

**PECO ENERGY COMPANY  
STATEMENT NO. 1**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY COMPANY  
FOR APPROVAL OF ITS  
DEFAULT SERVICE PROGRAM  
FOR THE PERIOD FROM  
JUNE 1, 2021 THROUGH MAY 31, 2025

DOCKET NO. P-2020-\_\_\_\_\_

\_\_\_\_\_  
DIRECT TESTIMONY  
\_\_\_\_\_

WITNESS: JOHN J. MCCAWLEY, P.E.

SUBJECTS: DEFAULT SERVICE PROCUREMENT,  
UNIFORM SUPPLY MASTER  
AGREEMENT, RETAIL MARKET  
ENHANCEMENTS, AND GENERATION  
SUPPLY ISSUES

DATED: MARCH 13, 2020

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**DIRECT TESTIMONY  
OF  
JOHN J. MCCAWLEY, P.E.**

5

**I. INTRODUCTION AND PURPOSE**

6 **1. Q. Please state your full name and business address.**

7 A. My name is John J. McCawley. My business address is PECO Energy Company,  
8 2301 Market Street, Philadelphia, PA, 19103.

9 **2. Q. By whom are you employed and in what capacity?**

10 A. I am employed by PECO Energy Company (“PECO” or the “Company”) as  
11 Director of Energy Acquisition.

12 **3. Q. What are your current duties and responsibilities as Director of Energy  
13 Acquisition?**

14 A. As Director of Energy Acquisition for PECO, I am responsible for the  
15 administration of wholesale power supply contracts and purchase agreements for  
16 PECO’s default service obligations. I am also responsible for the administration  
17 of PECO’s retail electric generation supplier (“EGS”) and natural gas supplier  
18 coordination functions as they relate to electric and natural gas choice, and for  
19 energy accounting activities that PECO performs as an electric distribution  
20 company (“EDC”) in support of PJM Interconnection, L.L.C. (“PJM”), the entity  
21 that operates the multi-state electric grid in which PECO is located. I have been  
22 responsible for these functions since 1998. In addition, I am responsible for the  
23 administration of PECO’s procurement of alternative energy credits (“AECs”)

1 necessary for compliance with Pennsylvania’s Alternative Energy Portfolio  
2 Standards Act (the “AEPS Act”).

3 **4. Q. Please summarize your educational background and prior professional**  
4 **experience.**

5 A. I hold a B.S. degree in Electrical Engineering from Lehigh University, an M.B.A.  
6 degree from Villanova University, and an M.S. degree in finance from Drexel  
7 University. I am also a Registered Professional Engineer in the Commonwealth  
8 of Pennsylvania.

9 I have been employed by PECO and/or Exelon Corporation since 1984. During  
10 that period, I have held engineering and management positions in the areas of  
11 nuclear, fossil fuel, and hydroelectric generation; corporate strategy involving  
12 electric industry issues (including restructuring, PJM transmission and wholesale  
13 power markets); and business planning and budgeting, in addition to my current  
14 responsibilities described above.

15 **5. Q. Have you previously provided testimony before the Pennsylvania Public**  
16 **Utility Commission (the “Commission”)?**

17 A. Yes. A listing of the cases for which I have provided testimony is attached as  
18 Exhibit JJM-1.

19 **6. Q. What is the purpose of your direct testimony?**

20 A. The purpose of my direct testimony is to describe PECO’s fifth default service  
21 program (“DSP V”) for procurement of electric generation to meet the needs of  
22 default service customers in PECO’s service territory for the period from June 1,

1 2021 through May 31, 2025. My testimony is divided into several parts, in which  
2 I discuss:

- 3 (1) PECO's default service obligations under PECO's fourth default  
4 service program ("DSP IV");
- 5 (2) An overview of DSP V and its principal features;
- 6 (3) The customer procurement classes under DSP V;
- 7 (4) The portfolio of products that PECO intends to procure for each  
8 customer procurement class;
- 9 (5) A description of proposed revisions to the uniform supply master  
10 agreement ("SMA") that PECO will use with wholesale generation  
11 suppliers;
- 12 (6) PECO's proposed Independent Evaluator and proposed  
13 implementation plan;
- 14 (7) A description of contingency plans in the event PECO does not  
15 obtain sufficient default service supply or experiences a supplier  
16 default;
- 17 (8) PECO's default service rate design and its introduction of a time-  
18 of-use ("TOU") rate in accordance with Act 129 of 2008 ("Act  
19 129") and Commission requirements;
- 20 (9) PECO's plans for compliance with the AEPS Act, including long-  
21 term procurement of AECs from solar energy facilities ("Solar  
22 AECs");

1 (10) PECO’s proposals to continue the Company’s Standard Offer  
2 Program as a competitive retail market enhancement and to  
3 facilitate shopping by customers participating in PECO’s Customer  
4 Assistance Program (“CAP”); and

5 (11) Generation supply issues and the requirement that PECO and its  
6 affiliates do not withhold generation from the wholesale market.

7 Finally, I introduce a proposed schedule for these proceedings and describe the  
8 notice provided to customers of PECO’s DSP V filing.

9 **7. Q. Have you prepared any exhibits to accompany your testimony?**

10 A. Yes. PECO Exhibits JJM-1 to JJM-10 were prepared at my direction and under  
11 my supervision and are described in my testimony.

12 **8. Q. On January 23, 2020, the Commission issued a Secretarial Letter requesting**  
13 **EDCs to address several topics in upcoming DSP filings.<sup>1</sup> Has PECO**  
14 **addressed those topics?**

15 A. Yes. The January 2020 Secretarial Letter requested PECO and other EDCs to  
16 address the following topics:

17 (1) Cost allocation based on peak load contribution (“PLC”) and Network  
18 Service Peak Load (“NSPL”);

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<sup>1</sup> *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) (“January 2020 Secretarial Letter”).

1 (2) The manner in which TOU rates for electric vehicle operators may be  
2 made available;

3 (3) How the EDC's DSP proposal complies with the "prudent mix"  
4 requirements under the Public Utility Code;

5 (4) Analysis and history of the price paid by customers for the EDC's  
6 default service (the "Price to Compare" ("PTC")), including consideration  
7 of the benefits of an adjustment to the PTC every six months to reflect  
8 current costs instead of an adjustment every three months;

9 (5) The issues and concerns raised by the Commission in prior  
10 proceedings relating to shopping for electric generation service by  
11 customers participating in universal service programs; and

12 (6) Recent Commission rulings relating to the scripts used in EDC  
13 Standard Offer Programs to encourage customers receiving default service  
14 to shop with EGSs.

15 Because these topics are addressed by different PECO witnesses, I have attached  
16 an exhibit to my testimony (JJM-2) that lists the topics and identifies each PECO  
17 witness who addresses the topics. In my testimony, I will address Topic Nos. 1  
18 and 3.

19

20

1                                   **II.     PECO’S DEFAULT SERVICE OBLIGATIONS**

2   **9.    Q.    Please describe PECO’s default service obligations.**

3           A.    PECO is obligated to arrange for and provide electric generation service (default  
4                   service) to all customers within its service territory who do not select an EGS or  
5                   who return to default service after being served by an EGS that becomes unable or  
6                   unwilling to serve. By law, PECO is required to file a plan with the Commission  
7                   that sets forth how it will meet its default service obligations, including a strategy  
8                   for procuring generation supply, a schedule for implementation, and a rate design  
9                   to recover PECO’s reasonable costs.

10   **10.   Q.   How does PECO currently meet its default service obligations?**

11           A.    In 2008, PECO filed its first default service program (“DSP I”), which was  
12                   approved by the Commission in 2009 and took effect on January 1, 2011. On  
13                   January 15, 2012, PECO filed its second default service program (“DSP II”),  
14                   which the Commission approved on October 12, 2012, subject to the resolution of  
15                   various retail market enhancement issues that were addressed by PECO in  
16                   subsequent filings and approved by the Commission. On March 10, 2014, PECO  
17                   filed its third default service program (“DSP III”), which the Commission  
18                   approved on December 4, 2014. On March 17, 2016, PECO filed its DSP IV,  
19                   which was approved on December 8, 2016.

20                   Under DSP IV, as in DSP I, DSP II, and DSP III, PECO conducts competitive  
21                   procurements of wholesale power and associated services for different default  
22                   service customer classes. For DSP IV, these classes are: Residential, Small  
23                   Commercial (i.e., customers with less than 100 kW demand and lighting

1 customers) and Consolidated Large Commercial and Industrial (i.e., customers  
2 with greater than or equal to 100 kW demand) (“Consolidated Large C&I”). In  
3 accordance with the Public Utility Code, 66 Pa.C.S. §§ 2807(3.1)-(3.4), PECO  
4 procures a “prudent mix” of contracts tailored for each customer class and  
5 designed to obtain electric supply at “least cost over time.”

6 The principal procurement features of DSP IV include the use of fixed-price full  
7 requirements supply contracts for residential and small commercial customers and  
8 spot-priced full requirements supply contracts for Consolidated Large C&I  
9 customers. DSP IV also includes tailored contract lengths ranging from 12  
10 months to 24 months for each customer class. Procurement under DSP IV occurs  
11 in March and September each year, approximately two months prior to the dates  
12 of delivery of supply obtained in the procurement, to minimize the effects of  
13 potential wholesale “price spikes” on retail default service rates. PECO is  
14 proposing to continue each of these procurement features in DSP V.

15 **11. Q. Has PECO met its obligations?**

16 A. Yes. PECO has met its obligations to date under DSP IV, including its  
17 fundamental obligation as default service provider to provide adequate and  
18 reliable default service to default service customers at least cost over time.

19 In addition, PECO implemented various programs to support retail competition,  
20 including continuation of its “Standard Offer” customer referral program in which  
21 default service residential and small commercial customers contacting PECO’s  
22 customer service center are offered the opportunity to select among a group of

1 EGSs that have voluntarily chosen to offer customers a twelve-month contract  
2 priced at 7% below PECO’s default service rate at the time of the offer. Over  
3 26,000 customers have switched to participating EGSs under the program since  
4 June 1, 2017.

5 **III. OVERVIEW OF PECO DSP V**

6 **12. Q. What principles did PECO use in designing DSP V?**

7 A. In designing DSP V, PECO adhered to the same central principles used in DSP  
8 IV:

9 (1) Competitive forces will produce the least cost to customers over  
10 time and, therefore, the development of retail and wholesale  
11 energy markets should continue to be encouraged.

12 (2) Obtaining a “prudent mix” of default generation supply contracts  
13 at least cost over time should take into account factors such as the  
14 benefits of price stability and reflect the different needs of various  
15 customer types through tailored procurement strategies.

16 (3) Default service rate design should be understandable and reflect  
17 the competitive procurement of generation supply service.

18 **13. Q. Please provide an overview of PECO’s proposed procurement process.**

19 A. PECO proposes to maintain most of the DSP IV default service procurement  
20 design for DSP V, with some minor improvements.

21 PECO plans to conduct multiple competitive solicitations to acquire generation  
22 service to meet its default service obligations on and after June 1, 2021, when its

1 current default service program (DSP IV) expires. As in DSP IV and in PECO's  
2 prior default service programs, DSP V will employ a request for proposals  
3 ("RFP") process to solicit bids for a portfolio of full requirements supply products  
4 with varying terms for its residential and small commercial customers, as well as  
5 its commercial and industrial customers receiving hourly priced default service.  
6 DSP V will continue the contract terms and delivery periods for each procurement  
7 class that were implemented in DSP IV.

8 **14. Q. What is the proposed term of DSP V?**

9 A. PECO's DSP V encompasses default service procurement for the four-year period  
10 from June 1, 2021 through May 31, 2025. This four-year term is consistent with  
11 the four-year term agreed to by the parties in a settlement of the DSP IV  
12 proceedings that was subsequently approved by the Commission.

13 A four-year term for default service programs is permitted under the  
14 Commission's Default Service Policy Statement, which states that default service  
15 programs should be for two-year periods unless the Commission directs  
16 otherwise.<sup>2</sup> In approving the DSP IV settlement, the Commission noted that a  
17 four-year term would minimize future litigation expenses and reduce  
18 administrative costs.<sup>3</sup>

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<sup>2</sup> 52 Pa. Code § 69.1804.

<sup>3</sup> *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Opinion and Order entered Dec. 8, 2016) ("DSP IV Order"), p. 35.

1 **15. Q. What are the significant changes from DSP IV that PECO is proposing in**  
2 **DSP V?**

3 A. There are three significant changes in DSP V. First, as I describe later in my  
4 testimony, PECO is seeking approval to solicit new ten-year contracts for Solar  
5 AECs to satisfy the requirements of the Pennsylvania Electricity Generation  
6 Customer Choice and Competition Act (“Competition Act”) and the AEPS Act.  
7 All of PECO’s existing ten-year Solar AEC contracts previously approved by the  
8 Commission will have expired by the end of DSP IV. As part of this solicitation,  
9 PECO will be seeking a specified annual quantity of Solar AECs from solar  
10 facilities located within its service territory as well as throughout the  
11 Commonwealth.

12 Second, as described by Mr. Joseph Bisti in PECO Statement No. 2, PECO is  
13 introducing a new TOU rate in order to comply with Act 129 and the  
14 Commission’s requirements. Finally, PECO is proposing to permit CAP  
15 customers to shop for generation service in accordance with the Commission’s  
16 proposed CAP Policy Statement, as described by Ms. Carol Reilly in PECO  
17 Statement No. 3.

18 **16. Q. How did PECO determine that its default service procurement plan is a**  
19 **sound approach to meeting “least cost over time” requirements?**

20 A. PECO engaged The NorthBridge Group to conduct an analysis of the results of its  
21 DSP IV procurements and to evaluate PECO’s proposed DSP V procurements. In  
22 PECO Statement No. 4, Mr. Scott Fisher of The NorthBridge Group presents this  
23 analysis and evaluation. Mr. Fisher reviews the “lessons learned” under DSP IV

1 with respect to procurement issues and discusses how PECO's DSP V  
2 procurement plan provides for a "prudent mix" of default supply contracts for all  
3 customer classes, is consistent with "least cost over time" requirements, and  
4 continues to support retail competition.

#### 5 IV. PROCUREMENT CLASSES

6 **17. Q. What procurement classes are being proposed by PECO for DSP V?**

7 A. PECO is proposing to maintain the same procurement classes in DSP V as those  
8 approved by the Commission for DSP IV. Specifically, PECO is proposing to  
9 divide its default service customers into three classes for purposes of default  
10 service procurement.

11 (1) Residential: All customers on schedules R and RH.

12 (2) Small Commercial: All customers with annual peak demand of up  
13 to and including 100 kW on schedule GS, PD and HT plus lighting  
14 customers on schedules AL, POL, SLC, SLE, SLS and TLCL.

15 (3) Consolidated Large Commercial and Industrial ("Large C&I"):  
16 All customers with annual peak demand greater than 100 kW on  
17 schedules GS, HT, PD and EP.

18 The Residential and Small Commercial classes are the same as in PECO's four  
19 prior default service programs, and this division continues to reflect the nature of  
20 the load in those customer classes. The separation of the Residential and Small  
21 Commercial procurement classes reflects the different usage patterns of those

1 customers and reduces the potential that changes in shopping trends in one  
2 customer group will result in a higher price for the other customer group.

3 PECO's DSP IV was the first PECO default service program that combined  
4 default service procurement for PECO's former "medium" commercial customers  
5 (100 kW to 500 kW peak demand) and "large" industrial customers (500 kW and  
6 over). These customers have the highest propensity to shop with an EGS and the  
7 combined class streamlines the Company's competitive solicitation process as  
8 well as its reconciliation of over- and undercollections.

9 **18. Q. Do the Commission's regulations and Policy Statement support PECO's**  
10 **proposed procurement classes for DSP V?**

11 A. The Commission's regulations and Policy Statement provide that default service  
12 procurement classes should be designed based on peak loads of 0-25 kW, 25-500  
13 kW, and 500 kW and above.<sup>4</sup> The Commission has previously granted PECO a  
14 waiver from these regulations in DSP I, DSP II, DSP III, and DSP IV to support a  
15 100 kW "breakpoint" among PECO's commercial customers in light of customer  
16 characteristics. PECO believes that lowering the threshold for the Consolidated  
17 Large C&I class to 100 kW remains appropriate because that level of demand  
18 separates smaller commercial customers from larger C&I customers who receive  
19 hourly priced default service. PECO therefore requests a renewed waiver of this  
20 regulation in order to maintain its existing procurement classes.

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<sup>4</sup> 52 Pa. Code §§ 54.187 and 69.1805.

1 **19. Q. Are there any exceptions with respect to customer size and procurement**  
2 **class?**

3 A. Yes. Certain lighting customers have peak demands equal to or exceeding 100kW  
4 but have been placed in the Small Commercial class. PECO believes that this  
5 arrangement remains appropriate to avoid a separate procurement class that may  
6 be too small to attract bidder interest.

7 **V. PORTFOLIO OF RFP PRODUCTS FOR DSP V**  
8 **AND IMPLEMENTATION PLAN**

9 **20. Q. What are the products that PECO will solicit for each procurement class?**

10 A. Each procurement class will have a unique procurement strategy consistent with  
11 Public Utility Code requirements to obtain a prudent mix of contracts designed to  
12 ensure least cost over time, taking into account rate stability, and to continue to  
13 support retail competition. All products to be procured in the RFPs will be full  
14 requirements products. The Residential and Small Commercial procurement  
15 products will be fixed price (\$/MWh) with term lengths of 12 months and 24  
16 months. The Consolidated Large C&I product will be hourly-priced based on the  
17 PJM day-ahead spot market price for the PECO zone with a twelve-month term  
18 length. Each of the products will be procured approximately two months prior to  
19 delivery of the energy. A schedule of PECO's proposed procurements is attached  
20 to my testimony as Exhibit JJM-3.

21

1   **21.   Q.   Please describe the full requirements products that wholesale suppliers will**  
2                   **be responsible for should they be chosen to serve a percentage of PECO’s**  
3                   **default service load.**

4           A.   Suppliers will be obligated to supply full requirements load-following service,  
5                   which includes the energy, capacity, and ancillary services and any other services  
6                   or products necessary to serve a specified percentage of PECO’s default service  
7                   load for a customer class continuously throughout the term of the product.

8                   The amount of energy and other services and products a supplier must provide  
9                   under the full requirements contracts that PECO will enter into will vary  
10                  depending on PECO’s actual default service load. The full requirements products  
11                  obligate the supplier to satisfy a specified percentage of default service for the  
12                  customer class, based on a defined percentage (“tranche”) times the number of  
13                  tranches won. The supplier must provide all of the default service customer’s  
14                  supply requirements in every hour of the delivery period, regardless of the  
15                  customer’s instantaneous changes in energy consumption and the frequency or  
16                  amount at which the customer switches to and from default service. In addition,  
17                  the full requirements product obligates the supplier to provide PECO all AECs  
18                  required to comply with AEPS obligations associated with the supplier’s specified  
19                  percentage of the load. PECO will continue to allocate AECs from the separate  
20                  Solar AEC procurements that PECO is proposing toward suppliers’ AEC  
21                  obligations in the same manner approved by the Commission in prior DSPs.

22

1 **22. Q. Are wholesale suppliers responsible for all transmission and distribution**  
2 **costs associated with their share of default service load?**

3 A. No. PECO remains responsible for all distribution service customers. Wholesale  
4 suppliers are responsible for those PJM bill line items specified in the SMA.

5 In DSP V, PECO will continue to be responsible for and recover Network  
6 Integration Transmission Service and Non-Firm Point-to-Point PJM bill line items  
7 associated with default service load through its unbundled, bypassable  
8 Transmission Service Charge. On June 1, 2015, in accordance with the  
9 Commission’s order approving DSP III,<sup>5</sup> PECO implemented a Non-Bypassable  
10 Transmission (“NBT”) charge to recover the following PJM charges from all  
11 distribution customers in PECO’s service territory: Generation Deactivation/  
12 Reliability Must Run charges (PJM bill line item 1930) set after December 4,  
13 2014; Regional Transmission Expansion Plan charges (PJM bill line items 1108  
14 and 1115); and Expansion Cost Recovery charges (PJM bill line item 1730).  
15 PECO will continue to implement this NBT charge in DSP V.

16 **23. Q. What are the products PECO is currently procuring for each customer class**  
17 **under DSP IV?**

18 A. Under DSP IV, most of the Residential class load is served by full requirements  
19 products consisting of a mix of 12- and 24-month contracts, with delivery periods  
20 overlapping on a six-month basis. There are a total of 62 tranches of full  
21 requirements products for the Residential class, and each tranches represents 1.6%

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<sup>5</sup> See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Final Order entered Dec. 4, 2014), p. 46.

1 of the total full requirements load. Twenty-four-month products are allocated 38  
2 tranches (approximately 61% of the load) and 12-month products are allocated 24  
3 tranches (approximately 38% of the load). The remaining approximately 1% of  
4 load is supplied directly by PJM's spot energy, capacity and ancillary service  
5 markets.

6 In addition, PECO receives an allocation of five megawatts of low-cost  
7 hydropower from the New York Power Authority ("NYPA") for residential  
8 customers in PECO's service territory under a multi-state agreement administered  
9 in Pennsylvania by Allegheny Electric Cooperative, Inc. This amount  
10 corresponds to 0.2% of PECO's Residential default service load of approximately  
11 2,600 MW. Under DSP V, PECO will continue to use the NYPA allocation to  
12 offset the amount of Residential default service supply provided by wholesale  
13 suppliers.

14 All of the DSP IV Small Commercial supply is served by full requirements  
15 products. The Small Commercial load is divided into 24 tranches of 4.17% per  
16 tranche. Twenty-four month products are allocated 12 tranches (50%) and 12-  
17 month products are allocated 12 tranches (50%).

18 Similarly, all of the Consolidated Large C&I class is served by hourly priced full  
19 requirements products. The class load is divided into eight tranches of 12.5% per  
20 tranche. All tranches are allocated to a 12-month full requirements product that is  
21 procured during each spring RFP with no overlap.

22

1   **24.   Q.   Does the supply portfolio for any procurement class include any long-term**  
2           **contracts?**

3           A.   Yes. In DSP IV, all procurement classes are allocated solar Tier I AECs from  
4           PECO’s long-term ten-year Solar AEC purchase agreements. In total, PECO has  
5           been purchasing 8,000 solar Tier I AECs annually from various agreements that  
6           will expire on May 31, 2020 or May 31, 2021.

7   **25.   Q.   Please describe PECO’s procurement strategy for the Residential class under**  
8           **DSP V.**

9           A.   Under DSP V, PECO will continue the procurement design of DSP IV for the  
10          Residential class. The targeted residential supply portfolio will be composed of a  
11          blend of 38% one-year and 61% two-year fixed-price full requirements products.  
12          Each of the products will be procured approximately two months prior to delivery  
13          of the energy. Products with delivery periods beginning on June 1 will be  
14          procured in the month of March prior to delivery. Because contracts beginning  
15          June 1 are not executed in time to allow winning bidders to participate in the  
16          PJM’s annual Auction Revenue Rights (“ARRs”) nomination process in early  
17          March, PECO will continue to nominate ARR for the default service load that  
18          will be served as of June 1 as it did in DSP IV. To facilitate for and advise on  
19          selection of ARR on behalf of customers for wholesale default service suppliers,  
20          PECO will also continue to contract with a consultant for ARR analysis and  
21          selection. Contracts beginning on December 1 will be procured in a September  
22          RFP, approximately two months before the start of the contract delivery period.

1   **26.   Q.   Please describe PECO’s procurement strategy for the Small Commercial**  
2           **class under DSP V.**

3           A.   Under DSP V, PECO will continue the procurement design of DSP IV for the  
4           Small Commercial class with no changes. Specifically, PECO will continue to  
5           serve the Small Commercial class with a portfolio composed of equal shares of  
6           one-year and two-year fixed-price full requirements products. The supply  
7           contracts will be laddered, with six-month spacing between the start of the  
8           delivery periods under those contracts. Each of the products for the Small  
9           Commercial class will be procured in the same manner as fixed-price full  
10          requirements products for the Residential class approximately two months prior to  
11          delivery of energy under the contract. In PECO Statement No. 4, Mr. Fisher  
12          explains how the use of one- and two-year fixed-price full requirements products  
13          for the Small Commercial class provides price stability benefits for all small non-  
14          residential customers who may not have the knowledge or resources to elect a  
15          competitive EGS offering that provides the price stability they seek.

16   **27.   Q.   Does PECO intend to supply all Residential and Small Commercial default**  
17           **generation service from the residential and small commercial supply**  
18           **portfolios respectively?**

19          A.   Yes. PECO is proposing a new TOU default service rate option described by Mr.  
20          Bisti in PECO Statement No. 2 to comply with the Company’s statutory  
21          obligation to offer TOU rates to all default service customers with smart meters

1 consistent with Commission guidance on TOU rate design.<sup>6</sup> Both the fixed price  
2 and the TOU generation service for residential and small commercial customers  
3 will be supplied from the portfolio of supply contracts PECO proposes to procure  
4 for those customers during DSP V.

5 **28. Q. For the Residential and Small Commercial procurements, did PECO**  
6 **consider creating a separate default service product to supply customers in**  
7 **those classes who are on TOU rates, as recommended by the Commission in**  
8 **the April 2017 Secretarial Letter?**

9 A. Yes. PECO expects that relatively few customers (compared to the number of  
10 customers who receive fixed-price default service) will enroll in the optional TOU  
11 default service in light of the customer participation experienced in the PECO  
12 TOU pilot described by Mr. Bisti in his testimony and based on the newness of  
13 this TOU rate. As Mr. Fisher explains, any effects of TOU default service on  
14 supplier prices should be small given the expected small level of participation  
15 relative to the overall default service customer base and the lack of revenue risk to  
16 suppliers (who will be paid the same price for a megawatt-hour of default service  
17 supply for customers on standard default service and those on TOU default  
18 service). To the extent more customers choose TOU default service and shift

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<sup>6</sup> 66 Pa.C.S. §§ 2807(f)(5); *see also Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Cmwlth. 2015) (“*DCIDA*”) (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) (“April 2017 Secretarial Letter”) (proposing a TOU design for PPL Electric Utilities Corp. in accordance with the *DCIDA* decision and noting that the proposed TOU design “may provide future guidance to all EDCs” for incorporation into their own TOU proposals in their individual default service proceedings).

1 their usage to lower-priced periods, that could also reduce the overall cost of  
2 default service supply.

3 Procuring supply for all residential customers through a single RFP also avoids  
4 the administrative costs of conducting additional RFPs as well as the costs,  
5 complexity, and implementation time associated with modifying PECO's energy  
6 accounting IT system software to add two new customer procurement groups  
7 (Residential TOU and Small Commercial TOU) to the current three customer  
8 procurement groups.

9 **29. Q. Please describe PECO's procurement strategy for the Consolidated Large**  
10 **C&I class under DSP V?**

11 A. Under DSP V, PECO will continue the procurement design of DSP IV with no  
12 changes. Specifically, PECO will continue to procure all default supply for the  
13 Consolidated Large C&I class through spot-priced full requirements products,  
14 which will be procured annually in March for delivery starting June 1 of each  
15 year.

16 **30. Q. Does PECO's DSP V procurement strategy for the Residential, Small**  
17 **Commercial and Consolidated Large C&I class include any long-term**  
18 **purchases?**

19 A. Yes. All long-term (ten-year) Solar Tier I AEC purchase agreements totaling  
20 8,000 Solar AECs annually will expire on or before May 31, 2021. As I describe  
21 later in my testimony, PECO is proposing to replace its existing ten-year Solar  
22 AEC contracts with new ten-year Solar AEC contracts. Similar to DSP IV, PECO

1 would allocate separately procured Solar AECs across all three DSP V  
2 procurement classes.

3 **31. Q. Will some of the full-requirements contracts PECO proposes for DSP V**  
4 **continue past May 31, 2025?**

5 A. Yes. The extension of contracts beyond the term of a default service program is  
6 permitted by the Commission’s regulations (52 Pa. Code § 54.186(b)(3)) and is  
7 consistent with the procurement design approved by the Commission in DSP II,  
8 DSP III and DSP IV. Laddering of contract delivery periods (which would result  
9 in some delivery periods extending beyond May 31, 2025) will better ensure that  
10 residential and small commercial customers are not fully exposed to wholesale  
11 price volatility associated with replacing large portions of default service supply  
12 over short periods.

13 **VI. SUPPLY MASTER AGREEMENT**

14 **32. Q. Mr. McCawley, please describe the Supply Master Agreement (“SMA”).**

15 A. The SMA is a standardized generation supply contract that sets forth the rights  
16 and obligations of PECO and each generation supplier that successfully bids to  
17 serve a portion of PECO’s default service load. Under the SMA, a supplier is  
18 obligated to supply full requirements service for a specified percentage of default  
19 service load assigned to that supplier through PECO’s competitive procurement  
20 process, and PECO is obligated to pay for this supply. The SMA includes  
21 detailed provisions relating to billing, supplier credit requirements, default and  
22 termination, damages, indemnification, survival, and dispute resolution, in

1 addition to customary provisions relating to representations and warranties by  
2 each party, as well as confidentiality and other obligations.

3 During DSP III, PECO utilized a new SMA developed through the uniform SMA  
4 stakeholder process envisioned by the Commission in the End State Order<sup>7</sup> in  
5 order to realize efficiencies and reduce expenses. That SMA was used again in  
6 DSP IV, with minor changes to facilitate competition and bidder participation.  
7 The uniform SMA has functioned well during DSP IV and has not resulted in  
8 litigation, defaults or other material disputes.

9 **33. Q. Is PECO proposing to make any changes to the uniform SMA?**

10 A. PECO is proposing one change to enable the Company to provide better  
11 information in its annual report to the Commission on default service. Under the  
12 Commission’s regulations (52 Pa. Code § 54.39), PECO must report “[t]he  
13 percentage of total electricity supplied by each energy source, including a detailed  
14 breakdown of renewable resources as defined in section 2803 of the code (relating  
15 to definitions).”<sup>8</sup> PECO is proposing a provision in the SMA that will require  
16 each supplier to submit this information to PECO annually for the energy supplied  
17 under the SMA.

18 A copy of the SMA and a “blackline” version of the SMA showing proposed  
19 changes is attached as Exhibit JJM-4 and Exhibit JJM-5, respectively. As in DSP

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<sup>7</sup> *Investigation of Pennsylvania’s Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered Feb. 15, 2013) (“End State Order”), pp. 34-35.

<sup>8</sup> *See also* 52 Pa. Code § 54.6 (requiring default service providers to file the annual licensing report required by Section 54.39 of the Commission’s EGS licensing regulations that provides information on default supply generation sources).

1 IV, PECO is also requesting that the Commission approve the SMA as an  
2 affiliated interest agreement under the Public Utility Code to permit the  
3 participation of wholesale generation affiliates of PECO.

4 **VII. INDEPENDENT EVALUATOR AND IMPLEMENTATION PLAN**

5 **34. Q. Has PECO selected an Independent Evaluator for DSP V?**

6 A. Yes. In accordance with the Commission’s regulations, PECO requests approval  
7 of NERA Economic Consulting, Inc. (“NERA”) as the Independent Evaluator,  
8 which will manage and monitor the default service RFPs. The Independent  
9 Evaluator will conduct the RFPs in a fair and efficient manner and will also report  
10 the RFP results to the Commission. The Commission has approved NERA as the  
11 Independent Evaluator for each of PECO’s default service programs since the  
12 beginning of default service. In 2019, PECO conducted a competitive solicitation  
13 for the DSP V Independent Evaluator services and, again, NERA was selected as  
14 the Independent Evaluator.

15 **35. Q. Has PECO also prepared an implementation plan?**

16 A. Yes. In conjunction with the Independent Evaluator, PECO has developed a  
17 competitive solicitation process, including a detailed set of rules and protocols for  
18 the Commission’s review and approval that will govern the RFPs administered by  
19 NERA (the “RFP Rules”). PECO’s solicitations under its prior DSPs have  
20 attracted between nine and thirteen suppliers qualified to bid. A copy of the RFP  
21 Rules for DSP V, which contains a number of appendices, is attached to my  
22 testimony as Exhibit JJM-6. The RFP Protocol, which describes how NERA will

1 manage the RFP process and will communicate with all parties, is attached as  
2 Exhibit JJM-7. These rules have been updated for DSP V, but there have been no  
3 substantive changes to the rules used in DSP IV. A blackline showing all changes  
4 to the DSP IV RFP Rules and Protocol is attached as Exhibit JJM-8 and Exhibit  
5 JJM-9, respectively.

6 **36. Q. Please describe the RFP process.**

7 A. As in DSP IV, each RFP will be administered by NERA as the Independent  
8 Evaluator in accordance with the RFP Rules. NERA's role is to be the main point  
9 of contact with RFP bidders; to ensure that the RFP Rules, as approved by the  
10 Commission, are followed; to ensure that bidder qualifications are evaluated  
11 equitably and fairly; to evaluate bids on a price-only basis; and to present results  
12 to the Commission.

13 The multi-step RFP process includes a two-part bidder proposal process, an  
14 alternate guaranty process, and a bid submission date. Under Part 1 of the bidder  
15 proposal process, potential bidders submit required information that NERA uses  
16 to evaluate them for the next stage. Potential bidders who pass the Part 1  
17 qualification may submit additional information and bidder collateral for Part 2,  
18 which is then used to certify them to submit bids. Under the alternative guaranty  
19 process, RFP bidders with corporate policies that preclude them from using the  
20 standard guaranty can request consideration by PECO for an alternate guaranty  
21 form.

1 On the bid submission date, qualified bidders may submit bids to provide default  
2 service supply for a procurement class, up to the load cap limits. NERA evaluates  
3 bids based on price and submits an RFP report to the Commission. NERA  
4 prepares documents for winning bidders that are used to execute the SMA and  
5 associated transaction confirmations for each RFP.

6 **37. Q. Will PECO's competitive procurement solicitations continue to be open to all**  
7 **wholesale suppliers, including affiliates of PECO?**

8 A. Yes. All interested suppliers that satisfy the uniform bidder qualification  
9 requirements will have an opportunity to participate in PECO's RFPs. The  
10 competitive solicitations process, which will be managed by the Independent  
11 Evaluator, is designed to ensure that PECO's generation affiliates do not receive  
12 an advantage over other bidders. The competitive solicitation process complies  
13 with the code of conduct established under 52 Pa. Code § 54.122.

14 **38. Q. Will wholesale suppliers be subject to any limitation on the amount of supply**  
15 **they can serve?**

16 A. Yes. As in DSP IV, all suppliers will be subject to a 50% load cap for each  
17 procurement class. This means that on any given day in the DSP V period, a  
18 supplier may supply up to but not more than 50% of the required supply for any  
19 procurement class. The load cap ensures that, for each procurement class, there  
20 will be at least two suppliers during any given period. This supplier  
21 diversification will mitigate the effects of any default by a single supplier.

22

1 **39. Q. Is PECO seeking to begin procurement before June 1, 2021?**

2 A. Yes. While some of the supply for residential and small commercial customer  
3 procurement classes required on June 1, 2021 will be provided by products  
4 procured under DSP IV and with terms that end during DSP V, PECO proposes to  
5 begin procurement activities for DSP V in February 2021.

6 **40. Q. Does PECO propose that its affiliate, Exelon Generation Company, LLC**  
7 **(“Exelon Generation”), again be permitted to participate in its competitive**  
8 **procurements?**

9 A. Yes. PECO’s competitive bid process will continue to comply with the  
10 Commission’s codes of conduct and includes protocols to ensure that Exelon  
11 Generation does not receive an advantage over other participants in the bidding  
12 process or any other aspect of PECO’s default service implementation plan.

13 **VIII. CONTINGENCY PLANS**

14 **41. Q. Is PECO proposing any changes to its contingency plans in the event it either**  
15 **does not obtain sufficient supply through its procurement process or**  
16 **experiences a supplier default?**

17 A. No. PECO proposes to use the same contingency plans as those in DSP IV.  
18 PECO employs a contingency plan in the event it fails to obtain sufficient  
19 approved bids for all tranches of supply offered in a procurement or in the event  
20 that a supplier enters into a supply agreement and subsequently defaults on its  
21 obligations. In the event PECO fails to obtain approved bids for all offered  
22 tranches in a solicitation, the unfilled tranches will be included in PECO’s next

1 scheduled default supplier solicitation for that product. If necessary, PECO will  
2 supply any unserved portion of its default service load from the PJM-administered  
3 markets for energy, capacity and ancillary services. If the supplier default occurs  
4 within a reasonable time before a scheduled procurement, the load served by the  
5 defaulting supplier will be incorporated into that next procurement. Otherwise,  
6 PECO will file a plan with the Commission proposing alternative procurement  
7 options and a request for approval on an expedited basis.

## 8 IX. RATE DESIGN

9 **42. Q. Is PECO proposing any revisions to its existing default service rate design as**  
10 **part of DSP V?**

11 A. As described by Mr. Bisti in PECO Statement No. 2, PECO is proposing to  
12 continue to recover the costs of default service through its Generation Supply  
13 Adjustment rates in the same manner as approved by the Commission in DSP IV.  
14 For DSP V, PECO is proposing a new, optional TOU rate for the Residential and  
15 Small Commercial classes. Mr. Bisti discusses the details of PECO's proposed  
16 TOU product and rate design in his direct testimony.

## 17 X. AEPS COMPLIANCE

18 **43. Q. Will PECO continue to satisfy its AEPS obligations with respect to sales to**  
19 **default service customers by requiring suppliers to transfer AECs to PECO?**

20 A. Yes. The AEPS Act requires PECO and other default service providers to obtain  
21 specified percentages of electricity sold to retail customers from alternative  
22 energy sources, as measured by AECs and defined by the AEPS Act. Under the

1 SMA, PECO will continue to require each default service supplier to transfer Tier  
2 I and Tier II AECs to PECO corresponding to PECO's AEPS obligations  
3 associated with the amount of default service load served by that supplier.

4 **44. Q. Has PECO separately procured Solar AECs?**

5 A. Yes. In 2009, the Commission authorized PECO to conduct RFPs for Solar AECs  
6 that PECO would use to meet a portion of the requirements of the AEPS Act  
7 associated with the load of PECO customers receiving default service. PECO  
8 subsequently conducted a successful RFP and, upon approval of the Commission,  
9 entered into contracts for the annual delivery of 8,000 Solar AECs over a ten-year  
10 period. The Solar AECs from these contracts were applied to the AEPS  
11 requirements of all customer classes to reduce the number of Solar AECs that  
12 wholesale suppliers serving each customer class were required to transfer to  
13 PECO to meet the AEPS requirements associated with the default service supply  
14 provided by those suppliers. Each of these ten-year contracts is scheduled to  
15 expire on or before the end of DSP IV.

16 **45. Q. Why is PECO seeking to enter into new long-term agreements for Solar**  
17 **AECs?**

18 A. During DSP V, PECO's solar AEPS requirement will be 0.5% of its total default  
19 service retail load. In light of PECO's prior successful Solar AEC RFP, as well as  
20 decisions of the Commission that require Solar AECs to be generated by facilities  
21 located within the Commonwealth for compliance with Act 40 of 2017 ("Act  
22 40"), PECO believes that continuing to obtain a portion of its Solar AEC  
23 requirements through long-term contracts can be an appropriate component of a

1 “prudent mix” of supply contracts. In fact, the Commission’s most recent AEPS  
2 report concludes that Act 40’s new in-state requirement will lead to a situation in  
3 which future demand may exceed supply for AEPS compliance.<sup>9</sup> Continued (and  
4 even expanded) procurement of solar energy, especially local solar energy, is also  
5 consistent with the express policies of a variety of stakeholders in PECO’s service  
6 territory, including the City of Philadelphia.

7 **46. Q. Is PECO proposing to procure the same amount of Solar AECs in DSP V?**

8 A. Given the increase in the Solar AEPS requirement since the long-term solar  
9 contracts were entered into ten years ago and potential future supply shortfalls,  
10 PECO is proposing to increase the total annual Solar AECs to be procured from  
11 8,000 AECs to 16,000 AECs. This amount of Solar AECs would satisfy  
12 approximately 25% of PECO’s increased solar AEPS requirements under DSP V.  
13 The remaining 75% of requirements will be met through AECs provided by  
14 wholesale suppliers to meet the AEPS requirements associated with the  
15 percentage of load served by each supplier.

16 Because the intrastate solar AEC market is still developing, PECO believes that  
17 the amount to be procured should be acquired over the first two years of the term  
18 of DSP V through two procurements each year (i.e., two annual solicitations for  
19 annual delivery of a total of 8,000 AECs each) instead of through a single RFP.

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<sup>9</sup> See *Alternative Energy Portfolio Standards Act: Compliance for Reporting Year 2018* (Dec. 2019), p. 46, available at [http://www.puc.state.pa.us/Electric/pdf/AEPS/AEPS\\_Ann\\_Rpt\\_2018.pdf](http://www.puc.state.pa.us/Electric/pdf/AEPS/AEPS_Ann_Rpt_2018.pdf).

1 PECO is also proposing to procure up to half of each year's amount of Solar  
2 AECs from solar generating facilities located within its service territory.

3 **47. Q. Why is PECO proposing to conduct solar procurements in 2021 and 2022**  
4 **instead of throughout the DSP V term?**

5 A. The federal solar investment tax credit ("ITC"), which can provide a tax credit of  
6 26% of a taxpayer's cost of a solar project, is being reduced during 2020 and  
7 2021. By timing PECO's procurements to coincide with this period in which the  
8 ITC is higher, PECO expects that, all else equal, the bids will be from projects  
9 that have benefited from lower costs associated with the ITC.

10 **48. Q. Please describe the process PECO is proposing to obtain new solar AEC**  
11 **contracts.**

12 A. PECO has updated its Solar AEC RFP (the "Solar RFP") previously approved by  
13 the Commission, and a copy of the Solar RFP is attached as Exhibit JJM-10. The  
14 Solar RFP includes two forms of an updated version of the Solar AEC Purchase  
15 and Sale Agreement previously approved by the Commission and used with each  
16 winning bidder in PECO's 2010 Solar AEC procurement. The Project Version of  
17 the Solar AEC Purchase and Sale Agreement will apply to bidders selling Solar  
18 AECs generated from individual solar PV systems, while the Aggregator Version  
19 will apply to entities who can aggregate Solar AECs from multiple parties.

20 As set forth in the Solar RFP, PECO will conduct a two-stage competitive  
21 procurement in the spring and summer of 2021 and 2022 for contracts that will  
22 deliver a total of 8,000 AECs annually each year. The first stage of the Solar RFP

1 will consist of a competitive procurement where the winning bidders will be  
2 determined by the lowest Solar AEC prices offered. The second stage will be a  
3 Standard Offer to Purchase (“SOTP”) Solar AECs at a competitive price  
4 determined by the first stage Solar RFP, with the requirement that the Solar AECs  
5 from stage two bidders come from solar generation resources located in the PECO  
6 service area.

7 For both the RFP stage and the SOTP stage, PECO will use a two-part bid process  
8 in which bidders are first qualified and then are permitted to submit a bid with an  
9 offer (including a price in \$/Solar AEC for the first stage RFP) to deliver a bidder-  
10 determined specific amount of Solar AECs annually over the term of the Solar  
11 AEC Agreement. Bidders must offer to deliver a minimum of 200 Solar AECs  
12 annually. Bidders in the stage one RFP are thus motivated to submit  
13 competitively priced bids since they will be directly competing with other bidders  
14 solely on the basis of price. Each annual RFP and SOTP stage will be limited to  
15 procurement of a total of 8,000 Solar AECs (4,000 for each procurement).

16 All bidders must be owners of solar photovoltaic (“PV”) systems, or own the  
17 rights to Solar AECs generated by such systems, and such systems must be  
18 physically located within Pennsylvania. Both existing solar PV systems that have  
19 achieved commercial operation and solar PV projects under development that will  
20 achieve commercial operation by May 31 of the year following the year of the  
21 effective date are eligible to participate. These include solar PV systems that are  
22 or will be directly connected to an electric utility’s distribution (i.e., grid-  
23 connected systems) or transmission systems and solar PV systems that are or will

1 be connected to an electric utility’s distribution system pursuant to applicable net  
2 metering requirements (i.e., net-metered systems). All systems must be qualified  
3 as Tier I solar PV alternative energy systems, and all deliveries of Solar AECs to  
4 PECO must be made through the Generation Attribute Tracking System operated  
5 by PJM Environmental Information Services, Inc. Aggregators will be permitted  
6 to participate in both the RFP and SOTP.

7 The entire procurement process will be overseen by an independent RFP monitor  
8 (“RFP Monitor”), who will evaluate the bids and develop an opinion concerning  
9 the RFP process and results. This will include conducting a marketplace  
10 benchmarking analysis prior to the day that the RFP bids are opened. For each  
11 event, i.e., the stage one RFP and the stage two SOTP process, the RFP Monitor  
12 will then submit a confidential RFP report to the Commission that will include the  
13 RFP Monitor’s opinion, price benchmarks and other analysis for Solar AECs  
14 bought and sold that qualify to meet Pennsylvania’s AEPS requirements. The  
15 Commission will have a ten-day review period to evaluate the RFP report and  
16 results and decide whether to approve the RFP results and the Solar AEC prices  
17 obtained. PECO also has the right to reject bids, even after Commission approval,  
18 if it determines that the prices would impose unreasonably high costs on the  
19 Company’s customers. If a bid is accepted and approved, the winning bidder will  
20 be required to enter into the Solar AEC Purchase and Sale Agreement with PECO.  
21 Upon approval of PECO’s DSP V program, PECO will select a Solar AEC RFP  
22 Monitor and notify the Commission of its selection.

1 Upon completion of the first stage RFP each year, PECO will publish the average  
2 winning bid received in the RFP. This average winning bid price will be the price  
3 for the SOTP procurement stage. For the SOTP procurement, the RFP Monitor  
4 will accept bidder applications on a first-come, first-served basis and qualify each  
5 bidder. Once the RFP Monitor has a sufficient list of companies, or after 90 days  
6 (whichever comes first), the RFP Monitor will submit the list of bidders with their  
7 qualifications to the Commission for a ten-day review period. PECO will execute  
8 a purchase agreement with each qualified and approved bidder up to the  
9 numerical limit of Solar AECs for that procurement.

10 **49. Q. Does PECO believe that the forms of Solar AEC Purchase and Sale**  
11 **Agreement (Project Version and Aggregator Version) include appropriate**  
12 **terms and conditions?**

13 A. Yes. The agreement includes terms and conditions that are typical of solar  
14 renewable energy credit agreements, including provisions for default and  
15 termination and representations and warranties regarding the Solar AECs that will  
16 be delivered to PECO. Each agreement also requires semi-annual delivery of  
17 Solar AECs to reduce risk of a contract delivery issue at the end of an AEPS  
18 compliance period. Each contract also includes collateral provisions that require  
19 the Solar AEC suppliers to post security for their obligations, which declines over  
20 the course of the contract. As with the SMA, PECO is requesting that the  
21 Commission approve both forms of the Solar AEC Purchase and Sale Agreement  
22 as affiliated-interest agreements under the Public Utility Code to permit the  
23 participation of PECO affiliates in these procurements.

1 **50. Q. How will PECO apply the AECs obtained through the new solar AEC**  
2 **contracts?**

3 A. The AECs will be used to satisfy the AEPS requirements of all customer classes  
4 in the same manner as PECO has applied its separately procured AECs in its prior  
5 default service programs. AEC allocations will be calculated by PECO in  
6 proportion to the forecast of default service retail sales to each procurement group  
7 under PECO's tariff. PECO will track AEC allocations and actual retail sales and  
8 adjust future allocations accordingly. In order for default service supply bidders  
9 to adjust their prices accordingly for this reduction in their Solar AEC supply  
10 obligations under the SMA, PECO will provide bidders with a binding number of  
11 the Solar AECs that PECO will apply to supplier obligations as part of the default  
12 service RFP process and prior to submission of any bids. PECO will not transfer  
13 Solar AECs to suppliers, but rather the amount of Solar AECs that suppliers must  
14 transfer to PECO will be reduced by the amount of Solar AECs allocated to  
15 suppliers by PECO in the RFP.

16 **51. Q. Does PECO have a contingency plan if any of its RFPs for Solar AECs are**  
17 **unsuccessful?**

18 A. Yes. In the event that the 2021 Solar RFP or SOTP is unsuccessful or there is  
19 insufficient participant interest, the amount of Solar AECs not under contract will  
20 be added to the amount to be procured in the 2022 procurement process. If PECO  
21 is unable to obtain its full 16,000 Solar AECs after completing the 2021 and the  
22 2022 procurements, any shortfall will be met by wholesale suppliers who are

1 obligated to transfer enough Solar AECs to meet AEPS requirements for the  
2 percentage of default service load that they supply.

### 3 **XI. COMPETITIVE ENHANCEMENTS**

4 **52. Q. Did PECO take steps to enhance retail competition during DSP IV?**

5 A. Yes. As I described earlier, PECO continued its Standard Offer Program. In  
6 addition, PECO continued several other retail enhancements, including its  
7 purchase of EGS receivables program, accelerated (three-day) switching, account  
8 number lookup, and the choice-friendly customer bill presentment features.

9 **53. Q. What is PECO proposing to enhance retail competition during DSP V?**

10 A. As discussed by Ms. Reilly in her testimony, PECO proposes to continue its  
11 Standard Offer Program for the period from June 1, 2021 through May 31, 2025.  
12 In addition, Ms. Reilly discusses a new program to enhance retail competition by  
13 enabling residential CAP customers to shop for supply from EGSs.

### 14 **XII. GENERATION SUPPLY ISSUES**

15 **54. Q. Please describe the determination that the Commission must make pursuant**  
16 **to Section 2807(e)(3.7)(iii) of the Competition Act.**

17 A. Section 2807(e)(3.7)(iii) of the Competition Act requires the Commission to  
18 determine that neither the default service provider nor its affiliated interest has  
19 withheld from the market any generation supply in a manner that violates federal  
20 law.

1 55. Q. Has PECO withheld from the market any generation supply in violation of  
2 federal law?

3 A. No.

4 56. Q. Has any PECO affiliate withheld from the market any generation supply in  
5 violation of federal law?

6 A. No. The only PECO affiliate that owns generation supply is Exelon Generation.  
7 Under applicable codes of conduct of the Federal Energy Regulatory  
8 Commission, PECO does not discuss generation market-related issues with  
9 Exelon Generation. However, PECO can affirmatively state that there has been  
10 no determination by a court or regulatory agency of competent jurisdiction that  
11 Exelon Generation has withheld from the wholesale energy market any generation  
12 supply in a manner that violates federal law.

13 **XIII. PEAK LOAD CONTRIBUTION (“PLC”) AND NETWORK SERVICE PEAK**  
14 **LOAD (“NSPL”)**

15 57. Q. Please describe the current methodology for allocating wholesale capacity  
16 and transmission costs to default service customers reflected in Attachment  
17 M-2 (PECO Energy Company) to PJM’s Open Access Transmission Tariff.

18 A. PJM establishes and publishes information, referred to as the five coincident  
19 peaks or “5CP,” to aid PECO and EDCs in the calculation of PLC for capacity  
20 allocations to retail customer accounts and NSPL for transmission allocation to  
21 retail customer accounts (also known as “tickets”). The 5CPs are the five highest

1 daily unrestricted PJM peak loads for each summer (June 1 through September  
2 30).<sup>10</sup>

3 Using the 5CP data provided by PJM each year, each fall PECO calculates a PLC  
4 “ticket” representing the customer’s allocation of PECO’s share of PJM’s  
5 weather-normalized peak load from the previous summer (June through  
6 September). For NSPL, each PECO customer’s ticket represents the customer’s  
7 allocation of peak actual metered zone load within the previous twelve months  
8 (November through October). PECO calculates both PLC and NSPL tickets by  
9 customer premise (physical location) annually and provides this information to  
10 EGSs in the Company’s service territory.

11 PECO’s PLC calculations apply a weather correction factor to each of the  
12 applicable five PJM coincident peak days to reflect an effective temperature of 99  
13 degrees at the hour ending 1700. PECO also employs a scaling factor so that the  
14 sum of all its customer PLC tickets equals the PLC load target for the PECO  
15 transmission zone provided by PJM annually. PECO uses actual customer meter  
16 data to calculate PLC tickets on the applicable PJM peaks for all customers other  
17 than residential customers. For customers on each of PECO’s residential rates,  
18 PECO determines the monthly annual consumption usage of each customer and  
19 assigns the customers to one of three strata for Rate R and three additional strata

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<sup>10</sup> PJM defines “unrestricted load” as “hourly metered load data supplemented with estimated load drops for: 1) Curtailment of load for customers registered in the PJM emergency or preemergency program either as a Load Management resource (Demand Resource) or an Emergency – Energy Only resource, or customers registered to meet a Price Responsive Demand commitment for either the Reliability Pricing Model or the FRR Alternative; 2) Voltage Reductions implemented by PJM or an EDC; and 3) Significant losses of load.” PJM’s Questions on 5CP and Peak Load, available at: <https://www.pjm.com/-/media/committees-groups/task-forces/scrstf/20160506/20160506-item-01b-faqs-for-5cps-and-peak-shaving.ashx>.

1 for Rate RH. For each customer in each strata, PECO calculates a peak load  
2 contribution based on a load curve for each strata based on the days when the  
3 peak load coincident peaks occurred at PJM. The values derived for each strata  
4 are then used as the annual PLC calculation for that customer. PECO's PLC  
5 calculations employ the same weather correction assumptions and scaling factors  
6 to the customer group load shape that are used with the five PJM coincident peaks  
7 for summer weekdays.

8 **58. Q. Is PECO proposing any changes to its current practice regarding PLC/NSPL**  
9 **calculations?**

10 A. No. PECO reflects wholesale costs in default service rates based on PJM's 5CP  
11 methodology, which was established through a robust stakeholder process in the  
12 late 1990s. In that stakeholder process, PJM considered adoption of one, five or  
13 ten data points for PLC calculations. Based on stakeholder comments and  
14 recommendations, PJM determined that the 5CP methodology appropriately  
15 balances the risk to customers based on normal usage variations created by a  
16 single peak day with forecasting challenges, including more weather correction  
17 factors, posed by ten data points.

18 Over the last decade, PJM system peak hours have consistently occurred in the  
19 afternoon, with a median peak time of 4 p.m. to 5 p.m. PECO allocates the share  
20 of zone peak loads for capacity and transmission to retail customers using the  
21 hour ending at 5 p.m., thus mirroring PJM's well-tested 5CP methodology.

1 **59. Q. In the January 2020 Secretarial Letter, the Commission asked EDCs to**  
2 **discuss the use of monthly summary usage data in calculating PLC tickets**  
3 **and why such data may be used instead of actual customer usage data. Can**  
4 **you please explain?**

5 A. Yes. First, I would like to clarify that PECO uses monthly usage data only to  
6 group residential customers into strata for calculation of PLCs. The annual PLC  
7 value for those customers is then calculated using the actual PJM 5CP peak data  
8 and load curves as I have described, not account-level usage data.

9 At this time, PECO does not believe there is any reason to change the residential  
10 PLC methodology. The price paid by default service customers for generation  
11 service is based on dollar-per-megawatt-hour bids for full requirements service  
12 from winning wholesale suppliers, and those bids reflect the suppliers' costs for  
13 energy, capacity (based on the PLC calculations), ancillary services, and AEPS  
14 costs for the projected aggregate of residential customers. PECO also provides a  
15 detailed explanation of its PLC calculation methodology to EGSs each year.

16 In the event the Commission were to require PECO to use individual customer  
17 PLC data for all residential customers, PECO would first need to complete  
18 information technology ("IT") and related work. PECO anticipates that the  
19 requisite IT-related work needed to calculate account-specific residential PLCs  
20 could be substantially completed by the end of 2022 and is expected to cost  
21 approximately \$1.5 million.

22

1                                   **XIV. PROCEDURAL SCHEDULE AND NOTICE**

2   **60.    Q.    Mr. McCawley, please describe the procedural schedule PECO has proposed**  
3                   **for this proceeding.**

4            A.    In accordance with the nine-month period for approval of a default service plan  
5                    under the Public Utility Code, PECO proposes the following schedule for this  
6                    proceeding:

March 13, 2020	Petition Filing
April 23, 2020	Prehearing Conference
June 4, 2020	Other Parties’ Direct Testimony Due
June 25, 2020	Rebuttal Testimony Due
July 9, 2020	Surrebuttal Testimony Due
July 15-16, 2020	Oral Rejoinder Testimony and Hearings
August 6, 2020	Initial Briefs
August 25, 2020	Reply Briefs
October 6, 2020	Recommended Decision
December 3, 2020	Commission Order

7  
8   **61.    Q.    How will PECO provide notice to its customers of this filing?**

9            A.    PECO is providing extensive public notice of this filing to its customers. First,  
10                   PECO will include a stand-alone bill insert in all customer bills over a 30-day  
11                   period beginning on April 1, 2020. This standalone bill insert will notify  
12                   customers of this filing, where they may obtain copies, and how they may

1 participate in this proceeding by filing comments or complaints with the  
2 Commission. Second, PECO is publishing notices containing similar information  
3 in all of the major newspapers serving PECO's service territory. All notices will  
4 refer to PECO's website (www.peco.com/know) where a copy of the entire filing  
5 will be maintained. PECO is also serving copies of this filing on the  
6 Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small  
7 Business Advocate, the Commission's Bureau of Investigation and Enforcement,  
8 the Coalition for Affordable Utility Services and Energy Efficiency in  
9 Pennsylvania, the Philadelphia Area Industrial Energy Users Group, PJM, the  
10 Retail Energy Supply Association, and all EGSs registered in PECO's service  
11 territory and is requesting that the Commission publish notice of this filing in the  
12 Pennsylvania Bulletin.

13 **XV. CONCLUSION**

14 **62. Q. Does this conclude your direct testimony?**

15 **A. Yes.**

16

**Listing of Prior Case Testimony**

Pennsylvania

Docket No. P-00072260 – *Petition of PECO Energy Company for Approval Of (1) A Process to Procure Alternative Energy Credits during the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs*

Docket No. P-2008-2062739 – *Petition of PECO Energy for Approval of Its Default Service Program and Rate Mitigation Plan*

Docket No. P-2009-2094494 – *Petition of PECO Energy Company for Approval to Procure Solar Alternative Energy Credits*

Docket No. P-2009-2143588 – *Petition of PECO Energy Company for Approval of its Natural Gas Supplier Purchase of Receivables Program*

Docket No. P-2009-2143607 – *Petition of PECO Energy Company for Approval of its Electric Generation Supplier Purchase of Receivables Program*

Docket P-2012-2283641 – *Petition of PECO Energy for Approval of Its Default Service Program*

Docket No P-2014-2409362 – *Petition of PECO Energy for Approval of Its Default Service Program for the Period From June 1, 2015 Through May 31, 2017*

Docket No P-2016-2534980 – *Petition of PECO Energy for Approval of Its Default Service Program for the Period From June 1, 2017 Through May 31, 2021*

**Index of PECO’s Response to the Topics Set Forth in the Secretarial Letter Issued  
on January 23, 2020 at Docket No. M-2019-3007101**

<u>Secretarial Letter Topic</u>	<u>PECO Witness</u>	<u>PECO DSP V Filing Reference</u>
<p>1. “[W]e request that the large EDCs, in their next DSP filings, provide information and analysis on their NSPL/PLC cost allocation calculations and why they use such cost allocation for consideration by the Commission. This analysis should also include a discussion on why any large EDC may still be using monthly summary usage data instead of actual customer usage data to determine PLCs/NSPLs, and what steps and timelines, would be needed to implement a change to their current practice, as well as any associated costs.”</p> <p>Secretarial Letter, p. 5.</p>	John J. McCawley	PECO St. No. 2, pp. 37-39.
<p>2. “While the adoption rate of EVs is a matter of speculation, it is indisputable that during the timeframe covered by the upcoming DSP’s, EV use will increase. With that said, we find that TOU rates, especially in the context of EV expansion, needs to be explored further, especially whether the lack of TOU rate offerings for operators of EVs presents a barrier to EV adoption. Accordingly, we urge all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to consumers.”</p> <p>Secretarial Letter, pp. 6-7.</p>	Joseph A. Bisti	PECO St. No. 2, pp. 15, 30.
<p>3. “We request that the EDCs include in their filings evidence showing how its DSP proposal complies with the prudent mix requirements of the Public Utility Code and case law.”</p> <p>Secretarial Letter, p. 8.</p>	John J. McCawley Scott G. Fisher	PECO St. No. 2, pp. 10-20, 22-25. PECO St. No. 4, pp. 22-31.
<p>4. “We find that it may be worthwhile for the Commission and the large EDCs to closely examine the history of PTC changes over the past few years to see if a 6-month PTC change interval would have provided more stability. Accordingly, we request that the large EDCs include in their upcoming DSP filings a 10 year history of their PTC changes and assess the benefits of a 6 month PTC change compared to a 3-month PTC change. EDCs are also free to propose other PTC change intervals that change no more frequently than on a quarterly basis.”</p> <p>Secretarial Letter, pp. 8-9.</p>	Joseph A. Bisti	PECO St. No. 2, pp. 29-30. PECO Exhibit JAB-10
<p>5. While not a topic of the proceeding at this docket, the Commission wants to take this opportunity to remind the EDCs and all interested parties to assess how Customer Assistance Program (CAP) customers can participate in the competitive market in future DSP proceedings. This topic has been addressed in various dockets, and we refer all parties to these dockets for more information. In addition,</p>	Carol Reilly	PECO St. No. 3, pp. 3-17.

<p>parties should review the most recent Commission actions on this topic, including how CAP-shopping was addressed in the FirstEnergy EDCs DSP IV proceedings and the Commission’s proposed CAP-shopping policy statement. While we acknowledge that the proposed policy statement is unlikely to be final and effective in time for some of the upcoming DSP proceedings, we still think the EDCs and interested stakeholders should consider the issues and concerns raised by the Commission and commenters in that proceeding in any future DSP proceeding. We suggest that all the EDCs with CAP programs, as well as interested stakeholders, consider the issues and concerns raised by the Commission in the above-noted prior proceedings when developing their CAP shopping proposals in the upcoming DSP filings.</p> <p>Secretarial Letter, pp. 9-10.</p>		
<p>6. “Another topic not included in this docket, but again we think it prudent to mention because it has been a subject litigated in past DSP proceedings, is Standard Offer Program (SOP) scripting language. These are the scripts used by the EDCs and their vendor call centers to refer customers to the SOPs. We direct the EDCs and all interested parties to our most recent statement on SOP scripting as found in the 2018-2019 FirstEnergy DSP proceeding; specifically, the February 28, 2019 order, in that proceeding. We suggest that EDCs, when preparing their upcoming DSP filings, review the Commission’s actions in the above-noted FirstEnergy proceeding and to include in their filings analyses of their SOPs, the current scripting, and any proposed scripting that adequately informs customers about the SOPs while maintaining important safeguards and protections.”</p> <p>Secretarial Letter, p. 10.</p>	<p>Carol Reilly</p>	<p>PECO St. No. 3, pp. 17-18.</p>

Procurement Schedule

Class	Product Term	Months	Full Requirements Fixed Price Products										
			March 2021	Sept 2021	March 2022	Sept 2022	March 2023	Sept 2023	March 2024	Sept 2024			
			Number of tranches										
Residential	June 2021 - May 2022	12	12										
	June 2021 - May 2023	24	11										
	December 2021 - November 2022	12		12									
	December 2021 - November 2023	24		9									
	June 2022 - May 2023	12			12								
	June 2022 - May 2024	24			9								
	December 2022 - November 2023	12				12							
	December 2022 - November 2024	24				9							
	June 2023 - May 2024	12					12						
	June 2023 - May 2025	24					11						
	December 2023 - November 2024	12						12					
	December 2023 - November 2025	24						9					
	June 2024 - May 2025	12							12				
	June 2024 - May 2026	24							9				
	December 2024 - November 2025	12										12	
December 2024 - November 2026	24										9		

Class	Product Term	Months	Full Requirements Fixed Price Products										
			March 2021	Sept 2021	March 2022	Sept 2022	March 2023	Sept 2023	March 2024	Sept 2024			
			Number of tranches										
Small Commercial	June 2021 - May 2022	12	6										
	June 2021 - May 2023	24	3										
	December 2021 - November 2022	12		6									
	December 2021 - November 2023	24		3									
	June 2022 - May 2023	12			6								
	June 2022 - May 2024	24			3								
	December 2022 - November 2023	12				6							
	December 2022 - November 2024	24				3							
	June 2023 - May 2024	12					6						
	June 2023 - May 2025	24					3						
	December 2023 - November 2024	12						6					
	December 2023 - November 2025	24						3					
	June 2024 - May 2025	12							6				
	June 2024 - May 2026	24							3				
	December 2024 - November 2025	12									6		
December 2024 - November 2026	24									3			

Class	Product Term	Months	Full Requirements Spot Price Products										
			March 2021	Sept 2021	March 2022	Sept 2022	March 2023	Sept 2023	March 2024	Sept 2024			
			Number of tranches										
Consolidated Large Commercial and Industrial	June 2021 - May 2022	12	8										
	June 2022 - May 2023	12			8								
	June 2023 - May 2024	12				8							
	June 2024 - May 2025	12						8					

**PECO ENERGY COMPANY**  
**PENNSYLVANIA DEFAULT SERVICE SUPPLIER**  
**MASTER AGREEMENT**

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# PENNSYLVANIA DEFAULT SERVICE SUPPLIER MASTER AGREEMENT

**THIS DEFAULT SERVICE SUPPLIER MASTER AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (“Effective Date”) by and between PECO ENERGY COMPANY (the “Company” and “Buyer”), a corporation and a public utility organized and existing under the laws of the Commonwealth of Pennsylvania and **INSERT NAME OF SUPPLIER** (“DS Supplier”), the Company and the DS Supplier hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”,

## WITNESSETH:

**WHEREAS**, the Company is an electric public utility engaged, *inter alia*, in providing retail electric service within its service territory located in the Commonwealth of Pennsylvania; and

**WHEREAS**, the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) Orders issued pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812, direct Buyer to supply electric service to Default Service Load within Buyer’s Pennsylvania franchise service territory; and

**WHEREAS**, the PaPUC has found that, for periods further identified in Appendix C and Transaction Confirmation(s) under this Agreement it would serve the public interest for the Company to secure Default Service Supply (“DS Supply”) through a competitive procurement process (“DS Solicitation”) and the PaPUC has approved such a process; and

**WHEREAS**, the Company has conducted and completed a successful DS

Solicitation for the provision of DS Supply, and the DS Supplier was one of the winning bidders in the DS Solicitation; and

**WHEREAS**, pursuant to the competitive bidding procedures of the DS Solicitation, the Company and the DS Supplier desire to enter into this Agreement setting forth their respective rights and obligations concerning the provision of DS Supply.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

## **ARTICLE 1: DEFINITIONS**

Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article.

**Alternative Energy Credit or “AEC”** – Shall have the meaning ascribed thereto in the AEPS Act.

**AEPS Act** – The Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

**Affiliate** – Shall mean, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**Allocated AECs** – Shall mean the types and amounts of AECs specified on Appendix E and a Transaction Confirmation.

**Alternative Energy Portfolio Standards or “AEPS”** – Standards requiring that a certain amount of electric energy sold to retail electric customers in the Commonwealth of Pennsylvania be comprised of electricity generated from alternative energy sources, as measured by AECs, in accordance with the requirements of the AEPS Act and provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2812-

14, in effect on the Effective Date including, without limitation, any subsequent increases in Tier I requirements under 66 Pa.C.S. § 2814.

**Ancillary Services** – Shall have the meaning ascribed thereto in the PJM Agreements.

**Applicable Legal Authorities** – Those federal and Pennsylvania statutes and administrative rules and regulations that govern the electric utility industry in Pennsylvania, as they may be amended from time to time.

**Auction Revenue Rights or “ARRs”** – The current or any successor congestion management mechanisms as may be employed by PJM (whether set forth in the PJM Agreements or elsewhere) for the purpose of allocating financial congestion hedges or financial transmission auction revenue rights. As currently defined by PJM, ARR are entitlements allocated annually by PJM which entitle the holder to receive an allocation of the revenues from the annual auction of financial transmission rights conducted by PJM pursuant to the PJM Agreements.

**Bankruptcy Code** – Those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

**Billing Month** – Each calendar month during the term of this Agreement.

**Business Day** – Any day on which the Company’s and PJM’s corporate offices are open for business and commercial banks are not authorized or required to close in New York, New York.

**Capacity** – “Unforced Capacity” as set forth in the PJM Agreements, or any successor, measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

**Charge** – Any fee, charge or other amount that is billable by the Company to the DS Supplier under this Agreement.

**Commercial Class** – Group of Rate Schedules that comprise the Commercial Class for DS Supply and itemized in Appendix C.

**Company** – PECO Energy Company.

**Costs** – With respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace Transaction(s) under this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

**Customer** – Any person or entity who enters a contractual agreement with the Company to receive retail electric service including, without limitation, all persons or entities taking service under a retail tariff, eligible to receive competitive electricity supply from an EGS or DS, respectively, in accordance with the Applicable Legal Authorities.

**Damages** – Financial compensation from the Defaulting Party to the Non-Defaulting Party associated with the occurrence of an Event of Default or an Early Termination of this Agreement. This compensation shall be assessed pursuant to Article 5 of this Agreement.

**Defaulting Party** – A Party to this Agreement that has caused or precipitated an Event of Default or an Early Termination of this Agreement.

**Default Service or “DS”** – Electric generation service that is provided at retail pursuant to the Applicable Legal Authorities under the Company’s retail electric tariffs and under any other agreements or arrangements between the Company and Customers, to any Customer that is not being served by an EGS.

**Default Allocation Assessment** – shall have the meaning ascribed to it under the PJM Agreements.

**Delivery Period** – The delivery period specified in an Appendix C Transaction Confirmation.

**Delivery Point** – Means the applicable zone of the Company as designated by PJM.

**DS Customer(s)** – Retail customers who are provided Default Service pursuant to the terms of this Agreement, the Applicable Legal Authorities and the Company’s retail tariffs.

**DS Fixed Percentage** – The percentage of DS Supply provided at a fixed price, as set forth in Appendix C.

**DS Fixed Price** – The price in dollars per MWh, as set forth in Appendix C hereto, as determined pursuant to the DS Solicitation.

**DS Load** – The aggregate load of DS Customers being provided DS Supply, except with respect to the Residential Class, less a fractional percentage of committed energy and capacity obtained under contract with Allegheny Electric Cooperative, Inc. for supply from the New York Power Authority.

**DS Solicitation** – The competitive bidding processes, procedures and rules employed by the Company to competitively procure DS Supply for purposes of this Agreement.

**DS Supplier** – An entity that (i) has been selected through the DS Solicitation and has accepted the obligations and associated rights to provide DS Supply to the Company for DS Customers in accordance with the Applicable Legal Authorities, (ii) has entered into this Agreement with the Company as a Party, and (iii) is a PJM Member and registered with PJM as a LSE.

**DS Supplier Representative** – Any officer, director, employee, consultant, contractor, or other agent or representative of the DS Supplier in connection with the DS Supplier’s activity under this Agreement. To the extent the DS Supplier is a division or group of a company, the term DS Supplier Representative does not include any person in that company who is not part of the DS Supplier division or group.

**DS Supplier Responsibility Share** – The fixed percentage share of the Company’s DS Load for which the DS Supplier is responsible as set forth in Appendix C.

**Default Service Supply or “DS Supply”** – All necessary Energy, Capacity, AECs for AEPS Act compliance, Ancillary Services, and transmission services including Network Integration Transmission Service, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, and such other services or products that the DS Supplier may be required, by PJM or any governmental body having jurisdiction, to provide in order to meet the DS Supplier Responsibility Share for serving DS Load under this Agreement and as detailed in Appendix C. For the avoidance of doubt, (i) any reference in this Agreement to any other agreement for DS Supply shall include any agreement between the Parties for the provision of Energy to serve DS Load, even if such other agreement does not require delivery of additional products (e.g., Capacity); and (ii) DS Load shall include unaccounted for energy, as reflected in PJM settlement volumes (including adjustments required by PJM for PJM’s derating in conjunction with implementation of marginal losses as appropriate per PJM Agreements).

**DS Tariffs** – The Company’s existing schedules of rates and services provided to retail customers as currently on file with the Commission and on the Company’s website at EDC website, as they may be amended from time to time.

**DS Variable Percentage** – The percentage of DS Supply provided at a variable price, as set forth in Appendix C hereto.

**DS Variable Price** – The price in dollars per MWh, as set forth in Appendix C hereto.

**Early Termination** – Termination of this Agreement prior to the end of the term due to the occurrence of an Event of Default as specified in Section 5.2 of this Agreement and the declaration of Early Termination.

**Early Termination Date** – The date upon which an Early Termination becomes effective as specified in Section 5.2 of this Agreement.

**Effective Date** - The date specified above as the effective date.

**Electric Distribution Company or “EDC”** – A public utility providing facilities for the transmission and distribution of electricity to retail customers in Pennsylvania.

**Electric Generation Supplier or “EGS”** – A person or entity that is duly certified by the Commission to offer and provide competitive electric supply to retail customers located in the Commonwealth of Pennsylvania.

**Emergency** – (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a condition that requires implementation of Emergency Operations Procedures as defined in the PJM Agreements or PJM manuals; or (iii) any other condition or situation that the Company or PJM deems imminently likely to endanger life or property or to affect or impair the Company’s electrical system or the electrical system(s) of other(s) to which the Company’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include, but shall not be limited to, potential overloading of the Company’s transmission and/or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either the Company’s or a Connected Entity’s electrical system, or conditions such that the Company is unable to accept Energy from the DS Supplier without jeopardizing the Company’s electrical system or a Connected Entity’s electrical system. Other additional emergencies can only be declared by PJM, FERC, or the PaPUC.

**Energy** – Three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

**Event of Default** – A Party’s breach of obligations under this Agreement as set forth in Article 5 of this Agreement.

**FERC** – The Federal Energy Regulatory Commission.

**Final Monthly Energy Allocation or “FMEA”** – A quantity of Energy which, for any Billing Month, is the PMEA adjusted for any billing or metering data received subsequent to the calculation of PMEA of which PJM is notified within 60 days.

**Force Majeure** – Shall mean an event or circumstance which prevents one Party from performing its obligations under one or more transactions, such as riots or revolutions, demands or embargoes of the United States Government, fire, flood, drought, insurrection, acts of God which are not within the reasonable control of, or the results of the negligence of the affected Party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of DS Supplier’s supply; (ii) DS Supplier’s ability to sell the DS Supply at a price greater

than that received under any Transaction; (iii) curtailment by a utility transmitting DS Supply; (iv) the Company's ability to purchase the DS Supply at a price lower than paid under any Transaction; (v) any change in requirements of any governmental authority; or (vi) labor stoppage or lockout.

**Forward Market Price** – The price for On-peak Energy Forward Price and Off-peak Energy Forward Price as determined by averaging concurrent broker quotes obtained by the Company for the Market Price Hub as available.

**Gains** – With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

**Generator Attribute Tracking System or “GATS”** - the system owned and operated by PJM Environmental Information Services, Inc. to provide reporting and tracking services to its subscribers in support of the AEPS Act, or any successor credit registry selected by the PaPUC. (As specified in Appendix E)

**Guaranty** – A guaranty, suretyship, hypothecation agreement, margins or security agreement or any other document in the form attached to this DS Supplier Master Agreement or other form approved by the Company.

**Guarantor** – Any party having the authority and agreeing to guarantee the DS Supplier's financial obligations under this Agreement, recognizing that such party shall be obligated to meet the Company's creditworthiness requirements specified in this Agreement for such DS Supplier.

**Industrial Class** - Group of Rate Schedules that comprise the Industrial Class for the DS Supply and itemized in Appendix C.

**Interest Index** – The average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

**Kilowatt or “kW”** – Unit of measurement of useful power equivalent to 1000 watts.

**Kilowatt-hour or “kWh”** – One kilowatt of electric power used over a period of one hour.

**Load Serving Entity or “LSE”** – An entity that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electricity to retail customers located within the PJM Control Area as that term is defined in the PJM Agreements or in successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement.

**Losses** – With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

**Margin** – The amount by which the Total Exposure Amount exceeds the DS Supplier’s, or Guarantor’s, credit limit as defined in Section 6.4.

**Mark-to-Market (“MtM”) Exposure Amount** – An amount calculated daily for each DS Supplier reflecting the total MtM credit exposure to the Company due to fluctuations in market prices for Energy. The methodology for calculation of the MtM credit exposure is illustrated in Appendix B.

**Market Price Hub** - A liquid pricing point located within PJM’s geographic footprint, as specified in Appendix B.

**Maximum Credit Limit** – The lesser of the applicable percentage of TNW or the applicable credit limit cap as specified in Section 6.4 of this Agreement.

**Megawatt or MW** – One thousand kilowatts.

**Megawatt-hour or MWh** – One megawatt of electric power used over a period of one hour.

**Merger Event** – When a DS Supplier consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity and either (i) the resulting entity fails to assume all of the obligations of such DS Supplier hereunder as determined in the sole discretion of the Company or (ii) the benefits of any credit support provided pursuant to Article 6 of this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of the DS Supplier’s obligations hereunder, and the resulting entity or its guarantor fails to meet the creditworthiness requirements of this Agreement as determined in the sole discretion of the Company.

**Minimum Rating** – A minimum senior unsecured debt rating as defined in Appendix A of this Agreement.

**Minimum Transfer Amount** - \$100,000.

**NERC** – The North American Electric Reliability Council or its successor.

**Network Integration Transmission Service or “NITS”** – “Network Integration Transmission Service” under the PJM Agreements in effect as of the date of this Agreement, or its successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Network Integration Transmission Service shall mean the type of

transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

**Non-Defaulting Party** - A Party to this Agreement who, at the time an Event of Default occurs, is not itself in default of this Agreement and has not otherwise caused or precipitated an Event of Default or Early Termination of this Agreement.

**Off-Peak Energy Forward Price** - Shall mean the price for Off-Peak Hours for each Billing Month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer available or no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

**On-Peak Energy Forward Price** – Shall mean the price for On-Peak Hours for each Billing Month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

**PaPUC or Commission** – The Pennsylvania Public Utility Commission or its successor.

**PJM** – PJM Interconnection L.L.C. or its successor.

**PJM Agreements** – The PJM OATT, PJM RAA, PJM OA and all other PJM agreements, procedures, manuals and documents applicable to the Transactions covered by or relating to this Agreement.

**PJM Control Area** – That certain Control Area encompassing electric systems in parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia, as may be modified from time to time, and which is recognized by the North American Electric Reliability Council as the "PJM Control Area".

**PJM Member** – A member in good standing of PJM that satisfies the requirements to conduct business with PJM.

**PJM OA** – The PJM Operating Agreement or the successor, superseding or amended version of the PJM Operating Agreement that may take effect from time to time.

**PJM OATT** – The PJM Open Access Transmission Tariff or the successor, superseding or amended version of the PJM Open Access Transmission Tariff that may take effect from time to time.

**PJM OI** – The PJM Office of Interconnection, the system operator for the PJM Control Area.

**PJM RAA** – The PJM Reliability Assurance Agreement or the successor, superseding or amended version of the PJM Reliability Assurance Agreement that may take effect from time to time.

**PMEA/FMEA Adjustment Amount** – For any Billing Month, the monetary amount due to the DS Supplier or the Company, as the case may be, in order to reconcile any difference between the PMEA used for the purpose of calculating estimated payments made to DS Supplier for a given month and the FMEA used for calculating the final payments due to the DS Supplier for such month as more fully described in Article 9 hereof.

**Preliminary Monthly Energy Allocation or “PMEA”** – A quantity of Energy which, for any Billing Month, is the preliminary calculation of the DS Supplier’s DS Supplier Responsibility Share for that Billing Month.

**Rate Schedule(s)** – Shall mean the specified existing, and modified or successor customer rate schedule(s) in the electric service tariff of the Company filed with the Commission.

**Reliability First Corporation or “RFC”** – The approved regional NERC entity with responsibility for the Commonwealth of Pennsylvania.

**Residential Class** – Group of Rate Schedules that comprise the Residential Class for the DS Supply and itemized in Appendix C

**Seasonal Billing Factor** – A numerical factor, as set forth in Appendix C hereto, one amount applicable during the summer months of June through September and one amount applicable during the non-summer months of October through May, applied to the DS Fixed Price in accordance with the provisions of Article 9 hereof and thereby used to adjust the Company’s payments to the DS Supplier.

**Rounding Amount** - \$100,000.

**Settlement Amount** – With respect to a Non-Defaulting Party, the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4(a) of this Agreement. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

**Statement** – A monthly report prepared by the Company for the DS Supplier indicating the amount due to the DS Supplier by the Company as compensation for DS Supply

supplied to DS Customers by the DS Supplier during the applicable Billing Month, in accordance with DS Supplier's obligations under this Agreement.

**Supply Day** – Any calendar day during the term of this Agreement on which the DS Supplier is providing, or is obligated by this Agreement to provide, DS Supply to the Company's DS Customers.

**Tangible Net Worth or "TNW"** – Total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks.

**Termination Payment** – An amount paid by the Defaulting Party or Non-Defaulting Party due to Early Termination.

**Tier I AEC** – Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the non-solar photovoltaic Tier I requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Tier I (Solar) AEC** – Shall mean an AEC generated by a solar photovoltaic energy source that will satisfy the Tier I solar photovoltaic requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Tier II AEC** - Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the Tier II requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Total Exposure Amount** – An amount calculated daily for the DS Supplier reflecting the total credit exposure to the Company and consisting of the sum of (i) the Buyer's Exposure for all Transactions under this Agreement; (ii) any amount(s) designated as "buyer's exposure" under any other DS Supply agreements providing for "DS Supply" or similar default service; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

**Tranche** – A fixed percentage share of the Company's DS Load, as specified in a Transaction Confirmation.

**Transaction** – Means a particular agreement by which the Company purchases and the DS Supplier sells DS Supply pursuant to this Agreement, the details of which are more fully set forth in a Transaction Confirmation in the form attached as Exhibit 1 in Appendix C.

**Transaction Confirmation** – Shall have the meaning ascribed to it in Appendix C and Exhibit 1 of this Agreement.

**Transaction Date** – Shall mean the date that a Transaction is effective as set forth in the Transaction Confirmation.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 Capacity In Which Company Is Entering Into This Agreement**

The DS Supplier agrees and acknowledges that the Company is contracting for the provision of DS Supply from such DS Supplier for Customers receiving Default Service on the Company's electric system pursuant to the authorizations provided to the Company. The DS Supplier further agrees and acknowledges that the Company will administer and monitor the DS Supplier's performance in providing DS Supply under this Agreement and that the Company shall be entitled to enforce the DS Supplier's obligations related to the provision of DS Supply. The DS Supplier hereby permanently, expressly and irrevocably waives any claim that Company is not entitled to seek enforcement of this Agreement on behalf of Customers. It is the specific intention of the Parties hereto that Customers and Customer groups are not third party beneficiaries of this Agreement and that no Customer or Customer group shall seek enforcement of this Agreement against the DS Supplier on their own behalf, either independently or by joining in any legal proceeding brought by the Company.

### **2.2 Parties' Obligations**

#### **(a) Obligations of DS Supplier**

The DS Supplier hereby agrees as follows:

- (i) To provide service on a firm and continuous basis such that the supply delivered for the term of each Transaction under the Agreement meets the terms and conditions set forth in Appendix C and the applicable Transaction Confirmation;
- (ii) To provide sufficient quantities of DS Supply on an instantaneous basis at

- all times during the Delivery Period of each Transaction and supplied to the Delivery Point to meet the DS Supplier Responsibility Share;
- (iii) To procure those services provided by the PJM OI and to perform such functions as may be required by the PJM OI that are necessary for the delivery of DS Supply required hereunder;
  - (iv) To cooperate with the Company in any regulatory compliance efforts that may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of DS Supply, before the PaPUC, FERC or any other regulatory body asserting jurisdiction;
  - (v) To become the LSE with respect to the provision of DS Supply for the DS Supplier Responsibility Share and to comply with all requirements of a LSE with respect to such DS Supplier Responsibility Share;
  - (vi) To pay to the Company the PMEA/FMEA Adjustment Amount for any Billing Month in which the PMEA exceeds the FMEA, as more fully described in Article 9 of this Agreement;
  - (vii) To accept assignment of and to fulfill all obligations of a LSE that are assigned to it by this Agreement;
  - (viii) To comply in a timely manner with all obligations under this Agreement imposed upon the DS Supplier;
  - (ix) To comply with the AEPS requirements of the Company's Default Service Plan, as detailed in Appendix E; and
  - (x) To provide a completed generation supply report to the Company, in the

form of Appendix H, by March 31st of each calendar year for all Energy provided to the Company under this Agreement in the preceding calendar year.

**(b) Obligations of the Company**

The Company hereby agrees as follows:

- (i) To pay to the DS Supplier every month an amount due, resulting from the calculations, as detailed in Article 9 of this Agreement, subject to the adjustments as expressed therein;
- (ii) Pay to the DS Supplier the PMEA/FMEA Adjustment Amount for any Billing Month in which the FMEA exceeds the PMEA, as more fully described in Article 9 of this Agreement;
- (iii) To provide to the DS Supplier its estimated aggregate load obligation (Capacity MW value) for each Supply Day no less than five (5) calendar days prior to the day of delivery. Further, this information will be posted in the DS Supplier's specific PJM eMTR account, or successor system or process;
- (iv) To comply in a timely manner with all obligations under this Agreement imposed upon the Company;
- (v) Accept the delivery of DS Supply necessary to meet the DS Load; and
- (vi) Be responsible (as between the Company and the DS Supplier) for the provision of the Allocated AECs to satisfy AEPS requirements.

**2.3 Congestion and Congestion Management**

The DS Supplier is responsible for any congestion costs incurred to meet the DS

Supplier Responsibility Share. The Company shall transfer or assign to the DS Supplier the Company's rights to ARR's to which the Company is entitled as a LSE pursuant to the PJM Agreements provided that such rights are related to the service being provided to meet the DS Supplier Responsibility Share and such rights are for the Delivery Period indicated in the Transaction Confirmation(s). All rights, liabilities and obligations associated with such ARR's will accrue and be assumed by the DS Supplier through the transfer or assignment from the Company to the DS Supplier including the responsibility and ability of the DS Supplier to request or nominate such ARR's when applicable and feasible. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations will nominate such ARR's for the upcoming PJM planning period and such ARR's will be allocated to the DS Supplier in accordance with the PJM Agreements based upon its DS Supplier Responsibility Share.

#### **2.4 PJM Services**

The DS Supplier shall make all necessary arrangements for the delivery of DS Supply through the PJM OI. The Company will advise the PJM OI of the magnitude and location of each DS Supplier's actual DS Supplier Responsibility Share, as required by the PJM OI, for the purpose of calculating such DS Supplier's appropriate DS Supply requirements related to the provision of service under this Agreement by DS Supplier arising under the PJM Agreements. The DS Supplier shall remain responsible to PJM for the performance of its LSE obligations associated with the provision of DS Supply under this Agreement until the effective date of the transfer of such LSE obligations.

The Company shall generate and provide to DS Supplier PJM shortname(s) associated with supplier's unique contract type(s), as necessary. Unique shortname(s)

may be generated for each differing contract type. DS Supplier shall complete all required forms and processing to PJM to create shortname(s) within the PJM system.

For the period of time this Agreement is in effect, both the Company and DS Supplier shall have executed the PJM Declaration of Authority, and shall remain in effect during the Term of each Transaction under this Agreement. In the event PJM requires that the Declaration of Authority be amended after execution by the DS Supplier, DS Supplier agrees to execute a revised Declaration of Authority in accordance with PJM requirements.

## **2.5 PJM Agreement Modifications**

(a) If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

(b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement, including the DS Supplier's responsibility for changes in PJM products and pricing during the term of each Transaction under this Agreement.

## **2.6 PJM Member Default Cost Allocation**

In the event PJM imposes a Default Allocation Assessment upon the Company relating to a default during the term of Transaction(s) under this Agreement, the

Company shall invoice DS Supplier and DS Supplier shall pay an amount equal to the product of (i) DS Supplier Responsibility Share and (ii) the Default Allocation Assessment, less the amounts of any types of charges allocated to the Company under this Agreement that are used by PJM in calculating such Default Allocation Assessment.

## **2.7 Other Fines and Penalties**

If fees, fines, penalties, or costs are claimed or assessed against the Company by any Applicable Legal Authority or PJM due to non-compliance by the DS Supplier with this Agreement, any other requirements of law, or the PJM Agreements, the DS Supplier shall indemnify and hold the Company harmless against any and all losses, liabilities, damages, and claims suffered or incurred by the Company, including claims for indemnity or contribution made by third parties against the Company, except to the extent the Company recovers any such losses, liabilities or damages through other provisions of this Agreement.

## **2.8 Communications and Data Exchange**

The DS Supplier and the Company shall supply to each other in a thorough and timely manner all data, materials or other information that is specified in this Agreement, or that may otherwise reasonably be required by DS Supplier or by the Company in connection with the provision of DS Supply by the DS Supplier to DS Customers, if required.

The DS Supplier shall be equipped with the communications capabilities necessary to comply with the communications and data exchange standards that are set by and as may, from time to time, be modified by PJM, and shall exclusively bear the costs of installing, maintaining, testing, and operating all required information technology

systems that will enable it to send to and receive data from the Company and PJM and to satisfy its obligations under this Agreement, the PJM Agreements and all other relevant agreements.

## **2.9 Record Retention**

The Company shall retain necessary records for the longer of two years or as required under applicable PaPUC requirements so as to permit DS Supplier to confirm the validity of payments due to DS Supplier hereunder; provided that if a DS Supplier has provided notice pursuant to this Agreement that it disputes the validity of any payments, the Company agrees that it shall retain all records related to such dispute until the dispute is finally resolved.

## **2.10 Verification**

In the event of a good faith dispute regarding any invoice issued or payment due under this Agreement, and provided that a mutually acceptable confidentiality agreement is executed by the Parties, each Party will have the right to verify, at its sole expense, the accuracy of the invoice or the calculation of the payment due by obtaining copies of relevant portions of the books and records of the other Party.

## **2.11 Forward Contract Merchant**

The Parties agree that the Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, that each Party hereto is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, all setoffs, netting and liquidations contemplated hereunder constitute “settlement payments” as set forth in Sections 101 and 741 of the United States Bankruptcy Code and each payment or

transfer of performance assurance is a “margin payment”, “settlement payment” or transfer within the meaning of Section 101 of the United States Bankruptcy Code for the purposes of and as used in such Code. Accordingly, the Parties hereto are entitled to the protections of Section 556 of the United States Bankruptcy Code. The Parties therefore agree that the Agreement may be terminated by either Party upon the commencement of a proceeding by the other Party under any chapter of the United States Bankruptcy Code in accordance with Section 5.2 of this Agreement.

### **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

#### **3.1 DS Supplier’s Representations and Warranties**

The DS Supplier hereby represents, warrants and covenants to the Company on the Effective Date and throughout the term of the Transaction(s) under this Agreement as follows:

a) It is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania or, if another jurisdiction, under the laws of such jurisdiction and, in such case, is duly registered and authorized to do business in such other jurisdiction;

b) It has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including satisfaction of all applicable FERC requirements;

c) The execution and delivery of this Agreement and the performance of such DS Supplier’s obligations hereunder have been duly authorized by all necessary

action on the part of the DS Supplier and do not and will not conflict with, or constitute a breach of or default under, any of the terms, conditions, or provisions of the DS Supplier's certificate of incorporation or bylaws or other constituent instruments or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the DS Supplier is a party or by which the DS Supplier or any of its properties is bound or subject;

d) All necessary and appropriate action that is required on the DS Supplier's part to execute this Agreement has been completed;

e) This Agreement is the legal, valid and binding obligation of the DS Supplier, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity;

f) There are no actions at law, suits in equity, proceedings or claims pending or, to the DS Supplier's knowledge, threatened against the DS Supplier before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the DS Supplier's performance of its obligations hereunder;

g) It has entered into this Agreement and all Transactions under this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

h) It is in good standing as a LSE in PJM, is a signatory to all applicable PJM Agreements, and is in compliance with, and will continue to comply with, all obligations,

rules and regulations, as established and interpreted by the PJM OI, that are applicable to LSEs as defined by the PJM Agreements; provided that the DS Supplier shall not be obligated to become a LSE in PJM until the date it begins providing DS Supply;

i) It has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the Company;

j) It will comply with any and all information and data transfer protocols that may be adopted by the Company or that are set by, and from time to time modified by, the PaPUC; provided that DS Supplier shall be entitled to exercise its reserved right to challenge any such protocols in the appropriate forum.

k) It is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent;

l) There are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement;

m) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

n) It is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the

terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement; and

o) It has entered into this Agreement and all Transactions under this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of DS Supply as required by this Agreement; and it is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act.

### **3.2 Company’s Representations and Warranties**

The Company hereby represents, warrants and covenants to the DS Supplier as follows:

a) The Company is an electric utility corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;

b) The Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

c) The execution and delivery of this Agreement and the performance of the Company’s obligations hereunder have been duly authorized by all necessary action on the part of the Company and do not and will not conflict with, constitute a breach of or default under, any of the terms, conditions, or provisions of the Company’s certificate of incorporation or bylaws or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the Company is a party or by which the Company or any of its properties is bound or subject;

d) All necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed;

e) This Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity and the Commission's power under section 508 of the Public Utility Code, 66 Pa.C.S. § 508, to amend or modify the contracts of public utilities;

f) The ability of the Company to pay any and all amounts due and payable under this Agreement, or upon any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the Commission, the Commonwealth of Pennsylvania or any other governmental authority;

g) There are no actions at law, suits in equity, proceedings or claims pending or, to the Company's knowledge, threatened against the Company before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the Company's performance of its obligations under this Agreement;

h) It has entered into this Agreement and all Transactions under this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

i) The Company's performance under this Agreement is not contingent upon the performance of Customers or the ability of Customers to pay rates;

j) The Company shall have sole responsibility for metering and billing with

respect to Customers; and

k) The Company shall be responsible for electric distribution services and the DS Supplier shall not be responsible for distribution charges.

### **3.3 Survival of Obligations**

All representations and warranties contained in this Article are of a continuing nature and shall be maintained during the term of this Agreement or until all amounts due hereunder, including all obligations, have been paid or performed in full. If a Party learns that any of the representations, warranties or covenants in this Agreement are no longer true during the term of any Transaction under this Agreement, the Party shall immediately notify the other Party via facsimile, with a hard copy of the notice delivered by overnight mail.

## **ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT**

### **4.1 Commencement and Termination**

The term of this Agreement shall commence upon the Effective Date. Unless otherwise agreed upon by the Company and the DS Supplier, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed under this Agreement, unless the Agreement is terminated prematurely pursuant to the provisions of this Agreement.

### **4.2 Termination of Right to Supply**

The DS Supplier agrees that termination of this Agreement for reason of an Event of Default shall terminate any right of the DS Supplier to provide DS Supply to the DS Customers and nullify any of the entitlements to which the DS Supplier became entitled

as a result of being selected as a winning bidder in the DS Solicitation.

#### **4.3 Survival of Obligations**

Termination of this Agreement for any reason shall not relieve the Company or the DS Supplier of any obligation accrued or accruing prior to such termination. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings.

#### **4.4 Mutual Termination**

The Company and the DS Supplier may agree at any time during the term of this Agreement to terminate their respective rights and obligations hereunder on such terms and under such conditions that they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to the Company and the DS Supplier (“Mutual Termination Agreement”); provided that Company agrees that it shall enter into such a Mutual Termination Agreement, which will discharge the terminating DS Supplier (the “Terminating DS Supplier”) with respect to liabilities arising after the effective date of the Mutual Termination Agreement if the following conditions precedent are met: (i) the Terminating DS Supplier identifies a replacement DS Supplier willing to assume all obligations of the Terminating DS Supplier hereunder for the remaining term of Transactions under this Agreement (the “Replacement DS Supplier”); (ii) the Replacement DS Supplier demonstrates its compliance with Article 6 of this Agreement, “Creditworthiness”, as of the effective date of the Mutual Termination Agreement, that determination to be made in the sole discretion of Company; (iii) the Replacement DS Supplier executes a counterpart signature page to this Agreement and all Transaction Confirmation(s) that are currently in effect and thereby becomes a Party

under this Agreement and all relevant Transaction(s), effective immediately following the effective date of the Mutual Termination Agreement; and (iv) the Terminating DS Supplier is not, to the belief or knowledge of the Company, subject to an Event of Default as of the effective date of the Mutual Termination Agreement or, if the Company believes that the Terminating DS Supplier may be subject to an Event of Default, either (a) the Company has determined that, as of the effective date of the Mutual Termination Agreement, it has not incurred any Damages as a result of the Event of Default or (b) if the Company has determined, as of the effective date of the Mutual Termination Agreement, that it may have incurred Damages as a result of the Event of Default, that the Replacement DS Supplier has agreed in writing to be responsible for the payment of such Damages or to otherwise cure the Event of Default, in either case to the satisfaction of the Company in its sole discretion.

## **ARTICLE 5: BREACH AND DEFAULT**

### **5.1 Events of Default**

An Event of Default under this Agreement shall occur if a Party (the “Defaulting Party”):

- (i) Is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (ii) Makes an assignment for the benefit of its creditors;
- (iii) Applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (iv) Is dissolved (other than pursuant to a consolidation, amalgamation or merger) or is the subject of a Merger Event;

(v) Has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;

(vi) Has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(vii) In the case of a DS Supplier, PJM terminates the DS Supplier's ability to make purchases from PJM markets or PJM holds the Company responsible for the provision of DS Supply under this Agreement and PJM does not rescind such termination or assignment of responsibility within seven (7) Business Days;

(viii) Fails to comply with the creditworthiness requirements as set forth in Article 6 of this Agreement, including, without limitation, compliance with the creditworthiness requirements to cover the Margin calculated under Section 6.3 or post any performance assurance collateral as set forth in Section 6.7 to cover Margin due under Section 6.5 of this Agreement, within the time frames set forth in this Agreement;

(ix) Is declared by PJM to be in default of any provision of any PJM Agreement, which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;

(x) Fails to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

(xi) Violates any federal, state or local code, regulation or statute applicable to the supply of Energy and/or AECs in a manner that materially, and adversely, affects the Party's performance under this Agreement, including by way of failure to continually

satisfy all applicable FERC requirements, or, in the case of the DS Supplier, by way of failure to maintain any other governmental approvals required for participation in the Pennsylvania retail Energy market, or defaults on any obligation or other failure to comply with PJM requirements under the PJM Agreements;

(xii) Is the subject of an involuntary bankruptcy or similar proceeding;

(xiii) Subject to Section 5.3 (b) of this Agreement, in the case of the Company, fails to accept DS Supply properly tendered by the DS Supplier under this Agreement;

(xiv) Fails to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within three (3) Business Days after written notice;

(xv) Makes a materially incorrect or misleading representation or warranty under this Agreement or under any response to the DS Solicitation;

(xvi) Commits an act or makes an omission that constitutes an “Event of Default” under any other agreement(s) for the provision of DS Supply between the Company and the DS Supplier; and fails to remedy such condition, event or delinquency herein above described such that the other Party (the “Non-Defaulting Party”) is completely made whole with respect to such condition, event or delinquency, within three (3) Business Days of receipt of written notice thereof from such Non-Defaulting Party; provided, however, that an Event of Default shall be deemed to have occurred immediately, without any need for the provision of notice thereof by the Non-Defaulting Party and without any right of cure on the part of the Defaulting Party, in the event of the occurrence of a condition, event or delinquency described in subsections “i”, “ii”, “iii”, “iv”, “v”, “vi”, “vii” or “viii” above. Termination of this Agreement or any Transactions

hereunder by the PaPUC, other regulatory authority or court of law does not constitute an Event of Default under this Agreement; or

(xvii) With respect to the DS Supplier's Guarantor, if any:

1. any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
2. Guarantor fails to make, when due, any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within two (2) Business Days after written notice;
3. Guarantor's guaranty fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of the DS Supplier under this Agreement without the written consent of the Company; or
4. Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty.

## **5.2 Rights upon Default**

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not

continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Sections 5.6 and 5.7. In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement either or both of the following remedies:

(i) Declare an Early Termination Date of this Agreement with respect to the obligations of the Defaulting Party without any liability or responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice to the Defaulting Party; provided, however, that this Agreement shall immediately terminate automatically and without notice in the case of any Event of Default in which a DS Supplier is the Defaulting Party occurring under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) of Section 5.1 of this Agreement and such date of automatic termination shall be deemed the Early Termination Date of this Agreement with respect to such DS Supplier; and

(ii) Receive Damages in accordance with Section 5.3 of this Agreement.

### **5.3 Damages Resulting From an Event of Default**

(a) **DS Supplier's Failure to Supply DS Supply or Declaration of Early Termination By Company:** Damages resulting from (i) the DS Supplier's failure to (A) provide DS Supply in conformance with Section 2.2 hereof or (B) pay PJM for purchases of any products or services from PJM, or other failure to comply with PJM requirements, such that PJM holds the Company responsible for the provision of DS Supply to meet the DS Supplier's DS Supplier Responsibility Share under Transaction(s)

of this Agreement or (ii) the occurrence of any Event of Default attributable to the DS Supplier resulting in Early Termination, shall include all Costs incurred by the Company, acting in a commercially reasonable manner consistent with any statutory or regulatory requirements imposed by the Applicable Legal Authorities, in obtaining replacement services or in obtaining a replacement supplier, which Costs exceed the amounts that would have been payable to the defaulting DS Supplier under this Agreement. Costs incurred by the Company for the purpose of calculating Damages hereunder will consist of:

(i) The cost of DS Supply allocated to the Company by the PJM OI due to the failure of the DS Supplier to meet obligations owing to the PJM OI in connection with its obligations under this Agreement;

(ii) The costs of DS Supply purchased by the Company to replace DS Supply that a DS Supplier was obligated to supply under this Agreement during the term hereof;

(iii) Administrative and legal costs associated with procuring replacement DS Supply; and

(iv) Financial hedging costs incurred by the Company on behalf of DS Customers as a result of having to procure DS Supply not provided by the DS Supplier.

The Parties further recognize and agree that the final calculation of Damages hereunder may not be known for some time since the level of such Damages may be dependent upon the arrangements made by the Company to obtain replacement services or a replacement DS Supplier. The Company and the DS Supplier agree that, until the calculation of Damages under this provision is completed, the amount and payment to the Company of the Settlement Amount on behalf of DS Customers in the event of an Early

Termination as set forth in Section 5.4 of this Agreement shall be immediately due and owing as an estimate of all Damages ultimately determined to be due and owing. After Damages have been finally determined under this Section 5.3, the amounts of Damages due and owing will be reconciled with payments already made by the DS Supplier under Section 5.4 of this Agreement.

(b) **Failure By Company on Behalf of Customers To Accept DS Supply Tendered By DS Supplier:** Damages resulting from the failure of the Company on behalf of Customers to accept DS Supply tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under Transaction(s) of this Agreement shall consist of the positive difference (if any) between (i) the amounts that would have been payable to the DS Supplier hereunder had the Company accepted the DS Supply tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under Transaction(s) of this Agreement and (ii) the amount realized by the DS Supplier in disposing, in a commercially reasonable manner, of the DS Supply not accepted by the Company; provided, however, that the Company shall not be required to accept on behalf of any Customer, quantities of DS Supply utilized by Customers on an instantaneous basis as a function of electrical load, in excess of such Customer's instantaneous consumption of such component of DS Supply; and further provided that the Company shall not be liable for any Damages if this Agreement is terminated by the PaPUC, other regulatory authority or a court of law.

(c) **Damages Resulting From Early Termination Due To An Event of Default Attributable To the Company:** Damages resulting from Early Termination due to an Event of Default attributable to the Company shall be as set forth in Section 5.4

of this Agreement. Damages calculated in accordance with said Section 5.4 shall be the exclusive remedy available to the DS Supplier in the event of Early Termination resulting from an Event of Default attributable to the Company.

(d) **Damages Resulting from DS Supplier's Failure to Continuously Satisfy its AEPS Obligations:** Damages resulting from the DS Supplier's failure to continuously meet and satisfy all or any portion of its obligations under Section 2.2 (a)(ix) of this Agreement shall include, but not be limited to, the amount of all penalties, and costs associated with the procurement of additional AECs, etc. including, without limitation, interest and other charges, if any, levied against the Company related to AEPS regulations, due to such DS Supplier's conduct or inaction.

(e) **Other Damages:** Damages for Events of Default not specified above shall consist of the direct Damages incurred by the Non-Defaulting Party.

(f) **Waiver of Event of Default:** If an Event of Default has occurred and the Non-Defaulting Party is the Company, then unless the Event of Default was a failure by the DS Supplier to meet any or all of its DS Supply obligations, the Company may elect, at its sole discretion, to offer to waive the default on such terms and conditions as the Company, at its sole discretion, may deem appropriate to propose a special remedy. Any such special remedy can only be offered to the DS Supplier if it first is specifically approved by the PaPUC in accordance with Commission Orders.

#### **5.4 Declaration of an Early Termination Date and Calculation of Settlement Amount and Termination Payment**

(a) **Settlement Amount.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right (i) to designate a day, no earlier than the day such notice is effective and no

later than twenty (20) days after such notice is effective, as the Early Termination Date to accelerate all amounts owing between the Parties and to liquidate and terminate the undertakings set forth in this Agreement, (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance; provided however, that an Early Termination Date shall be deemed to occur automatically and concurrently with the Event of Default, without any requirement for the provision of notice by the Non-Defaulting Party, with respect to an Event of Default under subsections (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii) of Section 5.1 of this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount with respect to the obligations under this Agreement.

The DS Supplier may, in its sole discretion, select the notional quantity in the following subsection 5.4(a)(1) by checking this box. If the DS Supplier does not check the box to select subsection 5.4(a)(1) it will be deemed to be excluded from this Agreement.

5.4(a)(1) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes as may have occurred since the previous calendar year.

(b) **Net Out of Settlement Amounts.** The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Company and the DS Supplier for the

provision of DS Supply into a single amount by netting out (i) all Settlement Amounts that are due or will become due to the Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply against (ii) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the DS Supplier is the Defaulting Party and the Termination Payment is due to the DS Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the DS Supplier as Damages and further provided that any previously attached security interest of the Company in such retained amounts shall continue. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined to be due and owing by the DS Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the DS Supplier, the Company will pay simple interest on the Termination Payment amount being made to the DS Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per

annum.

(c) **Notice of Termination Payment.** As soon as practicable after calculation of a Termination Payment, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to Section 5.4(b) above, the Termination Payment shall be made by the Party that owes it within three (3) Business Days after such notice is effective.

(d) **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within three (3) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party as specified in the Termination Payment dispute notice.

(e) **Multiple DS Supply Agreements.** It is the intention of the Company and the DS Supplier that, in the event the DS Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the Effective Date of this Agreement or are entered into after the Effective Date of this Agreement, the Company will calculate a single Termination Payment applicable to all such agreements as set forth herein.

### **5.5 Step-up Provision**

The Company may ask other DS Suppliers whether they wish to assume all or part of the delivery obligations on the same terms and price contained herein, but any DS Supplier shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a “Step-Up”, and is subject to compliance with the creditworthiness provisions of Section 6 of this Agreement and the DS Supplier’s load cap as per the Company’s approved default service procurement plan. For the avoidance of doubt, in the event that the DS Supplier does not respond to the Company’s Step-Up request within the relevant timeframe, then the DS Supplier shall be deemed to have rejected the Company’s request in full.

### **5.6 Setoff of Payment Obligations of the Non-Defaulting Party**

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured, but which are subject to a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply.

### **5.7 Preservation of Rights of Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including without limitation Sections 5.4 and 5.6 of this Agreement, shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

- a. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.
  
- b. Return of Auction Revenue Rights. When the DS Supplier is the Defaulting Party, the DS Supplier will make best efforts to facilitate the transfer or reassignment to the entity which is the replacement DS Supplier on the Early Termination Date, any and all of the replacement DS Supplier's rights to ARRs to which the replacement DS Supplier is entitled as a LSE pursuant to the PJM Agreements, which were transferred or assigned to the DS Supplier under Section 2.3 (Congestion and Congestion Management).

## **ARTICLE 6: CREDITWORTHINESS**

### **6.1 Applicability**

The DS Supplier agrees that it shall meet the creditworthiness requirements of this Article 6 at all times during the term of this Agreement and shall inform the Company immediately of any changes in its credit rating or financial condition. Without limitation

of the foregoing, the DS Supplier shall, upon written request, affirmatively demonstrate to the Company, its compliance with the creditworthiness requirements set forth hereunder. The Company may establish less restrictive creditworthiness requirements under this Article 6 in a non-discriminatory manner.

## **6.2 Creditworthiness Determination**

The DS Supplier may submit and maintain a security deposit in accordance with Section 6.4 of this Agreement in lieu of submitting to or being qualified under a creditworthiness evaluation. The DS Supplier shall have the opportunity to request that the Company re-evaluate its creditworthiness whenever an event occurs that the DS Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as possible but no longer than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the credit limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. DS Supplier shall provide the Company and its agents unrestricted access to audited financial statements; provided that if audited financial statements are not available, the Company, in its sole discretion, may specify other types of financial statements that will be accepted.

## **6.3 Buyer's Exposure and Mark-to-Market Credit Exposure Methodology**

To calculate the daily exposure for each DS Supplier the MtM credit exposure methodology will be used. The "mark" for each Billing Month will be determined at the time the auction is completed based on the available Forward Market Prices and for the remaining Billing Months will be derived based on historical data. At the time the

auction is completed, the MtM credit exposure for each DS Supplier shall be equal to zero. Subsequently, the differences between the available Forward Market Prices on the valuation date and the “mark” prices for the corresponding Billing Months will be used to calculate the daily credit exposures for each DS Supplier. The total MtM credit exposure will be equal to 1.1 times the sum of the MtM credit exposures for each Billing Month. The methodology for calculation of Buyer’s Exposure under this Agreement including the MtM credit exposure is illustrated in the example (using hypothetical numbers) set forth in Appendix B hereto.

#### **6.4 Credit Limit**

The following criteria constitute the Company’s creditworthiness requirements for the DS Supplier to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer rating) will be used.

(i) For a DS Supplier to be granted an unsecured line of credit, the DS Supplier must be rated by at least two of the following rating agencies: S&P, Moody’s, or Fitch. The methodology for determining the credit rating to use is set forth in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount will be determined based on the credit matrix table in Appendix A of this Agreement.

The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7 (b) of this Agreement (see standard format in Appendix F) for the Margin due the Company as set forth in Section 6.5 of this Agreement; or

(ii) For a DS Supplier having a Guarantor, in the case of a Guarantor

organized under the laws of the United States, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the rating will be established based on the methodology outlined in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in Appendix G) will be determined based on the credit matrix table for Guarantors on Appendix A. The DS Supplier will be granted a credit limit equal to the lesser of (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the term of this Agreement, or (ii) the DS Supplier's Maximum Credit Limit. The DS Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable credit limit during the time period after the Company has made a Margin call but before the DS Supplier has posted the required performance assurance collateral as set forth in Section 6.7 to cover Margin. Notwithstanding anything herein to the contrary, the DS Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the DS Supplier may request a return of the posted performance assurance collateral in accordance with Section 6.5 of this Agreement. The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Appendix F) for the Margin due the Company as set forth in Section 6.5 of this

Agreement; or

(iii) For a DS Supplier or Guarantor that has not been incorporated or otherwise formed under the laws of the United States and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (“GAAP”) in the United States, they shall supply the following additional information:

- a. A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the DS Supplier or Guarantor is incorporated or otherwise formed that this Agreement is, or upon completion of execution formalities will become, the binding obligation of the DS Supplier or Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and
- b. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the person executing this Agreement on behalf of the DS Supplier has the authority to execute the Agreement and that the governing board of the DS Supplier or Guarantor has approved the execution of this Agreement;
- c. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the DS Supplier or Guarantor has been authorized by its governing board to enter into agreements of the same type as this Agreement; and
- d. Such other documents and certificates as may be required by the Company in its sole discretion.

(iv) The posting of cash or a letter of credit as defined in Section 6.7 (b) below for the entire Total Exposure Amount as set forth in Section 6.5 of this Agreement.

### **6.5 Posting Margin and Return of Surplus Margin**

(a) If at any time and from time to time during the term of Transaction(s) under this Agreement, the Total Exposure Amount, rounded by the Rounding Amount, exceeds the DS Supplier's or the Guarantor's credit limit by the Minimum Transfer Amount, then the Company on any Business Day, may request that the DS Supplier provide cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Appendix F), in an amount equal to the Margin (less any performance assurance collateral for Margin posted by the DS Supplier and held by the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply).

If the DS Supplier receives written notice for performance assurance collateral to cover Margin from the Company by 1:00 p.m. New York time on a Business Day, then the DS Supplier shall post performance assurance collateral to cover Margin the next following Business Day, if posting cash, and by the second Business Day following the date of notice, if posting a letter of credit, unless the Company agrees in writing to extend the period to provide performance assurance collateral to cover Margin. If the DS Supplier receives notice for Margin from the Company after 1:00 p.m. New York time on a Business Day, whether posting cash or a letter of credit, then the DS Supplier must post performance assurance collateral to cover Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide

performance assurance collateral to cover Margin. The Company will not unreasonably deny a request for a one-day extension of such period. In the event that the DS Supplier fails to post performance assurance collateral to cover Margin when due in accordance with this Section 6.5, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5 of this Agreement.

(b) Surplus Margin being held by the Company that is not needed to satisfy the Total Exposure Amount, as determined above, will be returned to the DS Supplier upon receipt of a written request by the DS Supplier. Surplus Margin means cash or a letter of credit posted by the DS Supplier as a result of a request by the Company pursuant to Section 6.5(a) that exceeds the Total Exposure Amount less the DS Supplier's or the Guarantor's credit limit (rounded by the Rounding Amount). If the resulting surplus Margin amount is more than the Minimum Transfer Amount, it will be returned to the DS Supplier. If the DS Supplier posted cash and notice is received by 1:00 p.m. New York time on a Business Day, the surplus Margin will be returned by the next following Business Day and if the DS Supplier posted cash and notice is received by the Company after 1:00 p.m. New York time on a Business Day, the surplus Margin shall be returned by the second Business Day following the date of notice, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. If the DS Supplier posted a letter of credit, the surplus Margin shall be returned on the next Business Day following the Business Day on which the amendment to the letter of credit is received from the issuing bank, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. The DS Supplier will not unreasonably deny a

request for a one-day extension of such period. In the event that the Company fails to return the surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the DS Supplier will be entitled to the remedies set forth in Article 5 of this Agreement.

#### **6.6 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the DS Supplier posted performance assurance collateral to cover Margin hereunder, the DS Supplier hereby grants to the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and the DS Supplier and the Company agree to take such action as is reasonably required to perfect the secured Party's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the DS Supplier in the possession of the Company whether held in connection with this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply; (iii) draw on any outstanding letter of credit issued for its benefit; and (iv) liquidate all security held by or

for the benefit of the Company free from any claim or right of any nature whatsoever of the DS Supplier, including any equity or right of purchase or redemption by the DS Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the DS Supplier's obligation under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply (the DS Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to a DS Supplier to:

Copy to:

If to the Company to:

Copy to:

Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

## 6.7 Security Instruments

At each DS Supplier's choice, the following are deemed to be acceptable methods for posting security to satisfy Margin requirements, if required:

(a) Cash; or

(b) A standby irrevocable letter of credit acceptable to the Company, in its sole discretion, issued by a bank or other financial institution with a minimum "A-" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P and "A3" from Moody's (see standard format in Appendix F). The letter of credit shall state that it shall renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days prior written notice from the issuing financial institution. If the Company receives notice from the issuing financial institution that the letter of credit is being cancelled, the DS Supplier will be required to provide a substitute letter of credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute letter of credit must be effective as of the cancellation date and delivered to the Company thirty (30) days before the cancellation date of the original letter of credit. If the DS Supplier fails to supply a substitute letter of credit as required, then the Company will have the right to draw on the existing letter of credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which a DS Supplier has obtained a letter of credit falls below the levels specified in Article 6 of this Agreement, the DS Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable letter of credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by the

Company. The Company shall have no obligation under this Agreement or otherwise to make or grant such extension.

## **6.8 Maintenance of Creditworthiness**

### **(a) Reporting of Changes.**

The DS Supplier shall promptly notify the Company of any change in its credit rating or financial condition or that of its Guarantor. The DS Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company.

### **(b) Change in Credit Standing.**

The Company will re-evaluate the creditworthiness of a DS Supplier whenever it becomes aware of an adverse change, through the provision of notice by the DS Supplier or otherwise, in the DS Supplier's or Guarantor's credit standing. If the lowest credit rating (whether senior unsecured debt rating or corporate issuer rating) used to determine the DS Supplier's Maximum Credit Limit or its credit limit adversely changes, the Company will require additional security from the DS Supplier in accordance with Section 6.4 of this Agreement. The additional security must be in a form acceptable to the Company in its sole discretion, as specified in Section 6.7 of this Agreement and must be posted as set forth in Section 6.5 of this Agreement.

## **6.9 Calling on Security**

The Company may call upon the security posted by the DS Supplier if the DS Supplier fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply after all of the following events occur:

- (a) Written Notice of Default is provided to the DS Supplier; and
- (b) Any applicable cure period associated with the written Notice of Default ends.

The foregoing notwithstanding, the security posted by the DS Supplier shall become due automatically without prior notice or right of cure in the case of any Event of Default arising under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of Section 5.1 of this Agreement.

#### **6.10 Interest on Cash Held by Company**

The Company will pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement. Each Billing Month, the Company will prepare a statement of interest amounts due to the DS Supplier. The statement will be sent to the DS Supplier within three (3) Business Days after the end of the Billing Month via overnight mail or other expeditious means. The Company shall make interest payments on the first Business Day after the 5<sup>th</sup> day of each calendar month.

#### **6.11 No Endorsement of DS Supplier**

The Company's determination that a DS Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the DS Supplier. The Company will treat all DS Suppliers in a non-discriminatory manner and shall provide no preference to any DS Supplier.

#### **6.12 Multiple DS Supply Agreements**

It is the intention of the Company and the DS Supplier that, in the event the DS

Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the effective date of this Agreement, the Company will calculate the Margin applicable to all such agreements as set forth herein. Each DS Supplier that is a party to such other agreements with the Company for the provision of DS Supply hereby agrees that such other agreements are deemed amended by this Agreement for the purpose of calculating the Margin as described herein.

## **ARTICLE 7: PROCEDURES FOR ENERGY SCHEDULING, CAPACITY RESOURCE SUBMISSION AND TRANSMISSION PROCUREMENT**

### **7.1 Load Obligations**

The Company and the DS Supplier acknowledge and agree that (1) the Company shall determine the DS Load, (2) the Company shall allocate the DS Supply obligation using the DS Supplier Responsibility Share, (3) the Company shall provide the DS Supplier's DS Supply obligation to PJM, and (4) the DS Supplier shall be responsible for meeting its DS Supply obligations as a LSE under the PJM Agreements.

### **7.2 Data Transmission**

The procedures for transmitting load obligation data to PJM for DS Supplier's DS Load shall be as set forth by PJM.

### **7.3 Energy Scheduling**

The Company is not obligated to provide any day ahead scheduling services. If the Company chooses to provide such services, the information provided is not guaranteed by the Company.

## **ARTICLE 8: THE ENERGY SETTLEMENT/RECONCILIATION PROCESS**

### **8.1 Energy Settlement By PJM**

The settlement process occurs at PJM to reflect the DS Supplier's actual Energy obligations in a supply/usage reconciliation process. The Energy obligations for each DS Supplier will be determined based on the DS Supplier Responsibility Share of the DS Load. The reconciled total DS Energy obligation will be based on the final total Energy loads for the Customers receiving DS service, including deration adjustments for marginal losses.

Any adjustments for billing and metering errors reported subsequent to the calculation of FMEA will be proportionally allocated by the Company to the DS Suppliers based on the respective DS Supplier Responsibility Share.

### **8.2 Energy Settlement by the Company**

In the event that actual DS Customer consumption data is not available until after the PJM deadline for conducting the final settlement, the Company will conduct the settlement process with the DS Supplier. In the event PJM imposes penalties against the Company as a result of the DS Supplier's Transactions or failure to meet PJM requirements, such penalties shall be passed through by the Company to the DS Supplier as part of this settlement process. In addition, all other applicable charges from PJM, including any billing adjustments, will be appropriately allocated to the DS Supplier.

## **ARTICLE 9: BILLING AND PAYMENT**

### **9.1 The Company Payment of Obligations to the DS Supplier**

The Company shall pay all amounts due to the DS Supplier hereunder in

accordance with the following provisions:

(a) Each Billing Month, the Company will prepare a Statement of amounts due to the DS Supplier. This Statement will show the aggregate amounts due based on the DS Fixed Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown in Appendix C, multiplied by the Seasonal Billing Factor, if applicable, for each hour of the Billing Month, plus the aggregate amounts due based on the DS Variable Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Variable Percentage as shown in Appendix C for each hour of the Billing Month. With respect to Variable Price Transactions, the Statement will also include additional amounts set forth in Appendix C.

(b) The Statement will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(c) The Company shall make payment on the first Business Day after the 19<sup>th</sup> day of each calendar month.

(d) To the extent that the FMEA differs from the PMEA, the Company shall pay or charge the DS Supplier for the PMEA/FMEA Adjustment Amount within the PJM deadline for conducting the final settlement.

(e) If each Party owes an amount to the other Party pursuant to this Agreement, including any related interest, payments or credits, the Parties may satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing

the greater aggregate amount paying the other Party the difference between the amounts owed.

(f) Payments shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of all Transactions under this Agreement.

(g) The Company shall make payments of funds payable to the DS Supplier by electronic transfer to a bank designated by the DS Supplier.

(h) If a good faith dispute arises between the Company and the DS Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Statement in dispute. Statement disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

(i) If payment is made to the DS Supplier after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate

permitted by applicable law.

## **9.2 Billing for DS Supplier's Obligations to Other Parties**

Except as set forth in Sections 2.5 and 2.6, the Company shall have no responsibility for billing between the DS Supplier and PJM; the DS Supplier and any Energy or Capacity source; or the DS Supplier and any other third party. The Company will be solely responsible for billing DS Customers for Default Service.

## **9.3 The DS Supplier Payment of Obligations to the Company**

The DS Supplier shall pay all Charges it incurs hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company shall submit an invoice to the DS Supplier for all Charges owed by the DS Supplier under this Agreement. The DS Supplier shall make payment for Charges shown on the invoice. The due date will be on the first Business Day after the 19<sup>th</sup> day of each calendar month. The invoice will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(b) Invoices shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of all Transactions of this Agreement.

(c) The DS Supplier shall make payments of funds payable to the Company by electronic transfer to a bank designated by the Company.

(d) If a good faith dispute arises between the Company and the DS Supplier regarding an invoice, the disputing Party shall pay only the undisputed portion of the invoice, if any, and shall present the dispute in writing and submit supporting

documentation to the non-disputing Party within one hundred twenty (120) calendar days from the due date of the invoice in dispute. Billing disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a billing dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a bill dispute was received by the non-disputing Party.

(e) If payment is made to the Company after the due date shown on the invoice, a late fee will be added to the unpaid balance until the entire invoice is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

## **ARTICLE 10: SYSTEM OPERATION**

The Parties shall adhere to any applicable operational requirements of PJM necessary to protect the integrity of the transmission system within the PJM Control Area and the transmission systems of interconnected control areas, and shall satisfy any and all PJM, RFC and NERC criteria, when applicable. The DS Supplier shall also adhere to any applicable operational requirements of the Company necessary to protect the integrity of the Company’s local distribution system.

### **10.1 Disconnection and Curtailment By the Company**

The Company shall have the right, without incurring any liability to the DS

Suppliers, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the DS Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever the Company determines in the exercise of its good faith discretion, or when the Company is directed by PJM, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's facilities; or due to any other reason affecting the safe and reliable operation of the Company's or a Customer's facilities, including, without limitation, an Emergency, forced outage or potential overloading of the Company's transmission and/or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons or property.

### **10.2 Inadvertent Loss of Service to DS Customers**

The Parties agree and acknowledge that service to DS Customers may be inadvertently lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of the Company affecting the transmission and distribution system of the Company. Neither Party will have any liability to the other Party for the occurrence of such events except for the Company's obligation to pursue steps for the resumption of the disrupted service as set forth in Section 10.3 below. In no event will an inadvertent loss of service affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such inadvertent loss of service.

### **10.3 Good Faith Efforts**

The Company shall use good faith efforts to: (a) minimize any curtailment, interruption or reduction in service to DS Customers to the extent reasonably practicable

under the circumstances; (b) provide the DS Supplier with prior notification of any curtailment, interruption or reduction in service to DS Customers, to the extent reasonably practicable; and (c) resume service to DS Customers as promptly as reasonably practicable.

#### **10.4 PJM Requirements**

The DS Supplier acknowledges and agrees that, as a member of PJM, the Company is bound by all PJM operating instructions, policies and procedures as are currently set forth in the PJM Operating Manual, which are available through the Internet on the PJM Home Page (<http://www.pjm.com>), as may be revised from time to time, which are needed to maintain the integrity of the PJM system. The DS Supplier acknowledges and agrees that it will cooperate with the Company so that the Company will be in compliance with all PJM Emergency Operations Procedures, which include, but are not limited to, those procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction or full interruption of Customer load by either manual or automatic means.

#### **10.5 Compliance With Governmental Directives**

The DS Supplier also acknowledges and agrees that the Company may need to act in response to governmental or civil authority directives which may affect DS Load. The DS Supplier agrees to cooperate with the Company in order to comply with said directives.

## **ARTICLE 11: DISPUTE RESOLUTION**

### **11.1 Informal Resolution of Disputes**

Before pursuing resolution of any dispute arising out of this Agreement (other than an Event of Default under Section 5.1(i)-(ix) , (xii), or (xvi)), the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Section 11.1 (Informal Resolution of Disputes), shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

### **11.2 Recourse to Agencies or Courts of Competent Jurisdiction**

After the requirements of Section 11.1 (Informal Resolution of Disputes) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Nothing in this Agreement shall restrict the rights of either Party to file a complaint with the FERC under relevant provisions of the Federal Power Act (“FPA”), with the PaPUC under relevant provisions of the Applicable Legal Authorities, with a Pennsylvania State court or a federal court of competent jurisdiction and within reasonably close proximity to the Company. The Party’s agreement hereunder is without prejudice to any Party’s right to contest the jurisdiction of the agency or court to which a complaint is brought.

The Parties hereby acknowledge and agree that both Parties have negotiated and entered into this Agreement and all Transactions under this Agreement freely and in good faith and that the terms of this Agreement have not been affected in any way, either directly or indirectly, by (A) any fraud, duress, unfairness, or any inequity in the relative bargaining power of the Parties or (B) any manipulation, unlawful activity, disruption, anomaly, dysfunction, or other adverse market conditions of any type or description.

To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives its rights (i) to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”), and (ii) to argue before any governmental authority that any terms of this Agreement should be modified or rescinded based on (A) any claim of fraud, duress, unfairness, bad faith, or inequity in the relative bargaining power of the Parties or (B) any claim of market manipulation, unlawful activity, disruption, anomaly, dysfunction, or other adverse market conditions of any type or description.

## **ARTICLE 12: REGULATORY AUTHORIZATIONS AND JURISDICTION**

### **12.1 Compliance With Applicable Legal Authorities**

The Company and the DS Supplier are subject to, and shall comply with, all

existing or future applicable federal, state and local laws, all existing or future duly-promulgated orders or other duly-authorized actions of PJM or of Applicable Legal Authorities.

## **12.2 FERC Jurisdictional Matters**

The inclusion herein of descriptions of procedures or processes utilized by PJM or otherwise subject to the jurisdiction of FERC is intended solely for informational purposes. If anything stated herein is found by the FERC to conflict with or be inconsistent with any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA or if any existing procedures or processes utilized by PJM are duly modified, the applicable FERC rule, regulation, order, determination or modification shall control. To the extent required under any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA, the Company and/or the DS Supplier, if applicable, shall use reasonable commercial efforts to secure, from time to time, all appropriate orders, approvals and determinations from the FERC necessary to support this Agreement.

## **12.3 Energy Efficiency, Conservation, and Retail Market Programs**

DS Supplier acknowledges that DS Customers may participate in energy efficiency and conservation programs offered by the Company (required by Applicable Legal Authorities or otherwise offered by the Company whether voluntarily or not), by PJM, or by other third parties and, for the avoidance of doubt, any programs offered or conducted by the Company or other entities relating to or arising from the PaPUC's Investigation of Pennsylvania's Retail Electricity Market, PaPUC Docket No. I-2011-2237952 (including legislation enacted to address the Commission's Final Order in

Docket No. I-2011-2237952), and that such participation may reduce or change the amount of DS Supply that DS Supplier is required to provide and the amount of monies it may receive under this Agreement. The Company shall have no obligation whatsoever to DS Supplier with respect to the effect, if any, of such programs. DS Supplier is solely responsible for determining the effect, if any, of such programs on future load requirements.

### **ARTICLE 13:    LIMITATION OF REMEDIES, LIABILITY AND DAMAGES**

#### **13.1    Limitations on Liability**

Except as set forth in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of Damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of Damages is provided, such express remedy or measure of Damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or Damages at law or in equity are waived. If no remedy or measure of Damages is expressly provided herein, the obligor's liability shall be limited to direct actual Damages only, such direct actual Damages shall be the sole and exclusive remedy and all other remedies or Damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect Damages, lost profits or other business interruption Damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of Damages be without regard to the cause or causes related

thereto, including the negligence or any Party, whether such negligence by sole, joint or concurrent, or active or passive. To the extent any Damages required to be paid hereunder are liquidated, the Parties acknowledge that the Damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the Damages calculated hereunder constitute a reasonable approximation of the harm or loss.

### **13.2 Risk of Loss**

Solely for purposes of determining risk of loss and for determining the indemnity obligations under Article 14 of this Agreement, the Company shall be deemed to have custody and control of the electric Energy delivered by the DS Supplier upon receipt thereof into the Company's distribution system and until delivery thereof at the retail electric meter of the Customer; and the DS Supplier shall be deemed to have custody and control of the DS Supply at all times prior to receipt thereof by the Company. The Party deemed to have custody and control of DS Supply shall be responsible for all loss or damage to property or injury or death to persons arising in connection with such DS Supply while in its custody and control and shall indemnify the other Parties with respect to same as set forth in Article 14 of this Agreement.

## **ARTICLE 14: INDEMNIFICATION**

### **14.1 Indemnification**

(a) Should the Company become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the DS Supplier with

respect to an obligation arising under or in connection with this Agreement, or for which the DS Supplier has otherwise assumed liability under the terms of this Agreement, the DS Supplier shall defend (at the Company's option), indemnify and hold harmless the Company, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Company. The Company may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Should the DS Supplier (the "Indemnified DS Supplier") become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the Company with respect to an obligation arising under or in connection with this Agreement, or for which the Company has otherwise assumed liability under the terms of this Agreement, the Company shall defend (at the option of the Indemnified DS Supplier), indemnify and hold harmless the Indemnified DS Supplier, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified DS Supplier. The Indemnified DS Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) If either Party intends to seek indemnification under Article 14.1(a) or 14.1(b), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

#### **14.2 Survives Agreement**

The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any statutory scheme, including any workers' compensation acts, disability benefit acts or other employee benefit acts.

### **ARTICLE 15: FORCE MAJEURE**

#### **15.1 Force Majeure**

Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force

Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Article 15.2 (Notification).

### **15.2 Notification**

A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

## **ARTICLE 16: MISCELLANEOUS PROVISIONS**

### **16.1 Notices**

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail or courier service. Notice may also be provided via e-mail or facsimile transmission (with the original transmitted by any of the other delivery methods specified in the previous sentence) addressed per the notification information for the DS Supplier and Company as set forth in Appendix C hereto.

Such notices, demands or requests shall also be provided to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next

Business Day.

### **16.2 No Prejudice of Rights**

The failure of a Party to insist on any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

### **16.3 Assignment**

Parties shall not assign any of their rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. The Company agrees that it shall grant its consent to a proposed assignment by the DS Supplier if the proposed assignee meets all of the Company's creditworthiness requirements then in effect under this Agreement and any applicable load cap restrictions. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 16.3 shall be void; provided, however, the Company may assign any or all of its rights and obligations under this Agreement notwithstanding anything contained herein to the contrary, without the DS Supplier's consent, to any entity succeeding to all or substantially all of the assets of the Company, if such assignee agrees, in writing, to be bound by all of the terms and conditions hereof and all necessary regulatory approvals are obtained. The DS Supplier may, with prior

written notice to the Company but without obtaining the approval of the Company, assign the accounts, revenues or proceeds under this Agreement to a third party. The Company agrees that, following receipt of such notice of the assignment of accounts, revenues or proceeds and such other documentation that the Company may reasonably request, the Company will pay amounts becoming due to the assigning DS Supplier under this Agreement directly to the designated assignee; provided, however, that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the DS Supplier and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Company arising under this Agreement.

#### **16.4 Governing Law and Venue**

To the extent not subject to the jurisdiction of the FERC, questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. Except for matters jurisdictional to FERC, the PaPUC or the appellate courts having jurisdiction over the PaPUC or FERC matters, all disputes hereunder shall be resolved in the Pennsylvania State court or Federal court of competent jurisdiction and within reasonably close proximity to the Company. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

#### **16.5 Regulatory Approvals**

DS Supplier agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the Agreement and/or

Transaction Confirmations hereunder. The commencement of the Delivery Period and the obligations hereto are subject to (i) the receipt or waiver by Company of all Company required regulatory approvals, (ii) the receipt or waiver by DS Supplier of all DS Supplier required regulatory approvals, and (iii) PaPUC approval.

### **16.6 Headings**

The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.

### **16.7 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties hereto and nothing in this Agreement shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **16.8 General Miscellaneous Provisions**

(a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

(b) Cancellation, expiration or Early Termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

(c) Should any provision of this Agreement be held invalid or unenforceable,

such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof unless it materially changes the agreement of the Parties; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.

(d) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement. The Parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction.

#### **16.9 Taxes**

As between the Parties: (i) the DS Supplier is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on the wholesale sales of DS Supply under this Agreement; and (ii) the Company is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on retail sales of DS Supply under this Agreement. Should the DS Supplier be required to remit

any Pennsylvania State sales and use taxes directly to the applicable taxing authority, other than taxes previously collected by the DS Supplier on behalf of the Company, the Company will defend and indemnify the DS Supplier for such sales and use taxes and will pay to the DS Supplier all such tax amounts upon demand. If any Transaction is exempt from the payment of any sales and use taxes, the affected DS Supplier will, if requested, provide the Company with valid tax exemption certificates. Should the Company be required to remit any sales and use taxes directly to any applicable taxing authority, other than taxes previously collected by the Company directly from the DS Supplier, the DS Supplier will defend and indemnify the Company and will pay to the Company all such tax amounts upon demand.

#### **16.10 Audit**

Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Article 9 (Billing and Payment) of this Agreement.

#### **16.11 Rules of Interpretation**

The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) Unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) All titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) References to the singular include the plural and vice versa;
- (d) References to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (e) In carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (f) If any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

#### **16.12 Confidentiality**

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless:
  - (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law;
  - (ii) such document or information is generally available to the public;
  - (iii) such document or information was available

to the receiving Party on a non-confidential basis; (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation; or (v) such disclosure is made to PJM or PaPUC and is necessary in order for the Transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.

(b) Notwithstanding any other provision of this Section 16.12, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of this Section 16.12, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

(c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.12. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Section 16.12, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

### **16.13 Federal Acquisition Regulation**

If any of the following clauses prescribed by the Federal Acquisition Regulation ("FAR"), 48 Code of Federal Regulations Chapter 1, should be deemed to apply to this Agreement, the DS Supplier shall comply with the requirements of such clause(s), and shall include the terms or substance of such clause(s) in its subcontracts, as and to the extent required by the FAR:

- 1) Clean Air and Water: § 52.223-2;
- 2) Contract Work Hours and Safety Standards Act-Overtime Compensation: § 52.222-4;
- 3) Equal Opportunity: § 52.222-26;
- 4) Affirmative Action for and Employment Reports on Special Disabled and Vietnam Era Veterans: § 52.222-35 and § 52.222-37;
- 5) Affirmative Action for Handicapped Workers: § 52.222-36;
- 6) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns and Small Business and Small Disadvantaged Business Subcontracting Plan: § 52.219-8 and § 52-219-9.

In case of a conflict between the provisions of the FAR and the balance of this Agreement, the requirements of the FAR shall prevail.

#### **16.14 Binding Terms**

This Agreement and the rates, terms and conditions herein shall remain in effect for the entire term hereof and each Party agrees not to seek any change to such rates, terms and conditions pursuant to the FPA, if the FPA is deemed to have jurisdiction over this Agreement, including on the grounds that they are not just and reasonable.

#### **16.15 Amendment**

This Agreement, including the appendices hereto, cannot be amended without the written agreement of all Parties prior to such amendment becoming effective. Except as provided in Appendix C, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”).

**16.16 Counterparts**

This Agreement including all Transaction Confirmations hereunder may be executed in counterparts, each of which will be considered an original, but all of which shall constitute one instrument.

**16.17 Successors**

This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

ATTEST:

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

[SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

## APPENDIX A

## MAXIMUM UNSECURED CREDIT

## Credit Rating Table

Credit Rating			Maximum Credit Limit is the lower of Tangible Net Worth (TNW) Amount and Unsecured Credit Limit Cap below:	
S&P	Fitch	Moody's	TNW Amount	Credit Limit Cap
A- or above	A- or above	A3 or above	16% of TNW	\$60,000,000
BBB+	BBB+	Baa1	10% of TNW	\$40,000,000
BBB	BBB	Baa2	8% of TNW	\$30,000,000
BBB-	BBB-	Baa3	6% of TNW	\$15,000,000
Below BBB-	Below BBB-	Below Baa3	0% of TNW	0

**Credit Rating Determination Methodology**

The DS Supplier or its Guarantor must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating.

For purposes of determining Unsecured Credit, the relevant Maximum Credit Limit for aggregate transactions shall not exceed the Maximum Credit Limit listed in the table above that corresponds to DS Supplier's (or DS Supplier's Guarantor's) lowest Credit Rating most recently published by the three credit rating agencies: S&P, Fitch and Moody's. If the DS Supplier or its Guarantor is rated by only two rating agencies, and the ratings are split, the lower rating will be used.

The relevant TNW Amount shall be calculated using the percentage listed in the Credit Rating Table that corresponds to DS Supplier's (or DS Supplier's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's.

**Minimum Rating** – The lowest credit rating for a DS Supplier, as set forth in this Appendix A, that can obtain unsecured credit.

## APPENDIX B

### BUYER'S EXPOSURE CALCULATION INFORMATION

Disclaimer: The prices that appear in this Appendix are purely hypothetical and are not based on or derived from any actual source for forward pricing. They are solely for purposes of illustration. Capitalized terms not defined herein shall have the meaning in the Agreement.

As set forth in Article 6 (Creditworthiness) of the Agreement, the DS Supplier's credit exposure (the "Mark-to-Market (MtM) Exposure Amount") is an amount calculated each Trading Day for the DS Supplier that reflects the financial exposure to the Buyer due to fluctuations in Forward Market Prices for Energy. The MtM Exposure Amount will be equal to 1.1 times the sum of the MtM credit exposures for each applicable month. The Total Exposure Amount is the sum of the calculated Buyer's Exposure for all Transactions under this Agreement and all other transactions under all supplier master agreements executed between the Parties pursuant to the PaPUC Orders to serve Buyer's DS Load. For Fixed Price Default Supply, the Buyer's Exposure during the term of a Transaction shall be calculated by determining the MtM Exposure Amount, then subtracting the sum of any unpaid or unbilled amounts owed by Buyer to DS Supplier pursuant to a Transaction.

This Appendix B explains the methodology and data sources that the Buyer will use to calculate the MtM Exposure Amount and Total Exposure Amount.

On a Transaction Date, the Buyer's Exposure for a Fixed Price Transaction shall be deemed equal to zero. To the extent that the calculations of the Total Exposure Amount for a given Trading Day result in a negative number, the Total Exposure Amount for such date shall be deemed equal to zero.

### **Calculation of the MtM Exposure Amount and Total Exposure Amount**

For each Transaction, on each Trading Day subsequent to the Transaction Date, the MtM credit exposures will be calculated, with respect to each month remaining in the Delivery Period, as the sum of the following:

- the relevant month On-Peak Energy Forward Price minus the relevant month On-Peak Initial Mark Price, multiplied by the relevant month On-Peak Estimated Energy Quantity;
- the relevant month Off-Peak Energy Forward Price minus the relevant month Off-Peak Initial Mark Price, multiplied by the relevant month Off-Peak Estimated Energy Quantity

where,

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Buyer’s Exposure” during the term of a Transaction, for Fixed Price Transactions, shall be deemed equal to the positive difference between: (i) the MtM Exposure Amount pursuant to a Transaction under this Agreement and (ii) the sum of any unpaid or unbilled amounts owed by Buyer to DS Supplier pursuant to a Transaction under this Agreement. With respect to the preceding sentence, “unbilled amounts owed by Buyer” shall consist of a good faith estimate by Buyer as to any amounts which will be owed by Buyer for service already rendered by DS Supplier under a Transaction. Buyer’s Exposure for a Variable Price Transaction, during the first month of the term of a Transaction, shall be equal to Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche. Thereafter, Buyer’s Exposure for a Variable Price Transaction shall be calculated on the first Business Day of each month during the term of a Transaction and shall be deemed equal to the product of: (i) Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche; (ii) the ratio of the Current Capacity PLC Per Tranche to the MW-Measure; (iii) the number of Tranches awarded to the DS Supplier per the Transaction Confirmation; and (iv) the ratio of the calendar days remaining in the Delivery Period to the total calendar days in the Delivery Period.

“Capacity Peak Load Contribution” or “Capacity PLC” means the aggregation of retail customer peak load contributions, as determined by the Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer’s retail load settlement process, and used by PJM in determining the DS Supplier’s capacity obligation for each Transaction.

“Current Capacity PLC Per Tranche” is the Capacity PLC of a Tranche as of the Business Day the Buyer’s Exposure is calculated for a Fixed Price Transaction or Variable Price Transaction.

“Fixed Price Transaction” means a Transaction Confirmation that is not a Variable Price Transaction, and as shown on such confirmation where the DS Fixed Price Percentage is 100%.

“MW-Measure” means the Current Capacity PLC Per Tranche as of the Transaction Date.

“Off-Peak Estimated Energy Quantity” is the estimate of the energy quantity (in MWh) to be supplied in the relevant month and will be calculated, from Transaction Confirmation information, by multiplying the relevant month Off-Peak Estimated Energy Quantity Per MW-Measure, by the number of Tranches awarded to the DS Supplier, and the ratio of the current Capacity PLC Per Tranche to the MW-Measure.

“Off-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the Off-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“Off-Peak Hours” means those hours which are not On-Peak Hours.

“Off-Peak Initial Mark Price” means the Off-Peak Energy Forward Price as of the Transaction Date.

“Off-Peak/On-Peak Price Ratio” means the relevant monthly ratio of off-peak pricing to on-peak pricing of the PJM Western Hub day-ahead prices as set forth by Buyer each October based on the previous 36-month period ending in September. The historical on-peak prices used for the ratio will be the PJM Western Hub day-ahead price for the On-Peak Hours. The historical off-peak prices used for the ratio will be the PJM Western Hub day-ahead prices for the Off-Peak Hours. For each month of the 36-month period, the monthly on-peak and off-peak prices will be summed and respectively divided by the amount of On-Peak Hours and Off-Peak Hours in that month. This calculated off-peak average price will be divided by the on-peak average price to determine the individual monthly ratios. Such monthly ratios for the same months within the 36-month period will then be summed and divided by three (3) to come up with the rolling three year monthly ratio average.

“On-Peak Estimated Energy Quantity” is the estimate of the energy quantity (in MWh) to be supplied in the relevant month and will be calculated, from Transaction Confirmation information, by multiplying the relevant month On-Peak Estimated Energy Quantity Per MW-Measure, by the number of Tranches awarded to the DS Supplier, and the ratio of the Current Capacity PLC Per Tranche to the MW-Measure.

“On-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the On-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“On-Peak Hours” means Hour Ending (“HE”) 0800 through HE 2300 EPT, Monday through Friday, excluding Saturday, Sunday and PJM holidays.

“On-Peak Initial Mark Price” means the On-Peak Energy Forward Price as of the Transaction Date.

“Pricing Agent” is the independent consultant to provide pricing services with respect to the Fixed Price Transactions under this Agreement. The Pricing Agent shall provide to the

Buyer the On-Peak Initial Mark Price and the Off-Peak Initial Mark Price. In addition, on each Business Day, the Pricing Agent shall provide to the Buyer the On-Peak Energy Forward Price and the Off-Peak Energy Forward Price. To the extent that information and/or quotes are not available to determine an On-Peak Energy Forward Price or Off-Peak Energy Forward Price for a given month the Pricing Agent shall be permitted to use information and/or quotes relevant to such month for which information/and quotes are available in order to provide the Buyer the required On-Peak Energy Forward Price and Off-Peak Energy Forward Price for such month.

“Reference Market-Maker” means any broker in energy products or exchange that is not an Affiliate of Buyer or DS Supplier.

“Trading Day” means any day except a Saturday, Sunday or a designated holiday by a non-affiliated entity providing forward energy market prices for purposes of Appendix B, as selected by Buyer in its reasonable discretion.

“Transaction Date” means the date that a Transaction is executed as set forth in the Transaction Confirmation.

“Variable Price Transaction” means a Transaction Confirmation for Full Requirements Service with spot energy pricing, as shown on such confirmation.

For the current month of each Trading Day MtM credit exposures calculation, the On-Peak Estimated Energy Quantity and Off-Peak Estimated Energy Quantity will be calculated for the month, as described above, and prorated for the remaining On-Peak Hours and Off Peak Hours remaining in the month as follows:

- On-Peak Hours remaining in the current month (including the first calendar day following the Trading Day) divided by total On-Peak Hours in the current month
- Off-Peak Hours remaining in the current month (including the first calendar day following the Trading Day) divided by total Off-Peak Hours in the current month

### **Parameters**

In calculating the MtM Exposure Amount for each Transaction, the following parameters are set on the Transaction Date:

- On-Peak Initial Mark Price
- Off-Peak/On-Peak Price Ratio
- Off-Peak Initial Mark Price
- MW-Measure: initial Capacity PLC Per Tranche

- On-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
- Off-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
- Number of awarded Tranches

In calculating the MtM Exposure Amount for each Transaction, the following parameters are set each Trading Day subsequent to the Transaction Date:

- On-Peak Energy Forward Price
- Off-Peak Energy Forward Price
- Current Capacity PLC Per Tranche
- On-Peak Estimated Energy Quantity
- Off-Peak Estimated Energy Quantity

**Process to Update the On-Peak Initial Mark Prices and Off-Peak Initial Mark Prices on a daily basis**

On each Trading Day subsequent to the Transaction Date, the Pricing Agent will contact four Reference Market-Makers to obtain price quotes for on-peak and off-peak energy for PJM Western Hub. The Pricing Agent may not rely upon quotes from DS Supplier or any Affiliate of DS Supplier.

The updated mark for a month will be equal to the average mark for that month over all sources from which a quote is available. If a monthly quote is available from any source, only the monthly quote or monthly quotes shall be used. Where quotes provide a bid and ask, the average shall be used.

Where a quote for an individual month is unavailable, but the month is quoted as part of a “packaged” quote (e.g., January 2021 is only available in the form of a January/February 2021 “packaged” quote or an annual quote):

- If the other month/months of the package quote is/are also unavailable, then the marks for all months of the package will be calculated by multiplying the packaged quote by the ratio of the corresponding month to the corresponding calculated package quote from the previous day.

Example: There are no On-Peak quotes available on day X during the contract for July 2021 or August 2021. However, there is an On-Peak July/August 2021 packaged quote of \$73.00/MWh available. The On-Peak marks from day X-1 for July 2021 and August 2021 were \$73.50/MWh and \$76.50/MWh respectively. Additionally we know that there

are 352 On-Peak hours for July 2021 and 336 On-Peak hours for August 2021. The information available for use in this example is summarized below.

Month(s) of Quote	On-Peak Hours	Quote for Day X-1	Quote for Day X
July 2021	<b>352</b>	<b>\$73.50</b>	Not provided
August 2021	<b>336</b>	<b>\$76.50</b>	Not provided
July/August 2021	<b>688</b> (352+336)	Not provided	<b>\$73.00</b>

The On-Peak July/August 2021 packaged quote can be calculated as  $[(73.50 * 352) + (76.50 * 336)] / (352+336) \approx \$74.97$ .

The day X On-Peak mark for July 2021 is set at  $73.00 * [73.50] / [(73.50 * 352) + (76.50 * 336)] / (352+336) = 73.00 * (73.50 / 74.97) = \$71.57/\text{MWh}$ . The day X On-Peak mark for August 2021 is set at  $73.00 * [76.50] / [(73.50 * 352) + (76.50 * 336)] / (352+336) = 73.00 * (76.50 / 74.97) = \$74.49/\text{MWh}$ .

- If the other month/months of the package quote is/are available, then the mark for the month will be set such that the average of the month and the other month(s) (weighted for either the On-Peak Hours or Off-Peak Hours as applicable) equals the packaged quote (see calculation example below).

Example: There are no On-Peak available for August 2021. However, there is an On-Peak July/August 2021 package quote available of \$75.00/MWh and an On-Peak July 2021 quote of \$73.00/MWh. The information available for use in this example is summarized below.

Month(s) of Quote	On-Peak Hours	Quotes for Day
July 2021	<b>352</b>	<b>\$73.00</b>
August 2021	<b>336</b>	Not provided
July/August 2021	<b>688</b> (352+336)	<b>\$75.00</b>

The On-Peak mark for August 2021 is set at  $[75.00 * (352 + 336) - 73.00 * (336)] / [352] = \$76.91/\text{MWh}$ .

If, on a given Trading Day, the Pricing Agent is not able to obtain quotes from the Reference Market-Makers, then Buyer will look to reasonable alternative sources of price data (excluding DS Supplier or any Affiliate of DS Supplier) and will rely on the prices from those alternative data sources to update the mark if pricing data is available from those alternative sources. As a reasonable alternative source of price data, the Buyer may use the following methodology:

- A calendar year on-peak/off-peak energy price, for the calendar year pertaining to the delivery period for which the On-Peak/Off-Peak Energy Forward Price is being developed, is calculated using the following methodology:
  - First, a Market-Implied Heat Rate is calculated as the ratio of the calendar year On-Peak and/or Off-Peak Energy Forward Price (calculated using On-Peak/Off-Peak Energy Forward Prices) to the calendar year Henry Hub forward natural gas price (calculated using Henry Hub forward natural gas prices) for the calendar year for which price data sufficient to calculate both prices are available and that is the farthest year in the future. As an alternative, the applicable Market-Implied Heat Rate may be determined by calculating the market-implied heat rates applicable to the last three years for which data are available that are the farthest in the future, and performing an extrapolation.
  - Next, this calculated Market-Implied Heat Rate is applied to the monthly Henry Hub forward natural gas price (calculated using Henry Hub forward natural gas prices) for the months pertaining to the delivery period for which the On-Peak/Off-Peak Energy Forward Price is being developed.

Quotes from the sources will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Sources will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

## APPENDIX C

### DS SUPPLY SPECIFICATIONS

The following DS Supply specifications will be specified in Transaction Confirmations to this SMA in the form attached as Exhibit 1. Suppliers shall also be required to provide a completed Form of Notice (Exhibit 2) and PJM Declaration of Authority (Exhibit 3).

**Product:**

Full Requirements Service - All necessary Energy, Capacity, transmission other than Network Integration Transmission Service, Ancillary Services, AECs for compliance with the AEPS Act, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply the DS Supplier Responsibility Share except for distribution service.

Appendix D – describes Company and DS Supplier responsibility for PJM Billing Statement Line Item Credits and Charges associated with the product.

Appendix E – further describes DS Supplier responsibilities for compliance with the AEPS Act in the Product specification.

**DS Fixed Percentage/DS Variable Percentage:**

The percentage of DS Supply provided at a fixed price and the percentage of DS Supply provided at a variable price. For each Transaction Confirmation, DS Fixed Percentage + DS Variable Percentage specified shall add to 100%.

**Seasonal Billing Factor:**

When specified, numerical multipliers associated with summer months (June-September) and non-summer months (November-May)

Summer Seasonal Billing Factor- 1.0

Non-Summer Seasonal Billing Factor- 1.0

Otherwise, assumed to be 1.0, if not specified.

**DS Customer Group:**

Each Transaction Confirmation shall be associated with DS Supply to one of the following DS Customer categories as defined in the DS Tariff:

Residential;

Small Commercial and Industrial 0-100 kW

Consolidated Large Commercial and Industrial over 100 kW.

**Service Type:**

Residential – Rate Classes R and RH

Small Commercial - Rate Classes GS, HT, PD, AL, TLCL, POL, SLE and SLS

Consolidated Large Commercial and Industrial – Rate Classes GS, HT, PD and EP

**Delivery Point:**

PE Zone

**Delivery Period:**

Beginning on [Month] [Day], [Year] and ending on [Month] [Day], [Year]

**Number of Tranches and Percentage for Each Tranche:**

Residential - XX tranches; Tranche Percentage: X.X% per Tranche

Small Commercial - XX tranches; Tranche Percentage: X.X% per Tranche

Medium Commercial - XX tranches; Tranche Percentage: X.X% per Tranche

Large Commercial and Industrial - XX tranches; Tranche Percentage: X.X% per Tranche

**DS Supplier Responsibility Share:**

Fixed percentage share of DS Load for DS Customer Group associated with Transaction Confirmation. Typically, DS Supplier Responsibility Share is the product between the number of Tranches won and Tranche Percentage for the DS Customer Group. (Ex. X.X%)

**MW Measure:**

The estimated megawatt measure of Capacity Peak Load Contribution corresponding to a single Tranche identified in the Transaction Confirmation as of the Transaction Date.

With respect to Transactions where the DS Variable Percentage is 100%, the Statement prepared in accordance with Section 9.1(a) will include: (a) an energy charge equal to sum of the products of each hour's hourly day-ahead PJM load weighted average locational marginal price for the Delivery Point, and each hour's Energy requirements associated with the DS Supplier Responsibility Share, and (b) a capacity charge equal to the sum of the product of the PJM Final Zonal Capacity Price for the Delivery Point in \$/MW-day and the daily amounts of Capacity reported as the DS Supplier's Capacity obligation by Buyer to PJM for each day of the Billing Month. With respect to Variable Price Transactions, the PMEAFMEAF Adjustment Amount calculated in accordance with Section 9.1 (d) will include: any adjustments to account for changes in the hourly energy or capacity volumes used to calculate the energy charge and the capacity charge as described above.

**EXHIBIT 1**

**TRANSACTION CONFIRMATION**

This Transaction Confirmation letter is being provided pursuant to and in accordance with the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”) dated \_\_\_\_\_ between PECO Energy Company (“Buyer” or “PECO Energy”) and \_\_\_\_\_ (“DS Supplier”). Terms used but not defined herein shall have the meanings ascribed to them in the Default Service SMA. This Transaction Confirmation shall confirm the following terms of the transaction (“Transaction”) agreed to on \_\_\_\_\_ (“Transaction Date”).

Product: Full Requirements Service

DS Fixed Percentage/DS Variable Percentage:

DS Customer Group:

Service Type:

Delivery Point: PE Zone

Delivery Period:

Number of Tranches:

Percentage for Each Tranche:

DS Supplier Responsibility Share:

MW-Measure:

DS Fixed Price/DS Variable Price \$XX.XXXX (\$/MWh) (inclusive of AEPS Costs)

Average Cost per Non-Solar PV Tier I AEC:

\$\_\_\_

Average Cost per Solar PV Tier I AEC:\$\_\_\_

Average Cost per Tier II AEC: \$\_\_\_

AEC Solar Penalty \$XXX.XX

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
On-Peak Estimated Quantity Per MW-Measure (MWh)	xx,xxx											
Off-Peak Estimated	xx,xxx											

Quantity Per MW-Measure (MWh)												
-------------------------------	--	--	--	--	--	--	--	--	--	--	--	--

Alternative Energy Credit (AEC) Allocation:

Alternative Energy Portfolio Standards - Reporting Period:	Tier I (non-solar PV)		Tier I (solar PV)	
	AEC Allocation per Tranche, (AECs)	Total AEC Allocation (AECs)	AEC Allocation per Tranche, (AECs)	Total AEC Allocation (AECs)
2021-2022				
2022-2023				
2023-2024				

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between DS Supplier and Buyer by returning an executed copy of this Transaction Confirmation by facsimile to PECO Energy Company at (xxx) xxx.xxxx as provided in the RFP Rules. The signatories to this Transaction must have the authority to enter into this Transaction.

PECO ENERGY COMPANY (BUYER)

DS SUPPLIER

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 2**

**FORM OF NOTICE**

Any notices required under this Agreement shall be made as follows:

**Buyer:**

**DS Supplier:**

**All Notices:**

**All Notices:**

Street:

Street:

City/State/Zip:

City/State/Zip:

Attn:

Attn:

Facsimile:

Facsimile:

Duns:

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

**Invoices:**

**Invoices:**

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

**Scheduling:**

**Scheduling:**

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

**Payments:**

**Payments:**

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

**Wire Transfer:**

**Wire Transfer**

BNK:

BNK:

ABA:

ABA:

ACCT:

ACCT:

**Credit and Collections:**

**Credit and Collections:**

Attn:  
Phone:  
Facsimile:

**With additional Notices of an**

**Event of Default to:**

Attn:  
Phone:  
Facsimile:

Attn:  
Phone:  
Facsimile:

**With Additional Notices of an**

**Event of Default to:**

Attn:  
Phone:  
Facsimile:

**EXHIBIT 3****FORM OF PJM DECLARATION OF AUTHORITY**

This Declaration of Authority (“Declaration”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the following:

PRINCIPAL: \_\_\_\_\_ (“Principal”)

AGENT: \_\_\_\_\_ (“Agent”).

**RECITALS**

WHEREAS, PJM is a Regional Transmission Organization (“RTO”) subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”);

WHEREAS, PJM Settlement, Inc (“PJM Settlement”) is a Pennsylvania Non-Profit Corporation, incorporated for the purpose of providing billing and settlement functions and credit and risk management functions for PJM. References to “PJM” in this Declaration are intended to apply to PJM and/or PJM Settlement, as appropriate, with regard to their respective functions.

WHEREAS, PJM and PJM Settlement administer centralized markets that clear various electric energy and energy-related products among multiple buyers and DS Suppliers;

WHEREAS, PJM additionally exercises operational control over its members’ transmission facilities whereby PJM provides open-access transmission service and control area functions, including economic dispatch and emergency response to ensure reliability;

WHEREAS, Principal is a PJM Member and seeks to obtain, or is obtaining, services provided or administered by PJM, seeks to participate, or is participating in, markets administered by PJM, or seeks to engage in, or is engaging in, operations that use or affect the integrated transmission system operated by PJM;

WHEREAS, such activities or contemplated activities by Principal and Agent are governed by rights and obligations established by or under the PJM Open Access Transmission Tariff (“Tariff”), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), the Reliability Assurance Agreement Among Load-serving Entities in the MAAC Control Zone (“RAA”), and other agreements, manuals, and practices of PJM (the Tariff, the Operating Agreement, the RAA, and such other agreements manuals, and practices of PJM, the “PJM Agreements”); and

WHEREAS, Principal and Agent desire to declare to PJM their respective authorities concerning such rights and obligations, intend that PJM rely upon such declaration, and acknowledge that PJM may rely upon such declaration to its detriment.

**DECLARATION**

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the declarations made below, Principal and Agent, as identified below, make the following declarations:

**1. Exclusivity of Agent’s Authority.**

Pursuant to a binding, legally enforceable agreement, Principal has authorized Agent to act for Principal with respect to certain rights and responsibilities as specified in Section 2 of this Declaration (“the Authorized Rights and Responsibilities”). With respect to the Authorized Rights and Responsibilities, Agent is authorized to communicate and transact with PJM as Principal’s sole and exclusive agent, and PJM is authorized to communicate and transact directly and exclusively with Agent as Principal’s agent. With respect to Authorized Rights and Responsibilities, Principal will abide by any direction issued by PJM to Agent.

**2. Specification of Authorized Rights and Responsibilities.**

In the following parts (a) through (h), Principal and Agent specify the rights and responsibilities with respect to which Agent is authorized to act for Principal. Specification shall be effective only if both Principal and Agent have placed the initials of their authorized representatives in the space provided for each applicable right or responsibility from among the options provided below:

(a) Load Server Responsibilities.

\_\_\_\_\_ Agent is authorized to satisfy Principal’s obligations as a Load-Serving Entity under the RAA, including, without limitation, its obligations to provide Unforced Capacity, submit capacity plans, provide or arrange for Capacity Resources, satisfy Accounted-for Obligations and Peak Season Maintenance Obligations, comply with any capacity audits, make payment of all deficiency, data submission, and emergency procedure charges incurred, coordinate planning and operation of Capacity Resources with other parties; and develop and submit planned outage schedules.

\_\_\_\_\_ Agent is authorized to satisfy Principal’s obligations under the Tariff, RAA and to provide or arrange for transmission service to its loads; provide or arrange for sufficient reactive capability, voltage control facilities, and black start capability for service to its loads; submit firm transmission service schedules, and designate Network Resources and other points of receipt and delivery for transmission

service. Agent is authorized to request changes to the transmission service required for service to Principal's loads, and to enter into, on Principal's behalf, any feasibility, system impact, facilities study, or other agreements required to process such request for a change in service.

\_\_\_\_\_ Agent is authorized to satisfy Principal's rights and obligations under the Tariff and Operating Agreement to submit bids on, obtain, administer, and receive payments or credits for Financial Transmission Rights and Auction Revenue Rights with respect to service to Principal's loads.

\_\_\_\_\_ Agent is authorized to provide data required by PJM with respect to service to Principal's loads, including, but not limited to, data required for coordination of operations, accounting for all interchange transactions, preparation of required reports and maintenance schedules, and analysis of system disturbances.

\_\_\_\_\_ Agent is authorized to provide the facilities and personnel required to coordinate operations with PJM and other PJM Members.

(b) Electric Distributor Responsibilities.

\_\_\_\_\_ Agent is authorized to satisfy Principal's rights and obligations as an Electric Distributor under the Operating Agreement, including, but not limited to, assuring the continued compatibility of its local energy management, monitoring, and telecommunications systems with PJM's technical requirements; providing or arranging for the services of a 24-hour local control center to coordinate with PJM; providing to PJM all system, accounting, customer tracking, load forecasting, and other data necessary or appropriate to implement or administer the Operating Agreement, RAA; shedding connected load, initiating active load management programs, and taking such other coordination actions as may be necessary in accordance with PJM's directions in Emergencies; maintaining or arranging for a portion of its connected load to be subject to control by automatic underfrequency, under-voltage, or other load-shedding devices; and complying with the underfrequency relay obligations and charges specified in the Operating Agreement.

(c) Generator Responsibilities.

\_\_\_\_\_ Agent is authorized to operate the Principal's generation resources in all events, including, but not limited to, in the event of Emergencies, and shall operate such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

\_\_\_\_\_ Agent is authorized to ensure that the required portion of Principal's Capacity Resources have the ability to go from a shutdown condition to an operating condition and start delivering power without assistance from the power system.

- Or -

\_\_\_\_\_ Agent is authorized to direct the operation of Principal's generation resources by relaying PJM's instructions to the resource in all events, including, but not limited to, in the event of Emergencies, and shall direct such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

\_\_\_\_\_ Agent is authorized to communicate with PJM in all matters concerning the provision of capacity, energy, or ancillary services from Principal's generation resources, including, without limitation, information required in connection with Capacity Resources, dispatch of any unit, provision of reactive power, regulation, synchronous condensing, spinning or other reserves, establishment or maintenance of a unit as a Black-Start Unit, satisfaction of must-run obligations, and costs or revenue requirements for any product or service offered by any such unit.

\_\_\_\_\_ Agent is authorized to provide information on outages of Principal's generation facilities, whether planned, forced, or for maintenance, and to coordinate such outages with PJM

\_\_\_\_\_ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Feasibility Study, System Impact Study, or Facilities Study Agreements.

\_\_\_\_\_ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Construction Service Agreements.

\_\_\_\_\_ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Interconnection Service Agreements.

\_\_\_\_\_ Agent is authorized to receive from PJM historic and real time data collected by PJM from, or provided to PJM by, Principal with respect to Principal's generation resources.

\_\_\_\_\_ Agent is authorized to act on behalf of Principal for the following specific unit(s) in Principal primary and subaccounts:

Resource Name:

Resource ID:

(d) Market Buyer/Market Seller Responsibilities.

\_\_\_\_\_ Agent is authorized to satisfy Principal’s rights and obligations as a Market Buyer or Market Seller under the Operating Agreement, including, but not limited to, arranging for a Market Operations Center capable of real-time communication with PJM during normal and Emergency conditions; reporting to PJM sources of energy available for operation; providing to PJM scheduling and other information, including, but not limited to, maintenance and other anticipated outages of generation or transmission facilities, scheduling and related information on bilateral transactions and self-scheduled resources, and implementation of active load management, interruption of load, and other load reduction measures; obtaining Spot Market Backup for bilateral transactions; submitting to PJM binding offers to purchase or sell energy and ancillary services in compliance with all applicable Offer Data specifications; responding to PJM’s directives to start, shut down or change output levels of generation units, or change scheduled voltages or reactive output levels; responding to PJM’s directives to schedule delivery or change delivery schedules for external resources; and following PJM’s directions to take actions to prevent, manage, alleviate or end an Emergency.

(e) Billing and Payment Responsibilities.

\_\_\_\_\_ In connection with all rights and responsibilities specified by Principal and Agent in any of subparts (a) through (d) of this Section, or as specified in the attached Addendum, Agent shall be billed for, and shall make payment to PJM for, all charges, penalties, costs and fees. (If this option is not specified, PJM will issue billings to, and collect amounts due from, Principal.)

\_\_\_\_\_ In connection with all rights and responsibilities specified by Principal and Agent above, Agent is entitled to receive from PJM in Agent’s account all credits, revenues, distributions, and disbursements. (If this option is not specified, PJM will pay such amounts to Principal.)

(f) General Membership Responsibilities.

\_\_\_\_\_ Agent is authorized to participate and vote in all PJM committees, working groups, and other stakeholder bodies on Principal’s behalf.

- \_\_\_\_\_ Agent is authorized to participate on Principal’s behalf in the regional transmission expansion planning process.
- \_\_\_\_\_ Agent is authorized to provide information or otherwise cooperate on Principal’s behalf in connection with any investigation or request for information by PJM or the PJM Market Monitoring Unit in accordance with the Operating Agreement and Attachment M to the Tariff. (If this option is specified, PJM and the PJM Market Monitoring Unit shall have the right to request and obtain such information from Agent and/or Principal.)
- \_\_\_\_\_ Agent shall be billed for, and shall make payment of, Principal’s costs of membership in PJM, including payment of the Membership fee, and payment of any other general assessments on the PJM members, including, but not limited to, amounts assessed as a consequence of defaults by other Members.
- (g) Additional Responsibilities.
- \_\_\_\_\_ Agent has been Authorized other rights and responsibilities of Principal as specified on Attachment “A” to this Declaration.
- (h) Limitation on Responsibilities.
- \_\_\_\_\_ The rights and responsibilities specified in parts (a) through (f) above apply to a limited portion of Principal’s facilities or loads located in the PJM Region, as specified on Attachment “B” to this Declaration, and to no other facilities or loads of Principal.

**3. Continuing Responsibilities and Liabilities of Principal.**

- 3.1 The Authorized Rights and Responsibilities are the only rights and responsibilities under the PJM Agreements for which Agent is authorized to act for Principal, and Principal retains all rights and responsibilities under the PJM Agreements not specified by Principal and Agent in Section 2.
- 3.2 With respect to the Authorized Rights and Responsibilities, and notwithstanding any other provision of this Agreement, Principal shall remain liable to PJM for all amounts due or to become due to PJM under the PJM Agreements, and Agent’s authorization to make payment of any such amounts hereunder (if specified in Section 2) shall not release Principal from liability for any financial obligations to PJM not satisfied by Agent.

**4. Reliance and Indemnity, Duty to Inform, Liability Waiver, and Rules of Construction.**

- 4.1 Principal and Agent each recognizes, accepts and intends that PJM will rely, upon on the truth, accuracy and completeness of the declarations herein in matters including but not

limited to creditworthiness and in assuring compliance with the PJM Agreements. Principal and Agent each recognizes and accepts that PJM or its members may suffer losses and damages if any declaration is or becomes untrue, inaccurate or incomplete, and each agrees to indemnify PJM for any such losses and damages.

- 4.2 Principal and Agent each has a continuing duty to notify PJM if and when any declaration herein ceases to be truthful, accurate or complete. Until such time as PJM receives written notification of any change to any declaration, in accordance with the terms contained herein, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with Principal and Agent as to the subject matter of this Declaration. Written notice of changes to the declarations contained herein must be provided by Principal (PJM Member) to PJM at least thirty days in advance of their effectiveness. If Agent is also a PJM Member, then both parties will be required to provide thirty days prior written notification in order for such changes to be effective. Such notification is required for changes to the declarations and responsibilities contained herein and/or termination of this Declaration. Upon such termination, all rights, responsibilities and accounts will revert back to the original status quo prevailing before the Declaration became effective. Should less than thirty days notice be provided, PJM shall use its best efforts to accommodate and process the declarations herein, but all attempts should be made to provide such notice.
- 4.3 Nothing in this Declaration shall be construed to create or give rise to any liability on the part of PJM and Principal and Agent expressly waive any claims that may arise against PJM under this Declaration. This Declaration shall not be construed to modify any of the PJM Agreements and in the event of conflict between this Declaration and a PJM Agreement, the applicable PJM Agreement shall control.
- 4.4 Capitalized terms used herein that are not defined herein have the meanings given in the PJM Agreements, as applicable.
- 4.5 The Recitals are hereby incorporated into the body of this Declaration.

IN WITNESS WHEREOF, Principal and Agent execute this Declaration to be effective as of the date written above or upon receipt of a fully executed original by PJM, whichever date is later.

**PRINCIPAL:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

**AGENT:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

## APPENDIX D

**RESPONSIBILITIES FOR PJM BILLING LINE ITEMS  
AS DEFINED IN APPLICABLE PJM AGREEMENT OR MANUAL**

	<b>PJM Billing Statement Line Items</b>	<b>Responsible Party</b>	
<b>ID #</b>		<b>PECO (Buyer)</b>	<b>DSP (DS Supplier)</b>
<b>ID #</b>	<b>CHARGES</b>		
1100	Network Integration Transmission Service	X	
1102	Network Integration Transmission Service (exempt)	X	
1104	Network Integration Transmission Service Offset	X	
1108	Transmission Enhancement	X	
1110	Direct Assignment Facilities	X	
1120	Other Supporting Facilities	X	
1130	Firm Point-to-Point Transmission Service		X
1133	Firm Point-to-Point Transmission Service Resale Charge		X
1140	Non-Firm Point-to-Point Transmission Service		X
1143	Non-Firm Point-to-Point Transmission Service Resale Charge		X
1200	Day-ahead Spot Market Energy		X
1205	Balancing Spot Market Energy		X
1210	Day-ahead Transmission Congestion		X
1215	Balancing Transmission Congestion		X
1218	Planning Period Congestion Uplift		X
1220	Day-ahead Transmission Losses		X
1225	Balancing Transmission Losses		X
1230	Inadvertent Interchange		X

1240	Day-ahead Economic Load Response		X
1241	Real-time Economic Load Response		X
1245	Emergency Load Response		X
1250	Meter Error Correction		X
1260	Emergency Energy		X
1301	PJM Scheduling, System Control and Dispatch Service - Control Area Administration		X
1302	PJM Scheduling, System Control and Dispatch Service - FTR Administration		X
1303	PJM Scheduling, System Control and Dispatch Service - Market Support		X
1304	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration		X
1305	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.		X
1306	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center		X
1308	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration		X
1309	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration		X
1310	PJM Scheduling, System Control and Dispatch Service Refund - Market Support		X
1311	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration		X

1312	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.		X
1314	Market Monitoring Unit (MMU) Funding		X
1315	FERC Annual Charge Recovery		X
1316	Organization of PJM States, Inc. (OPSI) Funding		X
1317	North American Electric Reliability Corporation (NERC)		X
1318	Reliability First Corporation (RFC)		X
1320	Transmission Owner Scheduling, System Control and Dispatch Service		X
1330	Reactive Supply and Voltage Control from Generation and Other Sources Service		X
1340	Regulation and Frequency Response Service		X
1350	Energy Imbalance Service		X
1360	Synchronized Reserve		X
1365	Day-ahead Scheduling Reserve		X
1370	Day-ahead Operating Reserve		X
1371	Day-ahead Operating Reserve for Load Response		X
1375	Balancing Operating Reserve		X
1376	Balancing Operating Reserve for Load Response		X
1377	Synchronous Condensing		X
1378	Reactive Services		X
1380	Black Start Service		X
1400	Load Reconciliation for Spot Market Energy		X
1410	Load Reconciliation for Transmission Congestion		X
1420	Load Reconciliation for Transmission Losses		X
1430	Load Reconciliation for Inadvertent Interchange		X
1440	Load Reconciliation for PJM Scheduling, System Control and		X

	Dispatch Service		
1441	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund		X
1445	Load Reconciliation for FERC Annual Charge Recovery		X
1446	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding		X
1447	Load Reconciliation for North American Electric Reliability Corporation (NERC)		X
1448	Load Reconciliation for Reliability First Corporation (RFC)		X
1450	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service		X
1460	Load Reconciliation for Regulation and Frequency Response Service		X
1470	Load Reconciliation for Synchronized Reserve		X
1475	DASR Load Reconciliation		X
1478	Load Reconciliation for Operating Reserve		X
1480	Load Reconciliation for Synchronous Condensing		X
1490	Load Reconciliation for Reactive Services		X
1500	Financial Transmission Rights Auction		X
1600	RPM Auction		X
1610	Locational Reliability		X
1650	Non-Unit Specific Capacity Transaction		X
1660	Demand Resource and ILR Compliance Penalty	X	

1661	Capacity Resource Deficiency		X
1662	Generation Resource Rating Test Failure		X
1663	Qualifying Transmission Upgrade Compliance Penalty		X
1664	Peak Season Maintenance Compliance Penalty		X
1665	Peak-Hour Period Availability		X
1710	PJM/MISO Seams Elimination Cost Assignment	X	
1720	RTO Start-up Cost Recovery	X	
1730	Expansion Cost Recovery	X	
1900	Unscheduled Transmission Service	X	
1910	Ramapo Phase Angle Regulators	X	
1920	Station Power	X	
1930	Generation Deactivation	X	
1950	Virginia Retail Administrative Fee	X	
1980	Miscellaneous Bilateral	X	
1995	PJM Annual Membership Fee	X	
<b>ID #</b>	<b>CREDITS</b>		
2100	Network Integration Transmission Service	X	
2102	Network Integration Transmission Service (exempt)	X	
2104	Network Integration Transmission Service Offset	X	
2106	Non-Zone Network Integration Transmission Service	X	

2108	Transmission Enhancement	X	
2110	Direct Assignment Facilities	X	
2120	Other Supporting Facilities	X	
2130	Firm Point-to-Point Transmission Service	X	
2132	Internal Firm Point-to-Point Transmission Service	X	
2133	Firm Point-to-Point Transmission Service Resale Credit		X
2140	Non-Firm Point-to-Point Transmission Service	X	
2142	Internal Non-Firm Point-to-Point Transmission Service	X	
2143	Non-Firm Point-to-Point Transmission Service Resale Credit		X
2210	Transmission Congestion		X
2217	Planning Period Excess Congestion		X
2218	Planning Period Congestion Uplift		X
2220	Transmission Losses		X
2240	Day-ahead Economic Load Response	X	
2241	Real-time Economic Load Response	X	
2245	Emergency Load Response	X	
2260	Emergency Energy		X
2320	Transmission Owner Scheduling, System Control and Dispatch Service	X	
2330	Reactive Supply and Voltage Control from Generation and Other Sources Service		X
2340	Regulation and Frequency Response Service		X
2350	Energy Imbalance Service		X

2360	Synchronized Reserve		X
2365	Day-ahead Scheduling Reserve		X
2370	Day-ahead Operating Reserve		X
2371	Day-ahead Operating Reserve for Load Response		X
2375	Balancing Operating Reserve		X
2376	Balancing Operating Reserve for Load Response		X
2377	Synchronous Condensing		X
2378	Reactive Services		X
2380	Black Start Service		X
2420	Load Reconciliation for Transmission Losses		X
2500	Financial Transmission Rights Auction		X
2510	Auction Revenue Rights		X
2600	RPM Auction		X
2620	Interruptible Load for Reliability	X	
2630	Capacity Transfer Rights		X
2640	Incremental Capacity Transfer Rights		X
2650	Non-Unit Specific Capacity Transaction		X
2660	Demand Resource and ILR Compliance Penalty	X	
2661	Capacity Resource Deficiency		X
2662	Generation Resource Rating Test Failure		X
2663	Qualifying Transmission Upgrade Compliance Penalty		X
2664	Peak Season Maintenance Compliance Penalty		X
2665	Peak-Hour Period Availability		X
2710	PJM/MISO Seams Elimination Cost Assignment	X	
2720	RTO Start-up Cost Recovery	X	
2730	Expansion Cost Recovery	X	
2910	Ramapo Phase Angle Regulators	X	

2930	Generation Deactivation	X	
2950	Virginia Retail Administrative Fee	X	
2980	Miscellaneous Bilateral	X	
2996	Annual PJM Cell Tower	X	
2997	Annual PJM Building Rent	X	

## APPENDIX E

### DS SUPPLIER'S OBLIGATIONS FOR AEPS COMPLIANCE

To satisfy AEPS requirements with respect to the DS Supplier Responsibility Share, DS Supplier shall fulfill the following obligations:

- (1) Providing sufficient AECs for each tranche award via the DS Solicitation less the allocated AECs. Appendix E and Exhibit 1 will apply during the term of the Agreement and will be used to determine the number of AECs a DS Supplier must deliver to Buyer to fulfill DS Supplier's AEPS obligation except to the extent that DS Supplier's AEPS obligation may be reduced by any AECs obtained separately by the Buyer and allocated to DS Supplier's AEPS obligation as shown on a Transaction Confirmation. Any Buyer AECs allocated to DS Supplier's AEPS obligation as set forth in Exhibit 1 shall remain the property of Buyer and shall not be transferred to DS Supplier;
- (2) Paying any AEC penalties, costs, charges, etc. assessed against the DS Supplier and/or the Company associated with the DS Supplier's non-performance with AEPS requirements;
- (3) Submitting to the Company proof of AEPS compliance under this agreement in such form and manner as may be required by the Company.
- (4) Provide to the Company all information the Company may require to comply with the AEPS Act and its implementing regulations and other Requirements of Law, including, but not limited to the price paid per AEC required by 73 Pa.C.S. §1648.3(e)(8).

This Appendix E shall conform the AEPS obligation of the Transaction agreed to on \_\_\_\_\_ ("Transaction Due Date").

AEPS obligations for the period beginning 6/1/2021 based on the total MWh supplied by the DS Supplier:

<u>Reporting Period</u>	<u>Tier 1*</u>	<u>PV</u>	<u>Tier 2</u>
6/1/2021 to 5/31/2025	8.00%	0.50%	10.00%

\*Tier 1 requirements include Tier 1 PV requirements.

The percentages set forth above are those applicable for the DS Solicitation and may be revised for future DS Solicitations to reflect changes in law or other applicable regulatory requirements. DS Supplier shall transfer all AECs to Buyer using GATS. Buyer will provide with an estimate of DS Supplier's AEPS obligation following the second quarter of the AEPS reporting period and with a final statement within thirty (30) calendar days of the end of AEPS reporting period. DS Supplier shall transfer the amount of AECs shown on Buyer's estimate and on the final statement within forty-five (45) calendar days after the date of each such estimate or statement. DS Supplier warrants that all AECs transferred to Buyer during an AEPS reporting period (or during the twenty calendar days thereafter) shall be eligible for Buyer's use for compliance during such AEPS reporting period.

If AEPS requirements change by law or any other reason, DS Supplier shall be responsible for providing the credits at its expense in order to comply with its obligations under Full Requirements Service.

**APPENDIX F**

**LETTER OF CREDIT DOCUMENTATION**  
**{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}**

IRREVOCABLE LETTER OF CREDIT NO.

ISSUE DATE \_\_\_\_\_

EXPIRY DATE \_\_\_\_\_

APPLICANT  
[NAME]  
[ADDRESS]

BENEFICIARY  
[NAME]  
[ADDRESS]

**CURRENCY**            **AMOUNT**  
**USD**                    **\*\*\*\*\*\$**

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO:  
\_\_\_\_\_ FOR THE ACCOUNT OF \_\_\_\_\_ (APPLICANT) FOR AN  
AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS  
\_\_\_\_\_ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE  
BANK OF \_\_\_\_\_ (“ISSUER”) \_\_\_\_\_ (ADDRESS),  
EFFECTIVE \_\_\_\_\_ AND EXPIRING AT OUR COUNTERS ON  
\_\_\_\_\_ OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE, AS  
PROVIDED HEREIN. THIS LETTER OF CREDIT IS AVAILABLE IN ONE OR MORE  
DRAFTS UP TO THE AGGREGATE AMOUNT SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS  
AND WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN  
COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED  
ON PRESENTATION IF ACCOMPANIED BY THE REQUIRED DOCUMENTS  
PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT.

THE BELOW MENTIONED DOCUMENT(S) MUST BE PRESENTED ON OR BEFORE  
THE EXPIRY DATE OF THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND  
CONDITIONS OF THIS LETTER OF CREDIT.

1. YOUR SIGNED AND DATED STATEMENT, READING AS FOLLOWS:

“THE AMOUNT FOR THIS DRAWING, USD (INSERT AMOUNT), BEING MADE UNDER THE BANK OF \_\_\_\_\_ (BANK) LETTER OF CREDIT NUMBER (INSERT LETTER OF CREDIT REFERENCE NUMBER), REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM APPLICANT FOR PERFORMANCE ASSURANCE RELATED TO THE BENEFICIARY’S PECO ENERGY COMPANY PENNSYLVANIA DEFAULT SERVICE SUPPLIER MASTER AGREEMENT DATED BETWEEN \_\_\_\_\_ AND \_\_\_\_\_.”

2. THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENT(S).

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00 A.M. NEW YORK TIME, ISSUER SHALL SATISFY SUCH DRAWING REQUEST ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE SECOND FOLLOWING BUSINESS DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH PERIOD.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY’S RECEIPT OF FULL PAYMENT FROM THE APPLICANT AND ISSUER’S RECEIPT OF A WRITTEN RELEASE FROM THE BENEFICIARY RELEASING THE ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM “BUSINESS DAY” AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT’S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT’S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF [BANK] UNDER THIS LETTER OF CREDIT AND [BANK] SHALL ALWAYS REMAIN LIABLE TO [BENEFICIARY] FOR THE FULL AMOUNT OF APPLICANT’S OBLIGATIONS HEREIN TO [BENEFICIARY] NOT TO EXCEED THE AVAILABLE AMOUNT IN THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WILL BE BORNE BY THE APPLICANT.
2. THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED OR ASSIGNED.
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98"). AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF NEW YORK. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER.
5. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS THE BENEFICIARY OR AN AUTHORIZED AGENT OF THE BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.
6. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Please direct any written correspondence, including drawing or inquiries to:

[Bank name, address and phone number]

## APPENDIX G

### GUARANTY

THIS GUARANTY (this “Guaranty”), dated as of \_\_\_\_\_, 202\_, is made by \_\_\_\_\_ (the “Guarantor”), a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ [a state of the United States or of the District of Columbia], in favor of PECO Energy Company (the “Guaranteed Party”), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Terms not defined herein shall have the meanings given to them in the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement dated \_\_\_\_\_, 202\_ (as amended, modified or extended from time to time, the “Agreement(s)”), between the Guaranteed Party and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ (the “DS Supplier”). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement(s) with the DS Supplier. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party the full and prompt payment when due, subject to any applicable grace period, of all payment obligations of the DS Supplier to the Guaranteed Party arising out of the Agreement(s). Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the DS Supplier as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). [Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed \$\_\_\_\_, less the value other liquid securities posted by the DS Supplier under the Agreement(s).] All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.

2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor), filing of claims with a court in the

event of the insolvency or bankruptcy of the DS Supplier, and any right to require a proceeding first against the DS Supplier.

3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any Agreement(s) with respect to the Guaranteed Obligations or any person (including the DS Supplier) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the DS Supplier to the Guaranteed Party; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the DS Supplier to the Guaranteed Party including any security therefor.

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the DS Supplier concerning any provision of the Agreement(s) governing any of the Guaranteed Obligations of the DS Supplier; (b) the rendering of any judgment against the DS Supplier or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the DS Supplier and the Guaranteed Party; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the DS Supplier or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the DS Supplier, its assets or the Guarantor; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the DS Supplier, the Guaranteed Party, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; and (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement(s) or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the DS Supplier or any collateral security or guaranty or right of offset held by the Guaranteed Party therefor.

6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement(s) have been paid in full.

7. Subject to the terms and conditions hereof, this Guaranty is a continuing Guaranty and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the

Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party. The assignment rights of the Guaranteed Party will be in accordance with any applicable terms of the Agreement(s).

9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.

10. The Guarantor's liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received from the Guarantor or the DS Supplier in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement(s) or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Guaranteed Party.

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement(s) and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

12. All notices and other communications hereunder shall be made at the addresses by hand delivery, by next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received)

If to the Guarantor: *[To be completed]*

If to the Guaranteed Party: *[To be completed]*

13. The Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor; and (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its [insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws] or any law, regulation or contractual restriction binding on it or its assets.

14. This Guaranty and the rights and obligations of the DS Supplier and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania. The Guarantor and Guaranteed Party jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Commonwealth of Pennsylvania over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.

15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreement(s) between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of

this Guaranty.

16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

17. If the Guarantor is a trust: no trustee of the Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and this Guaranty shall not be enforceable against any such trustee in their or its, his or her individual capacities or capacity; and this Guaranty shall be enforceable against the trustees of the Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to the Guarantor or any trustee of the Guarantor shall look solely to the trust estate of the Guarantor for the payment or satisfaction thereof.

IN WITNESS WHEREOF, the Guarantor and the Guaranteed Party have caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement(s).

Accepted and Agreed to:

[GUARANTOR]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PECO ENERGY COMPANY

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX H**

**FORM OF GENERATION SUPPLY REPORT**

**Supplier Name:**  
**Calendar Year (in which Energy was delivered):**

---

Year	Coal %	Nuclear %	Oil %	Hydro-power %	Natural Gas %	Renewable %	TOTAL ENERGY SUPPLIED (kWh)
							100.00%

**Detailed Break-down of Renewable Source by Technology (if any reported above)**

Technology	Percent of Total Renewable Energy Supplied	Actual Amount of Energy Supplied (Sales in kWh)
Solar Photovoltaic Energy		
Solar Thermal Energy		
Wind Power		
Low-Head Hydropower		
Geothermal Energy		
Landfill or Other Biomass-based Methane Gas		
Mine-based Methane Gas		
Energy from Waste		
Sustainable Biomass Energy		
Other (Name)		
Other (Name)		
Total Renewable Sources	100%	

**PECO ENERGY COMPANY**  
**PENNSYLVANIA DEFAULT SERVICE SUPPLIER**  
**MASTER AGREEMENT**

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## PENNSYLVANIA DEFAULT SERVICE SUPPLIER MASTER AGREEMENT

**THIS DEFAULT SERVICE SUPPLIER MASTER AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (“Effective Date”) by and between PECO ENERGY COMPANY (the “Company” and “Buyer”), a corporation and a public utility organized and existing under the laws of the Commonwealth of Pennsylvania and **INSERT NAME OF SUPPLIER** (“DS Supplier”), the Company and the DS Supplier hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”,

### WITNESSETH:

**WHEREAS**, the Company is an electric public utility engaged, inter alia, in providing retail electric service within its service territory located in the Commonwealth of Pennsylvania; and

**WHEREAS**, the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) Orders issued pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812, direct Buyer to supply electric service to Default Service Load within Buyer’s Pennsylvania franchise service territory; and

**WHEREAS**, the PaPUC has found that, for periods further identified in Appendix C and Transaction Confirmation(s) under this Agreement it would serve the public interest for the Company to secure Default Service Supply (“DS Supply”) through a competitive procurement process (“DS Solicitation”) and the PaPUC has approved such a process; and

**WHEREAS**, the Company has conducted and completed a successful DS

Solicitation for the provision of DS Supply, and the DS Supplier was one of the winning bidders in the DS Solicitation; and

**WHEREAS**, pursuant to the competitive bidding procedures of the DS Solicitation, the Company and the DS Supplier desire to enter into this Agreement setting forth their respective rights and obligations concerning the provision of DS Supply.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

## **ARTICLE 1: DEFINITIONS**

Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article.

**Alternative Energy Credit or “AEC”** – Shall have the meaning ascribed thereto in the AEPS Act.

**AEPS Act** – The Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

**Affiliate** – Shall mean, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

**Allocated AECs** – Shall mean the types and amounts of AECs specified on Appendix E and a Transaction Confirmation.

**Alternative Energy Portfolio Standards or “AEPS”** – Standards requiring that a certain amount of electric energy sold to retail electric customers in the Commonwealth of Pennsylvania be comprised of electricity generated from alternative energy sources, as measured by AECs, in accordance with the requirements of the AEPS Act and provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2812-

14, in effect on the Effective Date including, without limitation, any subsequent increases in Tier I requirements under 66 Pa.C.S. § 2814.

**Ancillary Services** – Shall have the meaning ascribed thereto in the PJM Agreements.

**Applicable Legal Authorities** – Those federal and Pennsylvania statutes and administrative rules and regulations that govern the electric utility industry in Pennsylvania, as they may be amended from time to time.

**Auction Revenue Rights or “ARRs”** – The current or any successor congestion management mechanisms as may be employed by PJM (whether set forth in the PJM Agreements or elsewhere) for the purpose of allocating financial congestion hedges or financial transmission auction revenue rights. As currently defined by PJM, ARR are entitlements allocated annually by PJM which entitle the holder to receive an allocation of the revenues from the annual auction of financial transmission rights conducted by PJM pursuant to the PJM Agreements.

**Bankruptcy Code** – Those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

**Billing Month** – Each calendar month during the term of this Agreement.

**Business Day** – Any day on which the Company’s and PJM’s corporate offices are open for business and commercial banks are not authorized or required to close in New York, New York.

**Capacity** – “Unforced Capacity” as set forth in the PJM Agreements, or any successor, measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

**Charge** – Any fee, charge or other amount that is billable by the Company to the DS Supplier under this Agreement.

**Commercial Class** – Group of Rate Schedules that comprise the Commercial Class for DS Supply and itemized in Appendix C.

**Company** – PECO Energy Company.

**Costs** – With respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace Transaction(s) under this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

**Customer** – Any person or entity who enters a contractual agreement with the Company to receive retail electric service including, without limitation, all persons or entities taking service under a retail tariff, eligible to receive competitive electricity supply from an EGS or DS, respectively, in accordance with the Applicable Legal Authorities.

**Damages** – Financial compensation from the Defaulting Party to the Non-Defaulting Party associated with the occurrence of an Event of Default or an Early Termination of this Agreement. This compensation shall be assessed pursuant to Article 5 of this Agreement.

**Defaulting Party** – A Party to this Agreement that has caused or precipitated an Event of Default or an Early Termination of this Agreement.

**Default Service or “DS”** – Electric generation service that is provided at retail pursuant to the Applicable Legal Authorities under the Company’s retail electric tariffs and under any other agreements or arrangements between the Company and Customers, to any Customer that is not being served by an EGS.

**Default Allocation Assessment** – shall have the meaning ascribed to it under the PJM Agreements.

**Delivery Period** – The delivery period specified in an Appendix C Transaction Confirmation.

**Delivery Point** – Means the applicable zone of the Company as designated by PJM.

**DS Customer(s)** – Retail customers who are provided Default Service pursuant to the terms of this Agreement, the Applicable Legal Authorities and the Company’s retail tariffs.

**DS Fixed Percentage** – The percentage of DS Supply provided at a fixed price, as set forth in Appendix C.

**DS Fixed Price** – The price in dollars per MWh, as set forth in Appendix C hereto, as determined pursuant to the DS Solicitation.

**DS Load** – The aggregate load of DS Customers being provided DS Supply, except with respect to the Residential Class, less a fractional percentage of committed energy and capacity obtained under contract with Allegheny Electric Cooperative, Inc. for supply from the New York Power Authority.

**DS Solicitation** – The competitive bidding processes, procedures and rules employed by the Company to competitively procure DS Supply for purposes of this Agreement.

**DS Supplier** – An entity that (i) has been selected through the DS Solicitation and has accepted the obligations and associated rights to provide DS Supply to the Company for DS Customers in accordance with the Applicable Legal Authorities, (ii) has entered into this Agreement with the Company as a Party, and (iii) is a PJM Member and registered with PJM as a LSE.

**DS Supplier Representative** – Any officer, director, employee, consultant, contractor, or other agent or representative of the DS Supplier in connection with the DS Supplier's activity under this Agreement. To the extent the DS Supplier is a division or group of a company, the term DS Supplier Representative does not include any person in that company who is not part of the DS Supplier division or group.

**DS Supplier Responsibility Share** – The fixed percentage share of the Company's DS Load for which the DS Supplier is responsible as set forth in Appendix C.

**Default Service Supply or "DS Supply"** – All necessary Energy, Capacity, AECs for AEPS Act compliance, Ancillary Services, and transmission services including Network Integration Transmission Service, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, and such other services or products that the DS Supplier may be required, by PJM or any governmental body having jurisdiction, to provide in order to meet the DS Supplier Responsibility Share for serving DS Load under this Agreement and as detailed in Appendix C. For the avoidance of doubt, (i) any reference in this Agreement to any other agreement for DS Supply shall include any agreement between the Parties for the provision of Energy to serve DS Load, even if such other agreement does not require delivery of additional products (e.g., Capacity); and (ii) DS Load shall include unaccounted for energy, as reflected in PJM settlement volumes (including adjustments required by PJM for PJM's derating in conjunction with implementation of marginal losses as appropriate per PJM Agreements).

**DS Tariffs** – The Company's existing schedules of rates and services provided to retail customers as currently on file with the Commission and on the Company's website at EDC website, as they may be amended from time to time.

**DS Variable Percentage** – The percentage of DS Supply provided at a variable price, as set forth in Appendix C hereto.

**DS Variable Price** – The price in dollars per MWh, as set forth in Appendix C hereto.

**Early Termination** – Termination of this Agreement prior to the end of the term due to the occurrence of an Event of Default as specified in Section 5.2 of this Agreement and the declaration of Early Termination.

**Early Termination Date** – The date upon which an Early Termination becomes effective as specified in Section 5.2 of this Agreement.

**Effective Date** - The date specified above as the effective date.

**Electric Distribution Company or “EDC”** – A public utility providing facilities for the transmission and distribution of electricity to retail customers in Pennsylvania.

**Electric Generation Supplier or “EGS”** – A person or entity that is duly certified by the Commission to offer and provide competitive electric supply to retail customers located in the Commonwealth of Pennsylvania.

**Emergency** – (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a condition that requires implementation of Emergency Operations Procedures as defined in the PJM Agreements or PJM manuals; or (iii) any other condition or situation that the Company or PJM deems imminently likely to endanger life or property or to affect or impair the Company’s electrical system or the electrical system(s) of other(s) to which the Company’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include, but shall not be limited to, potential overloading of the Company’s transmission and/or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either the Company’s or a Connected Entity’s electrical system, or conditions such that the Company is unable to accept Energy from the DS Supplier without jeopardizing the Company’s electrical system or a Connected Entity’s electrical system. Other additional emergencies can only be declared by PJM, FERC, or the PaPUC.

**Energy** – Three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

**Event of Default** – A Party’s breach of obligations under this Agreement as set forth in Article 5 of this Agreement.

**FERC** – The Federal Energy Regulatory Commission.

**Final Monthly Energy Allocation or “FMEA”** – A quantity of Energy which, for any Billing Month, is the PMEA adjusted for any billing or metering data received subsequent to the calculation of PMEA of which PJM is notified within 60 days.

**Force Majeure** – Shall mean an event or circumstance which prevents one Party from performing its obligations under one or more transactions, such as riots or revolutions, demands or embargoes of the United States Government, fire, flood, drought, insurrection, acts of God which are not within the reasonable control of, or the results of the negligence of the affected Party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of DS Supplier’s supply; (ii) DS Supplier’s ability to sell the DS Supply at a price greater

than that received under any Transaction; (iii) curtailment by a utility transmitting DS Supply; (iv) the Company's ability to purchase the DS Supply at a price lower than paid under any Transaction; (v) any change in requirements of any governmental authority; or (vi) labor stoppage or lockout.

**Forward Market Price** – The price for On-peak Energy Forward Price and Off-peak Energy Forward Price as determined by averaging concurrent broker quotes obtained by the Company for the Market Price Hub as available.

**Gains** – With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

**Generator Attribute Tracking System or "GATS"** - the system owned and operated by PJM Environmental Information Services, Inc. to provide reporting and tracking services to its subscribers in support of the AEPS Act, or any successor credit registry selected by the PaPUC. (As specified in Appendix E)

**Guaranty** – A guaranty, suretyship, hypothecation agreement, margins or security agreement or any other document in the form attached to this DS Supplier Master Agreement or other form approved by the Company.

**Guarantor** – Any party having the authority and agreeing to guarantee the DS Supplier's financial obligations under this Agreement, recognizing that such party shall be obligated to meet the Company's creditworthiness requirements specified in this Agreement for such DS Supplier.

**Industrial Class** - Group of Rate Schedules that comprise the Industrial Class for the DS Supply and itemized in Appendix C.

**Interest Index** – The average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

**Kilowatt or "kW"** – Unit of measurement of useful power equivalent to 1000 watts.

**Kilowatt-hour or "kWh"** – One kilowatt of electric power used over a period of one hour.

**Load Serving Entity or "LSE"** – An entity that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electricity to retail customers located within the PJM Control Area as that term is defined in the PJM Agreements or in successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement.

**Losses** – With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

**Margin** – The amount by which the Total Exposure Amount exceeds the DS Supplier’s, or Guarantor’s, credit limit as defined in Section 6.4.

**Mark-to-Market (“MtM”) Exposure Amount** – An amount calculated daily for each DS Supplier reflecting the total MtM credit exposure to the Company due to fluctuations in market prices for Energy. The methodology for calculation of the MtM credit exposure is illustrated in Appendix B.

**Market Price Hub** - A liquid pricing point located within PJM’s geographic footprint, as specified in Appendix B.

**Maximum Credit Limit** – The lesser of the applicable percentage of TNW or the applicable credit limit cap as specified in Section 6.4 of this Agreement.

**Megawatt or MW** – One thousand kilowatts.

**Megawatt-hour or MWh** – One megawatt of electric power used over a period of one hour.

**Merger Event** – When a DS Supplier consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity and either (i) the resulting entity fails to assume all of the obligations of such DS Supplier hereunder as determined in the sole discretion of the Company or (ii) the benefits of any credit support provided pursuant to Article 6 of this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of the DS Supplier’s obligations hereunder, and the resulting entity or its guarantor fails to meet the creditworthiness requirements of this Agreement as determined in the sole discretion of the Company.

**Minimum Rating** – A minimum senior unsecured debt rating as defined in Appendix A of this Agreement.

**Minimum Transfer Amount** - \$100,000.

**NERC** – The North American Electric Reliability Council or its successor.

**Network Integration Transmission Service or “NITS”** – “Network Integration Transmission Service” under the PJM Agreements in effect as of the date of this Agreement, or its successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Network Integration Transmission Service shall mean the type of

transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

**Non-Defaulting Party** - A Party to this Agreement who, at the time an Event of Default occurs, is not itself in default of this Agreement and has not otherwise caused or precipitated an Event of Default or Early Termination of this Agreement.

**Off-Peak Energy Forward Price** - Shall mean the price for Off-Peak Hours for each Billing Month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer available or no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

**On-Peak Energy Forward Price** - Shall mean the price for On-Peak Hours for each Billing Month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

**PaPUC or Commission** - The Pennsylvania Public Utility Commission or its successor.

**PJM** - PJM Interconnection L.L.C. or its successor.

**PJM Agreements** - The PJM OATT, PJM RAA, PJM OA and all other PJM agreements, procedures, manuals and documents applicable to the Transactions covered by or relating to this Agreement.

**PJM Control Area** - That certain Control Area encompassing electric systems in parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia, as may be modified from time to time, and which is recognized by the North American Electric Reliability Council as the "PJM Control Area".

**PJM Member** - A member in good standing of PJM that satisfies the requirements to conduct business with PJM.

**PJM OA** - The PJM Operating Agreement or the successor, superseding or amended version of the PJM Operating Agreement that may take effect from time to time.

**PJM OATT** - The PJM Open Access Transmission Tariff or the successor, superseding or amended version of the PJM Open Access Transmission Tariff that may take effect from time to time.

**PJM OI** – The PJM Office of Interconnection, the system operator for the PJM Control Area.

**PJM RAA** – The PJM Reliability Assurance Agreement or the successor, superseding or amended version of the PJM Reliability Assurance Agreement that may take effect from time to time.

**PMEA/FMEA Adjustment Amount** – For any Billing Month, the monetary amount due to the DS Supplier or the Company, as the case may be, in order to reconcile any difference between the PMEA used for the purpose of calculating estimated payments made to DS Supplier for a given month and the FMEA used for calculating the final payments due to the DS Supplier for such month as more fully described in Article 9 hereof.

**Preliminary Monthly Energy Allocation or “PMEA”** – A quantity of Energy which, for any Billing Month, is the preliminary calculation of the DS Supplier’s DS Supplier Responsibility Share for that Billing Month.

**Rate Schedule(s)** – Shall mean the specified existing, and modified or successor customer rate schedule(s) in the electric service tariff of the Company filed with the Commission.

**Reliability First Corporation or “RFC”** – The approved regional NERC entity with responsibility for the Commonwealth of Pennsylvania.

**Residential Class** – Group of Rate Schedules that comprise the Residential Class for the DS Supply and itemized in Appendix C

**Seasonal Billing Factor** – A numerical factor, as set forth in Appendix C hereto, one amount applicable during the summer months of June through September and one amount applicable during the non-summer months of October through May, applied to the DS Fixed Price in accordance with the provisions of Article 9 hereof and thereby used to adjust the Company’s payments to the DS Supplier.

**Rounding Amount** - \$100,000.

**Settlement Amount** – With respect to a Non-Defaulting Party, the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4(a) of this Agreement. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

**Statement** – A monthly report prepared by the Company for the DS Supplier indicating the amount due to the DS Supplier by the Company as compensation for DS Supply

supplied to DS Customers by the DS Supplier during the applicable Billing Month, in accordance with DS Supplier's obligations under this Agreement.

**Supply Day** – Any calendar day during the term of this Agreement on which the DS Supplier is providing, or is obligated by this Agreement to provide, DS Supply to the Company's DS Customers.

**Tangible Net Worth or "TNW"** – Total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks.

**Termination Payment** – An amount paid by the Defaulting Party or Non-Defaulting Party due to Early Termination.

**Tier I AEC** – Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the non-solar photovoltaic Tier I requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Tier I (Solar) AEC** – Shall mean an AEC generated by a solar photovoltaic energy source that will satisfy the Tier I solar photovoltaic requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Tier II AEC** - Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the Tier II requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

**Total Exposure Amount** – An amount calculated daily for the DS Supplier reflecting the total credit exposure to the Company and consisting of the sum of (i) the Buyer's Exposure for all Transactions under this Agreement; (ii) any amount(s) designated as "buyer's exposure" under any other DS Supply agreements providing for "DS Supply" or similar default service; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

**Tranche** – A fixed percentage share of the Company's DS Load, as specified in a Transaction Confirmation.

**Transaction** – Means a particular agreement by which the Company purchases and the DS Supplier sells DS Supply pursuant to this Agreement, the details of which are more fully set forth in a Transaction Confirmation in the form attached as Exhibit 1 in Appendix C.

**Transaction Confirmation** – Shall have the meaning ascribed to it in Appendix C and Exhibit 1 of this Agreement.

**Transaction Date** – Shall mean the date that a Transaction is effective as set forth in the Transaction Confirmation.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 Capacity In Which Company Is Entering Into This Agreement**

The DS Supplier agrees and acknowledges that the Company is contracting for the provision of DS Supply from such DS Supplier for Customers receiving Default Service on the Company's electric system pursuant to the authorizations provided to the Company. The DS Supplier further agrees and acknowledges that the Company will administer and monitor the DS Supplier's performance in providing DS Supply under this Agreement and that the Company shall be entitled to enforce the DS Supplier's obligations related to the provision of DS Supply. The DS Supplier hereby permanently, expressly and irrevocably waives any claim that Company is not entitled to seek enforcement of this Agreement on behalf of Customers. It is the specific intention of the Parties hereto that Customers and Customer groups are not third party beneficiaries of this Agreement and that no Customer or Customer group shall seek enforcement of this Agreement against the DS Supplier on their own behalf, either independently or by joining in any legal proceeding brought by the Company.

### **2.2 Parties' Obligations**

#### **(a) Obligations of DS Supplier**

The DS Supplier hereby agrees as follows:

- (i) To provide service on a firm and continuous basis such that the supply delivered for the term of each Transaction under the Agreement meets the terms and conditions set forth in Appendix C and the applicable Transaction Confirmation;
- (ii) To provide sufficient quantities of DS Supply on an instantaneous basis at

- all times during the Delivery Period of each Transaction and supplied to the Delivery Point to meet the DS Supplier Responsibility Share;
- (iii) To procure those services provided by the PJM OI and to perform such functions as may be required by the PJM OI that are necessary for the delivery of DS Supply required hereunder;
  - (iv) To cooperate with the Company in any regulatory compliance efforts that may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of DS Supply, before the PaPUC, FERC or any other regulatory body asserting jurisdiction;
  - (v) To become the LSE with respect to the provision of DS Supply for the DS Supplier Responsibility Share and to comply with all requirements of a LSE with respect to such DS Supplier Responsibility Share;
  - (vi) To pay to the Company the PMEA/FMEA Adjustment Amount for any Billing Month in which the PMEA exceeds the FMEA, as more fully described in Article 9 of this Agreement;
  - (vii) To accept assignment of and to fulfill all obligations of a LSE that are assigned to it by this Agreement;
  - (viii) To comply in a timely manner with all obligations under this Agreement imposed upon the DS Supplier; ~~and~~
  - (ix) To comply with the AEPS requirements of the Company's Default Service Plan, as detailed in Appendix E; and
  - (x) To provide a completed generation supply report to the Company, in the

form of Appendix H, by March 31st of each calendar year for all Energy provided to the Company under this Agreement in the preceding calendar year.

**(b) Obligations of the Company**

The Company hereby agrees as follows:

- (i) To pay to the DS Supplier every month an amount due, resulting from the calculations, as detailed in Article 9 of this Agreement, subject to the adjustments as expressed therein;
- (ii) Pay to the DS Supplier the PMEA/FMEA Adjustment Amount for any Billing Month in which the FMEA exceeds the PMEA, as more fully described in Article 9 of this Agreement;
- (iii) To provide to the DS Supplier its estimated aggregate load obligation (Capacity MW value) for each Supply Day no less than five (5) calendar days prior to the day of delivery. Further, this information will be posted in the DS Supplier's specific PJM eMTR account, or successor system or process;
- (iv) To comply in a timely manner with all obligations under this Agreement imposed upon the Company;
- (v) Accept the delivery of DS Supply necessary to meet the DS Load; and
- (vi) Be responsible (as between the Company and the DS Supplier) for the provision of the Allocated AECs to satisfy AEPS requirements.

**2.3 Congestion and Congestion Management**

The DS Supplier is responsible for any congestion costs incurred to meet the DS

Supplier Responsibility Share. The Company shall transfer or assign to the DS Supplier the Company's rights to ARR to which the Company is entitled as a LSE pursuant to the PJM Agreements provided that such rights are related to the service being provided to meet the DS Supplier Responsibility Share and such rights are for the Delivery Period indicated in the Transaction Confirmation(s). All rights, liabilities and obligations associated with such ARRs will accrue and be assumed by the DS Supplier through the transfer or assignment from the Company to the DS Supplier including the responsibility and ability of the DS Supplier to request or nominate such ARRs when applicable and feasible. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations will nominate such ARRs for the upcoming PJM planning period and such ARRs will be allocated to the DS Supplier in accordance with the PJM Agreements based upon its DS Supplier Responsibility Share.

#### **2.4 PJM Services**

The DS Supplier shall make all necessary arrangements for the delivery of DS Supply through the PJM OI. The Company will advise the PJM OI of the magnitude and location of each DS Supplier's actual DS Supplier Responsibility Share, as required by the PJM OI, for the purpose of calculating such DS Supplier's appropriate DS Supply requirements related to the provision of service under this Agreement by DS Supplier arising under the PJM Agreements. The DS Supplier shall remain responsible to PJM for the performance of its LSE obligations associated with the provision of DS Supply under this Agreement until the effective date of the transfer of such LSE obligations.

The Company shall generate and provide to DS Supplier PJM shortname(s) associated with supplier's unique contract type(s), as necessary. Unique shortname(s)

may be generated for each differing contract type. DS Supplier shall complete all required forms and processing to PJM to create shortname(s) within the PJM system.

For the period of time this Agreement is in effect, both the Company and DS Supplier shall have executed the PJM Declaration of Authority, and shall remain in effect during the Term of each Transaction under this Agreement. In the event PJM requires that the Declaration of Authority be amended after execution by the DS Supplier, DS Supplier agrees to execute a revised Declaration of Authority in accordance with PJM requirements.

#### **2.5 PJM Agreement Modifications**

(a) If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

(b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement, including the DS Supplier's responsibility for changes in PJM products and pricing during the term of each Transaction under this Agreement.

#### **2.6 PJM Member Default Cost Allocation**

In the event PJM imposes a Default Allocation Assessment upon the Company relating to a default during the term of Transaction(s) under this Agreement, the

Company shall invoice DS Supplier and DS Supplier shall pay an amount equal to the product of (i) DS Supplier Responsibility Share and (ii) the Default Allocation Assessment, less the amounts of any types of charges allocated to the Company under this Agreement that are used by PJM in calculating such Default Allocation Assessment.

#### **2.7 Other Fines and Penalties**

If fees, fines, penalties, or costs are claimed or assessed against the Company by any Applicable Legal Authority or PJM due to non-compliance by the DS Supplier with this Agreement, any other requirements of law, or the PJM Agreements, the DS Supplier shall indemnify and hold the Company harmless against any and all losses, liabilities, damages, and claims suffered or incurred by the Company, including claims for indemnity or contribution made by third parties against the Company, except to the extent the Company recovers any such losses, liabilities or damages through other provisions of this Agreement.

#### **2.8 Communications and Data Exchange**

The DS Supplier and the Company shall supply to each other in a thorough and timely manner all data, materials or other information that is specified in this Agreement, or that may otherwise reasonably be required by DS Supplier or by the Company in connection with the provision of DS Supply by the DS Supplier to DS Customers, if required.

The DS Supplier shall be equipped with the communications capabilities necessary to comply with the communications and data exchange standards that are set by and as may, from time to time, be modified by PJM, and shall exclusively bear the costs of installing, maintaining, testing, and operating all required information technology

systems that will enable it to send to and receive data from the Company and PJM and to satisfy its obligations under this Agreement, the PJM Agreements and all other relevant agreements.

#### **2.9 Record Retention**

The Company shall retain necessary records for the longer of two years or as required under applicable PaPUC requirements so as to permit DS Supplier to confirm the validity of payments due to DS Supplier hereunder; provided that if a DS Supplier has provided notice pursuant to this Agreement that it disputes the validity of any payments, the Company agrees that it shall retain all records related to such dispute until the dispute is finally resolved.

#### **2.10 Verification**

In the event of a good faith dispute regarding any invoice issued or payment due under this Agreement, and provided that a mutually acceptable confidentiality agreement is executed by the Parties, each Party will have the right to verify, at its sole expense, the accuracy of the invoice or the calculation of the payment due by obtaining copies of relevant portions of the books and records of the other Party.

#### **2.11 Forward Contract Merchant**

The Parties agree that the Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, that each Party hereto is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, all setoffs, netting and liquidations contemplated hereunder constitute “settlement payments” as set forth in Sections 101 and 741 of the United States Bankruptcy Code and each payment or

transfer of performance assurance is a “margin payment”, “settlement payment” or transfer within the meaning of Section 101 of the United States Bankruptcy Code for the purposes of and as used in such Code. Accordingly, the Parties hereto are entitled to the protections of Section 556 of the United States Bankruptcy Code. The Parties therefore agree that the Agreement may be terminated by either Party upon the commencement of a proceeding by the other Party under any chapter of the United States Bankruptcy Code in accordance with Section 5.2 of this Agreement.

### **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

#### **3.1 DS Supplier’s Representations and Warranties**

The DS Supplier hereby represents, warrants and covenants to the Company on the Effective Date and throughout the term of the Transaction(s) under this Agreement as follows:

a) It is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania or, if another jurisdiction, under the laws of such jurisdiction and, in such case, is duly registered and authorized to do business in such other jurisdiction;

b) It has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including satisfaction of all applicable FERC requirements;

c) The execution and delivery of this Agreement and the performance of such DS Supplier’s obligations hereunder have been duly authorized by all necessary

action on the part of the DS Supplier and do not and will not conflict with, or constitute a breach of or default under, any of the terms, conditions, or provisions of the DS Supplier's certificate of incorporation or bylaws or other constituent instruments or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the DS Supplier is a party or by which the DS Supplier or any of its properties is bound or subject;

d) All necessary and appropriate action that is required on the DS Supplier's part to execute this Agreement has been completed;

e) This Agreement is the legal, valid and binding obligation of the DS Supplier, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity;

f) There are no actions at law, suits in equity, proceedings or claims pending or, to the DS Supplier's knowledge, threatened against the DS Supplier before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the DS Supplier's performance of its obligations hereunder;

g) It has entered into this Agreement and all Transactions under this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

h) It is in good standing as a LSE in PJM, is a signatory to all applicable PJM Agreements, and is in compliance with, and will continue to comply with, all obligations,

rules and regulations, as established and interpreted by the PJM OI, that are applicable to LSEs as defined by the PJM Agreements; provided that the DS Supplier shall not be obligated to become a LSE in PJM until the date it begins providing DS Supply;

i) It has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the Company;

j) It will comply with any and all information and data transfer protocols that may be adopted by the Company or that are set by, and from time to time modified by, the PaPUC; provided that DS Supplier shall be entitled to exercise its reserved right to challenge any such protocols in the appropriate forum.

k) It is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent;

l) There are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement;

m) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

n) It is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the

terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement; and

o) It has entered into this Agreement and all Transactions under this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of DS Supply as required by this Agreement; and it is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act.

### **3.2 Company’s Representations and Warranties**

The Company hereby represents, warrants and covenants to the DS Supplier as follows:

a) The Company is an electric utility corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;

b) The Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

c) The execution and delivery of this Agreement and the performance of the Company’s obligations hereunder have been duly authorized by all necessary action on the part of the Company and do not and will not conflict with, constitute a breach of or default under, any of the terms, conditions, or provisions of the Company’s certificate of incorporation or bylaws or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the Company is a party or by which the Company or any of its properties is bound or subject;

d) All necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed;

e) This Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity and the Commission's power under section 508 of the Public Utility Code, 66 Pa.C.S. § 508, to amend or modify the contracts of public utilities;

f) The ability of the Company to pay any and all amounts due and payable under this Agreement, or upon any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the Commission, the Commonwealth of Pennsylvania or any other governmental authority;

g) There are no actions at law, suits in equity, proceedings or claims pending or, to the Company's knowledge, threatened against the Company before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the Company's performance of its obligations under this Agreement;

h) It has entered into this Agreement and all Transactions under this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

i) The Company's performance under this Agreement is not contingent upon the performance of Customers or the ability of Customers to pay rates;

j) The Company shall have sole responsibility for metering and billing with

respect to Customers; and

k) The Company shall be responsible for electric distribution services and the DS Supplier shall not be responsible for distribution charges.

### **3.3 Survival of Obligations**

All representations and warranties contained in this Article are of a continuing nature and shall be maintained during the term of this Agreement or until all amounts due hereunder, including all obligations, have been paid or performed in full. If a Party learns that any of the representations, warranties or covenants in this Agreement are no longer true during the term of any Transaction under this Agreement, the Party shall immediately notify the other Party via facsimile, with a hard copy of the notice delivered by overnight mail.

## **ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT**

### **4.1 Commencement and Termination**

The term of this Agreement shall commence upon the Effective Date. Unless otherwise agreed upon by the Company and the DS Supplier, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed under this Agreement, unless the Agreement is terminated prematurely pursuant to the provisions of this Agreement.

### **4.2 Termination of Right to Supply**

The DS Supplier agrees that termination of this Agreement for reason of an Event of Default shall terminate any right of the DS Supplier to provide DS Supply to the DS Customers and nullify any of the entitlements to which the DS Supplier became entitled

as a result of being selected as a winning bidder in the DS Solicitation.

#### **4.3 Survival of Obligations**

Termination of this Agreement for any reason shall not relieve the Company or the DS Supplier of any obligation accrued or accruing prior to such termination. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings.

#### **4.4 Mutual Termination**

The Company and the DS Supplier may agree at any time during the term of this Agreement to terminate their respective rights and obligations hereunder on such terms and under such conditions that they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to the Company and the DS Supplier (“Mutual Termination Agreement”); provided that Company agrees that it shall enter into such a Mutual Termination Agreement, which will discharge the terminating DS Supplier (the “Terminating DS Supplier”) with respect to liabilities arising after the effective date of the Mutual Termination Agreement if the following conditions precedent are met: (i) the Terminating DS Supplier identifies a replacement DS Supplier willing to assume all obligations of the Terminating DS Supplier hereunder for the remaining term of Transactions under this Agreement (the “Replacement DS Supplier”); (ii) the Replacement DS Supplier demonstrates its compliance with Article 6 of this Agreement, “Creditworthiness”, as of the effective date of the Mutual Termination Agreement, that determination to be made in the sole discretion of Company; (iii) the Replacement DS Supplier executes a counterpart signature page to this Agreement and all Transaction Confirmation(s) that are currently in effect and thereby becomes a Party

under this Agreement and all relevant Transaction(s), effective immediately following the effective date of the Mutual Termination Agreement; and (iv) the Terminating DS Supplier is not, to the belief or knowledge of the Company, subject to an Event of Default as of the effective date of the Mutual Termination Agreement or, if the Company believes that the Terminating DS Supplier may be subject to an Event of Default, either (a) the Company has determined that, as of the effective date of the Mutual Termination Agreement, it has not incurred any Damages as a result of the Event of Default or (b) if the Company has determined, as of the effective date of the Mutual Termination Agreement, that it may have incurred Damages as a result of the Event of Default, that the Replacement DS Supplier has agreed in writing to be responsible for the payment of such Damages or to otherwise cure the Event of Default, in either case to the satisfaction of the Company in its sole discretion.

## **ARTICLE 5: BREACH AND DEFAULT**

### **5.1 Events of Default**

An Event of Default under this Agreement shall occur if a Party (the “Defaulting Party”):

- (i) Is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (ii) Makes an assignment for the benefit of its creditors;
- (iii) Applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (iv) Is dissolved (other than pursuant to a consolidation, amalgamation or merger) or is the subject of a Merger Event;

(v) Has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;

(vi) Has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(vii) In the case of a DS Supplier, PJM terminates the DS Supplier's ability to make purchases from PJM markets or PJM holds the Company responsible for the provision of DS Supply under this Agreement and PJM does not rescind such termination or assignment of responsibility within seven (7) Business Days;

(viii) Fails to comply with the creditworthiness requirements as set forth in Article 6 of this Agreement, including, without limitation, compliance with the creditworthiness requirements to cover the Margin calculated under Section 6.3 or post any performance assurance collateral as set forth in Section 6.7 to cover Margin due under Section 6.5 of this Agreement, within the time frames set forth in this Agreement;

(ix) Is declared by PJM to be in default of any provision of any PJM Agreement, which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;

(x) Fails to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

(xi) Violates any federal, state or local code, regulation or statute applicable to the supply of Energy and/or AECs in a manner that materially, and adversely, affects the Party's performance under this Agreement, including by way of failure to continually

satisfy all applicable FERC requirements, or, in the case of the DS Supplier, by way of failure to maintain any other governmental approvals required for participation in the Pennsylvania retail Energy market, or defaults on any obligation or other failure to comply with PJM requirements under the PJM Agreements;

(xii) Is the subject of an involuntary bankruptcy or similar proceeding;

(xiii) Subject to Section 5.3 (b) of this Agreement, in the case of the Company, fails to accept DS Supply properly tendered by the DS Supplier under this Agreement;

(xiv) Fails to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within three (3) Business Days after written notice;

(xv) Makes a materially incorrect or misleading representation or warranty under this Agreement or under any response to the DS Solicitation;

(xvi) Commits an act or makes an omission that constitutes an “Event of Default” under any other agreement(s) for the provision of DS Supply between the Company and the DS Supplier; and fails to remedy such condition, event or delinquency herein above described such that the other Party (the “Non-Defaulting Party”) is completely made whole with respect to such condition, event or delinquency, within three (3) Business Days of receipt of written notice thereof from such Non-Defaulting Party; provided, however, that an Event of Default shall be deemed to have occurred immediately, without any need for the provision of notice thereof by the Non-Defaulting Party and without any right of cure on the part of the Defaulting Party, in the event of the occurrence of a condition, event or delinquency described in subsections “i”, “ii”, “iii”, “iv”, “v”, “vi”, “vii” or “viii” above. Termination of this Agreement or any Transactions

hereunder by the PaPUC, other regulatory authority or court of law does not constitute an Event of Default under this Agreement; or

(xvii) With respect to the DS Supplier's Guarantor, if any:

1. any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
2. Guarantor fails to make, when due, any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within two (2) Business Days after written notice;
3. Guarantor's guaranty fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of the DS Supplier under this Agreement without the written consent of the Company; or
4. Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty.

## **5.2 Rights upon Default**

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not

continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Sections 5.6 and 5.7. In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement either or both of the following remedies:

(i) Declare an Early Termination Date of this Agreement with respect to the obligations of the Defaulting Party without any liability or responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice to the Defaulting Party; provided, however, that this Agreement shall immediately terminate automatically and without notice in the case of any Event of Default in which a DS Supplier is the Defaulting Party occurring under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) of Section 5.1 of this Agreement and such date of automatic termination shall be deemed the Early Termination Date of this Agreement with respect to such DS Supplier; and

(ii) Receive Damages in accordance with Section 5.3 of this Agreement.

### **5.3 Damages Resulting From an Event of Default**

(a) **DS Supplier's Failure to Supply DS Supply or Declaration of Early Termination By Company:** Damages resulting from (i) the DS Supplier's failure to (A) provide DS Supply in conformance with Section 2.2 hereof or (B) pay PJM for purchases of any products or services from PJM, or other failure to comply with PJM requirements, such that PJM holds the Company responsible for the provision of DS Supply to meet the DS Supplier's DS Supplier Responsibility Share under Transaction(s)

of this Agreement or (ii) the occurrence of any Event of Default attributable to the DS Supplier resulting in Early Termination, shall include all Costs incurred by the Company, acting in a commercially reasonable manner consistent with any statutory or regulatory requirements imposed by the Applicable Legal Authorities, in obtaining replacement services or in obtaining a replacement supplier, which Costs exceed the amounts that would have been payable to the defaulting DS Supplier under this Agreement. Costs incurred by the Company for the purpose of calculating Damages hereunder will consist of:

(i) The cost of DS Supply allocated to the Company by the PJM OI due to the failure of the DS Supplier to meet obligations owing to the PJM OI in connection with its obligations under this Agreement;

(ii) The costs of DS Supply purchased by the Company to replace DS Supply that a DS Supplier was obligated to supply under this Agreement during the term hereof;

(iii) Administrative and legal costs associated with procuring replacement DS Supply; and

(iv) Financial hedging costs incurred by the Company on behalf of DS Customers as a result of having to procure DS Supply not provided by the DS Supplier.

The Parties further recognize and agree that the final calculation of Damages hereunder may not be known for some time since the level of such Damages may be dependent upon the arrangements made by the Company to obtain replacement services or a replacement DS Supplier. The Company and the DS Supplier agree that, until the calculation of Damages under this provision is completed, the amount and payment to the Company of the Settlement Amount on behalf of DS Customers in the event of an Early

Termination as set forth in Section 5.4 of this Agreement shall be immediately due and owing as an estimate of all Damages ultimately determined to be due and owing. After Damages have been finally determined under this Section 5.3, the amounts of Damages due and owing will be reconciled with payments already made by the DS Supplier under Section 5.4 of this Agreement.

(b) **Failure By Company on Behalf of Customers To Accept DS Supply Tendered By DS Supplier:** Damages resulting from the failure of the Company on behalf of Customers to accept DS Supply tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under Transaction(s) of this Agreement shall consist of the positive difference (if any) between (i) the amounts that would have been payable to the DS Supplier hereunder had the Company accepted the DS Supply tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under Transaction(s) of this Agreement and (ii) the amount realized by the DS Supplier in disposing, in a commercially reasonable manner, of the DS Supply not accepted by the Company; provided, however, that the Company shall not be required to accept on behalf of any Customer, quantities of DS Supply utilized by Customers on an instantaneous basis as a function of electrical load, in excess of such Customer's instantaneous consumption of such component of DS Supply; and further provided that the Company shall not be liable for any Damages if this Agreement is terminated by the PaPUC, other regulatory authority or a court of law.

(c) **Damages Resulting From Early Termination Due To An Event of Default Attributable To the Company:** Damages resulting from Early Termination due to an Event of Default attributable to the Company shall be as set forth in Section 5.4

of this Agreement. Damages calculated in accordance with said Section 5.4 shall be the exclusive remedy available to the DS Supplier in the event of Early Termination resulting from an Event of Default attributable to the Company.

(d) **Damages Resulting from DS Supplier's Failure to Continuously Satisfy its AEPS Obligations:** Damages resulting from the DS Supplier's failure to continuously meet and satisfy all or any portion of its obligations under Section 2.2 (a)(ix) of this Agreement shall include, but not be limited to, the amount of all penalties, and costs associated with the procurement of additional AECs, etc. including, without limitation, interest and other charges, if any, levied against the Company related to AEPS regulations, due to such DS Supplier's conduct or inaction.

(e) **Other Damages:** Damages for Events of Default not specified above shall consist of the direct Damages incurred by the Non-Defaulting Party.

(f) **Waiver of Event of Default:** If an Event of Default has occurred and the Non-Defaulting Party is the Company, then unless the Event of Default was a failure by the DS Supplier to meet any or all of its DS Supply obligations, the Company may elect, at its sole discretion, to offer to waive the default on such terms and conditions as the Company, at its sole discretion, may deem appropriate to propose a special remedy. Any such special remedy can only be offered to the DS Supplier if it first is specifically approved by the PaPUC in accordance with Commission Orders.

#### **5.4 Declaration of an Early Termination Date and Calculation of Settlement Amount and Termination Payment**

(a) **Settlement Amount.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right (i) to designate a day, no earlier than the day such notice is effective and no

later than twenty (20) days after such notice is effective, as the Early Termination Date to accelerate all amounts owing between the Parties and to liquidate and terminate the undertakings set forth in this Agreement, (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance; provided however, that an Early Termination Date shall be deemed to occur automatically and concurrently with the Event of Default, without any requirement for the provision of notice by the Non-Defaulting Party, with respect to an Event of Default under subsections (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii) of Section 5.1 of this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount with respect to the obligations under this Agreement.

The DS Supplier may, in its sole discretion, select the notional quantity in the following subsection 5.4(a)(1) by checking this box. If the DS Supplier does not check the box to select subsection 5.4(a)(1) it will be deemed to be excluded from this Agreement.

5.4(a)(1) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes as may have occurred since the previous calendar year.

(b) **Net Out of Settlement Amounts.** The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Company and the DS Supplier for the

provision of DS Supply into a single amount by netting out (i) all Settlement Amounts that are due or will become due to the Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply against (ii) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the DS Supplier is the Defaulting Party and the Termination Payment is due to the DS Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the DS Supplier as Damages and further provided that any previously attached security interest of the Company in such retained amounts shall continue. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined to be due and owing by the DS Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the DS Supplier, the Company will pay simple interest on the Termination Payment amount being made to the DS Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per

annum.

(c) **Notice of Termination Payment.** As soon as practicable after calculation of a Termination Payment, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to Section 5.4(b) above, the Termination Payment shall be made by the Party that owes it within three (3) Business Days after such notice is effective.

(d) **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within three (3) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party as specified in the Termination Payment dispute notice.

(e) **Multiple DS Supply Agreements.** It is the intention of the Company and the DS Supplier that, in the event the DS Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the Effective Date of this Agreement or are entered into after the Effective Date of this Agreement, the Company will calculate a single Termination Payment applicable to all such agreements as set forth herein.

### **5.5 Step-up Provision**

The Company may ask other DS Suppliers whether they wish to assume all or part of the delivery obligations on the same terms and price contained herein, but any DS Supplier shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a “Step-Up”, and is subject to compliance with the creditworthiness provisions of Section 6 of this Agreement and the DS Supplier’s load cap as per the Company’s approved default service procurement plan. For the avoidance of doubt, in the event that the DS Supplier does not respond to the Company’s Step-Up request within the relevant timeframe, then the DS Supplier shall be deemed to have rejected the Company’s request in full.

### **5.6 Setoff of Payment Obligations of the Non-Defaulting Party**

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured, but which are subject to a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply.

### 5.7 Preservation of Rights of Non-Defaulting Party

The rights of the Non-Defaulting Party under this Agreement, including without limitation Sections 5.4 and 5.6 of this Agreement, shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

- a. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.
- b. Return of Auction Revenue Rights. When the DS Supplier is the Defaulting Party, the DS Supplier will make best efforts to facilitate the transfer or reassignment to the entity which is the replacement DS Supplier on the Early Termination Date, any and all of the replacement DS Supplier's rights to ARRs to which the replacement DS Supplier is entitled as a LSE pursuant to the PJM Agreements, which were transferred or assigned to the DS Supplier under Section 2.3 (Congestion and Congestion Management).

## ARTICLE 6: CREDITWORTHINESS

### 6.1 Applicability

The DS Supplier agrees that it shall meet the creditworthiness requirements of this Article 6 at all times during the term of this Agreement and shall inform the Company immediately of any changes in its credit rating or financial condition. Without limitation

of the foregoing, the DS Supplier shall, upon written request, affirmatively demonstrate to the Company, its compliance with the creditworthiness requirements set forth hereunder. The Company may establish less restrictive creditworthiness requirements under this Article 6 in a non-discriminatory manner.

### **6.2 Creditworthiness Determination**

The DS Supplier may submit and maintain a security deposit in accordance with Section 6.4 of this Agreement in lieu of submitting to or being qualified under a creditworthiness evaluation. The DS Supplier shall have the opportunity to request that the Company re-evaluate its creditworthiness whenever an event occurs that the DS Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as possible but no longer than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the credit limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. DS Supplier shall provide the Company and its agents unrestricted access to audited financial statements; provided that if audited financial statements are not available, the Company, in its sole discretion, may specify other types of financial statements that will be accepted.

### **6.3 Buyer's Exposure and Mark-to-Market Credit Exposure Methodology**

To calculate the daily exposure for each DS Supplier the MtM credit exposure methodology will be used. The "mark" for each Billing Month will be determined at the time the auction is completed based on the available Forward Market Prices and for the remaining Billing Months will be derived based on historical data. At the time the

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auction is completed, the MtM credit exposure for each DS Supplier shall be equal to zero. Subsequently, the differences between the available Forward Market Prices on the valuation date and the “mark” prices for the corresponding Billing Months will be used to calculate the daily credit exposures for each DS Supplier. The total MtM credit exposure will be equal to 1.1 times the sum of the MtM credit exposures for each Billing Month. The methodology for calculation of Buyer’s Exposure under this Agreement including the MtM credit exposure is illustrated in the example (using hypothetical numbers) set forth in Appendix B hereto.

#### **6.4 Credit Limit**

The following criteria constitute the Company’s creditworthiness requirements for the DS Supplier to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer rating) will be used.

(i) For a DS Supplier to be granted an unsecured line of credit, the DS Supplier must be rated by at least two of the following rating agencies: S&P, Moody’s, or Fitch. The methodology for determining the credit rating to use is set forth in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount will be determined based on the credit matrix table in Appendix A of this Agreement.

The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7 (b) of this Agreement (see standard format in Appendix F) for the Margin due the Company as set forth in Section 6.5 of this Agreement; or

(ii) For a DS Supplier having a Guarantor, in the case of a Guarantor

organized under the laws of the United States, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the rating will be established based on the methodology outlined in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in Appendix G) will be determined based on the credit matrix table for Guarantors on Appendix A. The DS Supplier will be granted a credit limit equal to the lesser of (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the term of this Agreement, or (ii) the DS Supplier's Maximum Credit Limit. The DS Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable credit limit during the time period after the Company has made a Margin call but before the DS Supplier has posted the required performance assurance collateral as set forth in Section 6.7 to cover Margin. Notwithstanding anything herein to the contrary, the DS Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the DS Supplier may request a return of the posted performance assurance collateral in accordance with Section 6.5 of this Agreement. The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Appendix F) for the Margin due the Company as set forth in Section 6.5 of this

Agreement; or

(iii) For a DS Supplier or Guarantor that has not been incorporated or otherwise formed under the laws of the United States and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (“GAAP”) in the United States, they shall supply the following additional information:

- a. A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the DS Supplier or Guarantor is incorporated or otherwise formed that this Agreement is, or upon completion of execution formalities will become, the binding obligation of the DS Supplier or Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and
- b. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the person executing this Agreement on behalf of the DS Supplier has the authority to execute the Agreement and that the governing board of the DS Supplier or Guarantor has approved the execution of this Agreement;
- c. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the DS Supplier or Guarantor has been authorized by its governing board to enter into agreements of the same type as this Agreement; and
- d. Such other documents and certificates as may be required by the Company in its sole discretion.

(iv) The posting of cash or a letter of credit as defined in Section 6.7 (b) below for the entire Total Exposure Amount as set forth in Section 6.5 of this Agreement.

#### **6.5 Posting Margin and Return of Surplus Margin**

(a) If at any time and from time to time during the term of Transaction(s) under this Agreement, the Total Exposure Amount, rounded by the Rounding Amount, exceeds the DS Supplier's or the Guarantor's credit limit by the Minimum Transfer Amount, then the Company on any Business Day, may request that the DS Supplier provide cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Appendix F), in an amount equal to the Margin (less any performance assurance collateral for Margin posted by the DS Supplier and held by the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply).

If the DS Supplier receives written notice for performance assurance collateral to cover Margin from the Company by 1:00 p.m. New York time on a Business Day, then the DS Supplier shall post performance assurance collateral to cover Margin the next following Business Day, if posting cash, and by the second Business Day following the date of notice, if posting a letter of credit, unless the Company agrees in writing to extend the period to provide performance assurance collateral to cover Margin. If the DS Supplier receives notice for Margin from the Company after 1:00 p.m. New York time on a Business Day, whether posting cash or a letter of credit, then the DS Supplier must post performance assurance collateral to cover Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide

performance assurance collateral to cover Margin. The Company will not unreasonably deny a request for a one-day extension of such period. In the event that the DS Supplier fails to post performance assurance collateral to cover Margin when due in accordance with this Section 6.5, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5 of this Agreement.

(b) Surplus Margin being held by the Company that is not needed to satisfy the Total Exposure Amount, as determined above, will be returned to the DS Supplier upon receipt of a written request by the DS Supplier. Surplus Margin means cash or a letter of credit posted by the DS Supplier as a result of a request by the Company pursuant to Section 6.5(a) that exceeds the Total Exposure Amount less the DS Supplier's or the Guarantor's credit limit (rounded by the Rounding Amount). If the resulting surplus Margin amount is more than the Minimum Transfer Amount, it will be returned to the DS Supplier. If the DS Supplier posted cash and notice is received by 1:00 p.m. New York time on a Business Day, the surplus Margin will be returned by the next following Business Day and if the DS Supplier posted cash and notice is received by the Company after 1:00 p.m. New York time on a Business Day, the surplus Margin shall be returned by the second Business Day following the date of notice, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. If the DS Supplier posted a letter of credit, the surplus Margin shall be returned on the next Business Day following the Business Day on which the amendment to the letter of credit is received from the issuing bank, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. The DS Supplier will not unreasonably deny a

request for a one-day extension of such period. In the event that the Company fails to return the surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the DS Supplier will be entitled to the remedies set forth in Article 5 of this Agreement.

#### **6.6 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the DS Supplier posted performance assurance collateral to cover Margin hereunder, the DS Supplier hereby grants to the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and the DS Supplier and the Company agree to take such action as is reasonably required to perfect the secured Party's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the DS Supplier in the possession of the Company whether held in connection with this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply; (iii) draw on any outstanding letter of credit issued for its benefit; and (iv) liquidate all security held by or

for the benefit of the Company free from any claim or right of any nature whatsoever of the DS Supplier, including any equity or right of purchase or redemption by the DS Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the DS Supplier's obligation under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply (the DS Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to a DS Supplier to:

Copy to:

If to the Company to:

Copy to:

Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

## 6.7 Security Instruments

At each DS Supplier's choice, the following are deemed to be acceptable methods for posting security to satisfy Margin requirements, if required:

- (a) Cash; or
- (b) A standby irrevocable letter of credit acceptable to the Company,

in its sole discretion, issued by a bank or other financial institution with a minimum "A-" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P and "A3" from Moody's (see standard format in Appendix F). The letter of credit shall state that it shall renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days prior written notice from the issuing financial institution. If the Company receives notice from the issuing financial institution that the letter of credit is being cancelled, the DS Supplier will be required to provide a substitute letter of credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute letter of credit must be effective as of the cancellation date and delivered to the Company thirty (30) days before the cancellation date of the original letter of credit. If the DS Supplier fails to supply a substitute letter of credit as required, then the Company will have the right to draw on the existing letter of credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which a DS Supplier has obtained a letter of credit falls below the levels specified in Article 6 of this Agreement, the DS Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable letter of credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by the

Company. The Company shall have no obligation under this Agreement or otherwise to make or grant such extension.

#### **6.8 Maintenance of Creditworthiness**

##### **(a) Reporting of Changes.**

The DS Supplier shall promptly notify the Company of any change in its credit rating or financial condition or that of its Guarantor. The DS Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company.

##### **(b) Change in Credit Standing.**

The Company will re-evaluate the creditworthiness of a DS Supplier whenever it becomes aware of an adverse change, through the provision of notice by the DS Supplier or otherwise, in the DS Supplier's or Guarantor's credit standing. If the lowest credit rating (whether senior unsecured debt rating or corporate issuer rating) used to determine the DS Supplier's Maximum Credit Limit or its credit limit adversely changes, the Company will require additional security from the DS Supplier in accordance with Section 6.4 of this Agreement. The additional security must be in a form acceptable to the Company in its sole discretion, as specified in Section 6.7 of this Agreement and must be posted as set forth in Section 6.5 of this Agreement.

#### **6.9 Calling on Security**

The Company may call upon the security posted by the DS Supplier if the DS Supplier fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply after all of the following events occur:

- (a) Written Notice of Default is provided to the DS Supplier; and
- (b) Any applicable cure period associated with the written Notice of Default ends.

The foregoing notwithstanding, the security posted by the DS Supplier shall become due automatically without prior notice or right of cure in the case of any Event of Default arising under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of Section 5.1 of this Agreement.

#### **6.10 Interest on Cash Held by Company**

The Company will pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement. Each Billing Month, the Company will prepare a statement of interest amounts due to the DS Supplier. The statement will be sent to the DS Supplier within three (3) Business Days after the end of the Billing Month via overnight mail or other expeditious means. The Company shall make interest payments on the first Business Day after the 5<sup>th</sup> day of each calendar month.

#### **6.11 No Endorsement of DS Supplier**

The Company's determination that a DS Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the DS Supplier. The Company will treat all DS Suppliers in a non-discriminatory manner and shall provide no preference to any DS Supplier.

#### **6.12 Multiple DS Supply Agreements**

It is the intention of the Company and the DS Supplier that, in the event the DS

Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the effective date of this Agreement, the Company will calculate the Margin applicable to all such agreements as set forth herein. Each DS Supplier that is a party to such other agreements with the Company for the provision of DS Supply hereby agrees that such other agreements are deemed amended by this Agreement for the purpose of calculating the Margin as described herein.

**ARTICLE 7: PROCEDURES FOR ENERGY SCHEDULING,  
CAPACITY RESOURCE SUBMISSION AND  
TRANSMISSION PROCUREMENT**

**7.1 Load Obligations**

The Company and the DS Supplier acknowledge and agree that (1) the Company shall determine the DS Load, (2) the Company shall allocate the DS Supply obligation using the DS Supplier Responsibility Share, (3) the Company shall provide the DS Supplier's DS Supply obligation to PJM, and (4) the DS Supplier shall be responsible for meeting its DS Supply obligations as a LSE under the PJM Agreements.

**7.2 Data Transmission**

The procedures for transmitting load obligation data to PJM for DS Supplier's DS Load shall be as set forth by PJM.

**7.3 Energy Scheduling**

The Company is not obligated to provide any day ahead scheduling services. If the Company chooses to provide such services, the information provided is not guaranteed by the Company.

**ARTICLE 8: THE ENERGY SETTLEMENT/RECONCILIATION PROCESS****8.1 Energy Settlement By PJM**

The settlement process occurs at PJM to reflect the DS Supplier's actual Energy obligations in a supply/usage reconciliation process. The Energy obligations for each DS Supplier will be determined based on the DS Supplier Responsibility Share of the DS Load. The reconciled total DS Energy obligation will be based on the final total Energy loads for the Customers receiving DS service, including deration adjustments for marginal losses.

Any adjustments for billing and metering errors reported subsequent to the calculation of FMEA will be proportionally allocated by the Company to the DS Suppliers based on the respective DS Supplier Responsibility Share.

**8.2 Energy Settlement by the Company**

In the event that actual DS Customer consumption data is not available until after the PJM deadline for conducting the final settlement, the Company will conduct the settlement process with the DS Supplier. In the event PJM imposes penalties against the Company as a result of the DS Supplier's Transactions or failure to meet PJM requirements, such penalties shall be passed through by the Company to the DS Supplier as part of this settlement process. In addition, all other applicable charges from PJM, including any billing adjustments, will be appropriately allocated to the DS Supplier.

**ARTICLE 9: BILLING AND PAYMENT****9.1 The Company Payment of Obligations to the DS Supplier**

The Company shall pay all amounts due to the DS Supplier hereunder in

accordance with the following provisions:

(a) Each Billing Month, the Company will prepare a Statement of amounts due to the DS Supplier. This Statement will show the aggregate amounts due based on the DS Fixed Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown in Appendix C, multiplied by the Seasonal Billing Factor, if applicable, for each hour of the Billing Month, plus the aggregate amounts due based on the DS Variable Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Variable Percentage as shown in Appendix C for each hour of the Billing Month. With respect to Variable Price Transactions, the Statement will also include additional amounts set forth in Appendix C.

(b) The Statement will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(c) The Company shall make payment on the first Business Day after the 19<sup>th</sup> day of each calendar month.

(d) To the extent that the FMEA differs from the PMEA, the Company shall pay or charge the DS Supplier for the PMEA/FMEA Adjustment Amount within the PJM deadline for conducting the final settlement.

(e) If each Party owes an amount to the other Party pursuant to this Agreement, including any related interest, payments or credits, the Parties may satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing

the greater aggregate amount paying the other Party the difference between the amounts owed.

(f) Payments shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of all Transactions under this Agreement.

(g) The Company shall make payments of funds payable to the DS Supplier by electronic transfer to a bank designated by the DS Supplier.

(h) If a good faith dispute arises between the Company and the DS Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Statement in dispute. Statement disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

(i) If payment is made to the DS Supplier after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate

permitted by applicable law.

### **9.2 Billing for DS Supplier's Obligations to Other Parties**

Except as set forth in Sections 2.5 and 2.6, the Company shall have no responsibility for billing between the DS Supplier and PJM; the DS Supplier and any Energy or Capacity source; or the DS Supplier and any other third party. The Company will be solely responsible for billing DS Customers for Default Service.

### **9.3 The DS Supplier Payment of Obligations to the Company**

The DS Supplier shall pay all Charges it incurs hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company shall submit an invoice to the DS Supplier for all Charges owed by the DS Supplier under this Agreement. The DS Supplier shall make payment for Charges shown on the invoice. The due date will be on the first Business Day after the 19<sup>th</sup> day of each calendar month. The invoice will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(b) Invoices shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of all Transactions of this Agreement.

(c) The DS Supplier shall make payments of funds payable to the Company by electronic transfer to a bank designated by the Company.

(d) If a good faith dispute arises between the Company and the DS Supplier regarding an invoice, the disputing Party shall pay only the undisputed portion of the invoice, if any, and shall present the dispute in writing and submit supporting

documentation to the non-disputing Party within one hundred twenty (120) calendar days from the due date of the invoice in dispute. Billing disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a billing dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a bill dispute was received by the non-disputing Party.

(e) If payment is made to the Company after the due date shown on the invoice, a late fee will be added to the unpaid balance until the entire invoice is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

## **ARTICLE 10: SYSTEM OPERATION**

The Parties shall adhere to any applicable operational requirements of PJM necessary to protect the integrity of the transmission system within the PJM Control Area and the transmission systems of interconnected control areas, and shall satisfy any and all PJM, RFC and NERC criteria, when applicable. The DS Supplier shall also adhere to any applicable operational requirements of the Company necessary to protect the integrity of the Company's local distribution system.

### **10.1 Disconnection and Curtailment By the Company**

The Company shall have the right, without incurring any liability to the DS

Suppliers, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the DS Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever the Company determines in the exercise of its good faith discretion, or when the Company is directed by PJM, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's facilities; or due to any other reason affecting the safe and reliable operation of the Company's or a Customer's facilities, including, without limitation, an Emergency, forced outage or potential overloading of the Company's transmission and/or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons or property.

#### **10.2 Inadvertent Loss of Service to DS Customers**

The Parties agree and acknowledge that service to DS Customers may be inadvertently lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of the Company affecting the transmission and distribution system of the Company. Neither Party will have any liability to the other Party for the occurrence of such events except for the Company's obligation to pursue steps for the resumption of the disrupted service as set forth in Section 10.3 below. In no event will an inadvertent loss of service affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such inadvertent loss of service.

#### **10.3 Good Faith Efforts**

The Company shall use good faith efforts to: (a) minimize any curtailment, interruption or reduction in service to DS Customers to the extent reasonably practicable

under the circumstances; (b) provide the DS Supplier with prior notification of any curtailment, interruption or reduction in service to DS Customers, to the extent reasonably practicable; and (c) resume service to DS Customers as promptly as reasonably practicable.

#### **10.4 PJM Requirements**

The DS Supplier acknowledges and agrees that, as a member of PJM, the Company is bound by all PJM operating instructions, policies and procedures as are currently set forth in the PJM Operating Manual, which are available through the Internet on the PJM Home Page (<http://www.pjm.com>), as may be revised from time to time, which are needed to maintain the integrity of the PJM system. The DS Supplier acknowledges and agrees that it will cooperate with the Company so that the Company will be in compliance with all PJM Emergency Operations Procedures, which include, but are not limited to, those procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction or full interruption of Customer load by either manual or automatic means.

#### **10.5 Compliance With Governmental Directives**

The DS Supplier also acknowledges and agrees that the Company may need to act in response to governmental or civil authority directives which may affect DS Load. The DS Supplier agrees to cooperate with the Company in order to comply with said directives.

**ARTICLE 11: DISPUTE RESOLUTION****11.1 Informal Resolution of Disputes**

Before pursuing resolution of any dispute arising out of this Agreement (other than an Event of Default under Section 5.1(i)-(ix), (xii), or (xvi)), the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Section 11.1 (Informal Resolution of Disputes), shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

**11.2 Recourse to Agencies or Courts of Competent Jurisdiction**

After the requirements of Section 11.1 (Informal Resolution of Disputes) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Nothing in this Agreement shall restrict the rights of either Party to file a complaint with the FERC under relevant provisions of the Federal Power Act ("FPA"), with the PaPUC under relevant provisions of the Applicable Legal Authorities, with a Pennsylvania State court or a federal court of competent jurisdiction and within reasonably close proximity to the Company. The Party's agreement hereunder is without prejudice to any Party's right to contest the jurisdiction of the agency or court to which a complaint is brought.

The Parties hereby acknowledge and agree that both Parties have negotiated and entered into this Agreement and all Transactions under this Agreement freely and in good faith and that the terms of this Agreement have not been affected in any way, either directly or indirectly, by (A) any fraud, duress, unfairness, or any inequity in the relative bargaining power of the Parties or (B) any manipulation, unlawful activity, disruption, anomaly, dysfunction, or other adverse market conditions of any type or description.

To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives its rights (i) to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”), and (ii) to argue before any governmental authority that any terms of this Agreement should be modified or rescinded based on (A) any claim of fraud, duress, unfairness, bad faith, or inequity in the relative bargaining power of the Parties or (B) any claim of market manipulation, unlawful activity, disruption, anomaly, dysfunction, or other adverse market conditions of any type or description.

## **ARTICLE 12: REGULATORY AUTHORIZATIONS AND JURISDICTION**

### **12.1 Compliance With Applicable Legal Authorities**

The Company and the DS Supplier are subject to, and shall comply with, all

existing or future applicable federal, state and local laws, all existing or future duly-promulgated orders or other duly-authorized actions of PJM or of Applicable Legal Authorities.

## **12.2 FERC Jurisdictional Matters**

The inclusion herein of descriptions of procedures or processes utilized by PJM or otherwise subject to the jurisdiction of FERC is intended solely for informational purposes. If anything stated herein is found by the FERC to conflict with or be inconsistent with any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA or if any existing procedures or processes utilized by PJM are duly modified, the applicable FERC rule, regulation, order, determination or modification shall control. To the extent required under any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA, the Company and/or the DS Supplier, if applicable, shall use reasonable commercial efforts to secure, from time to time, all appropriate orders, approvals and determinations from the FERC necessary to support this Agreement.

## **12.3— Energy Efficiency, Conservation, and Retail Market Programs**

DS Supplier acknowledges that DS Customers may participate in energy efficiency and conservation programs offered by the Company (required by Applicable Legal Authorities or otherwise offered by the Company whether voluntarily or not), by PJM, or by other third parties and, for the avoidance of doubt, any programs offered or conducted by the Company or other entities relating to or arising from the PaPUC's Investigation of Pennsylvania's Retail Electricity Market, PaPUC Docket No. I-2011-2237952 (including legislation enacted to address the Commission's Final Order in

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Docket No. I-2011-2237952), and that such participation may reduce or change the amount of DS Supply that DS Supplier is required to provide and the amount of monies it may receive under this Agreement. The Company shall have no obligation whatsoever to DS Supplier with respect to the effect, if any, of such programs. DS Supplier is solely responsible for determining the effect, if any, of such programs on future load requirements.

**ARTICLE 13: LIMITATION OF REMEDIES, LIABILITY AND DAMAGES**

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**13.1 Limitations on Liability**

Except as set forth in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of Damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of Damages is provided, such express remedy or measure of Damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or Damages at law or in equity are waived. If no remedy or measure of Damages is expressly provided herein, the obligor's liability shall be limited to direct actual Damages only, such direct actual Damages shall be the sole and exclusive remedy and all other remedies or Damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect Damages, lost profits or other business interruption Damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of Damages be without regard to the cause or causes related

thereto, including the negligence or any Party, whether such negligence by sole, joint or concurrent, or active or passive. To the extent any Damages required to be paid hereunder are liquidated, the Parties acknowledge that the Damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the Damages calculated hereunder constitute a reasonable approximation of the harm or loss.

### **13.2 Risk of Loss**

Solely for purposes of determining risk of loss and for determining the indemnity obligations under Article 14 of this Agreement, the Company shall be deemed to have custody and control of the electric Energy delivered by the DS Supplier upon receipt thereof into the Company's distribution system and until delivery thereof at the retail electric meter of the Customer; and the DS Supplier shall be deemed to have custody and control of the DS Supply at all times prior to receipt thereof by the Company. The Party deemed to have custody and control of DS Supply shall be responsible for all loss or damage to property or injury or death to persons arising in connection with such DS Supply while in its custody and control and shall indemnify the other Parties with respect to same as set forth in Article 14 of this Agreement.

## **ARTICLE 14: INDEMNIFICATION**

### **14.1 Indemnification**

(a) Should the Company become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the DS Supplier with

respect to an obligation arising under or in connection with this Agreement, or for which the DS Supplier has otherwise assumed liability under the terms of this Agreement, the DS Supplier shall defend (at the Company's option), indemnify and hold harmless the Company, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Company. The Company may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Should the DS Supplier (the "Indemnified DS Supplier") become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the Company with respect to an obligation arising under or in connection with this Agreement, or for which the Company has otherwise assumed liability under the terms of this Agreement, the Company shall defend (at the option of the Indemnified DS Supplier), indemnify and hold harmless the Indemnified DS Supplier, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified DS Supplier. The Indemnified DS Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) If either Party intends to seek indemnification under Article 14.1(a) or 14.1(b), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

#### **14.2 Survives Agreement**

The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any statutory scheme, including any workers' compensation acts, disability benefit acts or other employee benefit acts.

### **ARTICLE 15: FORCE MAJEURE**

#### **15.1 Force Majeure**

Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force

Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Article 15.2 (Notification).

#### **15.2 Notification**

A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

### **ARTICLE 16: MISCELLANEOUS PROVISIONS**

#### **16.1 Notices**

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail or courier service. Notice may also be provided via e-mail or facsimile transmission (with the original transmitted by any of the other delivery methods specified in the previous sentence) addressed per the notification information for the DS Supplier and Company as set forth in Appendix C hereto.

Such notices, demands or requests shall also be provided to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next

Business Day.

### **16.2 No Prejudice of Rights**

The failure of a Party to insist on any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

### **16.3 Assignment**

Parties shall not assign any of their rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. The Company agrees that it shall grant its consent to a proposed assignment by the DS Supplier if the proposed assignee meets all of the Company's creditworthiness requirements then in effect under this Agreement and any applicable load cap restrictions. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 16.3 shall be void; provided, however, the Company may assign any or all of its rights and obligations under this Agreement notwithstanding anything contained herein to the contrary, without the DS Supplier's consent, to any entity succeeding to all or substantially all of the assets of the Company, if such assignee agrees, in writing, to be bound by all of the terms and conditions hereof and all necessary regulatory approvals are obtained. The DS Supplier may, with prior

written notice to the Company but without obtaining the approval of the Company, assign the accounts, revenues or proceeds under this Agreement to a third party. The Company agrees that, following receipt of such notice of the assignment of accounts, revenues or proceeds and such other documentation that the Company may reasonably request, the Company will pay amounts becoming due to the assigning DS Supplier under this Agreement directly to the designated assignee; provided, however, that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the DS Supplier and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Company arising under this Agreement.

#### **16.4 Governing Law and Venue**

To the extent not subject to the jurisdiction of the FERC, questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. Except for matters jurisdictional to FERC, the PaPUC or the appellate courts having jurisdiction over the PaPUC or FERC matters, all disputes hereunder shall be resolved in the Pennsylvania State court or Federal court of competent jurisdiction and within reasonably close proximity to the Company. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

#### **16.5 Regulatory Approvals**

DS Supplier agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the Agreement and/or

Transaction Confirmations hereunder. The commencement of the Delivery Period and the obligations hereto are subject to (i) the receipt or waiver by Company of all Company required regulatory approvals, (ii) the receipt or waiver by DS Supplier of all DS Supplier required regulatory approvals, and (iii) PaPUC approval.

#### **16.6 Headings**

The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.

#### **16.7 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties hereto and nothing in this Agreement shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

#### **16.8 General Miscellaneous Provisions**

(a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

(b) Cancellation, expiration or Early Termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

(c) Should any provision of this Agreement be held invalid or unenforceable,

such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof unless it materially changes the agreement of the Parties; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.

(d) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement. The Parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction.

#### **16.9 Taxes**

As between the Parties: (i) the DS Supplier is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on the wholesale sales of DS Supply under this Agreement; and (ii) the Company is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on retail sales of DS Supply under this Agreement. Should the DS Supplier be required to remit

any Pennsylvania State sales and use taxes directly to the applicable taxing authority, other than taxes previously collected by the DS Supplier on behalf of the Company, the Company will defend and indemnify the DS Supplier for such sales and use taxes and will pay to the DS Supplier all such tax amounts upon demand. If any Transaction is exempt from the payment of any sales and use taxes, the affected DS Supplier will, if requested, provide the Company with valid tax exemption certificates. Should the Company be required to remit any sales and use taxes directly to any applicable taxing authority, other than taxes previously collected by the Company directly from the DS Supplier, the DS Supplier will defend and indemnify the Company and will pay to the Company all such tax amounts upon demand.

#### **16.10 Audit**

Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Article 9 (Billing and Payment) of this Agreement.

#### **16.11 Rules of Interpretation**

The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) Unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) All titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) References to the singular include the plural and vice versa;
- (d) References to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (e) In carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (f) If any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

#### **16.12 Confidentiality**

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless:
  - (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law;
  - (ii) such document or information is generally available to the public;
  - (iii) such document or information was available

to the receiving Party on a non-confidential basis; (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation; or (v) such disclosure is made to PJM or PaPUC and is necessary in order for the Transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.

(b) Notwithstanding any other provision of this Section 16.12, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of this Section 16.12, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

(c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.12. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Section 16.12, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

### **16.13 Federal Acquisition Regulation**

If any of the following clauses prescribed by the Federal Acquisition Regulation ("FAR"), 48 Code of Federal Regulations Chapter 1, should be deemed to apply to this Agreement, the DS Supplier shall comply with the requirements of such clause(s), and shall include the terms or substance of such clause(s) in its subcontracts, as and to the extent required by the FAR:

- 1) Clean Air and Water: § 52.223-2;
- 2) Contract Work Hours and Safety Standards Act-Overtime Compensation: § 52.222-4;
- 3) Equal Opportunity: § 52.222-26;
- 4) Affirmative Action for and Employment Reports on Special Disabled and Vietnam Era Veterans: § 52.222-35 and § 52.222-37;
- 5) Affirmative Action for Handicapped Workers: § 52.222-36;
- 6) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns and Small Business and Small Disadvantaged Business Subcontracting Plan: § 52.219-8 and § 52-219-9.

In case of a conflict between the provisions of the FAR and the balance of this Agreement, the requirements of the FAR shall prevail.

#### **16.14 Binding Terms**

This Agreement and the rates, terms and conditions herein shall remain in effect for the entire term hereof and each Party agrees not to seek any change to such rates, terms and conditions pursuant to the FPA, if the FPA is deemed to have jurisdiction over this Agreement, including on the grounds that they are not just and reasonable.

#### **16.15 Amendment**

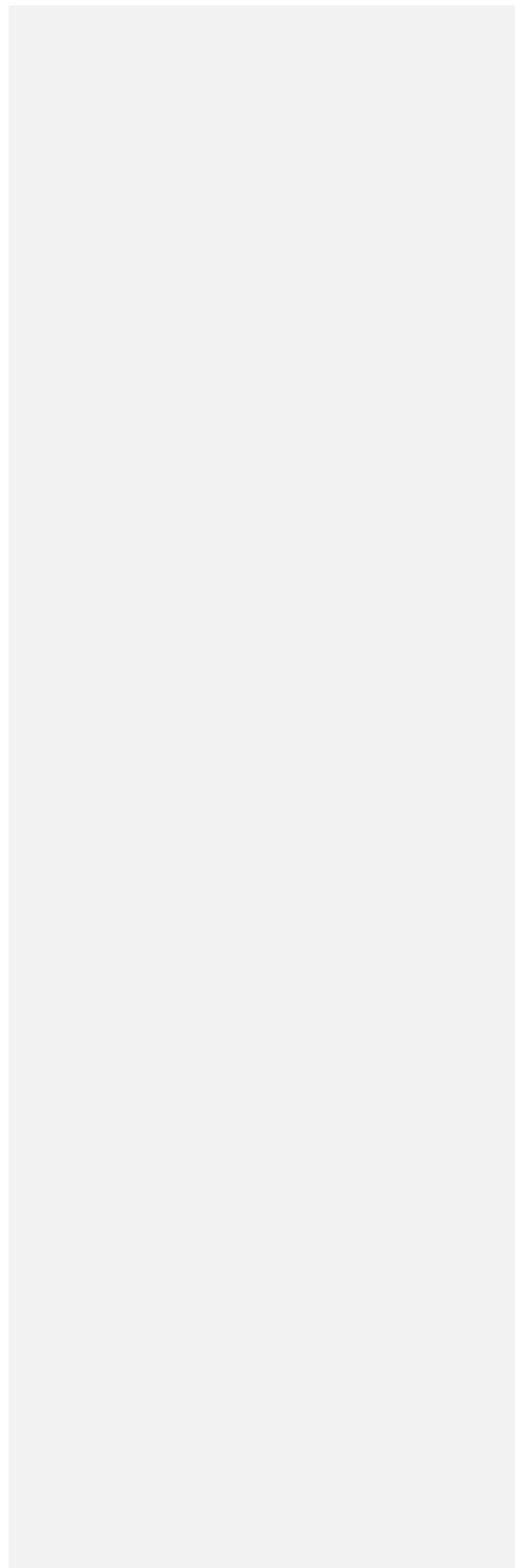
This Agreement, including the appendices hereto, cannot be amended without the written agreement of all Parties prior to such amendment becoming effective. Except as provided in Appendix C, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”).

**16.16 Counterparts**

This Agreement including all Transaction Confirmations hereunder may be executed in counterparts, each of which will be considered an original, but all of which shall constitute one instrument.

**16.17 Successors**

This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

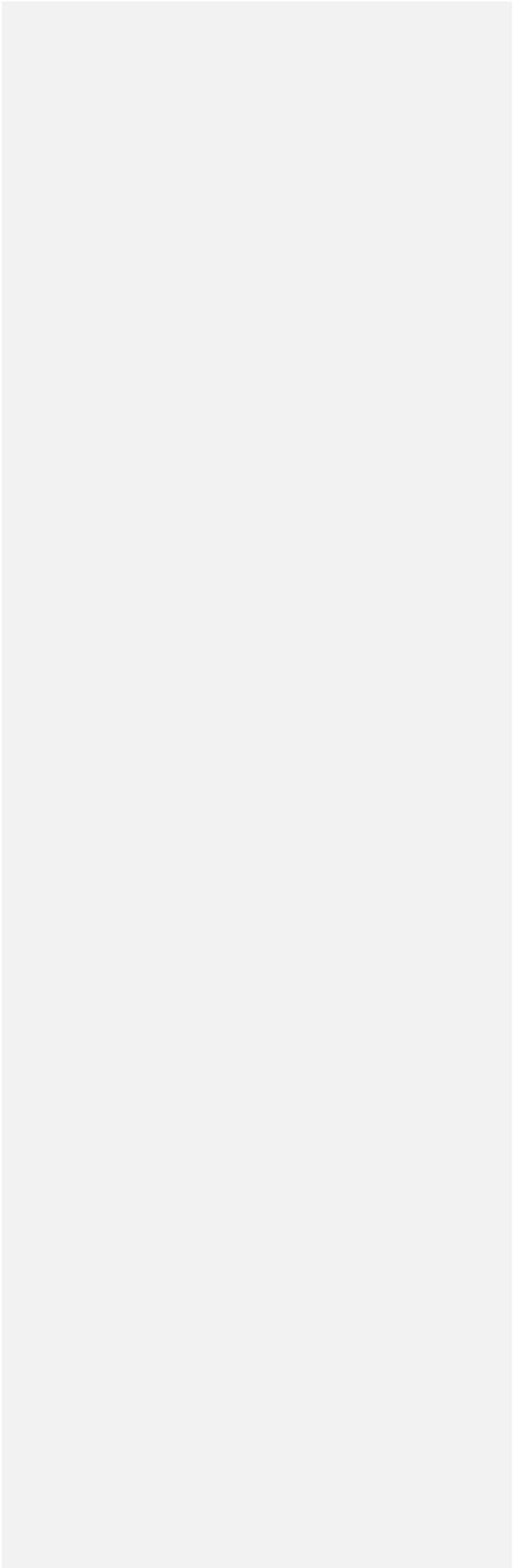


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

ATTEST:

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

[SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]



## APPENDIX A

## MAXIMUM UNSECURED CREDIT

## Credit Rating Table

Credit Rating			Maximum Credit Limit is the lower of Tangible Net Worth (TNW) Amount and Unsecured Credit Limit Cap below:	
S&P	Fitch	Moody's	TNW Amount	Credit Limit Cap
A- or above	A- or above	A3 or above	16% of TNW	\$60,000,000
BBB+	BBB+	Baa1	10% of TNW	\$40,000,000
BBB	BBB	Baa2	8% of TNW	\$30,000,000
BBB-	BBB-	Baa3	6% of TNW	\$15,000,000
Below BBB-	Below BBB-	Below Baa3	0% of TNW	0

**Credit Rating Determination Methodology**

The DS Supplier or its Guarantor must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating.

For purposes of determining Unsecured Credit, the relevant Maximum Credit Limit for aggregate transactions shall not exceed the Maximum Credit Limit listed in the table above that corresponds to DS Supplier's (or DS Supplier's Guarantor's) lowest Credit Rating most recently published by the three credit rating agencies: S&P, Fitch and Moody's. If the DS Supplier or its Guarantor is rated by only two rating agencies, and the ratings are split, the lower rating will be used.

The relevant TNW Amount shall be calculated using the percentage listed in the Credit Rating Table that corresponds to DS Supplier's (or DS Supplier's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's.

**Minimum Rating** – The lowest credit rating for a DS Supplier, as set forth in this Appendix A, that can obtain unsecured credit.

**APPENDIX B****BUYER'S EXPOSURE CALCULATION INFORMATION**

Disclaimer: The prices that appear in this Appendix are purely hypothetical and are not based on or derived from any actual source for forward pricing. They are solely for purposes of illustration. Capitalized terms not defined herein shall have the meaning in the Agreement.

As set forth in Article 6 (Creditworthiness) of the Agreement, the DS Supplier's credit exposure (the "Mark-to-Market (MtM) Exposure Amount") is an amount calculated each Trading Day for the DS Supplier that reflects the financial exposure to the Buyer due to fluctuations in Forward Market Prices for Energy. The MtM Exposure Amount will be equal to 1.1 times the sum of the MtM credit exposures for each applicable month. The Total Exposure Amount is the sum of the calculated Buyer's Exposure for all Transactions under this Agreement and all other transactions under all supplier master agreements executed between the Parties pursuant to the PaPUC Orders to serve Buyer's DS Load. For Fixed Price Default Supply, the Buyer's Exposure during the term of a Transaction shall be calculated by determining the MtM Exposure Amount, then subtracting the sum of any unpaid or unbilled amounts owed by Buyer to DS Supplier pursuant to a Transaction.

This Appendix B explains the methodology and data sources that the Buyer will use to calculate the MtM Exposure Amount and Total Exposure Amount.

On a Transaction Date, the Buyer's Exposure for a Fixed Price Transaction shall be deemed equal to zero. To the extent that the calculations of the Total Exposure Amount for a given Trading Day result in a negative number, the Total Exposure Amount for such date shall be deemed equal to zero.

### **Calculation of the MtM Exposure Amount and Total Exposure Amount**

For each Transaction, on each Trading Day subsequent to the Transaction Date, the MtM credit exposures will be calculated, with respect to each month remaining in the Delivery Period, as the sum of the following:

- the relevant month On-Peak Energy Forward Price minus the relevant month On-Peak Initial Mark Price, multiplied by the relevant month On-Peak Estimated Energy Quantity;
- the relevant month Off-Peak Energy Forward Price minus the relevant month Off-Peak Initial Mark Price, multiplied by the relevant month Off-Peak Estimated Energy Quantity

where,

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Buyer’s Exposure” during the term of a Transaction, for Fixed Price Transactions, shall be deemed equal to the positive difference between: (i) the MtM Exposure Amount pursuant to a Transaction under this Agreement and (ii) the sum of any unpaid or unbilled amounts owed by Buyer to DS Supplier pursuant to a Transaction under this Agreement. With respect to the preceding sentence, “unbilled amounts owed by Buyer” shall consist of a good faith estimate by Buyer as to any amounts which will be owed by Buyer for service already rendered by DS Supplier under a Transaction. Buyer’s Exposure for a Variable Price Transaction, during the first month of the term of a Transaction, shall be equal to Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche. Thereafter, Buyer’s Exposure for a Variable Price Transaction shall be calculated on the first Business Day of each month during the term of a Transaction and shall be deemed equal to the product of: (i) Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche; (ii) the ratio of the Current Capacity PLC Per Tranche to the MW-Measure; (iii) the number of Tranches awarded to the DS Supplier per the Transaction Confirmation; and (iv) the ratio of the calendar days remaining in the Delivery Period to the total calendar days in the Delivery Period.

“Capacity Peak Load Contribution” or “Capacity PLC” means the aggregation of retail customer peak load contributions, as determined by the Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer’s retail load settlement process, and used by PJM in determining the DS Supplier’s capacity obligation for each Transaction.

“Current Capacity PLC Per Tranche” is the Capacity PLC of a Tranche as of the Business Day the Buyer’s Exposure is calculated for a Fixed Price Transaction or Variable Price Transaction.

“Fixed Price Transaction” means a Transaction Confirmation that is not a Variable Price Transaction, and as shown on such confirmation where the DS Fixed Price Percentage is 100%.

“MW-Measure” means the Current Capacity PLC Per Tranche as of the Transaction Date.

“Off-Peak Estimated Energy Quantity” is the estimate of the energy quantity (in MWh) to be supplied in the relevant month and will be calculated, from Transaction Confirmation information, by multiplying the relevant month Off-Peak Estimated Energy Quantity Per MW-Measure, by the number of Tranches awarded to the DS Supplier, and the ratio of the current Capacity PLC Per Tranche to the MW-Measure.

“Off-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the Off-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“Off-Peak Hours” means those hours which are not On-Peak Hours.

“Off-Peak Initial Mark Price” means the Off-Peak Energy Forward Price as of the Transaction Date.

“Off-Peak/On-Peak Price Ratio” means the relevant monthly ratio of off-peak pricing to on-peak pricing of the PJM Western Hub day-ahead prices as set forth by Buyer each October based on the previous 36-month period ending in September. The historical on-peak prices used for the ratio will be the PJM Western Hub day-ahead price for the On-Peak Hours. The historical off-peak prices used for the ratio will be the PJM Western Hub day-ahead prices for the Off-Peak Hours. For each month of the 36-month period, the monthly on-peak and off-peak prices will be summed and respectively divided by the amount of On-Peak Hours and Off-Peak Hours in that month. This calculated off-peak average price will be divided by the on-peak average price to determine the individual monthly ratios. Such monthly ratios for the same months within the 36-month period will then be summed and divided by three (3) to come up with the rolling three year monthly ratio average.

“On-Peak Estimated Energy Quantity” is the estimate of the energy quantity (in MWh) to be supplied in the relevant month and will be calculated, from Transaction Confirmation information, by multiplying the relevant month On-Peak Estimated Energy Quantity Per MW-Measure, by the number of Tranches awarded to the DS Supplier, and the ratio of the Current Capacity PLC Per Tranche to the MW-Measure.

“On-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the On-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“On-Peak Hours” means Hour Ending (“HE”) 0800 through HE 2300 EPT, Monday through Friday, excluding Saturday, Sunday and PJM holidays.

“On-Peak Initial Mark Price” means the On-Peak Energy Forward Price as of the Transaction Date.

“Pricing Agent” is the independent consultant to provide pricing services with respect to the Fixed Price Transactions under this Agreement. The Pricing Agent shall provide to the

Buyer the On-Peak Initial Mark Price and the Off-Peak Initial Mark Price. In addition, on each Business Day, the Pricing Agent shall provide to the Buyer the On-Peak Energy Forward Price and the Off-Peak Energy Forward Price. To the extent that information and/or quotes are not available to determine an On-Peak Energy Forward Price or Off-Peak Energy Forward Price for a given month the Pricing Agent shall be permitted to use information and/or quotes relevant to such month for which information/and quotes are available in order to provide the Buyer the required On-Peak Energy Forward Price and Off-Peak Energy Forward Price for such month.

“Reference Market-Maker” means any broker in energy products or exchange that is not an Affiliate of Buyer or DS Supplier.

“Trading Day” means any day except a Saturday, Sunday or a designated holiday by a non-affiliated entity providing forward energy market prices for purposes of Appendix B, as selected by Buyer in its reasonable discretion.

“Transaction Date” means the date that a Transaction is executed as set forth in the Transaction Confirmation.

“Variable Price Transaction” means a Transaction Confirmation for Full Requirements Service with spot energy pricing, as shown on such confirmation.

For the current month of each Trading Day MtM credit exposures calculation, the On-Peak Estimated Energy Quantity and Off-Peak Estimated Energy Quantity will be calculated for the month, as described above, and prorated for the remaining On-Peak Hours and Off Peak Hours remaining in the month as follows:

- On-Peak Hours remaining in the current month (including the first calendar day following the Trading Day) divided by total On-Peak Hours in the current month
- Off-Peak Hours remaining in the current month (including the first calendar day following the Trading Day) divided by total Off-Peak Hours in the current month

### **Parameters**

In calculating the MtM Exposure Amount for each Transaction, the following parameters are set on the Transaction Date:

- On-Peak Initial Mark Price
- Off-Peak/On-Peak Price Ratio
- Off-Peak Initial Mark Price
- MW-Measure: initial Capacity PLC Per Tranche

- On-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
- Off-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
- Number of awarded Tranches

In calculating the MtM Exposure Amount for each Transaction, the following parameters are set each Trading Day subsequent to the Transaction Date:

- On-Peak Energy Forward Price
- Off-Peak Energy Forward Price
- Current Capacity PLC Per Tranche
- On-Peak Estimated Energy Quantity
- Off-Peak Estimated Energy Quantity

**Process to Update the On-Peak Initial Mark Prices and Off-Peak Initial Mark Prices on a daily basis**

On each Trading Day subsequent to the Transaction Date, the Pricing Agent will contact four Reference Market-Makers to obtain price quotes for on-peak and off-peak energy for PJM Western Hub. The Pricing Agent may not rely upon quotes from DS Supplier or any Affiliate of DS Supplier.

The updated mark for a month will be equal to the average mark for that month over all sources from which a quote is available. If a monthly quote is available from any source, only the monthly quote or monthly quotes shall be used. Where quotes provide a bid and ask, the average shall be used.

Where a quote for an individual month is unavailable, but the month is quoted as part of a “packaged” quote (e.g., January ~~2016~~2021 is only available in the form of a January/February ~~2016~~2021 “packaged” quote or an annual quote):

- If the other month/months of the package quote is/are also unavailable, then the marks for all months of the package will be calculated by multiplying the packaged quote by the ratio of the corresponding month to the corresponding calculated package quote from the previous day.

Example: There are no On-Peak quotes available on day X during the contract for July ~~2016~~2021 or August ~~2016~~2021. However, there is an On-Peak July/August ~~2016~~2021 packaged quote of \$73.00/MWh available. The On-Peak marks from day X-1 for July ~~2016~~2021 and August ~~2016~~2021 were \$73.50/MWh and \$76.50/MWh respectively. Additionally we know that there are 352 On-Peak hours for July ~~2016~~2021 and 336 On-

Peak hours for August 20162021. The information available for use in this example is summarized below.

Month(s) of Quote	On-Peak Hours	Quote for Day X-1	Quote for Day X
July <u>20162021</u>	<b>352</b>	<b>\$73.50</b>	Not provided
August <u>20162021</u>	<b>336</b>	<b>\$76.50</b>	Not provided
July/August <u>20162021</u>	<b>688</b> (352+336)	Not provided	<b>\$73.00</b>

The On-Peak July/August 20162021 packaged quote can be calculated as  $[(73.50 * 352) + (76.50 * 336)] / (352+336) \approx \$74.97$ .

The day X On-Peak mark for July 20162021 is set at  $73.00 * [73.50] / [(73.50 * 352) + (76.50 * 336)] = 73.00 * (73.50 / 74.97) = \$71.57/\text{MWh}$ . The day X On-Peak mark for August 20162021 is set at  $73.00 * [76.50] / [(73.50 * 352) + (76.50 * 336)] = 73.00 * (76.50 / 74.97) = \$74.49/\text{MWh}$ .

- If the other month/months of the package quote is/are available, then the mark for the month will be set such that the average of the month and the other month(s) (weighted for either the On-Peak Hours or Off-Peak Hours as applicable) equals the packaged quote (see calculation example below).

Example: There are no On-Peak available for August 20162021. However, there is an On-Peak July/August 20162021 package quote available of \$75.00/MWh and an On-Peak July 20162021 quote of \$73.00/MWh. The information available for use in this example is summarized below.

Month(s) of Quote	On-Peak Hours	Quotes for Day
July <u>20162021</u>	<b>352</b>	<b>\$73.00</b>
August <u>20162021</u>	<b>336</b>	Not provided
July/August <u>20162021</u>	<b>688</b> (352+336)	<b>\$75.00</b>

The On-Peak mark for August 20162021 is set at  $[75.00 * (352 + 336) - 73.00 * (336)] / [352] = \$76.91/\text{MWh}$ .

If, on a given Trading Day, the Pricing Agent is not able to obtain quotes from the Reference Market-Makers, then Buyer will look to reasonable alternative sources of price data (excluding DS Supplier or any Affiliate of DS Supplier) and will rely on the prices from those alternative data sources to update the mark if pricing data is available from those alternative sources. As a reasonable alternative source of price data, the Buyer may use the following methodology:

- A calendar year on-peak/off-peak energy price, for the calendar year pertaining to the delivery period for which the On-Peak/Off-Peak Energy Forward Price is being developed, is calculated using the following methodology:
  - First, a Market-Implied Heat Rate is calculated as the ratio of the calendar year On-Peak and/or Off-Peak Energy Forward Price (calculated using On-Peak/Off-Peak Energy Forward Prices) to the calendar year Henry Hub forward natural gas price (calculated using Henry Hub forward natural gas prices) for the calendar year for which price data sufficient to calculate both prices are available and that is the farthest year in the future. As an alternative, the applicable Market-Implied Heat Rate may be determined by calculating the market-implied heat rates applicable to the last three years for which data are available that are the farthest in the future, and performing an extrapolation.
  - Next, this calculated Market-Implied Heat Rate is applied to the monthly Henry Hub forward natural gas price (calculated using Henry Hub forward natural gas prices) for the months pertaining to the delivery period for which the On-Peak/Off-Peak Energy Forward Price is being developed.

Quotes from the sources will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Sources will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

**APPENDIX C****DS SUPPLY SPECIFICATIONS**

The following DS Supply specifications will be specified in Transaction Confirmations to this SMA in the form attached as Exhibit 1. Suppliers shall also be required to provide a completed Form of Notice (Exhibit 2) and PJM Declaration of Authority (Exhibit 3).

**Product:**

Full Requirements Service - All necessary Energy, Capacity, transmission other than Network Integration Transmission Service, Ancillary Services, AECs for compliance with the AEPS Act, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply the DS Supplier Responsibility Share except for distribution service.

Appendix D – describes Company and DS Supplier responsibility for PJM Billing Statement Line Item Credits and Charges associated with the product.

Appendix E – further describes DS Supplier responsibilities for compliance with the AEPS Act in the Product specification.

**DS Fixed Percentage/DS Variable Percentage:**

The percentage of DS Supply provided at a fixed price and the percentage of DS Supply provided at a variable price. For each Transaction Confirmation, DS Fixed Percentage + DS Variable Percentage specified shall add to 100%.

**Seasonal Billing Factor:**

When specified, numerical multipliers associated with summer months (June-September) and non-summer months (November-May)

Summer Seasonal Billing Factor- 1.0

Non-Summer Seasonal Billing Factor- 1.0

Otherwise, assumed to be 1.0, if not specified.

**DS Customer Group:**

Each Transaction Confirmation shall be associated with DS Supply to one of the following DS Customer categories as defined in the DS Tariff:

Residential;

Small Commercial and Industrial 0-100 kW

Consolidated Large Commercial and Industrial over 100 kW.

**Service Type:**

Residential – Rate Classes R and RH

Small Commercial - Rate Classes GS, HT, PD, AL, TLCL, POL, SLE and SLS

Consolidated Large Commercial and Industrial – Rate Classes GS, HT, PD and EP

**Delivery Point:**

PE Zone

**Delivery Period:**

Beginning on [Month] [Day], [Year] and ending on [Month] [Day], [Year]

**Number of Tranches and Percentage for Each Tranche:**

Residential - XX tranches; Tranche Percentage: X.X% per Tranche

Small Commercial - XX tranches; Tranche Percentage: X.X% per Tranche

Medium Commercial - XX tranches; Tranche Percentage: X.X% per Tranche

Large Commercial and Industrial - XX tranches; Tranche Percentage: X.X% per Tranche

**DS Supplier Responsibility Share:**

Fixed percentage share of DS Load for DS Customer Group associated with Transaction

Confirmation. Typically, DS Supplier Responsibility Share is the product between the number of Tranches won and Tranche Percentage for the DS Customer Group. (Ex.

X.X%)

**MW Measure:**

The estimated megawatt measure of Capacity Peak Load Contribution corresponding to a single Tranche identified in the Transaction Confirmation as of the Transaction Date.

With respect to Transactions where the DS Variable Percentage is 100%, the Statement prepared in accordance with Section 9.1(a) will include: (a) an energy charge equal to sum of the products of each hour's hourly day-ahead PJM load weighted average locational marginal price for the Delivery Point, and each hour's Energy requirements associated with the DS Supplier Responsibility Share, and (b) a capacity charge equal to the sum of the product of the PJM Final Zonal Capacity Price for the Delivery Point in \$/MW-day and the daily amounts of Capacity reported as the DS Supplier's Capacity obligation by Buyer to PJM for each day of the Billing Month. With respect to Variable Price Transactions, the PME/FMEA Adjustment Amount calculated in accordance with Section 9.1 (d) will include: any adjustments to account for changes in the hourly energy or capacity volumes used to calculate the energy charge and the capacity charge as described above.

**EXHIBIT 1**

**TRANSACTION CONFIRMATION**

This Transaction Confirmation letter is being provided pursuant to and in accordance with the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”) dated \_\_\_\_\_ between PECO Energy Company (“Buyer” or “PECO Energy”) and \_\_\_\_\_ (“DS Supplier”). Terms used but not defined herein shall have the meanings ascribed to them in the Default Service SMA. This Transaction Confirmation shall confirm the following terms of the transaction (“Transaction”) agreed to on \_\_\_\_\_ (“Transaction Date”).

Product: Full Requirements Service  
 DS Fixed Percentage/DS Variable Percentage:  
 DS Customer Group:  
 Service Type:  
 Delivery Point: PE Zone  
 Delivery Period:  
 Number of Tranches:  
 Percentage for Each Tranche:  
 DS Supplier Responsibility Share:  
 MW-Measure:  
 DS Fixed Price/DS Variable Price \$XXX.XXXX (\$/MWh) (inclusive of AEPS Costs)  
 Average Cost per Non-Solar PV Tier I AEC: \$\_\_\_\_  
 Average Cost per Solar PV Tier I AEC:\$\_\_\_\_  
 Average Cost per Tier II AEC: \$\_\_\_\_  
 AEC Solar Penalty \$XXX.XX

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
On-Peak Estimated Quantity Per MW-Measure (MWh)	xx,xxx											
Off-Peak Estimated	xx,xxx											

Quantity Per MW-Measure (MWh)												
-------------------------------	--	--	--	--	--	--	--	--	--	--	--	--

Alternative Energy Credit (AEC) Allocation:

Alternative Energy Portfolio Standards - Reporting Period:	Tier I (non-solar PV)		Tier I (solar PV)	
	AEC Allocation per Tranche, (AECs)	Total AEC Allocation (AECs)	AEC Allocation per Tranche, (AECs)	Total AEC Allocation (AECs)
<del>2017-2018</del> <u>2021-2022</u>				
<del>2018-2019</del> <u>2022-2023</u>				
<del>2019-2020</del> <u>2023-2024</u>				

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between DS Supplier and Buyer by returning an executed copy of this Transaction Confirmation by facsimile to PECO Energy Company at (xxx) xxx.xxxx as provided in the RFP Rules. The signatories to this Transaction must have the authority to enter into this Transaction.

PECO ENERGY COMPANY (BUYER)

DS SUPPLIER

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 2**

**FORM OF NOTICE**

Any notices required under this Agreement shall be made as follows:

**Buyer:**

**All Notices:**

Street:  
City/State/Zip:  
Attn:  
Facsimile:  
Duns:  
Federal Tax ID Number:

**Invoices:**

Attn:  
Phone:  
Facsimile:

**Scheduling:**

Attn:  
Phone:  
Facsimile:

**Payments:**

Attn:  
Phone:  
Facsimile:

**Wire Transfer:**

BNK:  
ABA:  
ACCT:

**Credit and Collections:**

**DS Supplier:**

**All Notices:**

Street:  
City/State/Zip:  
Attn:  
Facsimile:  
Duns:  
Federal Tax ID Number:

**Invoices:**

Attn:  
Phone:  
Facsimile:

**Scheduling:**

Attn:  
Phone:  
Facsimile:

**Payments:**

Attn:  
Phone:  
Facsimile:

**Wire Transfer**

BNK:  
ABA:  
ACCT:

**Credit and Collections:**

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Attn:  
Phone:  
Facsimile:

Attn:  
Phone:  
Facsimile:

**With additional Notices of an**

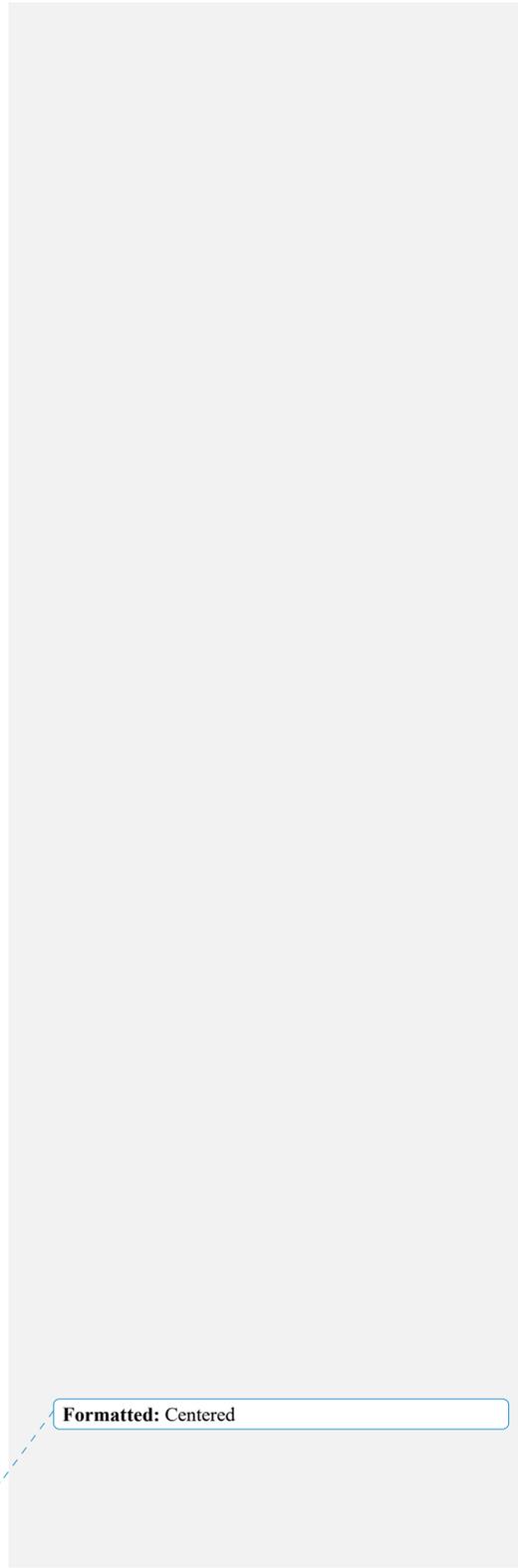
**With Additional Notices of an**

**Event of Default to:**

**Event of Default to:**

Attn:  
Phone:  
Facsimile:

Attn:  
Phone:  
Facsimile:



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**EXHIBIT 3**

**FORM OF PJM DECLARATION OF AUTHORITY**

This Declaration of Authority (“Declaration”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the following:

PRINCIPAL: \_\_\_\_\_ (“Principal”)

AGENT: \_\_\_\_\_ (“Agent”).

**RECITALS**

WHEREAS, PJM is a Regional Transmission Organization (“RTO”) subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”);

WHEREAS, PJM Settlement, Inc (“PJM Settlement”) is a Pennsylvania Non-Profit Corporation, incorporated for the purpose of providing billing and settlement functions and credit and risk management functions for PJM. References to “PJM” in this Declaration are intended to apply to PJM and/or PJM Settlement, as appropriate, with regard to their respective functions.

WHEREAS, PJM and PJM Settlement administer centralized markets that clear various electric energy and energy-related products among multiple buyers and DS Suppliers;

WHEREAS, PJM additionally exercises operational control over its members’ transmission facilities whereby PJM provides open-access transmission service and control area functions, including economic dispatch and emergency response to ensure reliability;

WHEREAS, Principal is a PJM Member and seeks to obtain, or is obtaining, services provided or administered by PJM, seeks to participate, or is participating in, markets administered by PJM, or seeks to engage in, or is engaging in, operations that use or affect the integrated transmission system operated by PJM;

WHEREAS, such activities or contemplated activities by Principal and Agent are governed by rights and obligations established by or under the PJM Open Access Transmission Tariff (“Tariff”), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), the Reliability Assurance Agreement Among Load-serving Entities in the MAAC Control Zone (“RAA”), and other agreements, manuals, and practices of PJM (the Tariff, the Operating Agreement, the RAA, and such other agreements manuals, and practices of PJM, the “PJM Agreements”); and

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WHEREAS, Principal and Agent desire to declare to PJM their respective authorities concerning such rights and obligations, intend that PJM rely upon such declaration, and acknowledge that PJM may rely upon such declaration to its detriment.

**DECLARATION**

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the declarations made below, Principal and Agent, as identified below, make the following declarations:

**1. Exclusivity of Agent’s Authority.**

Pursuant to a binding, legally enforceable agreement, Principal has authorized Agent to act for Principal with respect to certain rights and responsibilities as specified in Section 2 of this Declaration (“the Authorized Rights and Responsibilities”). With respect to the Authorized Rights and Responsibilities, Agent is authorized to communicate and transact with PJM as Principal’s sole and exclusive agent, and PJM is authorized to communicate and transact directly and exclusively with Agent as Principal’s agent. With respect to Authorized Rights and Responsibilities, Principal will abide by any direction issued by PJM to Agent.

**2. Specification of Authorized Rights and Responsibilities.**

In the following parts (a) through (h), Principal and Agent specify the rights and responsibilities with respect to which Agent is authorized to act for Principal. Specification shall be effective only if both Principal and Agent have placed the initials of their authorized representatives in the space provided for each applicable right or responsibility from among the options provided below:

(a) Load Server Responsibilities.

\_\_\_\_\_ Agent is authorized to satisfy Principal’s obligations as a Load-Serving Entity under the RAA, including, without limitation, its obligations to provide Unforced Capacity, submit capacity plans, provide or arrange for Capacity Resources, satisfy Accounted-for Obligations and Peak Season Maintenance Obligations, comply with any capacity audits, make payment of all deficiency, data submission, and emergency procedure charges incurred, coordinate planning and operation of Capacity Resources with other parties; and develop and submit planned outage schedules.

\_\_\_\_\_ Agent is authorized to satisfy Principal’s obligations under the Tariff, RAA and to provide or arrange for transmission service to its loads; provide or arrange for sufficient reactive capability, voltage control facilities, and black start capability for service to its loads; submit firm transmission service schedules, and designate Network Resources and other points of receipt and delivery for transmission

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service. Agent is authorized to request changes to the transmission service required for service to Principal's loads, and to enter into, on Principal's behalf, any feasibility, system impact, facilities study, or other agreements required to process such request for a change in service.

\_\_\_\_\_ Agent is authorized to satisfy Principal's rights and obligations under the Tariff and Operating Agreement to submit bids on, obtain, administer, and receive payments or credits for Financial Transmission Rights and Auction Revenue Rights with respect to service to Principal's loads.

\_\_\_\_\_ Agent is authorized to provide data required by PJM with respect to service to Principal's loads, including, but not limited to, data required for coordination of operations, accounting for all interchange transactions, preparation of required reports and maintenance schedules, and analysis of system disturbances.

\_\_\_\_\_ Agent is authorized to provide the facilities and personnel required to coordinate operations with PJM and other PJM Members.

(b) Electric Distributor Responsibilities.

\_\_\_\_\_ Agent is authorized to satisfy Principal's rights and obligations as an Electric Distributor under the Operating Agreement, including, but not limited to, assuring the continued compatibility of its local energy management, monitoring, and telecommunications systems with PJM's technical requirements; providing or arranging for the services of a 24-hour local control center to coordinate with PJM; providing to PJM all system, accounting, customer tracking, load forecasting, and other data necessary or appropriate to implement or administer the Operating Agreement, RAA; shedding connected load, initiating active load management programs, and taking such other coordination actions as may be necessary in accordance with PJM's directions in Emergencies; maintaining or arranging for a portion of its connected load to be subject to control by automatic underfrequency, under-voltage, or other load-shedding devices; and complying with the underfrequency relay obligations and charges specified in the Operating Agreement.

(c) Generator Responsibilities.

\_\_\_\_\_ Agent is authorized to operate the Principal's generation resources in all events, including, but not limited to, in the event of Emergencies, and shall operate such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

\_\_\_\_\_ Agent is authorized to ensure that the required portion of Principal's Capacity Resources have the ability to go from a shutdown condition to an operating condition and start delivering power without assistance from the power system.

- Or -

\_\_\_\_\_ Agent is authorized to direct the operation of Principal's generation resources by relaying PJM's instructions to the resource in all events, including, but not limited to, in the event of Emergencies, and shall direct such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

\_\_\_\_\_ Agent is authorized to communicate with PJM in all matters concerning the provision of capacity, energy, or ancillary services from Principal's generation resources, including, without limitation, information required in connection with Capacity Resources, dispatch of any unit, provision of reactive power, regulation, synchronous condensing, spinning or other reserves, establishment or maintenance of a unit as a Black-Start Unit, satisfaction of must-run obligations, and costs or revenue requirements for any product or service offered by any such unit.

\_\_\_\_\_ Agent is authorized to provide information on outages of Principal's generation facilities, whether planned, forced, or for maintenance, and to coordinate such outages with PJM

\_\_\_\_\_ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Feasibility Study, System Impact Study, or Facilities Study Agreements.

\_\_\_\_\_ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Construction Service Agreements.

\_\_\_\_\_ Agent is authorized to act on behalf of Principal with respect to Principal's rights and obligations under any Interconnection Service Agreements.

\_\_\_\_\_ Agent is authorized to receive from PJM historic and real time data collected by PJM from, or provided to PJM by, Principal with respect to Principal's generation resources.

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\_\_\_\_\_ Agent is authorized to act on behalf of Principal for the following specific unit(s) in Principal primary and subaccounts:

Resource Name: \_\_\_\_\_ Resource ID: \_\_\_\_\_

(d) Market Buyer/Market Seller Responsibilities.

\_\_\_\_\_ Agent is authorized to satisfy Principal’s rights and obligations as a Market Buyer or Market Seller under the Operating Agreement, including, but not limited to, arranging for a Market Operations Center capable of real-time communication with PJM during normal and Emergency conditions; reporting to PJM sources of energy available for operation; providing to PJM scheduling and other information, including, but not limited to, maintenance and other anticipated outages of generation or transmission facilities, scheduling and related information on bilateral transactions and self-scheduled resources, and implementation of active load management, interruption of load, and other load reduction measures; obtaining Spot Market Backup for bilateral transactions; submitting to PJM binding offers to purchase or sell energy and ancillary services in compliance with all applicable Offer Data specifications; responding to PJM’s directives to start, shut down or change output levels of generation units, or change scheduled voltages or reactive output levels; responding to PJM’s directives to schedule delivery or change delivery schedules for external resources; and following PJM’s directions to take actions to prevent, manage, alleviate or end an Emergency.

(e) Billing and Payment Responsibilities.

\_\_\_\_\_ In connection with all rights and responsibilities specified by Principal and Agent in any of subparts (a) through (d) of this Section, or as specified in the attached Addendum, Agent shall be billed for, and shall make payment to PJM for, all charges, penalties, costs and fees. (If this option is not specified, PJM will issue billings to, and collect amounts due from, Principal.)

\_\_\_\_\_ In connection with all rights and responsibilities specified by Principal and Agent above, Agent is entitled to receive from PJM in Agent’s account all credits, revenues, distributions, and disbursements. (If this option is not specified, PJM will pay such amounts to Principal.)

(f) General Membership Responsibilities.

\_\_\_\_\_ Agent is authorized to participate and vote in all PJM committees, working groups, and other stakeholder bodies on Principal’s behalf.

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- \_\_\_\_\_ Agent is authorized to participate on Principal’s behalf in the regional transmission expansion planning process.
- \_\_\_\_\_ Agent is authorized to provide information or otherwise cooperate on Principal’s behalf in connection with any investigation or request for information by PJM or the PJM Market Monitoring Unit in accordance with the Operating Agreement and Attachment M to the Tariff. (If this option is specified, PJM and the PJM Market Monitoring Unit shall have the right to request and obtain such information from Agent and/or Principal.)
- \_\_\_\_\_ Agent shall be billed for, and shall make payment of, Principal’s costs of membership in PJM, including payment of the Membership fee, and payment of any other general assessments on the PJM members, including, but not limited to, amounts assessed as a consequence of defaults by other Members.
- (g) Additional Responsibilities.
- \_\_\_\_\_ Agent has been Authorized other rights and responsibilities of Principal as specified on Attachment “A” to this Declaration.
- (h) Limitation on Responsibilities.
- \_\_\_\_\_ The rights and responsibilities specified in parts (a) through (f) above apply to a limited portion of Principal’s facilities or loads located in the PJM Region, as specified on Attachment “B” to this Declaration, and to no other facilities or loads of Principal.

**3. Continuing Responsibilities and Liabilities of Principal.**

- 3.1 The Authorized Rights and Responsibilities are the only rights and responsibilities under the PJM Agreements for which Agent is authorized to act for Principal, and Principal retains all rights and responsibilities under the PJM Agreements not specified by Principal and Agent in Section 2.
- 3.2 With respect to the Authorized Rights and Responsibilities, and notwithstanding any other provision of this Agreement, Principal shall remain liable to PJM for all amounts due or to become due to PJM under the PJM Agreements, and Agent’s authorization to make payment of any such amounts hereunder (if specified in Section 2) shall not release Principal from liability for any financial obligations to PJM not satisfied by Agent.

**4. Reliance and Indemnity, Duty to Inform, Liability Waiver, and Rules of Construction.**

- 4.1 Principal and Agent each recognizes, accepts and intends that PJM will rely, upon on the truth, accuracy and completeness of the declarations herein in matters including but not

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limited to creditworthiness and in assuring compliance with the PJM Agreements. Principal and Agent each recognizes and accepts that PJM or its members may suffer losses and damages if any declaration is or becomes untrue, inaccurate or incomplete, and each agrees to indemnify PJM for any such losses and damages.

- 4.2 Principal and Agent each has a continuing duty to notify PJM if and when any declaration herein ceases to be truthful, accurate or complete. Until such time as PJM receives written notification of any change to any declaration, in accordance with the terms contained herein, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with Principal and Agent as to the subject matter of this Declaration. Written notice of changes to the declarations contained herein must be provided by Principal (PJM Member) to PJM at least thirty days in advance of their effectiveness. If Agent is also a PJM Member, then both parties will be required to provide thirty days prior written notification in order for such changes to be effective. Such notification is required for changes to the declarations and responsibilities contained herein and/or termination of this Declaration. Upon such termination, all rights, responsibilities and accounts will revert back to the original status quo prevailing before the Declaration became effective. Should less than thirty days notice be provided, PJM shall use its best efforts to accommodate and process the declarations herein, but all attempts should be made to provide such notice.
- 4.3 Nothing in this Declaration shall be construed to create or give rise to any liability on the part of PJM and Principal and Agent expressly waive any claims that may arise against PJM under this Declaration. This Declaration shall not be construed to modify any of the PJM Agreements and in the event of conflict between this Declaration and a PJM Agreement, the applicable PJM Agreement shall control.
- 4.4 Capitalized terms used herein that are not defined herein have the meanings given in the PJM Agreements, as applicable.
- 4.5 The Recitals are hereby incorporated into the body of this Declaration.

IN WITNESS WHEREOF, Principal and Agent execute this Declaration to be effective as of the date written above or upon receipt of a fully executed original by PJM, whichever date is later.

**PRINCIPAL:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

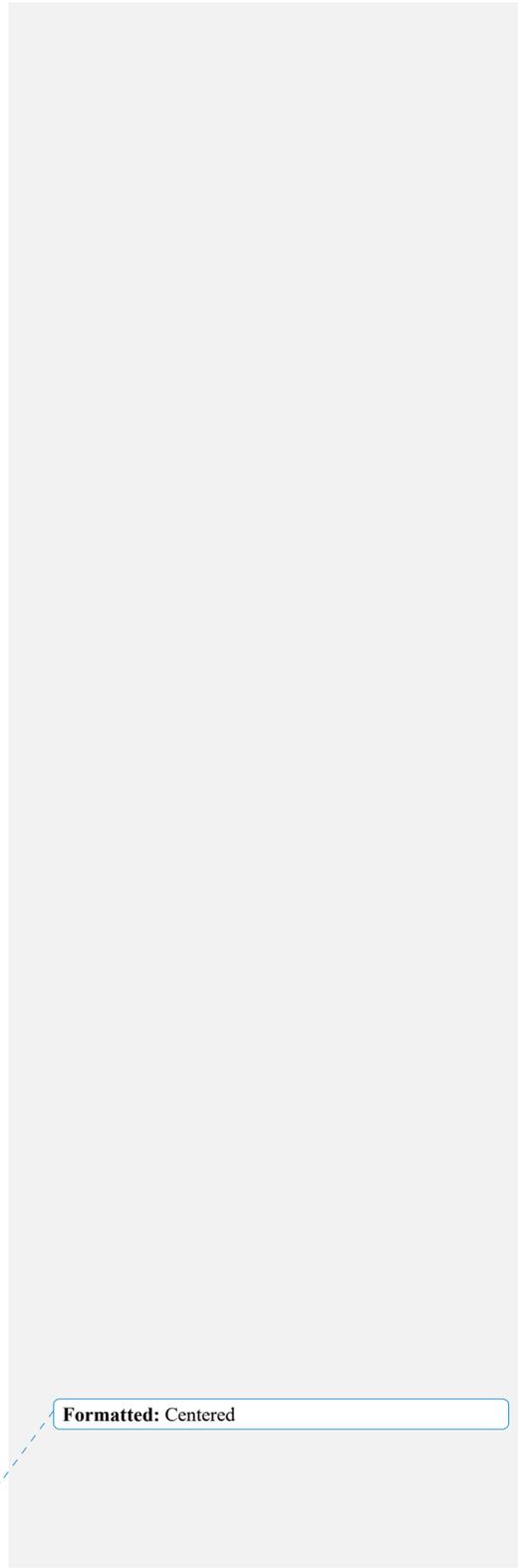
**AGENT:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_



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APPENDIX D

RESPONSIBILITIES FOR PJM BILLING LINE ITEMS  
AS DEFINED IN APPLICABLE PJM AGREEMENT OR MANUAL

ID #	PJM Billing Statement Line Items	Responsible Party	
		PECO (Buyer)	DSP (DS Supplier)
<b>ID #</b>	<b>CHARGES</b>		
1100	Network Integration Transmission Service	X	
1102	Network Integration Transmission Service (exempt)	X	
1104	Network Integration Transmission Service Offset	X	
1108	Transmission Enhancement	X	
1110	Direct Assignment Facilities	X	
1120	Other Supporting Facilities	X	
1130	Firm Point-to-Point Transmission Service		X
1133	Firm Point-to-Point Transmission Service Resale Charge		X
1140	Non-Firm Point-to-Point Transmission Service		X
1143	Non-Firm Point-to-Point Transmission Service Resale Charge		X
1200	Day-ahead Spot Market Energy		X
1205	Balancing Spot Market Energy		X
1210	Day-ahead Transmission Congestion		X
1215	Balancing Transmission Congestion		X
1218	Planning Period Congestion Uplift		X
1220	Day-ahead Transmission Losses		X
1225	Balancing Transmission Losses		X
1230	Inadvertent Interchange		X

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1240	Day-ahead Economic Load Response		X
1241	Real-time Economic Load Response		X
1245	Emergency Load Response		X
1250	Meter Error Correction		X
1260	Emergency Energy		X
1301	PJM Scheduling, System Control and Dispatch Service - Control Area Administration		X
1302	PJM Scheduling, System Control and Dispatch Service - FTR Administration		X
1303	PJM Scheduling, System Control and Dispatch Service - Market Support		X
1304	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration		X
1305	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.		X
1306	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center		X
1308	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration		X
1309	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration		X
1310	PJM Scheduling, System Control and Dispatch Service Refund - Market Support		X
1311	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration		X

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1312	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.		X
1314	Market Monitoring Unit (MMU) Funding		X
1315	FERC Annual Charge Recovery		X
1316	Organization of PJM States, Inc. (OPSI) Funding		X
1317	North American Electric Reliability Corporation (NERC)		X
1318	Reliability First Corporation (RFC)		X
1320	Transmission Owner Scheduling, System Control and Dispatch Service		X
1330	Reactive Supply and Voltage Control from Generation and Other Sources Service		X
1340	Regulation and Frequency Response Service		X
1350	Energy Imbalance Service		X
1360	Synchronized Reserve		X
1365	Day-ahead Scheduling Reserve		X
1370	Day-ahead Operating Reserve		X
1371	Day-ahead Operating Reserve for Load Response		X
1375	Balancing Operating Reserve		X
1376	Balancing Operating Reserve for Load Response		X
1377	Synchronous Condensing		X
1378	Reactive Services		X
1380	Black Start Service		X
1400	Load Reconciliation for Spot Market Energy		X
1410	Load Reconciliation for Transmission Congestion		X
1420	Load Reconciliation for Transmission Losses		X
1430	Load Reconciliation for Inadvertent Interchange		X
1440	Load Reconciliation for PJM Scheduling, System Control and		X

	Dispatch Service		
1441	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund		X
1445	Load Reconciliation for FERC Annual Charge Recovery		X
1446	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding		X
1447	Load Reconciliation for North American Electric Reliability Corporation (NERC)		X
1448	Load Reconciliation for Reliability First Corporation (RFC)		X
1450	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service		X
1460	Load Reconciliation for Regulation and Frequency Response Service		X
1470	Load Reconciliation for Synchronized Reserve		X
1475	DASR Load Reconciliation		X
1478	Load Reconciliation for Operating Reserve		X
1480	Load Reconciliation for Synchronous Condensing		X
1490	Load Reconciliation for Reactive Services		X
1500	Financial Transmission Rights Auction		X
1600	RPM Auction		X
1610	Locational Reliability		X
1650	Non-Unit Specific Capacity Transaction		X
1660	Demand Resource and ILR Compliance Penalty	X	

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1661	Capacity Resource Deficiency		X
1662	Generation Resource Rating Test Failure		X
1663	Qualifying Transmission Upgrade Compliance Penalty		X
1664	Peak Season Maintenance Compliance Penalty		X
1665	Peak-Hour Period Availability		X
1710	PJM/MISO Seams Elimination Cost Assignment	X	
1720	RTO Start-up Cost Recovery	X	
1730	Expansion Cost Recovery	X	
1900	Unscheduled Transmission Service	X	
1910	Ramapo Phase Angle Regulators	X	
1920	Station Power	X	
1930	Generation Deactivation	X	
1950	Virginia Retail Administrative Fee	X	
1980	Miscellaneous Bilateral	X	
1995	PJM Annual Membership Fee	X	
<b>ID #</b>	<b>CREDITS</b>		
2100	Network Integration Transmission Service	X	
2102	Network Integration Transmission Service (exempt)	X	
2104	Network Integration Transmission Service Offset	X	
2106	Non-Zone Network Integration Transmission Service	X	

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2108	Transmission Enhancement	X	
2110	Direct Assignment Facilities	X	
2120	Other Supporting Facilities	X	
2130	Firm Point-to-Point Transmission Service	X	
2132	Internal Firm Point-to-Point Transmission Service	X	
2133	Firm Point-to-Point Transmission Service Resale Credit		X
2140	Non-Firm Point-to-Point Transmission Service	X	
2142	Internal Non-Firm Point-to-Point Transmission Service	X	
2143	Non-Firm Point-to-Point Transmission Service Resale Credit		X
2210	Transmission Congestion		X
2217	Planning Period Excess Congestion		X
2218	Planning Period Congestion Uplift		X
2220	Transmission Losses		X
2240	Day-ahead Economic Load Response	X	
2241	Real-time Economic Load Response	X	
2245	Emergency Load Response	X	
2260	Emergency Energy		X
2320	Transmission Owner Scheduling, System Control and Dispatch Service	X	
2330	Reactive Supply and Voltage Control from Generation and Other Sources Service		X
2340	Regulation and Frequency Response Service		X
2350	Energy Imbalance Service		X

2360	Synchronized Reserve		X
2365	Day-ahead Scheduling Reserve		X
2370	Day-ahead Operating Reserve		X
2371	Day-ahead Operating Reserve for Load Response		X
2375	Balancing Operating Reserve		X
2376	Balancing Operating Reserve for Load Response		X
2377	Synchronous Condensing		X
2378	Reactive Services		X
2380	Black Start Service		X
2420	Load Reconciliation for Transmission Losses		X
2500	Financial Transmission Rights Auction		X
2510	Auction Revenue Rights		X
2600	RPM Auction		X
2620	Interruptible Load for Reliability	X	
2630	Capacity Transfer Rights		X
2640	Incremental Capacity Transfer Rights		X
2650	Non-Unit Specific Capacity Transaction		X
2660	Demand Resource and ILR Compliance Penalty	X	
2661	Capacity Resource Deficiency		X
2662	Generation Resource Rating Test Failure		X
2663	Qualifying Transmission Upgrade Compliance Penalty		X
2664	Peak Season Maintenance Compliance Penalty		X
2665	Peak-Hour Period Availability		X
2710	PJM/MISO Seams Elimination Cost Assignment	X	
2720	RTO Start-up Cost Recovery	X	
2730	Expansion Cost Recovery	X	
2910	Ramapo Phase Angle Regulators	X	

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2930	Generation Deactivation	X	
2950	Virginia Retail Administrative Fee	X	
2980	Miscellaneous Bilateral	X	
2996	Annual PJM Cell Tower	X	
2997	Annual PJM Building Rent	X	

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**APPENDIX E**

**DS SUPPLIER’S OBLIGATIONS FOR AEPS COMPLIANCE**

To satisfy AEPS requirements with respect to the DS Supplier Responsibility Share, DS Supplier shall fulfill the following obligations:

- (1) Providing sufficient AECs for each tranche award via the DS Solicitation less the allocated AECs. Appendix E and Exhibit 1 will apply during the term of the Agreement and will be used to determine the number of AECs a DS Supplier must deliver to Buyer to fulfill DS Supplier’s AEPS obligation except to the extent that DS Supplier’s AEPS obligation may be reduced by any AECs obtained separately by the Buyer and allocated to DS Supplier’s AEPS obligation as shown on a Transaction Confirmation. Any Buyer AECs allocated to DS Supplier’s AEPS obligation as set forth in Exhibit 1 shall remain the property of Buyer and shall not be transferred to DS Supplier;
- (2) Paying any AEC penalties, costs, charges, etc. assessed against the DS Supplier and/or the Company associated with the DS Supplier’s non-performance with AEPS requirements;
- (3) Submitting to the Company proof of AEPS compliance under this agreement in such form and manner as may be required by the Company.
- (4) Provide to the Company all information the Company may require to comply with the AEPS Act and its implementing regulations and other Requirements of Law, including, but not limited to the price paid per AEC required by 73 Pa.C.S. §1648.3(e)(8).

This Appendix E shall conform the AEPS obligation of the Transaction agreed to on \_\_\_\_\_ (“Transaction Due Date”).  
 AEPS obligations for the period beginning 6/1/~~2018~~2021 based on the total MWh supplied by the DS Supplier:

<u>Reporting Period</u>	<u>Tier 1*</u>	<u>PV</u>	<u>Tier 2</u>
6/1/ <del>2017</del> <u>2021</u> to 5/31/ <del>2018</del>	<del>6.50%</del>	<del>0.3400%</del> <u>2025</u>	<del>8.20%</del>
6/1/ <del>2018</del> to 5/31/ <del>2019</del>	7.00%	0.3900%	<del>8.20</del> <u>50%</u>
	<u>10.00%</u>		

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~~6/1/2019 to 5/31/2020 7.50% 0.4433% 8.20%~~

\*Tier 1 requirements include Tier 1 PV requirements.

The percentages set forth above are those applicable for the DS Solicitation and may be revised for future DS Solicitations to reflect changes in law or other applicable regulatory requirements. DS Supplier shall transfer all AECs to Buyer using GATS. Buyer will provide with an estimate of DS Supplier's AEPS obligation following the second quarter of the AEPS reporting period and with a final statement within thirty (30) calendar days of the end of AEPS reporting period. DS Supplier shall transfer the amount of AECs shown on Buyer's estimate and on the final statement within forty-five (45) calendar days after the date of each such estimate or statement. DS Supplier warrants that all AECs transferred to Buyer during an AEPS reporting period (or during the twenty calendar days thereafter) shall be eligible for Buyer's use for compliance during such AEPS reporting period.

If AEPS requirements change by law or any other reason, DS Supplier shall be responsible for providing the credits at its expense in order to comply with its obligations under Full Requirements Service.

APPENDIX F

LETTER OF CREDIT DOCUMENTATION  
{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}

IRREVOCABLE LETTER OF CREDIT NO.

ISSUE DATE \_\_\_\_\_ EXPIRY DATE \_\_\_\_\_

APPLICANT  
[NAME]  
[ADDRESS]

BENEFICIARY  
[NAME]  
[ADDRESS]

CURRENCY      AMOUNT  
USD              \*\*\*\*\*\$

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO:  
\_\_\_\_\_ FOR THE ACCOUNT OF \_\_\_\_\_ (APPLICANT) FOR AN  
AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS  
\_\_\_\_\_ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE  
BANK OF \_\_\_\_\_ ("ISSUER") \_\_\_\_\_ (ADDRESS),  
EFFECTIVE \_\_\_\_\_ AND EXPIRING AT OUR COUNTERS ON  
\_\_\_\_\_ OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE, AS  
PROVIDED HEREIN. THIS LETTER OF CREDIT IS AVAILABLE IN ONE OR MORE  
DRAFTS UP TO THE AGGREGATE AMOUNT SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS  
AND WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN  
COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED  
ON PRESENTATION IF ACCOMPANIED BY THE REQUIRED DOCUMENTS  
PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT.

THE BELOW MENTIONED DOCUMENT(S) MUST BE PRESENTED ON OR BEFORE  
THE EXPIRY DATE OF THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND  
CONDITIONS OF THIS LETTER OF CREDIT.

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1. YOUR SIGNED AND DATED STATEMENT, READING AS FOLLOWS:

“THE AMOUNT FOR THIS DRAWING, USD (INSERT AMOUNT), BEING MADE UNDER THE BANK OF \_\_\_\_\_ (BANK) LETTER OF CREDIT NUMBER (INSERT LETTER OF CREDIT REFERENCE NUMBER), REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM APPLICANT FOR PERFORMANCE ASSURANCE RELATED TO THE BENEFICIARY’S PECO ENERGY COMPANY PENNSYLVANIA DEFAULT SERVICE SUPPLIER MASTER AGREEMENT DATED BETWEEN \_\_\_\_\_ AND \_\_\_\_\_.”

2. THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENT(S).

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00 A.M. NEW YORK TIME, ISSUER SHALL SATISFY SUCH DRAWING REQUEST ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE SECOND FOLLOWING BUSINESS DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH PERIOD.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY’S RECEIPT OF FULL PAYMENT FROM THE APPLICANT AND ISSUER’S RECEIPT OF A WRITTEN RELEASE FROM THE BENEFICIARY RELEASING THE ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM “BUSINESS DAY” AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT’S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT’S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF [BANK] UNDER THIS LETTER OF CREDIT AND [BANK] SHALL ALWAYS REMAIN LIABLE TO [BENEFICIARY] FOR THE FULL AMOUNT OF APPLICANT’S OBLIGATIONS HEREIN TO [BENEFICIARY] NOT TO EXCEED THE AVAILABLE AMOUNT IN THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WILL BE BORNE BY THE APPLICANT.
2. THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED OR ASSIGNED.
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98"). AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF NEW YORK. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER.
5. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS THE BENEFICIARY OR AN AUTHORIZED AGENT OF THE BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.
6. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Please direct any written correspondence, including drawing or inquiries to:

[Bank name, address and phone number]

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## APPENDIX G

### GUARANTY

THIS GUARANTY (this "Guaranty"), dated as of \_\_\_\_\_, ~~2012~~, is made by \_\_\_\_\_ (the "Guarantor"), a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ [a state of the United States or of the District of Columbia], in favor of PECO Energy Company (the "Guaranteed Party"), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Terms not defined herein shall have the meanings given to them in the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement dated \_\_\_\_\_, ~~2012~~ (as amended, modified or extended from time to time, the "Agreement(s)"), between the Guaranteed Party and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ (the "DS Supplier"). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement(s) with the DS Supplier. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party the full and prompt payment when due, subject to any applicable grace period, of all payment obligations of the DS Supplier to the Guaranteed Party arising out of the Agreement(s). Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the DS Supplier as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). [Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed \$\_\_\_\_, less the value other liquid securities posted by the DS Supplier under the Agreement(s).] All such principal, interest, obligations and liabilities, collectively, are the "Guaranteed Obligations". This Guaranty is a guarantee of payment and not of collection.

2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by Guaranteed Party against, and any other

notice to, any party liable thereon (including the Guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the DS Supplier, and any right to require a proceeding first against the DS Supplier.

3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any Agreement(s) with respect to the Guaranteed Obligations or any person (including the DS Supplier) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the DS Supplier to the Guaranteed Party; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the DS Supplier to the Guaranteed Party including any security therefor.

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the DS Supplier concerning any provision of the Agreement(s) governing any of the Guaranteed Obligations of the DS Supplier; (b) the rendering of any judgment against the DS Supplier or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the DS Supplier and the Guaranteed Party; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the DS Supplier or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the DS Supplier, its assets or the Guarantor; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the DS Supplier, the Guaranteed Party, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; and (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement(s) or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the DS Supplier or any collateral security or guaranty or right of offset held by the Guaranteed Party therefor.

6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement(s) have been paid in full.

7. Subject to the terms and conditions hereof, this Guaranty is a continuing Guaranty and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in

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exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party. The assignment rights of the Guaranteed Party will be in accordance with any applicable terms of the Agreement(s).

9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.

10. The Guarantor's liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received from the Guarantor or the DS Supplier in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement(s) or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Guaranteed Party.

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement(s) and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this

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Guaranty until finally and fully performed.

12. All notices and other communications hereunder shall be made at the addresses by hand delivery, by next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received)

If to the Guarantor: *[To be completed]*

If to the Guaranteed Party: *[To be completed]*

13. The Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor; and (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its [insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws] or any law, regulation or contractual restriction binding on it or its assets.

14. This Guaranty and the rights and obligations of the DS Supplier and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania. The Guarantor and Guaranteed Party jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Commonwealth of Pennsylvania over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.

15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreement(s)

between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.

16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

17. If the Guarantor is a trust: no trustee of the Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and this Guaranty shall not be enforceable against any such trustee in their or its, his or her individual capacities or capacity; and this Guaranty shall be enforceable against the trustees of the Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to the Guarantor or any trustee of the Guarantor shall look solely to the trust estate of the Guarantor for the payment or satisfaction thereof.

IN WITNESS WHEREOF, the Guarantor and the Guaranteed Party have caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement(s).

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Accepted and Agreed to:

[GUARANTOR]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

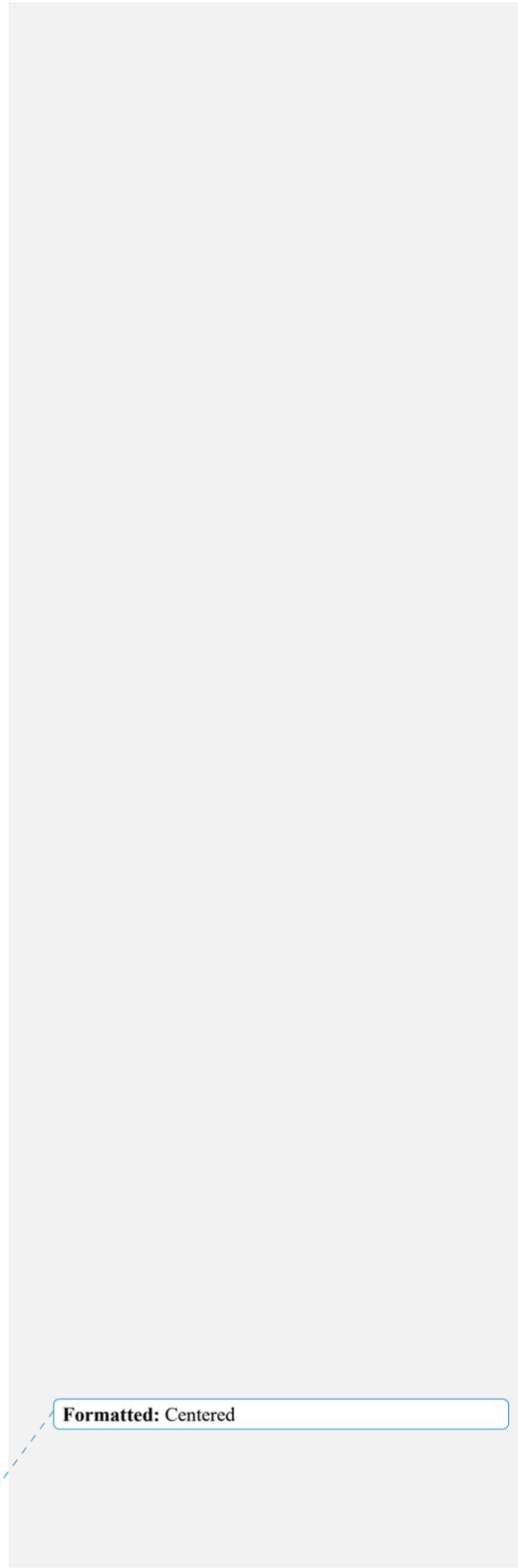
PECO ENERGY COMPANY

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



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**APPENDIX H**

**FORM OF GENERATION SUPPLY REPORT**

**Supplier Name:**

**Calendar Year (in which Energy was delivered):**

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Year	Coal %	Nuclear %	Oil %	Hydro-power %	Natural Gas %	Renewable %	TOTAL ENERGY SUPPLIED (kWh)
							100.00%

Detailed Break-down of Renewable Source by Technology (if any reported above)

Technology	Percent of Total Renewable Energy Supplied	Actual Amount of Energy Supplied (Sales in kWh)
Solar Photovoltaic Energy		
Solar Thermal Energy		
Wind Power		
Low-Head Hydropower		
Geothermal Energy		
Landfill or Other Biomass-based Methane Gas		
Mine-based Methane Gas		
Energy from Waste		
Sustainable Biomass Energy		
Other (Name)		
Other (Name)		
Total Renewable Sources	100%	

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**PECO Energy Company**  
**Default Service Program**  
**Request for Proposals**

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## ARTICLE I. INTRODUCTION

### I.1. Overview

- I.1.1. Capitalized terms in this document, which are not defined explicitly herein, are defined in the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA” or “SMA”). The Uniform SMA is attached as Appendix 1 to this document.
- I.1.2. As part of its fifth Default Service Plan (“DSP V”), PECO Energy Company (“Company” or “PECO”) is proposing a competitive bidding process to obtain full requirements supply for the Company to meet a portion of its obligations as Default Service Provider pursuant to Chapter 28 of the Pennsylvania Public Utility Code, 66 Pa. C. S. §§ 2801-2812. This competitive bidding process is consistent with Chapter 28, with P.L. 1592 No. 129 (“Act 129”), with the Pennsylvania Public Utility Commission’s (“Commission” or “PaPUC”) Default Service regulations in its Final Rulemaking Order in Docket No. L-2009-2095604, and the Commission’s Final Policy Statement on Default Service in Docket No. M-2009-2140580.
- I.1.3. PECO currently provides electric generation service to all customers within its service territory who do not select an electric generation supplier (“EGS”). Such customers are “Default Service customers” or “DS Customers”. The competitive bidding process would procure supply for the period beginning June 1, 2021 when PECO’s fourth Default Service Plan (“DSP IV”) expires.
- I.1.4. The competitive bidding process will be conducted through a series of Requests for Proposals (“RFPs”) issued twice yearly. The RFP consists of a total of fourteen (14) documents. This main document is called the “RFP Rules” and it describes generally how the RFP will be conducted. Prior to each solicitation, an “Addendum to the RFP Rules” will be issued and it will provide information relevant to that solicitation such as the schedule and products to be procured. The following documents are appended to, and shall be considered an integral part of, the RFP Rules:

Appendix 0: Addendum to the RFP Rules

Appendix 1: Uniform SMA

Appendix 2: Alternate Guaranty Process

Appendix 3: Illustrative Standard Part 1 Form

Appendix 4: Illustrative Short Part 1 Form

Appendix 5: Chief Financial Officer Attestation

Appendix 6: Officers’ Certificate (for RFP Bidders under an Agency Agreement)

Appendix 7: Illustrative Standard Part 2 Form  
 Appendix 8: Illustrative Short Part 2 Form  
 Appendix 9: Standard Pre-Bid Letter of Credit  
 Appendix 10: Sample Bid Form  
 Appendix 11: Tentative Schedule for Future Solicitations  
 Appendix 12: Confidentiality Statement

I.1.5. DSP V plans for the procurement of full requirements supply for three (3) “Classes” of Default Service customers: the Residential (“RES”) Class, the Small Commercial (“SC”) Class, and the Consolidated Large Commercial and Industrial (“CCI”) Class. Each such Class (or “DS Customer Group”) is a group of specific rate schedules as provided in the following table:

**Table I-1. Customer Classes.**

Class	Customers Included	Rate Schedule	Description
Residential	All residential customers	R	Residence Service
		RH	Residential Heating Service
Small Commercial	Non-residential customers with Peak Load Contribution up to and including 100kW and lighting customers	GS	General Service
		HT	High-Tension Power
		PD	Primary – Distribution Power
		AL	Alley Lighting in City of Philadelphia
		TLCL	Traffic Lighting Constant Load Service
		POL	Private Outdoor Lighting
		SL-C	Smart Lighting Control Lighting Customer Owned Facilities
		SL-E	Street Lighting Customer-Owned Facilities
Consolidated Large Commercial and Industrial	Non-residential customers with Peak Load Contribution greater than 100kW	GS	General Service
		HT	High-Tension Power
		PD	Primary –Distribution Power
		EP	Electric Propulsion

I.1.6. For the RES and SC Classes, the Company will solicit bids for the procurement of full requirements service on a fixed-price basis. For the CCI Class, the Company will solicit bids for the procurement of full requirements service with energy priced to the PJM day-ahead spot market. The Default Service supply (“Default Supply” or “DS Supply”) for a Class is the full requirements electricity supply based on the load of the retail customers in that Class measured and recorded by the Company and settled by PJM. The load of the Default Service customers in a Class is the “Default Load” or “DS Load” of that Class. A supplier selected through the competitive bidding process under DSP V to provide Default

Supply for a particular Class and approved by the Commission becomes a “Default Supplier” or “DS Supplier” for that Class.

- I.1.7. A Default Service customer may choose to begin receiving service from an EGS on the customer’s meter reading date in accordance with the Company’s standard switching requirements as described in the Company’s Electric Generation Supplier Coordination Tariff including, without limitation, prior advance notice to the Company. A customer served by an EGS may return to Default Service on the customer’s meter reading date in accordance with the Company’s standard switching requirements as described in the Company’s Electric Generation Supplier Coordination Tariff including, without limitation, prior advance notice to the Company.
- I.1.8. There are eight (8) “solicitations” or “DS Solicitations” under DSP V that will select electricity suppliers to provide Default Supply for the period June 1, 2021 through May 31, 2025 and for a portion of the Company’s requirements for the RES Class and SC Class for the period beyond June 1, 2025. Each solicitation will be identified by the month and year in which the Bid Date occurs. Solicitations will be held in March and September of each year, starting with a solicitation in March 2021 and ending with a solicitation in September 2024. A typical schedule for a solicitation is provided in Paragraph II.2.1. For each solicitation, the Addendum to the RFP Rules will be updated to include the dates for that solicitation and to refer to the particular products to be procured in that solicitation. The Independent Evaluator and the Company may advise the Commission to postpone or modify the schedule of a solicitation when market conditions are impacted by extraordinary events, such as the advent of war, terrorism, or an act of God.
- I.1.9. Standard rates of Default Service customers for a Class are determined on the basis of the prices determined through this RFP for that Class. As provided in the Commission’s directive dated October 12, 2010 (Docket No. M-2009-2082042), PECO provides a Default Service rate calculation model that translates the prices determined through this RFP into Default Service rates. This calculation model is posted to the PECO website:

<https://www.peco.com/MyAccount/MyService/Pages/ElectricPricetoCompare.aspx>

- I.1.10. Except for customers who participate in PECO's Customer Assistance Program, default service customers in the Residential and Small Commercial Classes can elect a time of use ("TOU") default service rate. Under this option, a customer: 1) pays a higher rate for peak usage (2 PM through 6 PM each week day) compared to the standard default service rate; 2) receives a discount off the standard default service rate during super off-peak hours (12 AM to 6 AM each day); and 3) receives a smaller discount in all other hours.
- I.1.11. The rates for the Residential Class are also determined on the basis of the cost to PECO to acquire the necessary supply through PJM-administered markets to serve 0.8% of the Default Load of the RES Class. For this portion of the RES Class, PECO acquires sufficient Alternative Energy Credits ("AECs") at market prices to satisfy any near-term obligations under the AEPS Act. PECO also receives an annual allocation of capacity and associated energy from the New York Power Authority and uses this allocation to offset the amount of supply needed for the RES Class.
- I.1.12. These RFP Rules may be updated to reflect additional decisions by the Commission, relevant changes in law, or non-material modifications to the processing of Proposals expected to improve potential participation by suppliers. Additionally, the Independent Evaluator and the Company may amend the RFP Rules if necessary to correct typographical errors, cure inconsistencies in the provisions of this RFP, or clarify the intent of the provisions of this RFP.

## **I.2. Products and Bids**

- I.2.1. Default Load for each Class is divided into tranches. A tranche for a Class represents a fixed percentage of the Default Load for that Class. A Default Supplier serving a tranche in a particular Class provides full requirements service for the percentage of that Class' Default Load represented by that one (1) tranche for a specified period.
- I.2.2. The total number of tranches of Default Load is based on that Class' annual Peak Load Contribution ("PLC") on the PECO system in accordance with PJM. The MW-Measure is calculated as the annual PLC for the Default Load of the Class divided by the total number of tranches. This figure is calculated for reference purposes only.

I.2.3. Each Class has “Load Caps”, which are limits on the number of tranches of Default Supply that an RFP Bidder can bid and serve for that Class. The Load Caps ensure that there will be a diversified pool of Default Suppliers for each Class. The Load Caps for a Class are set so that the Default Service customers of that Class have no more than a 50% exposure to any one Default Supplier at any given time. If two or more Default Suppliers are affiliated, the Load Caps will apply jointly to such group of Default Suppliers.

I.2.4. The total number of tranches, Load Caps, and the percentage size of each tranche to be procured under DSP V are shown in the table below. The Total Peak (MW), Default Peak (MW), and MW-Measure of each tranche are updated for each solicitation and will be provided in the Addendum to the RFP Rules.

**Table I-2. Number of Tranches and Size of a Tranche for Default Load.**

Class	Total Tranches	Load Cap	% Size of a Tranche
RES	62	31	1.60%
SC	24	12	4.17%
CCI	8	4	12.50%

I.2.5. The total number of tranches and the tranche size for the SC and CCI Classes are subject to change. The Independent Evaluator and PECO may revise the total number of tranches for a Class if doing so is expected to increase supplier interest. The Independent Evaluator informs Commission Staff of such a revision and announces the revision to suppliers in advance of suppliers presenting their qualifications.

I.2.6. The actual Default Load for the RES, SC, or CCI Class will depend upon many factors including, but not limited to, customer migration to EGSs and weather conditions. The maximum peak load of a Class may be higher or lower than the PLC utilized to determine the MW-Measure of tranches for that Class. Each participant is responsible for evaluating the uncertainties associated with Default Service Load for a particular Class and supply period.

I.2.7. A product for purposes of this RFP is defined by three characteristics: a) the Class to which it contributes Default Supply; b) the length of the supply period; and c) the date at which the supply period begins. For example, the RES-12-Jun21 product represents Default Supply for the RES Class

for the supply period from June 1, 2021 through May 31, 2022. A product name may be abbreviated when the context is clear; for example, RES-12 refers to all products for the Residential Class that are twelve (12) months in duration, regardless of the start date of the supply period.

I.2.8. A Proposal is a response to this RFP for a solicitation pursuant to these RFP Rules. An entity that submits any part of a response to this RFP for a solicitation is an “RFP Bidder”. A Bid for a tranche for any product is a price in dollars per MWh rounded to the nearest cent. An RFP Bidder may submit different Bids for different tranches of a given product.

I.2.9. The table below provides the products that will be procured for each solicitation under DSP V.

**Table I-3. Schedule of Procurement for Products.**

Product	Solicitation							
	March 2021	September 2021	March 2022	September 2022	March 2023	September 2023	March 2024	September 2024
RES-12-Jun21	12	0	0	0	0	0	0	0
RES-24-Jun21	11	0	0	0	0	0	0	0
RES-12-Dec21	0	12	0	0	0	0	0	0
RES-24-Dec21	0	9	0	0	0	0	0	0
RES-12-Jun22	0	0	12	0	0	0	0	0
RES-24-Jun22	0	0	9	0	0	0	0	0
RES-12-Dec22	0	0	0	12	0	0	0	0
RES-24-Dec22	0	0	0	9	0	0	0	0
RES-12-Jun23	0	0	0	0	12	0	0	0
RES-24-Jun23	0	0	0	0	11	0	0	0
RES-12-Dec23	0	0	0	0	0	12	0	0
RES-24-Dec23	0	0	0	0	0	9	0	0
RES-12-Jun24	0	0	0	0	0	0	12	0
RES-24-Jun24	0	0	0	0	0	0	9	0
RES-12-Dec24	0	0	0	0	0	0	0	12
RES-24-Dec24	0	0	0	0	0	0	0	9

Product	Solicitation							
	March 2021	September 2021	March 2022	September 2022	March 2023	September 2023	March 2024	September 2024
SC-12-Jun21	6	0	0	0	0	0	0	0
SC-24-Jun21	3	0	0	0	0	0	0	0
SC-12-Dec21	0	6	0	0	0	0	0	0
SC-24-Dec21	0	3	0	0	0	0	0	0
SC-12-Jun22	0	0	6	0	0	0	0	0
SC-24-Jun22	0	0	3	0	0	0	0	0
SC-12-Dec22	0	0	0	6	0	0	0	0
SC-24-Dec22	0	0	0	3	0	0	0	0
SC-12-Jun23	0	0	0	0	6	0	0	0
SC-24-Jun23	0	0	0	0	3	0	0	0
SC-12-Dec23	0	0	0	0	0	6	0	0
SC-24-Dec23	0	0	0	0	0	3	0	0
SC-12-Jun24	0	0	0	0	0	0	6	0
SC-24-Jun24	0	0	0	0	0	0	3	0
SC-12-Dec24	0	0	0	0	0	0	0	6
SC-24-Dec24	0	0	0	0	0	0	0	3
CCI-12-Jun21	8	0	0	0	0	0	0	0
CCI-12-Jun22	0	0	8	0	0	0	0	0
CCI-12-Jun23	0	0	0	0	8	0	0	0
CCI-12-Jun24	0	0	0	0	0	0	8	0

I.2.10. The Load Caps apply to all products that contribute to Default Supply for a Class at a given point in time. The table below provides the products procured under DSP IV and products to be procured under DSP V that contribute to Default Supply for that Class during that time period and that should be considered in determining whether Load Caps apply to a particular Default Supplier. The products procured under DSP IV are italicized. For example, at any given point in time in the period from June

1, 2022 to November 30, 2022, the Default Supply for the RES Class includes the following products: RES-24-Dec20 and RES-24-Jun21 and RES-12-Dec21 and RES-24-Dec21 and RES-12-Jun22 and RES- 24-Jun22.

Table I-4. Load Caps.

Class	Time Period	Products that contribute to Default Supply during time period	
		From DSP IV	From DSP V
RES	Jun-Nov21	RES-24-Dec19 RES-24-Jun20 RES-12-Dec20 RES-24-Dec20	RES-12-Jun21 RES-24-Jun21
	Dec21-May22	RES-24-Jun20 RES-24-Dec20	RES-12-Jun21 RES-24-Jun21 RES-12-Dec21 RES-24-Dec21
	Jun-Nov22	RES-24-Dec20	RES-24-Jun21 RES-12-Dec21 RES-24-Dec21 RES-12-Jun22 RES-24-Jun22
	Dec22-May23		RES-24-Jun21 RES-24-Dec21 RES-12-Jun22 RES-24-Jun22 RES-12-Dec22 RES-24-Dec22
	Jun-Nov23		RES-24-Dec21 RES-24-Jun22 RES-12-Dec22 RES-24-Dec22 RES-12-Jun23 RES-24-Jun23
	Dec23-May24		RES-24-Jun22 RES-24-Dec22 RES-12-Jun23 RES-24-Jun23 RES-12-Dec23 RES-24-Dec23
	Jun-Nov24		RES-24-Dec22 RES-24-Jun23 RES-12-Dec23 RES-24-Dec23 RES-12-Jun24 RES-24-Jun24
	Dec24-May25		RES-24-Jun23 RES-24-Dec23 RES-12-Jun24 RES-24-Jun24 RES-12-Dec24 RES-24-Dec24
SC	Jun-Nov21	SC-24-Dec19 SC-24-Jun20 SC-12-Dec20 SC-24-Dec20	SC-12-Jun21 SC-24-Jun21

Class	Time Period	Products that contribute to Default Supply during time period	
		From DSP IV	From DSP V
	Dec21-May22	<i>SC-24-Jun20</i> <i>SC-24-Dec20</i>	SC-12-Jun21 SC-24-Jun21 SC-12-Dec21 SC-24-Dec21
	Jun-Nov22	<i>SC-24-Dec20</i>	SC-24-Jun21 SC-12-Dec21 SC-24-Dec21 SC-12-Jun22 SC-24-Jun22
	Dec22-May23		SC-24-Jun21 SC-24-Dec21 SC-12-Jun22 SC-24-Jun22 SC-12-Dec22 SC-24-Dec22
	Jun-Nov23		SC-24-Dec21 SC-24-Jun22 SC-12-Dec22 SC-24-Dec22 SC-12-Jun23 SC-24-Jun23
	Dec23-May24		SC-24-Jun22 SC-24-Dec22 SC-12-Jun23 SC-24-Jun23 SC-12-Dec23 SC-24-Dec23
	Jun-Nov24		SC-24-Dec22 SC-24-Jun23 SC-12-Dec23 SC-24-Dec23 SC-12-Jun24 SC-24-Jun24
	Dec24-May25		SC-24-Jun23 SC-24-Dec23 SC-12-Jun24 SC-24-Jun24 SC-12-Dec24 SC-24-Dec24
CCI	Any		CCI-12

- I.2.11. The Addendum to the RFP Rules for each solicitation will contain a table with the available tranches and Load Caps for that solicitation specifically as well as an explanation of the Load Caps for that solicitation.
- I.2.12. A supplier participating in this RFP bids to provide Default Supply for one or more of the RES, SC, and CCI Classes, and for one or more supply periods. The obligations of the Default Supplier are described

in the “Uniform SMA”. The term Uniform SMA is an abbreviation for PECO Energy Company Pennsylvania Default Service Supplier Master Agreement, which may also be abbreviated by “SMA”, “DS Supplier Master Agreement” or “Supplier Master Agreement”. The main provisions of the Uniform SMA are summarized in Section I.4.

- I.2.13. The contingency plan in the event that PECO is unable to obtain Default Supply for all tranches of a product in a solicitation is as follows. If the product is more than six (6) months in duration, PECO will assume responsibility for the unfilled tranches as a PJM LSE for the first six (6) months of the supply period, acquiring the necessary supply through PJM-administered markets and obtaining sufficient AECs at market prices to satisfy any near-term obligations under the AEPS Act. The unfilled tranches, with a supply period that starts six (6) months later than tranches that were unfilled, will be placed for re-bid in the next solicitation. For products that are six (6) months or shorter, PECO will assume responsibility for the unfilled tranches as an LSE and will acquire the necessary supply through PJM-administered markets for the entire supply period. PECO reserves the right to file an alternate plan with the Commission.
- I.2.14. Any prospective supplier that meets the qualification standards established in these RFP Rules and that is willing to provide prices at which to serve tranches of Default Service Load can respond to this RFP, including any PECO affiliates.

### **I.3. Process**

- I.3.1. Prior to a typical solicitation, a supplier unable to use the Guaranty provided as Appendix G to the Uniform SMA (the “Standard Guaranty”) can request consideration by PECO of an alternate form of guaranty that the supplier uses in its normal course of business. Such request must be received no later than fifteen (15) business days prior to the opening of the Part 1 Window. Within three (3) business days of receipt of such a request, the Independent Evaluator will issue a timetable for receipt of the materials from the supplier and for consideration of these materials by PECO. This timetable will be such that a final decision on whether to accept the supplier’s alternate form of guaranty will be communicated to the supplier prior to the Part 1 Window.

- I.3.2. To qualify for a typical solicitation, suppliers provide materials to respond to the qualification standards described in Article IV. RFP Bidders that did not qualify in a previous solicitation under DSP V use the Standard Part 1 Form available online through the Proposal submission website to respond to these qualification standards. Previously qualified RFP Bidders under DSP V may participate in an abbreviated qualification process by using the Short Part 1 Form available online through the Proposal submission website to respond to these qualification standards. An Illustrative Standard Part 1 Form and an Illustrative Short Part 1 Form are available as Appendix 3 and Appendix 4 respectively to these RFP Rules and are also available electronically on the RFP website: [www.PECOProcurement.com](http://www.PECOProcurement.com). The generic term “Part 1 Form” refers either to the Standard Part 1 Form or the Short Part 1 Form. Part 1 Proposals are submitted during the “Part 1 Window”.
- I.3.3. To become eligible to bid for a solicitation, RFP Bidders that have met the qualification standards of Article IV must respond to the Part 2 Proposal requirements described in Article V of these RFP Rules. RFP Bidders use the Part 2 Form available online through the Proposal submission website to respond to these requirements. RFP Bidders that became eligible to submit Bids in a previous solicitation held under DSP V may participate in an abbreviated process by using the Short Part 2 Form available online through the Proposal submission website to respond to these requirements. The generic term “Part 2 Form” refers either to the Standard Part 2 Form or the Short Part 2 Form. Part 2 Proposals are submitted during the “Part 2 Window”.
- I.3.4. RFP Bidders use the Bid Form provided by the Independent Evaluator to submit their Bids. A sample Bid Form is provided for illustrative purposes as Appendix 10 of these RFP Rules. Each RFP Bidder’s Bids must be received between 10 AM and 12 PM (noon) on the “Bid Date” or “Bid Proposal Due Date”.
- I.3.5. On the first business day after the Bid Date, the Independent Evaluator presents to the Commission the results of the solicitation in a confidential report. The Commission has one (1) business day to consider the report of the Independent Evaluator and to approve or reject each of the winning Bids. If the PaPUC does not act within one (1) business day, the winning Bids are deemed to be approved.
- I.3.6. PECO and each RFP Bidder with Bids that are approved by the Commission proceed to the execution of the Uniform SMA and the Transaction Confirmations within one (1) business day of the

Commission decision. PECO and each such RFP Bidder execute a single Uniform SMA during the course of DSP V. Each solicitation, PECO and each such RFP Bidder execute one (1) Transaction Confirmation for each product for which such RFP Bidder has Bids that are approved by the Commission. Appendix E to the Uniform SMA specifies the AEPS percentage obligations in effect on the Bid Date for the period covered by each Transaction Confirmation.

- I.3.7. Within fifteen (15) days of the close of the solicitation, the Independent Evaluator releases the weighted average price for each product procured as well as the percentage of load represented by each tranche.

#### **I.4. Supplier's Obligations**

- I.4.1. A supplier selected through this RFP to provide Default Supply for a particular Class and approved by the Commission becomes a "Default Supplier" for that Class. A Default Supplier may be providing Default Supply for one or more of the RES, SC, and CCI Classes.
- I.4.2. This Section describes in general terms several provisions of the Uniform SMA. This is a summary only and is subject to and qualified in its entirety by the Uniform SMA provided as Appendix 1 to the RFP Rules. Each RFP Bidder accepts the obligations and associated rights to provide Default Supply as defined in the Uniform SMA as part of its Proposal.
- I.4.3. Default Suppliers for a Class will serve the Company's Default Load for that Class. Default Service for one of these Classes is the Company's full requirements service including, without limitation, energy, capacity, transmission (excluding Network Integration Transmission Service), ancillary services, AECs for compliance with the AEPS Act, transmission and distribution losses, congestion management costs, and such other services or products that are required to serve the specified percentage of Default Load for that Class (except for distribution service). Default Load for the RES Class is reduced by a fractional percentage of committed energy and capacity obtained under contract with Allegheny Electric Cooperative, Inc. for supply from the New York Power Authority.
- I.4.4. Default Suppliers are also responsible for providing AECs during the term of the Uniform SMA necessary for PECO to meet its obligations under the AEPS Act, as well as other Orders, regulations and rules that may be promulgated by the PaPUC with respect to the AEPS. Default Suppliers will be

required to participate in the PJM Generation Attribute Tracking System (“PJM-EIS GATS”) to transfer AECs to PECO. The Company will provide an estimate of the Default Supplier’s AEPS obligation following the second quarter of the AEPS Reporting Period and the Default Supplier will be required to transfer AECs to PECO in the amount of the estimate within forty-five (45) calendar days of the date of that estimate. The Company will provide a final statement to the Default Supplier within thirty (30) calendar days of the end of AEPS Reporting Period and the Default Supplier will be required to transfer AECs in the amount of the final statement within forty-five (45) calendar days after the date of the final statement.

- I.4.5. A Default Supplier that fails to provide sufficient AECs for a tranche will be required to pay any AEPS penalties, costs, charges, etc. assessed against the Default Supplier and/or the Company associated with the Default Supplier’s non-performance with AEPS requirements.
- I.4.6. PECO has obtained AECs from separate AEPS procurement(s) approved by the Commission and PECO will reduce the amount of AECs that Default Suppliers must provide. Prior to each solicitation, PECO will inform RFP Bidders of the amounts of AECs allocated for this purpose for each tranche of each product for which Default Supply is procured in that solicitation.
- I.4.7. A Default Supplier for a product will be paid a supplier-specific price for each MWh of electric load served as specified in the Transaction Confirmation for that product. The supplier-specific price for a Default Supplier for a product will be the average of approved Bids for that Default Supplier and for that product. The PJM day-ahead price for energy and the Reliability Pricing Model (“RPM”) price for capacity are also paid to a Default Supplier providing full requirements service on a spot-price basis.
- I.4.8. The Default Supplier will specify in the Transaction Confirmation the price of each type of AECs included in its supplier-specific price.
- I.4.9. PECO will transfer or assign Auction Revenue Rights (“ARRs”) to each Default Supplier in proportion to the percentage of Default Load that it serves. A Default Supplier will participate in the PJM process for the nominations of ARR to the extent that the supply period under the Transaction Confirmation is inclusive of the PJM Planning Period for which the ARR are nominated; otherwise, PECO will participate in the PJM ARR nomination process.

## ARTICLE II. Information and Schedule

### II.1. RFP Website

II.1.1. PECO and its Independent Evaluator have established an RFP website that is the main source of information. RFP Bidders and other stakeholders can visit this RFP website to obtain information and documents related to this RFP. The RFP website address is [www.PECOProcurement.com](http://www.PECOProcurement.com).

II.1.2. The RFP website contains the sections described below. New sections may be added as necessary to assist RFP Bidders.

Home: This section provides announcements of interest to RFP Bidders and to other interested parties, an outline of the RFP process, a search function, and a summary of important dates.

Background: These sections provide background information on the regulatory process, the results of previous solicitations and archives of documents. FAQs and announcements from previous solicitations are provided for reference purposes only.

Supplier Information: This section provides documents regarding the RFP as well as frequently asked questions (“FAQs”), RFP-related announcements, and NITS rate information. All stakeholders, including RFP Bidders, are able to ask questions via a web form. The Independent Evaluator provides an answer to the question via email to the questioner, and a copy of the question and answer is posted so that all stakeholders and RFP Bidders have access to the same information. Aspects of the question and/or answer that might identify the party asking the question are removed before posting to the extent practical.

Data Room: This section provides historical data to assist prospective suppliers. Links to the PJM website and related documents can also be found in this section.

Calendar: This section provides the timeline for the main events in the current and upcoming solicitations.

Contact Us: This section gives any stakeholder an opportunity to register its email address to receive updates and announcements regarding this RFP. The section also provides the contact information for the Independent Evaluator, an electronic web form to submit questions to the Independent Evaluator, and a web form for prospective suppliers to register for bidder information sessions.

## II.2. RFP Schedule

II.2.1. Each solicitation will follow the order of events in the general schedule provided below.

**Table II-1. General Schedule.**

<b>Event</b>	<b>Timing</b>
Deadline to request consideration of an alternate form of guaranty	Day -15
Bidder Information Webcast	Day -7
Decision on alternate guaranty forms (if any)	Day -2
Part 1 Window Opens	Day 0
Part 1 Date (Part 1 Window Closes)	Day 4
Part 1 Notification Date	Day 6
Approved modifications to Standard Guaranty posted	Day 7
Part 2 Proposal Window Opens	Day 7
Bid Submission training	Day 10
Part 2 Date (Part 2 Window Closes)	Day 11
Part 2 Notification Date	Day 13
Bid Date (Bids are Due)	Day 14
IE provides its report to the PaPUC	Day 15
PaPUC Decision (close of business)	No later than Day 16
<i>If Bids are approved by the PaPUC:</i>	
PECO and each winning RFP Bidder proceed to execution of the Uniform SMA and each Transaction Confirmation	Within three business days of the Bid Date

II.2.2. A total of eight (8) solicitations are planned under DSP V. The Bid Dates for each of the solicitations are provided below.

**Table II-2. Bid Dates.**

<b>Solicitation</b>	<b>Bid Dates</b>
March 2021	Tuesday, March 9, 2021
September 2021	Tuesday, September 28, 2021
March 2022	Tuesday, March 15, 2022
September 2022	Tuesday, September 27, 2022
March 2023	Tuesday, March 14, 2023
September 2023	Tuesday, September 26, 2023
March 2024	Tuesday, March 12, 2024
September 2024	Tuesday, September 24, 2024

II.2.3. The date for each event in each future solicitation is provided in the Tentative Schedule for Future Solicitations attached as Appendix 11 to these RFP Rules. The dates for each event in the current solicitation is provided in the Addendum to the RFP Rules. The dates follow the order of events and the number of days between events in the general schedule above except as needed to accommodate

holidays. The schedule for a solicitation may be amended if circumstances warrant. Any such amendments will be posted to the RFP website.

- II.2.4. Specific times for submission of materials for the Part 1 Proposals, the Part 2 Proposals, and the Bids are provided elsewhere in this RFP. All such times are Eastern Prevailing Time (“EPT”) unless specifically noted.

### ARTICLE III. General Requirements for Proposals

- III.1.1. An entity that submits any part of a response to this RFP for a solicitation is an “RFP Bidder”. An RFP Bidder can submit at most one Part 1 Proposal and one Part 2 Proposal for each solicitation. An RFP Bidder that qualifies for a solicitation by submitting a Part 1 Proposal that fulfills all requirements described in Article IV and that submits a Part 2 Proposal that fulfills all the requirements described in Article V is eligible to submit Bids in that solicitation. Aside from submission of financial guarantees to support its Bids, all materials for the Part 1 Proposals and all Part 2 Proposals are submitted to the Independent Evaluator online through the online Proposal submission website or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) in accordance with the instructions provided in Article VII.
- III.1.2. The submission of a Part 1 Proposal or a Part 2 Proposal to the Independent Evaluator constitutes the RFP Bidder’s acknowledgement and acceptance of all the terms and conditions of this RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.
- III.1.3. Each solicitation will have a Part 1 Window during which Part 1 Proposals may be submitted. The last day of the Part 1 Window is the “Part 1 Date”. The requirements of the Part 1 Proposal are described in Article IV. “Previously qualified RFP Bidder” means an RFP Bidder that met the qualification standards in a previous solicitation under DSP V by submitting a Part 1 Proposal that fulfilled all the requirements of Article IV. A previously qualified RFP Bidder may participate in an abbreviated Part 1 Proposal process. A supplier selected through the competitive bidding process under DSP V to provide Default Supply for a particular Class and approved by the Commission becomes a Default Supplier for that Class.
- III.1.4. The exclusive method for an RFP Bidder to complete the Part 1 Proposal is to submit the online Part 1 Form as well as provide Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents (supporting documents, draft Letter of Credit or draft Standard Guaranty, and Inserts) may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

- III.1.5. Each RFP Bidder must comply with all Part 1 Proposal requirements described in Article IV. Section IV.1 describes the contact information and representations required. Section IV.2 describes financial requirements including requirements that apply to RFP Bidders relying on the financial standing of an RFP Guarantor and additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section IV.3 describes the process by which RFP Bidders may propose modifications to the credit instruments (the Standard Pre-Bid Letter of Credit, the Standard Post-Bid Letter of Credit, and the Standard Guaranty) and describes the information that an RFP Bidder is asked to provide for the Independent Evaluator to prepare the Uniform SMA documents should the Independent Evaluator identify one or more of the RFP Bidder's Bids to the Commission as winning Bids. Section IV.4 describes the representations required. Section IV.5 lists additional requirements applicable only to RFP Bidders that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia ("Foreign RFP Bidders"), or to RFP Bidders that rely on the financial standing of an entity that has not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia ("Foreign Entity"). Each of the Sections of Article IV explains the abbreviated Part 1 Proposal process in which previously qualified RFP Bidders may participate.
- III.1.6. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV through a Part 1 Notification that the Independent Evaluator sends to the RFP Bidder by the Part 1 Notification Date. The Independent Evaluator transmits within two (2) business days of the Part 1 Notification Date to each RFP Bidder that has a successful Part 1 Proposal a number of documents and instructions, called the "Part 1 Materials".
- III.1.7. All information provided and certifications made in the Part 1 Proposal must remain valid and remain in full force and effect until six (6) business days after the Bid Date. Regardless of the reason, if any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid, it is the sole responsibility of the RFP Bidder to notify the Independent Evaluator as soon as practicable. Failing to do so may result in disqualification of the RFP Bidder and of its Proposal. The Independent Evaluator reserves the right to change the assessment of an RFP Bidder's qualifications based on any revised information provided by the RFP Bidder.

- III.1.8. Each solicitation will have a Part 2 Window during which Part 2 Proposals may be submitted. The last day of the Part 2 Window is the “Part 2 Date”. RFP Bidders also have the option to submit the representations and certifications required by the online Part 2 Form during the Part 1 Window for early processing. The requirements of the Part 2 Proposal are described in Article V. “Previously eligible RFP Bidder” means an RFP Bidder that became eligible to submit Bids in a previous solicitation held under DSP V by submitting a Part 1 Proposal that fulfilled all the requirements of Article IV and a Part 2 Proposal that fulfilled all the requirements of Article V. A previously eligible RFP Bidder may participate in an abbreviated Part 2 Proposal process.
- III.1.9. The exclusive method for an RFP Bidder to complete the Part 2 Proposal is to submit the online Part 2 Form as well as provide an executed Pre-Bid Letter of Credit. Any documents required by the Part 2 Proposal may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).
- III.1.10. Each RFP Bidder must comply with all Part 2 Proposal requirements described in Article V. Section V.1 describes the contact information and representations required by the Part 2 Proposal. Section V.2 describes the Pre-Bid Letter of Credit required to support the RFP Bidder’s Bids. Section V.3 lists additional requirements for RFP Bidders relying on the financial standing of an RFP Guarantor. Section V.4 lists additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section V.5 lists additional requirements applicable only to Foreign RFP Bidders or to RFP Bidders that rely on the financial standing of a Foreign Entity. Each of the Sections of Article V explains the abbreviated Part 2 Proposal process in which previously eligible RFP Bidders may participate.
- III.1.11. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV and all requirements of Article V so that it is eligible to submit Bids through a Part 2 Notification. The Independent Evaluator sends the Part 2 Notification to the RFP Bidder by the Part 2 Notification Date.
- III.1.12. All information provided and certifications made in the Part 2 Proposal must remain valid and remain in full force and effect until six (6) business days after the Bid Date. Regardless of the reason, if any information provided in the Part 2 Proposal changes or any previous certification fails to remain

valid, it is the sole responsibility of the RFP Bidder to notify the Independent Evaluator as soon as practicable. Failing to do so may result in disqualification of the RFP Bidder and of its Proposal. The Independent Evaluator reserves the right to change the assessment of an RFP Bidder's eligibility to submit Bids based on any revised information provided by the RFP Bidder.

- III.1.13. For a given solicitation, all representations and certifications required by this RFP must be made by a single individual who serves as Officer of the RFP Bidder. An Officer of the RFP Bidder is an individual authorized to undertake contracts (including the Uniform SMA) and bind that RFP Bidder. As a requirement of the Part 1 Proposal, the RFP Bidder must name an individual who serves as Officer of the RFP Bidder and must provide full contact information for this individual. The Officer of the RFP Bidder may sign all representations and certifications of the Part 1 Form and Part 2 Form at one time and RFP Bidders have the option to submit certifications required by the online Part 2 Form during the Part 1 Window for early processing.
- III.1.14. The Officer of the RFP Bidder named in the Part 1 Proposal will sign, or will nominate another authorized individual to execute the Uniform SMA as well as any Transaction Confirmations if any of the RFP Bidder's Bids are approved by the Commission.
- III.1.15. Each RFP Bidder must comply with the instructions for the submission of Bids provided with its Part 1 Notification. Article VI describes in general terms the requirements for the submission of Bids.
- III.1.16. Proposals that do not adhere to the terms and conditions of this RFP, or that do not fulfill all requirements of Article IV, Article V, and Article VI of this RFP, or that are not submitted in accordance with the process of Article VII or in accordance with the instructions provided by the Independent Evaluator in an addendum to these RFP Rules, will not be considered.
- III.1.17. The Independent Evaluator will send to each RFP Bidder that submitted a successful Part 1 Proposal in a previous solicitation under DSP V an email confirming its status as a previously qualified RFP Bidder. Such RFP Bidder may participate in an abbreviated Part 1 Proposal process. The Independent Evaluator will send to each RFP Bidder that submitted a successful Part 1 Proposal and a successful Part 2 Proposal in a previous solicitation under DSP V an email confirming its status as a previously eligible RFP Bidder. Such RFP Bidder may participate in an abbreviated Part 1 Proposal process and an abbreviated Part 2 Proposal process.

III.1.18. The RFP Bidder, at its own cost and expense, shall defend PECO, and the Independent Evaluator and their subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders, executors, administrators, successors and assigns, other than entities that are also RFP Bidders, against any and all manner of past, present, or future claims, demands, disputes, controversies, complaints, suits, actions, proceedings, or allegations of any kind which in any manner relate to, arise out of, or result from any false statement in the Proposal or breach of any covenant by the RFP Bidder set forth herein. The RFP Bidder shall indemnify and hold harmless PECO, the Independent Evaluator, their parent companies, subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders and agents, as well as the heirs, executors, administrators, successors and assigns, other than entities that are RFP Bidders, against any and all liens, judgments, liabilities, losses, injuries, damages, fees, fines, penalties, costs or expenses which in any manner relate to, arise out of, or result from any false statement or misrepresentation in the Proposal or breach of any warranty by the RFP Bidder as set forth herein.

## ARTICLE IV. Part 1 Proposal Requirements

Previously qualified RFP Bidders under DSP V may participate in an abbreviated qualification process by using the Short Part 1 Form available online through the Proposal submission website to respond to these qualification standards.

### IV.1. Contact Information and Representations

IV.1.1. Contact Information for the RFP Bidder. Each RFP Bidder must provide the RFP Bidder's legal name and address.

- An RFP Bidder that has not previously qualified must submit this contact information in its Part 1 Proposal.
- A previously qualified RFP Bidder either must confirm that the previously provided contact information remains valid or must update this information. If the RFP Bidder updates the RFP Bidder's legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the RFP Bidder, through a merger for example, the RFP Bidder may not participate in the abbreviated Part 1 Proposal or Part 2 Proposal process.

IV.1.2. Officer of the RFP Bidder. The Officer of the RFP Bidder must be an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder. The Officer of the RFP Bidder whose contact information is provided in the Part 1 Proposal must make all representations required by the online Part 1 Form. Should the RFP Bidder submit a Part 2 Proposal, the individual named as Officer of the RFP Bidder in the Part 1 Proposal must make the representations required by the online Part 2 Form. The Officer of the RFP Bidder may sign all representations and certifications of the online Part 1 Form and online Part 2 Form at one time and RFP Bidders have the option to submit the certifications required by the online Part 2 Form during the Part 1 Window for early processing.

- If an RFP Bidder has not previously qualified under DSP V, or if the individual who served as Officer of the RFP Bidder for a previously qualified RFP Bidder is not available in this solicitation, then the RFP Bidder must provide the name, title, and full contact information

(address, phone number, email address) of the individual who will serve as Officer of the RFP Bidder.

- If an RFP Bidder has previously qualified and the individual who served as Officer of the RFP Bidder in a previous solicitation is available for this solicitation, the RFP Bidder either must confirm that the previously submitted contact information for the Officer of the RFP Bidder remains valid or must update this information.

IV.1.3. Representative of the RFP Bidder. The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder. The Independent Evaluator contacts the Representative if the Independent Evaluator requires additional information regarding the RFP Bidder's Proposal. The Independent Evaluator sends correspondence related to the solicitation to the Representative, including confidential information required to submit Bids on the Bid Date.

- If an RFP Bidder has not previously qualified, the Officer of the RFP Bidder must designate an individual to serve as Representative of the RFP Bidder by completing the Representative Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Representative Insert by upload to the online Part 1 Form or by email at pecoprocurement@nera.com. The RFP Bidder must provide the name, title, and full contact information (address, phone number, email address) of the individual named by the Officer of the RFP Bidder who will serve as Representative of the RFP Bidder.
- A previously qualified RFP Bidder either must confirm that the previously submitted contact information for the Representative of the RFP Bidder remains valid or must update this information. The Officer of the RFP Bidder may, at his or her option, name another individual to serve as Representative of the RFP Bidder by completing the Representative Insert. The RFP Bidder provides the Representative Insert by upload to the online Part 1 Form or by email at pecoprocurement@nera.com.

IV.1.4. Nominees. The Independent Evaluator provides notifications to the RFP Bidder by email and provides documents needed for participation by secure file transfer. Whether or not an RFP Bidder has previously qualified, the RFP Bidder may designate up to three (3) authorized individuals to

receive communications from the Independent Evaluator in addition to the Representative of the RFP Bidder. Each such authorized individual is a Nominee. Either the Representative of the RFP Bidder or the Officer of the RFP Bidder may complete the Nominee Insert prepared for this purpose. The Nominee Insert requires that the following be provided for each authorized individual who will serve as Nominee: the individual's name and title, phone number, and email address. The RFP Bidder provides the Nominee Insert by upload to the online Part 1 Form or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). The Representative of the RFP Bidder or the Officer of the RFP Bidder may designate such other authorized individuals at any time during the solicitation using the Nominee Insert. The RFP Bidder is not required to do so in the Part 1 Proposal provided, however, that the total number of Nominees not exceed three (3) individuals at any one time.

- IV.1.5. All information required by this Section IV.1 must be provided exclusively by completing Section 1 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts and documents must be submitted by upload to the online Part 1 Form or by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

## **IV.2. Financial Requirements and Agency Agreements**

- IV.2.1. Agency Agreement. The RFP Bidder must state whether it is submitting a Proposal under an agency authorization ("Agency Agreement"). If an RFP Bidder is submitting a Proposal under an Agency Agreement, the RFP Bidder must identify a Principal as the entity on whose financial standing the RFP Bidder relies, as further explained in the next paragraph.

- IV.2.2. Election of Entity on Whose Financial Standing the RFP Bidder is relying. For purposes of submitting to the requirements of this section, each RFP Bidder elects: (a) to rely on its own financial standing; or: (b) to rely on the financial standing of an "RFP Guarantor"; or: (c) to rely on the financial standing of a Principal. An RFP Bidder submitting a Proposal under an Agency Agreement must select option (c) and option (c) may only be selected by an RFP Bidder submitting a Proposal under an Agency Agreement.

- An RFP Bidder that has not previously qualified must clearly select one of these options.

- A previously qualified RFP Bidder must confirm that the identity of the entity on whose financial standing the RFP Bidder last relied remains valid in order to participate in the abbreviated Part 1 Proposal process. If such RFP Bidder changes the identity of the entity on whose financial standing the RFP Bidder relies, the RFP Bidder must use the Standard Part 1 Form and submit all information required for the Part 1 Proposal as if the RFP Bidder had not previously qualified.
- A previously qualified RFP Bidder must either confirm that the previously provided legal name of the entity on whose financial standing the RFP Bidder relies remain valid or the RFP Bidder must update this information. If the RFP Bidder updates the entity's legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the entity, through a merger for example, the RFP Bidder must use the Standard Part 1 Form to present its Part 1 Proposal.

IV.2.3. Information Required from RFP Bidders Relying on Their Own Financial Standing. The requirements of this paragraph only apply to an RFP Bidder that selects option (a) in response to Paragraph IV.2.2.

- Whether or not the RFP Bidder has previously qualified, an RFP Bidder must submit available financial information for the RFP Bidder by upload to the online Part 1 Form or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). If available, the RFP Bidder must submit its most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent Securities and Exchange Commission ("SEC") Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit its most recent quarterly, monthly or bi-annual financial information accompanied by an attestation by the RFP Bidder's Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP

Rules. If such financial information is unavailable for the RFP Bidder, the RFP Bidder must clearly state this fact.

- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Bidder from the following rating agencies: S&P Global Ratings (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”), and Fitch Ratings (“Fitch”). If no ratings are available for the entity, the RFP Bidder must clearly state this fact. A previously qualified RFP Bidder must either confirm that the previously provided credit ratings remain valid or the RFP Bidder must update this information.

IV.2.4. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Guarantor. The requirements of this paragraph only apply to an RFP Bidder that selects option (b) in response to Paragraph IV.2.2.

- Financial information must be available for the RFP Guarantor.
- If not previously qualified, the RFP Bidder must provide the RFP Guarantor’s legal name and address. A previously qualified RFP Bidder must either confirm that the previously provided legal name and address of the RFP Guarantor remain valid or the RFP Bidder must update this information. If the RFP Bidder updates the RFP Guarantor’s legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the RFP Guarantor, through a merger for example, the RFP Bidder must use the Standard Part 1 Form to present its Part 1 Proposal.
- An RFP Bidder must submit by upload to the online Part 1 Form or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com), if available, the RFP Guarantor’s most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent SEC Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit the RFP Guarantor’s most recent quarterly, monthly, or bi-annual financial information accompanied by an attestation by the entity’s Chief Financial Officer (or similar position) that the information contained in the financial

statements fairly presents in all material respects the financial condition and results of the operations of the entity. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP Rules.

- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Guarantor from the following rating agencies: S&P, Moody's, and Fitch. Such ratings must be available for the RFP Guarantor. A previously qualified RFP Bidder must confirm that the credit ratings last submitted for the RFP Guarantor remain valid or the RFP Bidder must update this information with respect to any or all of the credit ratings. The Independent Evaluator uses the information submitted by such RFP Bidder in the most recent solicitation under this RFP for which the RFP Bidder submitted a successful Part 1 Proposal. If the RFP Bidder updates the information, the RFP Bidder must state the name of the rating agency that has updated its credit rating, the updated credit rating, and the type of rating. The Independent Evaluator may also inquire specifically about one or more credit ratings on file for the entity on whose financial standing the RFP Bidder and ask the RFP Bidder to confirm that no updates have been issued.

IV.2.5. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Principal. The requirements of this paragraph only apply to an RFP Bidder submitting a Proposal under an Agency Agreement that selects option (c) in response to Paragraph IV.2.2.

- If not previously qualified, the RFP Bidder must provide each Principal's legal name and address. A previously qualified RFP Bidder must either confirm that the previously provided legal name and address of each Principal remain valid or the RFP Bidder must update this information.
- If not previously qualified, the RFP Bidder must provide a copy of the Agency Agreement by upload to the online Part 1 Form or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). If previously qualified, the RFP Bidder must either confirm that the previously provided document remains valid or the RFP Bidder must update this information.

- If the RFP Bidder is acting as an agent for multiple Principals, the RFP Bidder must identify the Principal with the lowest credit rating as the entity on whose financial standing the RFP Bidder relies. If several Principals have the same lowest credit rating, the RFP Bidder must identify the Principal that also has the lowest tangible net worth as the entity on whose financial standing the RFP Bidder relies. This Principal is referred to as the “RFP Principal”. If there is a single Principal, the single Principal is the “RFP Principal”. Financial information must be available for the RFP Principal.
- An RFP Bidder must submit by upload to the online Part 1 Form or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com), if available, the RFP Principal’s most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent SEC Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit the RFP Principal’s most recent quarterly, monthly, or bi-annual financial information accompanied by an attestation by the entity’s Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Principal. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP Rules.
- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Principal from the following rating agencies: S&P, Moody’s, and Fitch. Such ratings must be available from at least two rating agencies for the RFP Principal. A previously qualified RFP Bidder must confirm that the credit ratings last submitted for the RFP Principal remain valid or the RFP Bidder must update this information with respect to any or all of the credit ratings. The Independent Evaluator uses the information submitted by such RFP Bidder in the most recent solicitation under this RFP for which the RFP Bidder submitted a successful Part 1 Proposal. If the RFP Bidder updates the information, the RFP Bidder must state the name of the rating agency that has updated its credit rating, the updated credit rating, and the type of

rating. The Independent Evaluator may also inquire specifically about one or more credit ratings on file for the RFP Principal and ask the RFP Bidder to confirm that no updates have been issued.

- Whether or not an RFP Bidder has previously qualified, the Officer of the RFP Bidder must: (i) certify that the Officer of the RFP Bidder has the authority to bind the Principal(s); and (ii) acknowledge that an Officers' Certificate, signed by an officer of each Principal and substantially in the form of Appendix 6 to these RFP Rules, must be provided with the Part 2 Proposal. The Officer of the RFP Bidder makes this certification and this acknowledgment by completing the P1 Agency Certifications Insert.
- Whether or not the RFP Bidder has previously qualified, the RFP Bidder may, but is not required to, submit a draft Officers' Certificate for evaluation. If an RFP Bidder submits a draft Officers' Certificate for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the Officers' Certificate, along with the Part 1 Notification. This Officers' Certificate will state that: (i) the Agency Agreement submitted in response to this RFP is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to six (6) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement, contemplated by the RFP Bidder, or contemplated by the Principal(s) to the RFP Bidder's knowledge; (iv) each individual who has executed the Officers' Certificate and the Agency Agreement is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the RFP Bidder is authorized to execute the Uniform SMA as well as any Transaction Confirmation(s) pursuant to the Uniform SMA on behalf of the Principal(s).

IV.2.6. All information required by this Section IV.2 must be provided exclusively by completing Section 2 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII.

Inserts and documents must be submitted by upload to the online Part 1 Form or by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

### IV.3. Credit Instruments and Uniform SMA

IV.3.1. Standard Pre-Bid Letter of Credit. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Pre-Bid Letter of Credit.

- Whether or not the RFP Bidder has previously qualified, an RFP Bidder must, in its Part 2 Proposal, submit a Pre-Bid Letter of Credit in an amount of at least: \$250,000 per tranche bid on products of the RES and SC Classes; and \$125,000 per tranche bid on a CCI product (if applicable). This Pre-Bid Letter of Credit must be in the form of the Standard Pre-Bid Letter of Credit provided as Appendix 9 to these RFP Rules or must incorporate only modifications that have been approved by PECO and provided to RFP Bidders by the Independent Evaluator.
- As part of the Part 1 Proposal, an RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Pre-Bid Letter of Credit by submitting a Draft Pre-Bid Letter of Credit substantially in the form of the Standard Pre-Bid Letter of Credit indicating clearly any and all modifications to the Standard Pre-Bid Letter of Credit. The Draft Pre-Bid Letter of Credit must be submitted in Microsoft Word with tracked changes by upload to the online Part 1 Form or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated.
- An RFP Bidder must confirm whether the Draft Pre-Bid Letter of Credit submitted as part of the Part 1 Proposal contains the same requested modifications as a Draft Pre-Bid Letter of Credit submitted in a prior solicitation. If the Draft Pre-Bid Letter of Credit submitted does contain the same requested modifications as a prior submittal, the Independent Evaluator will provide the RFP Bidder with PECO's assessment of the prior submittal upon request and the Draft Pre-Bid Letter of Credit will not be reviewed again.

- All approved modifications to the Standard Pre-Bid Letter of Credit will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly state that fact.

IV.3.2. Standard Post-Bid Letter of Credit. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Post-Bid Letter of Credit.

- The Uniform SMA includes, as Appendix F, Letter of Credit Documentation that may be used to post security under the terms of the Uniform SMA. This Paragraph refers to this letter of credit as the “Standard Post-Bid Letter of Credit”.
- Whether or not the RFP Bidder has previously qualified, an RFP Bidder may, in its Part 1 Proposal, request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Post-Bid Letter of Credit by submitting a Draft Post-Bid Letter of Credit substantially in the form of the Standard Post-Bid Letter of Credit indicating clearly any and all modifications to the Standard Post-Bid Letter of Credit. The Draft Post-Bid Letter of Credit must be submitted in Microsoft Word by upload to the online Part 1 Form or by email at pecoprocurement@nera.com. A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated.
- An RFP Bidder must confirm whether the Draft Post-Bid Letter of Credit submitted as part of the Part 1 Proposal contains the same requested modifications as a Draft Post-Bid Letter of Credit submitted in a prior solicitation. If the Draft Post-Bid Letter of Credit submitted does contain the same requested modifications as a prior submittal, the Independent Evaluator will provide the RFP Bidder with PECO’s assessment of the prior submittal upon request and the Draft Post-Bid Letter of Credit will not be reviewed again.

- All approved modifications to the Standard Post-Bid Letter of Credit will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly indicate that fact.

IV.3.3. Standard Guaranty. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Standard Guaranty.

- The Uniform SMA includes, as Appendix G, Guaranty Documentation that may be used to provide a financial guaranty under the terms of the Uniform SMA. This Paragraph refers to this financial guaranty as the “Standard Guaranty”.
- Whether or not the RFP Bidder has previously qualified, an RFP Bidder may, in its Part 1 Proposal, request modifications to the Standard Guaranty that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Guaranty by submitting a Draft Guaranty substantially in the form of the Standard Guaranty indicating clearly any and all modifications to the Standard Guaranty. The Draft Guaranty must be submitted in Microsoft Word by upload to the online Part 1 Form or by email at pecoprocurement@nera.com. A Draft Guaranty that is not substantially in the form of the Standard Guaranty will not be considered or evaluated.
- An RFP Bidder must confirm whether the Draft Guaranty submitted as part of the Part 1 Proposal contains the same requested modifications as a Draft Guaranty submitted in a prior solicitation. If the Draft Guaranty submitted does contain the same requested modifications as a prior submittal, the Independent Evaluator will provide the RFP Bidder with PECO’s assessment of the prior submittal upon request and the Draft Guaranty will not be reviewed again.
- All approved modifications to the Standard Guaranty will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly indicate that fact.

IV.3.4. Information to Prepare the Uniform SMA. This paragraph applies only to RFP Bidders that are not Default Suppliers. Such RFP Bidder is asked, in its Part 1 Proposal, to provide all information needed by the Independent Evaluator to prepare for execution the Uniform SMA and its Exhibits by completing the Uniform SMA Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Uniform SMA Insert by upload to the online Part 1 Form or by email at pecoprocedurement@nera.com. If the Independent Evaluator identifies one or more of such RFP Bidder's Bids to the Commission as winning Bids, the Independent Evaluator will use this information to prepare the Uniform SMA and its Exhibits for execution.

- Such RFP Bidder is asked: (i) to specify any elections to be made in the Uniform SMA; and (ii) to provide the contact information required to prepare the Form of Notice, which is included as Exhibit 2 to the Uniform SMA; and (iii) to provide any additional information required to prepare the Uniform SMA and its Exhibits.
- If such RFP Bidder fails to submit these elections and information with the Part 1 Proposal, the Officer of the RFP Bidder must acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder will be required to provide: (i) any elections to be made in the Uniform SMA; and (ii) the contact information to prepare the Form of Notice; and (iii) any additional information required to prepare the Uniform SMA and its Exhibits; by 12 PM (noon) EPT on the day after such notification is received. The Officer of the RFP Bidder provides the required acknowledgement by completing the Delay (SMA) Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Delay (SMA) Insert by upload to the online Part 1 Form or by email at pecoprocedurement@nera.com.

IV.3.5. All information required by this Section IV.3 must be provided exclusively by completing Section 3 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII.

Inserts and documents must be submitted by upload to the online Part 1 Form or by email to the Independent Evaluator at pecoprocedurement@nera.com.

#### **IV.4. Representations**

IV.4.1. Representations by the Officer of the RFP Bidder. Whether or not an RFP Bidder has previously qualified, the Officer of the RFP must certify that:

- he/she is an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder;
- all information provided in the Part 1 Proposal is true and accurate to the best of the knowledge and belief of the Officer of the RFP Bidder;
- if, for any reason or due to any circumstance, any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, the Officer of the RFP Bidder or the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date;
- the Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date; and
- the RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP. An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (A) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the online Part 1 Form or by email at pecoprocedurement@nera.com.

IV.4.2. Additional Representations for RFP Bidders that have not previously qualified. If an RFP Bidder has not previously qualified, the Officer of the RFP Bidder must certify that:

- he/she understands the terms of the Uniform SMA, that the RFP Bidder accepts all of the terms of the Uniform SMA without modifications, and that the RFP Bidder will execute the Uniform SMA and the Transaction Confirmation(s) for all Bids approved by the Commission;
- the submission of the Part 1 Proposal constitutes the RFP Bidder's acknowledgement and acceptance of all the terms and conditions of the RFP, regardless of the outcome of the solicitation or the outcome of such Proposal;
- the RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA;
- the RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent; and
- if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, all information required for the preparation of the Uniform SMA and its Exhibits must be submitted and complete by 12 PM (noon) EPT on the day after such notification is received;

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (B) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the online Part 1 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

IV.4.3. Additional Representations for RFP Bidders have previously qualified but that are not Default Suppliers. If an RFP Bidder has previously qualified but is not a Default Supplier, the Officer of the RFP Bidder must certify that:

- The RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA;

- The RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent; and
- if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, all information required for the preparation of the Uniform SMA and its Exhibits must be submitted and complete by 12 PM (noon) EPT on the day after such notification is received.

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (C) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the online Part 1 Form or by email at pecoprocurement@nera.com.

IV.4.4. PJM Load Serving Entity. The requirements of this paragraph apply only to RFP Bidders that are not previously qualified RFP Bidders. A Default Supplier must be an LSE by the start of the supply period.

- An RFP Bidder that has not previously qualified must, in its Part 1 Proposal, either: (i) demonstrate that the RFP Bidder is an LSE in PJM by providing the signature page of the Reliability Assurance Agreement ("RAA"); or (ii) certify that the RFP Bidder has investigated the requirements to become an LSE in PJM and that there exist no impediments for the RFP Bidder to become an LSE by the start of the supply period and to remain an LSE for the duration of the supply period.
- An RFP Bidder that provides the signature page of the RAA does so by upload to the online Part 1 Form or by email at pecoprocurement@nera.com.
- An RFP Bidder that submits the certification above does so by completing the LSE Representation Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the LSE Representation Insert by upload to the online Part 1 Form or by email at pecoprocurement@nera.com.

IV.4.5. All information required by this Section IV.4 must be provided exclusively by completing Section 4 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII.

Inserts and documents must be submitted by upload to the online Part 1 Form or sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

#### **IV.5. Foreign RFP Bidders and Foreign Entities**

IV.5.1. The requirements of this Section apply only to: (1) Foreign RFP Bidders; or (2) RFP Bidders that rely on the financial standing of a Foreign Entity as RFP Guarantor; or RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal. Other RFP Bidders are not subject to the requirements of this Section.

IV.5.2. Additional requirements for Foreign RFP Bidders. The requirements of this Paragraph apply only to Foreign RFP Bidders; other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may provide, in addition to supplying all required information and documents under Section IV.2, any additional evidence of creditworthiness so as to provide PECO with comparable assurances of creditworthiness as is applicable for an RFP Bidder that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.
- If such RFP Bidder has not previously qualified, the Officer of a Foreign RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may, but is not required to, submit a draft of the following documents for evaluation: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If such RFP Bidder submits a draft of these documents for evaluation, the Independent Evaluator will provide this evaluation to such RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.
- The RFP Bidder presents this information by completing the P1 Foreign Bidder Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

IV.5.3. Additional requirements for RFP Bidders relying on the financial standing of a Foreign Guarantor.

The requirements of this Paragraph apply only to RFP Bidders that rely on the financial standing of a Foreign Entity as RFP Guarantor; other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, an RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor may provide, in addition to supplying all required information and documents under Section IV.2, any additional evidence of

creditworthiness for the RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

- Whether or not such RFP Bidder has previously qualified, the Officer of such RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign Entity as RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.
- Whether or not such RFP Bidder has previously qualified, the RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of the following documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of

the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If an RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.

- The RFP Bidder presents this information by completing the P1 Foreign Guarantor Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

IV.5.4. Additional Requirements for RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal. The requirements of this Paragraph apply only to RFP Bidders that are submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal; other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, if the RFP Principal is a Foreign Entity, an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as RFP Principal may, in addition to supplying all required information and documents under Section IV.2, provide any additional evidence of creditworthiness for the Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.
- Whether or not such RFP Bidder has previously qualified, the Officer of such RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which

the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of the following additional documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If an RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.
- The RFP Bidder presents this information by completing the P1 Foreign Principal Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

IV.5.5. All information required by this Section IV.5 must be provided exclusively by completing Section 5 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts and documents must be submitted by upload to the online Part 1 Form or sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

## ARTICLE V. Part 2 Proposal Requirements

RFP Bidders that became eligible to submit Bids in a previous solicitation held under DSP V may participate in an abbreviated process by using the Short Part 2 Form available online through the Proposal submission website to respond to these requirements.

### V.1. Contact Information and Representations

V.1.1. Contact Information for the RFP Bidder. The RFP Bidder has an opportunity to update contact information provided in the Part 1 Proposal for the RFP Bidder or any individual. Whether or not the RFP Bidder is previously eligible, the RFP Bidder either must confirm that the contact information for the RFP Bidder, the Officer of the RFP Bidder and Representative of the RFP Bidder remains valid or must update this information in the online Part 2 Form. The RFP Bidder may, at any point during the solicitation, provide contact information for Nominees or update this information by submission of the Nominee Insert.

V.1.2. Representations of the Officer of the RFP Bidder. For a given solicitation, all representations and certifications must be made by a single individual who serves as Officer of the RFP Bidder. All representations and certifications required by this RFP may be made at a single point in time and RFP Bidders have the option to submit the online Part 1 Form and the certifications required by the online Part 2 Form together during the Part 1 Window. If an RFP Bidder did not avail itself of this option and if the Officer of the RFP Bidder who made the representations and certifications of the online Part 1 Form is unavailable to make the representations of the online Part 2 Form, the RFP Bidder must re-submit the certifications of the Part 1 Form by email naming a new individual to serve as Officer of the RFP Bidder by the Part 2 Date, and that Officer of the RFP Bidder must make all representations and certifications required by the online Part 1 Form and the online Part 2 Form. Whether or not the RFP Bidder is previously eligible, the Officer of the RFP Bidder must certify that:

- the Part 2 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date and if any information provided in the Part 2 Proposal changes or any

previous certification fails to remain valid during that time, the RFP Bidder will notify the Independent Evaluator as soon as practicable;

- the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal by another RFP Bidder in response to this solicitation or any future solicitation under this RFP. Such information includes, but is not limited to: the fact that another RFP Bidder is submitting a Proposal in response to this solicitation or a subsequent solicitation under this RFP; the Bids by another RFP Bidder in this or in a subsequent solicitation under this RFP; the number of tranches bid by another RFP Bidder for any product in this or in a subsequent solicitation under this RFP; the estimation by another RFP Bidder of the value of a tranche of a product; the estimation by another RFP Bidder of the risks associated with providing supply under the Uniform SMA; the preference of another RFP Bidder for bidding on specific products in this or in a subsequent solicitation under the RFP; and the contractual arrangements for power of another RFP Bidder to serve tranches of Default Service Load were that RFP Bidder to become a Default Supplier. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation;
- although the RFP Bidder may disclose aspects of its Proposal in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors (if any), any such communication is made in a manner that can reasonably be expected to maintain the confidentiality of its Proposal;
- with only the exceptions noted in the immediately previous certification, the RFP Bidder has not disclosed, and will not otherwise disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal in any solicitation under the RFP, or on the contents of the Proposal that another RFP Bidder would be willing to submit in response to the RFP. Such information includes, but is not limited to: the fact that the RFP Bidder is submitting a Proposal in response to this RFP; the RFP Bidder's Bids in this or in a subsequent solicitation under this RFP; the RFP Bidder's

number of tranches bid for any product in this or in a subsequent solicitation under this RFP; the RFP Bidder's estimation of the value of a tranche of a product; the RFP Bidder's estimation of the risks associated with providing supply under the Uniform SMA; and the RFP Bidder's preference for bidding on specific products in this or in a subsequent solicitation under this RFP. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation;

- any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the Uniform SMA at the price specified in the Bid;
- the Officer of the RFP Bidder will execute (or will nominate another authorized individual to execute) the Uniform SMA and all Transaction Confirmation(s) for the RFP Bidder's Bids that are approved by the Commission no later than 2PM on the third business day after the Commission has accepted such Bids; and
- In each Transaction Confirmation, the RFP Bidder will specify a price for each type of AECs (Tier I, Tier I Solar, and Tier II) that is included in the RFP Bidder's winning Bids and each such price must be greater than \$0/AEC.

The RFP Bidder submits such certifications by completing the P2 Certifications Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the P2 Certifications Insert by upload to the online Part 2 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

- V.1.3. All information required by this Section V.1 must be provided exclusively by completing Section 1 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts and documents must be submitted by upload to the online Part 1 Form or sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

**V.2. Pre-Bid Letter of Credit**

- V.2.1. Whether or not an RFP Bidder is previously eligible, the RFP Bidder must provide an executed Pre-Bid Letter of Credit, drawn for the account of the RFP Bidder and acceptable to PECO, in an amount of at least: \$250,000 per tranche bid on products for the RES and SC Classes, plus \$125,000 per tranche bid on a product for the CCI Class (if applicable) in accordance with the requirements of this Section V.2. A single Pre-Bid Letter of Credit is submitted even if the RFP Bidder bids on more than one product or if the RFP Bidder bids to supply both full requirements on a fixed-price basis and full requirements on a spot-price basis.
- V.2.2. The RFP Bidder must state whether the Pre-Bid Letter of Credit has already been sent to the Independent Evaluator. The hardcopy executed Pre-Bid Letter of Credit must be sent by overnight delivery service to the Independent Evaluator at the address indicated in the Part 2 Form. RFP Bidders may, but are not required to, provide an electronic executed version of the Pre-Bid Letter of Credit for evaluation.
- V.2.3. The RFP Bidder must either use the Standard Pre-Bid Letter of Credit provided in Appendix 9 to these RFP Rules, or the RFP Bidder must submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of the Part 1 Proposals. All approved modifications will be posted to the RFP website. An RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification. The RFP Bidder cannot, in its Part 2 Proposal, propose or incorporate any modification to its Pre-Bid Letter of Credit other than the modifications approved and posted as such on the RFP website.
- V.2.4. Generally, PECO and the Independent Evaluator will release the Pre-Bid Letter of Credit no later than six (6) business days after the Bid Date. An RFP Bidder may, in Section 2 of the Part 2 Form, provide special instructions for the return of the Pre-Bid Letter of Credit. If the Commission does not approve any of the RFP Bidder's Bids, PECO and the Independent Evaluator will release that RFP Bidder's Pre-Bid Letter of Credit within three (3) business days of the Bid Date. The prompt release of the Pre-Bid Letter of Credit will be conditioned upon the RFP Bidder not having violated any undertakings agreed to as part of the RFP.

- V.2.5. Payment under the Pre-Bid Letter of Credit can be demanded by PECO if: (i) the RFP Bidder has made a material omission or misrepresentation in its Part 1 Proposal or in its Part 2 Proposal; (ii) the RFP Bidder discloses information relating to its Proposal publicly or to any other party before the Commission has rendered its decision on the results of this solicitation; or (iii) the RFP Bidder has one or more Bids approved by the Commission and the RFP Bidder fails to execute the Uniform SMA and its Exhibits or fails to meet the creditworthiness requirements within the timeframe required.
- V.2.6. All information required by this Section V.2 must be provided exclusively by completing Section 2 of the online Part 2 Form, as further explained in Article VII. Any documents or special instructions for the return of the Pre-Bid Letter of Credit may be submitted by upload to the online Part 2 Form or sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). The executed Pre-Bid Letter of Credit must be sent to the Independent Evaluator at the address provided in the Part 2 Form.

### **V.3. RFP Bidders Relying on the Financial Standing of an RFP Guarantor**

- V.3.1. The requirements of this Section V.3 apply only to RFP Bidders relying on the financial standing of an RFP Guarantor; other RFP Bidders are not subject to the requirements of this Section V.3.
- V.3.2. Intent to Provide a Guaranty. The requirements of this paragraph only apply to RFP Bidders that are not Default Suppliers.
- Such RFP Bidder must provide in its Part 2 Proposal a statement from a representative of the RFP Guarantor acknowledging that the RFP Guarantor: (i) has been asked to provide a financial guaranty on behalf of the RFP Bidder should the RFP Bidder become a Default Supplier pursuant to its response under this RFP for procuring supply under the terms of the Uniform SMA; (ii) has a senior unsecured debt rating that meets the Minimum Rating as defined in the Uniform SMA; and (iii) would consider providing a financial guaranty on behalf of the RFP Bidder should there be no material change in affairs for at least the Indicative Amount. This RFP Guarantor may add that this statement should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.

- The Indicative Amount must meet or exceed the sum of: (i) \$600,000 times the number of tranches bid on products for the RES and SC Classes for full requirements on a fixed-price basis; and (ii) \$300,000 times the number of tranches bid for the CCI Class for full requirements on a spot-price basis (if applicable).
- The individual signing the intent to provide a guaranty must be a representative of the RFP Guarantor authorized to undertake contracts (including the Guaranty) and bind that RFP Guarantor.

The RFP Bidder provides this statement by completing the Guaranty Intent Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Guaranty Intent Insert by upload to the online Part 2 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

V.3.3. Information to Prepare the Guaranty. This paragraph applies to RFP Bidders whether or not they are previously eligible.

- The RFP Bidder is asked: (i) to specify the governing laws under which the RFP Guarantor is organized; (ii) to provide the name and title of the signatory to the guaranty as well as contact information for an individual who will receive notice under the guaranty; and (iii) to make elections to incorporate any or all of the approved modifications to the Standard Guaranty.
- An RFP Bidder that is a Default Supplier with a Guaranty in force may indicate that all information regarding the guaranty remains current and that the RFP Bidder does not wish to modify or supplement any of the elections regarding approved modifications to the Standard Guaranty.
- If an RFP Bidder that is not a Default Supplier with a Guaranty in force fails to submit information required for preparation of the Guaranty with the Part 1 Proposal, the Officer of the RFP Bidder must acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

The RFP Bidder either provides information needed to prepare the guaranty for execution by completing the Guaranty Insert prepared for this purpose or the RFP Bidder provides an acknowledgement from the Officer of the RFP Bidder that such information will be required if one or more of the RFP Bidder's Bids to the Commission as winning Bids by completing the Delay (Guaranty) Insert prepared for this purpose.

- V.3.4. Enforceability Opinion for an Alternate Guaranty. The requirements of this Paragraph only apply to RFP Bidders that have obtained approval from PECO to use an alternate guaranty form under the Alternate Guaranty Process and that are not previously eligible. The Alternate Guaranty Process allows a supplier unable to use the Standard Guaranty provided as Appendix G to the Uniform SMA to submit for consideration by PECO the guaranty that the supplier uses in its normal course of business. Such a guaranty is called an "alternate guaranty form" and the process by which suppliers may obtain approval to use an alternate guaranty is described in Appendix 2. Such RFP Bidder must provide, with its Part 2 Proposal, an executed enforceability opinion for its approved alternate guaranty form on the letterhead of a law firm of national standing by upload to the online Part 2 Form or by email at [pecoprocedurement@nera.com](mailto:pecoprocedurement@nera.com).
- V.3.5. All information required by this Section V.1 must be provided exclusively by completing Section 3 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts and documents must be submitted by upload to the online Part 1 Form or sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

#### **V.4. RFP Bidders Relying on the Financial Standing of an RFP Principal**

- V.4.1. The requirements of this Section V.4 apply only to RFP Bidders relying on the financial standing of an RFP Principal; other RFP Bidders are not subject to the requirements of this Section V.3.
- V.4.2. Officers' Certificate. Whether or not the RFP Bidder is previously eligible, an RFP Bidder submitting a Proposal under an Agency Agreement must submit an Officers' Certificate substantially in the form of Appendix 6 to these RFP Rules. The Officers' Certificate must be provided by upload to the online Part 2 Form or by email at [pecoprocedurement@nera.com](mailto:pecoprocedurement@nera.com).
- The Officers' Certificate must be signed by an officer of each Principal.

- The Officers' Certificate states that: (i) the copy of the Agency Agreement submitted with the Part 1 Proposal is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to six (6) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement; (iv) each individual who has executed the Officers' Certificate and the Agency Agreement is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the RFP Bidder is authorized to execute the Uniform SMA as well as any Transaction Confirmation pursuant to the Uniform SMA on behalf of the Principal(s).
- An Officers' Certificate submitted by a previously eligible RFP Bidder and that was previously acceptable to PECO will remain acceptable to PECO unless there has been a change in the circumstances of the RFP Bidder submitting a Proposal under an Agency Agreement.

The RFP Bidder submits the document by upload to the online Part 2 Form or by email at pecoprocedurement@nera.com.

- V.4.3. Signatory to the Uniform SMA. If an RFP Bidder submitting a Proposal under an Agency Agreement and the Principal does not authorize the RFP Bidder to sign the Uniform SMA or to execute a Transaction Confirmation, such RFP Bidder must name a representative of the Principal who will be authorized to sign the Uniform SMA and all necessary exhibits should such RFP Bidder have winning Bids that are approved by the Commission as required by Section VII.3. The RFP Bidder must provide contact information for this individual (address, phone number, and email address). If such RFP Bidder is not previously eligible, the RFP Bidder provides the information in the online Part 2 Form or by email at pecoprocedurement@nera.com. If such RFP Bidder is previously eligible, the RFP Bidder either: (i) must confirm that the representative of the Principal remains authorized to sign the Uniform SMA (if applicable because the RFP Bidder is not a Default Supplier) and any Transaction Confirmation and that the previously submitted contact information remains valid in the online Part

2 Form; or: (ii) must update this information in the online Part 2 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

V.4.4. An RFP Bidder that relies on the financial standing of a Principal that is a Foreign Entity must also comply with requirements detailed in Paragraph V.5.4.

V.4.5. All information required by this Section V.1 must be provided exclusively by completing Section 4 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts and documents must be submitted by upload to the online Part 1 Form or sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

## **V.5. Foreign RFP Bidders and Foreign Entities**

V.5.1. The requirements of this Section V.5 apply only to Foreign RFP Bidders, or to RFP Bidders that rely on the financial standing of a Foreign Entity as RFP Guarantor, or to RFP Bidders that submit a Proposal under an Agency Agreement with a Foreign Entity as Principal. Other RFP Bidders are not subject to the requirements of this Section V.5. An RFP Bidder fulfills the requirements by completing the P2 Foreign Entity Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the P2 Foreign Entity Insert by upload to the online Part 2 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

V.5.2. Required Documents for Foreign RFP Bidders. A Foreign RFP Bidder receives from the Independent Evaluator upon successfully completing the Part 1 Proposal a provisional assessment that presumes the receipt of the following fully executed additional documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign

RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient.

- If the Foreign RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents in a form acceptable to PECO for the Independent Evaluator to confirm the assessment provided with the Part 1 Notification. If the Foreign RFP Bidder submits these fully executed documents in a form acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the assessment provided with the Part 1 Notification. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised assessment that states either that the Foreign RFP Bidder is not granted unsecured credit or that the Foreign RFP Bidder is not eligible to continue further in the RFP.
- If the Foreign RFP Bidder is previously eligible and has previously submitted these additional documents in a form acceptable to PECO, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent Evaluator confirms the assessment in the Part 2 Notification if all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised assessment that states either that the Foreign RFP Bidder is not granted unsecured credit or that the Foreign RFP Bidder is not eligible to continue further in the RFP.

V.5.3. Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor. An RFP Bidder that relies on the financial standing of a Foreign Entity as RFP Guarantor receives, with its Part 1 Notification, a provisional creditworthiness assessment for its RFP Guarantor that presumes the receipt of the following fully executed additional documents in a form acceptable to PECO: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of

the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as RFP Guarantor.

- If such RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents in a form acceptable to PECO for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the RFP Bidder submits these fully executed documents and these documents are acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. If the RFP Bidder does not submit these documents, or if these documents are not acceptable to PECO, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the Foreign Entity as RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor. Any guaranty submitted in the Part 2 Proposal will be removed from consideration and the Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2.
- If such RFP Bidder is previously eligible and has submitted these additional documents in a form acceptable to PECO, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent Evaluator confirms the creditworthiness assessment provided with the Part 1 Notification if the RFP Bidder all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Guarantor is not granted unsecured credit. The RFP

Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2.

V.5.4. Required Documents for RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal receives, with its Part 1 Notification, a provisional assessment that presumes the receipt of the following documents fully executed and acceptable to PECO: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal.

- If such RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents in a form acceptable to PECO for the Independent Evaluator to confirm the assessment provided with the Part 1 Notification. If the RFP Bidder submits these fully executed documents and these documents are acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the assessment provided with the Part 1 Notification. If the RFP Bidder does not submit these documents, or if these documents are not acceptable to PECO, the Independent Evaluator provides with the Part 2 Notification a revised assessment that either states that the RFP Bidder and the Foreign Entity as RFP Principal are not granted unsecured credit or that the RFP Bidder is not eligible for continue further in the RFP.
- If such RFP Bidder is previously eligible, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent Evaluator confirms the assessment provided with the Part 1 Notification if the

RFP Bidder all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised assessment that states either that the RFP Bidder and the Foreign Entity as RFP Principal are not granted unsecured credit or that the RFP Bidder is not eligible to continue further in the RFP.

V.5.5. The information required by this Section V.5 must be provided exclusively by completing Section 5 of the online Part 2 Form, as further explained in Article VII. Documents must be submitted by upload to the online Part 2 Form or sent by email to the Independent Evaluator at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

## ARTICLE VI. Bid Submission

- VI.1.1. The Independent Evaluator prepares an electronic Bid Form for each RFP Bidder qualified pursuant to a successful Part 1 Proposal. If the RFP Bidder cannot bid on all tranches available of a product because of the Load Cap for the Class to which such product belongs and because of tranches previously won by the RFP Bidder, the Bid Form reflects that fact. The Independent Evaluator sends at the same time instructions for completion of the Bid Form, for the optional encryption of the Bid Form, for electronic transfer of the completed Bid Form to the Independent Evaluator, for an alternate submission method for Bids in case of technical difficulties with the electronic transfer, as well as information used for authenticating the Bids, including the RFP Bidder's unique username, password, and security codes. The Independent Evaluator transmits these materials, the "Part 1 Materials", within two (2) business days of the Part 1 Notification Date, by secure file transfer. The Independent Evaluator requires a confirmation of receipt of these materials in the online Part 2 Form.
- VI.1.2. The exclusive method for submitting an RFP Bidder's Bids is the Bid Form. An RFP Bidder must fill out all required information on the Bid Form according to the instructions provided by the Independent Evaluator. An RFP Bidder may, but is not required to, encrypt its Bid Form. Encryption provides an additional layer of protection for the confidentiality of the RFP Bidder's data. An RFP Bidder must submit the Bid Form to the Independent Evaluator through a secure file transfer system according to the instructions provided by the Independent Evaluator. An RFP Bidder must fill out contact information on its Bid Form and the Independent Evaluator will use that information to confirm receipt of the Bids. All instructions noted in this Paragraph are included in the Part 1 Materials.
- VI.1.3. In case of technical difficulties while using the secure file transfer system, the Independent Evaluator will instruct the RFP Bidder to email the Bid Form to the Independent Evaluator. The Independent Evaluator will recommend that the Bid Form in this case be encrypted and the Independent Evaluator will note for the RFP Bidder that such transmission may not be secure. An RFP Bidder that is not able to use the secure file transfer system must advise the Independent Evaluator of that fact by

phone and must at that time provide authenticating information. The Independent Evaluator will provide additional instructions for such a contingency that will be included with the Part 1 Materials.

- VI.1.4. All Bid Forms must be received between 10 AM and 12 PM (noon) on the Bid Date. No late Bid Forms will be accepted regardless of the method used by the RFP Bidder to submit its Bid Form.
- VI.1.5. A Bid for a tranche for any product is a price in U.S. Dollars per MWh, and must be displayed in the format \$xx.xx or \$xxx.xx, rounded to the nearest cent. The number of tranches bid on a product is the number of tranches of that product for which a Bid is provided.
- VI.1.6. A Bid that is not expressed in dollars per MWh will automatically be rejected. A Bid that has more than two (2) decimals will be automatically rounded to the nearest cent.
- VI.1.7. The RFP Bidder may not bid on less than a full tranche for a product. The RFP Bidder may not bid on fractions, portions, or parts of tranches.
- VI.1.8. The RFP Bidder may not submit any additional instructions, contingencies, or conditions on its Bids. Any such additional instructions, contingencies, or conditions will be ignored.
- VI.1.9. An RFP Bidder may not submit Bids that exceed the Load Caps and the Bid Form will include guidance for the RFP Bidder so that the RFP Bidder submits Bids that conform with the Load Caps. The Load Caps are described in Paragraph I.2.11.
- VI.1.10. The number of tranches bid for an RFP Bidder may not exceed the number of tranches supported by the Pre-Bid Letter of Credit. The amount of the Pre-Bid Letter of Credit is described in Paragraph V.2.1. The procedure used by the Independent Evaluator to modify the Bid Form is described in Paragraph VII.2.10.
- VI.1.11. Bids are evaluated on a price-only basis, in accordance with the process described in Section VII.2.

## ARTICLE VII. Process

### VII.1. Part 1 and Part 2 Proposals: Submission and Processing

- VII.1.1. The Independent Evaluator, for the purposes of this RFP, transmits all communications to the “Bidder Team” consisting of the Representative of the RFP Bidder and any Nominees. The Representative or the Officer of the RFP Bidder may designate up to three (3) Nominees.
- VII.1.2. Any notification or written communication will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that when delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day.
- VII.1.3. The exclusive method of responding to the qualification standards for the Part 1 Proposal listed in Article IV of these RFP Rules is the use of the online Part 1 Form. RFP Bidders that did not qualify in a previous solicitation under DSP V must use the Standard Part 1 Form to respond to the qualification standards described in Article IV. Previously qualified RFP Bidders may participate in an abbreviated Part 1 Proposal process by using the Short Part 1 Form. The generic term “Part 1 Form” refers either to the Standard Part 1 Form or to the Short Part 1 Form. Responses to the qualification standards of Article IV that do not use the online Part 1 Form will not be considered and the Part 1 Proposal will be considered deficient.
- VII.1.4. An RFP Bidder must provide contact information for the RFP Bidder, name an Officer of the RFP Bidder who designates a Representative of the RFP Bidder and make general representations as required by Section IV.1, exclusively by completing Section 1 of the online Part 1 Form. An RFP Bidder must show compliance with the financial requirements of Section IV.2 exclusively by completing Section 2 of the online Part 1 Form and by providing all documents supporting the financial information and credit information as requested in that Section of the online Part 1 Form. The RFP Bidder is asked to provide all information to prepare the Uniform SMA, as required by Section IV.3 exclusively by completing Section 3 of the online Part 1 Form. The RFP Bidder must show that it has all regulatory authorizations necessary for it to legally perform its obligations under the Uniform SMA and the Transaction Confirmations as required by Section IV.4, exclusively by

completing Section 4 of the online Part 1 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Uniform SMA, or an RFP Bidder relying on the financial standing of a Foreign Entity, either an RFP Guarantor or a Principal, must provide any additional information required by Section IV.5, exclusively by completing Section 5 of the Part 1 Form.

- VII.1.5. The Part 1 Proposal for an RFP Bidder includes the completed Part 1 Form as well Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents (supporting documents, draft Letter of Credit or draft Standard Guaranty, and Inserts) may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). Responses to the qualification standards of Article IV that do not use the online Part 1 Form and the Inserts prepared for this purpose will not be considered and the part 1 Proposal will be considered deficient. No late Part 1 Proposals will be accepted under any circumstances.
- VII.1.6. The Independent Evaluator considers and processes the Part 1 Proposals during the Part 1 Window. When a Part 1 Proposal is received, the Independent Evaluator sends an acknowledgment to the RFP Bidder by email. The Independent Evaluator only processes Part 1 Proposals during the Part 1 Window and, if the Part 1 Proposal is received before the Part 1 Window opens, the Independent Evaluator confirms receipt no later than on the first day of the Part 1 Window.
- VII.1.7. If the Part 1 Proposal is received before 12 PM (noon) on any business day during the Part 1 Window, the Independent Evaluator sends the acknowledgment confirming receipt on the day the Part 1 Proposal is received with the results of an initial review. The initial review states either that the Part 1 Proposal is complete and is being considered, or the initial review lists items of the Part 1 Proposal that are deficient or require clarification. If a Part 1 Proposal is received after 12 PM (noon) on any business day during the Part 1 Window prior to the Part 1 Date, the Independent Evaluator sends the acknowledgment along with the initial review by 12 PM (noon) of the next business day. The Independent Evaluator sends such acknowledgments to the RFP Bidder by email.
- VII.1.8. An RFP Bidder that submits a Draft Pre-Bid Letter of Credit will receive a review of any proposed modifications within two (2) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Pre-Bid Letter of Credit. Any review communicated to

the RFP Bidder of the Draft Pre-Bid Letter of Credit is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Pre-Bid Letter of Credit for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be updated daily during the Part 1 Window. By 12 PM (noon) on the day the Part 2 Window opens, the final document containing all accepted modifications will be posted.

VII.1.9. An RFP Bidder that submits a Draft Post-Bid Letter of Credit will receive a review of any proposed modifications within seven (7) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Post-Bid Letter of Credit. Any review communicated to the RFP Bidder of the Draft Post-Bid Letter of Credit is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Post-Bid Letter of Credit for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be posted no later than 6 PM on the Part 2 Date.

VII.1.10. An RFP Bidder that submits a Draft Standard Guaranty will receive a review of any proposed modifications within two (2) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Standard Guaranty. Any review communicated to the RFP Bidder of the Draft Standard Guaranty is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Guaranty for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be updated daily during the Part 1 Window. By 12 PM (noon) on the day the Part 2 Window opens, the final document containing all accepted modifications will be posted.

VII.1.11. An RFP Bidder submitting a Proposal under an Agency Agreement that submits a Draft Officers' Certificate will receive an evaluation of this document by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of the Draft Officers' Certificate is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

- VII.1.12. A Foreign RFP Bidder that submits a draft of any of the documents described in Paragraph IV.5.2 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.
- VII.1.13. An RFP Bidder that relies on the financial standing of a Foreign Entity as RFP Guarantor and that submits a draft of any of the documents described in Paragraph IV.5.3 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.
- VII.1.14. An RFP Bidder submitting a Proposal under an Agency Agreement that relies on the financial standing of a Foreign Entity as Principal and that submits a draft of any of the documents described in Paragraph IV.5.4 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.
- VII.1.15. The RFP Bidder includes, in its Part 1 Proposal, a certification from the Officer of the RFP Bidder that the RFP Bidder is bidding independently and is not acting in concert with another RFP Bidder. The Independent Evaluator may request additional information to ascertain that the RFP Bidder is bidding independently of other RFP Bidders. An RFP Bidder that is not bidding independently of another RFP Bidder may fail to qualify.
- VII.1.16. If an RFP Bidder receives any notice from the Independent Evaluator that any item of the Part 1 Proposal is deficient or requires clarification, the RFP Bidder has until 12 PM (noon) on the Part 1 Date, or until 6 PM on the business day following the business day during which the Independent Evaluator transmits such notice, whichever comes later, to respond. If the RFP Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 1 Proposal may be rejected. The Independent Evaluator sends such notice to the RFP Bidder by email.

- VII.1.17. An RFP Bidder meets the qualification standards of this RFP if its Part 1 Proposal is received on or before 12 PM (noon) on the Part 1 Date, if its Part 1 Proposal is complete, and if its Part 1 Proposal fully complies with all requirements of Article IV.
- VII.1.18. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV through a Part 1 Notification that the Independent Evaluators sends no later than 6 PM on the Part 1 Notification Date.
- VII.1.19. If the RFP Bidder has a successful Part 1 Proposal, within two (2) business days of the Part 1 Notification Date, the Independent Evaluator transmits to the RFP Bidder a number of documents and instructions, called the Part 1 Materials. The Part 1 Materials include: (i) the Bid Form; (ii) instructions for filling out and optionally encrypting the Bid Form; (iii) instructions for the submission of the completed Bid Form from the RFP Bidder to the Independent Evaluator by secure file transfer system; (iv) instructions for an alternate method for submission of the Bids in case of technical difficulties with the secure file transfer system; (v) an invitation to a training session on the Bid submission process; and (vi) a username, a password, and security codes to be used for Bid submission uniquely by that RFP Bidder. The Part 1 Materials may also include other training materials or important notifications to RFP Bidders. The Independent Evaluator transmits the Part 1 Materials by secure file transfer. However, if special circumstances warrant, the Independent Evaluator may transmit by email a particular document needed for participation in a solicitation upon agreement by the RFP Bidder.
- VII.1.20. The Independent Evaluator requires an acknowledgment from the RFP Bidder that the RFP Bidder has received intact the information necessary to submit Bids and that no one but authorized personnel of the RFP Bidder has had access to this information. The RFP Bidder may make this acknowledgment by email. The RFP Bidder's Bids are only evaluated if this acknowledgment is received.
- VII.1.21. The exclusive method of responding to the requirements for Part 2 Proposals listed in Article V of these RFP Rules is the use of the online Part 2 Form. Responses to the requirements of Article V that do not use the online Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

- VII.1.22. An RFP Bidder must confirm its contact information and make any general representations required by Section V.1 exclusively by completing Section 1 of the online Part 2 Form. An RFP Bidder must submit the Pre-Bid Letter of Credit as required by Section V.2 and as instructed in Section 2 of the online Part 2 Form. An RFP Bidder relying on the financial standing of an RFP Guarantor will provide intent to provide a guaranty from its RFP Guarantor and an RFP Bidder submitting a Proposal under an Agency Agreement must submit additional documents as required by Section V.3 exclusively by completing Section 3 of the online Part 2 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Uniform SMA, or an RFP Bidder that seeks to rely on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal), must submit any additional documents as required by Section V.4 and as instructed by Section 4 of the online Part 2 Form.
- VII.1.23. The Part 2 Proposal consists of the completed online Part 2 Form, the Pre-Bid Letter of Credit, as well as Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). In particular:
- For an RFP Bidder relying on the financial standing of an RFP Guarantor and that is not a Default Supplier, the Part 2 Proposal also includes an acknowledgment from a representative of the RFP Guarantor.
  - For an RFP Bidder submitting a Proposal under an Agency Agreement, the Part 2 Proposal also includes an executed Officers' Certificate.
  - For an RFP Bidder that: (i) is submitting a Proposal under an Agency Agreement and relying on the financial standing of a Foreign Entity as Principal; or (ii) is a Foreign RFP Bidder; or (iii) relies on the financial standing of a Foreign Entity as RFP Guarantor; the Part 2 proposal also includes any documents required by Section V.4 as a condition of being granted unsecured credit. These documents may include an executed legal opinion of outside counsel and a sworn certificate of the corporate secretary.

- VII.1.24. The Independent Evaluator considers and processes the Part 2 Proposals during the Part 2 Window. No late Part 2 Proposals will be accepted under any circumstances. RFP Bidders also have the option to submit the certifications required by the online Part 2 Form during the Part 1 Window for early processing. When a Part 2 Proposal is received, the Independent Evaluator sends an acknowledgment to the RFP Bidder by email. The Independent Evaluator confirms receipt as long as the Part 2 Proposal is received after the opening of the Part 1 Window. However, Part 2 Proposals are only processed during the Part 2 Window (with the exception of certifications, which may be processed during the Part 1 Window).
- VII.1.25. If the Part 2 Proposal is received before 12 PM (noon) on any business day after the opening of the Part 1 Window, the Independent Evaluator sends the acknowledgment confirming receipt on the day the Part 2 Proposal is received with the results of an initial review. The initial review states either that the Part 2 Proposal is complete and is being considered, or the initial review lists items of the Part 2 Proposal that are deficient or require clarification. If a Part 2 Proposal is received after 12 PM (noon) on any business day during the Part 2 Window prior to the Part 2 Date, the Independent Evaluator sends the acknowledgment along with the initial review by 12 PM (noon) of the next business day. The Independent Evaluator sends such acknowledgments by email.
- VII.1.26. An RFP Bidder's Part 2 Proposal is automatically deficient if the Pre-Bid Letter of Credit proposes or includes modifications to the Standard Pre-Bid Letter of Credit included as Appendix 9 of these RFP Rules other than those accepted modifications posted in a single document on the RFP website. If an RFP Bidder receives notice from the Independent Evaluator that its Pre-Bid Letter of Credit is deficient, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. The Independent Evaluator sends such notices by email.
- VII.1.27. The amount of the Pre-Bid Letter of Credit must be at least \$250,000 per tranche bid on products for full requirements service on a fixed-price basis, plus \$125,000 per tranche bid on the CCI product for full requirements service on a spot-price basis (if applicable). The Indicative Amount for RFP Bidders that rely on the financial standing of an RFP Guarantor and that do not hold a current Uniform SMA with PECO must be equal or exceed \$600,000 per tranche bid on products for full requirements

service on a fixed-price basis, plus \$300,000 per tranche bid on a CCI product for full requirements service on a spot-price basis (if applicable). An RFP Bidder's Part 2 Proposal is automatically deficient if the amount of the Pre-Bid Letter of Credit is not consistent with the Indicative Amount of the Guaranty provided in the Part 2 Form. If an RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. The Independent Evaluator provides such notice to the RFP Bidder by email.

VII.1.28. For an RFP Bidder that received approval from PECO to use an alternate guaranty form through the Alternate Guaranty Process, PECO and the Independent Evaluator will determine whether the enforceability opinion required under Paragraph V.3.3 is acceptable to PECO, without any liability or obligation to the RFP Bidder or the RFP Guarantor. If the document is not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the document remains insufficient, the RFP Bidder's Part 2 Proposal may be rejected. The Independent Evaluator provides such notice to the RFP Bidder by email.

VII.1.29. For an RFP Bidder submitting a Proposal under an Agency Agreement that provides the documents required under Section V.4, PECO and the Independent Evaluator will determine whether the documents provided are sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). If the documents are insufficient and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the documents remain insufficient, the RFP Bidder's Part 2 Proposal may be rejected. The Independent Evaluator provides such notice to the RFP Bidder by email.

- VII.1.30. For a Foreign RFP Bidder that submits the documents required under Paragraph V.5.2, PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the Foreign RFP Bidder. If the documents are not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the Independent Evaluator provides with the Part 2 Notification a revised assessment that states either that the Foreign RFP Bidder is not granted unsecured credit or that the Foreign RFP Bidder is not eligible to continue further in the RFP. If the Foreign RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the Foreign RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.
- VII.1.31. For an RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor and that submits the documents required under Paragraph V.5.3, PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the RFP Bidder or the RFP Guarantor. If the documents are acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the RFP Bidder the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor and the Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2. If the RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be

considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.

- VII.1.32. For an RFP Bidder relying on a Foreign Entity as Principal that provides the documents required under Paragraph V.5.4, PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the RFP Bidder or its Principal(s). If the documents are not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and its Principal are not granted unsecured credit. If the RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.
- VII.1.33. With the exceptions noted in the Paragraphs of this Section, if an RFP Bidder receives any notice from the Independent Evaluator that an item of the Part 2 Proposal is deficient or requires clarification, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the RFP Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 2 Proposal may be rejected. The Independent Evaluator sends such notice to the RFP Bidder by email.
- VII.1.34. An RFP Bidder's Part 2 Proposal is successful if its Part 2 Proposal is received on or before 12 PM (noon) on the Part 2 Date, if its Part 2 Proposal is complete, and if its Part 2 Proposal fully complies with the requirements of Article V of these RFP Rules.

VII.1.35. An RFP Bidder that submits a Part 2 Proposal will be notified whether it is eligible to submit Bids no later than 6 PM on the Part 2 Notification Date. The Independent Evaluator provides such notification to the RFP Bidder by email.

## **VII.2. Bids: Submission, Processing, and Evaluation**

VII.2.1. An RFP Bidder must submit its Bids in accordance with the instructions provided in the Part 1 Materials and in accordance with the requirements of Article VI. An RFP Bidder's Bids must be received between 10 AM and 12 PM (noon) on the Bid Date. The requirements for Bid submission are the same for all RFP Bidders, regardless of whether they were previously eligible to submit Bids.

VII.2.2. The Bid Form, as provided to each RFP Bidder with the Part 1 Notification, is the exclusive method for the submission of Bids. A sample of the Bid Form is provided for illustrative purposes as Appendix 10 of these RFP Rules. The Bid Form is prepared specifically for each RFP Bidder. The Bid Form must be filled out completely and transferred according to the instructions provided by the Independent Evaluator in the Part 1 Materials. The RFP Bidder may encrypt the Bid Form using the instructions provided by the Independent Evaluator. Bids on any Bid Form that is incompletely or inconsistently filled out will be considered deficient and will not be evaluated.

VII.2.3. An RFP Bidder submits its Bids electronically, by transferring its Bid Form through a secure file transfer system. The RFP Bidder must use the username and the password provided by the Independent Evaluator to access the secure file transfer system. The Independent Evaluator supplies a security code that the RFP Bidder may use to encrypt the Bid Form.

VII.2.4. An RFP Bidder that must resort to an alternate method for submitting its Bid Form by email because of technical difficulties with the secure file transfer system must follow the instructions provided by the Independent Evaluator for this contingency. These instructions will include a representative of the RFP Bidder phoning the Independent Evaluator to advise the Independent Evaluator of the use of an alternate method for the submission of the Bid Form and to provide authenticating information. The Independent Evaluator will recommend that the Bid Form in this case be encrypted and the Independent Evaluator will note for the RFP Bidder that such transmission may not be secure.

- VII.2.5. All Bid Forms must be received between 10 AM and 12 PM (noon) on the Bid Date. No late Bid Forms will be considered regardless of the method used by the RFP Bidder to submit its Bid Form.
- VII.2.6. If an RFP Bidder submits its Bid Form more than once between 10 AM and 12 PM (noon) on the Bid Date, the last Bid Form submitted in accordance with all requirements of the Bid Form and of Article VI automatically supersedes all previously submitted Bid Form(s).
- VII.2.7. The Independent Evaluator acknowledges receipt of the Bid Form with each RFP Bidder by telephone. The telephone number used is the telephone number provided on the Bid Form. If the Bid Form received by the Independent Evaluator is not encrypted by the RFP Bidder, the Independent Evaluator will require that the RFP Bidder provide the security code to the Independent Evaluator before the Bid Form is acknowledged and evaluated. The Independent Evaluator makes this acknowledgment within fifteen (15) minutes of receipt of the Bid Form. An RFP Bidder that does not receive an acknowledgment within fifteen (15) minutes of submitting its Bid Form should assume technical difficulties, should proceed to submitting its Bid Form by an alternate method, and should phone the Independent Evaluator immediately.
- VII.2.8. If the Bid Form received by the Independent Evaluator is incomplete or inconsistent with all requirements of the Bid Form and of Article VI, the Independent Evaluator will advise the RFP Bidder of that fact when confirming receipt of the Bid Form. The RFP Bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and 12 PM (noon) on the Bid Date. If the corrected Bid Form is not received between 10 AM and 12 PM (noon) on the Bid Date, the Bids on the Bid Form will not be evaluated.
- VII.2.9. It is the responsibility of the RFP Bidder to ensure that a completely and consistently filled out Bid Form is submitted between 10 AM and 12 PM (noon) on the Bid Date. The Independent Evaluator will hold a training session for RFP Bidders to practice the Bid submission process. RFP Bidders are encouraged to participate to minimize the possibility of technical difficulties with the submission of their Bid Forms.
- VII.2.10. The Independent Evaluator will verify that the Pre-Bid Letter of Credit is in an amount sufficient to support the number of tranches bid by each RFP Bidder. If an RFP Bidder's Pre-Bid Letter of Credit is insufficient to support the number of tranches bid by the RFP Bidder, the Independent Evaluator

will contact the RFP Bidder on a best efforts basis. The RFP Bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and 12 PM (noon) on the Bid Date. If the Independent Evaluator is not able to contact the RFP Bidder in time or if the RFP Bidder has not submitted a revised Bid Form between 10 AM and 12 PM (noon) on the Bid Date, the Independent Evaluator will modify the Bid Form. The Independent Evaluator will determine for such RFP Bidder the greatest number of whole tranches that its Pre-Bid Letter of Credit is sufficient to support. The Independent Evaluator will strike a Bid from a Bid Form for any tranche that is not supported by the Pre-Bid Letter of Credit. The Independent Evaluator will remove a Bid first from the product where there is most competition, as measured by the ratio of the number of tranches bid to the number of tranches needed. For that product, the Independent Evaluator will start with the tranche that has the highest Bid. If more than one RFP Bidder submitted Pre-Bid Letters of Credit that are insufficient to support the number of tranches bid by each such RFP Bidder, the Independent Evaluator will first modify the Bid Form from the RFP Bidder whose Bid Form is received last.

VII.2.11. By submitting a Proposal in response to an RFP, each RFP Bidder is authorizing the Independent Evaluator to modify the RFP Bidder's Bid Form as specified Paragraph VII.2.10. Each RFP Bidder acknowledges and accepts that the methodology may result in removal of a Bid that would have been approved by the Commission or the retention of a Bid that was not approved by the Commission.

VII.2.12. The Bids supported by adequate Pre-Bid Letters of Credit will be evaluated on a price-only basis. The Bids for each product will be ranked from lowest to highest price until all Bids are ranked or until the number of Bids that are ranked equals the number of tranches available for the product.

VII.2.13. If two or more RFP Bidders submit Bids that are identical for a product, these Bids will be considered "Tied Bids" at that price. The Independent Evaluator will use the tie-breaking procedure described in the next Paragraph if: i) in total, more Bids must be ranked for a product than there are tranches available for that product; ii) the tie among two or more Tied Bids must be broken in order to determine the RFP Bidders that have submitted the lowest Bids on that product.

VII.2.14. The tie-breaking procedure will award tranches in the following order: (1) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches for the product for any one month during the product term; (2) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches

for the Class in question for any one month during the product term; and then (3) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches in aggregate for any one month during the product term. If a tie were to remain, it would be broken by random selection.

- VII.2.15. An RFP Bidder acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator on behalf of the Company in its sole and exclusive discretion. The RFP Bidder will be considered to have made a material misrepresentation in its Part 2 Proposal and payment under the Pre-Bid Letter of Credit can be demanded by PECO.
- VII.2.16. For each product in this solicitation, a Default Supplier will be paid a supplier-specific price for each MWh of electric load served as specified in the Transaction Confirmation for that product. The supplier-specific price will be the average of approved Bids for that product.

### **VII.3. Post-Bid Process**

- VII.3.1. The winning RFP Bidders and PECO must execute the Uniform SMAs and Transaction Confirmations within three (3) days of acceptance of the results by the Commission.
- VII.3.2. PECO can collect on the Pre-Bid Letter of Credit if a winning RFP Bidder does not execute the Uniform SMA and all Transaction Confirmations, or if the winning RFP Bidder does not fulfill the creditworthiness requirements in the required timeframe.
- VII.3.3. The Independent Evaluator phones each RFP Bidder that has submitted Bids by 6 PM on the Bid Date and identifies the RFP Bidder's Bids that are provided to the Commission as winning Bids. The Independent Evaluator also provides a notification to the RFP Bidder by email.
- VII.3.4. An RFP Bidder that: (i) is not a Default Supplier; and (ii) has Bids that are identified to the Commission as winning Bids; and (iii) did not provide the necessary information to prepare the Uniform SMA with the Part 1 Proposal, will receive a notification from the Independent Evaluator on the Bid Date. This notification will require that such RFP Bidder provide all information needed to prepare the Uniform SMA by 12 PM (noon) on the next day. The Independent Evaluator uses this information to prepare the Uniform SMA for each such RFP Bidder.
- VII.3.5. An RFP Bidder that: (i) relies on the financial standing of an RFP Guarantor; (ii) has Bids that are identified to the Commission as winning Bids; and (iii) did not provide the information necessary to

prepare the guaranty with the Part 1 Proposal will receive a notification from the Independent Evaluator on the Bid Date. This notification will require that such RFP Bidder provide all information needed to prepare the guaranty by 12 PM (noon) on the next day. The Independent Evaluator uses this information to prepare the guaranty for each such RFP Bidder.

- VII.3.6. The Independent Evaluator presents the results of the solicitation to the Commission on the business day after the Bid Date in a confidential report. This confidential report will include the winning Bids identified during the evaluation. The Commission will have one (1) business day to consider the report of the Independent Evaluator and to approve or reject each of the winning Bids. If the Commission does not act within one (1) business day, the winning Bids are deemed to be approved.
- VII.3.7. On the day that the Commission approves some or all of the winning Bids, the Independent Evaluator notifies all RFP Bidders that have approved Bids. Such RFP Bidders are called Default Suppliers. When referring specifically to RFP Bidders that are not already Default Suppliers, the term New Default Suppliers will be used. When referring specifically to RFP Bidders that are already Default Suppliers, the term Existing Default Suppliers will be used.
- VII.3.8. On the day the Commission approves some or all of the winning Bids, the Independent Evaluator provides to PECO the name of each Default Supplier, the number of tranches won by each Default Supplier, and the Default Supplier's price for each product. The price for each such Default Supplier and for a given product is the average of the Default Supplier's approved Bids for that product in this solicitation.
- VII.3.9. On the day the Commission approves some or all of the winning Bids, the Independent Evaluator sends to PECO by secure file transfer the Uniform SMA, including all Exhibits, for each New Default Supplier. On the same day, the Independent Evaluator sends to PECO by secure file transfer the guaranty for each New Default Supplier relying on the financial standing of an RFP Guarantor. The Independent Evaluator also sends to PECO by secure file transfer the most current contact information that the Independent Evaluator has for each Default Supplier.
- VII.3.10. On the business day following the Commission approval of some or all of the winning Bids, PECO prepares one (1) Transaction Confirmation (Exhibit 1 of the Uniform SMA) for each product and Default Supplier. PECO partially executes two (2) originals of each Transaction Confirmation for each

Default Supplier and each product. PECO also partially executes two (2) originals of the Uniform SMA with each New Default Supplier.

VII.3.11. By 12PM on the second business day following the Commission approval of some or all of the winning Bids, PECO sends:

- One (1) copy of the signature page of the Uniform SMA (page 75) and one (1) copy of the signature page of Exhibit 3, the PJM Declaration of Authority (page 9) by email to each New Default Supplier;
- One (1) copy of the partially executed Transaction Confirmation by email to each Default Supplier for each product for which the Default Supplier has won tranches; and
- The guaranty by email to each New Default Supplier relying on the financial standing of an RFP Guarantor.

PECO also informs each Default Supplier of its specific creditworthiness requirements.

VII.3.12. By close of the second business day following the Commission approval of some or all of the winning Bids, PECO sends by overnight delivery service:

- The two (2) originals of the partially executed Uniform SMA, including all Exhibits, to each New Default Supplier; and
- Two (2) original partially executed Transaction Confirmations to each Default Supplier for each product for which such Default Supplier has approved Bids.

VII.3.13. By 2PM on the third business day following Commission approval of some or all of the winning Bids:

- Each New Default Supplier partially executes the two (2) originals of the Uniform SMA and the two (2) originals of Exhibit 3, the PJM Declaration of Authority and returns one (1) copy of these signature pages to PECO by email;
- Each Default Supplier partially executes the two (2) originals of the Transaction Confirmations and returns one (1) copy of the signature page to PECO by email; and
- Each New Default Supplier relying on the financial standing of an RFP Guarantor executes the guaranty sent by email and returns one (1) copy of the signature page of the guaranty to PECO by email.

- VII.3.14. By close of the third business day following Commission approval of some or all of the winning Bids:
- Each New Default Supplier returns by overnight delivery service to PECO one (1) original of the Uniform SMA, including all Exhibits;
  - Each Default Supplier returns by overnight delivery service to PECO one (1) original of the Transaction Confirmation; and
  - Each Default Supplier complies with all instructions from PECO to fulfill the creditworthiness requirements under the Uniform SMA.
- VII.3.15. Following receipt of originals by PECO:
- PECO and each New Default Supplier have one (1) fully executed original of the Uniform SMA and of Exhibit 3, the PJM Declaration of Authority, as well as all other Exhibits;
  - PECO and each Default Supplier have one (1) fully executed original of a Transaction Confirmation for each product for which the Default Supplier has approved Bids;
- VII.3.16. As provided in the Commission's directive dated October 12, 2010 (Docket No. M-2009-2082042), the Independent Evaluator will release, within fifteen (15) days of the close of the solicitation, the weighted average price and the percentage of load represented by each tranche for each product procured through this RFP. The Independent Evaluator will issue an announcement on behalf of PECO with this information and the announcement will also be posted to the RFP website.
- VII.3.17. Within fifteen (15) days of the full execution of the Uniform SMA, the Independent Evaluator provides to PECO a report on the solicitation. This report is based on the confidential report provided to the Commission, except that no losing bid information specific to a particular RFP Bidder is provided and that any information that an RFP Bidder may consider confidential or proprietary is also redacted.
- VII.3.18. As provided in the PaPUC's directive dated October 12, 2010 (Docket No. M-2009-2082042), PECO will continue to provide a default service rate calculation model. The model shows the methodology for translating RFP results into default service rates. A separate tool or illustrative example will be provided for determination of TOU rates. The calculation model is posted to the PECO website:
- <https://www.peco.com/MyAccount/MyService/Pages/ElectricPricetoCompare.aspx>

**VII.4. Personnel and Confidentiality**

- VII.4.1. Any information provided by an RFP Bidder in its Part 1 Proposal is provided on a confidential basis to the Independent Evaluator and may be provided on a confidential basis to the Commission Staff. PECO representatives will review the information provided to fulfill the requirements of Section IV.2, Section IV.3, and Section IV.5 and will participate in the evaluation of the creditworthiness of each RFP Bidder.
- VII.4.2. Any information provided by an RFP Bidder in its Part 2 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Commission Staff. PECO representatives will review the Pre-Bid Letter of Credit with the name of the RFP Bidder and the amount redacted and will participate in the evaluation of this Pre-Bid Letter of Credit. PECO representatives will also review the documents provided to fulfill the requirements of Section V.4 and Section V.5.
- VII.4.3. The Independent Evaluator and representatives from PECO involved in the evaluation of Proposals will consider all data and information provided by RFP Bidders in response to this RFP to be confidential and will attempt to limit its disclosure to the public in accordance with the provisions of this Section. PECO will also take reasonable action to ensure that its employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. Each representative of the Independent Evaluator and PECO that has access to any portion of the Proposals is required to sign a Confidentiality Statement in the form of Appendix 12 to these RFP Rules prior to evaluation of any portion of the Proposals. The list of all signatories is available to an RFP Bidder upon request.
- VII.4.4. However, absolute protection from public disclosure of the RFP Bidders' data and information filed in response to this RFP cannot be provided and is not intended. By submitting a Proposal in response to this RFP, each RFP Bidder acknowledges and agrees to the limitations of the confidentiality provisions set forth in this Section.
- VII.4.5. In addition, the RFP Bidders' data and information filed in response to the RFP will be disclosed if required by any federal, state or local agency (including, without limitation, the Commission) or by a court of competent jurisdiction. PECO or the Independent Evaluator will notify the RFP Bidder in

advance of such disclosure and cooperate with such RFP Bidder, to the extent deemed reasonable by PECO, and at the expense of the RFP Bidder, to prevent the disclosure of such materials. In any event, PECO, its employees, and agents including the Independent Evaluator will not be responsible to the RFP Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to this RFP.

## **ARTICLE VIII. Reserved Rights**

- VIII.1.1. PECO will not be liable to any RFP Bidder or any other party for failure to execute a Uniform SMA or any Transaction Confirmation. Nothing herein may be construed to bind PECO unless and until the Commission has approved winning Bids, and the Uniform SMA and each Transaction Confirmation with an approved Default Supplier has been executed and is effective. Once effective, it is the Uniform SMA and not the RFP Rules or any documents relating thereto that will govern the relationship between and the responsibilities of the parties.
- VIII.1.2. The Independent Evaluator reserves the right to reject Proposals submitted in response to this RFP that are incomplete, or do not conform with the requirements of this RFP, or are submitted beyond the deadline for submission, or are submitted by an RFP Bidder that tries to unduly influence in any way the evaluation process.

# ADDENDUM to the RFP Rules

## MARCH 2021 Solicitation

### I.1 Auction Schedule

The schedule for this solicitation is below. All times in this schedule are Eastern Prevailing Time (“EPT”) unless specifically noted.

**Table 1. Schedule**

Event	Timing
Deadline to request consideration of an alternate form of guaranty	Tuesday, January 26, 2021
Bidder Information Webcast	Friday, February 5, 2021
Decision on alternate guaranty forms (if any)	Friday, February 12, 2021
Part 1 Window Opens	Wednesday, February 17, 2021
Part 1 Date (Part 1 Window Closes)	Tuesday, February 23, 2021
Part 1 Notification Date	Thursday, February 25, 2021
Approved modifications to Standard Guaranty posted	Friday, February 26, 2021
Part 2 Proposal Window Opens	Friday, February 26, 2021
Bid Submission training	Monday, March 1, 2021
Part 2 Date (Part 2 Window Closes)	Thursday, March 4, 2021
Part 2 Notification Date	Monday, March 8, 2021
Bid Date (Bids are Due)	Tuesday, March 9, 2021
IE provides its report to the PaPUC	Wednesday, March 10 2021
PaPUC Decision (close of business)	Thursday, March 11, 2021
<i>If Bids are approved by the PaPUC:</i>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service (by close of business on the fourth business day after the Bid Date)	Monday, March 15, 2021
Uniform SMA and Transaction Confirmation(s) fully executed (by 2PM on the fifth business day after the Bid Date)	Tuesday, March 16, 2021
Default Service Supplier meets the creditworthiness requirements (by close of the fifth business day after the Bid Date)	Tuesday, March 16, 2021

## I.2 Updated Size of a Tranche for Default Load and Products Available

The total number of tranches, Load Caps, and the percentage size of each tranche to be procured under DSP V are shown in the table below. The Total Peak (MW), Default Peak (MW), and MW-

Measure of each tranche have been updated for this solicitation and are also provided in Table 2.

**Table 2. Number of Tranches and Size of a Tranche for Default Load.**

DSP V				Updated for March 2021 Solicitation		
Class	Total Tranches	Load Cap	% Size of a Tranche	Total Peak (MW)	Default Peak (MW)	MW-Measure of a Tranche
RES	62	31	1.60%	3,777.68	2,641.22	42.17
SC	24	12	4.17%	1,086.36	482.47	20.10
CCI	8	4	12.50%	3,162.98	190.54	23.82

The products and number of tranches available in this solicitation are provided in Table 3. A product for purposes of this RFP is defined by three characteristics: a) the Class to which it contributes Default Supply; b) the length of the supply period; and c) the date at which the supply period begins. For example, the RES-12-Jun21 product represents Default Supply for the RES Class for the supply period from June 1, 2021 through May 31, 2022.

**Table 3. Products and Number of Tranches Available.**

Product	Tranches Available
RES-12-Jun21	12
RES-24-Jun21	11
SC-12-Jun21	6
SC-24-Jun21	3
CCI-12-Jun21	8

## I.2 Load Caps for Products Available

Each Class has "Load Caps", which are limits on the number of tranches of Default Supply that an RFP Bidder can bid and serve for that Class. The Load Caps ensure that there will be a diversified pool of

Default Suppliers for each Class. The Load Caps for a Class are set so that the Default Service customers of that Class have no more than a 50% exposure to any one Default Supplier at any given time. The Load Caps in this solicitation are provided here:

**Table 4. Available Tranches and Load Caps (March 2021 Solicitation; RES Class).**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Caps for RES Class
RES-12-Jun21	12	Won more than 19 RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 tranches under DSP IV	31 less RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 tranches won under DSP IV
RES-24-Jun21	11	Won more than 20 RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 tranches under DSP IV	

**Table 5. Available Tranches and Load Caps (March 2021 Solicitation; SC and CCI Classes).**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Caps
SC-12-Jun21	6	Won more than 6 tranches of SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 under DSP IV	12 less SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 tranches won under DSP IV
SC-24-Jun21	3	Won more than 9 tranches of SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 under DSP IV	
CCI-12-Jun21	8	Load Caps apply always	4

- The Load Cap for the RES Class will apply as follows. An RFP Bidder is limited to 31 tranches of the RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 products combined, including tranches bid for RES-12-Jun21 and RES-24-Jun21 in this solicitation.
- The Load Cap for the SC Class will apply as follows. An RFP Bidder is limited to 12 tranches for the SC-12-Dec19, SC-24-Jun20, SC-12-Dec20, SC-24-Dec20 products combined, including tranches bid for SC-12-Jun21 and SC-24-Jun21 in this solicitation.
- The Load Cap for the CCI Class will apply as follows. In this solicitation, an RFP Bidder is limited to 4 tranches for the CCI-12-Jun21 product.

**Appendix 1**  
**PECO Energy Company**  
**Pennsylvania Default Service Supplier Master Agreement**

**See PECO Exhibit JJM-4**

## Appendix 2 – Alternate Guaranty Process

The Alternate Guaranty Process allows a prospective supplier unable to use the standard format of the guaranty provided as Appendix G to the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”) to submit for consideration by PECO Energy Company (“PECO”) an alternate guaranty form that the prospective supplier uses in its normal course of business.

Any prospective supplier can apply to use an alternate guaranty form. Any alternate guaranty form, as is the case with the standard format of the guaranty of the Uniform SMA, must be a financial guaranty. While alternate forms of financial guaranty may be acceptable, performance guaranties are not acceptable.

### Process and Ground Rules

The process for submitting an alternate guaranty form and the ground rules for PECO’s consideration of alternate guaranty forms are as follows:

1. A prospective supplier wishing to have PECO evaluate an alternate guaranty form must initiate the process by making a request for such consideration to the Independent Evaluator no later than fifteen (15) business days prior to the opening of the Part 1 Window. Within three (3) business days of receipt of such a request, the Independent Evaluator will issue a timetable for receipt of the materials from the prospective supplier and for consideration of these materials by PECO.
2. PECO will consider alternate guaranty forms only if the guaranty is for unlimited liability. (A prospective supplier can utilize the safe harbor provided by the Standard Guaranty, which has a liability limit.)
3. PECO has specified a list of minimum requirements that any alternate guaranty form must satisfy. This list is under the heading: “Minimum Requirements for the Alternate Guaranty Form” below.
4. The Independent Evaluator will receive the alternate guaranty form, remove any information identifying the prospective supplier, and forward it to PECO and to outside counsel retained on behalf of PECO. PECO will determine, with the consultation of outside counsel and the Independent Evaluator as necessary, whether the alternate guaranty form provides sufficient assurances of payment, taking into account the following general considerations:
  - a. whether the alternate guaranty form conforms to the minimum requirements identified by PECO;
  - b. whether the alternate guaranty form, which is not subject to a monetary limit, provides credit protections comparable to the credit protections provided to PECO by the Standard Guaranty; and
  - c. whether the alternate guaranty form includes defenses in favor of the guarantor not found in the Standard Guaranty.

PECO may also identify specific changes that would permit the alternate guaranty form to be acceptable.

The Independent Evaluator will inform the prospective supplier of PECO's decision. The Independent Evaluator will inform the prospective supplier of any specific changes that may be required for the proposed alternate guaranty form to be acceptable to PECO. Prospective suppliers will be given an opportunity to resubmit the alternate guaranty form if changes are identified by PECO. Alternate guaranty forms that have been resubmitted may be rejected if they do not include the changes identified by PECO.

5. An alternate guaranty form approved through this Guaranty Process will be acceptable to PECO. This alternate guaranty form may be used by the prospective supplier through the end of DSP V barring changes in the applicable law or changes to the RFP as may be ordered by the Pennsylvania Public Utility Commission.

### **Minimum Requirements for the Alternate Guaranty Form**

Below are the minimum requirements that must be met in order for any alternate guaranty form to be acceptable. As stated above, in determining whether an alternate guaranty form is acceptable and provides sufficient assurances of payment, PECO takes into account several general considerations, including whether the alternate guaranty form fulfills the following minimum requirements:

1. The guaranty must be an unconditional guaranty of payment of all amounts due by the Seller to PECO under the applicable SMA(s), i.e., the Uniform SMA and any previously entered Default Service SMA(s). To clarify the meaning of the term "unconditional guaranty of payment", sample language is provided in the last section of this document. The applicable SMA(s) must be expressly identified and the satisfaction of obligations through performance may not be authorized.
2. The guaranty may be terminated upon no less than thirty (30) calendar days advance written notice to PECO and termination will not discharge liabilities and obligations of the guarantor that have been incurred up to and including the effective date of the termination. The termination of an alternate guaranty will be effective only upon the receipt of substitute security or credit support that is acceptable to PECO.
3. The guaranty must not be subject to any monetary limit.
4. The guaranty must be accompanied by a certification from the guarantor that the alternate guaranty form, subject to changes needed to conform to the minimum requirements specified herein or to the specific changes identified by PECO, has been in general use by the prospective supplier in its ordinary course of business over the past twelve (12) months.
5. The guaranty must be a guaranty of payment and not of collection.
6. Assignment of the guaranty will not be permitted except with the prior written consent of PECO, except in the case of a Successor Guarantor as defined below (see sample assignment language).
7. The prospective supplier must provide an enforceability opinion with respect to the alternate guaranty form from its outside counsel. The enforceability opinion must be from a law firm of national (i.e., United States) standing. The prospective supplier must name the law firm that is offering the enforceability opinion in its submission. The enforceability opinion must not be weaker than would be the industry norm and must contain only those qualifications that would be typical. The opinion will name PECO and explicitly state that PECO is entitled to rely on the opinion.

The enforceability opinion must not be qualified by or conditioned on any of the following:

- a. the valid existence and good standing of the parties to the Uniform SMA;
- b. the power and authority of the prospective supplier and guarantor to execute, deliver, and perform their respective agreements;
- c. due execution of the Uniform SMA and the alternate guaranty form; or
- d. that the Uniform SMA is legal, valid, binding, and enforceable against all parties.

At the time that the prospective supplier submits its alternate guaranty form and supporting documentation, the opinion may be unsigned. If the prospective supplier becomes an RFP Bidder, the RFP Bidder will be required to submit, with its Part 2 Proposal, the enforceability opinion exactly as approved, duly signed, and on letterhead of a law firm of national standing.

**Sample Language**

The process for submission of alternate guaranty forms is designed to give prospective suppliers some flexibility while at the same time assuring adequate credit protection for PECO and its customers. PECO provides sample language below for the purpose of clarifying certain aspects of the minimum requirements for alternate guaranty forms. This language is not required, but would be deemed acceptable to PECO. PECO reserves the right to reject alternate guaranty forms that do not contain language that, in PECO’s view, provides substantially comparable protections to the language set forth below.

Subject	Sample Language
Unconditional Guaranty	“Guarantor agrees that its obligations hereunder are unconditional and will not be discharged except by complete payment of all amounts due under the Uniform SMA, irrespective of any claim or dispute as to the Uniform SMA’s validity, regularity or enforceability, or the lack of authority of the RFP Bidder to enter into the Uniform SMA.”
Assignment	“Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without the prior written consent of PECO, and any purported assignment or delegation absent such consent is void, except for an assignment and delegation of all of Guarantor’s rights and obligations hereunder to a Successor Guarantor. For purposes of this paragraph, a “Successor Guarantor” means a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor’s assets and business and that assumes all of the Guarantor’s obligations hereunder by contract or operation of law; provided, that, such Successor Guarantor will have a long-term unsubordinated debt rating that is not lower than the lesser of (i) A2/A or (ii) the rating of the Guarantor immediately prior to such assumption.”

## **APPENDIX 3 – ILLUSTRATIVE STANDARD PART 1 FORM DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS**

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PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

Before completing this online Part 1 Form, please review the RFP, including the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”), so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.PECOprocurement.com](http://www.PECOprocurement.com).

By submitting a Part 1 Proposal in response to this RFP, you are agreeing to all terms and conditions of this RFP.

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*Any information provided by an RFP Bidder in this Part 1 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission. PECO representatives will review financial information and will participate in the evaluation of the creditworthiness of each RFP Bidder. Information regarding the content or status of any Part 1 Proposal will not be released publicly or to any individual RFP Bidder during the evaluation process.*

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**STANDARD PART 1  
FORM**

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**1. Contact Information and Representations**

First Item: Name and Address of the RFP Bidder

**PLEASE PROVIDE THE RFP BIDDER’S LEGAL NAME AND ADDRESS.**

*Legal Name of RFP Bidder*

*Street Address*



*City*

*State*

*Zip Code*

Second Item: Officer of the RFP Bidder

The Officer of the RFP Bidder must be an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder. The Officer of the RFP Bidder whose contact information is provided in this online Part 1 Form must:

- make all representations required by the Part 1 Proposal requirements; and
- make all representations required by the Part 2 Proposal requirements.

**PLEASE PROVIDE THE NAME AND CONTACT INFORMATION FOR THE OFFICER OF THE RFP BIDDER.**

*First Name*

*Last Name*

*Title*

*Street Address*



*City*

*State*

*Zip Code*

*Phone No.*

*Email Address*

Third Item: Representative of the RFP Bidder

The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder.

**PLEASE PROVIDE THE NAME AND CONTACT INFORMATION FOR THE REPRESENTATIVE OF THE RFP BIDDER.**  
The Officer of the RFP Bidder may also serve as the Representative.

<i>First Name</i>	<i>Last Name</i>		
<input type="text"/>	<input type="text"/>		
<i>Title</i>			
<input type="text"/>			
<i>Street Address</i>			
<input type="text"/>			
<input type="text"/>			
<i>City</i>	<i>State</i>	<i>Zip Code</i>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
<i>Phone No.</i>	<i>Cell Phone No. (optional)</i>	<i>Email Address</i>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	

**THE OFFICER OF THE RFP BIDDER MUST DESIGNATE THE INDIVIDUAL NAMED ABOVE TO SERVE AS THE REPRESENTATIVE OF THE RFP BIDDER BY COMPLETING THE REPRESENTATIVE INSERT.** The Representative Insert is also labelled INSERT #P1-1.

*Name of RFP Bidder*

 **REPRESENTATIVE INSERT (#P1-1)**

**THE OFFICER OF THE RFP BIDDER MUST DESIGNATE THE INDIVIDUAL WHOSE CONTACT INFORMATION IS PROVIDED IN THE ONLINE PART 1 FORM AS THE REPRESENTATIVE.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), hereby designate \_\_\_\_\_ (name of the Representative) to serve as the Representative of the RFP Bidder.

\_\_\_\_\_  
 Signature of Officer
 \_\_\_\_\_  
 Date

Fourth Item: Nominees

The Independent Evaluator provides notifications to the RFP Bidder by email and provides documents needed for participation by secure file transfer. Any such notification will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that where delivery or transmission occurs after 6 PM on a

business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day.

The RFP Bidder may designate up to three (3) authorized individuals (each called a “Nominee”) to receive communications from the Independent Evaluator in addition to the Representative. The RFP Bidder may make such a designation at any time during the solicitation.

*Is the RFP Bidder designating Nominees at this time?*

Yes                       No

**THE REPRESENTATIVE OF THE RFP BIDDER OR THE OFFICER OF THE RFP BIDDER DESIGNATES NOMINEES BY COMPLETING THE NOMINEE INSERT. The Nominee Insert is also labelled INSERT #P1-2.**

*Name of RFP Bidder*

**NOMINEE INSERT (#P1-2)**

**Please note! This insert is optional.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder or the Representative of the RFP Bidder), authorize the individuals whose contact details are immediately below to receive communications from the Independent Evaluator and to act on behalf of the RFP Bidder during the Proposal submission process.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Contact Information for Nominee #1**

*First Name*

*Last Name*

*Title*

*Phone No.*

*Cell Phone No. (optional)*

*Email Address*

**Contact Information for Nominee #2**

*First Name*

*Last Name*

*Title*

*Phone No.*

*Cell Phone No. (optional)*

*Email Address*

**Contact Information for Nominee #3**

*First Name*  *Last Name*

*Title*

*Phone No.*  *Cell Phone No. (optional)*  *Email Address*

Notes (optional)

The RFP Bidder may provide additional information here, such as the period during which a particular individual will act as Nominee or the individual that a Nominee is replacing.

**2. Financial Requirements and Agency Agreements**

First Item: Agency Agreement

**Is the RFP Bidder submitting a Proposal under an Agency Agreement?**

- Yes  No

**If Yes**, the RFP Bidder must elect a Principal as the entity on whose financial standing it is relying in responding to the next item.

Second Item: Election of Entity on Whose Financial Standing the RFP Bidder Is Relying

**PLEASE SELECT THE ENTITY UPON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING AS REQUIRED BY PARAGRAPH IV.2.2 OF THE RFP RULES:**

- (a) the RFP Bidder is relying on its own financial standing.
- (b) the RFP Bidder is relying on the financial standing of a guarantor.
- (c) the RFP Bidder is submitting a Proposal under an Agency Agreement and the RFP Bidder is relying on the financial standing of a Principal.

## 2.a. Financial and Credit Requirements

The RFP Bidder is the entity on whose financial standing the RFP Bidder is relying.

### First Item: Financial Information

**IF AVAILABLE, PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP BIDDER**, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:

- **IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;**
- **IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, PLEASE PROVIDE, IF AVAILABLE, THE RFP BIDDER’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION** accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.

	Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer) <b>IF THE INFORMATION IS UNAVAILABLE, PLEASE SO STATE IN THE JUSTIFICATION OF OMISSIONS SECTION.</b>
	Attestation from Chief Financial Officer if necessary.

### Second Item: Credit Ratings

**PLEASE PROVIDE ALL AVAILABLE CREDIT RATINGS FOR THE RFP BIDDER.**

***Is the RFP Bidder rated by S&P Global Ratings (“S&P”)?***

**Yes**                       **No**

RFP Bidder’s rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
---

***Is the RFP Bidder rated by Moody’s Investors Service, Inc. (“Moody’s”)?***

**Yes**                       **No**

RFP Bidder’s rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
---

***Is the RFP Bidder rated by Fitch, Inc. (“Fitch”)?***

**Yes**                       **No**

RFP Bidder’s rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
---

**2.b. Financial and Credit Requirements**

The RFP Bidder is relying on financial standing of an RFP Guarantor.

First Item: Name and Address of RFP Guarantor

**PLEASE PROVIDE THE LEGAL NAME AND ADDRESS OF THE RFP GUARANTOR.**

*Legal Name of RFP Guarantor*

*Street Address*


*City*

*State*

*Zip Code*

Second Item: Financial Information

**Financial information must be available for the RFP Guarantor.**

**PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP GUARANTOR, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:**

- **IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;**
- **IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, YOU MUST PROVIDE THE RFP GUARANTOR’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.**

	<i>Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)</i>
	<i>Attestation from Chief Financial Officer (if necessary)</i>

Third Item: Credit Ratings

**PLEASE PROVIDE THE CREDIT RATINGS FOR THE RFP GUARANTOR.**

**Is the RFP Guarantor rated by S&P Global Ratings (“S&P”)?**

**Yes**                       **No**

RFP Guarantor's rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
--

**Is the RFP Guarantor rated by Moody's Investors Service, Inc. ("Moody's")?**

**Yes**  **No**

RFP Guarantor's rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
--

**Is the RFP Guarantor rated by Fitch, Inc. ("Fitch")?**

**Yes**  **No**

RFP Guarantor's rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
--

**2.c. Financial and Credit Requirements**

The RFP Bidder is submitting a Proposal under an Agency Agreement and is relying on financial standing of a Principal.

First Item: Principals to the Agency Agreement

**PLEASE PROVIDE THE LEGAL NAME OF ALL PRINCIPALS UNDER THE AGENCY AGREEMENT.**

*Legal Name of Principal(s)*

--

Second Item: Agency Agreement

A copy of the Agency Agreement is required. **PLEASE SUBMIT ONE (1) COPY OF THE AGENCY AGREEMENT.**

	Agency Agreement
---	------------------

Third Item: Principal on Whose Financial Standing the RFP Bidder is Relying

**PLEASE IDENTIFY THE RFP PRINCIPAL ON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING.**

- If there are several Principals in the Agency Agreement, you must identify the Principal with the lowest credit rating.
- If several Principals have the same lowest credit rating, you must identify the Principal among these that also has the lowest tangible net worth.

The Principal on whose financial standing the RFP Bidder is relying is referred to as the “RFP Principal”.

Name of RFP Principal

<i>Street Address</i>		
<i>City</i>	<i>State</i>	<i>Zip Code</i>

Fourth Item: Financial Information

**PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP PRINCIPAL, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:**

- **IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;**
- **IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, YOU MUST PROVIDE THE RFP PRINCIPAL’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION** accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.

	<i>Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)</i>
	<i>Attestation from Chief Financial Officer (if necessary)</i>

Fifth Item: Credit Ratings

**PLEASE PROVIDE THE CREDIT RATINGS FOR THE RFP PRINCIPAL.**

**Is the RFP Principal rated by S&P Global Ratings (“S&P”)?**

**Yes**                       **No**

RFP Principal’s rating: \_\_\_\_\_

Type of rating (**check one**):     Senior unsecured debt rating     Corporate issuer rating

**Is the RFP Principal rated by Moody’s Investors Service, Inc. (“Moody’s”)?**

**Yes**                       **No**

RFP Principal's rating: \_\_\_\_\_  
 Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

*Is the RFP Principal rated by Fitch, Inc. ("Fitch")?*

Yes  No

RFP Principal's rating: \_\_\_\_\_  
 Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

Sixth Item: Agency Certifications

**THE OFFICER OF THE RFP BIDDER MUST CERTIFY TO HAVING AUTHORITY TO BIND THE PRINCIPAL(S) AND ACKNOWLEDGE THAT AN OFFICERS' CERTIFICATE MUST BE SIGNED BY COMPLETING THE AGENCY CERTIFICATIONS INSERT.** The Agency Certifications Insert is also labelled INSERT #P1-3.

*Name of RFP Bidder*

 **P1 AGENCY CERTIFICATIONS INSERT (#P1-3)**

**Please note! Only RFP Bidders submitting a Proposal under an Agency Agreement are required to submit this Insert.**

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), certify that I have the authority to bind the Principal(s) under the Agency Agreement provided with this Part 1 Proposal. I acknowledge that with the Part 2 Proposal, the RFP Bidder will be required to submit an Officers' Certificate signed by an officer of each Principal and substantially in the form of Appendix 6 to the RFP Rules.

\_\_\_\_\_  
 Signature of Officer

\_\_\_\_\_  
 Date

Seventh Item: Draft Officers' Certificate

The RFP Bidder may, but is not required to, submit a draft Officers' Certificate for evaluation. If a draft Officers' Certificate is submitted for evaluation, the Independent Evaluator will inform the RFP Bidder of any changes required.

*Is the RFP Bidder submitting a draft Officers' Certificate?*

Yes  No

**PLEASE PROVIDE THE RFP BIDDER'S DRAFT OFFICERS' CERTIFICATE.**

	<i>Draft Officers' Certificate</i>
---	------------------------------------

### 3. Credit Instruments and Uniform SMA

First Item: Standard Pre-Bid Letter of Credit

An RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD PRE-BID LETTER OF CREDIT BY SUBMITTING A DRAFT PRE-BID LETTER OF CREDIT SUBSTANTIALLY IN THE FORM OF THE STANDARD PRE-BID LETTER OF CREDIT INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD PRE-BID LETTER OF CREDIT USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Pre-Bid Letter of Credit are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Pre-Bid Letter of Credit?*

Yes  No

*Does the Draft Pre-Bid Letter of Credit contain the same requested modifications as a Draft Pre-Bid Letter of Credit submitted in a prior solicitation?*

Yes  No

No

A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated. **PLEASE PROVIDE THE DRAFT PRE-BID LETTER OF CREDIT.**

	<i>Draft Pre-Bid Letter of Credit</i>
---	---------------------------------------

**Yes**

A Draft Pre-Bid Letter of Credit that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

Second Item: Standard Post-Bid Letter of Credit

An RFP Bidder may request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD POST-BID LETTER OF CREDIT BY SUBMITTING A DRAFT POST-BID LETTER OF CREDIT SUBSTANTIALLY IN THE FORM OF THE STANDARD POST-BID LETTER OF CREDIT INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD POST-BID LETTER OF CREDIT USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Post-Bid Letter of Credit are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Post-Bid Letter of Credit?*

**Yes**  **No**

*Does the Draft Post-Bid Letter of Credit contain the same requested modifications as a Draft Post-Bid Letter of Credit submitted in a prior solicitation?*

**Yes**  **No**

**No**

A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated. **PLEASE PROVIDE THE DRAFT POST-BID LETTER OF CREDIT.**



*Draft Post-Bid Letter of Credit*

**Yes**

A Draft Post-Bid Letter of Credit that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

Third Item: Standard Guaranty

An RFP Bidder may request modifications to the Standard Guaranty that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD GUARANTY BY SUBMITTING A DRAFT GUARANTY SUBSTANTIALLY IN THE FORM OF THE STANDARD GUARANTY INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD GUARANTY USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Guaranty are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Guaranty?*

Yes  No

*Does the Draft Guaranty contain the same requested modifications as a Draft Guaranty submitted in a prior solicitation?*

Yes  No

No

A Draft Guaranty that is not substantially in the form of the Standard Guaranty will not be considered or evaluated. **PLEASE PROVIDE THE DRAFT GUARANTY.**

	Draft Guaranty
---	----------------

Yes

A Draft Guaranty that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

*Fourth Item: Information to Prepare the Uniform SMA and Its Exhibits*

In accordance with Paragraph IV.3.4 of the RFP Rules, **THE RFP BIDDER IS ASKED TO PROVIDE THE FOLLOWING INFORMATION TO PREPARE THE UNIFORM SMA:**

- any elections to be made in the Uniform SMA;
- contact information required to prepare the Form of Notice, which is included as Exhibit 2 to the Uniform SMA; and
- any additional information required to prepare the Uniform SMA and its Exhibits.

**The RFP Bidder must either:** (i) provide the requested information to prepare the Uniform SMA at this time; **or:** (ii) submit an acknowledgment signed by the Officer of the RFP Bidder that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

*Is the RFP Bidder providing information to prepare the Uniform SMA at this time?*

Yes  No

Yes

**THE RFP BIDDER PROVIDES THE INFORMATION TO PREPARE THE UNIFORM SMA BY COMPLETING THE UNIFORM SMA INSERT.** The Uniform SMA Insert is also labelled INSERT #P1-4.

\_\_\_\_\_  
Name of RFP Bidder



**UNIFORM SMA INSERT (#P1-4)**

**Please note! RFP Bidders must submit one (but ONLY one) of Insert #P1-4 and Insert #P1-5.**

- Under Section 5.4(a)(1) of the Uniform SMA, the DS Supplier may, in its sole discretion, add the following subsection 5.4(a)(1) by indicating yes or no below.

5.4(a)(1) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes as may have occurred since the previous calendar year.

***Do you intend for subsection 5.4(a)(1) to be included as part of the Uniform SMA?***

Yes                       No

- The information that you provide below will be used to complete Exhibit 2 (Form of Notice) to the Uniform SMA. **IF ANY OF THE INFORMATION REQUESTED BELOW IS UNAVAILABLE, PLEASE ENTER N/A IN THE CORRESPONDING FIELDS.**

(a) All Notices:

First Name

Last Name

Street Address



City

State

Zip Code

Phone No.

Email Address

DUNS

Federal Tax I.D. Number

(b) Invoices:

ATTN:

*First Name*

*Last Name*

*Phone No.*

*Email Address*

(c) Schedule:

ATTN:

*First Name*

*Last Name*

*Phone No.*

*Email Address*

(d) Payments:

ATTN:

*First Name*

*Last Name*

*Phone No.*

*Email Address*

(e) Wire Transfer:

*Bank*

*ABA*

*ACCT*

(f) Credit and Collections:

ATTN:

*First Name*

*Last Name*

*Phone No.*

*Email Address*

(g) Additional Notices of an Event of Default to:

ATTN:

*First Name*

*Last Name*

*Phone No.*

*Email Address*

No

**THE OFFICER OF THE RFP BIDDER PROVIDES THE REQUIRED ACKNOWLEDGMENT BY COMPLETING THE DELAY (SMA) INSERT.** The Delay (SMA) Insert is also labelled INSERT #P1-5.

\_\_\_\_\_  
*Name of RFP Bidder*

 **DELAY (SMA) INSERT (#P1-5)**

**Please note! RFP Bidders must submit one (but ONLY one) of Insert #P1-4 and Insert #P1-5.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all information required by the Uniform SMA Insert (#P1-4) by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

#### 4. Regulatory Representations

First Item: Representations by the Officer of the RFP Bidder

The Officer of the RFP Bidder must make a number of certifications as detailed in the RFP Rules. **THE OFFICER OF THE RFP BIDDER MAKES SUCH CERTIFICATIONS BY COMPLETING THE P1 CERTIFICATIONS A INSERT. THE SIGNATURE OF THE OFFICER OF THE RFP BIDDER MUST BE NOTARIZED.** The P1 Certifications A Insert is also labelled INSERT #P1-6.

*Name of RFP Bidder*

 **P1 CERTIFICATIONS (A) INSERT (#P1-6)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (1) I am an officer, a director, or an individual otherwise authorized to undertake contracts (including the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement) and bind the RFP Bidder.
- (2) All information provided in this Part 1 Proposal is true and accurate to the best of my knowledge and belief.
- (3) If, for any reason or due to any circumstance, any information provided in this Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, I or the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date.
- (4) This Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date.
- (5) The RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

Second Item: Additional Representations for RFP Bidders that have not previously qualified

The Officer of the RFP Bidder must make a number of certifications as detailed in the RFP Rules. **THE OFFICER OF THE RFP BIDDER MAKES SUCH CERTIFICATIONS BY COMPLETING THE P1 CERTIFICATIONS B INSERT. THE SIGNATURE OF THE OFFICER OF THE RFP BIDDER MUST BE NOTARIZED.** The P1 Certifications B Insert is also labelled INSERT #P1-7.

*Name of RFP Bidder*

**P1 CERTIFICATIONS (B) INSERT (#P1-7)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (1) I understand the terms of the Uniform SMA. The RFP Bidder accepts all of the terms of the Uniform SMA without modifications, and the RFP Bidder will execute the Uniform SMA and the Transaction Confirmation(s) for all Bids approved by the Commission.
- (2) The submission of this Part 1 Proposal constitutes the RFP Bidder's acknowledgement and acceptance of all the terms and conditions of the RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.
- (3) The RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA.
- (4) The RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

Third Item: Load Serving Entity

By the time service begins, a Default Supplier must be a Load Serving Entity (“LSE”) in good standing in PJM, and must be a signatory of all applicable PJM Agreements, including the Reliability Assurance Agreement (“RAA”).

**Is the RFP Bidder an LSE in PJM?**

Yes  No

**Yes**

**THE RFP BIDDER MUST PROVIDE A COPY OF THE SIGNATURE PAGE OF THE RELIABILITY ASSURANCE AGREEMENT (“RAA”).**

	<i>Signature Page of RAA</i>
---	------------------------------

If the name of the signatory is not the same as the RFP Bidder, please provide evidence of a name change.

	<i>Evidence of name change (if necessary)</i>
---	---

**No**

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE CERTIFICATIONS DETAILED IN THE RFP RULES BY COMPLETING THE LSE REPRESENTATION INSERT.** The LSE Representation Insert is also labelled INSERT #P1-9.

\_\_\_\_\_

*Name of RFP Bidder*

 **LSE REPRESENTATION INSERT (#P1-9)**

**Please note! ONLY RFP Bidders that are NOT PJM LSEs are required to submit this Insert.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), certify that the RFP Bidder has investigated the requirements to become an LSE in PJM and that there exist no impediments for the RFP Bidder to become an LSE by the start of the supply period and to remain an LSE for the duration of the supply period. The RFP Bidder undertakes to be qualified as a PJM LSE by the start of the supply period should the RFP Bidder become a Default Supplier.

\_\_\_\_\_  
 Signature of Officer
 \_\_\_\_\_  
 Date

### 5. Foreign RFP Bidders and Foreign Entities

*Is the RFP Bidder a Foreign Entity, or is the RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor, or is the RFP Bidding submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal?*

Yes

No

Yes

**AN RFP BIDDER THAT IS A FOREIGN RFP BIDDER, OR THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP GUARANTOR, OR RFP BIDDERS SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE SECTION IV.5 OF THE RFP RULES BY COMPLETING THE APPLICABLE INSERT AND PROVIDING ASSOCIATED DOCUMENTS.** An RFP Bidder that is a Foreign RFP Bidder is required to complete the P1 Foreign Bidder Insert, also labelled INSERT #P1-10. An RFP Bidder relying on the financial standing of a Foreign RFP Guarantor is required to complete the P1 Foreign Guarantor Insert, also labelled INSERT #P1-11. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal is required to complete the P1 Foreign Principal Insert, also labelled INSERT #P1-12.

	<i>Insert (P1 Foreign Bidder Insert #P1-10, P1 Foreign Guarantor Insert #P1-11, OR P1 Foreign Principal Insert #P1-12)</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

\_\_\_\_\_  
*Name of RFP Bidder*

 **P1 FOREIGN BIDDER INSERT (#P1-10)**

**Please note! ONLY Foreign RFP Bidders are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, a Foreign RFP Bidder may provide any additional evidence of creditworthiness for the Foreign RFP Bidder so as to provide PECO with comparable assurances of creditworthiness as

is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

*Are you submitting additional evidence of creditworthiness for the Foreign RFP Bidder?*

Yes  No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

Second Item: Acknowledgment

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

*Are you submitting a draft of any of these additional documents for evaluation?*

Yes  No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

\_\_\_\_\_  
Name of RFP Bidder

 **P1 FOREIGN GUARANTOR INSERT (#P1-11)**

**Please note! ONLY RFP Bidders relying on a Foreign RFP Guarantor are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder relying on the financial standing of a Foreign RFP Guarantor may provide any additional evidence of creditworthiness for the Foreign RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

*Are you submitting additional evidence of creditworthiness for the Foreign RFP Guarantor?*

Yes  No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

Second Item: Acknowledgment

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign Entity as RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

Signature of Officer

Date

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

*Are you submitting a draft of any of these additional documents for evaluation?*

 Yes

 No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

\_\_\_\_\_  
Name of RFP Bidder

 **P1 FOREIGN PRINCIPAL INSERT (#P1-12)**

**Please note! ONLY RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as RFP Principal may provide any additional evidence of creditworthiness for the RFP Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

*Are you submitting additional evidence of creditworthiness for the Foreign Principal?*

 Yes

 No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

Second Item: Acknowledgment

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

*Are you submitting a draft of any of these additional documents for evaluation?*

Yes

No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

No

The requirements of this section do not apply to you.

## 6. Justification of Omissions

If you are unable to provide all documents or information required with this online Part 1 Form, please justify fully any omissions in the space provided below.

If you are providing additional documents, such as providing the Part 2 Form certifications for early processing, please use the spaces below to upload these documents.

	<i>File upload</i>
	<i>File upload</i>
	<i>File upload</i>

# APPENDIX 4 – ILLUSTRATIVE SHORT PART 1 FORM DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS

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PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

This Short Part 1 Form may only be used by an entity that has submitted a successful Part 1 Proposal in a previous solicitation under PECO’s current Default Service Program (“DSP V”). However, if there was a change in the corporate structure of the RFP Bidder, or if the identity of the entity on whose financial standing the RFP Bidder relies has changed, the RFP Bidder must use the Standard Part 1 Form.

Before completing this online Part 1 Form, please review the RFP, including the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”), so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.PECOprocurement.com](http://www.PECOprocurement.com).

By submitting a Part 1 Proposal in response to this RFP, you are agreeing to all terms and conditions of this RFP.

---

*Any information provided by an RFP Bidder in the Part 1 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission. PECO representatives will review financial information and will participate in the evaluation of the creditworthiness of each RFP Bidder. Information regarding the content or status of any Part 1 Proposal will not be released publicly or to any individual RFP Bidder during the evaluation process.*

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## SHORT PART 1 FORM

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### **GENERAL INSTRUCTIONS on the RFP Bidders that can use this form:**

- This Short Part 1 Form is for the exclusive use of RFP Bidders that successfully submitted a Part 1 Proposal in a previous solicitation under DSP V. If you are not eligible under this criterion, **please use the Standard Part 1 Form.**
- If there is a change in the corporate structure of the RFP Bidder (through a merger for example) since you last submitted a successful Part 1 Proposal in a previous solicitation under DSP V, **please use the Standard Part 1 Form.**
- If the entity on whose financial standing the RFP Bidder relies changed since you last submitted a successful Part 1 Proposal in a previous solicitation under DSP V, **please use the Standard Part 1 Form.**

# 1. Contact Information and Representations

First Item: Name and Address of the RFP Bidder

Below is the information that you previously provided. **PLEASE MAKE ANY NECESSARY UPDATES TO THE RFP BIDDER’S LEGAL NAME AND ADDRESS.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

*Legal Name of RFP Bidder*

*Street Address*



*City*

*State*

*Zip Code*

**IF THE LEGAL NAME OF THE RFP BIDDER HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE.**

	Evidence of name change (if necessary)
---	--

Second Item: Officer of the RFP Bidder

The Officer of the RFP Bidder must be an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder. The Officer of the RFP Bidder whose contact information is provided in this online Part 1 Form must:

- make all representations required by the Part 1 Proposal requirements; and
- make all representations required by the Part 2 Proposal requirements.

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE OFFICER OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

*First Name*

*Last Name*

*Title*

*Street Address*



*City*

*State*

*Zip Code*

*Phone No.*

*Email Address*

Third Item: Representative of the RFP Bidder

The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder.

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE REPRESENTATIVE OF THE RFP BIDDER.** The Officer of the RFP Bidder may also serve as the Representative. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

<i>First Name</i>	<i>Last Name</i>	
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	
<i>Title</i>		
<input type="text" value="[pre-populated]"/>		
<i>Street Address</i>		
<input type="text" value="[pre-populated]"/>		
<input type="text" value="[pre-populated]"/>		
<i>City</i>	<i>State</i>	<i>Zip Code</i>
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>
<i>Phone No.</i>	<i>Cell Phone No. (optional)</i>	<i>Email Address</i>
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>

**Has the individual who will serve as Representative changed?**

Yes                       No

If the individual who will serve as Representative has changed since you last submitted a successful Part 1 Proposal under DSP V, **THE OFFICER OF THE RFP BIDDER MUST DESIGNATE THE INDIVIDUAL NAMED IN THE ONLINE PART 1 FORM TO SERVE AS THE REPRESENTATIVE OF THE RFP BIDDER BY COMPLETING THE REPRESENTATIVE INSERT.** The Representative Insert is also labelled INSERT #P1-1.

*Name of RFP Bidder*

**REPRESENTATIVE INSERT (#P1-1)**

**THE OFFICER OF THE RFP BIDDER MUST DESIGNATE THE INDIVIDUAL WHOSE CONTACT INFORMATION IS PROVIDED IN THE ONLINE PART 1 FORM AS THE REPRESENTATIVE.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder) hereby designate \_\_\_\_\_ (name of the Representative) to serve as the Representative of the RFP Bidder.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

Fourth Item: Nominees

The Independent Evaluator provides notifications to the RFP Bidder by email and provides documents needed for participation by secure file transfer. Any such notification will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that where delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day.

The RFP Bidder may designate up to three (3) authorized individuals (each called a “Nominee”) to receive communications from the Independent Evaluator in addition to the Representative. The RFP Bidder may make such a designation at any time during the solicitation.

Nominees are designated for a single solicitation and previously submitted designations are not saved for use in subsequent solicitations.

***Is the RFP Bidder designating Nominees at this time?***

**Yes**                       **No**

**THE REPRESENTATIVE OF THE RFP BIDDER OR THE OFFICER OF THE RFP BIDDER DESIGNATES NOMINEES BY COMPLETING THE NOMINEE INSERT. The Nominee Insert is also labelled INSERT #P1-2.**

*Name of RFP Bidder*

 **NOMINEE INSERT (#P1-2)**

**Please note! This insert is optional.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder or the Representative of the RFP Bidder) authorize the individuals whose contact details are immediately below to receive communications from the Independent Evaluator and to act on behalf of the RFP Bidder during the Proposal submission process.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Contact Information for Nominee #1

*First Name*

*Last Name*

*Title*

*Phone No.*

*Cell Phone No. (optional)*

*Email Address*

Contact Information for Nominee #2

*First Name*

*Last Name*

*Title*

*Phone No.*

*Cell Phone No. (optional)*

*Email Address*

Contact Information for Nominee #3

*First Name*

*Last Name*

*Title*

*Phone No.*

*Cell Phone No. (optional)*

*Email Address*

Notes (optional)

The RFP Bidder may provide additional information here, such as the period during which a particular individual will act as Nominee or the individual that a Nominee is replacing.

**2.a. Information Required for RFP Bidders Relying on Their Own Financial Standing.**

**IF THE ENTITY UPON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING HAS CHANGED, YOU MUST USE THE STANDARD PART 1 FORM. PLEASE CONTACT THE INDEPENDENT EVALUATOR AT [PECOPROUREMENT@NERA.COM](mailto:PECOPROUREMENT@NERA.COM) TO RECEIVE INSTRUCTIONS ON THE FORM THAT YOU SHOULD USE.**

*First Item: Financial Information*

**IF AVAILABLE, PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP BIDDER, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:**

- **IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;**
- **IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, PLEASE PROVIDE, IF AVAILABLE, THE RFP BIDDER’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.**

	<i>Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)</i> <b>IF THE INFORMATION IS UNAVAILABLE, PLEASE SO STATE IN THE JUSTIFICATION OF OMISSIONS SECTION.</b>
	<i>Attestation from Chief Financial Officer if necessary.</i>

*Second Item: Credit Ratings*

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE CREDIT RATINGS FOR THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

**Is the RFP Bidder rated by S&P Global Ratings (“S&P”)?**

**Yes**                       **No**

RFP Bidder’s rating: _____	
Type of rating ( <b>check one</b> ):	<input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating

**Is the RFP Bidder rated by Moody’s Investors Service, Inc. (“Moody’s”)?**

**Yes**                       **No**

RFP Bidder’s rating: _____	
Type of rating ( <b>check one</b> ):	<input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating

**Is the RFP Bidder rated by Fitch, Inc. (“Fitch”)?**

**Yes**                       **No**

RFP Bidder's rating: Type of rating ( <b>check one</b> ):	<input type="checkbox"/> Senior unsecured debt rating	<input type="checkbox"/> Corporate issuer rating
--	---	--

**2.b. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Guarantor**

You previously elected the RFP Guarantor whose information is below as the entity on whose financial standing the RFP Bidder is relying. **IF THE ENTITY UPON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING HAS CHANGED, YOU MUST USE THE STANDARD PART 1 FORM. IF THERE WAS A CHANGE IN THE CORPORATE STRUCTURE OF THE RFP GUARANTOR, THROUGH A MERGER FOR EXAMPLE, YOU MUST USE THE STANDARD PART 1 FORM. PLEASE CONTACT THE INDEPENDENT EVALUATOR AT [PECOPROCUREMENT@NERA.COM](mailto:PECOPROCUREMENT@NERA.COM) TO RECEIVE INSTRUCTIONS ON THE FORM THAT YOU SHOULD USE.**

First Item: Name and Address of RFP Guarantor

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE ADDRESS FOR THE RFP GUARANTOR.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

*Legal Name of RFP Guarantor*

*Street Address*


*City*

*State*

*Zip Code*

**IF THE LEGAL NAME OF THE RFP GUARANTOR HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE.**

	Evidence of name change (if necessary)
---	--

Second Item: Financial Information

**Financial information must be available for the RFP Guarantor.**

**PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP GUARANTOR, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:**

- **IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;**
- **IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, YOU MUST PROVIDE THE RFP GUARANTOR’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an**

attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.

	Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)
	Attestation from Chief Financial Officer (if necessary)

Third Item: Credit Ratings

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO CREDIT RATINGS FOR THE RFP GUARANTOR.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

**Is the RFP Guarantor rated by S&P Global Ratings (“S&P”)?**

Yes  No

RFP Guarantor’s rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
--

**Is the RFP Guarantor rated by Moody’s Investors Service, Inc. (“Moody’s”)?**

Yes  No

RFP Guarantor’s rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
--

**Is the RFP Guarantor rated by Fitch, Inc. (“Fitch”)?**

Yes  No

RFP Guarantor’s rating: _____ Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating
--

**2.c. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Principal**

You previously elected a Principal as the entity on whose financial standing the RFP Bidder is relying; the RFP Bidder is submitting a Proposal under an Agency Agreement. **IF THE ENTITY UPON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING HAS CHANGED YOU MUST USE THE STANDARD PART 1 FORM. PLEASE CONTACT THE INDEPENDENT EVALUATOR AT [PECOPROUREMENT@NERA.COM](mailto:PECOPROUREMENT@NERA.COM) TO RECEIVE INSTRUCTIONS ON THE FORM THAT YOU SHOULD USE.**

**AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO PROVIDE FINANCIAL INFORMATION REGARDING THE PRINCIPAL AS WELL AS OTHER INFORMATION REGARDING THE AGENCY AGREEMENT AS SPECIFIED IN THE RFP RULES.** The Independent Evaluator provided to you, along

with your login credentials, the P1 Agency Certifications Insert (#P1-3) and the Agency Agreement that you submitted previously (if any).

First Item: Principals to the Agency Agreement

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME(S) OF THE PRINCIPAL(S).** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Legal Name of Principal(s)

Second Item: Agency Agreement

**Has the Agency Agreement changed since the RFP Bidder last submitted a successful Part 1 Proposal?**

Yes                       No

A copy of the Agency Agreement is required. **PLEASE PROVIDE ONE (1) COPY OF THE AGENCY AGREEMENT.**

	Agency Agreement
--	------------------

Third Item: Principal on Whose Financial Standing the RFP Bidder is Relying

Below is the information that you previously provided regarding the Principal on whose financial standing the RFP Bidder is relying.

- If there are several Principals in the Agency Agreement, you must identify the Principal with the lowest credit rating.
- If several Principals have the same lowest credit rating, you must identify the Principal among these that also has the lowest tangible net worth.

**PLEASE MAKE ANY NECESSARY UPDATES.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Legal Name of RFP Principal

Street Address



City

State

Zip Code

**IF THE LEGAL NAME OF THE PRINCIPAL HAS CHANGED, MORE INFORMATION MAY BE REQUIRED.**

Fourth Item: Financial Information

**Financial information must be available for the Principal on whose financial standing the RFP Bidder is relying.**

**PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE PRINCIPAL ON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:**

- **IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;**
- **IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, YOU MUST PROVIDE THE RFP PRINCIPAL’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.**

	<i>Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)</i>
	<i>Attestation from Chief Financial Officer (if necessary)</i>

Fifth Item: Credit Ratings

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO CREDIT RATINGS FOR THE RFP PRINCIPAL.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

**Is the Principal rated by S&P Global Ratings (“S&P”)?**

**Yes**                       **No**

Principal’s rating: \_\_\_\_\_  
 Type of rating (**check one**):       Senior unsecured debt rating       Corporate issuer rating

**Is the Principal rated by Moody’s Investors Service, Inc. (“Moody’s”)?**

**Yes**                       **No**

Principal’s rating: \_\_\_\_\_  
 Type of rating (**check one**):       Senior unsecured debt rating       Corporate issuer rating

**Is the Principal rated by Fitch, Inc. (“Fitch”)?**

**Yes**                       **No**

Principal’s rating: \_\_\_\_\_  
 Type of rating (**check one**):       Senior unsecured debt rating       Corporate issuer rating

Sixth Item: Certification

**THE OFFICER OF THE RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO MAKE A CERTAIN REPRESENTATION BY COMPLETING THE P1 AGENCY CERTIFICATIONS (#P1-3).** The P1 Agency Certifications Insert is also labelled INSERT #P1-3.

*Name of RFP Bidder*



**P1 AGENCY CERTIFICATIONS (PREV QUAL) INSERT (#P1-3)**

**Please note! Only RFP Bidders submitting a Proposal under an Agency Agreement are required to complete this Insert.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), certify that I have the authority to bind the Principal(s) under the Agency Agreement provided with this Part 1 Proposal. I acknowledge that with the Part 2 Proposal, the RFP Bidder will be required to submit an Officers' Certificate signed by an officer of each Principal and substantially in the form of Appendix 6 to the RFP Rules.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

RFP Bidders that have submitted a successful Part 1 Proposal for a prior solicitation under DSP V previously acknowledged that, with the Part 2 Proposal, the RFP Bidder will be required to submit an Officers' Certificate signed by an officer of each Principal and substantially in the form of Appendix 6 to the RFP Rules.

Seventh Item: Draft Officers' Certificate

The RFP Bidder may, but is not required to, submit a draft Officers' Certificate for evaluation. If a draft Officers' Certificate is submitted for evaluation, the Independent Evaluator will inform the RFP Bidder of any changes required.

***Is the RFP Bidder submitting a draft Officers' Certificate?***

**Yes**

**No**

**PLEASE PROVIDE THE RFP BIDDER'S DRAFT OFFICERS' CERTIFICATE.**



*Draft Officers' Certificate*

### 3. Credit Instruments and Uniform SMA

First Item: Standard Pre-Bid Letter of Credit

An RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD PRE-BID LETTER OF CREDIT BY SUBMITTING A DRAFT PRE-BID LETTER OF CREDIT SUBSTANTIALLY IN THE FORM OF THE STANDARD PRE-BID LETTER OF CREDIT INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD PRE-BID LETTER OF CREDIT USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Pre-Bid Letter of Credit are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Pre-Bid Letter of Credit?*

Yes  No

*Does the Draft Pre-Bid Letter of Credit contain the same requested modifications as a Draft Pre-Bid Letter of Credit submitted in a prior solicitation?*

Yes  No

No

A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated. **PLEASE PROVIDE THE DRAFT PRE-BID LETTER OF CREDIT.**



*Draft Pre-Bid Letter of Credit*

Yes

A Draft Pre-Bid Letter of Credit that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

Second Item: Standard Post-Bid Letter of Credit

An RFP Bidder may request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD POST-BID LETTER OF CREDIT BY SUBMITTING A DRAFT POST-BID LETTER OF CREDIT SUBSTANTIALLY IN THE FORM OF THE STANDARD POST-BID LETTER OF CREDIT INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD POST-BID LETTER OF CREDIT USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Post-Bid Letter of Credit are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Post-Bid Letter of Credit?*

- Yes  No

*Does the Draft Post-Bid Letter of Credit contain the same requested modifications as a Draft Post-Bid Letter of Credit submitted in a prior solicitation?*

- Yes  No

**No**

A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated. **PLEASE PROVIDE THE DRAFT POST-BID LETTER OF CREDIT.**



*Draft Post-Bid Letter of Credit*

**Yes**

A Draft Post-Bid Letter of Credit that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

Third Item: Standard Guaranty

An RFP Bidder may request modifications to the Standard Guaranty that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD GUARANTY BY SUBMITTING A DRAFT GUARANTY SUBSTANTIALLY IN THE FORM OF THE STANDARD GUARANTY INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD GUARANTY USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Guaranty are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Guaranty?*

- Yes  No

*Does the Draft Guaranty contain the same requested modifications as a Draft Guaranty submitted in a prior solicitation?*

- Yes  No

**No**

A Draft Guaranty that is not substantially in the form of the Standard Guaranty will not be considered or evaluated. **PLEASE PROVIDE THE DRAFT GUARANTY.**



*Draft Guaranty*

Yes

A Draft Guaranty that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

Fourth Item: Information to Prepare the Uniform SMA and Its Exhibits

*Is the RFP Bidder a Default Supplier serving tranches won in a solicitation under DSP V?*

Yes  No

If Yes, please proceed to the Section 4.

If No, please provide the information required by this section.

**RFP BIDDERS ARE ASKED TO PROVIDE ALL INFORMATION NEEDED TO PREPARE THE UNIFORM SMA AND ITS EXHIBITS. AN RFP BIDDER THAT DOES NOT PROVIDE THIS INFORMATION MUST INSTEAD SUBMIT AN ACKNOWLEDGMENT SIGNED BY THE OFFICER OF THE RFP BIDDER.**

*Is the RFP Bidder providing information to prepare the Uniform SMA at this time?*

Yes  No

 Yes

**THE RFP BIDDER PROVIDES THE INFORMATION TO PREPARE THE UNIFORM SMA AND ITS EXHIBITS BY COMPLETING THE UNIFORM SMA INSERT.** The Uniform SMA Insert is also labelled INSERT #P1-4.

The Independent Evaluator provided to you, along with your login credentials, the Uniform SMA Insert that you submitted previously. You may make any updates to this document. By submitting this form of the Uniform SMA Insert (#P1-4) without making updates, you will be confirming that the previously provided information remains valid.

\_\_\_\_\_  
Name of RFP Bidder

 **UNIFORM SMA INSERT (#P1-4)**

**Please note! RFP Bidders must submit one (but ONLY one) of Insert #P1-4 and Insert #P1-5.**

- Under Section 5.4(a)(i) of the Uniform SMA, the DS Supplier may, in its sole discretion, add the following subsection 5.4(a)(i) by indicating yes or no below.

5.4(a)(i) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes as may have occurred since the previous calendar year.

**Do you intend for subsection 5.4(a)(i) to be included as part of the Uniform SMA?**

**Yes**                       **No**

2. The information that you provide below will be used to complete Exhibit 2 (Form of Notice) to the Uniform SMA. **IF ANY OF THE INFORMATION REQUESTED BELOW IS UNAVAILABLE, PLEASE ENTER N/A IN THE CORRESPONDING FIELDS.**

(a) All Notices:

<i>First Name</i>	<i>Last Name</i>	
<input type="text"/>	<input type="text"/>	
<i>Street Address</i>		
<input type="text"/>		
<input type="text"/>		
<i>City</i>	<i>State</i>	<i>Zip Code</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Email Address</i>	
<input type="text"/>	<input type="text"/>	
<i>DUNS</i>	<i>Federal Tax I.D. Number</i>	
<input type="text"/>	<input type="text"/>	

(b) Invoices:

<i>ATTN:</i>	
<i>First Name</i>	<i>Last Name</i>
<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Email Address</i>
<input type="text"/>	<input type="text"/>

(c) Schedule:

<i>First Name</i>	<i>Last Name</i>
<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Email Address</i>
<input type="text"/>	<input type="text"/>

(d) Payments:

<i>ATTN:</i>	
<i>First Name</i>	<i>Last Name</i>
<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Email Address</i>
<input type="text"/>	<input type="text"/>

(e) Wire Transfer:

*Bank*

*ABA*

*ACCT*

(f) Credit and Collections:

*ATTN:*

*First Name*

*Last Name*

*Phone No.*

*Email Address*

(g) Additional Notices of an Event of Default to:

*ATTN:*

*First Name*

*Last Name*

*Phone No.*

*Email Address*

No

**THE OFFICER OF THE RFP BIDDER PROVIDES THE REQUIRED ACKNOWLEDGMENT BY COMPLETING THE DELAY (SMA) INSERT.** The Delay (SMA) Insert is also labelled INSERT #P1-5.

\_\_\_\_\_  
*Name of RFP Bidder*

 **DELAY (SMA) INSERT (#P1-5)**

**Please note! RFP Bidders must submit one (but ONLY one) of Insert #P1-4 and Insert #P1-5.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all information required by the Uniform SMA Insert (#P1-4) by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

#### 4. Representations

The Officer of the RFP Bidder must make a number of representations and certifications, which may include any or all of those detailed in Paragraphs IV.4.1, IV.4.2, and IV.4.3 of the RFP Rules.

*Is the RFP Bidder a Default Supplier serving tranches won in a solicitation under DSP V?*

Yes  No

Yes

**THE OFFICER OF THE RFP BIDDER MAKES SUCH CERTIFICATIONS BY COMPLETING THE P1 CERTIFICATIONS (A) INSERT.** The P1 Certifications (Default Supplier) Insert is also labelled INSERT #P16.

**THE SIGNATURE OF THE OFFICER OF THE RFP BIDDER MUST BE NOTARIZED.**

*Name of RFP Bidder*

 **P1 CERTIFICATIONS (A) INSERT (#P1-6)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (1) I am an officer, a director, or an individual otherwise authorized to undertake contracts (including the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement) and bind the RFP Bidder.
- (2) All information provided in this Part 1 Proposal is true and accurate to the best of my knowledge and belief.
- (3) If, for any reason or due to any circumstance, any information provided in this Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, I or the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date.
- (4) This Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date.
- (5) The RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

Printed Name	Date
_____	_____
Signature and Seal from Notary Public	Date
_____	_____

**No**

**THE OFFICER OF THE RFP BIDDER MAKES SUCH CERTIFICATIONS BY COMPLETING THE P1 CERTIFICATIONS (A) INSERT AND P1 CERTIFICATIONS (C) INSERT.** These inserts are also labelled INSERT #P1-6 and INSERT #P1-8, respectively.

**THE SIGNATURE OF THE OFFICER OF THE RFP BIDDER MUST BE NOTARIZED.**

*Name of RFP Bidder*

**P1 CERTIFICATIONS (A) INSERT (#P1-6)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (6) I am an officer, a director, or an individual otherwise authorized to undertake contracts (including the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement) and bind the RFP Bidder.
- (7) All information provided in this Part 1 Proposal is true and accurate to the best of my knowledge and belief.
- (8) If, for any reason or due to any circumstance, any information provided in this Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, I or the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date.
- (9) This Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date.
- (10) The RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

*Name of RFP Bidder*

 **P1 CERTIFICATIONS (C) INSERT (#P1-8)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (1) The RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder’s knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder’s performance of its obligations under the Uniform SMA.
- (2) The RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent.
- (3) If the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder’s Bids to the Commission as winning Bids, all information required for the preparation of the Uniform SMA and its Exhibits must be submitted and complete by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

5. Foreign RFP Bidders and Foreign Entities

*Is the RFP Bidder a Foreign Entity, or is the RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor, or is the RFP Bidding submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal?*

Yes  No

Yes

**AN RFP BIDDER THAT IS A FOREIGN RFP BIDDER, OR THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP GUARANTOR, OR RFP BIDDERS SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE SECTION IV.5 OF THE RFP RULES BY COMPLETING THE APPLICABLE INSERT AND PROVIDING ASSOCIATED DOCUMENTS.** An RFP Bidder that is a Foreign RFP Bidder is required to complete the P1 Foreign Bidder Insert, also labelled INSERT #P1-10. An RFP Bidder relying on the financial standing of a Foreign RFP Guarantor is required to complete the P1 Foreign Guarantor Insert, also labelled INSERT #P1-11. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal is required to complete the P1 Foreign Principal Insert, also labelled INSERT #P1-12.

	<i>Insert (P1 Foreign Bidder Insert #P1-10, P1 Foreign Guarantor Insert #P1-11, OR P1 Foreign Principal Insert #P1-12)</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

\_\_\_\_\_  
*Name of RFP Bidder*

 **P1 FOREIGN BIDDER INSERT (#P1-10)**

**Please note! ONLY Foreign RFP Bidders are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, a Foreign RFP Bidder may provide any additional evidence of creditworthiness for the Foreign RFP Bidder so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

*Are you submitting additional evidence of creditworthiness for the Foreign RFP Bidder?*

Yes

No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

Second Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

*Are you submitting a draft of any of these additional documents for evaluation?*

Yes

No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

\_\_\_\_\_  
*Name of RFP Bidder*

 **P1 FOREIGN GUARANTOR INSERT (#P1-11)**

**Please note! ONLY RFP Bidders relying on a Foreign RFP Guarantor are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder relying on the financial standing of a Foreign RFP Guarantor may provide any additional evidence of creditworthiness for the Foreign RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

*Are you submitting additional evidence of creditworthiness for the Foreign RFP Guarantor?*

Yes

No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

Second Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the

terms of the Uniform SMA. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

*Are you submitting a draft of any of these additional documents for evaluation?*

Yes

No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

\_\_\_\_\_  
*Name of RFP Bidder*

 **P1 FOREIGN PRINCIPAL INSERT (#P1-12)**

**Please note! ONLY RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as RFP Principal may provide any additional evidence of creditworthiness for the RFP Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

*Are you submitting additional evidence of creditworthiness for the Foreign Principal?*

Yes

No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

Second Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

*Are you submitting a draft of any of these additional documents for evaluation?*

Yes

No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

No

The requirements of this section do not apply to you.

### 6. Justification of Omissions

If you are unable to provide all documents or information required with this online Part 1 Form, please justify fully any omissions in the space provided below.

If you are providing additional documents, such as providing the Part 2 Form certifications for early processing, please use the spaces below to upload these documents.

	<i>File upload</i>
	<i>File upload</i>
	<i>File upload</i>

## **Appendix 5 - Requirements for Chief Financial Officer Attestation**

The attestation by the Chief Financial Officer, (or similar position), if required by Article IV, must fulfill the following requirements:

1. the attestation is a notarized affidavit attached to the financial information provided by the entity;
2. the attestation identifies the person making the affidavit as the Chief Financial Officer (or similar position);
3. the Chief Financial Officer (or similar position) attests that "the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of \_\_\_\_\_[name of entity]".

## **Appendix 6 - Officers' Certificate (RFP Bidders Under an Agency Agreement)**

### **Sample**

The undersigned hereby certify that they are duly elected, qualified and acting officers holding the offices set forth below their respective names of \_\_\_\_\_ [name of Principal(s)], the "Principal" or together the "Principals". As such, they are familiar with the affairs of the Principal(s) and the Proposal submitted in response to PECO Energy Company's Default Service Program RFP under DSP IV, including the agency authorization submitted with the Proposal (the "Agency Agreement"). They are authorized to execute and deliver this certificate on behalf of the Principal(s).

They further certify that:

- (i) the copy of the Agency Agreement submitted with the Proposal is a true and complete copy of the Agency Agreement as currently in effect;
- (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to six (6) business days following the Bid Date;
- (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement, contemplated by the RFP Bidder, or contemplated by the Principal(s) to the RFP Bidder's knowledge;
- (iv) each individual who has executed this officers' certificate and the Agency Agreement is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and
- (v) \_\_\_\_\_ [insert name], the Officer of the RFP Bidder named in the Part 1 Proposal, is authorized to execute the Uniform SMA as well as any Transaction Confirmation(s) pursuant to the Uniform SMA on behalf of the Principal(s).

Capitalized terms used in this officers' certificate without definition have the meanings assigned to such terms in the RFP Rules.

# APPENDIX 7 – ILLUSTRATIVE PART 2 FORM DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS

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## STANDARD FORM

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PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

Before completing this online Part 2 Form, please review the RFP, including the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”), so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.pecoprocurement.com](http://www.pecoprocurement.com).

By having submitted a Part 1 Proposal in response to this RFP, you agreed to all terms and conditions of this RFP.

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*Any information provided by an RFP Bidder in the Part 2 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission (“Commission”). PECO representatives will review financial information and legal documents provided to fulfill the requirements of the Part 2 Proposal, and will participate in the evaluation of the Pre-Bid Letter of Credit with the name of the RFP Bidder and the amount redacted.*

---

**1. Contact Information and Representations**

First Item: Name and Address of the RFP Bidder

Below is the information that you previously provided. **PLEASE MAKE ANY NECESSARY UPDATES TO THE RFP BIDDER’S LEGAL NAME AND ADDRESS.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

*Legal Name of RFP Bidder*

[pre-populated]

*Street Address*

[pre-populated]

[pre-populated]

*City*

[pre-populated]

*State*

[pre-populated]

*Zip Code*

[pre-populated]

**IF THE LEGAL NAME OF THE RFP BIDDER HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE.**

 Evidence of name change (if necessary)

Second Item: Contact Information for the Officer of the RFP Bidder

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE OFFICER OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Please note that the Officer of the RFP Bidder named in the Part 1 Proposal must make all representations and certifications in this Part 2 Proposal. If the individual serving as Officer of the RFP Bidder has changed, the RFP Bidder will be required to resubmit via email all certifications required by the Part 1 Proposal.

*First Name*

[pre-populated]

*Last Name*

[pre-populated]

*Title*

[pre-populated]

*Street Address*

[pre-populated]

[pre-populated]

*City*

[pre-populated]

*State*

[pre-populated]

*Zip Code*

[pre-populated]

*Phone No.*

[pre-populated]

*Cell Phone No. (Optional)*

[pre-populated]

*Email Address*

[pre-populated]

Third Item: Contact Information for the Representative

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE REPRESENTATIVE OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

<i>First Name</i>	<i>Last Name</i>		
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>		
<i>Title</i>			
<input type="text" value="[pre-populated]"/>			
<i>Street Address</i>			
<input type="text" value="[pre-populated]"/>			
<input type="text" value="[pre-populated]"/>			
<i>City</i>	<i>State</i>	<i>Zip Code</i>	
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	
<i>Phone No.</i>	<i>Cell Phone No. (Optional)</i>	<i>Email Address</i>	
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	

Fourth Item: Representations of the Officer of the RFP Bidder

**THE OFFICER OF THE RFP BIDDER MUST MAKE A NUMBER OF CERTIFICATIONS TO FULFILL THE REQUIREMENTS OF THE PART 2 PROPOSAL.** If the Officer of the RFP Bidder who made the representations and certifications of the Part 1 Form is unavailable to make the representations of the Part 2 Form, the RFP Bidder must name a new individual to serve as Officer of the RFP Bidder and must, in addition to making the representations required in the Part 2 Proposal, re-submit via email the certifications of the Part 1 Form by the Part 2 Date.

**THE OFFICER OF THE RFP BIDDER MUST MAKE A NUMBER OF CERTIFICATIONS BY COMPLETING THE P2 CERTIFICATIONS INSERT. THE SIGNATURE MUST BE NOTARIZED OR ATTESTED WITH THE CORPORATE SEAL.** The P2 Certifications Insert is also labelled INSERT #P2-1.

*Name of RFP Bidder*

 **P2 CERTIFICATIONS INSERT (#P2-1)**

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING CERTIFICATIONS. THE SIGNATURE MUST BE NOTARIZED OR ATTESTED WITH THE CORPORATE SEAL.**

- (1) I certify that this Part 2 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date and if any information provided in the Part 2 Proposal changes or any previous certification fails to remain valid during that time, the RFP Bidder will notify the Independent Evaluator as soon as practicable.
- (2) I certify that the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal by another RFP Bidder in response to this solicitation or any

future solicitation under this RFP. Such information includes, but is not limited to: the fact that another RFP Bidder is submitting a Proposal in response to this solicitation or a subsequent solicitation under this RFP; the Bids by another RFP Bidder in this or in a subsequent solicitation under this RFP; the number of tranches bid by another RFP Bidder for any product in this or in a subsequent solicitation under this RFP; the estimation by another RFP Bidder of the value of a tranche of a product; the estimation by another RFP Bidder of the risks associated with providing supply under the Uniform SMA; the preference of another RFP Bidder for bidding on specific products in this or in a subsequent solicitation under the RFP; and the contractual arrangements for power of another RFP Bidder to serve tranches of Default Service Load were that RFP Bidder to become a Default Supplier. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.

- (3) I certify that although the RFP Bidder may disclose aspects of its Proposal in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors (if any), any such communication is made in a manner that can reasonably be expected to maintain the confidentiality of the RFP Bidder’s Proposal.
- (4) I certify that, with only the exceptions noted in (3) above, the RFP Bidder has not disclosed, and will not otherwise disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal in any solicitation under the RFP, or on the contents of the Proposal that another RFP Bidder would be willing to submit in response to the RFP. Such information includes, but is not limited to: the fact that the RFP Bidder is submitting a Proposal in response to this RFP; the RFP Bidder’s Bids in this or in a subsequent solicitation under this RFP; the RFP Bidder’s number of tranches bid for any product in this or in a subsequent solicitation under this RFP; the RFP Bidder’s estimation of the value of a tranche of a product; the RFP Bidder’s estimation of the risks associated with providing supply under the Uniform SMA; and the RFP Bidder’s preference for bidding on specific products in this or in a subsequent solicitation under this RFP. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.
- (5) I certify that any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the Uniform SMA at the price specified in the Bid.
- (6) I certify that I will execute (or I will nominate another authorized individual to execute) the Uniform SMA and all Transaction Confirmation(s) for the RFP Bidder’s Bids that are approved by the Commission no later than 2PM on the third business day after the Commission has accepted such Bids.
- (7) I certify that in each Transaction Confirmation, the RFP Bidder will specify a price for each type of AECs (Tier I, Tier I Solar, and Tier II) that is included in the RFP Bidder’s winning Bids and each such price must be greater than \$0/AEC.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

## 2. Pre-Bid Letter of Credit

**THE RFP BIDDER MUST PROVIDE AN EXECUTED PRE-BID LETTER OF CREDIT**, drawn for the account of the RFP Bidder and acceptable to PECO, **IN AN AMOUNT OF AT LEAST: \$250,000 PER TRANCHE BID ON PRODUCTS OF THE RES AND SC CLASSES FOR FULL REQUIREMENTS ON A FIXED-PRICE BASIS, PLUS, IF APPLICABLE, \$125,000 PER TRANCHE BID ON A PRODUCT FOR THE CCI CLASS FOR FULL REQUIREMENTS ON A SPOT-PRICE BASIS.** A single Pre-Bid Letter of Credit is submitted even if the RFP Bidder bids on more than one product or, if applicable, the RFP Bidder bids to supply both full requirements on a fixed-price basis and full requirements on a spot-price basis.

The RFP Bidder must either use the Standard Pre-Bid Letter of Credit, provided on [www.pecoprocurement.com](http://www.pecoprocurement.com), or submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of the Part 1 Proposals.

**THE HARDCOPY EXECUTED PRE-BID LETTER OF CREDIT MUST BE SENT BY OVERNIGHT DELIVERY SERVICE** to the Independent Evaluator at the address provided to RFP Bidders for this purpose.

*At the time this form is submitted, has the Pre-Bid Letter of Credit already been sent to the Independent Evaluator?*

Yes

No

RFP Bidders may, but are not required to, upload or email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) an electronic executed version of the Pre-Bid Letter of Credit for evaluation.

	<i>Electronic version of Executed Pre-Bid Letter of Credit</i>
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PECO and the Independent Evaluator will release the Pre-Bid Letter of Credit no later than six (6) business days after the Bid Date. If the Commission does not approve any of the RFP Bidder's Bids, PECO and the Independent Evaluator will release that RFP Bidder's Pre-Bid Letter of Credit within three (3) business days of the Bid Date.

*Would you like to provide special instructions for returning the Pre-Bid Letter of Credit?*

Yes

No

**PLEASE PROVIDE ANY SPECIAL INSTRUCTIONS FOR RETURNING THE PRE-BID LETTER OF CREDIT BELOW.**

**3. Additional Requirements**

**3a. Requirements for RFP Bidders Relying on Their Own Financial Standing**

You previously elected the RFP Bidder as the entity on whose financial standing the RFP Bidder is relying. **YOU HAVE NO ADDITIONAL REQUIREMENTS** under this section and you may proceed to the next section.

**3b. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Guarantor**

You previously elected to rely on the financial standing of an RFP Guarantor. **THE RFP BIDDER MUST PROVIDE THE GUARANTY DOCUMENTS REQUIRED BY THIS SECTION.**

First Item: Intent to Provide a Guaranty

**A REPRESENTATIVE OF THE RFP GUARANTOR WHO IS AUTHORIZED TO UNDERTAKE CONTRACTS (INCLUDING THE GUARANTY) AND BIND THAT RFP GUARANTOR MUST MAKE THE CERTIFICATIONS PROVIDED IN THE GUARANTY INTENT INSERT.** The Guaranty Intent Insert is also labelled INSERT #P2-2.

*Name of RFP Bidder*

 **GUARANTY INTENT INSERT (#P2-2)**

**PLEASE PROVIDE THE INDICATIVE AMOUNT OF THE GUARANTY IN THE SPACE PROVIDED. THE INDICATIVE AMOUNT MUST MEET OR EXCEED THE SUM OF: (I) \$600,000 TIMES THE NUMBER OF TRANCHES BID ON PRODUCTS FOR THE RES AND SC CLASSES FOR FULL REQUIREMENTS ON A FIXED-PRICE BASIS; AND, IF APPLICABLE, (II) \$300,000 TIMES THE NUMBER OF TRANCHES BID ON THE CCI CLASS FOR FULL REQUIREMENTS ON A SPOT-PRICE BASIS.**

I acknowledge that \_\_\_\_\_ (“RFP Guarantor”) has been asked to provide a financial guaranty on behalf of \_\_\_\_\_ (“RFP Bidder”) should the RFP Bidder become a Default Supplier pursuant to its response under this RFP for procuring supply under the terms of the Uniform SMA. Our senior unsecured debt rating meets the Minimum Rating as defined in the Uniform SMA.

We would consider providing a financial guaranty on behalf of the RFP Bidder should there be no material change in affairs of at least \$ \_\_\_\_\_ (Indicative Amount). This statement should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.

\_\_\_\_\_  
Signature of a Representative of the RFP Guarantor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

Second Item: Information to Prepare the Guaranty

In accordance with Paragraph V.3.3 of the RFP Rules, **THE RFP BIDDER IS ASKED TO PROVIDE THE FOLLOWING INFORMATION TO PREPARE THE GUARANTY:**

- the governing laws under which the RFP Guarantor is organized;
- contact information for the RFP Guarantor, including the name and title of the signatory of the guaranty for notices under the guaranty;
- elections to incorporate any or all of the approved modifications to the Standard Guaranty.

**THE RFP BIDDER MUST EITHER:** (i) provide the requested information to prepare the guaranty at this time; or: (ii) submit an acknowledgment signed by the Officer of the RFP Bidder that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder’s Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

*Is the RFP Bidder providing information to prepare the guaranty at this time?*

Yes  No

Yes

**THE RFP BIDDER PROVIDES THE INFORMATION TO PREPARE THE GUARANTY BY COMPLETING THE GUARANTY INSERT.** The Guaranty Insert is also labelled INSERT #P2-3.

\_\_\_\_\_  
*Name of RFP Bidder*

 **GUARANTY INSERT (#P2-3)**

**Please note! RFP Bidders relying on the financial standing of an RFP Guarantor must submit one (but ONLY one) of Insert #P2-3 or Insert #P2-4.**

1. Governing Laws under which the RFP Guarantor is Organized

*Whether the RFP Guarantor is a Corporation, Partnership, etc.*

*Jurisdiction under whose laws the RFP Guarantor is existing and organized.*

*Name of relevant and binding corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws.*

2. Governing Laws under which the RFP Bidder is Organized

*Whether the RFP Bidder is a Corporation, Partnership, etc.*



11	Paragraph 10	<input type="checkbox"/> yes <input type="checkbox"/> no
12	Paragraph 11	<input type="checkbox"/> yes <input type="checkbox"/> no
13	Paragraph 11	<input type="checkbox"/> yes <input type="checkbox"/> no
14	Paragraph 12	<input type="checkbox"/> yes <input type="checkbox"/> no
15	Paragraph 13	<input type="checkbox"/> yes <input type="checkbox"/> no
16	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
17	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
18	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
19	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
<b>20</b>	<b>Paragraph 17</b>	<input type="checkbox"/> <b>yes (*b*)</b> <input type="checkbox"/> no <b>Provide the information below under (*b*)</b>
<b>21</b>	<b>Closing Paragraph and Signature Block</b>	<input type="checkbox"/> <b>yes (*c*)</b> <input type="checkbox"/> no <b>Provide the information below under (*c*)</b>
<b>22</b>	<b>Additional Guarantor</b>	<input type="checkbox"/> <b>yes (*d*)</b> <input type="checkbox"/> no <b>Provide the information below under (*d*)</b>
<b>23</b>	<b>Additional Guarantor</b>	<input type="checkbox"/> <b>yes (*e*)</b> <input type="checkbox"/> no <b>Provide the information below under (*e*)</b>
24	Paragraph 9	<input type="checkbox"/> yes <input type="checkbox"/> no

(\*a\*) Optional change #7 is available only to an RFP Bidder that has an outstanding guaranty with PECO.

**PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #7:**

*Date of Existing Guaranty*

*Amount of Existing Guaranty*

**(\*b\*) THE REPRESENTATIVE OF THE RFP BIDDER OR THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION IF YOU ELECT OPTIONAL CHANGE #20:**

I, \_\_\_\_\_ (the Officer of the RFP Bidder or the Representative of the RFP Bidder), certify that the RFP Guarantor, on whose financial standing the RFP Bidder will be relying, is not a trust.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**(\*c\*) PLEASE PROVIDE THE NAME AND TITLE OF THE ADDITIONAL PERSON WHO WILL BE SIGNING THE GUARANTY IF YOU ELECT OPTIONAL CHANGE #21:**

*First Name*

*Last Name*

*Title*

**(\*d\*) PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #22:**

*Name of Additional Guarantor*

Whether the Additional Guarantor is a Corporation, Partnership, etc.

Jurisdiction under whose laws the Additional Guarantor is existing and organized.

(\*e\*) PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #23:

Name of Additional Guarantor

Whether the Additional Guarantor is a Corporation, Partnership, etc.

Jurisdiction under whose laws the Additional Guarantor is existing and organized.

NO

**THE OFFICER OF THE RFP BIDDER PROVIDES THE REQUIRED ACKNOWLEDGMENT BY COMPLETING THE DELAY (GUARANTY) INSERT.** The Delay (Guaranty) Insert is also labelled INSERT #P2-4.

\_\_\_\_\_  
Name of RFP Bidder

 **DELAY (GUARANTY) INSERT (#P2-4)**

**Please note! RFP Bidders relying on the financial standing of an RFP Guarantor must submit one (but ONLY one) of Insert #P2-3 or Insert #P2-4.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all information required by the Guaranty Insert (#P2-3) by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

*Did you receive approval from PECO to use an alternate guaranty form through the Guaranty Process?*

Yes

No

Yes

**EACH RFP BIDDER THAT RELIES ON THE FINANCIAL STANDING OF AN RFP GUARANTOR AND THAT HAS OBTAINED APPROVAL FOR USE OF AN ALTERNATE GUARANTY FORM MUST PROVIDE AN EXECUTED ENFORCEABILITY OPINION for its approved alternate guaranty form on the letterhead of a law firm of national standing.**

**PLEASE PROVIDE THE ENFORCEABILITY OPINION IN THE SPACE PROVIDED BELOW OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

	<i>Enforceability Opinion</i>
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### 3c. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Principal

AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO PROVIDE AN OFFICERS' CERTIFICATE AS WELL AS CONTACT INFORMATION FOR A REPRESENTATIVE OF THE PRINCIPAL as specified in Section V.4 of the RFP Rules.

First Item: Officer's Certificate

PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM. The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). The Officers' Certificate should be substantially in the form of Appendix 6 to the RFP Rules.

	<i>Officers' Certificate</i>
---	------------------------------

Second Item: Signatory to the Uniform SMA

**Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable) on behalf of the Principal(s)?**

- Yes       No

**NO**

Please provide the information of the representative of the Principal who will sign the Uniform SMA (if applicable) and any Transaction Confirmation.

*Company*

*Street Address*


*City*

*State*

*Zip Code*

*Phone No.*

*Cell Phone No. (Optional)*

*Email Address*

#### 4. Foreign RFP Bidders and Foreign Entities

*Is the RFP Bidder a Foreign RFP Bidder, or is the RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor or is the RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal?*

Yes [pre-populated]       No [pre-populated]

**AN RFP BIDDER THAT IS A FOREIGN RFP BIDDER, OR THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP GUARANTOR, OR THAT IS SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN SECTION V.5 OF THE RFP RULES** by completing the P2 Foreign Entity Insert and providing associated documents. The P2 Foreign Entity Insert is also labelled INSERT #P2-5.

	Insert #P2-5
	Additional Evidence of Creditworthiness
	Additional Evidence of Creditworthiness
	Legal opinion
	Sworn certificate
	Sworn certificate

Name of RFP Bidder

 **P2 FOREIGN ENTITY INSERT (#P2-5)**

**Please note! Only RFP Bidders that are Foreign Entities, or that rely on the financial standing of a Foreign Entity as RFP Guarantor, or that submit a Proposal under an Agency Agreement with a Foreign Entity as Principal, are required to complete this Insert. The requirements are provided in Section V.5 of the RFP Rules.**

Are you a previously eligible RFP Bidder (i.e., did you successfully complete the Part 2 Proposal on a prior solicitation under DSP V)?

Yes       No

**If no,** please complete Section A below.  
**If yes,** please complete Section B below.

## **SECTION A. RFP BIDDERS THAT HAVE NOT PREVIOUSLY COMPLETED THE PART 2 PROPOSAL**

**PLEASE COMPLETE ONLY THE ITEM THAT APPLIES TO YOU:**

<b>Circumstances</b>	<b>Item to Complete</b>
The RFP Bidder is a Foreign Entity	First Item
The RFP Bidder relies on the financial standing of a Foreign Entity as RFP Guarantor	Second Item
The RFP Bidder is submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal	Third Item

### First Item: Required Documents for Foreign RFP Bidders

**A FOREIGN RFP BIDDER MUST PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM FOR THE FOREIGN RFP BIDDER.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Bidder that the person executing the Uniform SMA on behalf of the RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such RFP Bidder has approved the execution of the Uniform SMA.
- (3) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Bidder that the RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. **If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.**

### Second Item: Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor

**AN RFP BIDDER RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP GUARANTOR MUST PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY**

**EMAIL TO PECOPROCUREMENT@NERA.COM FOR THE RFP GUARANTOR TO BE GRANTED UNSECURED CREDIT UNDER THE TERMS OF THE UNIFORM SMA.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA;
- (3) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

If the RFP Bidder does not submit these documents, or if these documents are not sufficient, the Foreign Entity as RFP Guarantor is not granted unsecured credit under the terms of the Uniform SMA. In that case, the RFP Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional financial or credit information regarding the RFP Bidder.

Third Item: Required Documents for RFP Bidders with a Foreign Entity as Principal

**AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL MUST PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROCUREMENT@NERA.COM.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

**SECTION B. PREVIOUSLY ELIGIBLE RFP BIDDERS (THAT HAVE SUCCESSFULLY COMPLETED THE PART 2 PROPOSAL IN A PRIOR SOLICITATION)**

**PLEASE COMPLETE ONLY THE ITEM THAT APPLIES TO YOU:**

Circumstances	Item to Complete
The RFP Bidder is a Foreign Entity	First Item
The RFP Bidder relies on the financial standing of a Foreign Entity as RFP Guarantor	Second Item
The RFP Bidder is submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal	Third Item

First Item: Required Documents for Foreign RFP Bidders

For each document required of Foreign RFP Bidders, a Foreign RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP V remains valid; or: (ii) provide the document by upload to the online Part 2 form or email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) if it has changed.

**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

<b>REQUIRED DOCUMENTS</b>	<b>Remains valid (not submitted)</b>	<b>Has changed (submitted this solicitation)</b>
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>

**one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA.



**one (1) executed original sworn** certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.



PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

Second Item: Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor

For each document required of an RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor, an RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP V remains valid; or (ii) provide the document by upload to the online Part 2 form or email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) if it has changed.

**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

**REQUIRED DOCUMENTS**

**Remains valid  
(not submitted)**

**Has changed this  
(submitted this  
solicitation)**

**one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.

**one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA



**one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.



If these documents are not sufficient, the Foreign Entity as RFP Guarantor is not granted unsecured credit under the terms of the Uniform SMA. In that case, the RFP Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional financial or credit information regarding the RFP Bidder.

*Third Item: Required Documents for RFP Bidders with a Foreign Entity as Principal*

For each document required of an RFP Bidder submitting a Proposal under an Agency Agreement with a Principal that is a foreign entity, an RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP V remains valid; or: (ii) provide the document by upload to the online Part 2 form or email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) if it has changed.

**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

<b>REQUIRED DOCUMENTS</b>	<b>Remains valid (not submitted)</b>	<b>Has changed this (submitted this solicitation)</b>
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>

**one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

## 5. Bids

**Reminder:** Each RFP Bidder submits its Bids electronically, by transferring its Bid Form through a secure file transfer system. The Independent Evaluator provides electronically to each RFP Bidder qualified pursuant to a successful Part 1 Proposal the Bid Form as well as a set of instructions. These instructions guide the RFP Bidder for completion of the Bid Form, for optional encryption of the Bid Form, for submission of the completed Bid Form to the Independent Evaluator via secure file transfer interface, as well as instructions for backup methods for the submission of Bids in case of technical difficulties with the electronic transfer.

**Important!** The Independent Evaluator provides electronically to each RFP Bidder that qualifies pursuant to a successful Part 1 Proposal information required for the submission of Bids, including a username, password, and security code. This information is unique to each RFP Bidder and allows the Independent Evaluator to authenticate the Bids received. The RFP Bidder must acknowledge that the RFP Bidder has received intact the information necessary to submit Bids and that no one but authorized personnel of the RFP Bidder has had access to this information.

Please provide this confirmation below.

- I confirm receipt of the Bid Form, instructions, and information necessary to submit Bids. No one but authorized personnel of the RFP Bidder has had access to this information.
- I request that such information and documents be re-issued.

### 6. Justification of Omissions Section

If you are unable to provide all documents or information with this Part 2 Form, please justify fully any omissions in the space provided below.

If you are providing additional documents, such as providing the Part 1 Form certifications if the individual who is serving as Officer of the RFP Bidder has changed, please use the spaces below to upload these documents.

	<i>File upload</i>
	<i>File upload</i>
	<i>File upload</i>

# APPENDIX 8 – ILLUSTRATIVE PART 2 FORM DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS

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## SHORT FORM

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PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

Before completing this online Part 2 Form, please review the RFP, including the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”), so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.pecoprocurement.com](http://www.pecoprocurement.com).

By having submitted a Part 1 Proposal in response to this RFP, you agreed to all terms and conditions of this RFP.

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*Any information provided by an RFP Bidder in the Part 2 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission (“Commission”). PECO representatives will review financial information and legal documents provided to fulfill the requirements of the Part 2 Proposal, and will participate in the evaluation of the Pre-Bid Letter of Credit with the name of the RFP Bidder and the amount redacted.*

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1. Contact Information and Representations

First Item: Name and Address of the RFP Bidder

Below is the information that you previously provided. PLEASE MAKE ANY NECESSARY UPDATES TO THE RFP BIDDER'S LEGAL NAME AND ADDRESS. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Legal Name of RFP Bidder

[pre-populated]

Street Address

[pre-populated]

[pre-populated]

City

[pre-populated]

State

[pre-populated]

Zip Code

[pre-populated]

IF THE LEGAL NAME OF THE RFP BIDDER HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE.

 Evidence of name change (if necessary)

Second Item: Contact Information for the Officer of the RFP Bidder

Below is the information that you previously provided. PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE OFFICER OF THE RFP BIDDER. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Please note that the Officer of the RFP Bidder named in the Part 1 Proposal must make all representations and certifications in this Part 2 Proposal. If the individual serving as Officer of the RFP Bidder has changed, the RFP Bidder will be required to resubmit via email all certifications required by the Part 1 Proposal.

First Name

[pre-populated]

Last Name

[pre-populated]

Title

[pre-populated]

Street Address

[pre-populated]

[pre-populated]

City

[pre-populated]

State

[pre-populated]

Zip Code

[pre-populated]

Phone No.

[pre-populated]

Cell Phone No. (Optional)

[pre-populated]

Email Address

[pre-populated]

Third Item: Contact Information for the Representative

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE REPRESENTATIVE OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

<i>First Name</i>	<i>Last Name</i>		
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>		
<i>Title</i>			
<input type="text" value="[pre-populated]"/>			
<i>Street Address</i>			
<input type="text" value="[pre-populated]"/>			
<input type="text" value="[pre-populated]"/>			
<i>City</i>	<i>State</i>	<i>Zip Code</i>	
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	
<i>Phone No.</i>	<i>Cell Phone No. (Optional)</i>	<i>Email Address</i>	
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	

Fourth Item: Representations of the Officer of the RFP Bidder

**THE OFFICER OF THE RFP BIDDER MUST MAKE A NUMBER OF CERTIFICATIONS TO FULFILL THE REQUIREMENTS OF THE PART 2 PROPOSAL.** If the Officer of the RFP Bidder who made the representations and certifications of the Part 1 Form is unavailable to make the representations of the Part 2 Form, the RFP Bidder must name a new individual to serve as Officer of the RFP Bidder and must, in addition to making the representations required in the Part 2 Proposal, re-submit via email the certifications of the Part 1 Form by the Part 2 Date.

**THE OFFICER OF THE RFP BIDDER MUST MAKE A NUMBER OF CERTIFICATIONS BY COMPLETING THE P2 CERTIFICATIONS INSERT. THE SIGNATURE MUST BE NOTARIZED OR ATTESTED WITH THE CORPORATE SEAL.** The P2 Certifications Insert is also labelled INSERT #P2-1.

*Name of RFP Bidder*

 **P2 CERTIFICATIONS INSERT (#P2-1)**

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING CERTIFICATIONS. THE SIGNATURE MUST BE NOTARIZED OR ATTESTED WITH THE CORPORATE SEAL.**

- (1) I certify that this Part 2 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date and if any information provided in the Part 2 Proposal changes or any previous certification fails to remain valid during that time, the RFP Bidder will notify the Independent Evaluator as soon as practicable.
- (2) I certify that the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal by another RFP Bidder in response to this solicitation or any future solicitation under this RFP. Such information includes, but is not limited to: the fact that

another RFP Bidder is submitting a Proposal in response to this solicitation or a subsequent solicitation under this RFP; the Bids by another RFP Bidder in this or in a subsequent solicitation under this RFP; the number of tranches bid by another RFP Bidder for any product in this or in a subsequent solicitation under this RFP; the estimation by another RFP Bidder of the value of a tranche of a product; the estimation by another RFP Bidder of the risks associated with providing supply under the Uniform SMA; the preference of another RFP Bidder for bidding on specific products in this or in a subsequent solicitation under the RFP; and the contractual arrangements for power of another RFP Bidder to serve tranches of Default Service Load were that RFP Bidder to become a Default Supplier. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.

- (3) I certify that although the RFP Bidder may disclose aspects of its Proposal in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors (if any), any such communication is made in a manner that can reasonably be expected to maintain the confidentiality of the RFP Bidder’s Proposal.
- (4) I certify that, with only the exceptions noted in (3) above, the RFP Bidder has not disclosed, and will not otherwise disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal in any solicitation under the RFP, or on the contents of the Proposal that another RFP Bidder would be willing to submit in response to the RFP. Such information includes, but is not limited to: the fact that the RFP Bidder is submitting a Proposal in response to this RFP; the RFP Bidder’s Bids in this or in a subsequent solicitation under this RFP; the RFP Bidder’s number of tranches bid for any product in this or in a subsequent solicitation under this RFP; the RFP Bidder’s estimation of the value of a tranche of a product; the RFP Bidder’s estimation of the risks associated with providing supply under the Uniform SMA; and the RFP Bidder’s preference for bidding on specific products in this or in a subsequent solicitation under this RFP. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.
- (5) I certify that any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the Uniform SMA at the price specified in the Bid.
- (6) I certify that I will execute (or I will nominate another authorized individual to execute) the Uniform SMA and all Transaction Confirmation(s) for the RFP Bidder’s Bids that are approved by the Commission no later than 2PM on the third business day after the Commission has accepted such Bids.
- (7) I certify that in each Transaction Confirmation, the RFP Bidder will specify a price for each type of AECs (Tier I, Tier I Solar, and Tier II) that is included in the RFP Bidder’s winning Bids and each such price must be greater than \$0/AEC.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

## 2. Pre-Bid Letter of Credit

**THE RFP BIDDER MUST PROVIDE AN EXECUTED PRE-BID LETTER OF CREDIT**, drawn for the account of the RFP Bidder and acceptable to PECO, **IN AN AMOUNT OF AT LEAST \$250,000 PER TRANCHE BID ON PRODUCTS OF THE RES AND SC CLASSES FOR FULL REQUIREMENTS ON A FIXED-PRICE BASIS, PLUS, IF APPLICABLE, \$125,000 PER TRANCHE BID ON A PRODUCT FOR THE CCI CLASS FOR FULL REQUIREMENTS ON A SPOT-PRICE BASIS.** A single Pre-Bid Letter of Credit is submitted even if the RFP Bidder bids on more than one product or, if applicable, the RFP Bidder bids to supply both full requirements on a fixed-price basis and full requirements on a spot-price basis.

The RFP Bidder must either use the Standard Pre-Bid Letter of Credit, provided on [www.pecoprocurement.com](http://www.pecoprocurement.com), or submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of the Part 1 Proposals.

**THE HARDCOPY EXECUTED PRE-BID LETTER OF CREDIT MUST BE SENT BY OVERNIGHT DELIVERY SERVICE** to the Independent Evaluator at the address provided to RFP Bidders for this purpose.

*At the time this form is submitted, has the Pre-Bid Letter of Credit already been sent to the Independent Evaluator?*

Yes

No

RFP Bidders may, but are not required to, upload or email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) an electronic executed version of the Pre-Bid Letter of Credit for evaluation.

	<i>Electronic version of Executed Pre-Bid Letter of Credit</i>
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PECO and the Independent Evaluator will release the Pre-Bid Letter of Credit no later than six (6) business days after the Bid Date. If the Commission does not approve any of the RFP Bidder's Bids, PECO and the Independent Evaluator will release that RFP Bidder's Pre-Bid Letter of Credit within three (3) business days of the Bid Date.

*Would you like to provide special instructions for returning the Pre-Bid Letter of Credit?*

Yes

No

**PLEASE PROVIDE ANY SPECIAL INSTRUCTIONS FOR RETURNING THE PRE-BID LETTER OF CREDIT BELOW.**

### 3. Additional Requirements

*Is the RFP Bidder a Default Supplier serving tranches won in a solicitation under DSP V?*

Yes

No

Yes

#### 3a. Requirements for RFP Bidders Relying on Their Own Financial Standing

You previously elected the RFP Bidder as the entity on whose financial standing the RFP Bidder is relying. **YOU HAVE NO ADDITIONAL REQUIREMENTS** under this section and you may proceed to the next section.

#### 3b. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Guarantor

You previously elected to rely on the financial standing of an RFP Guarantor. Please proceed to Section 4 below.

#### 3c. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Principal

The RFP Bidder is submitting a Proposal under an Agency Agreement. **AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO PROVIDE AN OFFICERS' CERTIFICATE AS WELL AS CONTACT INFORMATION FOR A REPRESENTATIVE OF THE PRINCIPAL** as specified in the RFP Rules.

First Item: Officer's Certificate

**PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.** The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). The Officers' Certificate should be substantially in the form of Appendix 6 to the RFP Rules.

	<i>Officers' Certificate</i>
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Second Item: Signatory to the Uniform SMA

***Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable)?***

yes

no

no

Below is the information that you previously for the representative of the Principal who will sign the Uniform SMA (if applicable) and any Transaction Confirmation. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

<i>Last Name</i>		<i>First Name</i>	
[pre-populated]		[pre-populated]	
<i>Title</i>		<i>Company</i>	
[pre-populated]		[pre-populated]	
<i>Street Address</i>			
[pre-populated]			
[pre-populated]			
<i>City</i>		<i>State</i>	<i>Zip Code</i>
[pre-populated]		[pre-populated]	[pre-populated]
<i>Phone No.</i>	<i>Cell Phone No.</i>	<i>Email Address</i>	
[pre-populated]	[pre-populated]	[pre-populated]	

No

**3a. Requirements for RFP Bidders Relying on Their Own Financial Standing**

You previously elected the RFP Bidder as the entity on whose financial standing the RFP Bidder is relying. **YOU HAVE NO ADDITIONAL REQUIREMENTS** under this section and you may proceed to the next section.

**3b. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Guarantor**

You previously elected to rely on the financial standing of an RFP Guarantor. **THE RFP BIDDER MUST PROVIDE THE GUARANTY DOCUMENTS REQUIRED BY THIS SECTION.**

First Item: Intent to Provide a Guaranty

**A REPRESENTATIVE OF THE RFP GUARANTOR WHO IS AUTHORIZED TO UNDERTAKE CONTRACTS (INCLUDING THE GUARANTY) AND BIND THAT RFP GUARANTOR MUST MAKE THE CERTIFICATIONS PROVIDED IN THE GUARANTY INTENT INSERT. The Guaranty Intent Insert is also labelled INSERT #P2-2.**

*Name of RFP Bidder*

 **GUARANTY INTENT INSERT (#P2-2)**

**PLEASE PROVIDE THE INDICATIVE AMOUNT OF THE GUARANTY IN THE SPACE PROVIDED. THE INDICATIVE AMOUNT MUST MEET OR EXCEED THE SUM OF: (I) \$600,000 TIMES THE NUMBER OF TRANCHES BID ON PRODUCTS FOR THE RES AND SC CLASSES FOR FULL REQUIREMENTS SERVICE ON**

**A FIXED-PRICE BASIS; AND, IF APPLICABLE, (II) \$300,000 TIMES THE NUMBER OF TRANCHES BID ON THE CCI CLASS FOR FULL REQUIREMENTS ON A SPOT-PRICE BASIS.**

I acknowledge that \_\_\_\_\_ (“RFP Guarantor”) has been asked to provide a financial guaranty on behalf of \_\_\_\_\_ (“RFP Bidder”) should the RFP Bidder become a Default Supplier pursuant to its response under this RFP for procuring supply under the terms of the Uniform SMA. Our senior unsecured debt rating meets the Minimum Rating as defined in the Uniform SMA.

We would consider providing a financial guaranty on behalf of the RFP Bidder should there be no material change in affairs of at least \$ \_\_\_\_\_ (Indicative Amount). This statement should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.

\_\_\_\_\_  
Signature of a Representative of the RFP  
Guarantor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

In accordance with Paragraph IV.3.5 of the RFP Rules, **THE RFP BIDDER IS ASKED TO PROVIDE THE FOLLOWING INFORMATION TO PREPARE THE GUARANTY:**

- the governing laws under which the RFP Guarantor is organized;
- contact information for the RFP Guarantor, including the name and title of the signatory of the guaranty for notices under the guaranty;
- elections to incorporate any or all of the approved modifications to the Standard Guaranty.

**THE RFP BIDDER MUST EITHER:** (i) provide the requested information to prepare the guaranty at this time; or: (ii) submit an acknowledgment signed by the Officer of the RFP Bidder that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder’s Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

*Is the RFP Bidder providing information to prepare the guaranty at this time?*

Yes

No

Yes

The Independent Evaluator provided to you, along with your login credentials, the Guaranty Insert that you submitted previously (if any). You may make any updates to this document. By submitting this form of the Guaranty Insert (#P2-3) without making updates, you will be confirming that the previously provided information remains valid.

**THE RFP BIDDER PROVIDES THE INFORMATION TO PREPARE THE GUARANTY BY COMPLETING THE GUARANTY INSERT.** The Guaranty Insert is also labelled INSERT #P2-3.

Name of RFP Bidder

**GUARANTY INSERT (#P2-3)**

**Please note! RFP Bidders relying on the financial standing of an RFP Guarantor must submit one (but ONLY one) of Insert #P2-3 or Insert #P2-4.**

1. Governing Laws under which the RFP Guarantor is Organized

*Whether the RFP Guarantor is a Corporation, Partnership, etc.*

*Jurisdiction under whose laws the RFP Guarantor is existing and organized.*

*Name of relevant and binding corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws.*

2. Governing Laws under which the RFP Bidder is Organized

*Whether the RFP Bidder is a Corporation, Partnership, etc.*

*Jurisdiction under whose laws the RFP Bidder is existing and organized.*

3. Contact Information

Please provide the name and contact information for the person to whom notices and other communications will be sent under the guaranty:

*First Name*

*Last Name*

*Title*

*Company*

*Street Address*

*City*

*State*

*Zip Code*

*Phone Number*

*Fax*

provide the name and title of the person who will be signing the guaranty:

<i>Name</i>	<i>Last Name</i>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<input style="width: 100%;" type="text"/>	

**Options of Optional Modifications to the Guaranty**

1 changes that the RFP Bidder may adopt for the Form of Guaranty are provided in a document entitled “Optional Modifications to the Guaranty” available on the website. **INDICATE THE CHANGES THAT YOU ARE ELECTING IN THE TABLE BELOW.**

Paragraph	Paragraph	RFP Bidder adopts change
	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
	<b>Paragraph 1</b>	<input type="checkbox"/> <b>yes (*a*)</b> <input type="checkbox"/> <b>no</b> <b>Provide the information below under (*a*)</b>
	Paragraph 2	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 4	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 5	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 10	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 11	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 11	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 12	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 13	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
	<b>Paragraph 17</b>	<input type="checkbox"/> <b>yes (*b*)</b> <input type="checkbox"/> <b>no</b> <b>Provide the information below under (*b*)</b>
	<b>Closing Paragraph and Signature Block</b>	<input type="checkbox"/> <b>yes (*c*)</b> <input type="checkbox"/> <b>no</b> <b>Provide the information below under (*c*)</b>
	<b>Additional</b>	<input type="checkbox"/> <b>yes (*d*)</b> <input type="checkbox"/> <b>no</b>

*Date of Existing Guaranty*

*Amount of Existing Guaranty*

**(\*b\*) THE REPRESENTATIVE OF THE RFP BIDDER OR THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION IF YOU ELECT OPTIONAL CHANGE #20:**

I, \_\_\_\_\_ (the Officer of the RFP Bidder or the Representative of the RFP Bidder), certify that the RFP Guarantor, on whose financial standing the RFP Bidder will be relying, is not a trust.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**(\*c\*) PLEASE PROVIDE THE NAME AND TITLE OF THE ADDITIONAL PERSON WHO WILL BE SIGNING THE GUARANTY IF YOU ELECT OPTIONAL CHANGE #21:**

*First Name*

*Last Name*

*Title*

**(\*d\*) PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #22:**

*Name of Additional Guarantor*

*Whether the Additional Guarantor is a Corporation, Partnership, etc.*

*Jurisdiction under whose laws the Additional Guarantor is existing and organized.*

**(\*e\*) PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #23:**

*Name of Additional Guarantor*

*Whether the Additional Guarantor is a Corporation, Partnership, etc.*

*Jurisdiction under whose laws the Additional Guarantor is existing and organized.*

NO

**THE OFFICER OF THE RFP BIDDER PROVIDES THE REQUIRED ACKNOWLEDGMENT BY COMPLETING THE DELAY (GUARANTY) INSERT.** The Delay (Guaranty) Insert is also labelled INSERT #P2-4.

\_\_\_\_\_  
Name of RFP Bidder

**DELAY (GUARANTY) INSERT (#P2-4)**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all information required by the Guaranty Insert (#P2-3) by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**3c. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Principal**

The RFP Bidder is submitting a Proposal under an Agency Agreement. **AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO PROVIDE AN OFFICERS' CERTIFICATE AS WELL AS CONTACT INFORMATION FOR A REPRESENTATIVE OF THE PRINCIPAL** as specified in Section V.4 of the RFP Rules.

First Item: Officer's Certificate

**PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.** The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). The Officers' Certificate should be substantially in the form of Appendix 6 to the RFP Rules.

	<i>Officers' Certificate</i>
---	------------------------------

Second Item: Signatory to the Uniform SMA

**Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable)?**

yes       no

no

Below is the information that you previously for the representative of the Principal who will sign the Uniform SMA (if applicable) and any Transaction Confirmation. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Last Name

[pre-populated]

First Name

[pre-populated]

<i>Title</i> [pre-populated]	<i>Company</i> [pre-populated]	
<i>Street Address</i> [pre-populated]		
[pre-populated]		
<i>City</i> [pre-populated]	<i>State</i> [pre-populated]	<i>Zip Code</i> [pre-populated]
<i>Phone No.</i> [pre-populated]	<i>Cell Phone No.</i> [pre-populated]	<i>Email Address</i> [pre-populated]

#### 4. Foreign RFP Bidders and Foreign Entities

*Is the RFP Bidder a Foreign RFP Bidder, or is the RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor or is the RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal?*

Yes [pre-populated]       No[pre-populated]

**AN RFP BIDDER THAT IS A FOREIGN RFP BIDDER, OR THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP GUARANTOR, OR THAT SUBMITS A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL, IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN SECTION V.5 OF THE RFP RULES** by completing the P2 Foreign Entity Insert and providing associated documents. The P2 Foreign Entity Insert is also labelled INSERT #P2-5.

The Independent Evaluator provided to you, along with your Notification of Qualification, the P2 Foreign Entity Insert, the Additional Evidence of Creditworthiness, the Legal Opinion, and the Sworn Certificate(s) that you submitted previously (if any). You may make any updates to these documents. By submitting the form of these documents without making updates, you will be confirming that the previously provided information remains valid.

	<i>Insert #P2-5</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Legal opinion</i>
	<i>Sworn certificate</i>
	<i>Sworn certificate</i>

*Name of RFP Bidder*

 **P2 FOREIGN ENTITY INSERT (#P2-5)**

**Please note! Only RFP Bidders that are Foreign Entities, or that rely on the financial standing of a Foreign Entity as RFP Guarantor, or that submits a Proposal under an Agency Agreement with a Foreign Entity as Principal, are required to complete this Insert. The requirements are provided in Section V.5 of the RFP Rules.**

Are you a previously eligible RFP Bidder (i.e., did you successfully complete the Part 2 Proposal on a prior solicitation under DSP V)?

Yes       No

**If no,** please complete Section A below.

**If yes,** please complete Section B below.

## SECTION A. RFP BIDDERS THAT HAVE NOT PREVIOUSLY COMPLETED THE PART 2 PROPOSAL

**PLEASE COMPLETE ONLY THE ITEM THAT APPLIES TO YOU:**

Circumstances	Item to Complete
The RFP Bidder is a Foreign Entity	First Item
The RFP Bidder relies on the financial standing of a Foreign Entity as RFP Guarantor	Second Item
The RFP Bidder is submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal	Third Item

First Item: Required Documents for Foreign RFP Bidders

**A FOREIGN RFP BIDDER MUST PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM FOR THE FOREIGN RFP BIDDER.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA.
- (3) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. **If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.**

Second Item: Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor

**AN RFP BIDDER RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP GUARANTOR MUST PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY**

**EMAIL TO PECOPROUREMENT@NERA.COM FOR THE RFP GUARANTOR TO BE GRANTED UNSECURED CREDIT UNDER THE TERMS OF THE UNIFORM SMA.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA;
- (3) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

If the RFP Bidder does not submit these documents, or if these documents are not sufficient, the Foreign RFP Guarantor is not granted unsecured credit under the terms of the Uniform SMA. In that case, the RFP Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional financial or credit information regarding the RFP Bidder.

Third Item: Required Documents for RFP Bidders with a Foreign Entity as Principal

**AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL MUST PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

**SECTION B. PREVIOUSLY ELIGIBLE RFP BIDDERS (THAT HAVE SUCCESSFULLY COMPLETED THE PART 2 PROPOSAL IN A PRIOR SOLICITATION)**

**PLEASE COMPLETE ONLY THE ITEM THAT APPLIES TO YOU:**

Circumstances	Item to Complete
The RFP Bidder is a Foreign Entity	First Item
The RFP Bidder relies on the financial standing of a Foreign Entity as RFP Guarantor	Second Item
The RFP Bidder is submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal	Third Item

First Item: Required Documents for Foreign RFP Bidders

For each document required of Foreign RFP Bidders, a Foreign RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP V remains valid; or: (ii) provide the document by upload to the online Part 2 form or by email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) if it has changed.

**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

<b>REQUIRED DOCUMENTS</b>	<b>Remains valid (not submitted)</b>	<b>Has changed (submitted this solicitation)</b>
<b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.	<input type="checkbox"/>	<input type="checkbox"/>
<b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA.	<input type="checkbox"/>	<input type="checkbox"/>

**one (1) executed original sworn** certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.



PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

Second Item: Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor

For each document required of an RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor, an RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP V remains valid; or (ii) provide the document by upload to the online Part 2 form or by email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) if it has changed.

**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

<b>REQUIRED DOCUMENTS</b>	<b>Remains valid (not submitted)</b>	<b>Has changed this (submitted this solicitation)</b>
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA</p>	<input type="checkbox"/>	<input type="checkbox"/>

**one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.



If these documents are not sufficient, the Foreign RFP Guarantor is not granted unsecured credit under the terms of the Uniform SMA. In that case, the RFP Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional financial or credit information regarding the RFP Bidder.

*Third Item: Required Documents for RFP Bidders with a Foreign Entity as Principal*

For each document required of an RFP Bidder submitting a Proposal under an Agency Agreement with a Principal that is a foreign entity, an RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP V remains valid; or: (ii) provide the document by upload to the online Part 2 form or by email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) if it has changed.

**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

<b>REQUIRED DOCUMENTS</b>	<b>Remains valid (not submitted)</b>	<b>Has changed (submitted this solicitation)</b>
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.</p>	<input type="checkbox"/>	<input type="checkbox"/>

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

## 5. Bids

**Reminder:** Each RFP Bidder submits its Bids electronically, by transferring its Bid Form through a secure file transfer system. The Independent Evaluator provides electronically to each RFP Bidder qualified pursuant to a successful Part 1 Proposal the Bid Form as well as a set of instructions. These instructions guide the RFP Bidder for completion of the Bid Form, for optional encryption of the Bid Form, for submission of the completed Bid Form to the Independent Evaluator via secure file transfer interface, as well as instructions for backup methods for the submission of Bids in case of technical difficulties with the electronic transfer.

**Important!** The Independent Evaluator provides electronically to each RFP Bidder that qualifies pursuant to a successful Part 1 Proposal information required for the submission of Bids, including a username, password, and security code. This information is unique to each RFP Bidder and allows the Independent Evaluator to authenticate the Bids received. The RFP Bidder must acknowledge that the RFP Bidder has received intact the information necessary to submit Bids and that no one but authorized personnel of the RFP Bidder has had access to this information.

Please provide this confirmation below.

- I confirm receipt of the Bid Form, instructions, and information necessary to submit Bids. No one but authorized personnel of the RFP Bidder has had access to this information.
- I request that such information and documents be re-issued.

### 6. Justification of Omissions Section

If you are unable to provide all documents or information with this Part 2 Form, please justify fully any omissions in the space provided below.

If you are providing additional documents, such as providing the Part 1 Form certifications if the individual who is serving as Officer of the RFP Bidder has changed, please use the spaces below to upload these documents.

	<i>File upload</i>
	<i>File upload</i>
	<i>File upload</i>

## Appendix 9 - Standard Pre-Bid Letter of Credit

[On Issuing Bank's Letterhead]

### IRREVOCABLE STANDBY LETTER OF CREDIT

\_\_\_\_\_ (“Date of Issuance”)

Letter of Credit No. \_\_\_\_\_

Beneficiary:

PECO Energy Company (“PECO”)  
c/o NERA Economic Consulting (“NERA”)  
Independent Evaluator  
PECO Default Service Program  
[Independent Evaluator Address]

Applicant:

[Name of Bidder]  
[Address]

1. We, \_\_\_\_\_ (the “Issuing Bank”), hereby establish this Irrevocable Standby Letter of Credit (this “Letter of Credit”) in your favor in the amount of USD \$\_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank’s location for presentments] and expiring at 5:00 PM (New York, NY time<sup>1</sup>) on \_\_\_\_\_ [no earlier than fifteen days following the Bid Date] (the “Expiration Date”), unless terminated earlier in accordance with the provisions of Paragraph 9 hereof.
2. This Letter of Credit is issued at the request and for the account of \_\_\_\_\_ (including its successors and assigns, the “Bidder”). This Letter of Credit may be drawn by presenting the documents required by paragraph 3 hereof, including your certificate stating that:
  - a) “the Bidder has made a material omission or misrepresentation in the Part 1 Proposal or the Part 2 Proposal submitted in connection with this solicitation”; or
  - b) “the Bidder has disclosed information relating to its Proposal publicly or to any other party before the PUC has rendered its decision on the results of the solicitation”; or
  - c) “the Bidder has one or more Bids approved by the PUC and the Bidder has failed to execute the Uniform SMA and its Exhibits or has failed to meet the creditworthiness requirements within the timeframe required”.

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<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern Time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly, here and in Paragraphs 5 and 9.

3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to the Issuing Bank at \_\_\_\_\_, (a) Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of PECO, which is your notice, and (b) Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of PECO, which is your draft.
4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 PM (New York, NY time) on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM (New York, NY time) on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM (New York, NY time) on any Business Day.
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons why the demand for payment was not so effected, and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. Unless otherwise hereafter designated in writing to us by an Authorized Officer of PECO, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to PECO pursuant to the following instructions:

PECO Energy Company  
Account No.: \_\_\_\_\_  
Bank: \_\_\_\_\_  
Bank's Address: \_\_\_\_\_  
\_\_\_\_\_  
ABA Routing No.: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not

be deemed a failure to comply with the requirements of Paragraph 3 hereof, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.

9. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 3 hereto together with the original of this Letter of Credit returned for cancellation, or (c) 5:00 PM (New York, NY time) on the Expiration Date.
10. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
11. Article 36 of the UCP as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Article 36 of the UCP as it applies to this Letter of Credit is hereby further modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

12. As used herein:

“Authorized Officer” shall mean President, Treasurer, any Vice President, any Senior Vice President, any Managing Director, any Director, any Associate Director, or any Assistant Treasurer.

“Bids” shall mean the price offers submitted by the Bidder in response to PECO Energy Company’s Default Service Program RFP.

“Bid Date” shall mean the day on which the Bidder may submit Bids in the solicitation.

“Bidder” shall mean an entity that has successfully completed the Part 1 Proposal, and that submits the Part 2 Proposal.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fedwire system.

“Uniform SMA” shall mean the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement by which PECO can contract with winners from this solicitation.

“Independent Evaluator” shall mean the administrator of PECO Energy Company’s Default Service Program RFP.

“PUC” shall mean the Pennsylvania Utility Commission.

“Proposal” shall mean a response by the Bidder to PECO Energy Company’s Default Service Program RFP in a solicitation, including the Part 1 Proposal and the Part 2 Proposal.

“Transaction Confirmation” shall mean an agreement pursuant to the Uniform SMA that documents certain terms of a transaction between the Bidder and PECO Energy Company.

13. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of PECO or an Authorized Officer of the Independent Evaluator on behalf of PECO.
14. We, the Issuing Bank, certify that as of the Date of Issuance our senior unsecured debt is rated “A-” or better by S&P Global Ratings, or “A3” or higher from Moody’s Investors Service.
15. This original Letter of Credit has been sent to the Independent Evaluator at [address for Independent Evaluator] (as per Bidder’s instructions, the Independent Evaluator holds the Letter of Credit for the benefit of PECO). The aggregate amount paid to PECO during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of PECO. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of PECO or an Authorized Officer of the Independent Evaluator on behalf of PECO.

Very truly yours,  
[Issuing Bank]

\_\_\_\_\_  
Signature: \_\_\_\_\_  
Name:  
Title:  
Date:

**Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: [Issuing Bank]  
[Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under Your Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit. The amount to be received by PECO is (USD) \$\_\_\_\_\_.
3. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in as much as the Bidder has \_\_\_\_\_ [state a reason from conditions (a) – (c) of Paragraph 2 of the Letter of Credit].
4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

PECO Energy Company  
By \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ [Bidder]

***Annex 2 to Letter of Credit***

SIGHT DRAFT

Amount: \$ \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

At sight, pay to the order of PECO Energy Company the sum of \_\_\_\_\_ U.S. Dollars.

Drawn under Irrevocable Letter of Credit No. \_\_\_\_\_ of \_\_\_\_\_  
[identify Issuing Bank] dated \_\_\_\_\_, 20\_\_.

To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address]  
\_\_\_\_\_

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

***Annex 3 to Letter of Credit***

CERTIFICATE OF CANCELLATION

\_\_\_\_\_, 20\_\_

To: [Issuing Bank]  
[Address]

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit, marked cancelled.

PECO Energy Company

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ [Bidder]

**PECO Energy Company  
Default Service Program RFP  
March 2021 Solicitation**

**PECO Exhibit JJM-6**

**General Information  
Bid Date: Tuesday, March 9, 2021**

**Template Information:**

In addition to this 'General Information' sheet, this Bid Form contains the 'Bids' sheet.  
The 'Bids' sheet is for entering Bids for all products.

**Bidder Information:**

Company Name:	
Contact Name:	
Phone Number:	

**Bidder Information is incomplete. All fields are mandatory.**

**Class & Product Information:**

A "Class" is a grouping of PECO's retail customers. PECO will procure full requirements service for the Residential ("RES") and Small Commercial ("SC") Classes on a fixed-price basis. PECO will procure full requirements service with energy priced to the PJM day-ahead spot market for the Consolidated Large Commercial and Industrial ("CCI") Class.

Number of tranches available		
Class (Product)	Supply Period	Available Tranches
Residential (RES-12-Jun21)	June 2021 - May 2022	12
Residential (RES-24-Jun21)	June 2021 - May 2023	11
Small Commercial (SC-12-Jun21)	June 2021 - May 2022	6
Small Commercial (SC-24-Jun21)	June 2021 - May 2023	3
Consolidated Large Commercial and Industrial (CCI-12-Jun21)	June 2021 - May 2022	8

The Load Caps for a Class are set so that the customers of that Class have no more than a 50% exposure to any one Default Supplier at any given time. The Load Caps apply to the list of products that contribute to Default Supply for a Class at a given point in time. The Load Cap for an RFP Bidder that is a Default Supplier will take into account tranches won in previous solicitations under DSP IV and DSP V.

**Maximum Number of Tranches Bid in this Solicitation - RES Class.**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Caps for RES Class
RES-12-Jun21	12	Won more than 19 tranches of RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 under DSP IV	31 less RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 tranches won under DSP IV
RES-24-Jun21	11	Won more than 20 tranches of RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 under DSP IV	

**Maximum Number of Tranches Bid in this Solicitation - SC and CCI Classes.**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Cap
SC-12-Jun21	6	Won more than 6 tranches of SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 under DSP IV	12 less SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 tranches won under DSP IV
SC-24-Jun21	3	Won more than 9 tranches of SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 under DSP IV	
CCI-12-Jun21	8	Load Caps apply always	4

**Complete and Sign Certification:**

I, \_\_\_\_\_, certify under penalty of perjury that I am authorized to submit these Bids.

By affixing my electronic signature below I understand and agree with the following: Any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement at the price specified in the Bid.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

**Please enter your Name and Electronic Signature.**

Bids  
 Bid Date: Tuesday, March 9, 2021

**Bids**

- A 'Bid' is a price in \$/MWh for one tranche of a given product.
- A 'Bid' is rounded to the nearest cent.
- An RFP Bidder may submit different Bids for different tranches of a given product.
- Bids should be entered from top to bottom, without skipping rows.

**Section 1. Total Number of Tranches Bid**

Total Tranches Across all Products

0
---

**Section 2. Bids for each Tranche of each Product**

Bids (All Bids are in \$/MWh)

Residential	Residential	Small Commercial	Small Commercial	Consolidated Large Commercial and Industrial
RES-12-Jun21	RES-24-Jun21	SC-12-Jun21	SC-24-Jun21	CCI-12-Jun21
June 2021 - May 2022	June 2021 - May 2023	June 2021 - May 2022	June 2021 - May 2023	June 2021 - May 2022
Bid (\$/MWh)				
1	1	1	1	1
2	2	2	2	2
3	3	3	3	3
4	4	4		4
5	5	5		
6	6	6		
7	7			
8	8			
9	9			
10	10			
11	11			
12				

Number of Tranches Bid

Residential	Residential	Small Commercial	Small Commercial	Consolidated Large Commercial and Industrial
June 2021 - May 2022	June 2021 - May 2023	June 2021 - May 2022	June 2021 - May 2023	June 2021 - May 2022
0	0	0	0	0

Bidder-Specific Load Caps

12	11	6	3
23		9	

Load Cap Status

OK	OK	OK	OK
OK		OK	

Your bidder-specific load caps for a Class are set so that you serve no more than 50% of the load for a Class at any given time taking into account your tranches won in DSP IV and DSP V.

## Appendix 11 - Future Solicitations

### Tentative Schedule for Future Solicitations

The tentative schedules for future solicitations are provided in this Appendix 11. These schedules may be modified in accordance with Paragraphs I.1.8 and II.2.3 of the RFP Rules.

Activity	Date
<b>March 2021 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, January 26, 2021
Bidder Information Webcast	Friday, February 5, 2021
Decision on alternate guaranty forms (if any)	Friday, February 12, 2021
Part 1 Window Opens	Wednesday, February 17, 2021
Part 1 Date (Part 1 Window Closes)	Tuesday, February 23, 2021
Part 1 Notification Date	Thursday, February 25, 2021
Approved modifications to Form of Guaranty posted	Friday, February 26, 2021
Part 2 Window Opens	Friday, February 26, 2021
Bid Submission training	Wednesday, March 3, 2021
Part 2 Date (Part 2 Window Closes)	Thursday, March 4, 2021
Part 2 Notification Date	Monday, March 8, 2021
Bid Date (Bids are Due)	Tuesday, March 9, 2021
IE provides its report to the PaPUC	Wednesday, March 10, 2021
PaPUC Decision (close of business)	Thursday, March 11, 2021
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

Activity	Date
<b>September 2021 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, August 17, 2024
Bidder Information Webcast	Friday, August 27, 2024
Decision on alternate guaranty forms (if any)	Friday, September 3, 2021
Part 1 Window Opens	Wednesday, September 8, 2021
Part 1 Date (Part 1 Window Closes)	Tuesday, September 14, 2021
Part 1 Notification Date	Thursday, September 16, 2021
Approved modifications to Form of Guaranty posted	Friday, September 17, 2021
Part 2 Window Opens	Friday, September 17, 2021
Bid Submission training	Wednesday, September 22, 2021
Part 2 Date (Part 2 Window Closes)	Thursday, September 23, 2021
Part 2 Notification Date	Monday, September 27, 2021
Bid Date (Bids are Due)	Tuesday, September 28, 2021
IE provides its report to the PaPUC	Wednesday, September 29, 2021
PaPUC Decision (close of business)	Thursday, September 30, 2021
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

Activity	Date
<b>March 2022 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, February 1, 2022
Bidder Information Webcast	Friday, February 11, 2022
Decision on alternate guaranty forms (if any)	Friday, February 18, 2022
Part 1 Window Opens	Wednesday, February 23, 2022
Part 1 Date (Part 1 Window Closes)	Tuesday, March 1, 2022
Part 1 Notification Date	Thursday, March 3, 2022
Approved modifications to Form of Guaranty posted	Friday, March 4, 2022
Part 2 Window Opens	Friday, March 4, 2022
Bid Submission training	Wednesday, March 9, 2022
Part 2 Date (Part 2 Window Closes)	Thursday, March 10, 2022
Part 2 Notification Date	Monday, March 14, 2022
Bid Date (Bids are Due)	Tuesday, March 15, 2022
IE provides its report to the PaPUC	Wednesday, March 16, 2022
PaPUC Decision (close of business)	Thursday, March 17, 2022
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

<b>Activity</b>	<b>Date</b>
<b>September 2022 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, August 16, 2022
Bidder Information Webcast	Friday, August 26, 2022
Decision on alternate guaranty forms (if any)	Friday, September 2, 2022
Part 1 Window Opens	Wednesday, September 7, 2022
Part 1 Date (Part 1 Window Closes)	Tuesday, September 13, 2022
Part 1 Notification Date	Thursday, September 15, 2022
Approved modifications to Form of Guaranty posted	Friday, September 16, 2022
Part 2 Window Opens	Friday, September 16, 2022
Bid Submission training	Wednesday, September 21, 2022
Part 2 Date (Part 2 Window Closes)	Thursday, September 22, 2022
Part 2 Notification Date	Monday, September 26, 2022
Bid Date (Bids are Due)	Tuesday, September 27, 2022
IE provides its report to the PaPUC	Wednesday, September 28, 2022
PaPUC Decision (close of business)	Thursday, September 29, 2022
 <u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

Activity	Date
<b>March 2023 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, January 31, 2023
Bidder Information Webcast	Friday, February 10, 2023
Decision on alternate guaranty forms (if any)	Friday, February 17, 2023
Part 1 Window Opens	Wednesday, February 22, 2023
Part 1 Date (Part 1 Window Closes)	Tuesday, February 28, 2023
Part 1 Notification Date	Thursday, March 2, 2023
Approved modifications to Form of Guaranty posted	Friday, March 3, 2023
Part 2 Window Opens	Friday, March 3, 2023
Bid Submission training	Wednesday, March 8, 2023
Part 2 Date (Part 2 Window Closes)	Thursday, March 9, 2023
Part 2 Notification Date	Monday, March 13, 2023
Bid Date (Bids are Due)	Tuesday, March 14, 2023
IE provides its report to the PaPUC	Wednesday, March 15, 2023
PaPUC Decision (close of business)	Thursday, March 16, 2023
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

<b>Activity</b>	<b>Date</b>
<b>September 2023 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, August 15, 2023
Bidder Information Webcast	Friday, August 25, 2023
Decision on alternate guaranty forms (if any)	Friday, September 2, 2023
Part 1 Window Opens	Wednesday, September 6, 2023
Part 1 Date (Part 1 Window Closes)	Tuesday, September 12, 2023
Part 1 Notification Date	Thursday, September 14, 2023
Approved modifications to Form of Guaranty posted	Friday, September 15, 2023
Part 2 Window Opens	Friday, September 15, 2023
Bid Submission training	Wednesday, September 20, 2023
Part 2 Date (Part 2 Window Closes)	Thursday, September 21, 2023
Part 2 Notification Date	Monday, September 25, 2023
Bid Date (Bids are Due)	Tuesday, September 26, 2023
IE provides its report to the PaPUC	Wednesday, September 27, 2023
PaPUC Decision (close of business)	Thursday, September 28, 2023
 <u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

Activity	Date
<b>March 2024 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, January 30, 2024
Bidder Information Webcast	Friday, February 9, 2024
Decision on alternate guaranty forms (if any)	Monday, February 19, 2024
Part 1 Window Opens	Wednesday, February 21, 2024
Part 1 Date (Part 1 Window Closes)	Tuesday, February 27, 2024
Part 1 Notification Date	Thursday, February 29, 2024
Approved modifications to Form of Guaranty posted	Friday, March 1, 2024
Part 2 Window Opens	Friday, March 1, 2024
Bid Submission training	Wednesday, March 6, 2024
Part 2 Date (Part 2 Window Closes)	Thursday, March 7, 2024
Part 2 Notification Date	Monday, March 11, 2024
Bid Date (Bids are Due)	Tuesday, March 12, 2024
IE provides its report to the PaPUC	Wednesday, March 13, 2024
PaPUC Decision (close of business)	Thursday, March 14, 2024
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

<b>Activity</b>	<b>Date</b>
<b>September 2024 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, August 13, 2024
Bidder Information Webcast	Friday, August 23, 2024
Decision on alternate guaranty forms (if any)	Friday, August 30, 2024
Part 1 Window Opens	Wednesday, September 4, 2024
Part 1 Date (Part 1 Window Closes)	Tuesday, September 10, 2024
Part 1 Notification Date	Thursday, September 12, 2024
Approved modifications to Form of Guaranty posted	Friday, September 13, 2024
Part 2 Window Opens	Friday, September 13, 2024
Bid Submission training	Wednesday, September 18, 2024
Part 2 Date (Part 2 Window Closes)	Thursday, September 19, 2024
Part 2 Notification Date	Monday, September 23, 2024
Bid Date (Bids are Due)	Tuesday, September 24, 2024
IE provides its report to the PaPUC	Wednesday, September 25, 2024
PaPUC Decision (close of business)	Thursday, September 26, 2024
 <u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

## Appendix 12 – Confidentiality Statement

I, \_\_\_\_\_ {name of person}, am employed by \_\_\_\_\_ {name of employer}.

I will be considering, reviewing, and evaluating responses from RFP Bidders or I will have access to information submitted by RFP Bidders that is not publicly released. In this capacity, I sign below and hereby acknowledge and understand the Confidentiality Provisions of the RFP Rules and, consistent with those rules, agree to take all reasonable precautions to ensure that all data and information supplied by all RFP Bidders are maintained in confidence and not disclosed to individuals other than those that have signed this Confidentiality Statement. My signature is witnessed by the Independent Evaluator.

A list of signatories of this Confidentiality Statement is maintained by the Independent Evaluator and available to all signatories and to RFP Bidders upon request. I undertake to consult this list of signatories before communicating RFP information to another person.

If any data or information supplied by an RFP Bidder is disclosed publicly by that RFP Bidder itself or by the Pennsylvania Public Utility Commission, such information will cease to be Confidential.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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## **I. Introduction**

This RFP Protocol describes the process of administering the Requests for Proposals (“RFP”) and specifies how the Independent Evaluator (“IE”) will communicate with bidders, with representatives of PECO Energy Company (“Company” or “PECO”), and with the Staff of the Pennsylvania Public Utility Commission (“Commission” or “PaPUC”). The RFP Protocol is focused on specific procedures that the IE and PECO will follow. The following topics will be covered:

- General Principles
- Confidentiality
- Website and Data Room
- Frequently Asked Questions
- Announcements & Communications to Bidders
- Communications to the Press and the Media
- Bidder Information Webcasts
- Guaranty Process
- Processing of Proposals
- Transmitting Confidential Information
- Bid Submission Training
- Market Report
- Bid Processing
- Post-Bid Procedures

## **II. General Principles**

The main guiding principle of this RFP Protocol is that all bidders will be treated equally. This equality means that no bidder will be provided with information that is not available to all other bidders, and all bidders will be subject to the exact same rules and standards for participation. This not only ensures fairness of the process but it also fosters competition and so favors the best final prices possible. Bidders are more willing to participate in the RFP if they know that no other bidder will be granted an advantage over them.

Furthermore, information that is of a sensitive nature, such as information a bidder provides about itself during the proposal process and information about individual bidders' bids, shall be considered confidential and will not be released to the public. As stated in the PaPUC's Policy Statement at §69.1807(8):

“[t]he public interest would be served by the adoption of uniform rules for the confidentiality of competitive solicitation information. Supplier participation, bid prices, and retail rates may be impacted by protecting certain information, including, the identity of winning and losing bidders, the number of bids submitted, bid prices, the allocation of load among winning bidders, and the like.”

PECO and the IE are committed to upholding these principles, and to that end:

- The IE and PECO will nominate particular individuals who will review RFP information. Each nominated individual signs a Confidentiality Statement. The individual may only discuss the RFP information to which it has access with other nominated individuals. Information will be provided to Staff at critical junctures.
- The IE will serve as the sole interface with bidders.
- The IE will set up a public RFP website to disseminate information and data about this RFP efficiently and to which all stakeholders will have access.

### **III. Confidentiality**

This RFP Protocol describes the extent of the communication between the IE and PECO. Information not specifically designated in this protocol for communication between the IE and PECO shall not be communicated, and shall be treated as confidential. All PECO and NERA personnel involved in the administration of a solicitation will sign the Confidentiality Statement provided as Appendix 11 of the RFP, ensuring that all information submitted by prospective suppliers through this process will be treated as confidential. This RFP Protocol describes what information can be released, to whom and under what circumstances.

PECO and the IE will each designate specific individuals that will take part in the implementation of DSP V.

- These individuals will sign the Confidentiality Statement provided as Appendix 11 of the RFP and will commit to strictly adhere to the RFP Protocol.
- The IE will maintain a master list of individuals who can have access to confidential information and each individual on that list can only discuss confidential information with another individual on that list.
- Each individual, when communicating RFP information, will consult this list of individuals as needed to ascertain that the recipient has signed the Confidentiality Statement.

PECO will have a supporting role during the implementation of each solicitation, consisting primarily of the following:

- Development of data that the IE then posts to the RFP website and updates as necessary;
- Response to bidder inquiries, particularly on data methodology and the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement “Uniform SMA”, after the IE has redacted the identity of the questioner;
- Review with the IE of financial information provided by bidders with their qualification package to determine the credit line that would prevail under the terms of the Uniform SMA;
- Review additional documents provided by bidders that are qualifying under an agency agreement, or as foreign entities, or relying on the financial standing of a foreign entity;
- Review with the IE of modifications to credit instruments proposed by bidders (once the IE has redacted the identity of the prospective supplier) to determine whether the modifications are non-material in nature;

- Review with the IE of alternate guaranty forms to determine whether the alternate guaranty form provides the same protection as the standard format of the guaranty under the Uniform SMA;
- Review with the IE of bid security (once the IE has redacted the identity of the bidder and the amount) to determine whether the bid security instruments follow the standard formats or only include approved changes;
- Review the Uniform SMA documents and the guaranty (if applicable) prepared for Default Suppliers.

In addition, and assuming the Commission approves the results of a solicitation, the IE will provide PECO with the information necessary to administer the winning contracts, namely the identity of the approved suppliers, the amount that they will supply of each product, and the supplier-specific price for each product (which is the average of the supplier's approved bids for that product).

In addition to the information needed to administer the contracts, PECO will have access to certain additional information to assist in assessing whether the products offered could be improved in future procurement plans and to assist it in finalizing its contingency plans should the results of any solicitation be rejected by the Commission. The IE, at the conclusion of each solicitation, will provide PECO with a redacted version of the report it provides to the Commission. The redaction will ensure that PECO does not have access to information concerning losing bids of specific bidders. This redacted report is discussed in more detail in Section XV.C of this Protocol.

The Commission's regulations at §§54.186(c)(5) specifically provide as follows:

“The bids submitted by a supplier in response to a competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission pursuant to §§ 54.185(D)(6). The DSP, the Commission, and a third party

involved in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.”

#### **IV. Website and Data Room**

A website dedicated specifically to the RFP is the most efficient way for the IE to disseminate information to bidders and other stakeholders. An RFP website ([www.pecoprocurement.com](http://www.pecoprocurement.com)) was developed during DSP I. The RFP website has been maintained since that time and will be maintained during DSP V. The main pages of the RFP website will contain DSP V information. Materials from prior Default Service Programs will be accessible through an “archives” section of the RFP website. The RFP website is public, and anyone can access the site at any time and find any information they require simply by searching the RFP website instead of calling or emailing the IE. No password or login information is required to view the RFP website.

The RFP website contains a section where any visitor may register by submitting information such as name, phone number and email address. Any user who submits an email address will be signed up to receive updates via email from the IE. A registrant who elected to receive email updates during previous Default Service Programs will be sent updates about DSP V unless the registrant opts out, which the registrant can do at any time.

The RFP website allows stakeholders to download all key documents as soon as these become available. Such documents include the RFP Rules, the Uniform SMA, and the qualification materials that bidders will need to submit (e.g., proposal forms and standard templates for pre-bid security). These documents for a given solicitation will continue to be posted well in advance of the qualification deadlines. The RFP website also includes a calendar providing the deadlines for each solicitation. A calendar is provided in the RFP, in Article II of the RFP Rules as well as in Appendix 10 of the RFP.

The RFP website includes a data room to assist bidders in assessing the RFP opportunity. This data room includes data that is useful for providers in assessing the load associated with each product, such as historical load by class, switching statistics, etc. Data series are updated once a month.

In addition to allowing bidders to assess their ability to serve different products, the provision of data via the RFP website also has the effect of leveling the playing field for all bidders; without the provision of data, some bidders may have a better idea of the load associated with PECO's customers, and this would put bidders without such familiarity at a competitive disadvantage. Therefore, providing data on an equal basis to all bidders equalizes knowledge across prospective suppliers, and spurs competition in areas where some bidders might not otherwise have the ability to offer competitive bids. This is in keeping with the guiding principle of equality described at the beginning of this protocol.

It is expected that the same data series that were provided in prior Default Service Programs would continue to be provided during DSP V. The IE did not receive any requests for additional data series that would improve bidders' ability to submit competitive bids. Confidential data can expand the information provided, but at the cost of setting up a password-protected section of the website or of providing data through mailings only to qualified parties, and at the possible cost of monitoring access to the data. At this point in time, PECO does not anticipate the need to provide data on such a confidential basis, but will be able to do so if the need arises.

Data are currently updated on or about the 13<sup>th</sup> day of each month, on an ongoing basis, and PECO will continue this process without interruption between DSP IV and DSP V. Initial data series were first provided on March 27, 2009 including historical data dating back to January 2006. The procedure for the monthly updates of the data series on the RFP website is as follows:

1. PECO provides the updated data to the IE at least three days in advance of the scheduled monthly update;
2. The IE checks the data, ensuring that it is accurate and error-free, contacting PECO if necessary to resolve any issues;
3. The IE posts the updated data series to the RFP website.

The following data are available on the RFP website:

- hourly usage data;
- number of retail customers;

- capacity peak load contribution (“PLC”);
- historical monthly retention figures;
- estimated loss factors;
- customer size distributions.

Data may be archived so that the more recent five years of data are more immediately available to stakeholders.

The material on the RFP website will be updated when new content becomes available that would be of use to stakeholders. The process for updating the RFP website and adding new material is as follows:

1. PECO and the IE together prepare the material for posting, ensuring that it is accurate and error-free;
2. The IE posts the new documents to the RFP website;
3. The IE sends an announcement (via email) to registrants informing them of the newly available content on the RFP website.

## **V. Frequently Asked Questions**

The RFP website also contains a web-based form that stakeholders can use to submit questions, and a section where the IE would post questions received and the associated responses, in order to ensure equal distribution of information. This FAQ form is available for all stakeholders to ask questions and receive answers, although in times of high demand, priority may be given to answering questions from prospective suppliers. There are four major steps to the process.

In the first step, the question is received and the IE sends an acknowledgement to the questioner. The acknowledgement serves as a bidder’s confirmation that its question has been received, and the acknowledgement will also inform the bidder of the expected turnaround time for an answer, expected to be two business days. In the second step, the IE drafts an answer to the question, consulting PECO for expertise as necessary. If PECO is consulted, the identity of

the entity who has asked the question is not revealed, and any information in the question itself that could potentially identify the questioner is removed before sending to PECO.

Once an answer has been finalized by the IE (and PECO if necessary), the IE sends the final response directly to the questioner. If there is any delay in answering the question, such that the answer cannot be sent before the end of the expected turnaround period, the IE will send a delay notice to the questioner informing it of the delay and of a revised expected turnaround time for the answer. In the final step, questions and answers that were received during the previous week are posted to the Frequently Asked Questions (FAQ) section of the RFP website by the IE.

Posting the questions to the RFP website ensures an equal distribution of information among stakeholders – any information that is conveyed to one party via an answer to a question submitted through the RFP website is then conveyed to all stakeholders in a public manner through the FAQ section of the RFP website. This practice ensures that all bidders have the same information and can compete on an equal playing field. Any question received by a party other than the IE must be sent to the IE for processing – no party other than the IE will directly answer a question from a stakeholder. Because all questions received about the RFP must go through the IE, bidders know that all questions receive the same treatment; as specified in the guiding principles of this RFP Protocol, the IE is the sole interface with bidders.

The FAQ section of the RFP website is updated once per week, allowing for more frequent posts at times of high volume or less frequent posts due to holidays.

## **VI. Announcements & Communications to Bidders**

As specified in Section IV, postings of new information to the RFP website will be followed by an announcement made to all registrants to the RFP website. (The only exception will be for data postings that have been scheduled to occur on the same day each month.) The IE and PECO may also issue announcements to a list of registrants to the RFP website from time to time to remind prospective suppliers of deadlines for a given solicitation under the RFP or to make them aware of events that may impact the bids. Announcements will include the following milestones:

- Initial documents posted
- Part 1 Proposal Window opening & closing
- Bidder Information Webcast reminders
- Part 2 Proposal Window opening & closing
- Bids due
- PaPUC decision on RFP results

The goal of these announcements is to ensure that all bidders and stakeholders are aware of the ongoing progress of a solicitation, and to minimize the possibility that a potential bidder is unable to bid due to a missed deadline.

The IE will also engage in direct marketing to promote the RFP opportunity. Members of the IE team will compile a list of prospective suppliers using publicly available information and contact representatives of these entities or contract with a professional marketing service to contact the representatives to inform them of key dates in the RFP, and opportunities for them to gain more information about participation in the RFP, such as bidder information webcasts and the RFP website. All prospective suppliers reached during these marketing calls will receive the same public information.

## **VII. Communications to the Press and the Media**

The IE and PECO may also issue press releases or advertisements in order to promote the RFP opportunity. Information placed in the trade press has the ability to reach prospective suppliers that might not have been contacted otherwise, and might not have registered to the RFP website of their own volition; thus, more parties may be made aware of the RFP website, and more participation may be achieved for the bidder information webcasts. The IE and PECO will work together to draft these communications. If the IE and PECO issue a press release, contact information of a team member of the IE will be included in case additional information is required.

PECO may grant interviews to the press or respond to press inquiries concerning the RFP. The interviews and responses to press inquiries are limited to public information regarding the RFP. PECO may require that the IE, who is to provide support in promotion efforts, participate in interviews and press inquiries. PECO has complete discretion to provide its customers and security analysts with public information regarding the RFP. PECO has complete discretion to provide public information to utilities or regulators from outside Pennsylvania.

The IE will coordinate with PECO's press representatives on all media contacts before the RFP. The IE will coordinate with PECO before granting interviews or commenting on any aspect of the RFP. Notwithstanding this, the IE will answer routine inquiries from the press and will inform PECO of such inquiries (e.g., wanting to know where a document is on the RFP website).

### **VIII. Bidder Information Webcasts**

In addition to the electronic information dissemination methods via the RFP website, email, or through press releases, bidder information webcasts are effective for presenting efficiently and concisely the main elements of the RFP. Such webcasts also have the significant benefit of allowing bidders to ask questions directly of the IE and PECO. The IE and PECO expect that, for each solicitation, there would be a webcast prior to the due date for submission of Part 1 Proposals, and a subsequent training session held for bidders that are qualified to submit a Part 2 Proposal.

Each webcast will be tailored to parties considering participation in the RFP, and will cover a broad range of general topics about the opportunity. The aim is to provide a wealth of information quickly, so that potential bidders can evaluate the opportunity. Subject material will consist of the requirements of the RFP, the rules for the submission of proposals, the general structure of the RFP, the definition of the products available, and a summary of the RFP website and communication channels by which interested parties can obtain further information throughout the process.

The IE will prepare and deliver the presentation at the webcast, with representatives of PECO on hand to answer questions if necessary. The IE will take down all questions asked and

answered at the bidder information webcast and post them to the RFP website as Frequently Asked Questions, so that bidders that are unable to attend the bidder information webcast have access to the same information as bidders able to attend. Similarly, the presentation will be available on the RFP website after the bidder information webcast, both as a pdf and as a recording of both the audio and the slides. No information about the parties in attendance at the bidder information webcast will be made public.

Shortly before the Bid Date, the IE will hold a training session on the mechanics of submitting bids on the Bid Date. This session will be limited to bidders.

## **IX. Alternate Guaranty Process**

PECO will allow any prospective supplier to submit for consideration an alternate guaranty form that the prospective supplier uses in its normal course of business. A separate and more detailed document about the Alternate Guaranty Process is included as Appendix 2 of the RFP. This document provides the specific minimum requirements of any alternate guaranty form.

The protocol for the processing of a submission under the Alternate Guaranty Process will occur in the following steps:

1. Parties submit alternate guaranty forms by emailing the form and all relevant documentation (as specified in the Alternate Guaranty Process document).
2. The IE acknowledges receipt of the package by email. The notice includes an assessment of whether all required materials have been received. If there is time before the deadline, a prospective supplier submitting incomplete documentation will be given an opportunity to complete its submission.
3. The IE redacts all information that could identify the prospective supplier submitting the alternate guaranty form and provides the redacted form and other documentation to PECO electronically.
4. PECO evaluates the alternate guaranty package with the assistance of the IE and of outside counsel as necessary.
  - a. If the package is acceptable, the IE sends a notice to the prospective supplier informing it of the form's acceptability for use under the Uniform SMA.

- b. If the package is unacceptable, the IE sends a notice to the prospective supplier informing it of what must be changed in order for the package to be acceptable for use under the Uniform SMA.
5. Prospective suppliers that submit revised alternate guaranty packages do so via email.
6. The IE redacts all information that could identify the parties submitting the revised packages and provides the redacted material to PECO electronically.
7. PECO evaluates with the assistance of the IE and of outside counsel as necessary.
  - a. If a revised package is acceptable, the IE sends a notice to the prospective supplier informing it of the form's acceptability for use in the RFP.
  - b. If a package is unacceptable, the IE sends a notice to the prospective supplier informing it of the form's final rejection for use in the RFP and the reasons for the rejection.
8. Accepted forms are kept on file by the IE, as they will be acceptable for use in future solicitations under the RFP.
9. A prospective supplier submits the executed alternate guaranty form and the signed enforceability opinion with the Part 2 Proposal.

An alternate guaranty form approved through this process will be acceptable to PECO. This alternate guaranty form may be used for purposes of the solicitation during which it is approved and may be used for the course of DSP V barring changes in the applicable law or changes to the RFP process as may be ordered by the PaPUC. Suppliers that had alternate forms of guaranty approved during a prior Default Service Program will be required to resubmit their materials.

## **X. Processing of Proposals**

A proposal consists of three (3) parts. The Part 1 Proposal is the bidder's response to the qualification standards described in Article IV of the RFP Rules. Bidders that qualify pursuant to a successful Part 1 Proposal may submit the second part, the Part 2 Proposal. The Part 2 Proposal, described in detail in Article V of the RFP Rules, includes financial support for the bidder's offers. Bidders that present a successful Part 1 Proposal and Part 2 Proposal may submit the third part of the Proposal, which consists of the bidder's bids.

Part 1 and Part 2 Proposals are received and processed by the IE, with certain specified decisions and evaluations made by PECO with the assistance of the IE. The IE is the main party responsible for processing the proposals and bids. This section lays out the step-by-step procedures to be followed and time periods for each action to be taken.

Prospective suppliers submit Part 1 proposals during the Part 1 Window. Any information provided by a bidder in its Part 1 Proposal is provided on a confidential basis to the IE, and may be provided on a confidential basis to PaPUC Staff. PECO representatives and the IE will review the information provided to fulfill the financial requirements under the Uniform SMA. PECO representatives and the IE will review draft documents provided to comply with specific requirements for bidders submitting a proposal under an agency agreement, and draft documents provided to comply with specific requirements for foreign bidders or for bidders relying on the financial standing of a foreign entity.

Bidders submit Part 2 proposals during the Part 2 Window. Bidders may also provide the representations and certifications required by the online Part 2 Form during the Part 1 Window for early processing. Any information provided by a bidder in its Part 2 Proposal is provided on a confidential basis to the IE, and may be provided on a confidential basis to the PaPUC Staff. PECO representatives review the pre-bid letter of credit with the name of the bidder and the amount redacted and will participate in the evaluation of this pre-bid letter of credit. PECO representatives and the IE determine the sufficiency of documents provided to comply with specific requirements for bidders applying under an agency agreement, and documents provided to comply with specific requirement for foreign bidders or for bidders relying on the financial standing of a foreign entity.

The IE provides all notifications by email and documents by secure file transfer to the bidder's designated representative and up to three (3) additional individuals. The IE may also communicate with the named officer.

### **X.A. Part 1 Proposals**

In the Part 1 Proposal, applicants submit basic information, such as the name of the prospective supplier and contact information. The officer of the bidder named in the Part 1 Proposal will designate a representative as a point of contact for purposes of the RFP and will make a number of certifications regarding its participation in the RFP as well as provide

information required by the Part 1 Proposal. A bidder may designate up to three (3) additional individuals who are authorized to act on behalf of the bidder and who receive all correspondence from the IE.

#### **X.A.1. Receipt and Processing of Part 1 Proposals**

- All materials for the Part 1 Proposals must be received by 12 PM (noon EPT) on the Part 1 Date.
- The Part 1 Proposal includes the completed Part 1 Form as well as one (1) copy of all documents required by the Part 1 Form. The Part 1 Form will be available online for bidders to complete through an online proposal website. The online proposal website will only be accessible to suppliers that have requested an online account and have been provided login credentials by the IE.
- Any documents required by the Part 1 Proposal other than the Part 1 Form must be submitted electronically either by email to the IE at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) or by upload to the online Part 1 Form.
- When a bidder submits the online Part 1 Form, the IE receives an email from the online proposal website that indicates that a submission has been received. The email provides the company name associated with the submission. The IE will lock the bidder out of the form so that no further changes are possible to the submitted information while such information is under review. The IE will access the submission through the administrative interface of the online proposal website. The submission will be downloaded and saved on a secure network accessible only by the IE. The submission will also be saved to a portable medium such as an encrypted USB flash drive and stored off-site for at least four years after the conclusion of the current default service program.
- If the Part 1 Proposal is received by the IE before noon on any business day during the Part 1 Window, the IE will send an acknowledgment confirming receipt on the day the Part 1 Proposal is received with the results of an initial

review. If a Part 1 Proposal arrives after noon on any business day during the Part 1 Window prior to the Part 1 Date, the IE will send the acknowledgment along with the initial review by noon of the next business day.

- The IE's initial review will include a determination of the completeness of the proposal. The initial review will state either that the Part 1 Proposal is complete and is being considered, or the initial review will list items of the Part 1 Proposal that are deficient or require clarification. When a review is sent, the IE will restore access for the bidder to the online Part 1 Form.
- If the proposal is missing information, or requires clarification, a communication listing all information and documents required to complete the proposal will be prepared by the IE and sent to the bidder.
  - The bidder has until noon on the Part 1 Date, or until 6 PM on the business day following the business day during which such a notice is sent to the bidder, whichever comes later, to respond.
  - If the information and documents required to remedy deficiencies are submitted within the time allowed, the IE reconsiders the proposal.
  - If the required information is not submitted within the time allowed, the proposal is incomplete. The Part 1 Proposal will be rejected and the IE will send a rejection notice to the bidder by email.
- The Part 1 Proposal allows the bidder to submit non-material modifications to the credit instruments, namely the standard form of the pre-bid letter of credit, the standard form of the letter of credit appended to the Uniform SMA, and the standard format of the guaranty. If such a submission is received:
  - The IE will redact identifying information from the document and provide the redacted version to PECO for review.
  - PECO and the IE will evaluate the submission.

- The IE will communicate the results of the review to the bidders in the specified timeframe.
- All such modifications related to a particular credit instrument will be posted in a single document on the RFP website.
- To the extent that they remain applicable, modifications that were acceptable in previous Default Service Programs will remain acceptable during DSP V. A document containing all such modifications will be posted to the RFP website in advance of the first solicitation under DSP V.
- Bidders submitting a proposal under a number of specific special circumstances are requested to submit additional documents with their Part 2 Proposals. Any such bidder can submit draft documents with its Part 1 Proposal. These include bidders submitting a proposal under an agency agreement, foreign bidders, and bidders relying on the financial standing of a foreign entity. The IE will take the following steps for the evaluation of any such documents.
  - The IE will redact identifying information from the document and provide the redacted version to PECO for review.
  - PECO will review the document with the assistance of the IE and the IE will communicate the results of the review to the bidder with the Part 1 Notification.
- The financial documents submitted by all bidders that accompany the Part 1 Proposals will be provided to PECO. PECO representatives will be provided with the information they need to make the creditworthiness evaluation on the Part 1 Date. It is expected that the creditworthiness evaluation will take no more than a day. The following steps will occur:
  - The IE will provide to PECO a spreadsheet that contains the names of the applicants and their guarantors;

- PECO will make a determination of the creditworthiness of the applicants and their guarantors, with the IE assistance;
- The credit assessment of the applicants and their guarantors is entered into the spreadsheet.

### **X.A.2. Notification for Part 1 Results**

- For each prospective supplier that qualifies under the requirements of the Part 1 Proposal, the IE will send a Part 1 Notification regarding their qualification status. This letter also details the creditworthiness assessment.
- With the initial notification, the IE sends by secure file transfer the Part 1 Materials: (i) the Bid Form and instructions for submission of bids; (ii) instructions for filling out and encrypting the Bid Form; (iii) instructions for the electronic transfer of the completed Bid Form from the bidder to the IE; (iv) instructions for submission of the bids in case of technical difficulties with the electronic transfer; (v) invitation to a training session on the bid submission process; and, (vi) a username, a password, and security codes to be used for bid submission uniquely by that bidder.

### **X.B. Part 2 Proposals**

In the Part 2 Proposal, bidders fulfill the requirements specified in Article V of the RFP Rules, including providing financial support for the bidder's offers.

#### **X.B.1. Receipt and Processing of Part 2 Proposals**

- All materials for the Part 2 Proposals must be received by 12 PM (noon EPT) on the Part 2 Date. Bidders also have the option to submit the certifications required with the Part 2 Proposal during the Part 1 Window for early processing.
- The Part 2 form is submitted online through an online proposal website. The Part 2 Proposal includes the completed Part 2 Form submitted online and an executed Pre-Bid Letter of Credit submitted in hardcopy at the IE's offices.

- Bidders submitting a proposal under an agency agreement, foreign bidders, and bidders relying on the financial standing of a foreign entity submit additional documents as specified in Article V of the RFP Rules. Any additional documents required by the Part 2 Proposal must be submitted electronically either by email or by upload to the online Part 2 Form.
- When a bidder submits the online Part 2 Form, the IE receives an email from the online proposal website that indicates that a submission has been received. The email provides the company name associated with the submission. The IE will lock the bidder out of the form so that no further changes are possible to the submitted information while such information is under review. The IE will access the submission through the administrative interface of the online proposal website. The submission is downloaded and saved on a secure network accessible only by the IE. The submission will also be saved to a portable medium such as an encrypted USB flash drive and stored off-site for at least four years after the conclusion of the current default service program.
- If the Part 2 Proposal is received by the IE before noon on any business day during the Part 2 Window, the IE sends the acknowledgment confirming receipt on the day the Part 2 Proposal is received with the results of an initial review. If a Part 2 Proposal arrives after noon on any business day during the Part 2 Window prior to the Part 2 Date, the IE sends the acknowledgment along with the initial review by noon of the next business day.
- A copy of all security documents is made. Original security documents are stored in a safe in the IE office.
- The IE's initial review of the proposal makes a determination on the completeness of the proposal. The initial review states either that the Part 2 Proposal is complete and is being considered, or the initial review lists items of the Part 2 Proposal that are deficient or require clarification.

- Review of the pre-bid letter of credit as well as documents provided for bidders submitting a proposal under an agency agreement, as foreign bidders, or while relying on the financial standing a guarantor may be part of an initial review or may be provided separately the next business day.
- If the proposal is missing required information, or requires clarification, a communication listing all information and documents required to complete the proposal is prepared by the IE and sent to the bidder:
  - With the exceptions noted below, the bidder has until noon on the Part 2 Date, or until 6 PM on the business day following the business day during which such a notice is sent to the bidder, whichever comes later, to respond.
  - For deficiencies related to the pre-bid letter of credit or documents provided to comply with specific requirements for bidders applying under an agency agreement, and documents provided to comply with specific requirement for foreign bidders or for bidders relying on the financial standing of a foreign entity, the bidder will have until noon on the Part 2 Date, or until 6 PM of the second business day following the business day during which the bidder is notified, whichever comes later, to respond.
  - The IE will restore the bidder's access to the online Part 2 Form to allow the bidder to remedy the deficiencies to the submitted information.
- If the information and documents required to remedy deficiencies are submitted within the time allowed, the IE reconsiders the proposal.
- If the required information and documents are not submitted within the time allowed, the proposal is incomplete. If the Part 2 Proposal is rejected, the IE sends a rejection notice to the bidder by email.

- All bidders submit an executed pre-bid letter of credit with their Part 2 Proposals. PECO review the pre-bid letter of credit to ensure that it either uses the standard form or that it includes only approved modifications. The following steps will occur:
  - IE redacts all information that could identify the applicant and the amount of the LC from the pre-bid letter of credit prior to providing it electronically to PECO for review.
  - PECO will check that the forms of the pre-bid letters of credit are acceptable with the assistance of the IE. The IE and PECO undertake a daily review, and conference call if necessary, during the Part 2 Proposal Window to review the pre-bid letters or credit as they arrive.
  - If the pre-bid letter of credit requires revision, the IE prepares a deficiency notice informing the bidder of how its pre-bid letter of credit is deficient and what it must do to remedy the deficiencies. This notice to the bidder by via email.
  - If a new/amended pre-bid letter of credit is submitted the IE confirms whether the new pre-bid letter of credit follows the instructions of the deficiency notice. The IE consults PECO as needed by conference call. If the new pre-bid letter of credit does not follow the requirements, the bidder will receive an additional deficiency notice as long as time remains for the bidder to remedy the deficiencies. If no time remains, the bidder will not be allowed to submit bids.
- Bidders in special circumstances provide additional documents with the Part 2 Proposal. This is the case for bidders applying under an agency agreement, documents provided to comply with specific requirements for foreign bidders, and for bidders relying on the financial standing of a foreign entity. The sufficiency of these documents is evaluated by PECO and the IE. For each of these documents submitted:

- The IE and PECO meet daily as needed via conference call during the Part 2 Proposal Window to evaluate these documents as they arrive. PECO and IE determine the sufficiency of the documents provided.
- If the document(s) requires revision, the IE prepares a deficiency notice informing the bidder of how its document(s) is deficient and what it must do to remedy the deficiencies. This letter is sent to the bidder.
- If a bidder had submitted a draft of these documents with its Part 1 Proposal for review and if the bidder conforms these documents submitted with the Part 2 Proposal to the review provided during the assessment of the Part 1 Proposal, then these documents will automatically be considered sufficient.
- If a new/amended document(s) is submitted, the IE confirms whether the new document(s) follows the requirements of the deficiency notice. The IE consults PECO as needed by conference call. If the new document(s) does not follow the requirements, the bidder is not allowed to submit bids, or is not be granted unsecured credit under the terms of the Uniform SMA, or is not allowed to rely on the financial standing of the guarantor.

#### **X.B.2. Notification for Part 2 Results**

A bidder that submits a Part 2 Proposal will be notified whether it has qualified to submit bids no later than 6 PM on the Part 2 Notification Date. This Part 2 Notification letter will be sent to the bidder by email.

### **XI. Transmitting Confidential Information**

At various times throughout the RFP process it will be necessary for the IE to communicate certain highly confidential information to RFP Bidders. This section specifies the methods by which such information will be transferred. These protocols are used when designated highly confidential information must be transmitted; they are not used in the course of

standard Proposal-related communication such as deficiency and complete notices. Any communication containing any of the following items is designated as highly confidential:

- Bidding results
- Login information for the secure file transfer system
- Bidder-specific load caps
- Part 1 and Part 2 Notifications

### **XI.A. Email & Secure File Transfer**

When sending highly confidential communications to bidders, the IE will observe the following protocols:

- Communications with information regarding a bidder's participation in the RFP will only be sent to the representatives designated in the Proposal forms.
- Confidential information will be contained in pdf documents, with a note in the text of the communication informing the recipient of the purpose of the email and instructing the recipient to destroy the email and its attachment without reading or retaining them if the email has been received in error.
- Communications with confidential information will be checked by at least two members of the IE Team before being sent to ensure that the recipients' email addresses are correct and that the correct file attachment for that bidder has been attached.

### **XII. Bid Submission Training**

The IE will hold a training session for bidders to practice the bid submission process prior to the submission of bids. The principle of the training is to familiarize all bidders with the step-by-step procedure to submit bids so that they can be sure they understand the process in advance of the actual Bid Date, allowing them to submit their actual bids without being hampered by technical difficulties or procedural questions. The training session is scheduled to occur early during the Part 2 Proposal Window, and will allow only potential bidders that have

submitted successful Part 1 Proposals to familiarize themselves with the process by which they will be allowed to submit bids pursuant to successful Part 2 Proposals.

The IE will conduct the training exactly as it would on the Bid Date, except that bids submitted through the training exercise will not be binding in any way. PaPUC Staff may monitor the training exercise. PECO is not involved in the bidder training, but may participate in a separate mock trial with the IE so as to understand the bid submission process.

The training exercise will occur as follows:

1. Bidders will be provided with information on how to participate in the training with their Part 1 Notifications, including information for the electronic transfer of the Bid Form specific to the training;
2. Bidders will fill out, encrypt<sup>1</sup>, and transfer electronically their Bid Forms to the IE using the system that will be employed on the actual Bid Date, and during a specific timeframe set aside for the training;
3. The IE will receive, decrypt and evaluate the submitted forms for completeness; as it would on the actual Bid Date;
4. The IE will contact the bidders to inform them of the receipt of their practice Bid Forms, and whether or not the forms were filled out properly;
5. Bidders wishing to practice submitting bids using a backup method will be afforded the opportunity to do so.

### **XIII. Market Report**

This report would provide visible market prices for components of the full-requirements product and provide the PaPUC with any changes in broad trends in the wholesale markets since

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<sup>1</sup> Encryption is optional, but bidders will be encouraged to practice the encryption method and to use it on the Bid Date. The Independent Evaluator will verify the identity of bidders that submit unencrypted bid forms using the bidder-specific confidential information provided with the Part 1 Notification.

the previous solicitation. If appropriate, the market report could also report the results of similar solicitations held in the State or in a comparable region.

- If desired, the IE will prepare a confidential report to the PaPUC detailing current market conditions affecting the products of the RFP.
- This report would be provided one week to ten days in advance of the Bid Date to the PaPUC on a confidential basis.

#### **XIV. Bid Processing**

A bidder's bids must be received between 10 AM and noon on the Bid Date. The Bid Form, as provided to each bidder along with its Part 1 Notification, is the exclusive method for the submission of bids. The RFP Rules are the governing document regarding the processing of bids on the Bid Date. The steps of the process are as follows:

- The Bid Form must be filled out completely, encrypted (optional), and transferred according to the instructions provided by the IE.
- A bidder submits its bids electronically, by transferring a Bid Form through a secure file transfer interface. The bidder must use a username and a password provided by the IE to access the secure interface. The bidder must use a security code provided by the IE to encrypt the file, or provide the security code over the phone if the file is not encrypted.
- The primary backup method for submitting the Bid Form is by email. A bidder that submits the Bid Form by email will be informed that the IE recommends that the Bid Form be encrypted. A bidder that must resort to submitting its Bid Form by email because of technical difficulties must follow the instructions provided by the IE for this contingency. These instructions will include a representative of the bidder phoning the IE to advise the IE of the use of an email transmission to submit bids and to provide authenticating information.

- The IE checks the Bid Form received for consistency with the requirements of the RFP, including a verification that the pre-bid letter of credit is sufficient to cover the bids of each bidder. The IE contacts each bidder within 15 minutes of receipt of the Bid Form.
  - If the Bid Form is complete and consistently filled out, the IE acknowledges receipt of the Bid Form and states to the bidder that the Bid Form is complete and consistent with the requirements of the RFP.
  - If the Bid Form received by the IE is incomplete or inconsistent, the IE acknowledges receipt of the Bid Form but advises the bidder of the information that must be added or modified. The bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and noon on the Bid Date. Otherwise, the bids are not evaluated.
  - If the pre-bid letter of credit is insufficient to support the bids, the IE states that fact to the bidder. The bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and noon on the Bid Date. Otherwise, IE will modify the Bid Form as specified in the RFP Rules.
- Members of the IE communicating with bidders during the submission procedures use a script so as to minimize any disparity of information provided to bidders.
- The bids supported by adequate financial guarantees will be evaluated on a price-only basis. The bids for each product will be ranked from lowest to highest price until all bids are ranked or until the number of bids that are ranked equals the number of tranches available for the product.
- The IE phones each bidder that has submitted bids by 6 PM on the Bid Date and identifies the bidder's bids that are being identified to the PaPUC as winning bids.

- If two or more bidders submit bids that are identical for a product, these bids will be considered “Tied Bids” at that price. The IE will use the tie-breaking procedure described in the RFP Rules.

The IE communicates with PECO and provides the average winning price for each product and whether the solicitation has purchased all available tranches. PECO will not have information regarding any bidder’s specific bids.

## **XV. Post-Bid Procedures**

### **XV.A. Post-Bid Meeting with PECO**

To facilitate the timeline for the execution of contracts, the IE will provide to PECO certain information about the results of bidding prior to the PaPUC decision on a confidential basis. All recipients of this information will have signed the Confidentiality Statement and will treat such information as highly confidential. All recipients of the information will be advised of its confidential nature and that it is preliminary, subject to approval by the PaPUC.

The information provided to PECO will include:

- The number of tranches of each product that were filled;
- The weighted average winning bid price of each product;
- The names of bidders that submitted Part 1 and Part 2 Proposals.

### **XV.B. PaPUC Decision**

The IE will present the results of each solicitation to the PaPUC by 8 AM on the day immediately following the Bid Date in a confidential report. This confidential report will include the winning bids determined during the evaluation. Following the submission of the report by the IE:

- The PaPUC will have one (1) business day to consider the report of the IE and to approve or reject each of the winning bids. If the PaPUC does not act within one (1) business day, the winning bids are deemed to be approved.

- The IE will notify all bidders that have approved bids. The IE provides to PECO the name of each approved supplier, and for each such supplier, the number of tranches won by the supplier and the supplier-specific price for each product. The supplier-specific price for a given product is the average of the supplier's approved bids for that product.
- PECO is not provided with information concerning losing bids.

### **XV.C.Provision of Redacted Final Report to PECO**

To assist PECO in assessing whether the products offered could be improved in future procurement plans and to assist it in finalizing its contingency plans should the results of any solicitation be rejected by the Commission, PECO will be provided with certain additional information. Namely, PECO will be provided with a redacted version of the factual report provided to the Commission on the results of the solicitation. The report will be redacted so that PECO will not receive information about bids that is bidder-specific or proposal information that a bidder may consider confidential or proprietary. The report will be provided at the conclusion of the solicitation, namely when all contracts with winning suppliers that are approved by the Commission have been executed.

Any bidder-specific information that is not relevant to PECO's assessment of the products offered or to its contingency plan will be redacted to the extent that the bidder could reasonably believe such information to be confidential. Analysis of the bidding data that provides an overview of the competition or summary statistics for the entire pool of bidders will not be redacted. The IE expects items that will be redacted to include:

- The identities of losing bidders that submitted bids and the particular products for which losing bidders submitted bids;
- The bid prices of individual tranches won by each bidder;
- Information concerning specific losing bids;
- The identities of bidders that did or did not participate in the bidder training session to practice the online submission of bids; and

- Deficiencies in the Proposals of certain bidders or difficulties with the submission or practice or actual bids, to the extent that such deficiencies were cured and or such difficulties did not materially impact the results of the solicitation.

#### **XV.D. Preparation of Uniform SMA Documents by the IE**

The IE will prepare the Uniform SMA for each New Default Supplier and the guaranty for each Default Supplier that is relying on the financial standing of an RFP Guarantor in accordance to the timeline provided below.

- On the Bid Date the IE will contact RFP Bidders that have Bids that are identified to the PaPUC as winning Bids and did not provide the necessary information to prepare the Uniform SMA with the Part 1 Proposal. These RFP Bidders are instructed to provide the required information by 12PM on the following business day.
- On the day the Commission approves some or all of the winning Bids, the IE sends to PECO by secure file transfer the Uniform SMA, including all exhibits, for each New Default Supplier, the guaranty for each New Default Supplier relying on the financial standing of a Guarantor, transaction confirmations for each product and Default Supplier, and the most current contact information that the IE has for each Default Supplier.

#### **XV.E. Execution of Uniform SMA Documents and Transaction Confirmations**

PECO and each Default Supplier will execute the Uniform SMA documents and transaction confirmations in accordance with the schedule provided below.

- By 12PM on the second business day following the Commission approval of some or all of the winning Bids, PECO:
  - Partially executes two (2) originals of each Transaction Confirmation for each Default Supplier and each product.
  - Partially executes two (2) originals of the Uniform SMA with each New Default Supplier.

- Informs each Default Supplier of its specific creditworthiness requirements.
- By 12PM on the second business day following the Commission approval of some or all of the winning Bids, PECO sends:
  - One (1) copy of the signature page of the Uniform SMA (page 75) by email to each New Default Supplier;
  - One (1) copy of the partially executed Transaction Confirmation by email to each Default Supplier for each product for which the Default Supplier has won tranches; and
  - The guaranty or an amendment to the current guaranty (if necessary) by email for each Default Supplier relying on the financial standing of an RFP Guarantor.
- By close of the second business day following the Commission approval of some or all of the winning Bids, PECO sends by overnight delivery service:
  - The two (2) originals of the partially executed Uniform SMA, including all exhibits, to each New Default Supplier; and
  - The two (2) original partially executed Transaction Confirmations to each Default Supplier.
- By 2PM on the third business day following Commission approval of some or all of the winning Bids:
  - Each New Default Supplier partially executes the two (2) originals of the Uniform SMA and returns one (1) copy of these signature pages to PECO by email. Additionally, each New Default Supplier completes the PJM Declaration of Authority online;

- Each Default Supplier partially executes the two (2) originals of the Transaction Confirmations and returns one (1) copy of the signature page to PECO by email; and
- Each Default Supplier relying on the financial standing of an RFP Guarantor executes the guaranty or any amendment to the guaranty and returns one (1) copy of the signature page of the guaranty to PECO by email.
- By close of the third business day following Commission approval of some or all of the winning Bids:
  - Each New Default Supplier returns by overnight delivery service to PECO one (1) original of the Uniform SMA, including all exhibits;
  - Each Default Supplier returns by overnight delivery service to PECO one (1) original of the Transaction Confirmation.
  - Each Default Supplier complies with all instructions from PECO to fulfill the creditworthiness requirements under the Uniform SMA.

#### **XV.F. Return of Pre-Bid Security**

The IE plans to release the pre-bid letters of credit for all bidders no later than six (6) business days after the Bid Date. To ensure that the signed certificates of cancellation are returned to the bidder's bank as quickly as possible, the certificates of cancellation will be signed by PECO in advance of when the pre-bid letter of credit must be released and held by the IE. The time of release will depend on whether or not the bidder has won any products at the RFP and on the PaPUC's decision:

- If the Commission does not approve any of a particular bidder's bids, the IE will release that bidder's pre-bid letter of credit within three (3) business days after the Bid Date.

- If the Commission approves any of a particular bidder's bids, the IE will release that bidder's pre-bid letter of credit as soon as practical and no later than six (6) business days after the Bid Date.
  - PECO will notify the IE as soon as an approved supplier has returned the executed Uniform SMA and Transaction Confirmation.
  - The prompt return of bid security will also be conditioned upon the bidder not having violated any undertakings agreed to as part of the RFP.

PECO Exhibit JJM-8

**PECO Energy Company**  
**Default Service Program**  
**Request for Proposals**

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## ARTICLE I. INTRODUCTION

### I.1. Overview

- I.1.1. Capitalized terms in this document, which are not defined explicitly herein, are defined in the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA” or “SMA”). The Uniform SMA is attached as Appendix 1 to this document.
- I.1.2. As part of its ~~fourth~~<sup>fifth</sup> Default Service Plan (“DSP ~~IV~~<sup>V</sup>”), PECO Energy Company (“Company” or “PECO”) is proposing a competitive bidding process to obtain full requirements supply for the Company to meet a portion of its obligations as Default Service Provider pursuant to Chapter 28 of the Pennsylvania Public Utility Code, 66 Pa. C. S. §§ 2801-2812. This competitive bidding process is consistent with Chapter 28, with P.L. 1592 No. 129 (“Act 129”), with the Pennsylvania Public Utility Commission’s (“Commission” or “PaPUC”) Default Service regulations in its Final Rulemaking Order in Docket No. L-2009-2095604, and the Commission’s Final Policy Statement on Default Service in Docket No. M-2009-2140580.
- I.1.3. PECO currently provides electric generation service to all customers within its service territory who do not select an electric generation supplier (“EGS”). Such customers are “Default Service customers” or “DS Customers”. The competitive bidding process would procure supply for the period beginning June 1, ~~2017~~<sup>2021</sup> when PECO’s ~~third~~<sup>fourth</sup> Default Service Plan (“DSP ~~III~~<sup>IV</sup>”) expires.
- I.1.4. The competitive bidding process will be conducted through a series of Requests for Proposals (“RFPs”) issued twice yearly. The RFP consists of a total of ~~thirteen~~ <sup>(13)</sup> ~~fourteen~~ <sup>(14)</sup> documents. This main document is called the “RFP Rules” and it describes generally how the RFP will be conducted. Prior to each solicitation, an “Addendum to the RFP Rules” will be issued and it will provide information relevant to that solicitation such as the schedule and products to be procured. The following documents are appended to, and shall be considered an integral part of, the RFP Rules:
- Appendix 0: Addendum to the RFP Rules  
Appendix 1: Uniform SMA  
Appendix 2: Alternate Guaranty Process  
Appendix 3: Illustrative Standard Part 1 Form  
Appendix 4: Illustrative Short Part 1 Form  
Appendix 5: Chief Financial Officer Attestation  
Appendix 6: Officers’ Certificate (for RFP Bidders under an Agency Agreement)

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- Appendix 7: Illustrative Standard Part 2 Form
- Appendix 8: Illustrative Short Part 2 Form
- Appendix 9: Standard Pre-Bid Letter of Credit
- Appendix 10: Sample Bid Form
- Appendix 11: Tentative Schedule for Future Solicitations
- Appendix 12: Confidentiality Statement

I.1.5. DSP WV plans for the procurement of full requirements supply for three (3) “Classes” of Default Service customers: the Residential (“RES”) Class, the Small Commercial (“SC”) Class, and the Consolidated Large Commercial and Industrial (“CCI”) Class. Each such Class (or “DS Customer Group”) is a group of specific rate schedules as provided in the following table:

**Table I-1. Customer Classes.**

Class	Customers Included	Rate Schedule	Description
Residential	All residential customers	R RH	Residence Service Residential Heating Service
Small Commercial	Non-residential customers with Peak Load Contribution up to and including 100kW and lighting customers	GS HT PD AL TLCL POL <u>SL-C</u> SL-E SL-S	General Service High-Tension Power Primary – Distribution Power Alley Lighting in City of Philadelphia Traffic Lighting Constant Load Service Private Outdoor Lighting <u>Smart Lighting Control Lighting Customer Owned Facilities</u> Street Lighting Customer-Owned Facilities Street Lighting-Suburban Counties
Consolidated Large Commercial and Industrial	Non-residential customers with Peak Load Contribution greater than 100kW	GS HT PD EP	General Service High-Tension Power Primary –Distribution Power Electric Propulsion

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I.1.6. For the RES and SC Classes, the Company will solicit bids for the procurement of full requirements service on a fixed-price basis. For the CCI Class, the Company will solicit bids for the procurement of full requirements service with energy priced to the PJM day-ahead spot market. The Default Service supply (“Default Supply” or “DS Supply”) for a Class is the full requirements electricity supply based on the load of the retail customers in that Class measured and recorded by the Company and settled by PJM. The load of the Default Service customers in a Class is the “Default Load” or “DS Load” of that Class. A supplier selected through the competitive bidding process under DSP WV to provide Default

Supply for a particular Class and approved by the Commission becomes a “Default Supplier” or “DS Supplier” for that Class.

- I.1.7. A Default Service customer may choose to begin receiving service from an EGS on the customer’s meter reading date in accordance with the Company’s standard switching requirements as described in the Company’s Electric Generation Supplier Coordination Tariff including, without limitation, prior advance notice to the Company. A customer served by an EGS may return to Default Service on the customer’s meter reading date in accordance with the Company’s standard switching requirements as described in the Company’s Electric Generation Supplier Coordination Tariff including, without limitation, prior advance notice to the Company.
- I.1.8. There are eight (8) “solicitations” or “DS Solicitations” under DSP ~~IVV~~ that will select electricity suppliers to provide Default Supply for the period June 1, ~~2017~~2021 through May 31, ~~2024~~2025 and for a portion of the Company’s requirements for the RES Class and SC Class for the period beyond June 1, ~~2021~~2025. Each solicitation will be identified by the month and year in which the Bid Date occurs. Solicitations will be held in March and September of each year, starting with a solicitation in March ~~2017~~2021 and ending with a solicitation in September ~~2020~~2024. A typical schedule for a solicitation is provided in Paragraph II.2.1. For each solicitation, the Addendum to the RFP Rules will be updated to include the dates for that solicitation and to refer to the particular products to be procured in that solicitation. The Independent Evaluator and the Company may advise the Commission to postpone or modify the schedule of a solicitation when market conditions are impacted by extraordinary events, such as the advent of war, terrorism, or an act of God.
- ~~I.1.9. For each solicitation, these RFP Rules will be updated to include the dates for that solicitation and to refer to the particular products to be procured in that solicitation. The RFP Rules may be further~~Standard rates of Default Service customers for a Class are determined on the basis of the prices determined through this RFP for that Class. As provided in the Commission’s directive dated October 12, 2010 (Docket No. M-2009-2082042), PECO provides a Default Service rate calculation model that translates the prices determined through this RFP into Default Service rates. This calculation model is posted to the PECO website:  
<https://www.peco.com/MyAccount/MyService/Pages/ElectricPricetoCompare.aspx>

I.1.10. Except for customers who participate in PECO's Customer Assistance Program, default service customers in the Residential and Small Commercial Classes can elect a time of use ("TOU") default service rate. Under this option, a customer: 1) pays a higher rate for peak usage (2 PM through 6 PM each week day) compared to the standard default service rate; 2) receives a discount off the standard default service rate during super off-peak hours (12 AM to 6 AM each day); and 3) receives a smaller discount in all other hours.

I.1.11. The rates for the Residential Class are also determined on the basis of the cost to PECO to acquire the necessary supply through PJM-administered markets to serve 0.8% of the Default Load of the RES Class. For this portion of the RES Class, PECO acquires sufficient Alternative Energy Credits ("AECs") at market prices to satisfy any near-term obligations under the AEPS Act. PECO also receives an annual allocation of capacity and associated energy from the New York Power Authority and uses this allocation to offset the amount of supply needed for the RES Class.

~~I.1.9.I.1.12.~~ These RFP Rules may be updated to reflect additional decisions by the Commission, relevant changes in law, or non-material modifications to the processing of Proposals expected to improve potential participation by suppliers. ~~Additionally, the RFP Rules may change as a result of issues raised in the stakeholder collaborative PECO will hold in January 2018 and, if necessary, in the follow-up collaborative to be held in February 2018. Further~~Additionally, the Independent Evaluator and the Company may amend the RFP Rules if necessary to correct typographical errors, cure inconsistencies in the provisions of this RFP, or clarify the intent of the provisions of this RFP.

~~I.1.10.I.1.1. The rates of Default Service customers for a Class are determined on the basis of the prices determined through this RFP for that Class, except for approximately 1% of the Default Load of the RES Class, for which PECO assumes responsibility. PECO acquires the necessary supply through PJM-administered markets and obtaining sufficient Alternative Energy Credits ("AECs") at market prices to satisfy any near-term obligations under the AEPS Act. As provided in the Commission's directive dated October 12, 2010 (Docket No. M-2009-2082042), PECO provides a Default Service rate calculation model that translates the prices determined through this RFP into Default Service rates. This calculation model is posted to the PECO website.~~

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<https://www.peco.com/CustomerService/RatesandPricing/EnergyChoice/Pages/PricetoCompare.aspx>

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## I.2. Products and Bids

- I.2.1. Default Load for each Class is divided into tranches. A tranche for a Class represents a fixed percentage of the Default Load for that Class. A Default Supplier serving a tranche in a particular Class provides full requirements service for the percentage of that Class' Default Load represented by that one (1) tranche for a specified period.
- I.2.2. The total number of tranches of Default Load is based on that Class' annual Peak Load Contribution ("PLC") on the PECO system in accordance with PJM. The MW-Measure is calculated as the annual PLC for the Default Load of the Class divided by the total number of tranches. This figure is calculated for reference purposes only.
- I.2.3. Each Class has "Load Caps", which are limits on the number of tranches of Default Supply that an RFP Bidder can bid and serve for that Class. The Load Caps ensure that there will be a diversified pool of Default Suppliers for each Class. The Load Caps for a Class are set so that the Default Service customers of that Class have no more than a 50% exposure to any one Default Supplier at any given time. If two or more Default Suppliers are affiliated, the Load Caps will apply jointly to such group of Default Suppliers.
- I.2.4. The total number of tranches, Load Caps, and the percentage size of each tranche, the to be procured under DSP V are shown in the table below. The Total Peak (MW), Default Peak (MW), and MW-Measure of each tranche, are updated for each solicitation and the Load Caps are shown will be provided in the following table Addendum to the RFP Rules.

**Table I-2. Number of Tranches and Size of a Tranche for Default Load.**

Class	Total Tranches	Load Cap	% Size of a Tranche	Total Peak (MW)	Default Peak (MW)	MW-Measure of a Tranche
RES	62	31	1.60%	3,596.40	2,377.02	37.93
SC	24	12	4.17%	1,387.99	539.42	22.48
CCI	8	4	12.50%	2,318.29	83.76	10.47

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- I.2.5. The total number of tranches and the tranche size for the SC and CCI Classes are subject to change. The Independent Evaluator and PECO may revise the total number of tranches for a Class if doing so is expected to increase supplier interest. The Independent Evaluator informs Commission Staff of such a revision and announces the revision to suppliers in advance of suppliers presenting their qualifications.
- I.2.6. The actual Default Load for the RES, SC, or CCI Class will depend upon many factors including, but not limited to, customer migration to EGSS and weather conditions. The maximum peak load of a Class may be higher or lower than the PLC utilized to determine the MW-Measure of tranches for that Class. Each participant is responsible for evaluating the uncertainties associated with Default Service Load for a particular Class and supply period.
- I.2.7. A product for purposes of this RFP is defined by three characteristics: a) the Class to which it contributes Default Supply; b) the length of the supply period; and c) the date at which the supply period begins. For example, the RES-12-~~Jun17~~Jun21 product represents Default Supply for the RES Class for the supply period from June 1, ~~2017~~2021 through May 31, ~~2018~~2022. A product name may be abbreviated when the context is clear; for example, RES-12 refers to all products for the Residential Class that are twelve (12) months in duration, regardless of the start date of the supply period.
- I.2.8. A Proposal is a response to this RFP for a solicitation pursuant to these RFP Rules. An entity that submits any part of a response to this RFP for a solicitation is an "RFP Bidder". A Bid for a tranche for any product is a price in dollars per MWh rounded to the nearest cent. An RFP Bidder may submit different Bids for different tranches of a given product.
- I.2.9. The table below provides the products that will be procured for each solicitation under DSP ~~HW~~.





Table I-4. Load Caps.

Class	Time Period	Products that contribute to Default Supply during time period	
		From DSP <del>III</del> IV	From DSP <del>IV</del> V
RES	Jun-Nov17Nov21	<del>RES-24-Dec15Dec19</del> <del>RES-24-Jun16Jun20</del> <del>RES-12-Dec16Dec20</del> <del>RES-24-Dec16Dec20</del>	RES-12-Jun17Jun21 <del>RES-24-Jun17Jun21</del>
	Dec17-May18Dec21-May22	<del>RES-24-Jun16Jun20</del> <del>RES-24-Dec16Dec20</del>	RES-12-Jun17Jun21 <del>RES-24-Jun17Jun21</del> RES-12-Dec17Dec21 <del>RES-24-Dec17Dec21</del>
	Jun-Nov18Nov22	<del>RES-24-Dec16Dec20</del>	RES-24-Jun17Jun21 RES-12-Dec17Dec21 <del>RES-24-Dec17Dec21</del> RES-12-Jun18Jun22 RES-24-Jun18Jun22
	Dec18-May19Dec22-May23		RES-24-Jun17Jun21 <del>RES-24-Dec17Dec21</del> RES-12-Jun18Jun22 RES-24-Jun18Jun22 RES-12-Dec18Dec22 <del>RES-24-Dec18Dec22</del>
	Jun-Nov19Nov23		RES-24-Dec17Dec21 RES-24-Jun18Jun22 RES-12-Dec18Dec22 <del>RES-24-Dec18Dec22</del> RES-12-Jun19Jun23 RES-24-Jun19Jun23
	Dec19-May20Dec23-May24		RES-24-Jun18Jun22 <del>RES-24-Dec18Dec22</del> RES-12-Jun19Jun23 RES-24-Jun19Jun23 RES-12-Dec19Dec23 <del>RES-24-Dec19Dec23</del>
	Jun-Nov20Nov24		RES-24-Dec18Dec22 RES-24-Jun19Jun23 RES-12-Dec19Dec23 <del>RES-24-Dec19Dec23</del> RES-12-Jun20Jun24 RES-24-Jun20Jun24
	Dec20-May21Dec24-May25		RES-24-Jun19Jun23 <del>RES-24-Dec19Dec23</del> RES-12-Jun20Jun24 RES-24-Jun20Jun24 <del>RES-12-Dec20Dec24</del> RES-24-Dec20Dec24
	Jun-Nov17Nov21	<del>SC-24-Dec19</del> <del>SC-24-Jun20</del> <del>SC-12-Dec16Dec20</del> <del>SC-24-Dec20</del>	SC-12-Jun17Jun21 SC-24-Jun17Jun21

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Class	Time Period	Products that contribute to Default Supply during time period	
		From DSP IIIIV	From DSP IVV
Dec17- May18Dec21- May22		SC-24-Jun20	SC-12-Jun17Jun21
		SC-24-Dec20	SC-24-Jun17Jun21
Jun-Nov18Nov22		SC-24-Dec20	SC-12-Dec17Dec21
			SC-24-Dec17Dec21
Dec18- May19Dec22- May23			SC-12-Jun18Jun22
			SC-24-Jun18Jun22
Jun-Nov19Nov23			SC-24-Jun17Jun21
			SC-24-Dec17Dec21
Dec19- May20Dec23- May24			SC-12-Jun18Jun22
			SC-24-Jun18Jun22
Jun-Nov20Nov24			SC-12-Dec18Dec22
			SC-24-Dec18Dec22
Dec20- May21Dec24- May25			SC-12-Jun19Jun23
			SC-24-Jun19Jun23
CCI	Any		CCI-12

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I.2.11. The [Addendum to the RFP Rules](#) for each solicitation will contain a table with the available tranches and Load Caps for that solicitation specifically as well as an explanation of the Load Caps for that solicitation. [This Paragraph includes as an example the explanation for the Load Caps in the March 2017 Solicitation with the associated tables below:](#)

- The Load Cap for the RES Class will apply as follows. An RFP Bidder is limited to 31 tranches of the RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, RES-24-Dec16, RES-12-Jun17, and RES-24-Jun17 products combined, including tranches of RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, and RES-24-Dec16 won under DSP III and tranches bid for RES-12-Jun17 and RES-24-Jun17 in this solicitation.
- The Load Cap for the SC Class will apply as follows. An RFP Bidder is limited to 12 tranches for the SC-12-Dec16, SC-12-Jun17, and SC-24-Jun17 products combined, including tranches of SC-12-Dec16 won in DSP III and tranches bid for SC-12-Jun17 and SC-24-Jun17 in this solicitation.
- The Load Cap for the CCI Class will apply as follows. In this solicitation, an RFP Bidder is limited to 4 tranches for the CCI-12-Jun17 product.

**Table I-5. Available Tranches and Load Caps (March 2017 Solicitation; RES Class).**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Caps for RES Class
RES-12-Jun17	12	Won more than 19 RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, and RES-24-Dec16 tranches under DSP III	31 less RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, and RES-24-Dec16 tranches won under DSP III
RES-24-Jun17	11	Won more than 20 RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, and RES-24-Dec16 tranches under DSP III	

**Table I-6. Available Tranches and Load Caps (March 2017 Solicitation; SC and CCI Classes).**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Caps
SC-12-Jun17	9	Won more than 3 SC-12-Dec16 under DSP III	12 less SC-12-Dec16 tranches won under DSP III
SC-24-Jun17	3	Won more than 9 SC-12-Dec16 under DSP III	
CCI-12-Jun17	8	Load Caps apply always	4

- I.2.12. A supplier participating in this RFP bids to provide Default Supply for one or more of the RES, SC, and CCI Classes, and for one or more supply periods. The obligations of the Default Supplier are described in the “Uniform SMA”. The term Uniform SMA is an abbreviation for PECO Energy Company Pennsylvania Default Service Supplier Master Agreement, which may also be abbreviated by “SMA”, “DS Supplier Master Agreement” or “Supplier Master Agreement”. The main provisions of the Uniform SMA are summarized in Section I.4.
- I.2.13. The contingency plan in the event that PECO is unable to obtain Default Supply for all tranches of a product in a solicitation is as follows. If the product is more than six (6) months in duration, PECO will assume responsibility for the unfilled tranches as a PJM LSE for the first six (6) months of the supply period, acquiring the necessary supply through PJM-administered markets and obtaining sufficient AECs at market prices to satisfy any near-term obligations under the AEPS Act. The unfilled tranches, with a supply period that starts six (6) months later than tranches that were unfilled, will be placed for re-bid in the next solicitation. For products that are six (6) months or shorter, PECO will assume responsibility for the unfilled tranches as an LSE and will acquire the necessary supply through PJM-administered markets for the entire supply period. PECO reserves the right to file an alternate plan with the Commission.
- I.2.14. Any prospective supplier that meets the qualification standards established in these RFP Rules and that is willing to provide prices at which to serve tranches of Default Service Load can respond to this RFP, including any PECO affiliates.

**I.3. Process**

- I.3.1. Prior to a typical solicitation, a supplier unable to use the Guaranty provided as Appendix G to the Uniform SMA (the “Standard Guaranty”) can request consideration by PECO of an alternate form of guaranty that the supplier uses in its normal course of business. Such request must be received no later than fifteen (15) business days prior to the opening of the Part 1 Window. Within three (3) business days of receipt of such a request, the Independent Evaluator will issue a timetable for receipt of the materials from the supplier and for consideration of these materials by PECO. This timetable

will be such that a final decision on whether to accept the supplier’s alternate form of guaranty will be communicated to the supplier prior to the Part 1 Window.

- I.3.2. To qualify for a typical solicitation, suppliers provide materials to respond to the qualification standards described in Article IV. RFP Bidders that did not qualify in a previous solicitation under DSP ~~IV~~ use the Standard Part 1 Form available online through the Proposal submission website to respond to these qualification standards. Previously qualified RFP Bidders under DSP ~~IV~~ may participate in an abbreviated qualification process by using the Short Part 1 Form available online through the Proposal submission website to respond to these qualification standards. An Illustrative Standard Part 1 Form and an Illustrative Short Part 1 Form are available as Appendix 3 and Appendix 4 respectively to these RFP Rules and are also available electronically on the RFP website: [www.PECOProcurement.com](http://www.PECOProcurement.com). The generic term “Part 1 Form” refers either to the Standard Part 1 Form or the Short Part 1 Form. Part 1 Proposals are submitted during the “Part 1 Window”.
- I.3.3. To become eligible to bid for a solicitation, RFP Bidders that have met the qualification standards of Article IV must respond to the Part 2 Proposal requirements described in ~~Article V~~ Article V of these RFP Rules. RFP Bidders use the Part 2 Form available online through the Proposal submission website to respond to these requirements. RFP Bidders that became eligible to submit Bids in a previous solicitation held under DSP ~~IV~~ may participate in an abbreviated process by using the Short Part 2 Form available online through the Proposal submission website to respond to these requirements. The generic term “Part 2 Form” refers either to the Standard Part 2 Form or the Short Part 2 Form. Part 2 Proposals are submitted during the “Part 2 Window”.
- I.3.4. RFP Bidders use the Bid Form provided by the Independent Evaluator to submit their Bids. A sample Bid Form is provided for illustrative purposes as Appendix 10 of these RFP Rules. Each RFP Bidder’s Bids must be received between 10 AM and 12 PM (noon) on the “Bid Date” or “Bid Proposal Due Date”.
- I.3.5. On the first business day after the Bid Date, the Independent Evaluator presents to the Commission the results of the solicitation in a confidential report. The Commission has one (1) business day to consider the report of the Independent Evaluator and to approve or reject each of the winning Bids. If the PaPUC does not act within one (1) business day, the winning Bids are deemed to be approved.

- I.3.6. PECO and each RFP Bidder with Bids that are approved by the Commission proceed to the execution of the Uniform SMA and the Transaction Confirmations within one (1) business day of the Commission decision. PECO and each such RFP Bidder execute a single Uniform SMA during the course of DSP ~~IV~~V. Each solicitation, PECO and each such RFP Bidder execute one (1) Transaction Confirmation for each product for which such RFP Bidder has Bids that are approved by the Commission. Appendix E to the Uniform SMA specifies the AEPS percentage obligations in effect on the Bid Date for the period covered by each Transaction Confirmation.
- I.3.7. Within fifteen (15) days of the close of the solicitation, the Independent Evaluator releases the weighted average price for each product procured as well as the percentage of load represented by each tranche.

**I.4. Supplier’s Obligations**

- I.4.1. A supplier selected through this RFP to provide Default Supply for a particular Class and approved by the Commission becomes a “Default Supplier” for that Class. A Default Supplier may be providing Default Supply for one or more of the RES, SC, and CCI Classes.
- I.4.2. This Section describes in general terms several provisions of the Uniform SMA. This is a summary only and is subject to and qualified in its entirety by the Uniform SMA provided as Appendix 1 to the RFP Rules. Each RFP Bidder accepts the obligations and associated rights to provide Default Supply as defined in the Uniform SMA as part of its Proposal.
- I.4.3. Default Suppliers for a Class will serve the Company’s Default Load for that Class. Default Service for one of these Classes is the Company’s full requirements service including, without limitation, energy, capacity, transmission (excluding Network Integration Transmission Service), ancillary services, AECs for compliance with the AEPS Act, transmission and distribution losses, congestion management costs, and such other services or products that are required to serve the specified percentage of Default Load for that Class (except for distribution service). Default Load for the RES Class is reduced by a fractional percentage of committed energy and capacity obtained under contract with Allegheny Electric Cooperative, Inc. for supply from the New York Power Authority.

- I.4.4. Default Suppliers are also responsible for providing AECs during the term of the Uniform SMA necessary for PECO to meet its obligations under the AEPS Act, as well as other Orders, regulations and rules that may be promulgated by the PaPUC with respect to the AEPS. Default Suppliers will be required to participate in the PJM Generation Attribute Tracking System (“PJM-EIS GATS”) to transfer AECs to PECO. The Company will provide an estimate of the Default Supplier’s AEPS obligation following the second quarter of the AEPS Reporting Period and the Default Supplier will be required to transfer AECs to PECO in the amount of the estimate within forty-five (45) calendar days of the date of that estimate. The Company will provide a final statement to the Default Supplier within thirty (30) calendar days of the end of AEPS Reporting Period and the Default Supplier will be required to transfer AECs in the amount of the final statement within forty-five (45) calendar days after the date of the final statement.
- I.4.5. A Default Supplier that fails to provide sufficient AECs for a tranche will be required to pay any AEPS penalties, costs, charges, etc. assessed against the Default Supplier and/or the Company associated with the Default Supplier’s non-performance with AEPS requirements.
- I.4.6. PECO has obtained AECs from separate AEPS procurement(s) approved by the Commission and PECO will reduce the amount of AECs that Default Suppliers must provide. Prior to each solicitation, PECO will inform RFP Bidders of the amounts of AECs allocated for this purpose for each tranche of each product for which Default Supply is procured in that solicitation.
- I.4.7. A Default Supplier for a product will be paid a supplier-specific price for each MWh of electric load served as specified in the Transaction Confirmation for that product. The supplier-specific price for a Default Supplier for a product will be the average of approved Bids for that Default Supplier and for that product. The PJM day-ahead price for energy and the Reliability Pricing Model (“RPM”) price for capacity are also paid to a Default Supplier providing full requirements service on a spot-price basis.
- I.4.8. The Default Supplier will specify in the Transaction Confirmation the price of each type of AECs included in its supplier-specific price.
- I.4.9. PECO will transfer or assign Auction Revenue Rights (“ARRs”) to each Default Supplier in proportion to the percentage of Default Load that it serves. A Default Supplier will participate in the PJM process for the nominations of ARR to the extent that the supply period under the Transaction Confirmation

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is inclusive of the PJM Planning Period for which the ARRs are nominated; otherwise, PECO will participate in the PJM ARR nomination process.

## ARTICLE II. Information and Schedule

### II.1. RFP Website

II.1.1. PECO and its Independent Evaluator have established an RFP website that is the main source of information. RFP Bidders and other stakeholders can visit this RFP website to obtain information and documents related to this RFP. The RFP website address is [www.PECOProcurement.com](http://www.PECOProcurement.com).

II.1.2. The RFP website contains the sections described below. New sections may be added as necessary to assist RFP Bidders.

Home: This section provides announcements of interest to RFP Bidders and to other interested parties, an outline of the RFP process, a search function, and a summary of important dates.

Background: These sections provide background information on the regulatory process, the results of previous solicitations and archives of documents. FAQs and announcements from previous solicitations are provided for reference purposes only.

Supplier Information: This section provides documents regarding the RFP as well as frequently asked questions ("FAQs"), ~~and~~ RFP-related announcements, and NITS rate information. All stakeholders, including RFP Bidders, are able to ask questions via a web form. The Independent Evaluator provides an answer to the question via email to the questioner, and a copy of the question and answer is posted so that all stakeholders and RFP Bidders have access to the same information. Aspects of the question and/or answer that might identify the party asking the question are removed before posting to the extent practical.

Data Room: This section provides historical data to assist prospective suppliers. Links to the PJM website and related documents can also be found in this section.

Calendar: This section provides the timeline for the main events in the current and upcoming solicitations.

Contact Us: This section gives any stakeholder an opportunity to register its email address to receive updates and announcements regarding this RFP. The section also provides the contact information for the Independent Evaluator, an electronic web form to submit questions to the Independent Evaluator, and a web form for prospective suppliers to register for bidder information sessions.

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**II.2. RFP Schedule**

II.2.1. Each solicitation will follow the order of events in the general schedule provided below.

**Table II-1. General Schedule.**

Event	Timing
Deadline to request consideration of an alternate form of guaranty	Day -15
Bidder Information Webcast	Day -7
Decision on alternate guaranty forms (if any)	Day -2
Part 1 Window Opens	Day 0
Part 1 Date (Part 1 Window Closes)	Day 4
Part 1 Notification Date	Day 6
Approved modifications to Standard Guaranty posted	Day 7
Part 2 Proposal Window Opens	Day 7
Bid Submission training	Day <del>8</del> 10
Part 2 Date (Part 2 Window Closes)	Day 11
Part 2 Notification Date	Day 13
Bid Date (Bids are Due)	Day 14
IE provides its report to the PaPUC	Day 15
PaPUC Decision (close of business)	No later than Day 16
<i>If Bids are approved by the PaPUC:</i>	
PECO and each winning RFP Bidder proceed to execution of the Uniform SMA and each Transaction Confirmation	Within three business days of the Bid Date

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II.2.2. A total of eight (8) solicitations are planned under DSP ~~IV~~V. The Bid Dates for each of the solicitations are provided below.

**Table II-2. Bid Dates.**

Solicitation	Bid Dates
March <del>2017</del> 2021	Tuesday, March <del>14, 2017</del> 9, 2021
September <del>2017</del> 2021	Tuesday, September <del>26, 2017</del> 28, 2021
March <del>2018</del> 2022	Tuesday, March <del>13, 2018</del> 15, 2022
September <del>2018</del> 2022	Tuesday, September <del>25, 2018</del> 27, 2022
March <del>2019</del> 2023	Tuesday, March <del>12, 2019</del> 14, 2023
September <del>2019</del> 2023	Tuesday, September <del>24, 2019</del> 26, 2023
March <del>2020</del> 2024	Tuesday, March <del>10, 2020</del> 12, 2024
September <del>2020</del> 2024	Tuesday, September <del>29, 2020</del> 24, 2024

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II.2.3. The date for each event in each future solicitation is provided in the Tentative Schedule for Future Solicitations attached as Appendix 11 to these RFP Rules. The dates for each event in the current solicitation is provided in the Addendum to the RFP Rules. The dates follow the order of events and the number of days between events in the general schedule above except as needed to accommodate

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holidays. The schedule for a solicitation may be amended if circumstances warrant. Any such amendments will be posted to the RFP website.

- II.2.4. Specific times for submission of materials for the Part 1 Proposals, the Part 2 Proposals, and the Bids are provided elsewhere in this RFP. All such times are Eastern Prevailing Time ("EPT") unless specifically noted.

### ARTICLE III. General Requirements for Proposals

III.1.1. An entity that submits any part of a response to this RFP for a solicitation is an "RFP Bidder". An RFP Bidder can submit at most one Part 1 Proposal and one Part 2 Proposal for each solicitation. An RFP Bidder that qualifies for a solicitation by submitting a Part 1 Proposal that fulfills all requirements described in Article IV and that submits a Part 2 Proposal that fulfills all the requirements described in Article V is eligible to submit Bids in that solicitation. Aside from submission of financial guarantees to support its Bids, all materials for the Part 1 Proposals and all Part 2 Proposals are submitted to the Independent Evaluator online through the online Proposal submission website [or by email at pecoprocurement@nera.com](#) in accordance with the instructions provided in [Article VII](#) ~~Article VII~~.

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III.1.2. The submission of a Part 1 Proposal or a Part 2 Proposal to the Independent Evaluator constitutes the RFP Bidder's acknowledgement and acceptance of all the terms and conditions of this RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.

III.1.3. Each solicitation will have a Part 1 Window during which Part 1 Proposals may be submitted. The last day of the Part 1 Window is the "Part 1 Date". The requirements of the Part 1 Proposal are described in Article IV. "Previously qualified RFP Bidder" means an RFP Bidder that met the qualification standards in a previous solicitation under DSP ~~HV~~ by submitting a Part 1 Proposal that fulfilled all the requirements of Article IV. A previously qualified RFP Bidder may participate in an abbreviated Part 1 Proposal process. A supplier selected through the competitive bidding process under DSP ~~HV~~ to provide Default Supply for a particular Class and approved by the Commission becomes a Default Supplier for that Class.

III.1.4. The exclusive method for an RFP Bidder to complete the Part 1 Proposal is to submit the online Part 1 Form as well as provide Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents (supporting documents, draft Letter of Credit or draft Standard Guaranty, and Inserts) may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

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III.1.5. Each RFP Bidder must comply with all Part 1 Proposal requirements described in Article IV. Section [IV.1IV.1](#) describes the contact information and representations required. Section [IV.2IV.2](#) describes financial requirements including requirements that apply to RFP Bidders relying on the financial standing of an RFP Guarantor and additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section IV.3 describes the process by which RFP Bidders may propose modifications to the credit instruments (the Standard Pre-Bid Letter of Credit, the Standard Post-Bid Letter of Credit, and the Standard Guaranty) and describes the information that an RFP Bidder is asked to provide for the Independent Evaluator to prepare the Uniform SMA documents should the Independent Evaluator identify one or more of the RFP Bidder's Bids to the Commission as winning Bids. Section [IV.4IV.4](#) describes the representations required. Section IV.5 lists additional requirements applicable only to RFP Bidders that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia ("Foreign RFP Bidders"), or to RFP Bidders that rely on the financial standing of an entity that has not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia ("Foreign Entity"). Each of the Sections of Article IV explains the abbreviated Part 1 Proposal process in which previously qualified RFP Bidders may participate.

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III.1.6. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV through a Part 1 Notification that the Independent Evaluator sends to the RFP Bidder by the Part 1 Notification Date. The Independent Evaluator transmits within two (2) business days of the Part 1 Notification Date to each RFP Bidder that has a successful Part 1 Proposal a number of documents and instructions, called the "Part 1 Materials".

III.1.7. All information provided and certifications made in the Part 1 Proposal must remain valid and remain in full force and effect until six (6) business days after the Bid Date. Regardless of the reason, if any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid, it is the sole responsibility of the RFP Bidder to notify the Independent Evaluator as soon as practicable. Failing to do so may result in disqualification of the RFP Bidder and of its Proposal. The Independent Evaluator reserves the right to change the assessment of an RFP Bidder's qualifications based on any revised information provided by the RFP Bidder.

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III.1.8. Each solicitation will have a Part 2 Window during which Part 2 Proposals may be submitted. The last day of the Part 2 Window is the "Part 2 Date". RFP Bidders also have the option to submit the [representations and certifications required by the online](#) Part 2 Form during the Part 1 Window for early processing. The requirements of the Part 2 Proposal are described in Article V. "Previously eligible RFP Bidder" means an RFP Bidder that became eligible to submit Bids in a previous solicitation held under DSP ~~IV~~ by submitting a Part 1 Proposal that fulfilled all the requirements of Article IV and a Part 2 Proposal that fulfilled all the requirements of Article V. A previously eligible RFP Bidder may participate in an abbreviated Part 2 Proposal process.

III.1.9. The exclusive method for an RFP Bidder to complete the Part 2 Proposal is to submit the online Part 2 Form as well as provide an executed Pre-Bid Letter of Credit. Any documents required by the Part 2 Proposal may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

III.1.10. Each RFP Bidder must comply with all Part 2 Proposal requirements described in [Article V](#)~~Article V~~. Section ~~V.1V.1~~ describes the contact information and representations required by the Part 2 Proposal. Section ~~V.2V.2~~ describes the Pre-Bid Letter of Credit required to support the RFP Bidder's Bids. Section V.3 lists additional requirements for RFP Bidders relying on the financial standing of an RFP Guarantor. Section V.4 lists additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section V.5 lists additional requirements applicable only to Foreign RFP Bidders or to RFP Bidders that rely on the financial standing of a Foreign Entity. Each of the Sections of [Article V](#)~~Article V~~ explains the abbreviated Part 2 Proposal process in which previously eligible RFP Bidders may participate.

III.1.11. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV and all requirements of [Article V](#)~~Article V~~ so that it is eligible to submit Bids through a Part 2 Notification. The Independent Evaluator sends the Part 2 Notification to the RFP Bidder by the Part 2 Notification Date.

III.1.12. All information provided and certifications made in the Part 2 Proposal must remain valid and remain in full force and effect until six (6) business days after the Bid Date. Regardless of the reason, if any information provided in the Part 2 Proposal changes or any previous certification fails to remain

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valid, it is the sole responsibility of the RFP Bidder to notify the Independent Evaluator as soon as practicable. Failing to do so may result in disqualification of the RFP Bidder and of its Proposal. The Independent Evaluator reserves the right to change the assessment of an RFP Bidder's eligibility to submit Bids based on any revised information provided by the RFP Bidder.

III.1.13. For a given solicitation, all representations and certifications required by this RFP must be made by a single individual who serves as Officer of the RFP Bidder. An Officer of the RFP Bidder is an individual authorized to undertake contracts (including the Uniform SMA) and bind that RFP Bidder. As a requirement of the Part 1 Proposal, the RFP Bidder must name an individual who serves as Officer of the RFP Bidder and must provide full contact information for this individual. The Officer of the RFP Bidder may sign all representations and certifications of the Part 1 Form and Part 2 Form at one time and RFP Bidders have the option to submit certifications required by the online Part 2 Form during the Part 1 Window for early processing.

III.1.14. The Officer of the RFP Bidder named in the Part 1 Proposal will sign, or will nominate another authorized individual to execute the Uniform SMA as well as any Transaction Confirmations if any of the RFP Bidder's Bids are approved by the Commission.

III.1.15. Each RFP Bidder must comply with the instructions for the submission of Bids provided with its Part 1 Notification. Article VI describes in general terms the requirements for the submission of Bids.

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III.1.16. Proposals that do not adhere to the terms and conditions of this RFP, or that do not fulfill all requirements of Article IV, Article V, and Article VI of this RFP, or that are not submitted in accordance with the process of Article VII or in accordance with the instructions provided by the Independent Evaluator in an addendum to these RFP Rules, will not be considered.

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III.1.17. The Independent Evaluator will send to each RFP Bidder that submitted a successful Part 1 Proposal in a previous solicitation under DSP IV an email confirming its status as a previously qualified RFP Bidder. Such RFP Bidder may participate in an abbreviated Part 1 Proposal process. The Independent Evaluator will send to each RFP Bidder that submitted a successful Part 1 Proposal and a successful Part 2 Proposal in a previous solicitation under DSP IV an email confirming its status

as a previously eligible RFP Bidder. Such RFP Bidder may participate in an abbreviated Part 1 Proposal process and an abbreviated Part 2 Proposal process.

- III.1.18. The RFP Bidder, at its own cost and expense, shall defend PECO, and the Independent Evaluator and their subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders, executors, administrators, successors and assigns, other than entities that are also RFP Bidders, against any and all manner of past, present, or future claims, demands, disputes, controversies, complaints, suits, actions, proceedings, or allegations of any kind which in any manner relate to, arise out of, or result from any false statement in the Proposal or breach of any covenant by the RFP Bidder set forth herein. The RFP Bidder shall indemnify and hold harmless PECO, the Independent Evaluator, their parent companies, subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders and agents, as well as the heirs, executors, administrators, successors and assigns, other than entities that are RFP Bidders, against any and all liens, judgments, liabilities, losses, injuries, damages, fees, fines, penalties, costs or expenses which in any manner relate to, arise out of, or result from any false statement or misrepresentation in the Proposal or breach of any warranty by the RFP Bidder as set forth herein.

## ARTICLE IV. Part 1 Proposal Requirements

Previously qualified RFP Bidders under DSP ~~IVY~~ may participate in an abbreviated qualification process by using the Short Part 1 Form available online through the Proposal submission website to respond to these qualification standards.

### IV.1. Contact Information and Representations

IV.1.1. Contact Information for the RFP Bidder. Each RFP Bidder must provide the RFP Bidder's legal name and address.

- An RFP Bidder that has not previously qualified must submit this contact information in its Part 1 Proposal.
- A previously qualified RFP Bidder either must confirm that the previously provided contact information remains valid or must update this information. If the RFP Bidder updates the RFP Bidder's legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the RFP Bidder, through a merger for example, the RFP Bidder may not participate in the abbreviated Part 1 Proposal or Part 2 Proposal process.

IV.1.2. Officer of the RFP Bidder. The Officer of the RFP Bidder must be an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder. The Officer of the RFP Bidder whose contact information is provided in the Part 1 Proposal must make all representations required by the online Part 1 Form. Should the RFP Bidder submit a Part 2 Proposal, the individual named as Officer of the RFP Bidder in the Part 1 Proposal must make the representations required by the online Part 2 Form. The Officer of the RFP Bidder may sign all representations and certifications of the online Part 1 Form and online Part 2 Form at one time and RFP Bidders have the option to submit the certifications required by the online Part 2 Form during the Part 1 Window for early processing.

- If an RFP Bidder has not previously qualified under DSP ~~IVY~~, or if the individual who served as Officer of the RFP Bidder for a previously qualified RFP Bidder is not available in this solicitation, then the RFP Bidder must provide the name, title, and full contact information

(address, phone number, email address) of the individual who will serve as Officer of the RFP Bidder.

- If an RFP Bidder has previously qualified and the individual who served as Officer of the RFP Bidder in a previous solicitation is available for this solicitation, the RFP Bidder either must confirm that the previously submitted contact information for the Officer of the RFP Bidder remains valid or must update this information.

IV.1.3. Representative of the RFP Bidder. The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder. The Independent Evaluator contacts the Representative if the Independent Evaluator requires additional information regarding the RFP Bidder's Proposal. The Independent Evaluator sends correspondence related to the solicitation to the Representative, including confidential information required to submit Bids on the Bid Date.

- If an RFP Bidder has not previously qualified, the Officer of the RFP Bidder must designate an individual to serve as Representative of the RFP Bidder by completing the Representative Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Representative Insert by upload to the online Part 1 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com). The RFP Bidder must provide the name, title, and full contact information (address, phone number, email address) of the individual named by the Officer of the RFP Bidder who will serve as Representative of the RFP Bidder.
- A previously qualified RFP Bidder either must confirm that the previously submitted contact information for the Representative of the RFP Bidder remains valid or must update this information. The Officer of the RFP Bidder may, at his or her option, name another individual to serve as Representative of the RFP Bidder by completing the Representative Insert. The RFP Bidder provides the Representative Insert by upload to the online Part 1 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

IV.1.4. Nominees. The Independent Evaluator provides notifications to the RFP Bidder by email and provides documents needed for participation by secure file transfer. Whether or not an RFP Bidder has previously qualified, the RFP Bidder may designate up to three (3) authorized individuals to

receive communications from the Independent Evaluator in addition to the Representative of the RFP Bidder. Each such authorized individual is a Nominee. Either the Representative of the RFP Bidder or the Officer of the RFP Bidder may complete the Nominee Insert prepared for this purpose. The Nominee Insert requires that the following be provided for each authorized individual who will serve as Nominee: the individual’s name and title, phone number, and email address. The RFP Bidder provides the Nominee Insert by upload to the online Part 1 Form. or by email at PECOProcurement@nera.com. The Representative of the RFP Bidder or the Officer of the RFP Bidder may designate such other authorized individuals at any time during the solicitation using the Nominee Insert. The RFP Bidder is not required to do so in the Part 1 Proposal provided, however, that the total number of Nominees not exceed three (3) individuals at any one time.

IV.1.5. All information required by this Section IV.1.4 must be provided exclusively by completing Section 1 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts and documents must be submitted by upload to the online Part 1 Form. ~~In case of technical difficulties, documents, or Inserts may be sent~~ by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

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**IV.2. Financial Requirements and Agency Agreements**

IV.2.1. Agency Agreement. The RFP Bidder must state whether it is submitting a Proposal under an agency authorization (“Agency Agreement”). If an RFP Bidder is submitting a Proposal under an Agency Agreement, the RFP Bidder must identify a Principal as the entity on whose financial standing the RFP Bidder relies, as further explained in the next paragraph.

IV.2.2. Election of Entity on Whose Financial Standing the RFP Bidder is relying. For purposes of submitting to the requirements of this section, each RFP Bidder elects: (a) to rely on its own financial standing; or: (b) to rely on the financial standing of an “RFP Guarantor”; or: (c) to rely on the financial standing of a Principal. An RFP Bidder submitting a Proposal under an Agency Agreement must select option (c) and option (c) may only be selected by an RFP Bidder submitting a Proposal under an Agency Agreement.

- An RFP Bidder that has not previously qualified must clearly select one of these options.

- A previously qualified RFP Bidder must confirm that the identity of the entity on whose financial standing the RFP Bidder last relied remains valid in order to participate in the abbreviated Part 1 Proposal process. If such RFP Bidder changes the identity of the entity on whose financial standing the RFP Bidder relies, the RFP Bidder must use the Standard Part 1 Form and submit all information required for the Part 1 Proposal as if the RFP Bidder had not previously qualified.
- A previously qualified RFP Bidder must either confirm that the previously provided legal name of the entity on whose financial standing the RFP Bidder relies remain valid or the RFP Bidder must update this information. If the RFP Bidder updates the entity's legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the entity, through a merger for example, the RFP Bidder must use the Standard Part 1 Form to present its Part 1 Proposal.

IV.2.3. Information Required from RFP Bidders Relying on Their Own Financial Standing. The requirements of this paragraph only apply to an RFP Bidder that selects option (a) in response to Paragraph IV.2.2.

- Whether or not the RFP Bidder has previously qualified, an RFP Bidder must submit available financial information for the RFP Bidder by upload to the online Part 1 Form ~~or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com)~~. If available, the RFP Bidder must submit its most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent Securities and Exchange Commission ("SEC") Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit its most recent quarterly, monthly or bi-annual financial information accompanied by an attestation by the RFP Bidder's Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP

Rules. If such financial information is unavailable for the RFP Bidder, the RFP Bidder must clearly state this fact.

- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Bidder from the following rating agencies: [Standard & Poor's S&P Global Ratings Services](#) ("S&P"), Moody's Investors Service, Inc. ("Moody's"), and Fitch Ratings ("Fitch"). If no ratings are available for the entity, the RFP Bidder must clearly state this fact. A previously qualified RFP Bidder must either confirm that the previously provided credit ratings remain valid or the RFP Bidder must update this information.

IV.2.4. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Guarantor. The requirements of this paragraph only apply to an RFP Bidder that selects option (b) in response to Paragraph IV.2.2.

- Financial information must be available for the RFP Guarantor.
- If not previously qualified, the RFP Bidder must provide the RFP Guarantor's legal name and address. A previously qualified RFP Bidder must either confirm that the previously provided legal name and address of the RFP Guarantor remain valid or the RFP Bidder must update this information. If the RFP Bidder updates the RFP Guarantor's legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the RFP Guarantor, through a merger for example, the RFP Bidder must use the Standard Part 1 Form to present its Part 1 Proposal.
- An RFP Bidder must submit by upload to the online Part 1 Form; or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com), if available, the RFP Guarantor's most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent SEC Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit the RFP Guarantor's most recent quarterly, monthly, or bi-annual financial information accompanied by an attestation by the entity's Chief Financial Officer (or similar position) that the information contained in the financial

statements fairly presents in all material respects the financial condition and results of the operations of the entity. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP Rules.

- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Guarantor from the following rating agencies: S&P, Moody's, and Fitch. Such ratings must be available for the RFP Guarantor. A previously qualified RFP Bidder must confirm that the credit ratings last submitted for the RFP Guarantor remain valid or the RFP Bidder must update this information with respect to any or all of the credit ratings. The Independent Evaluator uses the information submitted by such RFP Bidder in the most recent solicitation under this RFP for which the RFP Bidder submitted a successful Part 1 Proposal. If the RFP Bidder updates the information, the RFP Bidder must state the name of the rating agency that has updated its credit rating, the updated credit rating, and the type of rating. The Independent Evaluator may also inquire specifically about one or more credit ratings on file for the entity on whose financial standing the RFP Bidder and ask the RFP Bidder to confirm that no updates have been issued.

IV.2.5. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Principal. The requirements of this paragraph only apply to an RFP Bidder submitting a Proposal under an Agency Agreement that selects option (c) in response to Paragraph IV.2.2.

- If not previously qualified, the RFP Bidder must provide each Principal's legal name and address. A previously qualified RFP Bidder must either confirm that the previously provided legal name and address of each Principal remain valid or the RFP Bidder must update this information.
- If not previously qualified, the RFP Bidder must provide a copy of the ~~agency agreement~~ Agency Agreement by upload to the online Part 1 Form or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). If previously qualified, the RFP Bidder must either confirm that the previously provided document remains valid or the RFP Bidder must update this information.

- If the RFP Bidder is acting as an agent for multiple Principals, the RFP Bidder must identify the Principal with the lowest credit rating as the entity on whose financial standing the RFP Bidder relies. If several Principals have the same lowest credit rating, the RFP Bidder must identify the Principal that also has the lowest tangible net worth as the entity on whose financial standing the RFP Bidder relies. This Principal is referred to as the “RFP Principal”. If there is a single Principal, the single Principal is the “RFP Principal”. Financial information must be available for the RFP Principal.
- An RFP Bidder must submit by upload to the online Part 1 Form, or by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com), if available, the RFP Principal’s most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent SEC Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit the RFP Principal’s most recent quarterly, monthly, or bi-annual financial information accompanied by an attestation by the entity’s Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Principal. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP Rules.
- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Principal from the following rating agencies: S&P, Moody’s, and Fitch. Such ratings must be available from at least two rating agencies for the RFP Principal. A previously qualified RFP Bidder must confirm that the credit ratings last submitted for the RFP Principal remain valid or the RFP Bidder must update this information with respect to any or all of the credit ratings. The Independent Evaluator uses the information submitted by such RFP Bidder in the most recent solicitation under this RFP for which the RFP Bidder submitted a successful Part 1 Proposal. If the RFP Bidder updates the information, the RFP Bidder must state the name of the rating agency that has updated its credit rating, the updated credit rating, and the type of

rating. The Independent Evaluator may also inquire specifically about one or more credit ratings on file for the RFP Principal and ask the RFP Bidder to confirm that no updates have been issued.

- Whether or not an RFP Bidder has previously qualified, the Officer of the RFP Bidder must: (i) certify that the Officer of the RFP Bidder has the authority to bind the Principal(s); and (ii) acknowledge that an Officers' Certificate, signed by an officer of each Principal and substantially in the form of Appendix 6 to these RFP Rules, must be provided with the Part 2 Proposal. The Officer of the RFP Bidder makes this certification and this acknowledgment by completing the P1 Agency Certifications Insert.
- Whether or not the RFP Bidder has previously qualified, the RFP Bidder may, but is not required to, submit a draft Officers' Certificate for evaluation. If an RFP Bidder submits a draft Officers' Certificate for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the Officers' Certificate, along with the Part 1 Notification. This Officers' Certificate will state that: (i) the Agency Agreement submitted in response to this RFP is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to six (6) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement, contemplated by the RFP Bidder, or contemplated by the Principal(s) to the RFP Bidder's knowledge; (iv) each individual who has executed the Officers' Certificate and the Agency Agreement is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the RFP Bidder is authorized to execute the Uniform SMA as well as any Transaction Confirmation(s) pursuant to the Uniform SMA on behalf of the Principal(s).

IV.2.6. All information required by this Section IV.2 must be provided exclusively by completing Section 2 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in [Article VIIA: Article VII](#). Inserts and documents must be submitted by upload to the online Part 1 Form. ~~In case~~

of technical difficulties, documents, or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

### IV.3. Credit Instruments and Uniform SMA

IV.3.1. Standard Pre-Bid Letter of Credit. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Pre-Bid Letter of Credit.

- Whether or not the RFP Bidder has previously qualified, an RFP Bidder must, in its Part 2 Proposal, submit a Pre-Bid Letter of Credit in an amount of at least: \$250,000 per tranche bid on products of the RES and SC Classes; and \$125,000 per tranche bid on a CCI product. (if applicable). This Pre-Bid Letter of Credit must be in the form of the Standard Pre-Bid Letter of Credit provided as Appendix 9 to these RFP Rules or must incorporate only modifications that have been approved by PECO and provided to RFP Bidders by the Independent Evaluator.
- As part of the Part 1 Proposal, an RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Pre-Bid Letter of Credit by submitting a Draft Pre-Bid Letter of Credit substantially in the form of the Standard Pre-Bid Letter of Credit indicating clearly any and all modifications to the Standard Pre-Bid Letter of Credit. The Draft Pre-Bid Letter of Credit must be submitted in Microsoft Word with tracked changes by upload to the online Part 1 Form: or by email at PECOProcurement@nera.com. A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated.
- An RFP Bidder must confirm whether the Draft Pre-Bid Letter of Credit submitted as part of the Part 1 Proposal contains the same requested modifications as a Draft Pre-Bid Letter of Credit submitted in a prior solicitation. If the Draft Pre-Bid Letter of Credit submitted does contain the same requested modifications as a prior submittal, the Independent Evaluator will provide the RFP Bidder with PECO's assessment of the prior submittal upon request and the Draft Pre-Bid Letter of Credit will not be reviewed again.

- All approved modifications to the Standard Pre-Bid Letter of Credit will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly state that fact.

IV.3.2. Standard Post-Bid Letter of Credit. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Post-Bid Letter of Credit.

- The Uniform SMA includes, as Appendix F, Letter of Credit Documentation that may be used to post security under the terms of the Uniform SMA. This Paragraph refers to this letter of credit as the "Standard Post-Bid Letter of Credit".
- Whether or not the RFP Bidder has previously qualified, an RFP Bidder may, in its Part 1 Proposal, request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Post-Bid Letter of Credit by submitting a Draft Post-Bid Letter of Credit substantially in the form of the Standard Post-Bid Letter of Credit indicating clearly any and all modifications to the Standard Post-Bid Letter of Credit. The Draft Post-Bid Letter of Credit must be submitted in Microsoft Word by upload to the online Part 1 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com). A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated.
- An RFP Bidder must confirm whether the Draft Post-Bid Letter of Credit submitted as part of the Part 1 Proposal contains the same requested modifications as a Draft Post-Bid Letter of Credit submitted in a prior solicitation. If the Draft Post-Bid Letter of Credit submitted does contain the same requested modifications as a prior submittal, the Independent Evaluator will provide the RFP Bidder with PECO's assessment of the prior submittal upon request and the Draft Post-Bid Letter of Credit will not be reviewed again.

- All approved modifications to the Standard Post-Bid Letter of Credit will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly indicate that fact.

IV.3.3. Standard Guaranty. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Standard Guaranty.

- The Uniform SMA includes, as Appendix G, Guaranty Documentation that may be used to provide a financial guaranty under the terms of the Uniform SMA. This Paragraph refers to this financial guaranty as the “Standard Guaranty”.
- Whether or not the RFP Bidder has previously qualified, an RFP Bidder may, in its Part 1 Proposal, request modifications to the Standard Guaranty that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Guaranty by submitting a Draft Guaranty substantially in the form of the Standard Guaranty indicating clearly any and all modifications to the Standard Guaranty. The Draft Guaranty must be submitted in Microsoft Word by upload to the online Part 1 Form, or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com). A Draft Guaranty that is not substantially in the form of the Standard Guaranty will not be considered or evaluated.
- An RFP Bidder must confirm whether the Draft Guaranty submitted as part of the Part 1 Proposal contains the same requested modifications as a Draft Guaranty submitted in a prior solicitation. If the Draft Guaranty submitted does contain the same requested modifications as a prior submittal, the Independent Evaluator will provide the RFP Bidder with PECO’s assessment of the prior submittal upon request and the Draft Guaranty will not be reviewed again.
- All approved modifications to the Standard Guaranty will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly indicate that fact.

IV.3.4. Information to Prepare the Uniform SMA. This paragraph applies only to RFP Bidders that are not Default Suppliers. Such RFP Bidder is asked, in its Part 1 Proposal, to provide all information needed by the Independent Evaluator to prepare for execution the Uniform SMA and its Exhibits by completing the Uniform SMA Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Uniform SMA Insert by upload to the online Part 1 Form or by email at pecoprocurement@nera.com. If the Independent Evaluator identifies one or more of such RFP Bidder's Bids to the Commission as winning Bids, the Independent Evaluator will use this information to prepare the Uniform SMA and its Exhibits for execution.

- Such RFP Bidder is asked: (i) to specify any elections to be made in the Uniform SMA; and (ii) to provide the contact information required to prepare the Form of Notice, which is included as Exhibit 2 to the Uniform SMA; and (iii) to provide any additional information required to prepare the Uniform SMA and its Exhibits.
- If such RFP Bidder fails to submit these elections and information with the Part 1 Proposal, the Officer of the RFP Bidder must acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder will be required to provide: (i) any elections to be made in the Uniform SMA; and (ii) the contact information to prepare the Form of Notice; and (iii) any additional information required to prepare the Uniform SMA and its Exhibits; by 12 PM (noon) EPT on the day after such notification is received. The Officer of the RFP Bidder provides the required acknowledgement by completing the Delay (SMA) Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Delay (SMA) Insert by upload to the online Part 1 Form or by email at pecoprocurement@nera.com.

IV.3.5. All information required by this Section IV.3.4-3 must be provided exclusively by completing Section 3 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article

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~~VII Article VII~~. Inserts and documents must be submitted by upload to the online Part 1 Form. ~~In case of technical difficulties, documents or Inserts may be sent or~~ by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

#### IV.4. Representations

IV.4.1. Representations by the Officer of the RFP Bidder. Whether or not an RFP Bidder has previously qualified, the Officer of the RFP must certify that:

- he/she is an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder;
- all information provided in the Part 1 Proposal is true and accurate to the best of the knowledge and belief of the Officer of the RFP Bidder;
- if, for any reason or due to any circumstance, any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, the Officer of the RFP Bidder or the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date;
- the Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date; and
- the RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP. An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (A) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the online Part 1 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

IV.4.2. Additional Representations for RFP Bidders that have not previously qualified. If an RFP Bidder has not previously qualified, the Officer of the RFP Bidder must certify that:

- he/she understands the terms of the Uniform SMA, that the RFP Bidder accepts all of the terms of the Uniform SMA without modifications, and that the RFP Bidder will execute the Uniform SMA and the Transaction Confirmation(s) for all Bids approved by the Commission;
- the submission of the Part 1 Proposal constitutes the RFP Bidder's acknowledgement and acceptance of all the terms and conditions of the RFP, regardless of the outcome of the solicitation or the outcome of such Proposal;
- the RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA;
- the RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent; and
- if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, all information required for the preparation of the Uniform SMA and its Exhibits must be submitted and complete by 12 PM (noon) EPT on the day after such notification is received;

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (B) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the [online Part 1 Form](#) or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

IV.4.3. Additional Representations for RFP Bidders have previously qualified but that are not Default Suppliers. If an RFP Bidder has previously qualified but is not a Default Supplier, the Officer of the RFP Bidder must certify that:

- The RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA;

- The RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent; and
- if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, all information required for the preparation of the Uniform SMA and its Exhibits must be submitted and complete by 12 PM (noon) EPT on the day after such notification is received.

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (C) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the [online Part 1 Form](#) or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

IV.4.4. PJM Load Serving Entity. The requirements of this paragraph apply only to RFP Bidders that are not previously qualified RFP Bidders. A Default Supplier must be an LSE by the start of the supply period.

- An RFP Bidder that has not previously qualified must, in its Part 1 Proposal, either: (i) demonstrate that the RFP Bidder is an LSE in PJM by providing the signature page of the Reliability Assurance Agreement ("RAA"); or (ii) certify that the RFP Bidder has investigated the requirements to become an LSE in PJM and that there exist no impediments for the RFP Bidder to become an LSE by the start of the supply period and to remain an LSE for the duration of the supply period.
- An RFP Bidder that provides the signature page of the RAA does so by upload to the online Part 1 Form [or by email at pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).
- An RFP Bidder that submits the certification above does so by completing the LSE Representation Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the LSE Representation Insert by upload to the online Part 1 Form [or by email at pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

IV.4.5. All information required by this Section ~~IV.4V.4~~ must be provided exclusively by completing Section 4 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in [Article VII](#) ~~Article VII~~. Inserts [and documents](#) must be submitted by upload to the online Part 1 Form. ~~In case~~

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~~of technical difficulties, documents, or Inserts may be~~ sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

#### IV.5. Foreign RFP Bidders and Foreign Entities

IV.5.1. The requirements of this Section apply only to: (1) Foreign RFP Bidders ~~that seek to be granted unsecured credit under the terms of the Uniform SMA;~~ or (2) RFP Bidders that rely on the financial standing of a Foreign Entity ~~(either as an RFP Guarantor, or RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal);~~. Other RFP Bidders are not subject to the requirements of this Section.

IV.5.2. Additional requirements for Foreign RFP Bidders. The requirements of this Paragraph apply only to Foreign RFP Bidders ~~that seek to be granted unsecured credit under the terms of the Uniform SMA;~~ other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may provide, in addition to supplying all required information and documents under Section IV.2, any additional evidence of creditworthiness so as to provide PECO with comparable assurances of creditworthiness as is applicable for an RFP Bidder that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.
- ~~Whether or not~~ If such RFP Bidder has not previously qualified, the Officer of a Foreign RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal ~~for the Foreign RFP Bidder to be granted unsecured credit under the terms of the Uniform SMA:~~ (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn

certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may, but is not required to, submit a draft of the following documents for evaluation: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If such RFP Bidder submits a draft of these documents for evaluation, the Independent Evaluator will provide this evaluation to such RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.
- The RFP Bidder presents this information by completing the P1 Foreign Bidder Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

IV.5.3. Additional requirements for RFP Bidders relying on the financial standing of a Foreign Guarantor.  
The requirements of this Paragraph apply only to RFP Bidders that rely on the financial standing of a Foreign Entity as RFP Guarantor; other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, an RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor may provide, in addition to supplying all required information and documents under Section IV.2, any additional evidence of creditworthiness for the RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.
- Whether or not such RFP Bidder has previously qualified, the Officer of such RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign Entity as RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.
- Whether or not such RFP Bidder has previously qualified, the RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of the following documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of

the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If an RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.

- The RFP Bidder presents this information by completing the P1 Foreign Guarantor Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

IV.5.4. Additional Requirements for RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal. The requirements of this Paragraph apply only to RFP Bidders that ~~rely on the financial standing of~~ are submitting a Proposal under an Agency Agreement with a Foreign Entity as ~~RFP~~ Principal; other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, if the RFP Principal is a Foreign Entity, an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as ~~RFP~~ Principal may, in addition to supplying all required information and documents under Section IV.2, provide any additional evidence of creditworthiness for the Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

- Whether or not such RFP Bidder has previously qualified, the Officer of such RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal ~~for the RFP Bidder and the Foreign Entity as Principal to be granted unsecured credit under the terms of the Uniform SMA~~: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.
- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of the following additional documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If an RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.
- The RFP Bidder presents this information by completing the P1 Foreign Principal Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

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IV.5.5. All information required by this Section IV.5 must be provided exclusively by completing Section 5 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in [Article VII](#) ~~Article VII~~. Inserts ~~and documents~~ must be submitted by upload to the online Part 1 Form. ~~In case of technical difficulties, documents or Inserts may be or~~ sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

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## ARTICLE V. Part 2 Proposal Requirements

RFP Bidders that became eligible to submit Bids in a previous solicitation held under DSP ~~IVV~~ may participate in an abbreviated process by using the Short Part 2 Form available online through the Proposal submission website to respond to these requirements.

### V.1. Contact Information and Representations

V.1.1. Contact Information for the RFP Bidder. The RFP Bidder has an opportunity to update contact information provided in the Part 1 Proposal for the RFP Bidder or any individual. Whether or not the RFP Bidder is previously eligible, the RFP Bidder either must confirm that the contact information for the RFP Bidder, the Officer of the RFP Bidder and Representative of the RFP Bidder remains valid or must update this information in the online Part 2 Form. The RFP Bidder may, at any point during the solicitation, provide contact information for Nominees or update this information by submission of the Nominee Insert.

V.1.2. Representations of the Officer of the RFP Bidder. For a given solicitation, all representations and certifications must be made by a single individual who serves as Officer of the RFP Bidder. All representations and certifications required by this RFP may be made at a single point in time and RFP Bidders have the option to submit the online Part 1 Form and the certifications required by the online Part 2 Form together during the Part 1 Window. If an RFP Bidder did not avail itself of this option and if the Officer of the RFP Bidder who made the representations and certifications of the online Part 1 Form is unavailable to make the representations of the online Part 2 Form, the RFP Bidder must re-submit the certifications of the Part 1 Form by email naming a new individual to serve as Officer of the RFP Bidder by the Part 2 Date, and that Officer of the RFP Bidder must make all representations and certifications required by the online Part 1 Form and the online Part 2 Form. Whether or not the RFP Bidder is previously eligible, the Officer of the RFP Bidder must certify that:

- the Part 2 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date and if any information provided in the Part 2 Proposal changes or any

previous certification fails to remain valid during that time, the RFP Bidder will notify the Independent Evaluator as soon as practicable;

- the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal by another RFP Bidder in response to this solicitation or any future solicitation under this RFP. Such information includes, but is not limited to: the fact that another RFP Bidder is submitting a Proposal in response to this solicitation or a subsequent solicitation under this RFP; the Bids by another RFP Bidder in this or in a subsequent solicitation under this RFP; the number of tranches bid by another RFP Bidder for any product in this or in a subsequent solicitation under this RFP; the estimation by another RFP Bidder of the value of a tranche of a product; the estimation by another RFP Bidder of the risks associated with providing supply under the Uniform SMA; the preference of another RFP Bidder for bidding on specific products in this or in a subsequent solicitation under the RFP; and the contractual arrangements for power of another RFP Bidder to serve tranches of Default Service Load were that RFP Bidder to become a Default Supplier. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation;
- although the RFP Bidder may disclose aspects of its Proposal in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors (if any), any such communication is made in a manner that can reasonably be expected to maintain the confidentiality of its Proposal;
- with only the exceptions noted in the immediately previous certification, the RFP Bidder has not disclosed, and will not otherwise disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal in any solicitation under the RFP, or on the contents of the Proposal that another RFP Bidder would be willing to submit in response to the RFP. Such information includes, but is not limited to: the fact that the RFP Bidder is submitting a Proposal in response to this RFP; the RFP Bidder's Bids in this or in a subsequent solicitation under this RFP; the RFP Bidder's

number of tranches bid for any product in this or in a subsequent solicitation under this RFP; the RFP Bidder's estimation of the value of a tranche of a product; the RFP Bidder's estimation of the risks associated with providing supply under the Uniform SMA; and the RFP Bidder's preference for bidding on specific products in this or in a subsequent solicitation under this RFP. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation;

- any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the Uniform SMA at the price specified in the Bid;
- the Officer of the RFP Bidder will execute (or will nominate another authorized individual to execute) the Uniform SMA and all Transaction Confirmation(s) for the RFP Bidder's Bids that are approved by the Commission no later than 2PM on the third business day after the Commission has accepted such Bids; and
- In each Transaction Confirmation, the RFP Bidder will specify a price for each type of AECs (Tier I, Tier I Solar, and Tier II) that is included in the RFP Bidder's winning Bids and each such price must be greater than \$0/AEC.

The RFP Bidder submits such certifications by completing the P2 Certifications Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the P2 Certifications Insert by upload to the online Part 2 Form [or by email at pecoprocedurement@nera.com](mailto:pecoprocedurement@nera.com).

V.1.3. All information required by this Section V.1 must be provided exclusively by completing Section 1 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts [and documents](#) must be submitted by upload to the online Part 1 Form. ~~In case of technical difficulties, documents\_ or Inserts may be~~ sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

## V.2. Pre-Bid Letter of Credit

- V.2.1. Whether or not an RFP Bidder is previously eligible, the RFP Bidder must provide an executed Pre-Bid Letter of Credit, drawn for the account of the RFP Bidder and acceptable to PECO, in an amount of at least: \$250,000 per tranche bid on products for the RES and SC Classes, plus \$125,000 per tranche bid on a product for the CCI Class (if applicable) in accordance with the requirements of this Section V.2.V.2. A single Pre-Bid Letter of Credit is submitted even if the RFP Bidder bids on more than one product efor if the RFP Bidder bids to supply both full requirements on a fixed-price basis and full requirements on a spot-price basis.
- V.2.2. The RFP Bidder must state whether the Pre-Bid Letter of Credit has already been sent to the Independent Evaluator. The hardcopy executed Pre-Bid Letter of Credit must be sent by overnight delivery service to the Independent Evaluator at the address indicated in the Part 2 Form. RFP Bidders may, but are not required to, uploadprovide an electronic executed version of the Pre-Bid Letter of Credit for evaluation.
- V.2.3. The RFP Bidder must either use the Standard Pre-Bid Letter of Credit provided in Appendix 9 to these RFP Rules, or the RFP Bidder must submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of the Part 1 Proposals. All approved modifications will be posted to the RFP website. An RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification. The RFP Bidder cannot, in its Part 2 Proposal, propose or incorporate any modification to its Pre-Bid Letter of Credit other than the modifications approved and posted as such on the RFP website.
- V.2.4. Generally, PECO and the Independent Evaluator will release the Pre-Bid Letter of Credit no later than six (6) business days after the Bid Date. An RFP Bidder may, in Section 2 of the Part 2 Form, provide special instructions for the return of the Pre-Bid Letter of Credit. If the Commission does not approve any of the RFP Bidder's Bids, PECO and the Independent Evaluator will release that RFP Bidder's Pre-Bid Letter of Credit within three (3) business days of the Bid Date. The prompt release of the Pre-Bid Letter of Credit will be conditioned upon the RFP Bidder not having violated any undertakings agreed to as part of the RFP.

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V.2.5. Payment under the Pre-Bid Letter of Credit can be demanded by PECO if: (i) the RFP Bidder has made a material omission or misrepresentation in its Part 1 Proposal or in its Part 2 Proposal; (ii) the RFP Bidder discloses information relating to its Proposal publicly or to any other party before the Commission has rendered its decision on the results of this solicitation; or (iii) the RFP Bidder has one or more Bids approved by the Commission and the RFP Bidder fails to execute the Uniform SMA and its Exhibits or fails to meet the creditworthiness requirements within the timeframe required.

V.2.6. All information required by this Section V.2 must be provided exclusively by completing Section 2 of the online Part 2 Form, as further explained in [Article VII](#). Any documents or special instructions for the return of the Pre-Bid Letter of Credit may be submitted by upload to the online Part 2 Form or sent by email to the Independent Evaluator at PECOProcurement@nera.com. The executed Pre-Bid Letter of Credit must be sent to the Independent Evaluator at the address provided in the Part 2 Form.

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**V.3. RFP Bidders Relying on the Financial Standing of an RFP Guarantor**

V.3.1. The requirements of this Section V.3 apply only to RFP Bidders relying on the financial standing of an RFP Guarantor; other RFP Bidders are not subject to the requirements of this Section V.3.

V.3.2. Intent to Provide a Guaranty. The requirements of this paragraph only apply to RFP Bidders that are not Default Suppliers.

- Such RFP Bidder must provide in its Part 2 Proposal a statement from a representative of the RFP Guarantor acknowledging that the RFP Guarantor: (i) has been asked to provide a financial guaranty on behalf of the RFP Bidder should the RFP Bidder become a Default Supplier pursuant to its response under this RFP for procuring supply under the terms of the Uniform SMA; (ii) has a senior unsecured debt rating that meets the Minimum Rating as defined in the Uniform SMA; and (iii) would consider providing a financial guaranty on behalf of the RFP Bidder should there be no material change in affairs for at least the Indicative Amount. This RFP Guarantor may add that this statement should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.

- The Indicative Amount must meet or exceed the sum of: (i) \$600,000 times the number of tranches bid on products for the RES and SC Classes for full requirements on a fixed-price basis; and (ii) \$300,000 times the number of tranches bid for the CCI Class for full requirements on a spot-price basis: (if applicable).
- The individual signing the intent to provide a guaranty must be a representative of the RFP Guarantor authorized to undertake contracts (including the Guaranty) and bind that RFP Guarantor.

The RFP Bidder provides this statement by completing the Guaranty Intent Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Guaranty Intent Insert by upload to the online Part 2 Form or by email at [pecoprocedurement@nera.com](mailto:pecoprocedurement@nera.com).

V.3.3. Information to Prepare the Guaranty. This paragraph applies to RFP Bidders whether or not they are previously eligible.

- The RFP Bidder is asked: (i) to specify the governing laws under which the RFP Guarantor is organized; (ii) to provide the name and title of the signatory to the guaranty as well as contact information for an individual who will receive notice under the guaranty; and (iii) to make elections to incorporate any or all of the approved modifications to the Standard Guaranty.
- An RFP Bidder that is a Default Supplier with a Guaranty in force may indicate that all information regarding the guaranty remains current and that the RFP Bidder does not wish to modify or supplement any of the elections regarding approved modifications to the Standard Guaranty.
- If an RFP Bidder that is not a Default Supplier with a Guaranty in force fails to submit information required for preparation of the Guaranty with the Part 1 Proposal, the Officer of the RFP Bidder must acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

The RFP Bidder either provides information needed to prepare the guaranty for execution by completing the Guaranty Insert prepared for this purpose or the RFP Bidder provides an acknowledgement from the Officer of the RFP Bidder that such information will be required if one or more of the RFP Bidder's Bids to the Commission as winning Bids by completing the Delay (Guaranty) Insert prepared for this purpose.

- V.3.4. Enforceability Opinion for an Alternate Guaranty. The requirements of this Paragraph only apply to RFP Bidders that have obtained approval from PECO to use an alternate guaranty form under the Alternate Guaranty Process and that are not previously eligible. The Alternate Guaranty Process allows a supplier unable to use the Standard Guaranty provided as Appendix G to the Uniform SMA to submit for consideration by PECO the guaranty that the supplier uses in its normal course of business. Such a guaranty is called an "alternate guaranty form" and the process by which suppliers may obtain approval to use an alternate guaranty is described in Appendix 2. Such RFP Bidder must provide, with its Part 2 Proposal, an executed enforceability opinion for its approved alternate guaranty form on the letterhead of a law firm of national standing by upload to the online Part 2 Form [or by email at pecoprocedurement@nera.com](mailto:pecoprocedurement@nera.com).
- V.3.5. All information required by this Section V.1 must be provided exclusively by completing Section 3 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts [and documents](#) must be submitted by upload to the online Part 1 Form. ~~In case of technical difficulties, documents\_ or Inserts may be~~ sent by email to the Independent Evaluator at [PECOProcedurement@nera.com](mailto:PECOProcedurement@nera.com).
- V.4. RFP Bidders Relying on the Financial Standing of an RFP Principal**
- V.4.1. The requirements of this Section V.4 apply only to RFP Bidders relying on the financial standing of an RFP Principal; other RFP Bidders are not subject to the requirements of this Section V.3.
- V.4.2. Officers' Certificate. Whether or not the RFP Bidder is previously eligible, an RFP Bidder submitting a Proposal under an Agency Agreement must submit an Officers' Certificate substantially in the form of Appendix 6 to these RFP Rules. The Officers' Certificate must be provided by upload to the online Part 2 Form: [or by email at pecoprocedurement@nera.com](mailto:pecoprocedurement@nera.com).

- The Officers' Certificate must be signed by an officer of each Principal.
- The Officers' Certificate states that: (i) the copy of the Agency Agreement submitted with the Part 1 Proposal is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to six (6) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement; (iv) each individual who has executed the Officers' Certificate and the Agency Agreement is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the RFP Bidder is authorized to execute the Uniform SMA as well as any Transaction Confirmation pursuant to the Uniform SMA on behalf of the Principal(s).
- An Officers' Certificate submitted by a previously eligible RFP Bidder and that was previously acceptable to PECO will remain acceptable to PECO unless there has been a change in the circumstances of the RFP Bidder submitting a Proposal under an Agency Agreement.

The RFP Bidder submits the document by upload to the online Part 2 Form- or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

- V.4.3. Signatory to the Uniform SMA. If an RFP Bidder submitting a Proposal under an Agency Agreement and the Principal does not authorize the RFP Bidder to sign the Uniform SMA or to execute a Transaction Confirmation, such RFP Bidder must name a representative of the Principal who will be authorized to sign the Uniform SMA and all necessary exhibits should such RFP Bidder have winning Bids that are approved by the Commission as required by Section VII.3. The RFP Bidder must provide contact information for this individual (address, phone number, and email address). If such RFP Bidder is not previously eligible, the RFP Bidder provides the information in the online Part 2 Form- or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com). If such RFP Bidder is previously eligible, the RFP Bidder either: (i) must confirm that the representative of the Principal remains authorized to sign the Uniform SMA (if applicable because the RFP Bidder is not a Default Supplier) and any Transaction Confirmation and that the previously submitted contact information remains valid in the online Part

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2 Form; or: (ii) must update this information in the online Part 2 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

V.4.4. An RFP Bidder that relies on the financial standing of a Principal that is a Foreign Entity must also comply with requirements detailed in Paragraph V.5.4.

V.4.5. All information required by this Section V.1 must be provided exclusively by completing Section 4 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts and documents must be submitted by upload to the online Part 1 Form. ~~In case of technical difficulties, documents\_ or Inserts may be~~ sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

**V.5. Foreign RFP Bidders and Foreign Entities**

V.5.1. The requirements of this Section V.5V.5 apply only to Foreign RFP Bidders ~~that seek to be granted unsecured credit under the terms of the Uniform SMA,~~ or to RFP Bidders that rely on the financial standing of a Foreign Entity ~~(either as an RFP Guarantor or, or to RFP Bidders that submit a Proposal under an Agency Agreement with a Foreign Entity as~~ Principal). Other RFP Bidders are not subject to the requirements of this Section V.5V.5. An RFP Bidder fulfills the requirements by completing the P2 Foreign Entity Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the P2 Foreign Entity Insert by upload to the online Part 2 Form or by email at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

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V.5.2. Required Documents for Foreign RFP Bidders. A Foreign RFP Bidder receives from the Independent Evaluator upon successfully completing the Part 1 Proposal a provisional creditworthiness assessment that presumes the receipt of the following fully executed additional documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the

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governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient ~~for a Foreign Entity as Principal.~~

- If the Foreign RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents ~~by upload to the online Part 2 Form~~ in a form acceptable to PECO for the Independent Evaluator to confirm the ~~creditworthiness~~ assessment provided with the Part 1 Notification. If the Foreign RFP Bidder submits these fully executed documents in a form acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the ~~creditworthiness~~ assessment provided with the Part 1 Notification. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised ~~creditworthiness~~ assessment that states either that the Foreign RFP Bidder is not granted unsecured credit or that the Foreign RFP Bidder is not eligible to continue further in the RFP.
- If the Foreign RFP Bidder is previously eligible and has previously submitted these additional documents in a form acceptable to PECO, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent Evaluator confirms the ~~creditworthiness~~ assessment in the Part 2 Notification if all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised ~~creditworthiness~~ assessment that states either that the Foreign RFP Bidder is not granted unsecured credit or that the Foreign RFP Bidder is not eligible to continue further in the RFP.

V.5.3. Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor. An RFP Bidder that relies on the financial standing of a Foreign Entity as RFP Guarantor receives, with its Part 1 Notification, a provisional creditworthiness assessment for its RFP Guarantor that presumes the receipt of the following fully executed additional documents in a form acceptable to PECO: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor

is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as ~~Principal~~RFP Guarantor.

- If such RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents ~~by upload to the online Part 2 Form~~ in a form acceptable to PECO for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the RFP Bidder submits these fully executed documents and these documents are acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. If the RFP Bidder does not submit these documents, or if these documents are not acceptable to PECO, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the Foreign Entity as RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor. Any guaranty submitted in the Part 2 Proposal will be removed from consideration and the Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2IV.2.
- If such RFP Bidder is previously eligible and has submitted these additional documents in a form acceptable to PECO, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent

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Evaluator confirms the creditworthiness assessment provided with the Part 1 Notification if the RFP Bidder all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor. ~~Any guaranty submitted with the Part 2 Proposal will be removed from consideration and the~~The Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2IV.2.

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V.5.4. Required Documents for RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal receives, with its Part 1 Notification, a provisional ~~creditworthiness~~ assessment that presumes the receipt of the following documents fully executed and acceptable to PECO: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal.

- If such RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents ~~by upload to the online Part 2 Form~~ in a form acceptable to PECO for the Independent Evaluator to confirm the ~~creditworthiness~~ assessment provided with the Part 1 Notification. If the RFP Bidder submits these fully executed documents and these documents are acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the ~~creditworthiness~~ assessment provided with the Part 1 Notification. If the RFP Bidder does not submit these documents, or if these documents are not acceptable to PECO, the Independent Evaluator provides with the Part 2 Notification a revised

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~~creditworthiness~~-assessment that either states that the RFP Bidder and the Foreign Entity as RFP Principal are not granted unsecured credit or that the RFP Bidder is not eligible for continue further in the RFP.

- If such RFP Bidder is previously eligible, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent Evaluator confirms the ~~creditworthiness~~-assessment provided with the Part 1 Notification if the RFP Bidder all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised ~~creditworthiness~~-assessment that states either that the RFP Bidder and the Foreign Entity as RFP Principal are not granted unsecured credit or that the RFP Bidder is not eligible to continue further in the RFP.

V.5.5. The information required by this Section V.5 must be provided exclusively by completing Section 5 of the online Part 2 Form, as further explained in Article VII Article VII. Documents must be submitted by upload to the online Part 2 Form or sent by email to the Independent Evaluator at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

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## ARTICLE VI. Bid Submission

- VI.1.1. The Independent Evaluator prepares an electronic Bid Form for each RFP Bidder qualified pursuant to a successful Part 1 Proposal. If the RFP Bidder cannot bid on all tranches available of a product because of the Load Cap for the Class to which such product belongs and because of tranches previously won by the RFP Bidder, the Bid Form reflects that fact. The Independent Evaluator sends at the same time instructions for completion of the Bid Form, for the optional encryption of the Bid Form, for electronic transfer of the completed Bid Form to the Independent Evaluator, for an alternate submission method for Bids in case of technical difficulties with the electronic transfer, as well as information used for authenticating the Bids, including the RFP Bidder's unique username, password, and security codes. The Independent Evaluator transmits these materials, the "Part 1 Materials", within two (2) business days of the Part 1 Notification Date, by secure file transfer. The Independent Evaluator requires a confirmation of receipt of these materials ~~by email in the online Part 2 Form.~~
- VI.1.2. The exclusive method for submitting an RFP Bidder's Bids is the Bid Form. An RFP Bidder must fill out all required information on the Bid Form according to the instructions provided by the Independent Evaluator. An RFP Bidder may, but is not required to, encrypt its Bid Form. Encryption provides an additional layer of protection for the confidentiality of the RFP Bidder's data. An RFP Bidder must submit the Bid Form to the Independent Evaluator through a secure file transfer system according to the instructions provided by the Independent Evaluator. An RFP Bidder must fill out contact information on its Bid Form and the Independent Evaluator will use that information to confirm receipt of the Bids. All instructions noted in this Paragraph are included in the Part 1 Materials.
- VI.1.3. In case of technical difficulties while using the secure file transfer system, the Independent Evaluator will instruct the RFP Bidder to ~~print email~~ the Bid Form ~~and fax it~~ to the Independent Evaluator. ~~If the RFP Bidder does not have immediate fax capabilities, the Independent Evaluator will accept an email submission; however, the~~The Independent Evaluator will recommend that the Bid Form in this case be encrypted and the Independent Evaluator will note for the RFP Bidder that such transmission

may not be secure. An RFP Bidder that is not able to use the secure file transfer system must advise the Independent Evaluator of that fact by phone and must at that time provide authenticating information. The Independent Evaluator will provide additional instructions for such a contingency that will be included with the Part 1 Materials.

- VI.1.4. All Bid Forms must be received between 10 AM and 12 PM (noon) on the Bid Date. No late Bid Forms will be accepted regardless of the method used by the RFP Bidder to submit its Bid Form.
- VI.1.5. A Bid for a tranche for any product is a price in U.S. Dollars per MWh, and must be displayed in the format \$xx.xx or \$xxx.xx, rounded to the nearest cent. The number of tranches bid on a product is the number of tranches of that product for which a Bid is provided.
- VI.1.6. A Bid that is not expressed in dollars per MWh will automatically be rejected. A Bid that has more than two (2) decimals will be automatically rounded to the nearest cent.
- VI.1.7. The RFP Bidder may not bid on less than a full tranche for a product. The RFP Bidder may not bid on fractions, portions, or parts of tranches.
- VI.1.8. The RFP Bidder may not submit any additional instructions, contingencies, or conditions on its Bids. Any such additional instructions, contingencies, or conditions will be ignored.
- VI.1.9. An RFP Bidder may not submit Bids that exceed the Load Caps and the Bid Form will include guidance for the RFP Bidder so that the RFP Bidder submits Bids that conform with the Load Caps. The Load Caps are described in Paragraph I.2.11.
- VI.1.10. The number of tranches bid for an RFP Bidder may not exceed the number of tranches supported by the Pre-Bid Letter of Credit. The amount of the Pre-Bid Letter of Credit is described in Paragraph V.2.1. The procedure used by the Independent Evaluator to modify the Bid Form is described in Paragraph VII.2.10.
- VI.1.11. Bids are evaluated on a price-only basis, in accordance with the process described in Section VII.2.

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**ARTICLE VII. Process**

**VII.1. Part 1 and Part 2 Proposals: Submission and Processing**

VII.1.1. The Independent Evaluator, for the purposes of this RFP, transmits all communications to the “Bidder Team” consisting of the Representative of the RFP Bidder and any Nominees. The Representative or the Officer of the RFP Bidder may designate up to three (3) Nominees.

VII.1.2. Any notification or written communication will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that when delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day.

VII.1.3. The exclusive method of responding to the qualification standards for the Part 1 Proposal listed in Article IV of these RFP Rules is the use of the online Part 1 Form. RFP Bidders that did not qualify in a previous solicitation under DSP ~~IV~~ must use the Standard Part 1 Form to respond to the qualification standards described in Article IV. Previously qualified RFP Bidders may participate in an abbreviated Part 1 Proposal process by using the Short Part 1 Form. The generic term “Part 1 Form” refers either to the Standard Part 1 Form or to the Short Part 1 Form. Responses to the qualification standards of Article IV that do not use the online Part 1 Form will not be considered and the Part 1 Proposal will be considered deficient.

VII.1.4. An RFP Bidder must provide contact information for the RFP Bidder, name an Officer of the RFP Bidder who designates a Representative of the RFP Bidder and make general representations as required by Section ~~IV.1IV.1~~, exclusively by completing Section 1 of the online Part 1 Form. An RFP Bidder must show compliance with the financial requirements of Section ~~IV.2IV.2~~ exclusively by completing Section 2 of the online Part 1 Form and by providing all documents supporting the financial information and credit information as requested in that Section of the online Part 1 Form. The RFP Bidder is asked to provide all information to prepare the Uniform SMA, as required by Section ~~IV.3IV.3~~ exclusively by completing Section 3 of the online Part 1 Form. The RFP Bidder must show that it has all regulatory authorizations necessary for it to legally perform its obligations under the Uniform SMA and the Transaction Confirmations as required by Section ~~IV.4IV.4~~, exclusively by

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completing Section 4 of the online Part 1 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Uniform SMA, or an RFP Bidder relying on the financial standing of a Foreign Entity, either an RFP Guarantor or a Principal, must provide any additional information required by Section IV.5, exclusively by completing Section 5 of the Part 1 Form.

- VII.1.5. The Part 1 Proposal for an RFP Bidder includes the completed Part 1 Form as well Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents (supporting documents, draft Letter of Credit or draft Standard Guaranty, and Inserts) may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). Responses to the qualification standards of Article IV that do not use the online Part 1 Form and the Inserts prepared for this purpose will not be considered and the part 1 Proposal will be considered deficient. No late Part 1 Proposals will be accepted under any circumstances.
- VII.1.6. The Independent Evaluator considers and processes the Part 1 Proposals during the Part 1 Window. When a Part 1 Proposal is received, the Independent Evaluator sends an acknowledgment to the RFP Bidder by email. The Independent Evaluator only processes Part 1 Proposals during the Part 1 Window and, if the Part 1 Proposal is received before the Part 1 Window opens, the Independent Evaluator confirms receipt no later than on the first day of the Part 1 Window.
- VII.1.7. If the Part 1 Proposal is received before 12 PM (noon) on any business day during the Part 1 Window, the Independent Evaluator sends the acknowledgment confirming receipt on the day the Part 1 Proposal is received with the results of an initial review. The initial review states either that the Part 1 Proposal is complete and is being considered, or the initial review lists items of the Part 1 Proposal that are deficient or require clarification. If a Part 1 Proposal is received after 12 PM (noon) on any business day during the Part 1 Window prior to the Part 1 Date, the Independent Evaluator sends the acknowledgment along with the initial review by 12 PM (noon) of the next business day. The Independent Evaluator sends such acknowledgments to the RFP Bidder by email.
- VII.1.8. An RFP Bidder that submits a Draft Pre-Bid Letter of Credit will receive a review of any proposed modifications within two (2) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Pre-Bid Letter of Credit. Any review communicated to

the RFP Bidder of the Draft Pre-Bid Letter of Credit is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Pre-Bid Letter of Credit for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be updated daily during the Part 1 Window. By 12 PM (noon) on the day the Part 2 Window opens, the final document containing all accepted modifications will be posted.

VII.1.9. An RFP Bidder that submits a Draft Post-Bid Letter of Credit will receive a review of any proposed modifications within seven (7) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Post-Bid Letter of Credit. Any review communicated to the RFP Bidder of the Draft Post-Bid Letter of Credit is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Post-Bid Letter of Credit for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be posted no later than 6 PM on the Part 2 Date.

VII.1.10. An RFP Bidder that submits a Draft Standard Guaranty will receive a review of any proposed modifications within two (2) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Standard Guaranty. Any review communicated to the RFP Bidder of the Draft Standard Guaranty is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Guaranty for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be updated daily during the Part 1 Window. By 12 PM (noon) on the day the Part 2 Window opens, the final document containing all accepted modifications will be posted.

VII.1.11. An RFP Bidder submitting a Proposal under an Agency Agreement that submits a Draft Officers' Certificate will receive an evaluation of this document by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of the Draft Officers' Certificate is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

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VII.1.12. A Foreign RFP Bidder that submits a draft of any of the documents described in Paragraph IV.5.2~~IV.5.2~~ will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

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VII.1.13. An RFP Bidder that relies on the financial standing of a Foreign Entity as RFP Guarantor and that submits a draft of any of the documents described in Paragraph IV.5.3 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

VII.1.14. An RFP Bidder submitting a Proposal under an Agency Agreement that relies on the financial standing of a Foreign Entity as Principal and that submits a draft of any of the documents described in Paragraph IV.5.4~~IV.5.4~~ will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

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VII.1.15. The RFP Bidder includes, in its Part 1 Proposal, a certification from the Officer of the RFP Bidder that the RFP Bidder is bidding independently and is not acting in concert with another RFP Bidder. The Independent Evaluator may request additional information to ascertain that the RFP Bidder is bidding independently of other RFP Bidders. An RFP Bidder that is not bidding independently of another RFP Bidder may fail to qualify.

VII.1.16. If an RFP Bidder receives any notice from the Independent Evaluator that any item of the Part 1 Proposal is deficient or requires clarification, the RFP Bidder has until 12 PM (noon) on the Part 1 Date, or until 6 PM on the business day following the business day during which the Independent Evaluator transmits such notice, whichever comes later, to respond. If the RFP Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 1 Proposal may be rejected. The Independent Evaluator sends such notice to the RFP Bidder by email.

VII.1.17. An RFP Bidder meets the qualification standards of this RFP if its Part 1 Proposal is received on or before 12 PM (noon) on the Part 1 Date, if its Part 1 Proposal is complete, and if its Part 1 Proposal fully complies with all requirements of Article IV.

VII.1.18. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV through a Part 1 Notification that the Independent Evaluators sends no later than 6 PM on the Part 1 Notification Date.

VII.1.19. If the RFP Bidder has a successful Part 1 Proposal, within two (2) business days of the Part 1 Notification Date, the Independent Evaluator transmits to the RFP Bidder a number of documents and instructions, called the Part 1 Materials. The Part 1 Materials include: (i) the Bid Form; (ii) instructions for filling out and optionally encrypting the Bid Form; (iii) instructions for the submission of the completed Bid Form from the RFP Bidder to the Independent Evaluator by secure file transfer system; (iv) instructions for an alternate method for submission of the Bids in case of technical difficulties with the secure file transfer system; (v) an invitation to a training session on the Bid submission process; and (vi) a username, a password, and security codes to be used for Bid submission uniquely by that RFP Bidder. The Part 1 Materials may also include other training materials or important notifications to RFP Bidders. The Independent Evaluator transmits the Part 1 Materials by secure file transfer. However, if special circumstances warrant, the Independent Evaluator may transmit by email a particular document needed for participation in a solicitation upon agreement by the RFP Bidder.

VII.1.20. The Independent Evaluator requires an acknowledgment from the RFP Bidder that the RFP Bidder has received intact the information necessary to submit Bids and that no one but authorized personnel of the RFP Bidder has had access to this information. The RFP Bidder may make this acknowledgment by email. The RFP Bidder's Bids are only evaluated if this acknowledgment is received.

VII.1.21. The exclusive method of responding to the requirements for Part 2 Proposals listed in ~~Article V~~ Article V of these RFP Rules is the use of the online Part 2 Form. Responses to the requirements of ~~Article V~~ Article V that do not use the online Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

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VII.1.22. An RFP Bidder must confirm its contact information and make any general representations required by Section ~~V.1V.4~~ exclusively by completing Section 1 of the online Part 2 Form. An RFP Bidder must submit the Pre-Bid Letter of Credit as required by Section V.2 and as instructed in Section 2 of the online Part 2 Form. An RFP Bidder relying on the financial standing of an RFP Guarantor will provide intent to provide a guaranty from its RFP Guarantor and an RFP Bidder submitting a Proposal under an Agency Agreement must submit additional documents as required by Section V.3 exclusively by completing Section 3 of the online Part 2 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Uniform SMA, or an RFP Bidder that seeks to rely on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal), must submit any additional documents as required by Section V.4 and as instructed by Section 4 of the online Part 2 Form.

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VII.1.23. The Part 2 Proposal consists of the completed online Part 2 Form, the Pre-Bid Letter of Credit, as well as Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). In particular:

- For an RFP Bidder relying on the financial standing of an RFP Guarantor and that is not a Default Supplier, the Part 2 Proposal also includes an acknowledgment from a representative of the RFP Guarantor.
- For an RFP Bidder submitting a Proposal under an Agency Agreement, the Part 2 Proposal also includes an executed Officers' Certificate.
- For an RFP Bidder that: (i) is submitting a Proposal under an Agency Agreement and relying on the financial standing of a Foreign Entity as Principal; or (ii) is a Foreign RFP Bidder; or (iii) relies on the financial standing of a Foreign Entity as RFP Guarantor; the Part 2 proposal also includes any documents required by Section V.4 as a condition of being granted unsecured credit. These documents may include an executed legal opinion of outside counsel and a sworn certificate of the corporate secretary.

- VII.1.24. The Independent Evaluator considers and processes the Part 2 Proposals during the Part 2 Window. No late Part 2 Proposals will be accepted under any circumstances. ~~No late Part 2 Proposals will be accepted under any circumstances.~~ RFP Bidders also have the option to submit the certifications required by the [online](#) Part 2 Form during the Part 1 Window for early processing. When a Part 2 Proposal is received, the Independent Evaluator sends an acknowledgment to the RFP Bidder by email. The Independent Evaluator confirms receipt as long as the Part 2 Proposal is received after the opening of the Part 1 Window. However, Part 2 Proposals are only processed during the Part 2 Window (with the exception of certifications, which may be processed during the Part 1 Window).
- VII.1.25. If the Part 2 Proposal is received before 12 PM (noon) on any business day after the opening of the Part 1 Window, the Independent Evaluator sends the acknowledgment confirming receipt on the day the Part 2 Proposal is received with the results of an initial review. The initial review states either that the Part 2 Proposal is complete and is being considered, or the initial review lists items of the Part 2 Proposal that are deficient or require clarification. If a Part 2 Proposal is received after 12 PM (noon) on any business day during the Part 2 Window prior to the Part 2 Date, the Independent Evaluator sends the acknowledgment along with the initial review by 12 PM (noon) of the next business day. The Independent Evaluator sends such acknowledgments by email.
- VII.1.26. An RFP Bidder's Part 2 Proposal is automatically deficient if the Pre-Bid Letter of Credit proposes or includes modifications to the Standard Pre-Bid Letter of Credit included as Appendix 9 of these RFP Rules other than those accepted modifications posted in a single document on the RFP website. If an RFP Bidder receives notice from the Independent Evaluator that its Pre-Bid Letter of Credit is deficient, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. The Independent Evaluator sends such notices by email.
- VII.1.27. The amount of the Pre-Bid Letter of Credit must be at least \$250,000 per tranche bid on products for full requirements service on a fixed-price basis, plus \$125,000 per tranche bid on the CCI product for full requirements service on a spot-price basis ~~(if applicable)~~. The Indicative Amount for RFP Bidders that rely on the financial standing of an RFP Guarantor and that do not hold a current Uniform SMA with PECO must be equal or exceed \$600,000 per tranche bid on products for full requirements

service on a fixed-price basis, plus \$300,000 per tranche bid on a CCI product for full requirements service on a spot-price basis: (if applicable). An RFP Bidder's Part 2 Proposal is automatically deficient if the amount of the Pre-Bid Letter of Credit is not consistent with the Indicative Amount of the Guaranty provided in the Part 2 Form. If an RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. The Independent Evaluator provides such notice to the RFP Bidder by email.

VII.1.28. For an RFP Bidder that received approval from PECO to use an alternate guaranty form through the Alternate Guaranty Process, PECO and the Independent Evaluator will determine whether the enforceability opinion required under Paragraph V.3.3 is acceptable to PECO, without any liability or obligation to the RFP Bidder or the RFP Guarantor. If the document is not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the document remains insufficient, the RFP Bidder's Part 2 Proposal may be rejected. The Independent Evaluator provides such notice to the RFP Bidder by email.

VII.1.29. For an RFP Bidder submitting a Proposal under an Agency Agreement that provides the documents required under Section V.4, PECO and the Independent Evaluator will determine whether the documents provided are sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). If the documents are insufficient and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the documents remain insufficient, the RFP Bidder's Part 2 Proposal may be rejected. The Independent Evaluator provides such notice to the RFP Bidder by email.

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VII.1.30. For a Foreign RFP Bidder that submits the documents required under Paragraph [V.5.2V.5.2](#), PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the Foreign RFP Bidder. If the documents are not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the Independent Evaluator provides with the Part 2 Notification a revised ~~creditworthiness~~ assessment that states either that the Foreign RFP Bidder is not granted unsecured credit or that the Foreign RFP Bidder is not eligible to continue further in the RFP. If the Foreign RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the Foreign RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.

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VII.1.31. For an RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor and that submits the documents required under Paragraph [V.5.3V.5.3](#), PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the RFP Bidder or the RFP Guarantor. If the documents are acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the RFP Bidder the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor and the Independent Evaluator may request additional information regarding the RFP Bidder under Section [IV.2IV.2](#). If the RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will

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automatically be considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.

VII.1.32. For an RFP Bidder relying on a Foreign Entity as Principal that provides the documents required under Paragraph V.5.4V-5.4, PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the RFP Bidder or its Principal(s). If the documents are not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and its Principal are not granted unsecured credit. If the RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.

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VII.1.33. With the exceptions noted in the Paragraphs of this Section, if an RFP Bidder receives any notice from the Independent Evaluator that an item of the Part 2 Proposal is deficient or requires clarification, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the RFP Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 2 Proposal may be rejected. The Independent Evaluator sends such notice to the RFP Bidder by email.

VII.1.34. An RFP Bidder's Part 2 Proposal is successful if its Part 2 Proposal is received on or before 12 PM (noon) on the Part 2 Date, if its Part 2 Proposal is complete, and if its Part 2 Proposal fully complies with the requirements of Article V of these RFP Rules.

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VII.1.35. An RFP Bidder that submits a Part 2 Proposal will be notified whether it is eligible to submit Bids no later than 6 PM on the Part 2 Notification Date. The Independent Evaluator provides such notification to the RFP Bidder by email.

**VII.2. Bids: Submission, Processing, and Evaluation**

VII.2.1. An RFP Bidder must submit its Bids in accordance with the instructions provided in the Part 1 Materials and in accordance with the requirements of ~~Article VI~~Article VI. An RFP Bidder's Bids must be received between 10 AM and 12 PM (noon) on the Bid Date. The requirements for Bid submission are the same for all RFP Bidders, regardless of whether they were previously eligible to submit Bids.

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VII.2.2. The Bid Form, as provided to each RFP Bidder with the Part 1 Notification, is the exclusive method for the submission of Bids. A sample of the Bid Form is provided for illustrative purposes as Appendix 10 of these RFP Rules. The Bid Form is prepared specifically for each RFP Bidder. The Bid Form must be filled out completely and transferred according to the instructions provided by the Independent Evaluator in the Part 1 Materials. The RFP Bidder may encrypt the Bid Form using the instructions provided by the Independent Evaluator. Bids on any Bid Form that is incompletely or inconsistently filled out will be considered deficient and will not be evaluated.

VII.2.3. An RFP Bidder submits its Bids electronically, by transferring its Bid Form through a secure file transfer system. The RFP Bidder must use the username and the password provided by the Independent Evaluator to access the secure file transfer system. The Independent Evaluator supplies a security code that the RFP Bidder may use to encrypt the Bid Form.

VII.2.4. An RFP Bidder that must resort to an alternate method for submitting its Bid Form by ~~fax~~email because of technical difficulties with the secure file transfer system must follow the instructions provided by the Independent Evaluator for this contingency. These instructions will include a representative of the RFP Bidder phoning the Independent Evaluator to advise the Independent Evaluator of the use of an alternate method for the submission of the Bid Form and to provide authenticating information. ~~The primary alternate submission method is fax; the Independent Evaluator will accept an email submission but the~~The Independent Evaluator will recommend that

the Bid Form in this case be encrypted and the Independent Evaluator will note for the RFP Bidder that such transmission may not be secure.

- VII.2.5. All Bid Forms must be received between 10 AM and 12 PM (noon) on the Bid Date. No late Bid Forms will be considered regardless of the method used by the RFP Bidder to submit its Bid Form.
- VII.2.6. If an RFP Bidder submits its Bid Form more than once between 10 AM and 12 PM (noon) on the Bid Date, the last Bid Form submitted in accordance with all requirements of the Bid Form and of Article VI automatically supersedes all previously submitted Bid Form(s).
- VII.2.7. The Independent Evaluator acknowledges receipt of the Bid Form with each RFP Bidder by telephone. The telephone number used is the telephone number provided on the Bid Form. If the Bid Form received by the Independent Evaluator is not encrypted by the RFP Bidder, the Independent Evaluator will require that the RFP Bidder provide the security code to the Independent Evaluator before the Bid Form is acknowledged and evaluated. The Independent Evaluator makes this acknowledgment within fifteen (15) minutes of receipt of the Bid Form. An RFP Bidder that does not receive an acknowledgment within fifteen (15) minutes of submitting its Bid Form should assume technical difficulties, should proceed to submitting its Bid Form by an alternate method, and should phone the Independent Evaluator immediately.
- VII.2.8. If the Bid Form received by the Independent Evaluator is incomplete or inconsistent with all requirements of the Bid Form and of Article VI, the Independent Evaluator will advise the RFP Bidder of that fact when confirming receipt of the Bid Form. The RFP Bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and 12 PM (noon) on the Bid Date. If the corrected Bid Form is not received between 10 AM and 12 PM (noon) on the Bid Date, the Bids on the Bid Form will not be evaluated.
- VII.2.9. It is the responsibility of the RFP Bidder to ensure that a completely and consistently filled out Bid Form is submitted between 10 AM and 12 PM (noon) on the Bid Date. The Independent Evaluator will hold a training session for RFP Bidders to practice the Bid submission process. RFP Bidders are encouraged to participate to minimize the possibility of technical difficulties with the submission of their Bid Forms.

VII.2.10. The Independent Evaluator will verify that the Pre-Bid Letter of Credit is in an amount sufficient to support the number of tranches bid by each RFP Bidder. If an RFP Bidder's Pre-Bid Letter of Credit is insufficient to support the number of tranches bid by the RFP Bidder, the Independent Evaluator will contact the RFP Bidder on a best efforts basis. The RFP Bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and 12 PM (noon) on the Bid Date. If the Independent Evaluator is not able to contact the RFP Bidder in time or if the RFP Bidder has not submitted a revised Bid Form between 10 AM and 12 PM (noon) on the Bid Date, the Independent Evaluator will modify the Bid Form. The Independent Evaluator will determine for such RFP Bidder the greatest number of whole tranches that its Pre-Bid Letter of Credit is sufficient to support. The Independent Evaluator will strike a Bid from a Bid Form for any tranche that is not supported by the Pre-Bid Letter of Credit. The Independent Evaluator will remove a Bid first from the product where there is most competition, as measured by the ratio of the number of tranches bid to the number of tranches needed. For that product, the Independent Evaluator will start with the tranche that has the highest Bid. If more than one RFP Bidder submitted Pre-Bid Letters of Credit that are insufficient to support the number of tranches bid by each such RFP Bidder, the Independent Evaluator will first modify the Bid Form from the RFP Bidder whose Bid Form is received last.

VII.2.11. By submitting a Proposal in response to an RFP, each RFP Bidder is authorizing the Independent Evaluator to modify the RFP Bidder's Bid Form as specified Paragraph [VII.2.10](#)~~VII.2.10~~. Each RFP Bidder acknowledges and accepts that the methodology may result in removal of a Bid that would have been approved by the Commission or the retention of a Bid that was not approved by the Commission.

VII.2.12. The Bids supported by adequate Pre-Bid Letters of Credit will be evaluated on a price-only basis. The Bids for each product will be ranked from lowest to highest price until all Bids are ranked or until the number of Bids that are ranked equals the number of tranches available for the product.

VII.2.13. If two or more RFP Bidders submit Bids that are identical for a product, these Bids will be considered "Tied Bids" at that price. The Independent Evaluator will use the tie-breaking procedure described in the next Paragraph if: i) in total, more Bids must be ranked for a product than there are tranches

available for that product; ii) the tie among two or more Tied Bids must be broken in order to determine the RFP Bidders that have submitted the lowest Bids on that product.

- VII.2.14. The tie-breaking procedure will award tranches in the following order: (1) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches for the product for any one month during the product term; (2) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches for the Class in question for any one month during the product term; and then (3) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches in aggregate for any one month during the product term. If a tie were to remain, it would be broken by random selection.
- VII.2.15. An RFP Bidder acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator on behalf of the Company in its sole and exclusive discretion. The RFP Bidder will be considered to have made a material misrepresentation in its Part 2 Proposal and payment under the Pre-Bid Letter of Credit can be demanded by PECO.
- VII.2.16. For each product in this solicitation, a Default Supplier will be paid a supplier-specific price for each MWh of electric load served as specified in the Transaction Confirmation for that product. The supplier-specific price will be the average of approved Bids for that product.

### VII.3. Post-Bid Process

- VII.3.1. The winning RFP Bidders and PECO must execute the Uniform SMAs and Transaction Confirmations within three (3) days of acceptance of the results by the Commission.
- VII.3.2. PECO can collect on the Pre-Bid Letter of Credit if a winning RFP Bidder does not execute the Uniform SMA and all Transaction Confirmations, or if the winning RFP Bidder does not fulfill the creditworthiness requirements in the required timeframe.
- VII.3.3. The Independent Evaluator phones each RFP Bidder that has submitted Bids by 6 PM on the Bid Date and identifies the RFP Bidder's Bids that are provided to the Commission as winning Bids. The Independent Evaluator also provides a notification to the RFP Bidder by email.
- VII.3.4. An RFP Bidder that: (i) is not a Default Supplier; and (ii) has Bids that are identified to the Commission as winning Bids; and (iii) did not provide the necessary information to prepare the Uniform SMA with the Part 1 Proposal, will receive a notification from the Independent Evaluator on

the Bid Date. This notification will require that such RFP Bidder provide all information needed to prepare the Uniform SMA by 12 PM (noon) on the next day. The Independent Evaluator uses this information to prepare the Uniform SMA for each such RFP Bidder.

- VII.3.5. An RFP Bidder that: (i) relies on the financial standing of an RFP Guarantor; (ii) has Bids that are identified to the Commission as winning Bids; and (iii) did not provide the information necessary to prepare the guaranty with the Part 1 Proposal will receive a notification from the Independent Evaluator on the Bid Date. This notification will require that such RFP Bidder provide all information needed to prepare the guaranty by 12 PM (noon) on the next day. The Independent Evaluator uses this information to prepare the guaranty for each such RFP Bidder.
- VII.3.6. The Independent Evaluator presents the results of the solicitation to the Commission on the business day after the Bid Date in a confidential report. This confidential report will include the winning Bids identified during the evaluation. The Commission will have one (1) business day to consider the report of the Independent Evaluator and to approve or reject each of the winning Bids. If the Commission does not act within one (1) business day, the winning Bids are deemed to be approved.
- VII.3.7. On the day that the Commission approves some or all of the winning Bids, the Independent Evaluator notifies all RFP Bidders that have approved Bids. Such RFP Bidders are called Default Suppliers. When referring specifically to RFP Bidders that are not already Default Suppliers, the term New Default Suppliers will be used. When referring specifically to RFP Bidders that are already Default Suppliers, the term Existing Default Suppliers will be used.
- VII.3.8. On the day the Commission approves some or all of the winning Bids, the Independent Evaluator provides to PECO the name of each Default Supplier, the number of tranches won by each Default Supplier, and the Default Supplier's price for each product. The price for each such Default Supplier and for a given product is the average of the Default Supplier's approved Bids for that product in this solicitation.
- VII.3.9. On the day the Commission approves some or all of the winning Bids, the Independent Evaluator sends to PECO by secure file transfer the Uniform SMA, including all Exhibits, for each New Default Supplier. On the same day, the Independent Evaluator sends to PECO by secure file transfer the guaranty for each New Default Supplier relying on the financial standing of an RFP Guarantor. The

Independent Evaluator also sends to PECO by secure file transfer the most current contact information that the Independent Evaluator has for each Default Supplier.

VII.3.10. On the business day following the Commission approval of some or all of the winning Bids, PECO prepares one (1) Transaction Confirmation (Exhibit 1 of the Uniform SMA) for each product and Default Supplier. PECO partially executes two (2) originals of each Transaction Confirmation for each Default Supplier and each product. PECO also partially executes two (2) originals of the Uniform SMA with each New Default Supplier.

VII.3.11. By 12PM on the second business day following the Commission approval of some or all of the winning Bids, PECO sends:

- One (1) copy of the signature page of the Uniform SMA (page 75) and one (1) copy of the signature page of Exhibit 3, the PJM Declaration of Authority (page 9) by ~~fax or other electronic means~~ email to each New Default Supplier;
- One (1) copy of the partially executed Transaction Confirmation by ~~fax or other electronic means~~ email to each Default Supplier for each product for which the Default Supplier has won tranches; and
- The guaranty by ~~secure file transfer~~ email to each New Default Supplier relying on the financial standing of an RFP Guarantor.

PECO also informs each Default Supplier of its specific creditworthiness requirements.

VII.3.12. By close of the second business day following the Commission approval of some or all of the winning Bids, PECO sends by overnight delivery service:

- The two (2) originals of the partially executed Uniform SMA, including all Exhibits, to each New Default Supplier; and
- Two (2) original partially executed Transaction Confirmations to each Default Supplier for each product for which such Default Supplier has approved Bids.

VII.3.13. By 2PM on the third business day following Commission approval of some or all of the winning Bids:

- Each New Default Supplier partially executes the two (2) originals of the Uniform SMA and the two (2) originals of Exhibit 3, the PJM Declaration of Authority and returns one (1) copy of these signature pages to PECO by ~~fax or other electronic means~~email;
- Each Default Supplier partially executes the two (2) originals of the Transaction Confirmations and returns one (1) copy of the signature page to PECO by ~~fax or other electronic means~~email; and
- Each New Default Supplier relying on the financial standing of an RFP Guarantor executes the guaranty sent by ~~secure file transfer~~email and returns one (1) copy of the signature page of the guaranty to PECO by ~~fax or other electronic means~~email.

VII.3.14. By close of the third business day following Commission approval of some or all of the winning Bids:

- Each New Default Supplier returns by overnight delivery service to PECO one (1) original of the Uniform SMA, including all Exhibits;
- Each Default Supplier returns by overnight delivery service to PECO one (1) original of the Transaction Confirmation; and
- Each Default Supplier complies with all instructions from PECO to fulfill the creditworthiness requirements under the Uniform SMA.

VII.3.15. Following receipt of originals by PECO:

- PECO and each New Default Supplier have one (1) fully executed original of the Uniform SMA and of Exhibit 3, the PJM Declaration of Authority, as well as all other Exhibits;
- PECO and each Default Supplier have one (1) fully executed original of a Transaction Confirmation for each product for which the Default Supplier has approved Bids;

VII.3.16. As provided in the Commission's directive dated October 12, 2010 (Docket No. M-2009-2082042), the Independent Evaluator will release, within fifteen (15) days of the close of the solicitation, the weighted average price and the percentage of load represented by each tranche for each product procured through this RFP. The Independent Evaluator will issue an announcement on behalf of PECO with this information and the announcement will also be posted to the RFP website.

VII.3.17. Within fifteen (15) days of the full execution of the Uniform SMA, the Independent Evaluator provides to PECO a report on the solicitation. This report is based on the confidential report provided to the

Commission, except that no losing bid information specific to a particular RFP Bidder is provided and that any information that an RFP Bidder may consider confidential or proprietary is also redacted.

VII.3.18. As provided in the PaPUC’s directive dated October 12, 2010 (Docket No. M-2009-2082042), PECO will continue to provide a default service rate calculation model. The model shows the methodology for translating RFP results into default service rates. ThisA separate tool or illustrative example will be provided for determination of TOU rates. The calculation model is posted to the PECO website: <https://www.peco.com/CustomerService/RatesandPricing/EnergyChoice/Pages/PricetoCompare.aspx> <https://www.peco.com/MyAccount/MyService/Pages/ElectricPricetoCompare.aspx>

**VII.4. Personnel and Confidentiality**

VII.4.1. Any information provided by an RFP Bidder in its Part 1 Proposal is provided on a confidential basis to the Independent Evaluator and may be provided on a confidential basis to the Commission Staff. PECO representatives will review the information provided to fulfill the requirements of Section IV.2IV-2, Section IV.3, and Section IV.5 and will participate in the evaluation of the creditworthiness of each RFP Bidder.

VII.4.2. Any information provided by an RFP Bidder in its Part 2 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Commission Staff. PECO representatives will review the Pre-Bid Letter of Credit with the name of the RFP Bidder and the amount redacted and will participate in the evaluation of this Pre-Bid Letter of Credit. PECO representatives will also review the documents provided to fulfill the requirements of Section V.4 and Section V.5.

VII.4.3. The Independent Evaluator and representatives from PECO involved in the evaluation of Proposals will consider all data and information provided by RFP Bidders in response to this RFP to be confidential and will attempt to limit its disclosure to the public in accordance with the provisions of this Section. PECO will also take reasonable action to ensure that its employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. Each representative of the Independent Evaluator and PECO that has access to any

portion of the Proposals is required to sign a Confidentiality Statement in the form of Appendix 12 to these RFP Rules prior to evaluation of any portion of the Proposals. The list of all signatories is available to an RFP Bidder upon request.

VII.4.4. However, absolute protection from public disclosure of the RFP Bidders' data and information filed in response to this RFP cannot be provided and is not intended. By submitting a Proposal in response to this RFP, each RFP Bidder acknowledges and agrees to the limitations of the confidentiality provisions set forth in this Section.

VII.4.5. In addition, the RFP Bidders' data and information filed in response to the RFP will be disclosed if required by any federal, state or local agency (including, without limitation, the Commission) or by a court of competent jurisdiction. PECO or the Independent Evaluator will notify the RFP Bidder in advance of such disclosure and cooperate with such RFP Bidder, to the extent deemed reasonable by PECO, and at the expense of the RFP Bidder, to prevent the disclosure of such materials. In any event, PECO, its employees, and agents including the Independent Evaluator will not be responsible to the RFP Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to this RFP.

**ARTICLE VIII. Reserved Rights**

VIII.1.1. PECO will not be liable to any RFP Bidder or any other party for failure to execute a Uniform SMA or any Transaction Confirmation. Nothing herein may be construed to bind PECO unless and until the Commission has approved winning Bids, and the Uniform SMA and each Transaction Confirmation with an approved Default Supplier has been executed and is effective. Once effective, it is the Uniform SMA and not the RFP Rules or any documents relating thereto that will govern the relationship between and the responsibilities of the parties.

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VIII.1.2. The Independent Evaluator reserves the right to reject Proposals submitted in response to this RFP that are incomplete, or do not conform with the requirements of this RFP, or are submitted beyond the deadline for submission, or are submitted by an RFP Bidder that tries to unduly influence in any way the evaluation process.

**Appendix 1**  
**PECO Energy Company**  
**Pennsylvania Default Service Supplier Master Agreement**

See PECO Exhibit JJM-4-

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## Appendix 2 – Alternate Guaranty Process

The Alternate Guaranty Process allows a prospective supplier unable to use the standard format of the guaranty provided as Appendix G to the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”) to submit for consideration by PECO Energy Company (“PECO”) an alternate guaranty form that the prospective supplier uses in its normal course of business.

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Any prospective supplier can apply to use an alternate guaranty form. Any alternate guaranty form, as is the case with the standard format of the guaranty of the Uniform SMA, must be a financial guaranty. While alternate forms of financial guaranty may be acceptable, performance guaranties are not acceptable.

### Process and Ground Rules

The process for submitting an alternate guaranty form and the ground rules for PECO’s consideration of alternate guaranty forms are as follows:

1. A prospective ~~supply~~supplier wishing to have PECO evaluate an alternate guaranty form must initiate the process by making a request for such consideration to the Independent Evaluator no later than fifteen (15) business days prior to the opening of the Part 1 Window. Within three (3) business days of receipt of such a request, the Independent Evaluator will issue a timetable for receipt of the materials from the prospective supplier and for consideration of these materials by PECO.
2. PECO will consider alternate guaranty forms only if the guaranty is for unlimited liability. (A prospective supplier can utilize the safe harbor provided by the Standard Guaranty, which has a liability limit.)
3. PECO has specified a list of minimum requirements that any alternate guaranty form must satisfy. This list is under the heading: “Minimum Requirements for the Alternate Guaranty Form” below.
4. The Independent Evaluator will receive the alternate guaranty form, remove any information identifying the prospective supplier, and forward it to PECO and to outside counsel retained on behalf of PECO. PECO will determine, with the consultation of outside counsel and the Independent Evaluator as necessary, whether the alternate guaranty form provides sufficient assurances of payment, taking into account the following general considerations:
  - a. whether the alternate guaranty form conforms to the minimum requirements identified by PECO;
  - b. whether the alternate guaranty form, which is not subject to a monetary limit, provides credit protections comparable to the credit protections provided to PECO by the Standard Guaranty; and
  - c. whether the alternate guaranty form includes defenses in favor of the guarantor not found in the Standard Guaranty.

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PECO may also identify specific changes that would permit the alternate guaranty form to be acceptable.

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The Independent Evaluator will inform the prospective supplier of PECO's decision. The Independent Evaluator will inform the prospective supplier of any specific changes that may be required for the proposed alternate guaranty form to be acceptable to PECO. Prospective suppliers will be given an opportunity to resubmit the alternate guaranty form if changes are identified by PECO. Alternate guaranty forms that have been resubmitted may be rejected if they do not include the changes identified by PECO.

5. An alternate guaranty form approved through this Guaranty Process will be acceptable to PECO. This alternate guaranty form may be used by the prospective supplier through the end of DSP ~~WV~~ barring changes in the applicable law or changes to the RFP as may be ordered by the Pennsylvania Public Utility Commission.

**Minimum Requirements for the Alternate Guaranty Form**

Below are the minimum requirements that must be met in order for any alternate guaranty form to be acceptable. As stated above, in determining whether an alternate guaranty form is acceptable and provides sufficient assurances of payment, PECO takes into account several general considerations, including whether the alternate guaranty form fulfills the following minimum requirements:

1. The guaranty must be an unconditional guaranty of payment of all amounts due by the Seller to PECO under the applicable SMA(s), i.e., the Uniform SMA and any previously entered Default Service SMA(s). To clarify the meaning of the term "unconditional guaranty of payment", sample language is provided in the last section of this document. The applicable SMA(s) must be expressly identified and the satisfaction of obligations through performance may not be authorized.
2. The guaranty may be terminated upon no less than thirty (30) calendar days advance written notice to PECO and termination will not discharge liabilities and obligations of the guarantor that have been incurred up to and including the effective date of the termination. The termination of an alternate guaranty will be effective only upon the receipt of substitute security or credit support that is acceptable to PECO.
3. The guaranty must not be subject to any monetary limit.
4. The guaranty must be accompanied by a certification from the guarantor that the alternate guaranty form, subject to changes needed to conform to the minimum requirements specified herein or to the specific changes identified by PECO, has been in general use by the prospective supplier in its ordinary course of business over the past twelve (12) months.
5. The guaranty must be a guaranty of payment and not of collection.
6. Assignment of the guaranty will not be permitted except with the prior written consent of PECO, except in the case of a Successor Guarantor as defined below (see sample assignment language).
7. The prospective supplier must provide an enforceability opinion with respect to the alternate guaranty form from its outside counsel. The enforceability opinion must be from a law firm of national (i.e., United States) standing. The prospective supplier must name the law firm that is offering the enforceability opinion in its submission. The enforceability opinion must not be weaker than would be the industry norm and must contain only those qualifications that would be typical. The opinion will name PECO and explicitly state that PECO is entitled to rely on the opinion.

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**PECO Exhibit JJM-8**

The enforceability opinion must not be qualified by or conditioned on any of the following:

- a. the valid existence and good standing of the parties to the Uniform SMA;
- b. the power and authority of the prospective supplier and guarantor to execute, deliver, and perform their respective agreements;
- c. due execution of the Uniform SMA and the alternate guaranty form; or
- d. that the Uniform SMA is legal, valid, binding, and enforceable against all parties.

At the time that the prospective supplier submits its alternate guaranty form and supporting documentation, the opinion may be unsigned. If the prospective supplier becomes an RFP Bidder, the RFP Bidder will be required to submit, with its Part 2 Proposal, the enforceability opinion exactly as approved, duly signed, and on letterhead of a law firm of national standing.

**Sample Language**

The process for submission of alternate guaranty forms is designed to give prospective suppliers some flexibility while at the same time assuring adequate credit protection for PECO and its customers. PECO provides sample language below for the purpose of clarifying certain aspects of the minimum requirements for alternate guaranty forms. This language is not required, but would be deemed acceptable to PECO. PECO reserves the right to reject alternate guaranty forms that do not contain language that, in PECO's view, provides substantially comparable protections to the language set forth below.

Subject	Sample Language
Unconditional Guaranty	"Guarantor agrees that its obligations hereunder are unconditional and will not be discharged except by complete payment of all amounts due under the Uniform SMA, irrespective of any claim or dispute as to the Uniform SMA's validity, regularity or enforceability, or the lack of authority of the RFP Bidder to enter into the Uniform SMA."
Assignment	"Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without the prior written consent of PECO, and any purported assignment or delegation absent such consent is void, except for an assignment and delegation of all of Guarantor's rights and obligations hereunder to a Successor Guarantor. For purposes of this paragraph, a "Successor Guarantor" means a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes all of the Guarantor's obligations hereunder by contract or operation of law; provided, that, such Successor Guarantor will have a long-term unsubordinated debt rating that is not lower than the lesser of (i) A2/A or (ii) the rating of the Guarantor immediately prior to such assumption."

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## APPENDIX 3 – ILLUSTRATIVE STANDARD PART 1 FORM DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS

PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

Before completing this online Part 1 Form, please review the RFP, including the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”), so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.PECOprocurement.com](http://www.PECOprocurement.com).

By submitting a Part 1 Proposal in response to this RFP, you are agreeing to all terms and conditions of this RFP.

*Any information provided by an RFP Bidder in this Part 1 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission. PECO representatives will review financial information and will participate in the evaluation of the creditworthiness of each RFP Bidder. Information regarding the content or status of any Part 1 Proposal will not be released publicly or to any individual RFP Bidder during the evaluation process.*

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**STANDARD PART 1 FORM**

PECO Exhibit JJM-8

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**1. Contact Information and Representations**

First Item: Name and Address of the RFP Bidder

**PLEASE PROVIDE THE RFP BIDDER'S LEGAL NAME AND ADDRESS.**

*Legal Name of RFP Bidder*

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*Street Address*

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*City*

*State*

*Zip Code*

Second Item: Officer of the RFP Bidder

The Officer of the RFP Bidder must be an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder. The Officer of the RFP Bidder whose contact information is provided in this online Part 1 Form must:

- make all representations required by the Part 1 Proposal requirements; and
- make all representations required by the Part 2 Proposal requirements.

**PLEASE PROVIDE THE NAME AND CONTACT INFORMATION FOR THE OFFICER OF THE RFP BIDDER.**

*First Name*

*Last Name*

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*Title*

Formatted Table

*Street Address*

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Formatted Table

*City*

*State*

*Zip Code*

*Phone No.*

*Email Address*

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Third Item: Representative of the RFP Bidder

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The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder.

**PLEASE PROVIDE THE NAME AND CONTACT INFORMATION FOR THE REPRESENTATIVE OF THE RFP BIDDER.**

The Officer of the RFP Bidder may also serve as the Representative.

First Name

Last Name

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Title

Formatted Table

Street Address

Formatted Table

Formatted Table

City

State

Zip Code

Phone No.

Cell Phone No. (optional)

Email Address

**THE OFFICER OF THE RFP BIDDER MUST DESIGNATE THE INDIVIDUAL NAMED ABOVE TO SERVE AS THE REPRESENTATIVE OF THE RFP BIDDER BY COMPLETING THE REPRESENTATIVE INSERT.** The Representative Insert is also labelled INSERT #P1-1.

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\_\_\_\_\_  
Name of RFP Bidder

**REPRESENTATIVE INSERT (#P1-1)**

**THE OFFICER OF THE RFP BIDDER MUST DESIGNATE THE INDIVIDUAL WHOSE CONTACT INFORMATION IS PROVIDED IN THE ONLINE PART 1 FORM AS THE REPRESENTATIVE.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), hereby designate \_\_\_\_\_ (name of the Representative) to serve as the Representative of the RFP Bidder.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

Fourth Item: Nominees

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The Independent Evaluator provides notifications to the RFP Bidder by email and provides documents needed for participation by secure file transfer. Any such notification will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that where delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day.

The RFP Bidder may designate up to three (3) authorized individuals (each called a "Nominee") to receive communications from the Independent Evaluator in addition to the Representative. The RFP Bidder may make such a designation at any time during the solicitation.

Is the RFP Bidder designating Nominees at this time?

Yes  No

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THE REPRESENTATIVE OF THE RFP BIDDER OR THE OFFICER OF THE RFP BIDDER DESIGNATES NOMINEES BY COMPLETING THE NOMINEE INSERT. The Nominee Insert is also labelled INSERT #P1-2.

\_\_\_\_\_  
Name of RFP Bidder

**NOMINEE INSERT (#P1-2)**

**Please note! This insert is optional.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder or the Representative of the RFP Bidder), authorize the individuals whose contact details are immediately below to receive communications from the Independent Evaluator and to act on behalf of the RFP Bidder during the Proposal submission process.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Contact Information for Nominee #1**

First Name

Last Name

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Title

\_\_\_\_\_

Phone No.

Cell Phone No. (optional)

Email Address

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Contact Information for Nominee #2**

First Name

Last Name

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Title

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<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Cell Phone No. (optional)</i>	<i>Email Address</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Contact Information for Nominee #3</b>		
<i>First Name</i>	<i>Last Name</i>	
<input type="text"/>	<input type="text"/>	
<i>Title</i>		
<input type="text"/>		
<i>Phone No.</i>	<i>Cell Phone No. (optional)</i>	<i>Email Address</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Notes (optional)</b>		
The RFP Bidder may provide additional information here, such as the period during which a particular individual will act as Nominee or the individual that a Nominee is replacing.		
<input type="text"/>		

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## 2. Financial Requirements and Agency Agreements

First Item: Agency Agreement

*Is the RFP Bidder submitting a Proposal under an Agency Agreement?*

- Yes                       No

If Yes, the RFP Bidder must elect a Principal as the entity on whose financial standing it is relying in responding to the next item.

Second Item: Election of Entity on Whose Financial Standing the RFP Bidder Is Relying

**PLEASE SELECT THE ENTITY UPON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING AS REQUIRED BY PARAGRAPH IV.2.12 OF THE RFP RULES:**

- (a) the RFP Bidder is relying on its own financial standing.
- (b) the RFP Bidder is relying on the financial standing of a guarantor.
- (c) the RFP Bidder is submitting a Proposal under an Agency Agreement and the RFP Bidder is relying on the financial standing of a Principal.

### 2.a. Financial and Credit Requirements

The RFP Bidder is the entity on whose financial standing the RFP Bidder is relying.

First Item: Financial Information

**IF AVAILABLE, PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP BIDDER**, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:

- **IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;**
- **IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, PLEASE PROVIDE, IF AVAILABLE, THE RFP BIDDER’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION** accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.

	<p><i>Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)</i></p> <p><b>IF THE INFORMATION IS UNAVAILABLE, PLEASE SO STATE IN THE JUSTIFICATION OF OMISSIONS SECTION.</b></p>
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Attestation from Chief Financial Officer if necessary.

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Second Item: Credit Ratings

PLEASE PROVIDE ALL AVAILABLE CREDIT RATINGS FOR THE RFP BIDDER.

Is the RFP Bidder rated by Standard & Poor's Rating Services S&P Global Ratings ("S&P")?

Yes No

RFP Bidder's rating: Type of rating (check one): Senior unsecured debt rating Corporate issuer rating

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Is the RFP Bidder rated by Moody's Investors Service, Inc. ("Moody's")?

Yes No

RFP Bidder's rating: Type of rating (check one): Senior unsecured debt rating Corporate issuer rating

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Is the RFP Bidder rated by Fitch, Inc. ("Fitch")?

Yes No

RFP Bidder's rating: Type of rating (check one): Senior unsecured debt rating Corporate issuer rating

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2.b. Financial and Credit Requirements

The RFP Bidder is relying on financial standing of an RFP Guarantor.

First Item: Name and Address of RFP Guarantor

PLEASE PROVIDE THE LEGAL NAME AND ADDRESS OF THE RFP GUARANTOR.

Legal Name of RFP Guarantor

Legal Name of RFP Guarantor input field

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Street Address

Street Address input field

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City

City input field

State

State input field

Zip Code

Zip Code input field

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Illustrative Standard Part 1 Form

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Second Item: Financial Information

**Financial information must be available for the RFP Guarantor.**

PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP GUARANTOR, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:

- IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;
- IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, YOU MUST PROVIDE THE RFP GUARANTOR’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.

	Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)
	Attestation from Chief Financial Officer (if necessary)

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Third Item: Credit Ratings

**PLEASE PROVIDE THE CREDIT RATINGS FOR THE RFP GUARANTOR.**

Is the RFP Guarantor rated by ~~Standard & Poor's Rating Services~~ S&P Global Ratings (“S&P”)?

Yes  No

RFP Guarantor's rating: _____
Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating

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Is the RFP Guarantor rated by Moody's Investors Service, Inc. (“Moody's”)?

Yes  No

RFP Guarantor's rating: _____
Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating

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Is the RFP Guarantor rated by Fitch, Inc. (“Fitch”)?

Yes  No

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RFP Guarantor's rating: \_\_\_\_\_  
Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

### 2.c. Financial and Credit Requirements

The RFP Bidder is submitting a Proposal under an Agency Agreement and is relying on financial standing of a Principal.

#### First Item: Principals to the Agency Agreement

PLEASE PROVIDE THE LEGAL NAME OF ALL PRINCIPALS UNDER THE AGENCY AGREEMENT.

Legal Name of Principal(s)

\_\_\_\_\_

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#### Second Item: Agency Agreement

A copy of the Agency Agreement is required. PLEASE SUBMIT ONE (1) COPY OF THE AGENCY AGREEMENT BY UPLOAD TO THE ONLINE PART 1 FORM.

 Agency Agreement

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#### Third Item: Principal on Whose Financial Standing the RFP Bidder is Relying

PLEASE IDENTIFY THE RFP PRINCIPAL ON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING.

- If there are several Principals in the Agency Agreement, you must identify the Principal with the lowest credit rating ~~as the entity on whose financial standing the RFP Bidder is relying.~~
- If several Principals have the same lowest credit rating, ~~please~~ you must identify the Principal among these that also has the lowest tangible net worth ~~as the entity.~~
- ~~The Principal~~ on whose financial standing the RFP Bidder relies.
- This Principal is relying is referred to as the "RFP Principal".

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Name of RFP Principal

\_\_\_\_\_

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Street Address

\_\_\_\_\_

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\_\_\_\_\_

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City

\_\_\_\_\_

State

\_\_\_\_\_

Zip Code

\_\_\_\_\_

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Fourth Item: Financial Information

PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP PRINCIPAL, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:

- IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;
- IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, YOU MUST PROVIDE THE RFP PRINCIPAL’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.

	Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)
	Attestation from Chief Financial Officer (if necessary)

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Fifth Item: Credit Ratings

PLEASE PROVIDE THE CREDIT RATINGS FOR THE RFP PRINCIPAL.

Is the RFP Principal rated by ~~Standard & Poor's Rating Services~~ S&P Global Ratings (“S&P”)?

Yes  No

RFP Principal's rating: _____
Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating

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Is the RFP Principal rated by Moody's Investors Service, Inc. (“Moody's”)?

Yes  No

RFP Principal's rating: _____
Type of rating ( <b>check one</b> ): <input type="checkbox"/> Senior unsecured debt rating <input type="checkbox"/> Corporate issuer rating

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Is the RFP Principal rated by Fitch, Inc. (“Fitch”)?

Yes  No

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RFP Principal's rating: \_\_\_\_\_  
Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

Sixth Item: Agency Certifications

**THE OFFICER OF THE RFP BIDDER MUST CERTIFY TO HAVING AUTHORITY TO BIND THE PRINCIPAL(S) AND ACKNOWLEDGE THAT AN OFFICERS' CERTIFICATE MUST BE SIGNED BY COMPLETING THE AGENCY CERTIFICATIONS INSERT.** The Agency Certifications Insert is also labelled INSERT #P1-3.-

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\_\_\_\_\_  
*Name of RFP Bidder*

**P1 AGENCY CERTIFICATIONS INSERT (#P1-3)**

**Please note! Only RFP Bidders submitting a Proposal under an Agency Agreement are required to submit this Insert.**

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), certify that I have the authority to bind the Principal(s) under the Agency Agreement provided with this Part 1 Proposal. I acknowledge that with the Part 2 Proposal, the RFP Bidder will be required to submit an Officers' Certificate signed by an officer of each Principal and substantially in the form of Appendix 6 to the RFP Rules.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

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Seventh Item: Draft Officers' Certificate

The RFP Bidder may, but is not required to, submit a draft Officers' Certificate for evaluation. If a draft Officers' Certificate is submitted for evaluation, the Independent Evaluator will inform the RFP Bidder of any changes required.

***Is the RFP Bidder submitting a draft Officers' Certificate?***

Yes  No

Illustrative Standard Part 1 Form

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PECO Exhibit JMM-8

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PLEASE ~~UPLOAD~~PROVIDE THE RFP BIDDER'S DRAFT OFFICERS' CERTIFICATE.

	Draft Officers' Certificate
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### 3. Credit Instruments and Uniform SMA

#### First Item: Standard Pre-Bid Letter of Credit

An RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD PRE-BID LETTER OF CREDIT BY SUBMITTING A DRAFT PRE-BID LETTER OF CREDIT SUBSTANTIALLY IN THE FORM OF THE STANDARD PRE-BID LETTER OF CREDIT INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD PRE-BID LETTER OF CREDIT USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Pre-Bid Letter of Credit are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Pre-Bid Letter of Credit?*

Yes  No

*Does the Draft Pre-Bid Letter of Credit contain the same requested modifications as a Draft Pre-Bid Letter of Credit submitted in a prior solicitation?*

Yes  No

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No

A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated. PLEASE ~~UPLOAD~~PROVIDE THE DRAFT PRE-BID LETTER OF CREDIT.

	Draft Pre-Bid Letter of Credit
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Yes

A Draft Pre-Bid Letter of Credit that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to pecoprocurement@nera.com.

Second Item: Standard Post-Bid Letter of Credit

An RFP Bidder may request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD POST-BID LETTER OF CREDIT BY SUBMITTING A DRAFT POST-BID LETTER OF CREDIT SUBSTANTIALLY IN THE FORM OF THE STANDARD POST-BID LETTER OF CREDIT INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD POST-BID LETTER OF CREDIT USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Post-Bid Letter of Credit are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Post-Bid Letter of Credit?*

Yes  No

Does the Draft Post-Bid Letter of Credit contain the same requested modifications as a Draft Post-Bid Letter of Credit submitted in a prior solicitation?

Yes  No

No

A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated. **PLEASE ~~UPLOAD~~PROVIDE THE DRAFT POST-BID LETTER OF CREDIT.**



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Yes

A Draft Post-Bid Letter of Credit that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to pecoprocurement@nera.com.

Third Item: Standard Guaranty

An RFP Bidder may request modifications to the Standard Guaranty that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**Illustrative Standard Part 1 Form**

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AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD GUARANTY BY SUBMITTING A DRAFT GUARANTY SUBSTANTIALLY IN THE FORM OF THE STANDARD GUARANTY INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD GUARANTY USING TRACKED CHANGES IN MICROSOFT WORD.

All approved modifications to the Standard Guaranty are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

Is the RFP Bidder submitting a Draft Guaranty?

Yes  No

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Does the Draft Guaranty contain the same requested modifications as a Draft Guaranty submitted in a prior solicitation?

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Yes  No

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**No**  
 A Draft Guaranty that is not substantially in the form of the Standard Guaranty will not be considered or evaluated. **PLEASE ~~UPLOAD~~ PROVIDE THE DRAFT GUARANTY.**

	Draft Guaranty
---	----------------

**Yes**  
A Draft Guaranty that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to pecoprocurement@nera.com.

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Fourth Item: Information to Prepare the Uniform SMA and Its Exhibits

In accordance with Paragraph IV.3.4 of the RFP Rules, **THE RFP BIDDER IS ASKED TO PROVIDE THE FOLLOWING INFORMATION TO PREPARE THE UNIFORM SMA:**

- any elections to be made in the Uniform SMA;
- contact information required to prepare the Form of Notice, which is included as Exhibit 2 to the Uniform SMA; and
- any additional information required to prepare the Uniform SMA and its Exhibits.

**The RFP Bidder must either:** (i) provide the requested information to prepare the Uniform SMA at this time; **or:** (ii) submit an acknowledgment signed by the Officer of the RFP Bidder that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

Is the RFP Bidder providing information to prepare the Uniform SMA at this time?

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Yes

No

Yes

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**THE RFP BIDDER PROVIDES THE INFORMATION TO PREPARE THE UNIFORM SMA BY COMPLETING THE UNIFORM SMA INSERT.** The Uniform SMA Insert is also labelled INSERT #P1-4.

\_\_\_\_\_  
\_\_\_\_\_

Name of RFP Bidder

 **UNIFORM SMA INSERT (#P1-4)**

 **UNIFORM SMA INSERT (#P1-4)**

**Please note!** RFP Bidders must submit one (but ONLY one) of Insert #P1-4 and Insert #P1-5.

1. Under Section 5.4(a)(1) of the Uniform SMA, the DS Supplier may, in its sole discretion, add the following subsection 5.4(a)(1) by indicating yes or no below.

5.4(a)(1) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes as may have occurred since the previous calendar year.

**Do you intend for subsection 5.4(a)(1) to be included as part of the Uniform SMA?**

Yes

No

2. The information that you provide below will be used to complete Exhibit 2 (Form of Notice) to the Uniform SMA. **IF ANY OF THE INFORMATION REQUESTED BELOW IS UNAVAILABLE, PLEASE ENTER N/A IN THE CORRESPONDING FIELDS.**

(a) All Notices:

First Name

\_\_\_\_\_  
\_\_\_\_\_

Last Name

\_\_\_\_\_  
\_\_\_\_\_

Street Address

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

City

State

Zip Code

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<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Fax No.</i>	<i>Email Address</i>
<input type="text"/>	<input type="text"/>	
<i>DUNS</i>	<i>Federal Tax I.D. Number</i>	
<input type="text"/>	<input type="text"/>	

(b) Invoices:

*ATTN:*

<i>First Name</i>	<i>Last Name</i>
<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Fax No.</i>
<input type="text"/>	<input type="text"/>

*Email Address*

(c) Schedule:

*ATTN:*

<i>First Name</i>	<i>Last Name</i>
<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Fax No.</i>
<input type="text"/>	<input type="text"/>

*Email Address*

(d) Payments:

*ATTN:*

<i>First Name</i>	<i>Last Name</i>
<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Fax No.</i>
<input type="text"/>	<input type="text"/>

*Email Address*

(e) Wire Transfer:

*Bank*

*ABA*  *ACCT*

(f) Credit and Collections:

*ATTN:*

<i>First Name</i>	<i>Last Name</i>
<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Fax No.</i>
<input type="text"/>	<input type="text"/>

*Email Address*

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PECO Exhibit JJM-8

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(g) Additional Notices of an Event of Default to:

ATTN:

First Name

Last Name

Phone No.

Fax No.

Email Address

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No

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**THE OFFICER OF THE RFP BIDDER PROVIDES THE REQUIRED ACKNOWLEDGMENT BY COMPLETING THE DELAY (SMA) INSERT.** The Delay (SMA) Insert is also labelled INSERT #P1-5.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of RFP Bidder

**DELAY (SMA) INSERT (#P1-5)**

**Please note!** RFP Bidders must submit one (but ONLY one) of Insert #P1-4 and Insert #P1-5.

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all information required by the Uniform SMA Insert (#P1-4) by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

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#### 4. Regulatory Representations

First Item: Representations by the Officer of the RFP Bidder

The Officer of the RFP Bidder must make a number of certifications as detailed in the RFP Rules. **THE OFFICER OF THE RFP BIDDER MAKES SUCH CERTIFICATIONS BY COMPLETING THE P1 CERTIFICATIONS A INSERT. THE SIGNATURE OF THE OFFICER OF THE RFP BIDDER MUST BE NOTARIZED.** The P1 Certifications A Insert is also labelled INSERT #P1-6.

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\_\_\_\_\_  
*Name of RFP Bidder*

 **P1 CERTIFICATIONS (A) INSERT (#P1-6)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (1) I am an officer, a director, or an individual otherwise authorized to undertake contracts (including the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement) and bind the RFP Bidder.
- (2) All information provided in this Part 1 Proposal is true and accurate to the best of my knowledge and belief.
- (3) If, for any reason or due to any circumstance, any information provided in this Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, I or the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date.
- (4) This Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date.
- (5) The RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

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Second Item: Additional Representations for RFP Bidders that have not previously qualified

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The Officer of the RFP Bidder must make a number of certifications as detailed in the RFP Rules. **THE OFFICER OF THE RFP BIDDER MAKES SUCH CERTIFICATIONS BY COMPLETING THE P1 CERTIFICATIONS B INSERT. THE SIGNATURE OF THE OFFICER OF THE RFP BIDDER MUST BE NOTARIZED.** The P1 Certifications B Insert is also labelled INSERT #P1-7.

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\_\_\_\_\_  
*Name of RFP Bidder*

**P1 CERTIFICATIONS (B) INSERT (#P1-7)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (1) I understand the terms of the Uniform SMA. The RFP Bidder accepts all of the terms of the Uniform SMA without modifications, and the RFP Bidder will execute the Uniform SMA and the Transaction Confirmation(s) for all Bids approved by the Commission.
- (2) The submission of this Part 1 Proposal constitutes the RFP Bidder's acknowledgement and acceptance of all the terms and conditions of the RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.
- (3) The RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA.
- (4) The RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

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PECO Exhibit JJM-8

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Third Item: Load Serving Entity

By the time service begins, a Default Supplier must be a Load Serving Entity ("LSE") in good standing in PJM, and must be a signatory of all applicable PJM Agreements, including the Reliability Assurance Agreement ("RAA").

**Is the RFP Bidder an LSE in PJM?**

Yes  No

Yes

**THE RFP BIDDER MUST PROVIDE A COPY OF THE SIGNATURE PAGE OF THE RELIABILITY ASSURANCE AGREEMENT ("RAA").**

	Signature Page of RAA
---	-----------------------

If the name of the signatory is not the same as the RFP Bidder, please provide evidence of a name change.

	Evidence of name change (if necessary)
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PECO Exhibit JJM-8

No

THE OFFICER OF THE RFP BIDDER MUST MAKE THE CERTIFICATIONS DETAILED IN THE RFP RULES BY COMPLETING THE LSE REPRESENTATION INSERT. The LSE Representation Insert is also labelled INSERT #P1-9.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Name of RFP Bidder

 LSE REPRESENTATION INSERT (#P1-9)

**Please note!** ONLY RFP Bidders that are NOT PJM LSEs are required to submit this Insert.

I, \_\_\_\_\_, \_\_\_\_\_ (the Officer of the RFP Bidder), certify that the RFP Bidder has investigated the requirements to become an LSE in PJM and that there exist no impediments for the RFP Bidder to become an LSE by the start of the supply period and to remain an LSE for the duration of the supply period. The RFP Bidder undertakes to be qualified as a PJM LSE by the start of the supply period should the RFP Bidder become a Default Supplier.

\_\_\_\_\_  
 Signature of Officer

\_\_\_\_\_  
 Date

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5. Foreign RFP Bidders and Foreign Entities

5. Is the RFP Bidder a Foreign RFP Bidder

~~AN Entity, or is the RFP Bidder THAT IS relying on the financial standing of a Foreign Entity as RFP BIDDER Guarantor, or is REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE RFP RULES BY COMPLETING THE P1 the RFP Bidding submitting a Proposal under an Agency Agreement with a Foreign BIDDER INSERT AND UPLOADING ASSOCIATED DOCUMENTS BELOW. The P1 Foreign Bidder Insert is also labelled INSERT #P1-10. Entity as Principal?~~

Yes  No

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Insert #P1-10  Yes

**AN RFP BIDDER THAT IS A FOREIGN RFP BIDDER, OR THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP GUARANTOR, OR RFP BIDDERS SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE SECTION IV.5 OF THE RFP RULES BY COMPLETING THE APPLICABLE INSERT AND PROVIDING ASSOCIATED DOCUMENTS.** An RFP Bidder that is a Foreign RFP Bidder is required to complete the P1 Foreign Bidder Insert, also labelled INSERT #P1-10. An RFP Bidder relying on the financial standing of a Foreign RFP Guarantor is required to complete the P1 Foreign Guarantor Insert, also labelled INSERT #P1-11. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal is required to complete the P1 Foreign Principal Insert, also labelled INSERT #P1-12.

	<i>Insert (P1 Foreign Bidder Insert #P1-10, P1 Foreign Guarantor Insert #P1-11, OR Foreign Principal Insert #P1-12)</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

*Name of RFP Bidder*

**P1 FOREIGN BIDDER INSERT (#P1-10)**

**Please note! ONLY Foreign RFP Bidders are required to submit this Insert.**

*First Item: Evidence of Creditworthiness*

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, a Foreign RFP Bidder may provide any additional evidence of creditworthiness for the Foreign RFP Bidder so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

**Are you submitting additional evidence of creditworthiness for the Foreign RFP Bidder?**

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Yes  No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

*Second Item: Acknowledgment*

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

\_\_\_\_\_  
Signature of Officer \_\_\_\_\_ Date

*Third Item: Draft Documents*

**The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal. THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

**Are you submitting a draft of any of these additional documents for evaluation?**

Yes  No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

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\_\_\_\_\_  
*Name of RFP Bidder*

**P1 FOREIGN GUARANTOR INSERT (#P1-11)**

**Please note! ONLY RFP Bidders relying on a Foreign RFP Guarantor are required to submit this Insert.**

*First Item: Evidence of Creditworthiness*

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder relying on the financial standing of a Foreign RFP Guarantor may provide any additional evidence of creditworthiness for the Foreign RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

**Are you submitting additional evidence of creditworthiness for the Foreign RFP Guarantor?**

**Yes**  **No**

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

*Second Item: Acknowledgment*

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign Entity as RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

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\_\_\_\_\_  
Signature of Officer \_\_\_\_\_ Date

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

Are you submitting a draft of any of these additional documents for evaluation?

Yes  No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

\_\_\_\_\_  
Name of RFP Bidder

 **P1 FOREIGN PRINCIPAL INSERT (#P1-12)**

**Please note! ONLY RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as RFP Principal may provide any additional evidence of creditworthiness for the RFP Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

Are you submitting additional evidence of creditworthiness for the Foreign Principal?

Yes  No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

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Second Item: Acknowledgment

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

\_\_\_\_\_  
Signature of Officer \_\_\_\_\_ Date

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

Are you submitting a draft of any of these additional documents for evaluation?

Yes  No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

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	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

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\_\_\_\_\_  
Name of RFP Bidder

**P1 FOREIGN BIDDER INSERT (#P1-10)**

**Please note! ONLY Foreign RFP Bidders are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, a Foreign RFP Bidder may provide any additional evidence of creditworthiness for the Foreign RFP Bidder so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

***Are you submitting additional evidence of creditworthiness for the Foreign RFP Bidder?***

Yes  No

**PLEASE UPLOAD SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.**

Second Item: Acknowledgment

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign RFP Bidder to be granted unsecured credit under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

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Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. ~~THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS BY UPLOAD TO THE ONLINE PART 1 FORM.~~

Are you submitting a draft of any of these additional documents for evaluation?

Yes  No

PLEASE UPLOAD ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.  No

The requirements of this section do not apply to you.

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**5.b. Foreign RFP Guarantor**

~~AN RFP BIDDER THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN RFP GUARANTOR IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE RFP RULES BY COMPLETING THE P1 FOREIGN GUARANTOR INSERT AND UPLOADING ASSOCIATED DOCUMENTS BELOW. The P1 Foreign Guarantor Insert is also labelled INSERT #P1-11.~~

	<i>Insert #P1-11</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

\_\_\_\_\_  
 Name of RFP Bidder

 **~~P1 FOREIGN GUARANTOR INSERT (#P1-11)~~**

**~~Please note! ONLY RFP Bidders relying on a Foreign RFP Guarantor are required to submit this Insert.~~**

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First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder relying on the financial standing of a Foreign RFP Guarantor may provide any additional evidence of creditworthiness for the Foreign RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

Are you submitting additional evidence of creditworthiness for the Foreign RFP Guarantor?

Yes  No

PLEASE UPLOAD SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.

Second Item: Acknowledgment

THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION:

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign Entity as RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

\_\_\_\_\_  
Signature of Officer \_\_\_\_\_ Date

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS BY UPLOAD TO THE ONLINE PART 1 FORM.**

Are you submitting a draft of any of these additional documents for evaluation?

Yes  No

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**PLEASE UPLOAD ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.**

**5.c. Foreign Principal**

~~AN RFP BIDDER THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN PRINCIPAL IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE RFP RULES BY COMPLETING THE P1 FOREIGN PRINCIPAL INSERT AND UPLOADING ASSOCIATED DOCUMENTS BELOW. The P1 Foreign Principal Insert is also labelled INSERT #P1-12.~~

	<i>Insert #P1-12</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

\_\_\_\_\_  
 Name of RFP Bidder

~~**P1 FOREIGN PRINCIPAL INSERT (#P1-12)**~~

~~**Please note! ONLY RFP Bidders relying on a Foreign Principal are required to submit this Insert.**~~

~~First Item: Evidence of Creditworthiness~~

~~In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder relying on the financial standing of a Foreign Principal may provide any additional evidence of creditworthiness for the Foreign Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.~~

~~**Are you submitting additional evidence of creditworthiness for the Foreign Principal?**~~

~~Yes  No~~

~~**PLEASE UPLOAD SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.**~~

~~Second Item: Acknowledgment~~

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**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION:**

I,            (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal for the RFP Bidder and the Foreign Entity as Principal to be granted unsecured credit under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

\_\_\_\_\_  
Signature of Officer \_\_\_\_\_ Date

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS BY UPLOAD TO THE ONLINE PART 1 FORM.**

*Are you submitting a draft of any of these additional documents for evaluation?*

Yes                       No

**PLEASE UPLOAD ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.**

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PECO Exhibit JJM-8

### 6. Justification of Omissions

If you are unable to provide all documents or information required with this online Part 1 Form, please justify fully any omissions in the space provided below.

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If you are providing additional documents, such as providing the Part 2 Form certifications for early processing, please use the spaces below to upload these documents.

	<i>File upload</i>
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## APPENDIX 4 – ILLUSTRATIVE SHORT PART 1 FORM DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS

PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

This Short Part 1 Form may only be used by an entity that has submitted a successful Part 1 Proposal in a previous solicitation under PECO’s current Default Service Program (“DSP ~~REV~~”). However, if there was a change in the corporate structure of the RFP Bidder, or if the identity of the entity on whose financial standing the RFP Bidder relies has changed, the RFP Bidder must use the Standard Part 1 Form.

Before completing this online Part 1 Form, please review the RFP, including the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”), so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.PECOprocurement.com](http://www.PECOprocurement.com).

By submitting a Part 1 Proposal in response to this RFP, you are agreeing to all terms and conditions of this RFP.

*Any information provided by an RFP Bidder in the Part 1 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission. PECO representatives will review financial information and will participate in the evaluation of the creditworthiness of each RFP Bidder. Information regarding the content or status of any Part 1 Proposal will not be released publicly or to any individual RFP Bidder during the evaluation process.*

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## SHORT PART 1 FORM

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### GENERAL INSTRUCTIONS on the RFP Bidders that can use this form:

- This Short Part 1 Form is for the exclusive use of RFP Bidders that successfully submitted a Part 1 Proposal in a previous solicitation under DSP ~~IV~~V. If you are not eligible under this criterion, **please use the Standard Part 1 Form.**
- If there is a change in the corporate structure of the RFP Bidder (through a merger for example) since you last submitted a successful Part 1 Proposal in a previous solicitation under DSP ~~IV~~V, **please use the Standard Part 1 Form.**
- If the entity ~~on whose~~ on whose financial standing the RFP Bidder relies changed since you last submitted a successful Part 1 Proposal in a previous solicitation under DSP ~~IV~~V, **please use the Standard Part 1 Form.**

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### 1. Contact Information and Representations

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#### First Item: Name and Address of the RFP Bidder

Below is the information that you previously provided. **PLEASE MAKE ANY NECESSARY UPDATES TO THE RFP BIDDER'S LEGAL NAME AND ADDRESS.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Legal Name of RFP Bidder

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Street Address

Formatted Table

Formatted Table

City

State

Zip Code

**IF THE LEGAL NAME OF THE RFP BIDDER HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE.**

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#### Second Item: Officer of the RFP Bidder

The Officer of the RFP Bidder must be an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder. The Officer of the RFP Bidder whose contact information is provided in this online Part 1 Form must:

- make all representations required by the Part 1 Proposal requirements; and
- make all representations required by the Part 2 Proposal requirements.

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE OFFICER OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

First Name

Last Name

Formatted Table

Title

Formatted Table

Street Address

Formatted Table

Formatted Table

City

State

Zip Code

Phone No.

Email Address

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Third Item: Representative of the RFP Bidder

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The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder.

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE REPRESENTATIVE OF THE RFP BIDDER.** The Officer of the RFP Bidder may also serve as the Representative. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

First Name [pre-populated]	Last Name [pre-populated]	
Title [pre-populated]		
Street Address [pre-populated] [pre-populated]		
City [pre-populated]	State [pre-populated]	Zip Code [pre-populated]
Phone No. [pre-populated]	Cell Phone No. (optional) [pre-populated]	Email Address [pre-populated]

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Has the individual who will serve as Representative changed?

Yes  No

If the individual who will serve as Representative has changed since you last submitted a successful Part 1 Proposal under DSP ~~IV~~**V**, **THE OFFICER OF THE RFP BIDDER MUST DESIGNATE THE INDIVIDUAL NAMED IN THE ONLINE PART 1 FORM TO SERVE AS THE REPRESENTATIVE OF THE RFP BIDDER BY COMPLETING THE REPRESENTATIVE INSERT.** The Representative Insert is also labelled INSERT #P1-1.

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\_\_\_\_\_  
Name of RFP Bidder

**REPRESENTATIVE INSERT (#P1-1)**

**THE OFFICER OF THE RFP BIDDER MUST DESIGNATE THE INDIVIDUAL WHOSE CONTACT INFORMATION IS PROVIDED IN THE ONLINE PART 1 FORM AS THE REPRESENTATIVE.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder) hereby designate \_\_\_\_\_ (name of the Representative) to serve as the Representative of the RFP Bidder.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

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Fourth Item: Nominees

The Independent Evaluator provides notifications to the RFP Bidder by email and provides documents needed for participation by secure file transfer. Any such notification will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that where delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day.

The RFP Bidder may designate up to three (3) authorized individuals (each called a "Nominee") to receive communications from the Independent Evaluator in addition to the Representative. The RFP Bidder may make such a designation at any time during the solicitation.

Nominees are designated for a single solicitation and previously submitted designations are not saved for use in subsequent solicitations.

**Is the RFP Bidder designating Nominees at this time?**

Yes  No

**THE REPRESENTATIVE OF THE RFP BIDDER OR THE OFFICER OF THE RFP BIDDER DESIGNATES NOMINEES BY COMPLETING THE NOMINEE INSERT.** The Nominee Insert is also labelled INSERT #P1-2.

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\_\_\_\_\_  
*Name of RFP Bidder*

**NOMINEE INSERT (#P1-2)**

**Please note! This insert is optional.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder or the Representative of the RFP Bidder) authorize the individuals whose contact details are immediately below to receive communications from the Independent Evaluator and to act on behalf of the RFP Bidder during the Proposal submission process.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Contact Information for Nominee #1**

\_\_\_\_\_  
*First Name*

\_\_\_\_\_  
*Last Name*

\_\_\_\_\_  
*Title*

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Phone No.

Cell Phone No. (optional)

Email Address

Contact Information for Nominee #2

First Name

Last Name

Title

Phone No.

Cell Phone No. (optional)

Email Address

Contact Information for Nominee #3

First Name

Last Name

Title

Phone No.

Cell Phone No. (optional)

Email Address

Notes (optional)

The RFP Bidder may provide additional information here, such as the period during which a particular individual will act as Nominee or the individual that a Nominee is replacing.

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2.a. Information Required for RFP Bidders Relying on Their Own Financial Standing.

IF THE ENTITY UPON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING HAS CHANGED, YOU MUST USE THE STANDARD PART 1 FORM. PLEASE CONTACT THE INDEPENDENT EVALUATOR AT PECOPROUREMENT@NERA.COM TO RECEIVE INSTRUCTIONS ON THE FORM THAT YOU SHOULD USE.

First Item: Financial Information

IF AVAILABLE, PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP BIDDER, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:

- IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION ("SEC") FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;
• IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, PLEASE PROVIDE, IF AVAILABLE, THE RFP BIDDER'S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.

Table with 2 columns: Document icon, Description. Row 1: Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer). Row 2: Attestation from Chief Financial Officer if necessary.

Second Item: Credit Ratings

Below is the information that you previously provided. PLEASE MAKE ANY UPDATES TO THE CREDIT RATINGS FOR THE RFP BIDDER. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Is the RFP Bidder rated by Standard & Poor's Rating Services S&P Global Ratings ("S&P")?

[X] Yes [ ] No

RFP Bidder's rating: \_\_\_\_\_
Type of rating (check one): [ ] Senior unsecured debt rating [ ] Corporate issuer rating

Is the RFP Bidder rated by Moody's Investors Service, Inc. ("Moody's")?

[X] Yes [ ] No

RFP Bidder's rating: \_\_\_\_\_
Type of rating (check one): [ ] Senior unsecured debt rating [ ] Corporate issuer rating

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Is the RFP Bidder rated by Fitch, Inc. ("Fitch")?

Yes  No

RFP Bidder's rating: \_\_\_\_\_

Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

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2.b. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Guarantor

You previously elected the RFP Guarantor whose information is below as the entity on whose financial standing the RFP Bidder is relying. IF THE ENTITY UPON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING HAS CHANGED, YOU MUST USE THE STANDARD PART 1 FORM. IF THERE WAS A CHANGE IN THE CORPORATE STRUCTURE OF THE RFP GUARANTOR, THROUGH A MERGER FOR EXAMPLE, YOU MUST USE THE STANDARD PART 1 FORM. PLEASE CONTACT THE INDEPENDENT EVALUATOR AT PECOPROUREMENT@NERA.COM TO RECEIVE INSTRUCTIONS ON THE FORM THAT YOU SHOULD USE.

First Item: Name and Address of RFP Guarantor

Below is the information that you previously provided. PLEASE MAKE ANY UPDATES TO THE ADDRESS FOR THE RFP GUARANTOR. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Legal Name of RFP Guarantor

[pre-populated]

Street Address

[pre-populated]

[pre-populated]

City

[pre-populated]

State

[pre-populated]

Zip Code

[pre-populated]

IF THE LEGAL NAME OF THE RFP GUARANTOR HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE.

 Evidence of name change (if necessary)

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Second Item: Financial Information

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Financial information must be available for the RFP Guarantor.

PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE RFP GUARANTOR, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:

- IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION (“SEC”) FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;
- IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, YOU MUST PROVIDE THE RFP GUARANTOR’S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.

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	Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)
	Attestation from Chief Financial Officer (if necessary)

Third Item: Credit Ratings

Below is the information that you previously provided. PLEASE MAKE ANY UPDATES TO CREDIT RATINGS FOR THE RFP GUARANTOR. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Is the RFP Guarantor rated by ~~Standard & Poor’s Rating Services~~ S&P Global Ratings (“S&P”)?

Yes  No

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RFP Guarantor’s rating: \_\_\_\_\_

Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

Is the RFP Guarantor rated by Moody’s Investors Service, Inc. (“Moody’s”)?

Yes  No

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RFP Guarantor’s rating: \_\_\_\_\_

Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

Is the RFP Guarantor rated by Fitch, Inc. (“Fitch”)?

Yes  No

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RFP Guarantor’s rating: \_\_\_\_\_

Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

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**2.c. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Principal**

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You previously elected a Principal as the entity on whose financial standing the RFP Bidder is relying; the RFP Bidder is submitting a Proposal under an Agency Agreement. **IF THE ENTITY UPON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING HAS CHANGED YOU MUST USE THE STANDARD PART 1 FORM. PLEASE CONTACT THE INDEPENDENT EVALUATOR AT [PECOPROUREMENT@NERA.COM](mailto:PECOPROUREMENT@NERA.COM) TO RECEIVE INSTRUCTIONS ON THE FORM THAT YOU SHOULD USE.**

**AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO PROVIDE FINANCIAL INFORMATION REGARDING THE PRINCIPAL AS WELL AS OTHER INFORMATION REGARDING THE AGENCY AGREEMENT AS SPECIFIED IN THE RFP RULES.** The Independent Evaluator provided to you, along with your login credentials, the P1 Agency Certifications Insert (#P1-3) and the Agency Agreement that you submitted previously (if any).

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First Item: Principals to the Agency Agreement

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME(S) OF THE PRINCIPAL(S).** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Legal Name of Principal(s)

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Second Item: Agency Agreement

**Has the Agency Agreement changed since the RFP Bidder last submitted a successful Part 1 Proposal?**

Yes  No

A copy of the Agency Agreement is required. **PLEASE ~~UPLOAD~~ PROVIDE ONE (1) COPY OF THE AGENCY AGREEMENT.**

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	Agency Agreement
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Third Item: Principal on Whose Financial Standing the RFP Bidder is Relying

Below is the information that you previously provided regarding the Principal on whose financial standing the RFP Bidder is relying.

- If there are several Principals in the Agency Agreement, you must identify the Principal with the lowest credit rating ~~as the entity on whose financial standing the RFP Bidder relying.~~
- If several Principals have the same lowest credit rating, you must identify the Principal among these that also has the lowest tangible net worth ~~as the entity on whose financial standing the RFP Bidder relies.~~

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PLEASE MAKE ANY NECESSARY UPDATES. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

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Legal Name of RFP Principal

[pre-populated]

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Street Address

[pre-populated]

Formatted Table

[pre-populated]

Formatted Table

City

[pre-populated]

State

[pre-populated]

Zip Code

[pre-populated]

IF THE LEGAL NAME OF THE PRINCIPAL HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE. MORE INFORMATION MAY BE REQUIRED.



Evidence of name change (if necessary)

Fourth Item: Financial Information

Financial information must be available for the Principal on whose financial standing the RFP Bidder is relying.

PLEASE PROVIDE THE MOST RECENT QUARTERLY FINANCIAL INFORMATION FOR THE PRINCIPAL ON WHOSE FINANCIAL STANDING THE RFP BIDDER IS RELYING, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules:

- IF AVAILABLE, YOU MUST PROVIDE THE MOST RECENT SECURITIES AND EXCHANGE COMMISSION ("SEC") FORM 10-Q OR 10-K (WHICHEVER IS MORE RECENT) TO FULFILL THIS REQUIREMENT;
• IF THE SEC FORM 10-Q OR 10-K IS UNAVAILABLE, YOU MUST PROVIDE THE RFP PRINCIPAL'S MOST RECENT QUARTERLY, MONTHLY, OR BI-ANNUAL FINANCIAL INFORMATION accompanied by an attestation by the Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of the RFP Rules.



Most recent quarterly financial information (or, if unavailable, most recent monthly or bi-annual financial information accompanied by an attestation by the Chief Financial Officer)

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Attestation from Chief Financial Officer (if necessary)

Fifth Item: Credit Ratings

Below is the information that you previously provided. PLEASE MAKE ANY UPDATES TO CREDIT RATINGS FOR THE RFP PRINCIPAL. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

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Illustrative Short Part 1 Form

Is the Principal rated by ~~Standard & Poor's Rating Services~~ S&P Global Ratings ("S&P")?

Yes  No

Principal's rating: \_\_\_\_\_  
Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

Is the Principal rated by Moody's Investors Service, Inc. ("Moody's")?

Yes  No

Principal's rating: \_\_\_\_\_  
Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

Is the Principal rated by Fitch, Inc. ("Fitch")?

Yes  No

Principal's rating: \_\_\_\_\_  
Type of rating (**check one**):  Senior unsecured debt rating  Corporate issuer rating

Sixth Item: Certification

THE OFFICER OF THE RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO MAKE A CERTAIN REPRESENTATION BY COMPLETING THE P1 AGENCY CERTIFICATIONS (#P1-3). The P1 Agency Certifications Insert is also labelled INSERT #P1-3.

\_\_\_\_\_  
Name of RFP Bidder

 **P1 AGENCY CERTIFICATIONS (PREV QUAL) INSERT (#P1-3)**

**Please note!** Only RFP Bidders submitting a Proposal under an Agency Agreement are required to complete this Insert.

I, \_\_\_\_\_ (the Officer of the RFP Bidder), certify that I have the authority to bind the Principal(s) under the Agency Agreement provided with this Part 1 Proposal. I acknowledge that with the Part 2 Proposal, the RFP Bidder will be required to submit an Officers' Certificate signed by an officer of each Principal and substantially in the form of Appendix 6 to the RFP Rules.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

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RFP Bidders that have submitted a successful Part 1 Proposal for a prior solicitation under DSP ~~IV~~V previously acknowledged that, with the Part 2 Proposal, the RFP Bidder will be required to submit an Officers' Certificate signed by an officer of each Principal and substantially in the form of Appendix 6 to the RFP Rules.

Seventh Item: Draft Officers' Certificate

The RFP Bidder may, but is not required to, submit a draft Officers' Certificate for evaluation. If a draft Officers' Certificate is submitted for evaluation, the Independent Evaluator will inform the RFP Bidder of any changes required.

*Is the RFP Bidder submitting a draft Officers' Certificate?*

Yes  No

PLEASE ~~UPLOAD~~PROVIDE THE RFP BIDDER'S DRAFT OFFICERS' CERTIFICATE.

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	<i>Draft Officers' Certificate</i>
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### 3. Credit Instruments and Uniform SMA

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#### First Item: Standard Pre-Bid Letter of Credit

An RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD PRE-BID LETTER OF CREDIT BY SUBMITTING A DRAFT PRE-BID LETTER OF CREDIT SUBSTANTIALLY IN THE FORM OF THE STANDARD PRE-BID LETTER OF CREDIT INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD PRE-BID LETTER OF CREDIT USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Pre-Bid Letter of Credit are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

*Is the RFP Bidder submitting a Draft Pre-Bid Letter of Credit?*

Yes  No

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**Does the Draft Pre-Bid Letter of Credit contain the same requested modifications as a Draft Pre-Bid Letter of Credit submitted in a prior solicitation?**

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Yes  No

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**No**

A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated. **PLEASE ~~UPLOAD~~ PROVIDE THE DRAFT PRE-BID LETTER OF CREDIT.**

	Draft Pre-Bid Letter of Credit
---	--------------------------------

**Yes**

A Draft Pre-Bid Letter of Credit that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to pecoprocurement@nera.com.

#### Second Item: Standard Post-Bid Letter of Credit

An RFP Bidder may request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD POST-BID LETTER OF CREDIT BY SUBMITTING A DRAFT POST-BID LETTER OF CREDIT SUBSTANTIALLY IN THE FORM OF THE STANDARD POST-BID LETTER OF CREDIT INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD POST-BID LETTER OF CREDIT USING TRACKED CHANGES IN MICROSOFT WORD.**

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All approved modifications to the Standard Post-Bid Letter of Credit are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

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**Is the RFP Bidder submitting a Draft Post-Bid Letter of Credit?**

Yes  No

**Does the Draft Post-Bid Letter of Credit contain the same requested modifications as a Draft Post-Bid Letter of Credit submitted in a prior solicitation?**

Yes  No

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**No**

A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated. **PLEASE ~~UPLOAD~~ PROVIDE THE DRAFT POST-BID LETTER OF CREDIT.**

 Draft Post-Bid Letter of Credit

**Yes**

A Draft Post-Bid Letter of Credit that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

Third Item: Standard Guaranty

An RFP Bidder may request modifications to the Standard Guaranty that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder.

**AN RFP BIDDER REQUESTS MODIFICATIONS TO THE STANDARD GUARANTY BY SUBMITTING A DRAFT GUARANTY SUBSTANTIALLY IN THE FORM OF THE STANDARD GUARANTY INDICATING CLEARLY ANY AND ALL MODIFICATIONS TO THE STANDARD GUARANTY USING TRACKED CHANGES IN MICROSOFT WORD.**

All approved modifications to the Standard Guaranty are posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

**Is the RFP Bidder submitting a Draft Guaranty?**

Yes  No

**Does the Draft Guaranty contain the same requested modifications as a Draft Guaranty submitted in a prior solicitation?**

Yes  No

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No

A Draft Guaranty that is not substantially in the form of the Standard Guaranty will not be considered or evaluated. **PLEASE PROVIDE THE DRAFT GUARANTY.**

 Draft Guaranty

Yes

A Draft Guaranty that contains the same requested modifications as a prior submittal will not be reviewed again by PECO. To request the Independent Evaluator to email to you PECO's assessment of the prior submittal, please email such request to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com).

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Fourth Item: Information to Prepare the Uniform SMA and Its Exhibits

Is the RFP Bidder a Default Supplier serving tranches won in a solicitation under DSP ~~HW~~?

Yes  No

If Yes, please proceed to the Section 4.

If No, please provide the information required by this section.

**RFP BIDDERS ARE ASKED TO PROVIDE ALL INFORMATION NEEDED TO PREPARE THE UNIFORM SMA AND ITS EXHIBITS. AN RFP BIDDER THAT DOES NOT PROVIDE THIS INFORMATION MUST INSTEAD SUBMIT AN ACKNOWLEDGMENT SIGNED BY THE OFFICER OF THE RFP BIDDER.**

Is the RFP Bidder providing information to prepare the Uniform SMA at this time?

Yes  No

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Yes

**THE RFP BIDDER PROVIDES THE INFORMATION TO PREPARE THE UNIFORM SMA AND ITS EXHIBITS BY COMPLETING THE UNIFORM SMA INSERT.** The Uniform SMA Insert is also labelled INSERT #P1-4.

The Independent Evaluator provided to you, along with your login credentials, the Uniform SMA Insert that you submitted previously. You may make any updates to this document. By submitting this form of the Uniform SMA Insert (#P1-4) without making updates, you will be confirming that the previously provided information remains valid.

Name of RFP Bidder  
 **UNIFORM SMA INSERT (#P1-4)**

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**Please note! RFP Bidders must submit one (but ONLY one) of Insert #P1-4 and Insert #P1-5.**

- 1. Under Section 5.4(a)(i) of the Uniform SMA, the DS Supplier may, in its sole discretion, add the following subsection 5.4(a)(i) by indicating yes or no below.

5.4(a)(i) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes as may have occurred since the previous calendar year.

**Do you intend for subsection 5.4(a)(i) to be included as part of the Uniform SMA?**

- Yes
- No

- 2. The information that you provide below will be used to complete Exhibit 2 (Form of Notice) to the Uniform SMA. **IF ANY OF THE INFORMATION REQUESTED BELOW IS UNAVAILABLE, PLEASE ENTER N/A IN THE CORRESPONDING FIELDS.**

- (a) All Notices:

<i>First Name</i>	<i>Last Name</i>	
<input type="text"/>	<input type="text"/>	
<i>Street Address</i>		
<input type="text"/>		
<input type="text"/>		
<i>City</i>	<i>State</i>	<i>Zip Code</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Phone No.</i>	<i>Fax No.</i>	<i>Email Address</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>DUNS</i>	<i>Federal Tax I.D. Number</i>	
<input type="text"/>	<input type="text"/>	

- (b) Invoices:

<i>ATTN:</i>		
<i>First Name</i>	<i>Last Name</i>	
<input type="text"/>	<input type="text"/>	
<i>Phone No.</i>	<i>Fax No.</i>	<i>Email Address</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>

- (c) Schedule:

<i>First Name</i>	<i>Last Name</i>
<input type="text"/>	<input type="text"/>

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*Phone No.* \_\_\_\_\_ *Fax No.* \_\_\_\_\_ *Email Address*  
\_\_\_\_\_  
\_\_\_\_\_

(d) **Payments:**

*ATTN:*  
*First Name* \_\_\_\_\_ *Last Name* \_\_\_\_\_  
\_\_\_\_\_  
*Phone No.* \_\_\_\_\_ *Fax No.* \_\_\_\_\_ *Email Address*  
\_\_\_\_\_  
\_\_\_\_\_

(e) **Wire Transfer:**

*Bank*  
\_\_\_\_\_  
*ABA* \_\_\_\_\_ *ACCT* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(f) **Credit and Collections:**

*ATTN:*  
*First Name* \_\_\_\_\_ *Last Name* \_\_\_\_\_  
\_\_\_\_\_  
*Phone No.* \_\_\_\_\_ *Fax No.* \_\_\_\_\_ *Email Address*  
\_\_\_\_\_  
\_\_\_\_\_

(g) **Additional Notices of an Event of Default to:**

*ATTN:*  
*First Name* \_\_\_\_\_ *Last Name* \_\_\_\_\_  
\_\_\_\_\_  
*Phone No.* \_\_\_\_\_ *Fax No.* \_\_\_\_\_ *Email Address*  
\_\_\_\_\_  
\_\_\_\_\_

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No

**THE OFFICER OF THE RFP BIDDER PROVIDES THE REQUIRED ACKNOWLEDGMENT BY COMPLETING THE DELAY (SMA) INSERT.** The Delay (SMA) Insert is also labelled INSERT #P1-5.

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\_\_\_\_\_

*Name of RFP Bidder*

~~ **DELAY (SMA) INSERT (#P1-5)**~~

 **DELAY (SMA) INSERT (#P1-5)**

**Please note! RFP Bidders must submit one (but ONLY one) of Insert #P1-4 and Insert #P1-5.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all information required by the Uniform SMA Insert (#P1-4) by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

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4. Representations

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The Officer of the RFP Bidder must make a number of representations and certifications, which may include any or all of those detailed in Paragraphs IV.4.1, IV.4.2, and IV.4.3 of the RFP Rules.

Is the RFP Bidder a Default Supplier serving tranches won in a solicitation under DSP #V?

- Yes No

Yes

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THE OFFICER OF THE RFP BIDDER MAKES SUCH CERTIFICATIONS BY COMPLETING THE P1 CERTIFICATIONS (A) INSERT. The P1 Certifications (Default Supplier) Insert is also labelled INSERT #P16.

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THE SIGNATURE OF THE OFFICER OF THE RFP BIDDER MUST BE NOTARIZED.

Name of RFP Bidder

P1 CERTIFICATIONS (A) INSERT (#P1-6)

An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.

I certify that:

- (1) I am an officer, a director, or an individual otherwise authorized to undertake contracts (including the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement) and bind the RFP Bidder.
(2) All information provided in this Part 1 Proposal is true and accurate to the best of my knowledge and belief.
(3) If, for any reason or due to any circumstance, any information provided in this Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, I or the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date.
(4) This Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date.
(5) The RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP.

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\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

No

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**THE OFFICER OF THE RFP BIDDER MAKES SUCH CERTIFICATIONS BY COMPLETING THE P1 CERTIFICATIONS (A) INSERT AND P1 CERTIFICATIONS (C) INSERT.** These inserts are also labelled INSERT #P1-6 and INSERT #P1-8, respectively.

**THE SIGNATURE OF THE OFFICER OF THE RFP BIDDER MUST BE NOTARIZED.**

\_\_\_\_\_  
*Name of RFP Bidder*

**P1 CERTIFICATIONS (A) INSERT (#P1-6)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (6) I am an officer, a director, or an individual otherwise authorized to undertake contracts (including the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement) and bind the RFP Bidder.
- (7) All information provided in this Part 1 Proposal is true and accurate to the best of my knowledge and belief.
- (8) If, for any reason or due to any circumstance, any information provided in this Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, I or

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the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date.

- (9) This Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date.
- (10) The RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP.

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\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Name of RFP Bidder*

**P1 CERTIFICATIONS (C) INSERT (#P1-8)**

**An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.**

I certify that:

- (1) The RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA.
- (2) The RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent.

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(3) If the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, all information required for the preparation of the Uniform SMA and its Exhibits must be submitted and complete by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

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5. Foreign RFP Bidders and Foreign Entities

5. Is the RFP Bidder a Foreign RFP Bidder

AN Entity, or is the RFP Bidder THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP BIDDER GUARANTOR, OR IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE RFP RULES BY COMPLETING THE P1 Foreign Bidder Insert, also labelled INSERT #P1-10. Entity as Principal?

Yes No

Insert #P1-10 Yes

AN RFP BIDDER THAT IS A FOREIGN RFP BIDDER, OR THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY AS RFP GUARANTOR, OR RFP BIDDERS SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE SECTION IV.5 OF THE RFP RULES BY COMPLETING THE APPLICABLE INSERT AND PROVIDING ASSOCIATED DOCUMENTS. An RFP Bidder that is a Foreign RFP Bidder is required to complete the P1 Foreign Bidder Insert, also labelled INSERT #P1-10. An RFP Bidder relying on the financial standing of a Foreign RFP Guarantor is required to complete the P1 Foreign Guarantor Insert, also labelled INSERT #P1-11. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal is required to complete the P1 Foreign Principal Insert, also labelled INSERT #P1-12.

Table with 2 columns: Document type and description. Includes items like 'Insert (P1 Foreign Bidder Insert #P1-10, P1 Foreign Guarantor Insert #P1-11, OR P1 Foreign Principal Insert #P1-12)', 'Additional Evidence of Creditworthiness', 'Draft legal opinion', and 'Draft sworn certificate'.

Name of RFP Bidder

P1 FOREIGN BIDDER INSERT (#P1-10)

Please note! ONLY Foreign RFP Bidders are required to submit this Insert.

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First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, a Foreign RFP Bidder may provide any additional evidence of creditworthiness for the Foreign RFP Bidder so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

Are you submitting additional evidence of creditworthiness for the Foreign RFP Bidder?

Yes  No

PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.

Second Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal. THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.

Are you submitting a draft of any of these additional documents for evaluation?

Yes  No

PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.

\_\_\_\_\_  
Name of RFP Bidder

 **P1 FOREIGN GUARANTOR INSERT (#P1-11)**

**Please note! ONLY RFP Bidders relying on a Foreign RFP Guarantor are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder relying on the financial standing of a Foreign RFP Guarantor may provide any additional evidence of creditworthiness for the Foreign RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been

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incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

***Are you submitting additional evidence of creditworthiness for the Foreign RFP Guarantor?***

Yes  No

**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

*Second Item: Draft Documents*

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.

***Are you submitting a draft of any of these additional documents for evaluation?***

Yes  No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

\_\_\_\_\_  
*Name of RFP Bidder*

 **P1 FOREIGN PRINCIPAL INSERT (#P1-12)**

**Please note! ONLY RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal are required to submit this Insert.**

*First Item: Evidence of Creditworthiness*

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as RFP Principal may provide any additional evidence of creditworthiness for the RFP Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

***Are you submitting additional evidence of creditworthiness for the Foreign Principal?***

Yes  No

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**PLEASE PROVIDE SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

*Second Item: Draft Documents*

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal. **THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS.**

***Are you submitting a draft of any of these additional documents for evaluation?***

Yes  No

**PLEASE PROVIDE ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

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	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

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\_\_\_\_\_  
*Name of RFP Bidder*

**P1 FOREIGN BIDDER INSERT (#P1-10)**

**Please note! ONLY Foreign RFP Bidders are required to submit this Insert.**

*First Item: Evidence of Creditworthiness*

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, a Foreign RFP Bidder may provide any additional evidence of creditworthiness for the Foreign RFP Bidder so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

***Are you submitting additional evidence of creditworthiness for the Foreign RFP Bidder?***

Yes  No

**PLEASE UPLOAD SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.**

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Second Item: Acknowledgment

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign RFP Bidder to be granted unsecured credit under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

\_\_\_\_\_  
Signature of Officer \_\_\_\_\_ Date

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. ~~THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS BY UPLOAD TO THE ONLINE PART 1 FORM.~~

*Are you submitting a draft of any of these additional documents for evaluation?*

Yes \_\_\_\_\_  No

~~PLEASE UPLOAD ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.~~  No

The requirements of this section do not apply to you.

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**5.b. Foreign RFP Guarantor**

~~AN RFP BIDDER THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN RFP GUARANTOR IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE RFP RULES BY COMPLETING THE P1 FOREIGN GUARANTOR INSERT AND UPLOADING ASSOCIATED DOCUMENTS BELOW. The P1 Foreign Guarantor Insert is also labelled INSERT #P1-11.~~

 Insert #P1-11

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	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

\_\_\_\_\_  
Name of RFP Bidder

**P1 FOREIGN GUARANTOR INSERT (#P1-11)**

**Please note! ONLY RFP Bidders relying on a Foreign RFP Guarantor are required to submit this Insert.**

First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder relying on the financial standing of a Foreign RFP Guarantor may provide any additional evidence of creditworthiness for the Foreign RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

*Are you submitting additional evidence of creditworthiness for the Foreign RFP Guarantor?*

Yes  No

**PLEASE UPLOAD SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.**

Second Item: Acknowledgment

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.**

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign Entity as RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate

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secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

\_\_\_\_\_  
Signature of Officer \_\_\_\_\_ Date \_\_\_\_\_

Third Item: Draft Documents

The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. ~~THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS BY UPLOAD TO THE ONLINE PART 1 FORM.~~

Are you submitting a draft of any of these additional documents for evaluation?

Yes  No

~~PLEASE UPLOAD ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.~~

**5.c. Foreign Principal**

~~AN RFP BIDDER THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN PRINCIPAL IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN THE RFP RULES BY COMPLETING THE P1 FOREIGN PRINCIPAL INSERT AND UPLOADING ASSOCIATED DOCUMENTS BELOW. The P1 Foreign Principal Insert is also labelled INSERT #P1-12.~~

	<i>Insert #P1-12</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Additional Evidence of Creditworthiness</i>
	<i>Draft legal opinion</i>
	<i>Draft sworn certificate</i>
	<i>Draft sworn certificate</i>

\_\_\_\_\_  
Name of RFP Bidder

 **P1 FOREIGN PRINCIPAL INSERT (#P1-12)**

**Please note! ONLY RFP Bidders relying on a Foreign Principal are required to submit this Insert.**

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First Item: Evidence of Creditworthiness

In addition to supplying all required information and documents elsewhere in the online Part 1 Form, an RFP Bidder relying on the financial standing of a Foreign Principal may provide any additional evidence of creditworthiness for the Foreign Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

*Are you submitting additional evidence of creditworthiness for the Foreign Principal?*

Yes  No

PLEASE UPLOAD SUCH ADDITIONAL EVIDENCE OF CREDITWORTHINESS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.

Second Item: Acknowledgment

~~THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION.~~

~~I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that the following additional documents are required with the Part 2 Proposal for the RFP Bidder and the Foreign Entity as Principal to be granted unsecured credit under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.~~

\_\_\_\_\_  
Signature of Officer \_\_\_\_\_ Date

Third Item: Draft Documents

~~The Officer of the RFP Bidder has acknowledged in the immediately preceding certifications that additional documents are required with the Part 2 Proposal for unsecured credit to be granted under the terms of the Uniform SMA. THE RFP BIDDER MAY, BUT IS NOT REQUIRED TO, SUBMIT A DRAFT OF THESE DOCUMENTS BY UPLOAD TO THE ONLINE PART 1 FORM.~~

*Are you submitting a draft of any of these additional documents for evaluation?*

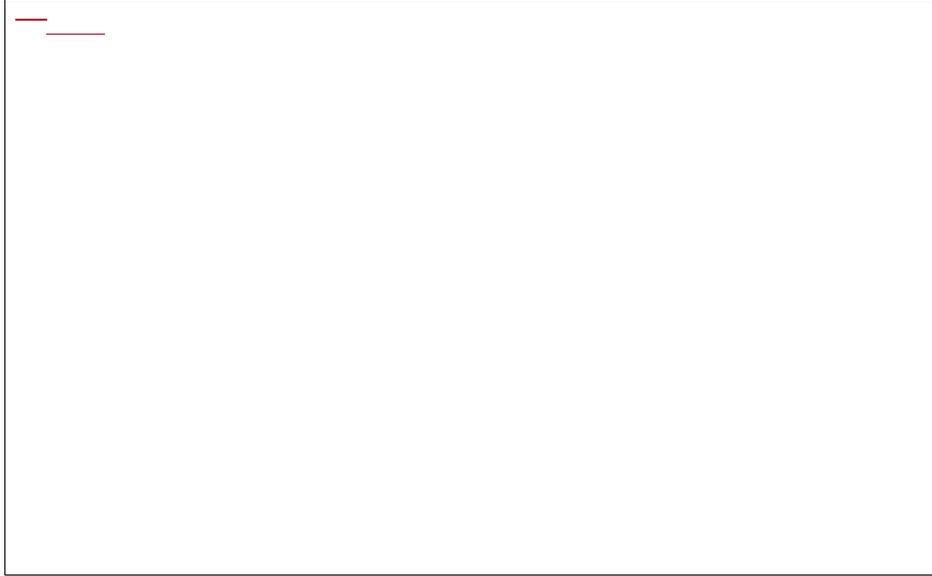
Yes  No

PLEASE UPLOAD ANY SUCH DOCUMENTS IN THE SPACES RESERVED FOR THAT PURPOSE IN THE ONLINE PART 1 FORM.

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## 6. Justification of Omissions

If you are unable to provide all documents or information required with this online Part 1 Form, please justify fully any omissions in the space provided below.



If you are providing additional documents, such as providing the Part 2 Form certifications for early processing, please use the spaces below to upload these documents.

	<i>File upload</i>
	<i>File upload</i>
	<i>File upload</i>

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## Appendix 5 - Requirements for Chief Financial Officer Attestation

The attestation by the Chief Financial Officer, (or similar position), if required by Article IV, must fulfill the following requirements:

1. the attestation is a notarized affidavit attached to the financial information provided by the entity;
2. the attestation identifies the person making the affidavit as the Chief Financial Officer (or similar position);
3. the Chief Financial Officer (or similar position) attests that "the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of \_\_\_\_\_ [name of entity]".

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PECO Exhibit JJM-8

## Appendix 6 - Officers' Certificate (RFP Bidders Under an Agency Agreement)

### Sample

The undersigned hereby certify that they are duly elected, qualified and acting officers holding the offices set forth below their respective names of \_\_\_\_\_ [name of Principal(s)], the "Principal" or together the "Principals". As such, they are familiar with the affairs of the Principal(s) and the Proposal submitted in response to PECO Energy Company's Default Service Program RFP under DSP IV, including the agency authorization submitted with the Proposal (the "Agency Agreement"). They are authorized to execute and deliver this certificate on behalf of the Principal(s).

They further certify that:

- (i) the copy of the Agency Agreement submitted with the Proposal is a true and complete copy of the Agency Agreement as currently in effect;
- (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to six (6) business days following the Bid Date;
- (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement, contemplated by the RFP Bidder, or contemplated by the Principal(s) to the RFP Bidder's knowledge;
- (iv) each individual who has executed this officers' certificate and the Agency Agreement is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and
- (v) \_\_\_\_\_ [insert name], the Officer of the RFP Bidder named in the Part 1 Proposal, is authorized to execute the Uniform SMA as well as any Transaction Confirmation(s) pursuant to the Uniform SMA on behalf of the Principal(s).

Capitalized terms used in this officers' certificate without definition have the meanings assigned to such terms in the RFP Rules.

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# APPENDIX 7 – ILLUSTRATIVE PART 2 FORM DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS

## STANDARD FORM

PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

Before completing this online Part 2 Form, please review the RFP, including the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”), so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.pecoprocedure.com](http://www.pecoprocedure.com).

By having submitted a Part 1 Proposal in response to this RFP, you agreed to all terms and conditions of this RFP.

*Any information provided by an RFP Bidder in the Part 2 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission (“Commission”). PECO representatives will review financial information and legal documents provided to fulfill the requirements of the Part 2 Proposal, and will participate in the evaluation of the Pre-Bid Letter of Credit with the name of the RFP Bidder and the amount redacted.*

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**PART 2 FORM**

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**1. Contact Information and Representations**

First Item: Name and Address of the RFP Bidder

Below is the information that you previously provided. **PLEASE MAKE ANY NECESSARY UPDATES TO THE RFP BIDDER'S LEGAL NAME AND ADDRESS.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Legal Name of RFP Bidder

[pre-populated]

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Street Address

[pre-populated]

Formatted Table

[pre-populated]

Formatted Table

City

[pre-populated]

State

[pre-populated]

Zip Code

[pre-populated]

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**IF THE LEGAL NAME OF THE RFP BIDDER HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE.**

 Evidence of name change (if necessary)

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Second Item: Contact Information for the Officer of the RFP Bidder

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE OFFICER OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Please note that the Officer of the RFP Bidder named in the Part 1 Proposal must make all representations and certifications in this Part 2 Proposal. If the individual serving as Officer of the RFP Bidder has changed, the RFP Bidder will be required to resubmit via email all certifications required by the Part 1 Proposal.

First Name

[pre-populated]

Last Name

[pre-populated]

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Title

[pre-populated]

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Street Address

[pre-populated]

Formatted Table

[pre-populated]

City

[pre-populated]

State

[pre-populated]

Zip Code

[pre-populated]

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Phone No.

Cell Phone No. (Optional)

Email Address

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**Illustrative Part 2 Form**

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[pre-populated] [pre-populated] [pre-populated]

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Third Item: Contact Information for the Representative

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE REPRESENTATIVE OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

First Name [pre-populated] Last Name [pre-populated]  
Title [pre-populated]  
Street Address [pre-populated]  
City [pre-populated] State [pre-populated] Zip Code [pre-populated]  
Phone No. [pre-populated] Cell Phone No. (Optional) [pre-populated] Email Address [pre-populated]

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Fourth Item: Representations of the Officer of the RFP Bidder

**THE OFFICER OF THE RFP BIDDER MUST MAKE A NUMBER OF CERTIFICATIONS TO FULFILL THE REQUIREMENTS OF THE PART 2 PROPOSAL.** If the Officer of the RFP Bidder who made the representations and certifications of the Part 1 Form is unavailable to make the representations of the Part 2 Form, the RFP Bidder must name a new individual to serve as Officer of the RFP Bidder and must, in addition to making the representations required in the Part 2 Proposal, re-submit via email the certifications of the Part 1 Form by the Part 2 Date.

**THE OFFICER OF THE RFP BIDDER MUST MAKE A NUMBER OF CERTIFICATIONS BY COMPLETING THE P2 CERTIFICATIONS INSERT. THE SIGNATURE MUST BE NOTARIZED OR ATTESTED WITH THE CORPORATE SEAL.** The P2 Certifications Insert is also labelled INSERT #P2-1.

Name of RFP Bidder  
P2 CERTIFICATIONS INSERT (#P2-1)  
THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING CERTIFICATIONS. THE SIGNATURE MUST BE NOTARIZED OR ATTESTED WITH THE CORPORATE SEAL.

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**Illustrative Part 2 Form**

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- (1) I certify that this Part 2 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date and if any information provided in the Part 2 Proposal changes or any previous certification fails to remain valid during that time, the RFP Bidder will notify the Independent Evaluator as soon as practicable.
- (2) I certify that the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal by another RFP Bidder in response to this solicitation or any future solicitation under this RFP. Such information includes, but is not limited to: the fact that another RFP Bidder is submitting a Proposal in response to this solicitation or a subsequent solicitation under this RFP; the Bids by another RFP Bidder in this or in a subsequent solicitation under this RFP; the number of tranches bid by another RFP Bidder for any product in this or in a subsequent solicitation under this RFP; the estimation by another RFP Bidder of the value of a tranche of a product; the estimation by another RFP Bidder of the risks associated with providing supply under the Uniform SMA; the preference of another RFP Bidder for bidding on specific products in this or in a subsequent solicitation under the RFP; and the contractual arrangements for power of another RFP Bidder to serve tranches of Default Service Load were that RFP Bidder to become a Default Supplier. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.
- (3) I certify that although the RFP Bidder may disclose aspects of its Proposal in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors (if any), any such communication is made in a manner that can reasonably be expected to maintain the confidentiality of the RFP Bidder's Proposal.
- (4) I certify that, with only the exceptions noted in (3) above, the RFP Bidder has not disclosed, and will not otherwise disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal in any solicitation under the RFP, or on the contents of the Proposal that another RFP Bidder would be willing to submit in response to the RFP. Such information includes, but is not limited to: the fact that the RFP Bidder is submitting a Proposal in response to this RFP; the RFP Bidder's Bids in this or in a subsequent solicitation under this RFP; the RFP Bidder's number of tranches bid for any product in this or in a subsequent solicitation under this RFP; the RFP Bidder's estimation of the value of a tranche of a product; the RFP Bidder's estimation of the risks associated with providing supply under the Uniform SMA; and the RFP Bidder's preference for bidding on specific products in this or in a subsequent solicitation under this RFP. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.
- (5) I certify that any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the Uniform SMA at the price specified in the Bid.
- (6) I certify that I will execute (or I will nominate another authorized individual to execute) the Uniform SMA and all Transaction Confirmation(s) for the RFP Bidder's Bids that are approved

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by the Commission no later than 2PM on the third business day after the Commission has accepted such Bids.

- (7) I certify that in each Transaction Confirmation, the RFP Bidder will specify a price for each type of AECs (Tier I, Tier I Solar, and Tier II) that is included in the RFP Bidder's winning Bids and each such price must be greater than \$0/AEC.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

## 2. Pre-Bid Letter of Credit

~~THE~~ **THE RFP BIDDER MUST PROVIDE AN EXECUTED PRE-BID LETTER OF CREDIT**, drawn for the account of the RFP Bidder and acceptable to PECO, IN AN AMOUNT OF AT LEAST: **\$250,000 PER TRANCHE BID ON PRODUCTS OF THE RES AND SC CLASSES FOR FULL REQUIREMENTS ON A FIXED-PRICE BASIS, PLUS, IF APPLICABLE, \$125,000 PER TRANCHE BID ON A PRODUCT FOR THE CCI CLASS FOR FULL REQUIREMENTS ON A SPOT-PRICE BASIS.** A single Pre-Bid Letter of Credit is submitted even if the RFP Bidder bids on more than one product or, if **applicable**, the RFP Bidder bids to supply both full requirements on a fixed-price basis and full requirements on a spot-price basis.

The RFP Bidder must either use the Standard Pre-Bid Letter of Credit, provided on [www.pecoprocurement.com](http://www.pecoprocurement.com), or submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of the Part 1 Proposals.

**THE HARDCOPY EXECUTED PRE-BID LETTER OF CREDIT MUST BE SENT BY OVERNIGHT DELIVERY SERVICE** to the Independent Evaluator at the address provided to RFP Bidders for this purpose.

*At the time this form is submitted, has the Pre-Bid Letter of Credit already been sent to the Independent Evaluator?*

- Yes
- No

RFP Bidders may, but are not required to, upload [or email to pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) an electronic executed version of the Pre-Bid Letter of Credit for evaluation.

	Electronic version of Executed Pre-Bid Letter of Credit
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PECO and the Independent Evaluator will release the Pre-Bid Letter of Credit no later than six (6) business days after the Bid Date. If the Commission does not approve any of the RFP Bidder's Bids, PECO and the Independent Evaluator will release that RFP Bidder's Pre-Bid Letter of Credit within three (3) business days of the Bid Date.

### Illustrative Part 2 Form

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Would you like to provide special instructions for returning the Pre-Bid Letter of Credit?

Yes

No

**PLEASE PROVIDE ANY SPECIAL INSTRUCTIONS FOR RETURNING THE PRE-BID LETTER OF CREDIT BELOW.**

[Empty text box for special instructions]

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**3. Additional Requirements**

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**3a. Requirements for RFP Bidders Relying on Their Own Financial Standing**

You previously elected the RFP Bidder as the entity on whose financial standing the RFP Bidder is relying. YOU HAVE NO ADDITIONAL REQUIREMENTS under this section and you may proceed to the next section.

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**3b. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Guarantor**

You previously elected to rely on the financial standing of an RFP Guarantor. THE RFP BIDDER MUST PROVIDE THE GUARANTY DOCUMENTS REQUIRED BY THIS SECTION.

First Item: Intent to Provide a Guaranty

A REPRESENTATIVE OF THE RFP GUARANTOR WHO IS AUTHORIZED TO UNDERTAKE CONTRACTS (INCLUDING THE GUARANTY) AND BIND THAT RFP GUARANTOR MUST MAKE THE CERTIFICATIONS PROVIDED IN THE GUARANTY INTENT INSERT. The Guaranty Intent Insert is also labelled INSERT #P2-2.

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\_\_\_\_\_  
Name of RFP Bidder

**GUARANTY INTENT INSERT (#P2-2)**

PLEASE PROVIDE THE INDICATIVE AMOUNT OF THE GUARANTY IN THE SPACE PROVIDED. THE INDICATIVE AMOUNT MUST MEET OR EXCEED THE SUM OF: ~~+(I)~~ \$600,000 TIMES THE NUMBER OF TRANCHES BID ON PRODUCTS FOR THE RES AND SC CLASSES FOR FULL REQUIREMENTS ON A FIXED-PRICE BASIS; AND ~~+(H, IF APPLICABLE, (II))~~ \$300,000 TIMES THE NUMBER OF TRANCHES BID ON THE CCI CLASS FOR FULL REQUIREMENTS ON A SPOT-PRICE BASIS.

I acknowledge that \_\_\_\_\_ ("RFP Guarantor") has been asked to provide a financial guaranty on behalf of \_\_\_\_\_ ("RFP Bidder") should the RFP Bidder become a Default Supplier pursuant to its response under this RFP for procuring supply under the terms of the Uniform SMA. Our senior unsecured debt rating meets the Minimum Rating as defined in the Uniform SMA.

We would consider providing a financial guaranty on behalf of the RFP Bidder should there be no material change in affairs of at least \$ \_\_\_\_\_ (Indicative Amount). This statement should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.

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Signature of a Representative of the RFP Guarantor	Date
_____	
Printed Name	

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Second Item: Information to Prepare the Guaranty

In accordance with Paragraph V.3.3 of the RFP Rules, **THE RFP BIDDER IS ASKED TO PROVIDE THE FOLLOWING INFORMATION TO PREPARE THE GUARANTY:**

- the governing laws under which the RFP Guarantor is organized;
- contact information for the RFP Guarantor, including the name and title of the signatory of the guaranty for notices under the guaranty;
- elections to incorporate any or all of the approved modifications to the Standard Guaranty.

**THE RFP BIDDER MUST EITHER:** (i) provide the requested information to prepare the guaranty at this time; or: (ii) submit an acknowledgment signed by the Officer of the RFP Bidder that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

**Is the RFP Bidder providing information to prepare the guaranty at this time?**

Yes  No

Yes

**THE RFP BIDDER PROVIDES THE INFORMATION TO PREPARE THE GUARANTY BY COMPLETING THE GUARANTY INSERT.** The Guaranty Insert is also labelled INSERT #P2-3.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*Name of RFP Bidder*

 **GUARANTY INSERT (#P2-3)**

**Please note! RFP Bidders relying on the financial standing of an RFP Guarantor must submit one (but ONLY one) of Insert #P2-3 or Insert #P2-4.**

1. Governing Laws under which the RFP Guarantor is Organized

*Whether the RFP Guarantor is a Corporation, Partnership, etc.*

\_\_\_\_\_  
*Jurisdiction under whose laws the RFP Guarantor is existing and organized.*

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\_\_\_\_\_

Name of relevant and binding corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws.

\_\_\_\_\_  
\_\_\_\_\_

**2. Governing Laws under which the RFP Bidder is Organized**

Whether the RFP Bidder is a Corporation, Partnership, etc.

\_\_\_\_\_  
\_\_\_\_\_

Jurisdiction under whose laws the RFP Bidder is existing and organized.

\_\_\_\_\_  
\_\_\_\_\_

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**2.3 Contact Information**

Please provide the name and contact information for the person to whom notices and other communications will be sent under the guaranty:

First Name

\_\_\_\_\_  
\_\_\_\_\_

Last Name

\_\_\_\_\_  
\_\_\_\_\_

Title

\_\_\_\_\_  
\_\_\_\_\_

Company

\_\_\_\_\_  
\_\_\_\_\_

Street Address

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip Code

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Phone Number

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Fax

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Please provide the name and title of the person who will be signing the guaranty:

First Name

\_\_\_\_\_  
\_\_\_\_\_

Last Name

\_\_\_\_\_  
\_\_\_\_\_

Title

\_\_\_\_\_  
\_\_\_\_\_

**3.4 Elections of Optional Modifications to the Guaranty**

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Optional changes that the RFP Bidder may adopt for the Form of Guaranty are provided in a document entitled "Optional Modifications to the Guaranty" available on the website. PLEASE INDICATE THE CHANGES THAT YOU ARE ELECTING IN THE TABLE BELOW.

Optional Change	Paragraph	RFP Bidder adopts change
1	<del>Preamble</del> Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
2	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
3	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
4	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
5	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
6	Paragraph 1	<input type="checkbox"/> yes <input type="checkbox"/> no
<del>7</del>	<del>Paragraph 1</del>	<input type="checkbox"/> yes <del>(**a*)</del> <input type="checkbox"/> no <del>Provide the information below under (**a*)</del>
<del>8</del>	<del>Paragraph 4</del>	<input type="checkbox"/> yes <del>(*)</del> <input type="checkbox"/> no <del>Provide the information below under (*)</del>
9	Paragraph 24	<input type="checkbox"/> yes <input type="checkbox"/> no
10	Paragraph 45	<input type="checkbox"/> yes <input type="checkbox"/> no
11	Paragraph 510	<input type="checkbox"/> yes <input type="checkbox"/> no
12	Paragraph 4011	<input type="checkbox"/> yes <input type="checkbox"/> no
13	Paragraph 11	<input type="checkbox"/> yes <input type="checkbox"/> no
14	Paragraph 112	<input type="checkbox"/> yes <input type="checkbox"/> no
15	Paragraph 1213	<input type="checkbox"/> yes <input type="checkbox"/> no
16	Paragraph 1314	<input type="checkbox"/> yes <input type="checkbox"/> no
17	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
18	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
19	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
<del>20</del>	<del>Paragraph 17</del>	<input type="checkbox"/> yes <del>(**)(b*)</del> <input type="checkbox"/> no <del>Provide the information below under (**)(b*)</del>
<del>21</del>	<del>Closing Paragraph and Signature Block</del>	<input type="checkbox"/> yes <del>(**c*)</del> <input type="checkbox"/> no <del>Provide the information below under (**c*)</del>
22	Additional Guarantor	<input type="checkbox"/> -yes <del>(**)(d*)</del> <input type="checkbox"/> no Provide the information below under <del>(**)(d*)</del> and indicate whether you are adopting Optional Change #24 <del>(**d*)</del>
23	Additional Guarantor	<input type="checkbox"/> -yes <del>(**)(e*)</del> <input type="checkbox"/> no Provide the information below under <del>(**)(e*)</del> and indicate whether you are adopting Optional Change #24 <del>(**e*)</del>
24	Paragraph 9	<input type="checkbox"/> yes <input type="checkbox"/> no

~~(\*\*)(a\*)~~ Optional change #87 is available only to an RFP Bidder that has an outstanding guaranty with PECO.

PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #87:

Date of Existing Guaranty \_\_\_\_\_ Amount of Existing Guaranty \_\_\_\_\_

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**(\*\*\*)(\*b\*) THE REPRESENTATIVE OF THE RFP BIDDER OR THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION IF YOU ELECT OPTIONAL CHANGE #20:**

I, \_\_\_\_\_ (the Officer of the RFP Bidder or the Representative of the RFP Bidder), certify that the RFP Guarantor, on whose financial standing the RFP Bidder will be relying, is not a trust.

\_\_\_\_\_  
Signature Date

**(\*\*\*)(\*c\*) PLEASE PROVIDE THE NAME AND TITLE OF THE ADDITIONAL PERSON WHO WILL BE SIGNING THE GUARANTY IF YOU ELECT OPTIONAL CHANGE #21:**

First Name \_\_\_\_\_ Last Name \_\_\_\_\_  
\_\_\_\_\_  
Title \_\_\_\_\_  
\_\_\_\_\_

**(\*\*d\*) PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #22:**

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Name of Additional Guarantor  
\_\_\_\_\_

Whether the Additional Guarantor is a Corporation, Partnership, etc.  
\_\_\_\_\_

Jurisdiction under whose laws the Additional Guarantor is existing and organized.  
\_\_\_\_\_

**(\*\*\*)(\*e\*) PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #23:**

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Name of Additional Guarantor  
\_\_\_\_\_

Whether the Additional Guarantor is a Corporation, Partnership, etc.  
\_\_\_\_\_

Jurisdiction under whose laws the Additional Guarantor is existing and organized.  
\_\_\_\_\_

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**THE OFFICER OF THE RFP BIDDER PROVIDES THE REQUIRED ACKNOWLEDGMENT BY COMPLETING THE DELAY (GUARANTY) INSERT.** The Delay (Guaranty) Insert is also labelled INSERT #P2-4.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Name of RFP Bidder

 **DELAY (GUARANTY) INSERT (#P2-4)**

**Please note!** RFP Bidders relying on the financial standing of an RFP Guarantor must submit one (but ONLY one) of Insert #P2-3 or Insert #P2-4.

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all information required by the Guaranty Insert (#P2-3) by 12 PM (noon) EPT on the day after such notification is received.

\_\_\_\_\_  
 Signature of Officer

\_\_\_\_\_  
 Date

*Third Item: Enforceability Opinion for an Alternate Guaranty*

**Did you receive approval from PECO to use an alternate guaranty form through the Guaranty Process?**

Yes       No

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**Yes**

**EACH RFP BIDDER THAT RELIES ON THE FINANCIAL STANDING OF AN RFP GUARANTOR AND THAT HAS OBTAINED APPROVAL FOR USE OF AN ALTERNATE GUARANTY FORM MUST PROVIDE AN EXECUTED ENFORCEABILITY OPINION for its approved alternate guaranty form on the letterhead of a law firm of national standing.**

**PLEASE ~~UPLOAD~~ PROVIDE THE ENFORCEABILITY OPINION IN THE SPACE PROVIDED BELOW OR BY EMAIL TO PECOPROUREMENT@NERA.COM.**

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**PECO Exhibit JJM-8**

	<i>Enforceability Opinion</i>
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### 3c. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Principal

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~~You previously elected a Principal as the entity on whose financial standing the RFP Bidder is relying. AN RFP BIDDER RELYING ON THE FINANCIAL STANDING OF AN RFP PRINCIPAL AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO PROVIDE AN OFFICERS' CERTIFICATE AS WELL AS CONTACT INFORMATION FOR A REPRESENTATIVE OF THE PRINCIPAL as specified in Section V.4 of the RFP Rules by completing the P2 Agency Agreement Insert and uploading associated documents below. The P2 Agency Agreement Insert is also labelled INSERT #P2-5.~~

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*First Item: Officer's Certificate*

~~PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM, The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). The Officers' Certificate should be substantially in the form of Appendix 6 to the RFP Rules.~~

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	<i>Insert #P2-5</i>
	<i>Officer's Officers' Certificate</i>

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*Second Item: Signatory to the Uniform SMA*

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~~Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable) on behalf of the Principal(s)?~~

~~Yes  No~~

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*Name of RFP Bidder*

~~ P2 AGENCY AGREEMENT INSERT (#P2-5)~~

~~Please note! Only RFP Bidders relying on the financial standing of an RFP Principal are required to complete this Insert. The requirements are provided in Section V.4 of the RFP Rules.~~

*First Item: Officer's Certificate*

~~PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM.  NO~~

~~Please The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s).~~

*Second Item: Signatory to the Uniform SMA*

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Illustrative Part 2 Form

**Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable)?**

Yes  No

**If no, please** provide the information of the representative of the Principal who will sign the Uniform SMA (if applicable) and any Transaction Confirmation.

Company

Last Name \_\_\_\_\_ First Name \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Title \_\_\_\_\_ Company \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Street Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_ Cell Phone No. (Optional) \_\_\_\_\_ Email Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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5.4. Foreign RFP Bidders and Foreign Entities

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Is the RFP Bidder a Foreign RFP Bidder, or is the RFP Bidder relying on the financial standing of a Foreign Entity (as RFP Guarantor or is the RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal)??

Yes [pre-populated]  No [pre-populated]

AN RFP BIDDER THAT IS A FOREIGN RFP BIDDER, OR THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY (AS RFP GUARANTOR, OR THAT IS SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL) IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN SECTION V.5 OF THE RFP RULES by completing the P2 Foreign Entity Insert and uploading/providing associated documents below. The P2 Foreign Entity Insert is also labelled INSERT #P2-65.

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	Insert #P2-65
	Additional Evidence of Creditworthiness
	Additional Evidence of Creditworthiness
	Legal opinion
	Sworn certificate
	Sworn certificate

Name of RFP Bidder

 P2 FOREIGN ENTITY INSERT (#P2-65)

Please note! Only RFP Bidders that are foreign entities Foreign Entities, or that rely on the financial standing of a foreign Foreign Entity as RFP Guarantor, or that submit a Proposal under an Agency

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**Agreement with a Foreign Entity as Principal**, are required to complete this Insert. The requirements are provided in Section V.5 of the RFP Rules.

Are you a previously eligible RFP Bidder (i.e., did you successfully complete the Part 2 Proposal on a prior solicitation under DSP ~~IV~~V)?

Yes       No

**If no**, please complete Section A below.

**If yes**, please complete Section B below.

**SECTION A. RFP BIDDERS THAT HAVE NOT PREVIOUSLY COMPLETED THE PART 2 PROPOSAL**

**PLEASE COMPLETE ONLY THE ITEM THAT APPLIES TO YOU:**

Circumstances	Item to Complete
The RFP Bidder is a Foreign <del>entity</del> Entity	First Item
The RFP Bidder relies on the financial standing of a Foreign <del>Entity as</del> RFP Guarantor	Second Item
The RFP Bidder is submitting a Proposal under an Agency Agreement with a <del>Foreign Entity as</del> Principal <del>that is a foreign entity</del>	Third Item

**First Item:** Required Documents for Foreign RFP Bidders

**A FOREIGN RFP BIDDER MUST ~~UPLOAD~~PROVIDE** THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM **OR BY EMAIL TO PECOPROUREMENT@NERA.COM** FOR THE FOREIGN RFP BIDDER ~~TO BE GRANTED UNSECURED CREDIT UNDER THE TERMS OF THE UNIFORM SMA.~~

(1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the ~~Foreign~~RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the

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~~Foreign~~ RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.

- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such ~~Foreign~~ RFP Bidder that the person executing the Uniform SMA on behalf of the ~~Foreign~~ RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such ~~Foreign~~ RFP Bidder has approved the execution of the Uniform SMA.
- (3) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such ~~Foreign~~ RFP Bidder that the ~~Foreign~~ RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

Second Item: Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor

**AN RFP BIDDER RELYING ON THE FINANCIAL STANDING OF ~~AN RFP GUARANTOR THAT IS A~~ FOREIGN ENTITY AS RFP GUARANTOR MUST ~~UPLOAD~~PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM FOR THE RFP GUARANTOR TO BE GRANTED UNSECURED CREDIT UNDER THE TERMS OF THE UNIFORM SMA.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA;
- (3) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

If the RFP Bidder does not submit these documents, or if these documents are not sufficient, the Foreign Entity as RFP Guarantor is not granted unsecured credit under the terms of the Uniform SMA. In that case, the RFP Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional financial or credit information regarding the RFP Bidder.

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Third Item: Required Documents for RFP Bidders with a Foreign Entity as Principal

AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A ~~PRINCIPAL THAT IS A FOREIGN ENTITY~~ AS PRINCIPAL MUST ~~UPLOAD~~PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM ~~FOR THE RFP BIDDER AND ITS PRINCIPAL OR BY EMAIL TO BE GRANTED UNSECURED CREDIT UNDER THE TERMS OF THE UNIFORM SMA~~PECOPROCUREMENT@NERA.COM.

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

**SECTION B. PREVIOUSLY ELIGIBLE RFP BIDDERS (THAT HAVE SUCCESSFULLY COMPLETED THE PART 2 PROPOSAL IN A PRIOR SOLICITATION)**

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**PLEASE COMPLETE ONLY THE ITEM THAT APPLIES TO YOU:**

Circumstances	Item to Complete
The RFP Bidder is a Foreign <del>entity</del> <u>Entity</u>	First Item
The RFP Bidder relies on the financial standing of a Foreign <u>Entity as</u> RFP Guarantor	Second Item

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The RFP Bidder is submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal ~~that is a foreign entity~~

Third Item

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*First Item:* Required Documents for Foreign RFP Bidders

For each document required of Foreign RFP Bidders, a Foreign RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP ~~IV~~ remains valid; or: (ii) ~~upload~~provide the document by upload to the online Part 2 form or email to pecoprocurement@nera.com if it has changed.

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**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

REQUIRED DOCUMENTS	Remains valid (not submitted)	Has changed (submitted this solicitation)
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA.</p>	<input type="checkbox"/>	<input type="checkbox"/>

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<p><b>one (1) executed original sworn</b> certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.</p>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

Second Item: Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor

For each document required of an RFP Bidder relying on the financial standing of ~~an RFP Guarantor that is a Foreign Entity as RFP Guarantor~~, an RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP ~~IV~~V remains valid; or (ii) ~~upload~~provide the document by upload to the online Part 2 form or email to pecoprocedurement@nera.com if it has changed.

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**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

<p><b>REQUIRED DOCUMENTS</b></p>	<p>Remains valid (not submitted)</p>	<p>Has changed (submitted this solicitation)</p>
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing</p>	<input type="checkbox"/>	<input type="checkbox"/>

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board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA		
<b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.	<input type="checkbox"/>	<input type="checkbox"/>

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If these documents are not sufficient, the Foreign Entity as RFP Guarantor is not granted unsecured credit under the terms of the Uniform SMA. In that case, the RFP Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional financial or credit information regarding the RFP Bidder.

Third Item: Required Documents for RFP Bidders with a Foreign Entity as Principal

For each document required of an RFP Bidder submitting a Proposal under an Agency Agreement with a Principal that is a foreign entity, an RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP IVV remains valid; or: (ii) upload provide the document by upload to the online Part 2 form or email to pecoprocurement@nera.com if it has changed.

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**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED.** By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

<b>REQUIRED DOCUMENTS</b>	<b>Remains valid (not submitted)</b>	<b>Has changed (submitted this solicitation)</b>
<b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4	<input type="checkbox"/>	<input type="checkbox"/>

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PECO Exhibit JJM-8

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to the Uniform SMA includes a sample of a sufficient legal opinion.

**one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

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## 5. Bids

**Reminder:** Each RFP Bidder submits its Bids electronically, by transferring its Bid Form through a secure file transfer system. The Independent Evaluator provides electronically to each RFP Bidder qualified pursuant to a successful Part 1 Proposal the Bid Form as well as a set of instructions. These instructions guide the RFP Bidder for completion of the Bid Form, for optional encryption of the Bid Form, for submission of the completed Bid Form to the Independent Evaluator via secure file transfer interface, as well as instructions for backup methods for the submission of Bids in case of technical difficulties with the electronic transfer.

**Important!** The Independent Evaluator provides electronically to each RFP Bidder that qualifies pursuant to a successful Part 1 Proposal information required for the submission of Bids, including a username, password, and security code. This information is unique to each RFP Bidder and allows the Independent Evaluator to authenticate the Bids received. The RFP Bidder must acknowledge that the RFP Bidder has received intact the information necessary to submit Bids and that no one but authorized personnel of the RFP Bidder has had access to this information.

Please provide this confirmation below.

I confirm receipt of the Bid Form, instructions, and information necessary to submit Bids. No one but authorized personnel of the RFP Bidder has had access to this information.

I request that such information and documents be re-issued.

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**5.6. Justification of Omissions Section**

If you are unable to provide all documents or information with this Part 2 Form, please justify fully any omissions in the space provided below.

If you are providing additional documents, such as providing the Part 1 Form certifications if the individual who is serving as Officer of the RFP Bidder has changed, please use the spaces below to upload these documents.

	<i>File upload</i>
	<i>File upload</i>
	<i>File upload</i>

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# APPENDIX 8 – ILLUSTRATIVE PART 2 FORM DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS

## SHORT FORM

PECO Energy Company (“Company” or “PECO”) is intending to obtain full requirements electric supply to meet a portion of its obligations as Default Service Provider through this Request for Proposals (“RFP”).

Before completing this online Part 2 Form, please review the RFP, including the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA”), so that you understand the conditions under which the RFP will be conducted. These documents are posted at [www.pecoprocedure.com](http://www.pecoprocedure.com).

By having submitted a Part 1 Proposal in response to this RFP, you agreed to all terms and conditions of this RFP.

*Any information provided by an RFP Bidder in the Part 2 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission (“Commission”). PECO representatives will review financial information and legal documents provided to fulfill the requirements of the Part 2 Proposal, and will participate in the evaluation of the Pre-Bid Letter of Credit with the name of the RFP Bidder and the amount redacted.*

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## PART 2 FORM

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### 1. Contact Information and Representations

#### First Item: Name and Address of the RFP Bidder

Below is the information that you previously provided. **PLEASE MAKE ANY NECESSARY UPDATES TO THE RFP BIDDER'S LEGAL NAME AND ADDRESS.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Legal Name of RFP Bidder

[pre-populated]

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Street Address

[pre-populated]

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[pre-populated]

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City

[pre-populated]

State

[pre-populated]

Zip Code

[pre-populated]

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**IF THE LEGAL NAME OF THE RFP BIDDER HAS CHANGED, PLEASE PROVIDE EVIDENCE OF THE CHANGE.**



Evidence of name change (if necessary)

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#### Second Item: Contact Information for the Officer of the RFP Bidder

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE OFFICER OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

Please note that the Officer of the RFP Bidder named in the Part 1 Proposal must make all representations and certifications in this Part 2 Proposal. If the individual serving as Officer of the RFP Bidder has changed, the RFP Bidder will be required to resubmit via email all certifications required by the Part 1 Proposal.

First Name

[pre-populated]

Last Name

[pre-populated]

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Title

[pre-populated]

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Street Address

[pre-populated]

[pre-populated]

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City

[pre-populated]

State

[pre-populated]

Zip Code

[pre-populated]

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Phone No.

[pre-populated]

Cell Phone No. (Optional)

[pre-populated]

Email Address

[pre-populated]

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Third Item: Contact Information for the Representative

Below is the information that you previously provided. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION FOR THE REPRESENTATIVE OF THE RFP BIDDER.** By submitting this form without making updates, you will be confirming that the previously provided information remains valid.

<i>First Name</i>	<i>Last Name</i>	
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	
<i>Title</i>		
<input type="text" value="[pre-populated]"/>		
<i>Street Address</i>		
<input type="text" value="[pre-populated]"/>		
<input type="text" value="[pre-populated]"/>		
<i>City</i>	<i>State</i>	<i>Zip Code</i>
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>
<i>Phone No.</i>	<i>Cell Phone No. (Optional)</i>	<i>Email Address</i>
<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>	<input type="text" value="[pre-populated]"/>

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Fourth Item: Representations of the Officer of the RFP Bidder

**THE OFFICER OF THE RFP BIDDER MUST MAKE A NUMBER OF CERTIFICATIONS TO FULFILL THE REQUIREMENTS OF THE PART 2 PROPOSAL.** If the Officer of the RFP Bidder who made the representations and certifications of the Part 1 Form is unavailable to make the representations of the Part 2 Form, the RFP Bidder must name a new individual to serve as Officer of the RFP Bidder and must, in addition to making the representations required in the Part 2 Proposal, re-submit via email the certifications of the Part 1 Form by the Part 2 Date.

**THE OFFICER OF THE RFP BIDDER MUST MAKE A NUMBER OF CERTIFICATIONS BY COMPLETING THE P2 CERTIFICATIONS INSERT. THE SIGNATURE MUST BE NOTARIZED OR ATTESTED WITH THE CORPORATE SEAL.** The P2 Certifications Insert is also labelled INSERT #P2-1.

*Name of RFP Bidder*

 **P2 CERTIFICATIONS INSERT (#P2-1)**

**THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING CERTIFICATIONS. THE SIGNATURE MUST BE NOTARIZED OR ATTESTED WITH THE CORPORATE SEAL.**

(1) I certify that this Part 2 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date and if any information provided in the Part 2 Proposal changes

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or any previous certification fails to remain valid during that time, the RFP Bidder will notify the Independent Evaluator as soon as practicable.

- (2) I certify that the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal by another RFP Bidder in response to this solicitation or any future solicitation under this RFP. Such information includes, but is not limited to: the fact that another RFP Bidder is submitting a Proposal in response to this solicitation or a subsequent solicitation under this RFP; the Bids by another RFP Bidder in this or in a subsequent solicitation under this RFP; the number of tranches bid by another RFP Bidder for any product in this or in a subsequent solicitation under this RFP; the estimation by another RFP Bidder of the value of a tranche of a product; the estimation by another RFP Bidder of the risks associated with providing supply under the Uniform SMA; the preference of another RFP Bidder for bidding on specific products in this or in a subsequent solicitation under the RFP; and the contractual arrangements for power of another RFP Bidder to serve tranches of Default Service Load were that RFP Bidder to become a Default Supplier. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.
- (3) I certify that although the RFP Bidder may disclose aspects of its Proposal in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors (if any), any such communication is made in a manner that can reasonably be expected to maintain the confidentiality of the RFP Bidder's Proposal.
- (4) I certify that, with only the exceptions noted in (3) above, the RFP Bidder has not disclosed, and will not otherwise disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal in any solicitation under the RFP, or on the contents of the Proposal that another RFP Bidder would be willing to submit in response to the RFP. Such information includes, but is not limited to: the fact that the RFP Bidder is submitting a Proposal in response to this RFP; the RFP Bidder's Bids in this or in a subsequent solicitation under this RFP; the RFP Bidder's number of tranches bid for any product in this or in a subsequent solicitation under this RFP; the RFP Bidder's estimation of the value of a tranche of a product; the RFP Bidder's estimation of the risks associated with providing supply under the Uniform SMA; and the RFP Bidder's preference for bidding on specific products in this or in a subsequent solicitation under this RFP. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.
- (5) I certify that any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the Uniform SMA at the price specified in the Bid.
- (6) I certify that I will execute (or I will nominate another authorized individual to execute) the Uniform SMA and all Transaction Confirmation(s) for the RFP Bidder's Bids that are approved by the Commission no later than 2PM on the third business day after the Commission has accepted such Bids.

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(7) I certify that in each Transaction Confirmation, the RFP Bidder will specify a price for each type of AECs (Tier I, Tier I Solar, and Tier II) that is included in the RFP Bidder's winning Bids and each such price must be greater than \$0/AEC.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Seal from Notary Public

\_\_\_\_\_  
Date

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## 2. Pre-Bid Letter of Credit

~~THE~~ **THE RFP BIDDER MUST PROVIDE AN EXECUTED PRE-BID LETTER OF CREDIT**, drawn for the account of the RFP Bidder and acceptable to PECO, **IN AN AMOUNT OF AT LEAST: \$250,000 PER TRANCHE BID ON PRODUCTS OF THE RES AND SC CLASSES FOR FULL REQUIREMENTS ON A FIXED-PRICE BASIS, PLUS, IF APPLICABLE, \$125,000 PER TRANCHE BID ON A PRODUCT FOR THE CCI CLASS FOR FULL REQUIREMENTS ON A SPOT-PRICE BASIS.** A single Pre-Bid Letter of Credit is submitted even if the RFP Bidder bids on more than one product or, if applicable, the RFP Bidder bids to supply both full requirements on a fixed-price basis and full requirements on a spot-price basis.

The RFP Bidder must either use the Standard Pre-Bid Letter of Credit, provided on [www.pecoprocurement.com](http://www.pecoprocurement.com), or submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of the Part 1 Proposals.

**THE HARDCOPY EXECUTED PRE-BID LETTER OF CREDIT MUST BE SENT BY OVERNIGHT DELIVERY SERVICE** to the Independent Evaluator at the address provided to RFP Bidders for this purpose.

*At the time this form is submitted, has the Pre-Bid Letter of Credit already been sent to the Independent Evaluator?*

Yes

No

RFP Bidders may, but are not required to, upload or email to [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) an electronic executed version of the Pre-Bid Letter of Credit for evaluation.

	Electronic version of Executed Pre-Bid Letter of Credit
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PECO and the Independent Evaluator will release the Pre-Bid Letter of Credit no later than six (6) business days after the Bid Date. If the Commission does not approve any of the RFP Bidder's Bids, PECO and the Independent Evaluator will release that RFP Bidder's Pre-Bid Letter of Credit within three (3) business days of the Bid Date.

*Would you like to provide special instructions for returning the Pre-Bid Letter of Credit?*

Yes

No

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3. Additional Requirements

Is the RFP Bidder a Default Supplier serving tranches won in a solicitation under DSP ~~44~~?

Yes  No

Yes

3a. ~~Additional Requirements~~ for RFP Bidders Relying on Their Own Financial Standing

You previously elected the RFP Bidder as the entity on whose financial standing the RFP Bidder is relying. YOU HAVE NO ADDITIONAL REQUIREMENTS under this section and you may proceed to the next section.

3b. ~~Additional Requirements~~ for RFP Bidders Relying on the Financial Standing of an RFP Guarantor

You previously elected to rely on the financial standing of an RFP Guarantor. Please proceed to Section 4 below.

3c. ~~Additional Requirements~~

You previously elected a for RFP Bidders Relying on the Financial Standing of an RFP Principal as the entity on whose financial standing the RFP Bidder is relying; the

The RFP Bidder is submitting a Proposal under an Agency Agreement. AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO PROVIDE AN OFFICERS' CERTIFICATE AS WELL AS CONTACT INFORMATION FOR A REPRESENTATIVE OF THE PRINCIPAL as specified in ~~Section V.4~~ of the RFP Rules by completing the P2 Agency Agreement Insert and uploading associated documents below. The P2 Agency Agreement Insert is also labelled INSERT #P2-5 ~~the RFP Rules.~~

*First Item: Officer's Certificate*

PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM. The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). The Independent Evaluator provided to you, along with your Notification of Qualification, the P2 Agency Agreement Insert that you submitted previously (if any). You may make any updates to this document. By submitting this form of the P2 Agency Agreement Insert (#P2-5) without making updates, you will be confirming that the previously provided information remains valid.

The Officers' Certificate should be substantially in the form of Appendix 6 to the RFP Rules.

	Insert #P2-5
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	<i>Officer's Officers' Certificate</i>
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Second Item: Signatory to the Uniform SMA

Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable)?

yes  no

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*Name of RFP Bidder*

**P2 AGENCY AGREEMENT INSERT (#P2-5)**

**Please note! Only RFP Bidders submitting a Proposal under an Agency Agreement are required to complete this Insert. The requirements are provided in Section V.4 of the RFP Rules.**

~~First Item: Officer's Certificate~~

**PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM.**

The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s).

~~Second Item: Signatory to the Uniform SMA~~

~~Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable)?~~

yes  no

~~If no, please provide Below is the information of that you previously for the representative of the Principal who will sign the Uniform SMA (if applicable) and any Transaction Confirmation. **PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.**~~

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<i>Last Name</i> —[pre-populated]	<i>First Name</i> —[pre-populated]
<i>Title</i> —[pre-populated]	<i>Company</i> —[pre-populated]

*Street Address*  
 —[pre-populated]  
 —[pre-populated]

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City —[pre-populated]	State —[pre-populated]	Zip Code —[pre-populated]
Phone No. —[pre-populated]	Cell Phone No. —[pre-populated]	Email Address —[pre-populated]

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No

**3a. Requirements for RFP Bidders Relying on Their Own Financial Standing**

You previously elected the RFP Bidder as the entity on whose financial standing the RFP Bidder is relying. YOU HAVE NO ADDITIONAL REQUIREMENTS under this section and you may proceed to the next section.

**3b. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Guarantor**

You previously elected to rely on the financial standing of an RFP Guarantor. **THE RFP BIDDER MUST PROVIDE THE GUARANTY DOCUMENTS REQUIRED BY THIS SECTION.**

First Item: Intent to Provide a Guaranty

**A REPRESENTATIVE OF THE RFP GUARANTOR WHO IS AUTHORIZED TO UNDERTAKE CONTRACTS (INCLUDING THE GUARANTY) AND BIND THAT RFP GUARANTOR MUST MAKE THE CERTIFICATIONS PROVIDED IN THE GUARANTY INTENT INSERT. The Guaranty Intent Insert is also labelled INSERT #P2-2.**

\_\_\_\_\_  
Name of RFP Bidder

**GUARANTY INTENT INSERT (#P2-2)**

**PLEASE PROVIDE THE INDICATIVE AMOUNT OF THE GUARANTY IN THE SPACE PROVIDED. THE INDICATIVE AMOUNT MUST MEET OR EXCEED THE SUM OF: ~~+(1)~~ \$600,000 TIMES THE NUMBER OF TRANCHES BID ON PRODUCTS FOR THE RES AND SC CLASSES FOR FULL REQUIREMENTS SERVICE ON**

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A FIXED-PRICE BASIS; AND ~~(H)~~, IF APPLICABLE, (I) \$300,000 TIMES THE NUMBER OF TRANCHES BID FOR ON THE CCI CLASS FOR FULL REQUIREMENTS ON A SPOT-PRICE BASIS.

I acknowledge that \_\_\_\_\_ (“RFP Guarantor”) has been asked to provide a financial guaranty on behalf of \_\_\_\_\_ (“RFP Bidder”) should the RFP Bidder become a Default Supplier pursuant to its response under this RFP for procuring supply under the terms of the Uniform SMA. Our senior unsecured debt rating meets the Minimum Rating as defined in the Uniform SMA.

We would consider providing a financial guaranty on behalf of the RFP Bidder should there be no material change in affairs of at least \$ \_\_\_\_\_ (Indicative Amount). This statement should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.

\_\_\_\_\_  
Signature of a Representative of the RFP Guarantor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

In accordance with Paragraph IV.3.5 of the RFP Rules, **THE RFP BIDDER IS ASKED TO PROVIDE THE FOLLOWING INFORMATION TO PREPARE THE GUARANTY:**

- the governing laws under which the RFP Guarantor is organized;
- contact information for the RFP Guarantor, including the name and title of the signatory of the guaranty for notices under the guaranty;
- elections to incorporate any or all of the approved modifications to the Standard Guaranty.

**THE RFP BIDDER MUST EITHER:** (i) provide the requested information to prepare the guaranty at this time; or: (ii) submit an acknowledgment signed by the Officer of the RFP Bidder that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder’s Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

*Is the RFP Bidder providing information to prepare the guaranty at this time?*

Yes                       No

Yes

The Independent Evaluator provided to you, along with your login credentials, the Guaranty Insert that you submitted previously (if any). You may make any updates to this document. By submitting this form

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of the Guaranty Insert (#P2-3) without making updates, you will be confirming that the previously provided information remains valid.

**THE RFP BIDDER PROVIDES THE INFORMATION TO PREPARE THE GUARANTY BY COMPLETING THE GUARANTY INSERT.** The Guaranty Insert is also labelled INSERT #P2-3.

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\_\_\_\_\_  
\_\_\_\_\_  
Name of RFP Bidder

**GUARANTY INSERT (#P2-3)**

**Please note!** RFP Bidders relying on the financial standing of an RFP Guarantor must submit one (but ONLY one) of Insert #P2-3 or Insert #P2-4.

1. Governing Laws under which the RFP Guarantor is Organized

*Whether the RFP Guarantor is a Corporation, Partnership, etc.*  
\_\_\_\_\_

*Jurisdiction under whose laws the RFP Guarantor is existing and organized.*  
\_\_\_\_\_

*Name of relevant and binding corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws.*  
\_\_\_\_\_

2. Governing Laws under which the RFP Bidder is Organized

*Whether the RFP Bidder is a Corporation, Partnership, etc.*  
\_\_\_\_\_

*Jurisdiction under whose laws the RFP Bidder is existing and organized.*  
\_\_\_\_\_

3. Contact Information

Please provide the name and contact information for the person to whom notices and other communications will be sent under the guaranty:

*First Name* \_\_\_\_\_ *Last Name* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*Title*  
\_\_\_\_\_

18	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
19	Paragraph 14	<input type="checkbox"/> yes <input type="checkbox"/> no
20	Paragraph 17	<input type="checkbox"/> yes <b>(**)(b*)</b> <input type="checkbox"/> no <b>Provide the information below under <b>(**)(b*)</b></b>
21	Closing Paragraph and Signature Block	<input type="checkbox"/> yes <input type="checkbox"/> <b>(c*)</b> no <b>Provide the information below under <b>(c*)</b></b>
22	Additional Guarantor	<input type="checkbox"/> -yes <b>(**)(d*)</b> <input type="checkbox"/> no <b>Provide the information below under <b>(**)(d*)</b> and indicate whether you are adopting Optional Change #24<b>(d*)</b></b>
23	Additional Guarantor	<input type="checkbox"/> -yes <b>(**)(e*)</b> <input type="checkbox"/> no <b>Provide the information below under <b>(**)(e*)</b> and indicate whether you are adopting Optional Change #24<b>(e*)</b></b>
24	Paragraph 9	<input type="checkbox"/> yes <input type="checkbox"/> no

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**(\*)(d\*)** Optional change #87 is available only to an RFP Bidder that has an outstanding guaranty with PECO.

**PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #87:**

Date of Existing Guaranty \_\_\_\_\_ Amount of Existing Guaranty \_\_\_\_\_

**(\*\*)(b\*)** THE REPRESENTATIVE OF THE RFP BIDDER OR THE OFFICER OF THE RFP BIDDER MUST MAKE THE FOLLOWING REPRESENTATION IF YOU ELECT OPTIONAL CHANGE #20:

I, \_\_\_\_\_ (the Officer of the RFP Bidder or the Representative of the RFP Bidder), certify that the RFP Guarantor, on whose financial standing the RFP Bidder will be relying, is not a trust.

Signature \_\_\_\_\_ Date \_\_\_\_\_

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**(\*\*)(c\*)** PLEASE PROVIDE THE NAME AND TITLE OF THE ADDITIONAL PERSON WHO WILL BE SIGNING THE GUARANTY IF YOU ELECT OPTIONAL CHANGE #21:

First Name \_\_\_\_\_ Last Name \_\_\_\_\_  
   
 Title \_\_\_\_\_

**(d\*)** PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #22:

Name of Additional Guarantor \_\_\_\_\_

Whether the Additional Guarantor is a Corporation, Partnership, etc.

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\_\_\_\_\_

~~Jurisdiction under whose laws the Additional Guarantor is existing and organized.~~

\_\_\_\_\_

(\*\*\*)

~~Jurisdiction under whose laws the Additional Guarantor is existing and organized.~~

\_\_\_\_\_

(\*e\*) PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU ELECT OPTIONAL CHANGE #23:

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Name of Additional Guarantor

\_\_\_\_\_

Whether the Additional Guarantor is a Corporation, Partnership, etc.

\_\_\_\_\_

~~Jurisdiction under whose laws the Additional Guarantor is existing and organized.~~

~~Jurisdiction under whose laws the Additional Guarantor is existing and organized.~~

\_\_\_\_\_  
\_\_\_\_\_

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NO

THE OFFICER OF THE RFP BIDDER PROVIDES THE REQUIRED ACKNOWLEDGMENT BY COMPLETING THE DELAY (GUARANTY) INSERT. The Delay (Guaranty) Insert is also labelled INSERT #P2-4.

\_\_\_\_\_  
\_\_\_\_\_

Name of RFP Bidder

 DELAY (GUARANTY) INSERT (#P2-4)

I, \_\_\_\_\_ (the Officer of the RFP Bidder), acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids

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to the Commission as winning Bids, the RFP Bidder must provide all information required by the Guaranty Insert (#P2-3) by 12 PM (noon) EPT on the day after such notification is received.

Signature \_\_\_\_\_

Date \_\_\_\_\_

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**3c. Requirements for RFP Bidders Relying on the Financial Standing of an RFP Principal**

You previously elected a Principal as the entity on whose financial standing the RFP Bidder is relying; ~~the~~**The** RFP Bidder is submitting a Proposal under an Agency Agreement. **AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT IS REQUIRED TO PROVIDE AN OFFICERS' CERTIFICATE AS WELL AS CONTACT INFORMATION FOR A REPRESENTATIVE OF THE PRINCIPAL PRINCIPAL**, as specified in Section V.4 of the RFP Rules ~~by completing the P2 Agency Agreement Insert and uploading associated documents below. The P2 Agency Agreement Insert is also labelled INSERT #P2-5.~~

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First Item: Officer's Certificate

**PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM.** The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). The Independent Evaluator provided to you, along with your Notification of Qualification, the P2 Agency Agreement Insert that you submitted previously (if any). You may make any updates to this document. By submitting this form of the P2 Agency Agreement Insert (#P2-5) without making updates, you will be confirming that the previously provided information remains valid.

The Officers' Certificate should be substantially in the form of Appendix 6 to the RFP Rules.

	<i>Insert #P2-5</i>
	<i>Officers' Certificate</i>
	

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Second Item: Signatory to the Uniform SMA

**Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable)?**

yes  no

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*Name of RFP Bidder*

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**P2 AGENCY AGREEMENT INSERT (#P2-5)**

**Please note! Only RFP Bidders submitting a Proposal under an Agency Agreement are required to complete this Insert. The requirements are provided in Section V.4 of the RFP Rules.**

First Item: Officer's Certificate

**PLEASE SUBMIT ONE (1) COPY OF THE REQUIRED OFFICERS' CERTIFICATE, SIGNED BY AN OFFICER OF EACH PRINCIPAL, BY UPLOAD TO THE ONLINE PART 2 FORM.**

no

Below is the information that you previously for The Independent Evaluator and PECO will determine whether the document provided is sufficient, without any liability or obligation to the RFP Bidder or its Principal(s).

Second Item: Signatory to the Uniform SMA

**Is a representative of the RFP Bidder authorized to execute the Transaction Confirmation(s) and to sign the Uniform SMA (if applicable)?**

Yes  No

**If no, please provide the information of the representative of the Principal who will sign the Uniform SMA (if applicable) and any Transaction Confirmation. PLEASE MAKE ANY UPDATES TO THE NAME AND CONTACT INFORMATION. By submitting this form without making updates, you will be confirming that the previously provided information remains valid.**

Last Name —[pre-populated]	First Name —[pre-populated]	
Title —[pre-populated]	Company —[pre-populated]	
Street Address —[pre-populated]		
—[pre-populated]		
City —[pre-populated]	State —[pre-populated]	Zip Code —[pre-populated]
Phone No. —[pre-populated]	Cell Phone No. —[pre-populated]	Email Address —[pre-populated]

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5.4. Foreign RFP Bidders and Foreign Entities

Is the RFP Bidder a Foreign RFP Bidder, or is the RFP Bidder relying on the financial standing of a Foreign Entity (as RFP Guarantor or is the RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal)??

Yes [pre-populated]  No[pre-populated]

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AN RFP BIDDER THAT IS A FOREIGN RFP BIDDER, OR THAT IS RELYING ON THE FINANCIAL STANDING OF A FOREIGN ENTITY (AS RFP GUARANTOR, OR THAT SUBMITS A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A FOREIGN ENTITY AS PRINCIPAL), IS REQUIRED TO PROVIDE ADDITIONAL INFORMATION AS SPECIFIED IN SECTION V.5 OF THE RFP RULES by completing the P2 Foreign Entity Insert and uploading/providing associated documents below. The P2 Foreign Entity Insert is also labelled INSERT #P2-65.

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The Independent Evaluator provided to you, along with your Notification of Qualification, the P2 Foreign Entity Insert, the Additional Evidence of Creditworthiness, the Legal Opinion, and the Sworn Certificate(s) that you submitted previously (if any). You may make any updates to these documents. By submitting the form of these documents without making updates, you will be confirming that the previously provided information remains valid.

	Insert #P2-65
	Additional Evidence of Creditworthiness
	Additional Evidence of Creditworthiness
	Legal opinion
	Sworn certificate
	Sworn certificate

Name of RFP Bidder

P2 FOREIGN ENTITY INSERT (#P2-65)

Please note! Only RFP Bidders that are foreign entities Foreign Entities, or that rely on the financial standing of a foreign Foreign Entity as RFP Guarantor, or that submits a Proposal under an Agency Agreement with a Foreign Entity as Principal, are required to complete this Insert. The requirements are provided in Section V.5 of the RFP Rules.

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Are you a previously eligible RFP Bidder (i.e., did you successfully complete the Part 2 Proposal on a prior solicitation under DSP ~~IV~~V)?

Yes       No

**If no**, please complete Section A below.

**If yes**, please complete Section B below.

**SECTION A. RFP BIDDERS THAT HAVE NOT PREVIOUSLY COMPLETED THE PART 2 PROPOSAL**

**PLEASE COMPLETE ONLY THE ITEM THAT APPLIES TO YOU:**

Circumstances	Item to Complete
The RFP Bidder is a Foreign <del>entity</del> Entity	First Item
The RFP Bidder relies on the financial standing of a Foreign <del>Entity as</del> RFP Guarantor	Second Item
The RFP Bidder is submitting a Proposal under an Agency Agreement with a <del>Foreign Entity as</del> Principal <del>that is a foreign entity</del>	Third Item

*First Item:* Required Documents for Foreign RFP Bidders

**A FOREIGN RFP BIDDER MUST ~~UPLOAD~~PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM FOR THE FOREIGN RFP BIDDER TO BE GRANTED UNSECURED CREDIT UNDER THE TERMS OF THE UNIFORM SMA.**

- one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA.
- one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

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PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

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*Second Item: Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor*

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**AN RFP BIDDER RELYING ON THE FINANCIAL STANDING OF ~~AN RFP GUARANTOR THAT IS A FOREIGN ENTITY~~ AS RFP GUARANTOR MUST ~~UPLOAD~~ PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM OR BY EMAIL TO PECOPROUREMENT@NERA.COM FOR THE RFP GUARANTOR TO BE GRANTED UNSECURED CREDIT UNDER THE TERMS OF THE UNIFORM SMA.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.
- (2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA;
- (3) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

**If the RFP Bidder does not submit these documents, or if these documents are not sufficient, the Foreign RFP Guarantor is not granted unsecured credit under the terms of the Uniform SMA.** In that case, the RFP Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional financial or credit information regarding the RFP Bidder.

*Third Item: Required Documents for RFP Bidders with a Foreign Entity as Principal*

**AN RFP BIDDER SUBMITTING A PROPOSAL UNDER AN AGENCY AGREEMENT WITH A ~~PRINCIPAL THAT IS A FOREIGN ENTITY~~ AS PRINCIPAL MUST ~~UPLOAD~~ PROVIDE THE ADDITIONAL DOCUMENTS LISTED BELOW TO THE ONLINE PART 2 FORM ~~FOR THE RFP BIDDER AND ITS PRINCIPAL~~ OR BY EMAIL TO BE GRANTED UNSECURED CREDIT UNDER THE TERMS OF THE UNIFORM SMA PECOPROUREMENT@NERA.COM.**

- (1) **one (1) executed original** legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in

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the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.

(2) **one (1) executed original** sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

**SECTION B. PREVIOUSLY ELIGIBLE RFP BIDDERS (THAT HAVE SUCCESSFULLY COMPLETED THE PART 2 PROPOSAL IN A PRIOR SOLICITATION)**

**PLEASE COMPLETE ONLY THE ITEM THAT APPLIES TO YOU:**

Circumstances	Item to Complete
The RFP Bidder is a Foreign <del>entity</del> Entity	First Item
The RFP Bidder relies on the financial standing of a Foreign <u>Entity as</u> RFP Guarantor	Second Item
The RFP Bidder is submitting a Proposal under an Agency Agreement with a <u>Foreign Entity as</u> Principal <del>that is a foreign entity</del>	Third Item

*First Item: Required Documents for Foreign RFP Bidders*

For each document required of Foreign RFP Bidders, a Foreign RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP ~~is~~ remains valid; or: (ii) ~~upload~~provide the document by upload to the online Part 2 form or by email to pecoprocurement@nera.com if it has changed.

**PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED. By clicking the box**

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that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

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REQUIRED DOCUMENTS	Remains valid (not submitted)	Has changed (submitted this solicitation)
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original sworn</b> certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.</p>	<input type="checkbox"/>	<input type="checkbox"/>

PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

Second Item: Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor

For each document required of an RFP Bidder relying on the financial standing of ~~an RFP Guarantor that is~~ a Foreign Entity as RFP Guarantor, an RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP ~~IV~~ remains valid; or (ii) ~~upload~~ provide the document by upload to the online Part 2 form or by email to pecoprocurement@nera.com if it has changed.

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REQUIRED DOCUMENTS	Remains valid (not submitted)	Has changed (submitted this solicitation)
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.</p>	<input type="checkbox"/>	<input type="checkbox"/>

If these documents are not sufficient, the Foreign RFP Guarantor is not granted unsecured credit under the terms of the Uniform SMA. In that case, the RFP Bidder may not rely on the financial standing of the RFP Guarantor. The Independent Evaluator may request additional financial or credit information regarding the RFP Bidder.

Third Item: Required Documents for RFP Bidders with a Foreign Entity as Principal

For each document required of an RFP Bidder submitting a Proposal under an Agency Agreement with a Principal that is a foreign entity, an RFP Bidder that is previously eligible must either: (i) confirm that the document and submitted in a previous solicitation under DSP ~~IV~~ remains valid; or: (ii) ~~upload~~ provide the document by upload to the online Part 2 form or by email to pecoprocmement@nera.com if it has changed.

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PLEASE USE THE TABLE BELOW TO SELECT, FOR EACH DOCUMENT, WHETHER (I) THE DOCUMENT REMAINS VALID OR (II) THE DOCUMENT HAS CHANGED AND IS BEING RESUBMITTED. By clicking the box that a document remains valid, you are confirming that such document continues to meet the requirements of Section V.5 of the RFP Rules.

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REQUIRED DOCUMENTS	Remains valid (not submitted)	Has changed (submitted this solicitation)
<p><b>one (1) executed original</b> legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed. Exhibit 4 to the Uniform SMA includes a sample of a sufficient legal opinion.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>one (1) executed original</b> sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.</p>	<input type="checkbox"/>	<input type="checkbox"/>

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PECO will determine whether such documents are sufficient. If the documents are not sufficient, the RFP Bidder may not be eligible to continue its participation in the RFP.

### 5. Bids

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**Reminder:** Each RFP Bidder submits its Bids electronically, by transferring its Bid Form through a secure file transfer system. The Independent Evaluator provides electronically to each RFP Bidder qualified pursuant to a successful Part 1 Proposal the Bid Form as well as a set of instructions. These instructions guide the RFP Bidder for completion of the Bid Form, for optional encryption of the Bid Form, for submission of the completed Bid Form to the Independent Evaluator via secure file transfer interface, as well as instructions for backup methods for the submission of Bids in case of technical difficulties with the electronic transfer.

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**PECO Exhibit JJM-8**

**Important!** The Independent Evaluator provides electronically to each RFP Bidder that qualifies pursuant to a successful Part 1 Proposal information required for the submission of Bids, including a username, password, and security code. This information is unique to each RFP Bidder and allows the Independent Evaluator to authenticate the Bids received. The RFP Bidder must acknowledge that the RFP Bidder has received intact the information necessary to submit Bids and that no one but authorized personnel of the RFP Bidder has had access to this information.

Please provide this confirmation below.

- I confirm receipt of the Bid Form, instructions, and information necessary to submit Bids. No one but authorized personnel of the RFP Bidder has had access to this information.
- I request that such information and documents be re-issued.

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**5.6. Justification of Omissions Section**

If you are unable to provide all documents or information with this Part 2 Form, please justify fully any omissions in the space provided below.

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If you are providing additional documents, such as providing the Part 1 Form certifications if the individual who is serving as Officer of the RFP Bidder has changed, please use the spaces below to upload these documents.

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## Appendix 9 - Standard Pre-Bid Letter of Credit

[On Issuing Bank's Letterhead]

### IRREVOCABLE STANDBY LETTER OF CREDIT

\_\_\_\_\_ ("Date of Issuance")

Letter of Credit No. \_\_\_\_\_

**Beneficiary:**

PECO Energy Company ("PECO")  
c/o NERA Economic Consulting, Inc. ("NERA")  
Independent Evaluator  
PECO Default Service Program  
[Independent Evaluator Address]

**Applicant:**

[Name of RFP Bidder]  
[Address]

1. We, \_\_\_\_\_ (the "Issuing Bank"), hereby establish this Irrevocable Standby Letter of Credit (this "Letter of Credit") in your favor in the amount of USD \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank's location for presentments] and expiring at 5:00 PM (New York, NY time<sup>1</sup>) on \_\_\_\_\_ [no earlier than fifteen days following the Bid Date] (the "Expiration Date"), unless terminated earlier in accordance with the provisions of Paragraph 9 hereof.
2. This Letter of Credit is issued at the request and for the account of \_\_\_\_\_ (including its successors and assigns, the "Bidder"). This Letter of Credit may be drawn by presenting the documents required by paragraph 3 hereof, including your certificate stating that:
  - a) "the Bidder has made a material omission or misrepresentation in the Part 1 Proposal or the Part 2 Proposal submitted in connection with this solicitation"; or
  - b) "the Bidder has disclosed information relating to its Proposal publicly or to any other party before the PUC has rendered its decision on the results of the solicitation"; or
  - c) "the Bidder has one or more Bids approved by the PUC and the RFP Bidder has failed to execute the Uniform SMA and its Exhibits or has failed to meet the creditworthiness requirements within the timeframe required".

<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern Time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly, here and in Paragraphs 5 and 9.

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**PECO Exhibit JJM-8**

3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to the Issuing Bank at \_\_\_\_\_, (a) Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of PECO, which is your notice, and (b) Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of PECO, which is your draft.
4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 PM (New York, NY time) on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM (New York, NY time) on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM (New York, NY time) on any Business Day.
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons why the demand for payment was not so effected, and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. Unless otherwise hereafter designated in writing to us by an Authorized Officer of PECO, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to PECO pursuant to the following instructions:

PECO Energy Company  
Account No.: \_\_\_\_\_  
Bank: \_\_\_\_\_  
Bank's Address: \_\_\_\_\_  
\_\_\_\_\_  
ABA Routing No.: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced by

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**PECO Exhibit JJM-8**

the amount of any drawings paid through us referencing this Letter of Credit. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.

9. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 3 hereto together with the original of this Letter of Credit returned for cancellation, or (c) 5:00 PM (New York, NY time) on the Expiration Date.
10. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 revision, ICC Publication No. 600, or any successor publication thereto (the "UCP"). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
11. Article 36 of the UCP as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Article 36 of the UCP as it applies to this Letter of Credit is hereby further modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

12. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President ~~or, any~~ Senior Vice President, any Managing Director, any Director, any Associate Director, or any Assistant Treasurer.

"Bids" shall mean the price offers submitted by the RFP Bidder in response to PECO Energy Company's Default Service Program RFP.

"Bid Date" shall mean the day on which the Bidder may submit Bids in the solicitation.

"Bidder" shall mean an entity that has successfully completed the Part 1 Proposal, and that submits the Part 2 Proposal.

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fedwire system.

"Uniform SMA" shall mean the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement by which PECO can contract with winners from this solicitation.

"Independent Evaluator" shall mean the administrator of PECO Energy Company's Default Service Program RFP.

"PUC" shall mean the Pennsylvania Utility Commission.

"Proposal" shall mean a response by the Bidder to PECO Energy Company's Default Service Program

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**PECO Exhibit JJM-8**

RFP in a solicitation, including the Part 1 Proposal and the Part 2 Proposal.

“Transaction Confirmation” shall mean an agreement pursuant to the Uniform SMA that documents certain terms of a transaction between the ~~RFP~~ Bidder and PECO Energy Company.

13. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of PECO or an Authorized Officer of the Independent Evaluator on behalf of PECO.
14. We, the Issuing Bank, certify that as of the Date of Issuance our senior unsecured debt is rated “A-” or better by ~~Standard & Poor’s~~ S&P Global Ratings, or “A3” or higher from Moody’s Investors Service.
15. This original Letter of Credit has been sent to the Independent Evaluator at \_\_\_\_\_ [address for Independent Evaluator] \_\_\_\_\_] (as per Bidder’s instructions, the Independent Evaluator holds the Letter of Credit for the benefit of PECO). The aggregate amount paid to PECO during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of PECO. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of PECO or an Authorized Officer of the Independent Evaluator on behalf of PECO.

Very truly yours,  
[Issuing Bank]

Signature: \_\_\_\_\_  
Name:  
Title:  
Date:

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**Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: [Issuing Bank]  
[Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under Your Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit. The amount to be received by PECO is (USD) \$\_\_\_\_\_.
3. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in as much as the Bidder has \_\_\_\_\_ [state a reason from conditions (a) - (c) of Paragraph 2 of the Letter of Credit].
4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

PECO Energy Company  
By \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ [Bidder]

**PECO Exhibit JJM-8**

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**Annex 2 to Letter of Credit**

SIGHT DRAFT

Amount: \$ \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

At sight, pay to the order of PECO Energy Company the sum of \_\_\_\_\_ U.S. Dollars.

Drawn under Irrevocable Letter of Credit No. \_\_\_\_\_ of \_\_\_\_\_  
[identify Issuing Bank] dated \_\_\_\_\_, 20\_\_.

To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address]  
\_\_\_\_\_

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

**PECO Exhibit JJM-8**

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**Annex 3 to Letter of Credit**

CERTIFICATE OF CANCELLATION

\_\_\_\_\_, 20\_\_

To: [Issuing Bank]  
[Address]

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit, marked cancelled.

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ [Bidder]

**PECO Exhibit JJM-8**

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**PECO Energy Company  
Default Service Program RFP  
March 2021 Solicitation**

**General Information  
Bid Date: Tuesday, March 9, 2021**

**Template Information:**

In addition to this 'General Information' sheet, this Bid Form contains the 'Bids' sheet. The 'Bids' sheet is for entering Bids for all products.

**Bidder Information:**

Company Name:	
Contact Name:	
Phone Number:	

**Bidder Information is incomplete. All fields are mandatory.**

**Class & Product Information:**

A "Class" is a grouping of PECO's retail customers. PECO will procure full requirements service for the Residential ("RES") and Small Commercial ("SC") Classes on a fixed-price basis. PECO will procure full requirements service with energy priced to the PJM day-ahead spot market for the Consolidated Large Commercial and Industrial (CCI) Class.

Number of tranches available		
Class (Product)	Supply Period	Available Tranches
Residential (RES-12-Jun21)	June 2021 - May 2022	12
Residential (RES-24-Jun21)	June 2021 - May 2023	11
Small Commercial (SC-12-Jun21)	June 2021 - May 2022	6
Small Commercial (SC-24-Jun21)	June 2021 - May 2023	3
Consolidated Large Commercial and Industrial (CCI-12-Jun21)	June 2021 - May 2022	8

The Load Caps for a Class are set so that the customers of that Class have no more than a 50% exposure to any one Default Supplier at any given time. The Load Caps apply to the list of products that contribute to Default Supply for a Class at a given point in time. The Load Cap for an RFP Bidder that is a Default Supplier will take into account tranches won in previous solicitations under DSP IV and DSP V.

**Maximum Number of Tranches Bid in this Solicitation - RES Class.**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Caps for RES Class
RES-12-Jun21	12	Won more than 19 RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 tranches under DSP IV	31 less RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 won under DSP IV
RES-24-Jun21	11	Won more than 20 RES-24-Dec19, RES-24-Jun20, RES-12-Dec20, and RES-24-Dec20 tranches under DSP IV	

**Maximum Number of Tranches Bid in this Solicitation - SC and CCI Classes.**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Cap
SC-12-Jun21	6	Won more than 6 tranches of SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 under DSP IV	12 less SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 tranches won under DSP IV
SC-24-Jun21	3	Won more than 9 tranches of SC-24-Dec19, SC-24-Jun20, SC-12-Dec20, and SC-24-Dec20 under DSP IV	
CCI-12-Jun21	8	Load Caps apply always	4

**Complete and Sign Certification:**

I, \_\_\_\_\_, certify under penalty of perjury that I am authorized to submit these Bids.

By affixing my electronic signature below I understand and agree with the following: Any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the PECO Energy Company Pennsylvania Default Service Supplier Master Agreement at the price specified in the Bid.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

**Please enter your Name and Electronic Signature.**

PECO Energy Company  
 Default Service Program RFP  
 March 2021 Solicitation

Bids  
 Bid Date: Tuesday, March 9, 2021

**Bids**

- A 'Bid' is a price in \$/MWh for one tranche of a given product.
- A 'Bid' is rounded to the nearest cent.
- An RFP Bidder may submit different Bids for different tranches of a given product.
- Bids should be entered from top to bottom, without skipping rows.

**Section 1. Total Number of Tranches Bid**

Total Tranches Across all Products

**Section 2. Bids for each Tranche of each Product**

Bids (All Bids are in \$/MWh)

	Residential RES-12-Jun21 June 2021 - May 2022	Residential RES-24-Jun21 June 2021 - May 2023	Small Commercial SC-12-Jun21 June 2021 - May 2022	Small Commercial SC-24-Jun21 June 2021 - May 2023	Consolidated Large Commercial and Industrial CCI-12-Jun21 June 2021 - May 2022
Bid (\$/MWh)					
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

Number of Tranches Bid

	Residential June 2021 - May 2022	Residential June 2021 - May 2023	Small Commercial June 2021 - May 2022	Small Commercial June 2021 - May 2023	Consolidated Large Commercial and Industrial June 2021 - May 2022
	0	0	0	0	0

Bidder-Specific Load Caps

	Residential	Residential	Small Commercial	Small Commercial	Consolidated Large Commercial and Industrial
	12	11	6	3	4
	23		9		

Load Cap Status

	OK	OK	OK	OK	OK
	OK				

Your bidder-specific load caps for a Class are set so that you serve no more than 50% of the load for a Class at any given time and take into account the tranches won in previous solicitations under DSP IV and DSP V.

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**Appendix 11 - Future Solicitations**  
**Tentative Schedule for Future Solicitations**

The tentative schedules for future solicitations are provided in this Appendix 11. These schedules may be modified in accordance with Paragraphs I.1.8 and II.2.3 of the RFP Rules.

Activity	Date
<b>March <del>2017</del>2021 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, January <del>31, 2017</del> 26, 2021
Bidder Information Webcast	Friday, February <del>10, 2017</del> 5, 2021
Decision on alternate guaranty forms (if any)	Friday, February <del>17, 2017</del> 12, 2021
Part 1 Window Opens	Wednesday, February <del>22, 2017</del> 17, 2021
Part 1 Date (Part 1 Window Closes)	Tuesday, February <del>28, 2017</del> 23, 2021
Part 1 Notification Date	Thursday, <del>March 2, 2017</del> February 25, 2021
Approved modifications to Form of Guaranty posted	Friday, <del>March 3, 2017</del> February 26, 2021
Part 2 Window Opens	Friday, <del>March 3, 2017</del> February 26, 2021
Bid Submission training	<del>Monday</del> Wednesday, March <del>6, 2017</del> 3, 2021
Part 2 Date (Part 2 Window Closes)	Thursday, March <del>9, 2017</del> 4, 2021
Part 2 Notification Date	Monday, March <del>13, 2017</del> 8, 2021
Bid Date (Bids are Due)	Tuesday, March <del>14, 2017</del> 9, 2021
IE provides its report to the PaPUC	Wednesday, March <del>15, 2017</del> 10, 2021
PaPUC Decision (close of business)	Thursday, March <del>16, 2017</del> 11, 2021

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If Bids are approved by the PaPUC:

PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

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<u>Activity</u>	<u>Date</u>
<b>September 20172021 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, August <del>15, 2017</del> <u>17, 2024</u>
Bidder Information Webcast	Friday, August <del>25, 2017</del> <u>27, 2024</u>
Decision on alternate guaranty forms (if any)	Friday, September <del>1, 2017</del> <u>3, 2021</u>
Part 1 Window Opens	Wednesday, September <del>6, 2017</del> <u>8, 2021</u>
Part 1 Date (Part 1 Window Closes)	Tuesday, September <del>12, 2017</del> <u>14, 2021</u>
Part 1 Notification Date	Thursday, September <del>14, 2017</del> <u>16, 2021</u>
Approved modifications to Form of Guaranty posted	Friday, September <del>15, 2017</del> <u>17, 2021</u>
Part 2 Window Opens	Friday, September <del>15, 2017</del> <u>17, 2021</u>
Bid Submission training	<del>Monday</del> <u>Wednesday</u> , September <del>18, 2017</del> <u>22, 2021</u>
Part 2 Date (Part 2 Window Closes)	Thursday, September <del>21, 2017</del> <u>23, 2021</u>
Part 2 Notification Date	Monday, September <del>25, 2017</del> <u>27, 2021</u>
Bid Date (Bids are Due)	Tuesday, September <del>26, 2017</del> <u>28, 2021</u>
IE provides its report to the PaPUC	Wednesday, September <del>27, 2017</del> <u>29, 2021</u>
PaPUC Decision (close of business)	Thursday, September <del>28, 2017</del> <u>30, 2021</u>
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

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Activity	Date
<b>March 20182022 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty Bidder Information Webcast	Tuesday, <del>January 30, 2018</del> February 1, 2022
Decision on alternate guaranty forms (if any)	Friday, February 9, <del>2018</del> 11, 2022
Part 1 Window Opens	Friday, February 16, <del>2018</del> 18, 2022
Part 1 Date (Part 1 Window Closes)	Wednesday, February 21, <del>2018</del> 23, 2022
Part 1 Notification Date	Tuesday, <del>February 27, 2018</del> March 1, 2022
Approved modifications to Form of Guaranty posted	Thursday, March 1, <del>2018</del> 3, 2022
Part 2 Window Opens	Friday, March 2, <del>2018</del> 4, 2022
Bid Submission training	Friday, March 2, <del>2018</del> 4, 2022
Part 2 Date (Part 2 Window Closes)	<del>Monday</del> Wednesday, March 5, <del>2018</del> 9, 2022
Part 2 Notification Date	Thursday, March 8, <del>2018</del> 10, 2022
Bid Date (Bids are Due)	Monday, March 12, <del>2018</del> 14, 2022
IE provides its report to the PaPUC	Tuesday, March 13, <del>2018</del> 15, 2022
PaPUC Decision (close of business)	Wednesday, March 14, <del>2018</del> 16, 2022
	Thursday, March 15, <del>2018</del> 17, 2022
<b>If Bids are approved by the PaPUC:</b>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

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Activity	Date
<b>September <del>2018</del>2022 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, August <del>14, 2018</del> 16, 2022
Bidder Information Webcast	Friday, August <del>24, 2018</del> 26, 2022
Decision on alternate guaranty forms (if any)	Friday, <del>August 31, 2018</del> September 2, 2022
Part 1 Window Opens	Wednesday, September <del>5, 2018</del> 7, 2022
Part 1 Date (Part 1 Window Closes)	Tuesday, September <del>11, 2018</del> 13, 2022
Part 1 Notification Date	Thursday, September <del>13, 2018</del> 15, 2022
Approved modifications to Form of Guaranty posted	Friday, September <del>14, 2018</del> 16, 2022
Part 2 Window Opens	Friday, September <del>14, 2018</del> 16, 2022
Bid Submission training	<del>Monday</del> Wednesday, September <del>17, 2018</del> 21, 2022
Part 2 Date (Part 2 Window Closes)	Thursday, September <del>20, 2018</del> 22, 2022
Part 2 Notification Date	Monday, September <del>24, 2018</del> 26, 2022
Bid Date (Bids are Due)	Tuesday, September <del>25, 2018</del> 27, 2022
IE provides its report to the PaPUC	Wednesday, September <del>26, 2018</del> 28, 2022
PaPUC Decision (close of business)	Thursday, September <del>27, 2018</del> 29, 2022
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

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Activity	Date
<b>March <del>2019</del>2023 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty Bidder Information Webcast	Tuesday, January <del>29, 2019</del> 31, 2023
Decision on alternate guaranty forms (if any)	Friday, February <del>8, 2019</del> 10, 2023
Part 1 Window Opens	Friday, February <del>15, 2019</del> 17, 2023
Part 1 Date (Part 1 Window Closes)	Wednesday, February <del>20, 2019</del> 22, 2023
Part 1 Notification Date	Tuesday, February <del>26, 2019</del> 28, 2023
Approved modifications to Form of Guaranty posted	Thursday, <del>February 28, 2019</del> March 2, 2023
Part 2 Window Opens	Friday, March <del>1, 2019</del> 3, 2023
Bid Submission training	Friday, March <del>1, 2019</del> 3, 2023
Part 2 Date (Part 2 Window Closes)	<del>Monday</del> Wednesday, March <del>4, 2019</del> 8, 2023
Part 2 Notification Date	Thursday, March <del>7, 2019</del> 9, 2023
Bid Date (Bids are Due)	Monday, March <del>11, 2019</del> 13, 2023
IE provides its report to the PaPUC	Tuesday, March <del>12, 2019</del> 14, 2023
PaPUC Decision (close of business)	Wednesday, March <del>13, 2019</del> 15, 2023
	Thursday, March <del>14, 2019</del> 16, 2023
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
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Activity	Date
<b>September <del>2019</del>2023 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, August <del>13, 2019</del> 15, 2023
Bidder Information Webcast	Friday, August <del>23, 2019</del> 25, 2023
Decision on alternate guaranty forms (if any)	Friday, <del>August 30, 2019</del> September 2, 2023
Part 1 Window Opens	Wednesday, September <del>4, 2019</del> 6, 2023
Part 1 Date (Part 1 Window Closes)	Tuesday, September <del>10, 2019</del> 12, 2023
Part 1 Notification Date	Thursday, September <del>12, 2019</del> 14, 2023
Approved modifications to Form of Guaranty posted	Friday, September <del>13, 2019</del> 15, 2023
Part 2 Window Opens	Friday, September <del>13, 2019</del> 15, 2023
Bid Submission training	<del>Monday</del> Wednesday, September <del>16, 2019</del> 20, 2023
Part 2 Date (Part 2 Window Closes)	Thursday, September <del>19, 2019</del> 21, 2023
Part 2 Notification Date	Monday, September <del>23, 2019</del> 25, 2023
Bid Date (Bids are Due)	Tuesday, September <del>24, 2019</del> 26, 2023
IE provides its report to the PaPUC	Wednesday, September <del>25, 2019</del> 27, 2023
PaPUC Decision (close of business)	Thursday, September <del>26, 2019</del> 28, 2023
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

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Activity	Date
<b>March <del>2020</del>2024 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty Bidder Information Webcast	Tuesday, January <del>29, 2020</del> 30, 2024
Decision on alternate guaranty forms (if any)	Friday, February <del>7, 2020</del> 9, 2024
Part 1 Window Opens	<del>Friday</del> Monday, February <del>14, 2020</del> 19, 2024
Part 1 Date (Part 1 Window Closes)	Wednesday, February <del>19, 2020</del> 21, 2024
Part 1 Notification Date	Tuesday, February <del>25, 2020</del> 27, 2024
Approved modifications to Form of Guaranty posted	Thursday, February <del>27, 2020</del> 29, 2024
Part 2 Window Opens	Friday, <del>February 28, 2020</del> March 1, 2024
Bid Submission training	Friday, <del>February 28, 2020</del> March 1, 2024
Part 2 Date (Part 2 Window Closes)	<del>Monday</del> Wednesday, March <del>2, 2020</del> 6, 2024
Part 2 Notification Date	Thursday, March <del>5, 2020</del> 7, 2024
Bid Date (Bids are Due)	Monday, March <del>9, 2020</del> 11, 2024
IE provides its report to the PaPUC	Tuesday, March <del>10, 2020</del> 12, 2024
PaPUC Decision (close of business)	Wednesday, March <del>11, 2020</del> 13, 2024
	Thursday, March <del>12, 2020</del> 14, 2024
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
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Activity	Date
<b>September <del>2020</del>2024 Solicitation</b>	
Deadline to request consideration of an alternate form of guaranty	Tuesday, August <del>18, 2020</del> 13, 2024
Bidder Information Webcast	Friday, August <del>28, 2020</del> 23, 2024
Decision on alternate guaranty forms (if any)	Friday, <del>September 4, 2020</del> August 30, 2024
Part 1 Window Opens	Wednesday, September <del>9, 2020</del> 4, 2024
Part 1 Date (Part 1 Window Closes)	Tuesday, September <del>15, 2020</del> 10, 2024
Part 1 Notification Date	Thursday, September <del>17, 2020</del> 12, 2024
Approved modifications to Form of Guaranty posted	Friday, September <del>18, 2020</del> 13, 2024
Part 2 Window Opens	Friday, September <del>18, 2020</del> 13, 2024
Bid Submission training	<del>Monday</del> Wednesday, September <del>21, 2020</del> 18, 2024
Part 2 Date (Part 2 Window Closes)	Thursday, September <del>24, 2020</del> 19, 2024
Part 2 Notification Date	Monday, September <del>28, 2020</del> 23, 2024
Bid Date (Bids are Due)	Tuesday, September <del>29, 2020</del> 24, 2024
IE provides its report to the PaPUC	Wednesday, September <del>30, 2020</del> 25, 2024
PaPUC Decision (close of business)	Thursday, <del>October 1, 2020</del> September 26, 2024
<u>If Bids are approved by the PaPUC:</u>	
PECO sends partially executed Uniform SMA and Transaction Confirmation(s) by overnight delivery service	By close of the fourth business day after the Bid Date
Uniform SMA and Transaction Confirmation(s) fully executed	By 2PM of the fifth business day after the Bid Date
Default Service Supplier meets the creditworthiness requirements	By close of fifth business day after the Bid Date

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## Appendix 12 – Confidentiality Statement

I, \_\_\_\_\_ {name of person}, am employed by \_\_\_\_\_ {name of employer}.

I will be considering, reviewing, and evaluating responses from RFP Bidders or I will have access to information submitted by RFP Bidders that is not publicly released. In this capacity, I sign below and hereby acknowledge and understand the Confidentiality Provisions of the RFP Rules and, consistent with those rules, agree to take all reasonable precautions to ensure that all data and information supplied by all RFP Bidders are maintained in confidence and not disclosed to individuals other than those that have signed this Confidentiality Statement. My signature is witnessed by the Independent Evaluator.

A list of signatories of this Confidentiality Statement is maintained by the Independent Evaluator and available to all signatories and to RFP Bidders upon request. I undertake to consult this list of signatories before communicating RFP information to another person.

If any data or information supplied by an RFP Bidder is disclosed publicly by that RFP Bidder itself or by the Pennsylvania Public Utility Commission, such information will cease to be Confidential.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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## RFP Protocol

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## **I. Introduction**

This RFP Protocol describes the process of administering the Requests for Proposals (“RFP”) and specifies how the Independent Evaluator (“IE”) will communicate with bidders, with representatives of PECO Energy Company (“Company” or “PECO”), and with the Staff of the Pennsylvania Public Utility Commission (“Commission” or “PaPUC”) . The RFP Protocol is focused on specific procedures that the IE and PECO will follow. The following topics will be covered:

- General Principles
- Confidentiality
- Website and Data Room
- Frequently Asked Questions
- Announcements & Communications to Bidders
- Communications to the Press and the Media
- Bidder Information Webcasts
- Guaranty Process
- Processing of Proposals
- Transmitting Confidential Information
- Bid Submission Training
- Market Report
- Bid Processing
- Post-Bid Procedures

## **II. General Principles**

The main guiding principle of this RFP Protocol is that all bidders will be treated equally. This equality means that no bidder will be provided with information that is not available to all other bidders, and all bidders will be subject to the exact same rules and standards for participation. This not only ensures fairness of the process but it also fosters competition and so favors the best

final prices possible. Bidders are more willing to participate in the RFP if they know that no other bidder will be granted an advantage over them.

Furthermore, information that is of a sensitive nature, such as information a bidder provides about itself during the proposal process and information about individual bidders' bids, shall be considered confidential and will not be released to the public. As stated in the PaPUC's Policy Statement at §69.1807(8):

“[t]he public interest would be served by the adoption of uniform rules for the confidentiality of competitive solicitation information. Supplier participation, bid prices, and retail rates may be impacted by protecting certain information, including, the identity of winning and losing bidders, the number of bids submitted, bid prices, the allocation of load among winning bidders, and the like.”

PECO and the IE are committed to upholding these principles, and to that end:

- The IE and PECO will nominate particular individuals who will review RFP information. Each nominated individual signs a Confidentiality Statement. The individual may only discuss the RFP information to which it has access with other nominated individuals. Information will be provided to Staff at critical junctures.
- The IE will serve as the sole interface with bidders.
- The IE will set up a public RFP website to disseminate information and data about this RFP efficiently and to which all stakeholders will have access.

### **III. Confidentiality**

This RFP Protocol describes the extent of the communication between the IE and PECO. Information not specifically designated in this protocol for communication between the IE and PECO shall not be communicated, and shall be treated as confidential. All PECO and NERA personnel involved in the administration of a solicitation will sign the Confidentiality Statement provided as Appendix 11 of the RFP, ensuring that all information submitted by prospective suppliers through this process will be treated as confidential. This RFP Protocol describes what information can be released, to whom and under what circumstances.

PECO and the IE will each designate specific individuals that will take part in the implementation of DSP ~~IV~~.

- These individuals will sign the Confidentiality Statement provided as Appendix 11 of the RFP and will commit to strictly adhere to the RFP Protocol.
- The IE will maintain a master list of individuals who can have access to confidential information and each individual on that list can only discuss confidential information with another individual on that list.
- Each individual, when communicating RFP information, will consult this list of individuals as needed to ascertain that the recipient has signed the Confidentiality Statement.

PECO will have a supporting role during the implementation of each solicitation, consisting primarily of the following:

- Development of data that the IE then posts to the RFP website and updates as necessary;
- Response to bidder inquiries, particularly on data methodology and the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement “Uniform SMA”, after the IE has redacted the identity of the questioner;
- Review with the IE of financial information provided by bidders with their qualification package to determine the credit line that would prevail under the terms of the Uniform SMA;
- Review additional documents provided by bidders that are qualifying under an agency agreement, or as foreign entities, or relying on the financial standing of a foreign entity;

- Review with the IE of modifications to credit instruments proposed by bidders (once the IE has redacted the identity of the prospective supplier) to determine whether the modifications are non-material in nature;
- Review with the IE of alternate guaranty forms to determine whether the alternate guaranty form provides the same protection as the standard format of the guaranty under the Uniform SMA;
- Review with the IE of bid security (once the IE has redacted the identity of the bidder and the amount) to determine whether the bid security instruments follow the standard formats or only include approved changes;
- Review the Uniform SMA documents and the guaranty (if applicable) prepared for Default Suppliers.

In addition, and assuming the Commission approves the results of a solicitation, the IE will provide PECO with the information necessary to administer the winning contracts, namely the identity of the approved suppliers, the amount that they will supply of each product, and the supplier-specific price for each product (which is the average of the supplier's approved bids for that product).

In addition to the information needed to administer the contracts, PECO will have access to certain additional information to assist in assessing whether the products offered could be improved in future procurement plans and to assist it in finalizing its contingency plans should the results of any solicitation be rejected by the Commission. The IE, at the conclusion of each solicitation, will provide PECO with a redacted version of the report it provides to the Commission. The redaction will ensure that PECO does not have access to information concerning losing bids of specific bidders. This redacted report is discussed in more detail in Section ~~XV.C~~XV.C of this Protocol.

The Commission's regulations at §§54.186(c)(5) specifically provide as follows:

“The bids submitted by a supplier in response to a competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission pursuant to §§ 54.185(D)(6). The DSP, the Commission, and a third party involved in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.”

#### **IV. Website and Data Room**

A website dedicated specifically to the RFP is the most efficient way for the IE to disseminate information to bidders and other stakeholders. An RFP website ([www.pecoprocurement.com](http://www.pecoprocurement.com)) was developed during DSP I. The RFP website has been maintained since that time and will be maintained during DSP ~~IV~~V. The main pages of the RFP website will contain DSP ~~IV~~V information. Materials from prior Default Service Programs will be accessible through an “archives” section of the RFP website. The RFP website is public, and anyone can access the site at any time and find any information they require simply by searching the RFP website instead of calling or emailing the IE. No password or login information is required to view the RFP website.

The RFP website contains a section where any visitor may register by submitting information such as name, phone number and email address. Any user who submits an email address will be signed up to receive updates via email from the IE. A registrant who elected to receive email updates during previous Default Service Programs will be sent updates about DSP ~~IV~~V unless the registrant opts out, which the registrant can do at any time.

The RFP website allows stakeholders to download all key documents as soon as these become available. Such documents include the RFP Rules, the Uniform SMA, and the qualification materials that bidders will need to submit (e.g., proposal forms and standard templates for pre-bid security). These documents for a given solicitation will continue to be posted well in advance of the qualification deadlines. The RFP website also includes a calendar providing the deadlines for each solicitation. A calendar is provided in the RFP, in Article II of the RFP Rules as well as in Appendix 10 of the RFP.

The RFP website includes a data room to assist bidders in assessing the RFP opportunity. This data room includes data that is useful for providers in assessing the load associated with each product, such as historical load by class, switching statistics, etc. Data series are updated once a month.

In addition to allowing bidders to assess their ability to serve different products, the provision of data via the RFP website also has the effect of leveling the playing field for all bidders; without the provision of data, some bidders may have a better idea of the load associated with PECO's customers, and this would put bidders without such familiarity at a competitive disadvantage. Therefore, providing data on an equal basis to all bidders equalizes knowledge across prospective suppliers, and spurs competition in areas where some bidders might not otherwise have the ability to offer competitive bids. This is in keeping with the guiding principle of equality described at the beginning of this protocol.

It is expected that the same data series that were provided in prior Default Service Programs would continue to be provided during DSP ~~IV~~V. The IE did not receive any requests for additional data series that would improve bidders' ability to submit competitive bids. Confidential data can expand the information provided, but at the cost of setting up a password-protected section of the website or of providing data through mailings only to qualified parties, and at the possible cost of monitoring access to the data. At this point in time, PECO does not anticipate the need to provide data on such a confidential basis, but will be able to do so if the need arises.

Data are currently updated on or about the 13<sup>th</sup> day of each month, on an ongoing basis, and PECO will continue this process without interruption between DSP ~~III~~IV and DSP ~~IV~~V. Initial data series were first provided on March 27, 2009 including historical data dating back to January 2006. The procedure for the monthly updates of the data series on the RFP website is as follows:

1. PECO provides the updated data to the IE at least three days in advance of the scheduled monthly update;
2. The IE checks the data, ensuring that it is accurate and error-free, contacting PECO if necessary to resolve any issues;
3. The IE posts the updated data series to the RFP website.

The following data are available on the RFP website:

- hourly usage data;

- number of retail customers;
- capacity peak load contribution (“PLC”);
- historical monthly retention figures;
- estimated loss factors;
- customer size distributions.

Data may be archived so that the more recent five years of data are more immediately available to stakeholders.

The material on the RFP website will be updated when new content becomes available that would be of use to stakeholders. The process for updating the RFP website and adding new material is as follows:

1. PECO and the IE together prepare the material for posting, ensuring that it is accurate and error-free;
2. The IE posts the new documents to the RFP website;
3. The IE sends an announcement (via email) to registrants informing them of the newly available content on the RFP website.

## **V. Frequently Asked Questions**

The RFP website also contains a web-based form that stakeholders can use to submit questions, and a section where the IE would post questions received and the associated responses, in order to ensure equal distribution of information. This FAQ form is available for all stakeholders to ask questions and receive answers, although in times of high demand, priority may be given to answering questions from prospective suppliers. There are four major steps to the process.

In the first step, the question is received and the IE sends an acknowledgement to the questioner. The acknowledgement serves as a bidder’s confirmation that its question has been received, and the acknowledgement will also inform the bidder of the expected turnaround time for an answer, expected to be two business days. In the second step, the IE drafts an answer to the question, consulting PECO for expertise as necessary. If PECO is consulted, the identity of the

entity who has asked the question is not revealed, and any information in the question itself that could potentially identify the questioner is removed before sending to PECO.

Once an answer has been finalized by the IE (and PECO if necessary), the IE sends the final response directly to the questioner. If there is any delay in answering the question, such that the answer cannot be sent before the end of the expected turnaround period, the IE will send a delay notice to the questioner informing it of the delay and of a revised expected turnaround time for the answer. In the final step, questions and answers that were received during the previous week are posted to the Frequently Asked Questions (FAQ) section of the RFP website by the IE.

Posting the questions to the RFP website ensures an equal distribution of information among stakeholders – any information that is conveyed to one party via an answer to a question submitted through the RFP website is then conveyed to all stakeholders in a public manner through the FAQ section of the RFP website. This practice ensures that all bidders have the same information and can compete on an equal playing field. Any question received by a party other than the IE must be sent to the IE for processing – no party other than the IE will directly answer a question from a stakeholder. Because all questions received about the RFP must go through the IE, bidders know that all questions receive the same treatment; as specified in the guiding principles of this RFP Protocol, the IE is the sole interface with bidders.

The FAQ section of the RFP website is updated once per week, allowing for more frequent posts at times of high volume or less frequent posts due to holidays.

## **VI. Announcements & Communications to Bidders**

As specified in Section IV, postings of new information to the RFP website will be followed by an announcement made to all registrants to the RFP website. (The only exception will be for data postings that have been scheduled to occur on the same day each month.) The IE and PECO may also issue announcements to a list of registrants to the RFP website from time to time to remind prospective suppliers of deadlines for a given solicitation under the RFP or to make them aware of events that may impact the bids. Announcements will include the following milestones:

- Initial documents posted
- Part 1 Proposal Window opening & closing
- Bidder Information Webcast reminders
- Part 2 Proposal Window opening & closing
- Bids due
- PaPUC decision on RFP results

The goal of these announcements is to ensure that all bidders and stakeholders are aware of the ongoing progress of a solicitation, and to minimize the possibility that a potential bidder is unable to bid due to a missed deadline.

The IE will also engage in direct marketing to promote the RFP opportunity. Members of the IE team will compile a list of prospective suppliers using publicly available information and contact representatives of these entities or contract with a professional marketing service to contact the representatives to inform them of key dates in the RFP, and opportunities for them to gain more information about participation in the RFP, such as bidder information webcasts and the RFP website. All prospective suppliers reached during these marketing calls will receive the same public information.

## **VII. Communications to the Press and the Media**

The IE and PECO may also issue press releases or advertisements in order to promote the RFP opportunity. Information placed in the trade press has the ability to reach prospective suppliers that might not have been contacted otherwise, and might not have registered to the RFP website of their own volition; thus, more parties may be made aware of the RFP website, and more participation may be achieved for the bidder information webcasts. The IE and PECO will work together to draft these communications. If the IE and PECO issue a press release, contact information of a team member of the IE will be included in case additional information is required.

PECO may grant interviews to the press or respond to press inquiries concerning the RFP. The interviews and responses to press inquiries are limited to public information regarding the

RFP. PECO may require that the IE, who is to provide support in promotion efforts, participate in interviews and press inquiries. PECO has complete discretion to provide its customers and security analysts with public information regarding the RFP. PECO has complete discretion to provide public information to utilities or regulators from outside Pennsylvania.

The IE will coordinate with PECO's press representatives on all media contacts before the RFP. The IE will coordinate with PECO before granting interviews or commenting on any aspect of the RFP. Notwithstanding this, the IE will answer routine inquiries from the press and will inform PECO of such inquiries (e.g., wanting to know where a document is on the RFP website).

### **VIII. Bidder Information Webcasts**

In addition to the electronic information dissemination methods via the RFP website, email, or through press releases, bidder information webcasts are effective for presenting efficiently and concisely the main elements of the RFP. Such webcasts also have the significant benefit of allowing bidders to ask questions directly of the IE and PECO. The IE and PECO expect that, for each solicitation, there would be a webcast prior to the due date for submission of Part 1 Proposals, and a subsequent training session held for bidders that are qualified to submit a Part 2 Proposal.

Each webcast will be tailored to parties considering participation in the RFP, and will cover a broad range of general topics about the opportunity. The aim is to provide a wealth of information quickly, so that potential bidders can evaluate the opportunity. Subject material will consist of the requirements of the RFP, the rules for the submission of proposals, the general structure of the RFP, the definition of the products available, and a summary of the RFP website and communication channels by which interested parties can obtain further information throughout the process.

The IE will prepare and deliver the presentation at the webcast, with representatives of PECO on hand to answer questions if necessary. The IE will take down all questions asked and answered at the bidder information webcast and post them to the RFP website as Frequently Asked Questions, so that bidders that are unable to attend the bidder information webcast have access to the same information as bidders able to attend. Similarly, the presentation will be available on the RFP website after the bidder information webcast, both as a pdf and as a recording of both the

audio and the slides. No information about the parties in attendance at the bidder information webcast will be made public.

Shortly before the Bid Date, the IE will hold a training session on the mechanics of submitting bids on the Bid Date. This session will be limited to bidders.

## **IX. Alternate Guaranty Process**

PECO will allow any prospective supplier to submit for consideration an alternate guaranty form that the prospective supplier uses in its normal course of business. A separate and more detailed document about the Alternate Guaranty Process is included as Appendix 2 of the RFP. This document provides the specific minimum requirements of any alternate guaranty form.

The protocol for the processing of a submission under the Alternate Guaranty Process will occur in the following steps:

1. Parties submit alternate guaranty forms by emailing the form and all relevant documentation (as specified in the Alternate Guaranty Process document).
2. The IE acknowledges receipt of the package by email. The notice includes an assessment of whether all required materials have been received. If there is time before the deadline, a prospective supplier submitting incomplete documentation will be given an opportunity to complete its submission.
3. The IE redacts all information that could identify the prospective supplier submitting the alternate guaranty form and provides the redacted form and other documentation to PECO electronically.
4. PECO evaluates the alternate guaranty package with the assistance of the IE and of outside counsel as necessary.
  - a. If the package is acceptable, the IE sends a notice to the prospective supplier informing it of the form's acceptability for use under the Uniform SMA.
  - b. If the package is unacceptable, the IE sends a notice to the prospective supplier informing it of what must be changed in order for the package to be acceptable for use under the Uniform SMA.
5. Prospective suppliers that submit revised alternate guaranty packages do so via email.

6. The IE redacts all information that could identify the parties submitting the revised packages and provides the redacted material to PECO electronically.
7. PECO evaluates with the assistance of the IE and of outside counsel as necessary.
  - a. If a revised package is acceptable, the IE sends a notice to the prospective supplier informing it of the form's acceptability for use in the RFP.
  - b. If a package is unacceptable, the IE sends a notice to the prospective supplier informing it of the form's final rejection for use in the RFP and the reasons for the rejection.
8. Accepted forms are kept on file by the IE, as they will be acceptable for use in future solicitations under the RFP.
9. A prospective supplier submits the executed alternate guaranty form and the signed enforceability opinion with the Part 2 Proposal.

An alternate guaranty form approved through this process will be acceptable to PECO. This alternate guaranty form may be used for purposes of the solicitation during which it is approved and may be used for the course of DSP ~~IV~~ barring changes in the applicable law or changes to the RFP process as may be ordered by the PaPUC. Suppliers that had alternate forms of guaranty approved during a prior Default Service Program will be required to resubmit their materials.

## **X. Processing of Proposals**

A proposal consists of three (3) parts. The Part 1 Proposal is the bidder's response to the qualification standards described in Article IV of the RFP Rules. Bidders that qualify pursuant to a successful Part 1 Proposal may submit the second part, the Part 2 Proposal. The Part 2 Proposal, described in detail in Article V of the RFP Rules, includes financial support for the bidder's offers. Bidders that present a successful Part 1 Proposal and Part 2 Proposal may submit the third part of the Proposal, which consists of the bidder's bids.

Part 1 and Part 2 Proposals are received and processed by the IE, with certain specified decisions and evaluations made by PECO with the assistance of the IE. The IE is the main party responsible for processing the proposals and bids. This section lays out the step-by-step procedures to be followed and time periods for each action to be taken.

Prospective suppliers submit Part 1 proposals during the Part 1 Window. Any information provided by a bidder in its Part 1 Proposal is provided on a confidential basis to the IE, and may be provided on a confidential basis to PaPUC Staff. PECO representatives and the IE will review the information provided to fulfill the financial requirements under the Uniform SMA. PECO representatives and the IE will review draft documents provided to comply with specific requirements for bidders submitting a proposal under an agency agreement, and draft documents provided to comply with specific requirements for foreign bidders or for bidders relying on the financial standing of a foreign entity.

Bidders submit Part 2 proposals during the Part 2 Window. Bidders may also provide the [representations and certifications required by the online](#) Part 2 Form during the Part 1 Window for early processing. Any information provided by a bidder in its Part 2 Proposal is provided on a confidential basis to the IE, and may be provided on a confidential basis to the PaPUC Staff. PECO representatives review the pre-bid letter of credit with the name of the bidder and the amount redacted and will participate in the evaluation of this pre-bid letter of credit. PECO representatives and the IE determine the sufficiency of documents provided to comply with specific requirements for bidders applying under an agency agreement, and documents provided to comply with specific requirement for foreign bidders or for bidders relying on the financial standing of a foreign entity.

The IE provides all notifications by email and documents by secure file transfer to the bidder's designated representative and up to three (3) additional individuals. The IE may also communicate with the named officer.

#### **X.A. Part 1 Proposals**

In the Part 1 Proposal, applicants submit basic information, such as the name of the prospective supplier and contact information. The officer of the bidder named in the Part 1 Proposal will designate a representative as a point of contact for purposes of the RFP and will make a number of certifications regarding its participation in the RFP as well as provide information required by the Part 1 Proposal. A bidder may designate up to three (3) additional individuals who are authorized to act on behalf of the bidder and who receive all correspondence from the IE.

#### **X.A.1. Receipt and Processing of Part 1 Proposals**

- All materials for the Part 1 Proposals must be received by 12 PM (noon EPT) on the Part 1 Date.
- The Part 1 Proposal includes the completed Part 1 Form as well as one (1) copy of all documents required by the Part 1 Form. The Part 1 Form will be available online for bidders to complete through an online proposal website. The online proposal website will only be accessible to suppliers that have requested an online account and have been provided login credentials by the IE.
- Any documents required by the Part 1 Proposal other than the Part 1 Form must be submitted electronically either by email to the IE at [pecoprocurement@nera.com](mailto:pecoprocurement@nera.com) or by upload to the online Part 1 Form.
- When a bidder submits the online Part 1 Form, the IE receives an email from the online proposal website that indicates that a submission has been received. The email provides the company name associated with the submission. The IE will lock the bidder out of the form so that no further changes are possible to the submitted information while such information is under review. The IE will access the submission through the administrative interface of the online proposal website. The submission will be downloaded and saved on a secure network accessible only by the IE. The submission will also be saved to a portable medium such as ~~a DC~~an encrypted USB flash drive and stored off-site for at least four years after the conclusion of the current default service program.
- If the Part 1 Proposal is received by the IE before noon on any business day during the Part 1 Window, the IE will send an acknowledgment confirming receipt on the day the Part 1 Proposal is received with the results of an initial review. If a Part 1 Proposal arrives after noon on any business day during the Part 1 Window prior to the Part 1 Date, the IE will send the acknowledgment along with the initial review by noon of the next business day.

- The IE's initial review will include a determination of the completeness of the proposal. The initial review will state either that the Part 1 Proposal is complete and is being considered, or the initial review will list items of the Part 1 Proposal that are deficient or require clarification. When a review is sent, the IE will restore access for the bidder to the online Part 1 Form.
- If the proposal is missing information, or requires clarification, a communication listing all information and documents required to complete the proposal will be prepared by the IE and sent to the bidder.
  - The bidder has until noon on the Part 1 Date, or until 6 PM on the business day following the business day during which such a notice is sent to the bidder, whichever comes later, to respond.
  - If the information and documents required to remedy deficiencies are submitted within the time allowed, the IE reconsiders the proposal.
  - If the required information is not submitted within the time allowed, the proposal is incomplete. The Part 1 Proposal will be rejected and the IE will send a rejection notice to the bidder by email.
- The Part 1 Proposal allows the bidder to submit non-material modifications to the credit instruments, namely the standard form of the pre-bid letter of credit, the standard form of the letter of credit appended to the Uniform SMA, and the standard format of the guaranty. If such a submission is received:
  - The IE will redact identifying information from the document and provide the redacted version to PECO for review.
  - PECO and the IE will evaluate the submission.
  - The IE will communicate the results of the review to the bidders in the specified timeframe.

- All such modifications related to a particular credit instrument will be posted in a single document on the RFP website.
- To the extent that they remain applicable, modifications that were acceptable in previous Default Service Programs will remain acceptable during DSP ~~IV~~V. A document containing all such modifications will be posted to the RFP website in advance of the first solicitation under DSP ~~IV~~V.
- Bidders submitting a proposal under a number of specific special circumstances are requested to submit additional documents with their Part 2 Proposals. Any such bidder can submit draft documents with its Part 1 Proposal. These include bidders submitting a proposal under an agency agreement, foreign bidders, and bidders relying on the financial standing of a foreign entity. The IE will take the following steps for the evaluation of any such documents.
  - The IE will redact identifying information from the document and provide the redacted version to PECO for review.
  - PECO will review the document with the assistance of the IE and the IE will communicate the results of the review to the bidder with the Part 1 Notification.
- The financial documents submitted by all bidders that accompany the Part 1 Proposals will be provided to PECO. PECO representatives will be provided with the information they need to make the creditworthiness evaluation on the Part 1 Date. It is expected that the creditworthiness evaluation will take no more than a day. The following steps will occur:
  - The IE will provide to PECO a spreadsheet that contains the names of the applicants and their guarantors;

- PECO will make a determination of the creditworthiness of the applicants and their guarantors, with the IE assistance;
- The credit assessment of the applicants and their guarantors is entered into the spreadsheet.

#### **X.A.2. Notification for Part 1 Results**

- For each prospective supplier that qualifies under the requirements of the Part 1 Proposal, the IE will send a Part 1 Notification regarding their qualification status. This letter also details the creditworthiness assessment.
- With the initial notification, the IE sends by secure file transfer the Part 1 Materials: (i) the Bid Form and instructions for submission of bids; (ii) instructions for filling out and encrypting the Bid Form; (iii) instructions for the electronic transfer of the completed Bid Form from the bidder to the IE; (iv) instructions for submission of the bids in case of technical difficulties with the electronic transfer; (v) invitation to a training session on the bid submission process; and, (vi) a username, a password, and security codes to be used for bid submission uniquely by that bidder.

#### **X.B. Part 2 Proposals**

In the Part 2 Proposal, bidders fulfill the requirements specified in Article V of the RFP Rules, including providing financial support for the bidder's offers.

##### **X.B.1. Receipt and Processing of Part 2 Proposals**

- All materials for the Part 2 Proposals must be received by 12 PM (noon EPT) on the Part 2 Date. Bidders also have the option to submit the certifications required with the Part 2 Proposal during the Part 1 Window for early processing.
- The Part 2 form is submitted online through an online proposal website. The Part 2 Proposal includes the completed Part 2 Form submitted online and an executed Pre-Bid Letter of Credit submitted in hardcopy at the IE's offices.

- Bidders submitting a proposal under an agency agreement, foreign bidders, and bidders relying on the financial standing of a foreign entity submit additional documents as specified in Article V of the RFP Rules. Any additional documents required by the Part 2 Proposal must be submitted electronically either by email or by upload to the online Part 2 Form.
- When a bidder submits the online Part 2 Form, the IE receives an email from the online proposal website that indicates that a submission has been received. The email provides the company name associated with the submission. The IE will lock the bidder out of the form so that no further changes are possible to the submitted information while such information is under review. The IE will access the submission through the administrative interface of the online proposal website. The submission is downloaded and saved on a secure network accessible only by the IE. The submission will also be saved to a portable medium such as ~~a DC~~an encrypted USB flash drive and stored off-site for at least four years after the conclusion of the current default service program.
- If the Part 2 Proposal is received by the IE before noon on any business day during the Part 2 Window, the IE sends the acknowledgment confirming receipt on the day the Part 2 Proposal is received with the results of an initial review. If a Part 2 Proposal arrives after noon on any business day during the Part 2 Window prior to the Part 2 Date, the IE sends the acknowledgment along with the initial review by noon of the next business day.
- A copy of all security documents is made. Original security documents are stored in a safe in the IE office.
- The IE's initial review of the proposal makes a determination on the completeness of the proposal. The initial review states either that the Part 2 Proposal is complete and is being considered, or the initial review lists items of the Part 2 Proposal that are deficient or require clarification.

- Review of the pre-bid letter of credit as well as documents provided for bidders submitting a proposal under an agency agreement, as foreign bidders, or while relying on the financial standing a guarantor may be part of an initial review or may be provided separately the next business day.
- If the proposal is missing required information, or requires clarification, a communication listing all information and documents required to complete the proposal is prepared by the IE and sent to the bidder:
  - With the exceptions noted below, the bidder has until noon on the Part 2 Date, or until 6 PM on the business day following the business day during which such a notice is sent to the bidder, whichever comes later, to respond.
  - For deficiencies related to the pre-bid letter of credit or documents provided to comply with specific requirements for bidders applying under an agency agreement, and documents provided to comply with specific requirement for foreign bidders or for bidders relying on the financial standing of a foreign entity, the bidder will have until noon on the Part 2 Date, or until 6 PM of the second business day following the business day during which the bidder is notified, whichever comes later, to respond.
  - The IE will restore the bidder's access to the online Part 2 Form to allow the bidder to remedy the deficiencies to the submitted information.
- If the information and documents required to remedy deficiencies are submitted within the time allowed, the IE reconsiders the proposal.
- If the required information and documents are not submitted within the time allowed, the proposal is incomplete. If the Part 2 Proposal is rejected, the IE sends a rejection notice to the bidder by email.
- All bidders submit an executed pre-bid letter of credit with their Part 2 Proposals. PECO review the pre-bid letter of credit to ensure that it either uses the standard

form or that it includes only approved modifications. The following steps will occur:

- IE redacts all information that could identify the applicant and the amount of the LC from the pre-bid letter of credit prior to providing it electronically to PECO for review.
  - PECO will check that the forms of the pre-bid letters of credit are acceptable with the assistance of the IE. The IE and PECO undertake a daily review, and conference call if necessary, during the Part 2 Proposal Window to review the pre-bid letters or credit as they arrive.
  - If the pre-bid letter of credit requires revision, the IE prepares a deficiency notice informing the bidder of how its pre-bid letter of credit is deficient and what it must do to remedy the deficiencies. This notice to the bidder by via email.
  - If a new/amended pre-bid letter of credit is submitted the IE confirms whether the new pre-bid letter of credit follows the instructions of the deficiency notice. The IE consults PECO as needed by conference call. If the new pre-bid letter of credit does not follow the requirements, the bidder will receive an additional deficiency notice as long as time remains for the bidder to remedy the deficiencies. If no time remains, the bidder will not be allowed to submit bids.
- Bidders in special circumstances provide additional documents with the Part 2 Proposal. This is the case for bidders applying under an agency agreement, documents provided to comply with specific ~~requirement~~requirements for foreign bidders, and for bidders relying on the financial standing of a foreign entity. The sufficiency of these documents is evaluated by PECO and the IE. For each of these documents submitted:

- The IE and PECO meet daily as needed via conference call during the Part 2 Proposal Window to evaluate these documents as they arrive. PECO and IE determine the sufficiency of the documents provided.
- If the document(s) requires revision, the IE prepares a deficiency notice informing the bidder of how its document(s) is deficient and what it must do to remedy the deficiencies. This letter is sent to the bidder.
- If a bidder had submitted a draft of these documents with its Part 1 Proposal for review and if the bidder conforms these documents submitted with the Part 2 Proposal to the review provided during the assessment of the Part 1 Proposal, then these documents will automatically be considered sufficient.
- If a new/amended document(s) is submitted, the IE confirms whether the new document(s) follows the requirements of the deficiency notice. The IE consults PECO as needed by conference call. If the new document(s) does not follow the requirements, the bidder is not allowed to submit bids, or is not be granted unsecured credit under the terms of the Uniform SMA, or is not allowed to rely on the financial standing of the guarantor.

#### **X.B.2. Notification for Part 2 Results**

A bidder that submits a Part 2 Proposal will be notified whether it has qualified to submit bids no later than 6 PM on the Part 2 Notification Date. This Part 2 Notification letter will be sent to the bidder by email.

#### **XI. Transmitting Confidential Information**

At various times throughout the RFP process it will be necessary for the IE to communicate certain highly confidential information to RFP Bidders. This section specifies the methods by which such information will be transferred. These protocols are used when designated highly confidential information must be transmitted; they are not used in the course of standard Proposal-related communication such as deficiency and complete notices. Any communication containing any of the following items is designated as highly confidential:

- Bidding results
- Login information for the secure file transfer system
- Bidder-specific load caps
- Part 1 and Part 2 Notifications

#### **XI.A. Email & Secure File Transfer**

When sending highly confidential communications to bidders, the IE will observe the following protocols:

- Communications with information regarding a bidder's participation in the RFP will only be sent to the representatives designated in the Proposal forms.
- Confidential information will be contained in pdf documents, with a note in the text of the communication informing the recipient of the purpose of the email and instructing the recipient to destroy the email and its attachment without reading or retaining them if the email has been received in error.
- Communications with confidential information will be checked by at least two members of the IE Team before being sent to ensure that the recipients' email addresses are correct and that the correct file attachment for that bidder has been attached.

#### **XII. Bid Submission Training**

The IE will hold a training session for bidders to practice the bid submission process prior to the submission of bids. The principle of the training is to familiarize all bidders with the step-by-step procedure to submit bids so that they can be sure they understand the process in advance of the actual Bid Date, allowing them to submit their actual bids without being hampered by technical difficulties or procedural questions. The training session is scheduled to occur early during the Part 2 Proposal Window, and will allow only potential bidders that have submitted successful Part 1 Proposals to familiarize themselves with the process by which they will be allowed to submit bids pursuant to successful Part 2 Proposals.

The IE will conduct the training exactly as it would on the Bid Date, except that bids submitted through the training exercise will not be binding in any way. PaPUC Staff may monitor the training exercise. PECO is not involved in the bidder training, but may participate in a separate mock trial with the IE so as to understand the bid submission process.

The training exercise will occur as follows:

1. Bidders will be provided with information on how to participate in the training with their Part 1 Notifications, including information for the electronic transfer of the Bid Form specific to the training;
2. Bidders will fill out, encrypt<sup>1</sup>, and transfer electronically their Bid Forms to the IE using the system that will be employed on the actual Bid Date, and during a specific timeframe set aside for the training;
3. The IE will receive, decrypt and evaluate the submitted forms for completeness; as it would on the actual Bid Date;
4. The IE will contact the bidders to inform them of the receipt of their practice Bid Forms, and whether or not the forms were filled out properly;
5. Bidders wishing to practice submitting bids using a backup method will be afforded the opportunity to do so.

### **XIII. Market Report**

This report would provide visible market prices for components of the full-requirements product and provide the PaPUC with any changes in broad trends in the wholesale markets since the previous solicitation. If appropriate, the market report could also report the results of similar solicitations held in the State or in a comparable region.

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<sup>1</sup> Encryption is optional, but bidders will be encouraged to practice the encryption method and to use it on the Bid Date. The Independent Evaluator will verify the identity of bidders that submit unencrypted bid forms using the bidder-specific confidential information provided with the Part 1 Notification.

- If desired, the IE will prepare a confidential report to the PaPUC detailing current market conditions affecting the products of the RFP.
- This report would be provided one week to ten days in advance of the Bid Date to the PaPUC on a confidential basis.

#### **XIV. Bid Processing**

A bidder's bids must be received between 10 AM and noon on the Bid Date. The Bid Form, as provided to each bidder along with its Part 1 Notification, is the exclusive method for the submission of bids. The RFP Rules are the governing document regarding the processing of bids on the Bid Date. The steps of the process are as follows:

- The Bid Form must be filled out completely, encrypted (optional), and transferred according to the instructions provided by the IE.
- A bidder submits its bids electronically, by transferring a Bid Form through a secure file transfer interface. The bidder must use a username and a password provided by the IE to access the secure interface. The bidder must use a security code provided by the IE to encrypt the file, or provide the security code over the phone if the file is not encrypted.
- The primary backup method for submitting the Bid Form is by ~~fax. The secondary method is by~~ email. A bidder that submits the Bid Form by email will be informed that the IE recommends that the Bid Form be encrypted. A bidder that must resort to submitting its Bid Form by ~~fax or~~ email because of technical difficulties must follow the instructions provided by the IE for this contingency. These instructions will include a representative of the bidder phoning the IE to advise the IE of the use of ~~a fax or an~~ email transmission to submit bids and to provide authenticating information.
- The IE checks the Bid Form received for consistency with the requirements of the RFP, including a verification that the pre-bid letter of credit is sufficient to cover

the bids of each bidder. The IE contacts each bidder within 15 minutes of receipt of the Bid Form.

- If the Bid Form is complete and consistently filled out, the IE acknowledges receipt of the Bid Form and states to the bidder that the Bid Form is complete and consistent with the requirements of the RFP.
  - If the Bid Form received by the IE is incomplete or inconsistent, the IE acknowledges receipt of the Bid Form but advises the bidder of the information that must be added or modified. The bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and noon on the Bid Date. Otherwise, the bids are not evaluated.
  - If the pre-bid letter of credit is insufficient to support the bids, the IE states that fact to the bidder. The bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and noon on the Bid Date. Otherwise, IE will modify the Bid Form as specified in the RFP Rules.
- Members of the IE communicating with bidders during the submission procedures use a script so as to minimize any disparity of information provided to bidders.
  - The bids supported by adequate financial guarantees will be evaluated on a price-only basis. The bids for each product will be ranked from lowest to highest price until all bids are ranked or until the number of bids that are ranked equals the number of tranches available for the product.
  - The IE phones each bidder that has submitted bids by 6 PM on the Bid Date and identifies the bidder's bids that are being identified to the PaPUC as winning bids.
  - If two or more bidders submit bids that are identical for a product, these bids will be considered "Tied Bids" at that price. The IE will use the tie-breaking procedure described in the RFP Rules.

The IE communicates with PECO and provides the average winning price for each product and whether the solicitation has purchased all available tranches. PECO will not have information regarding any bidder's specific bids.

## **XV. Post-Bid Procedures**

### **XV.A. Post-Bid Meeting with PECO**

To facilitate the timeline for the execution of contracts, the IE will provide to PECO certain information about the results of bidding prior to the PaPUC decision on a confidential basis. All recipients of this information will have signed the Confidentiality Statement and will treat such information as highly confidential. All recipients of the information will be advised of its confidential nature and that it is preliminary, subject to approval by the PaPUC.

The information provided to PECO will include:

- The number of tranches of each product that were filled;
- The weighted average winning bid price of each product;
- The names of bidders that submitted Part 1 and Part 2 Proposals.

### **XV.B. PaPUC Decision**

The IE will present the results of each solicitation to the PaPUC by ~~11~~8 AM on the day immediately following the Bid Date in a confidential report. This confidential report will include the winning bids determined during the evaluation. Following the submission of the report by the IE:

- The PaPUC will have one (1) business day to consider the report of the IE and to approve or reject each of the winning bids. If the PaPUC does not act within one (1) business day, the winning bids are deemed to be approved.
- The IE will notify all bidders that have approved bids. The IE provides to PECO the name of each approved supplier, and for each such supplier, the number of tranches won by the supplier and the supplier-specific price for each product. The

supplier-specific price for a given product is the average of the supplier's approved bids for that product.

- PECO is not provided with information concerning losing bids.

#### **XV.C. Provision of Redacted Final Report to PECO**

To assist PECO in assessing whether the products offered could be improved in future procurement plans and to assist it in finalizing its contingency plans should the results of any solicitation be rejected by the Commission, PECO will be provided with certain additional information. Namely, PECO will be provided with a redacted version of the factual report provided to the Commission on the results of the solicitation. The report will be redacted so that PECO will not receive information about bids that is bidder-specific or proposal information that a bidder may consider confidential or proprietary. The report will be provided at the conclusion of the solicitation, namely when all contracts with winning suppliers that are approved by the Commission have been executed.

Any bidder-specific information that is not relevant to PECO's assessment of the products offered or to its contingency plan will be redacted to the extent that the bidder could reasonably believe such information to be confidential. Analysis of the bidding data that provides an overview of the competition or summary statistics for the entire pool of bidders will not be redacted. The IE expects items that will be redacted to include:

- The identities of losing bidders that submitted bids and the particular products for which losing bidders submitted bids;
- The bid prices of individual tranches won by each bidder;
- Information concerning specific losing bids;
- The identities of bidders that did or did not participate in the bidder training session to practice the online submission of bids; and
- Deficiencies in the Proposals of certain bidders or difficulties with the submission or practice or actual bids, to the extent that such deficiencies were cured and or such difficulties did not materially impact the results of the solicitation.

#### **XV.D. Preparation of Uniform SMA Documents by the IE**

The IE will prepare the Uniform SMA for each New Default Supplier and the guaranty for each Default Supplier that is relying on the financial standing of an RFP Guarantor in accordance to the timeline provided below.

- On the Bid Date the IE will contact RFP Bidders that have Bids that are identified to the PaPUC as winning Bids and did not provide the necessary information to prepare the Uniform SMA with the Part 1 Proposal. These RFP Bidders are instructed to provide the required information by 12PM on the following business day.
- On the day the Commission approves some or all of the winning Bids, the IE sends to PECO by secure file transfer the Uniform SMA, including all exhibits, for each New Default Supplier, the guaranty for each New Default Supplier relying on the financial standing of a Guarantor, transaction confirmations for each product and Default Supplier, and the most current contact information that the IE has for each Default Supplier.

#### **XV.E. Execution of Uniform SMA Documents and Transaction Confirmations**

PECO and each Default Supplier will execute the Uniform SMA documents and transaction confirmations in accordance with the schedule provided below.

- By 12PM on the second business day following the Commission approval of some or all of the winning Bids, PECO:
  - Partially executes two (2) originals of each Transaction Confirmation for each Default Supplier and each product.
  - Partially executes two (2) originals of the Uniform SMA with each New Default Supplier.
  - Informs each Default Supplier of its specific creditworthiness requirements.

- By 12PM on the second business day following the Commission approval of some or all of the winning Bids, PECO sends:
  - One (1) copy of the signature page of the Uniform SMA (page 75) by ~~fax~~ or other electronic means email to each New Default Supplier;
  - One (1) copy of the partially executed Transaction Confirmation by ~~fax or other electronic means~~ email to each Default Supplier for each product for which the Default Supplier has won tranches; and
  - The guaranty or an amendment to the current guaranty (if necessary) by ~~fax or other electronic means~~ email for each Default Supplier relying on the financial standing of an RFP Guarantor.
- By close of the second business day following the Commission approval of some or all of the winning Bids, PECO sends by overnight delivery service:
  - The two (2) originals of the partially executed Uniform SMA, including all exhibits, to each New Default Supplier; and
  - The two (2) original partially executed Transaction Confirmations to each Default Supplier.
- By 2PM on the third business day following Commission approval of some or all of the winning Bids:
  - Each New Default Supplier partially executes the two (2) originals of the Uniform SMA and returns one (1) copy of these signature pages to PECO by ~~fax or other electronic means~~ email. Additionally, each New Default Supplier completes the PJM Declaration of Authority online;
  - Each Default Supplier partially executes the two (2) originals of the Transaction Confirmations and returns one (1) copy of the signature page to PECO by ~~fax or other electronic means~~ email; and

- Each Default Supplier relying on the financial standing of an RFP Guarantor executes the guaranty or any amendment to the guaranty and returns one (1) copy of the signature page of the guaranty to PECO by ~~fax or other electronic means~~ email.
- By close of the third business day following Commission approval of some or all of the winning Bids:
  - Each New Default Supplier returns by overnight delivery service to PECO one (1) original of the Uniform SMA, including all exhibits;
  - Each Default Supplier returns by overnight delivery service to PECO one (1) original of the Transaction Confirmation.
  - Each Default Supplier complies with all instructions from PECO to fulfill the creditworthiness requirements under the Uniform SMA.

#### **XV.F. Return of Pre-Bid Security**

The IE plans to release the pre-bid letters of credit for all bidders no later than ~~five (5)~~ six (6) business days after the Bid Date. To ensure that the signed certificates of cancellation are returned to the bidder's bank as quickly as possible, the certificates of cancellation will be signed by PECO in advance of when the pre-bid letter of credit must be released and held by the IE. The time of release will depend on whether or not the bidder has won any products at the RFP and on the PaPUC's decision:

- If the Commission does not approve any of a particular bidder's bids, the IE will release that bidder's pre-bid letter of credit within ~~two (2)~~ three (3) business days after the Bid Date.
- If the Commission approves any of a particular bidder's bids, the IE will release that bidder's pre-bid letter of credit as soon as practical and no later than ~~five (5)~~ six (6) business days after the Bid Date.

- PECO will notify the IE as soon as an approved supplier has returned the executed Uniform SMA and Transaction Confirmation.
- The prompt return of bid security will also be conditioned upon the bidder not having violated any undertakings agreed to as part of the RFP.

*PECO Energy Company*

*Request for Proposals  
To Supply*

*Solar Alternative Energy Credits*

*In Compliance With*

*Pennsylvania's Alternative Energy Portfolio  
Standards Act*

*\_\_\_\_\_, 2021*

## ARTICLE 1 INTRODUCTION

- 1.1 In this Request for Proposals (“RFP”), PECO Energy Company (“PECO” or the “Company”) is voluntarily soliciting competitive proposals for supply of Alternative Energy Credits (“AECs”) from Tier I solar Alternative Energy Systems under Pennsylvania’s Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 (“AEPS” or the “Act”).<sup>1</sup> PECO intends to use these AECs to apply towards its future AEPS obligations, and seeks to enter into fixed-price, ten-year agreements with successful bidders to purchase up to a total of 16,000 AECs annually through two solicitations (in 2021 and 2022). PECO will employ a two-phase annual procurement process involving a competitive bid phase (the RFP) followed by a Standard Offer To Purchase (“SOTP”) phase. This document describes the process by which bidders may qualify and participate in the RFP and/or the SOTP phase of these solicitations.
- 1.2 PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal corporate office in Philadelphia, Pennsylvania. PECO is an electric distribution company under Pennsylvania law and provides electric delivery service to approximately 1.6 million retail customers in Southeastern Pennsylvania. PECO’s electric delivery service territory falls entirely within the area served by PJM Interconnection, LLC (“PJM”).
- 1.3 PECO is implementing the RFP and SOTP in two stages. Bidders must first qualify by submitting an application (an “Application”) to PECO demonstrating their qualifications, as described in detail in Section 4.2 (Bidder Qualifications). These qualifications include the ability to provide AECs to PECO from one or more Tier I, solar Alternative Energy Systems in accordance with the Act commencing no later than twelve (12) months from the date that RFP/SOTP results are approved by the Pennsylvania Public Utility Commission (“PA PUC”).
- 1.4 Following qualification, bidders may submit a bid proposal (“Bid Proposal”) to deliver a specified amount of AECs annually from a single or multiple Alternative Energy System for a term of ten (10) years, with a single fixed price for each delivered AEC. Bid Proposals in the RFP stage will be ranked by price, and PECO will execute an AEC purchase and sale agreement with each successful bidder using one of the forms attached hereto as Exhibit 1-a (Form Solar Alternative Energy Credit Purchase and Sale Agreement (Project Version)) or Exhibit 1-b (Form Solar Alternative Energy Credit Purchase and Sale Agreement (Aggregator Version)) (each, an “AEC Purchase and Sale Agreement”). Bidders executing the Project Version will provide Solar AECs from specific facilities, while bidders executing the Aggregator Version will be procuring Solar AECs from multiple solar systems (e.g., smaller residential systems) for delivery to

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<sup>1</sup> All capitalized terms not expressly defined herein are defined in the form Solar Alternative Energy Credit Purchase and Sale Agreement attached as Exhibit 1.

PECO. Bidders in the SOTP stage will be ranked on a ‘first come, first served’ basis, as determined by the Application Receipt Date in the SOTP stage.

- 1.5 AECs purchased and delivered to PECO will be inventoried by PECO and used to partially satisfy the Company’s AEPS solar obligations on or after June 1, 2021 and in subsequent years. PECO is not purchasing electricity or capacity through this RFP.
- 1.6 The Pennsylvania Public Utility Commission (“PA PUC”) has approved the procedures described in this RFP and the terms of both forms of the AEC Purchase and Sale Agreement by order dated \_\_\_\_\_, 2020, in Pa. PUC Docket No. \_\_\_\_\_ (“PUC Order”). The RFP process will be managed by PECO, with the opening and ranking of bids monitored by [company name] (the “RFP Monitor”). **Potential bidders are strongly urged to review both the RFP and the AEC Purchase and Sale Agreement and to consult with counsel with respect to requirements and obligations under this RFP and the AEC Purchase and Sale Agreement.**
- 1.7 The following documents are attached to this RFP Overview and are to be considered part of the RFP:

- Exhibit 1: Form of PECO Solar AEC Purchase and Sale Agreement
  - Exhibit 1.a: Project Version
  - Exhibit 1.b: Aggregator Version
- Exhibit 2: Non-Binding Notice of Intent to Bid
- Exhibit 3: Bidder Application Submission Form
- Exhibit 4: Form of Bidder Application
- Exhibit 5: Bid Proposal Form
- Exhibit 6: Confidentiality Agreement
- Exhibit 7: Solicitation Schedules for 2021 and 2022

## ARTICLE 2 SCHEDULE AND BIDDER INFORMATION

- 2.1 RFP Schedule. The following table sets forth significant dates for this RFP. The time for each deadline on the specified date is 5:00 pm Eastern Prevailing Time (EPT). PECO reserves the right to modify these dates at its discretion. PECO will communicate this solicitation to potentially interested parties in advance of the date of the RFP Overview Conference.

RFP Overview Conference	Day 0
Non-binding Notice of Intent to Bid Due Date	Day 10
Bidder Inquiries Deadline	Day 15
Final Publication of Responses to Inquiries	Day 20
Bidder Applications Due Date	Day 35
Notification of Bidder Qualification	Day 45
Bid Proposal Due Date	Day 50
Notification of Selected Bidders	Day 65
Execution of AEC Purchase and Sale Agreements	Day 80

- 2.2 RFP Overview Conference. PECO will conduct a teleconference to outline the RFP process and the terms of the AEC Purchase and Sale Agreements. Potential bidders are urged to review this RFP, including exhibits, prior to the teleconference. PECO will answer questions raised at this teleconference to the extent possible. Any party wishing to participate in this teleconference must send an e-mail to [to be supplied]@peco-energy.com with the subject line “AEC Bidder Teleconference.” PECO will provide a dial-in number for the teleconference by return e-mail.
- 2.3 Non-Binding Notice of Intent To Bid. Following the bidder teleconference and no later than [Day 10], all parties seeking to submit a bid in response to this RFP must submit a non-binding Notice of Intent to Bid in the form attached hereto as Exhibit 2 to the address specified on the Notice. Any party who does not submit a non-binding Notice of Intent to Bid may not submit an Application for this RFP.
- 2.4 Bidder Inquiries. On or before the Bidder Inquiries Deadline [Day 15], bidders may submit questions to PECO via electronic mail ([to be supplied]@peco-energy.com). To the extent possible, questions submitted prior to the RFP Overview Conference will be addressed by PECO at the teleconference. Additional questions submitted and answered by PECO thereafter shall be posted with answers at the RFP website no later than [Day 15]. The person or company submitting the question shall not be identified. While PECO will review and attempt to answer questions in good faith, PECO reserves the right not to answer any question. The RFP Overview Conference and this bidder inquiry procedure are the exclusive methods for inquiring about this RFP and the AEC Purchase and Sale Agreement, and questions submitted to individual PECO employees, the Company, or the RFP Monitor by other means will not be answered and may result in disqualification of the bidder.
- 2.5 Informational Website and Updates. PECO will establish a website for electronic copies of RFP materials, posting of questions and answers, and other updates on this RFP. Bidders are encouraged to review this website regularly. In its sole discretion, PECO will endeavor to provide e-mail notification of important website updates to those bidders who have filed non-binding notices of intent to bid in this RFP.

### ARTICLE 3 PROJECT ELIGIBILITY AND REQUIREMENTS

- 3.1 Eligibility. Applications may be submitted by qualified entities who currently own, propose to develop, or have rights to, Tier I solar Alternative Energy Credits from solar photovoltaic Alternative Energy Systems. Successful bidders must commence delivery of AECs to PECO no later than twelve (12) months from the date that RFP results are approved by the PA PUC. Entities who seek to submit bids from multiple Alternative Energy Systems must submit a separate Application for each such system. Entities which own solar photovoltaic Alternative Energy Systems that generate AECs and supply energy to a retail electric customer (a “Host”) in accordance with applicable net metering requirements in the service territory of the electric utility in which the System is located are also eligible to apply. Entities that plan to aggregate AECs from multiple systems over the term of the agreement (“Aggregators”) must submit one Application as an Aggregator.
- 3.2 General Requirements. Successful bidders must be able to meet all requirements of the AEC Purchase and Sale Agreement. Bidders will be required to demonstrate in Bidder Applications that they can meet all specified terms of the AEC Purchase and Sale Agreement and that they take no exception to the Agreement terms. Failure to do so will result in exclusion of the bidder’s Applications from further consideration.
- 3.3 Contract for AECs Only; Location of AEC Alternative Energy System. AEC Purchase and Sale Agreements executed pursuant to this RFP will be for AECs only. Successful bidders will retain title to all generated electricity and capacity associated with Alternative Energy Systems generating the AECs purchased by PECO, where applicable. Successful bidders, where applicable, shall be responsible for undertaking all activities and paying all costs and charges associated with developing, permitting, and operating the bidder’s Alternative Energy System, including all costs associated with any delivery of energy to a Host or to an interconnection point within the PJM Interconnection Regional Transmission Organization grid. For the RFP stage, AECs delivered must meet the Pa PUC AEPS requirements for the AEPS Solar Tier I obligation. For the SOTP stage, AECs delivered to PECO must meet the Pa PUC AEPS requirements for the AEPS Solar Tier I obligation and the Alternative Energy System(s) used to generate the AECs must be physically located in the service territory of the Company.
- 3.4 Delivery of AECs. All AECs shall be delivered to PECO using the PJM Generation Attribute Tracking System (“PJM GATS”) and become the sole property of PECO.
- 3.5 Pricing and Term. Bidders in the RFP stage will specify in Bid Proposals an annual contract amount of AECs to be delivered to PECO (the “Contract Amount”) during a AEPS reporting period (June 1 – May 31), with a single, fixed price for each delivered AEC. Bids must be based on a ten-year contract term, commencing upon the Commercial Operation Date (Project Version) or Execution Date (Aggregator Version) under the Solar AEC Purchase and Sale Agreement. All agreements (Project Version and Aggregator Version) shall terminate no later than May 31, 20XX. In the event that the

Commercial Operation Date does not coincide with the beginning of an AEPS reporting period (i.e., in June), the contract term may be extended an initial period of up to eleven months so that each year of the ten-year term is coincident with AEPS reporting periods. (For example, if an Alternative Energy System is scheduled to achieve Commercial Operation in January, 1, 2022, an initial period from the date of Commercial Operation to May 31, 2022, would be included in the Term of the AEC Purchase and Sale Agreement, and the agreement would terminate on May 31, 2032). Delivery of AECs from an existing system will commence the month after execution of an AEC Purchase and Sale Agreement by the successful bidder. Delivery by an Aggregator may commence the month after execution of an AEC Purchase and Sale Agreement and may commence up to six months after execution, with the extension periods in this paragraph also applicable for commencement dates after June 1. Timing for commencement of deliveries shall be specified in the Aggregator's bid.

- 3.6 Development Security and Performance Security. Successful bidders developing new facilities will be required to post Development Security (cash deposit or letter of credit) with PECO of 2% of the Nominal Contract Value, defined as the Contract Amount (in AECs /year) multiplied by ten years multiplied by the bid price (in \$/AEC). This development fee shall be returned if the bidder achieves the Commercial Operation Date specified in the bidder's Bid Application. If the date is not achieved, some or all of the development fee will be forfeited and retained by PECO in its sole discretion. Performance security equal to 5% of the Nominal Contract Value, declining annually by 0.5% over the term of AEC Purchase and Sale Agreement, must be posted (i) by bidders of existing facilities upon execution of an AEC Purchase and Sale Agreement; (ii) by developers of new facilities upon commencement of Commercial Operation, or (iii) by Aggregators upon commencement of AEC deliveries. Performance security shall be recalculated annually thereafter based on the method described in Article 6 of the AEC Purchase and Sale Agreement, and shall be based on the remaining year of the term at the time of calculation. Performance Security will be returned to the bidder upon successful completion of all obligations under the AEC Purchase and Sale Agreement.
- 3.7 Contract Guarantee. In the event that PECO does not annually receive the Contract Amount under the Project Version of the AEC Purchase and Sale Agreement, PECO must be provided with replacement Tier I solar AECs of the same vintage year as the AECs PECO should have received but did not receive. Failure to provide AECs (Aggregator Version) or replacement AECs (Project Version) will require a payment equal to the solar alternative compliance payment established by the PA PUC for each AEPS reporting period, (the "ACP") or the Contract Price of the AEC, whichever is greater, multiplied by the quantity of undelivered AECs.
- 3.8 AEC Rollover. At Seller's discretion, upon notice to PECO no later than June 30th of each year, AECs produced by a winning bidder's generating unit, where applicable, during the prior AEPS reporting period in excess of the Contract Amount may be sold to PECO and credited against the next Contract Year's delivery obligations. Such excess AECs must be delivered no later than July 31st of such year. The AEC Rollover provision does not apply to Aggregator bidders.

## ARTICLE 4 BIDDER QUALIFICATION

- 4.1 Bidder Application. In order to submit a bid proposal in response to this RFP, a bidder must an Application for approval by PECO using the form attached hereto as Exhibit 3 (Form of Bidder Application). All Applications shall be submitted to the email address [to be specified]. PECO will confirm receipt of Applications by email. Applications which are incomplete, do not conform to the form attached hereto, or otherwise do not satisfy all requirements of this RFP shall not be considered. Submission of a Bidder Application constitutes a bidder's agreement to and acceptance of all terms and conditions of this RFP. An Application must be received by 5:00 p.m. (Eastern Prevailing Time) by the application deadline date to be considered.
- 4.2 Bidder Qualifications. Time is of the essence in this solicitation, and bidders that cannot demonstrate an ability to achieve Commercial Operation commencing no later than twelve (12) months from the date that RFP results are approved by the Pennsylvania Public Utility Commission ("PA PUC") will be eliminated from further consideration. In order to qualify to submit a bid proposal, a bidder must demonstrate and document in the Application that it satisfies the following criteria (the "Bidder Qualifications"):
- (a) Has secured or will secure all required rights to ensure a Commercial Operation Date within twelve months of approval of the RFP results by the PA PUC (Project bidders);
  - (b) Has obtained or will obtain all required local, state and federal permits to ensure a Commercial Operation Date within twelve months of approval of the RFP results by the PA PUC (Project bidders);
  - (c) Has secured or will secure all necessary equipment and services required to ensure construction and testing for a Commercial Operation Date within twelve months of approval of the RFP results (including a commitment letter or equivalent document from a solar module vendor showing the availability and delivery schedule for all modules for the project) (Project bidders);
  - (d) Has or will be certified as an "Alternative Energy System" capable of delivery of AECs equal to or greater than the Contract Amount the bidder intends to bid in response to this RFP (Project bidders);
  - (e) Has obtained or will obtain all authorizations necessary for the generation of electricity underlying the AECs (Project bidders);
  - (f) Has sufficient management and other personnel experienced in developing and operating systems similar to the proposed Alternative Energy System (Project bidders);

- (g) Has satisfied or will satisfy all performance and financial security requirements as described in the AEC Purchase and Sale Agreement (All bidders);
- (h) Has or will have an operations and maintenance plan with adequate resources (including funding) to maintain the system that will be generating AECs through the term of the AEC Purchase and Sale Agreement (Project bidders);
- (i) For new projects, financial backing sufficient for the project to achieve a Commercial Operation Date on or before twelve months after approval of the RFP results by the PA PUC, demonstrated by a letter from the project financier(s) stating the name of the financial institution, contact information for the person preparing the letter, the structure of any proposed financing (confidential information such as proposed financing costs need not be disclosed), confirmation that the financier(s) have reviewed project pro forma statements, have reviewed this RFP and the AEC Purchase and Sale Agreement, have reviewed the bidder's anticipated offer to the Company, including project costs and pricing terms, and that based on this review, the financier(s) consider the project financeable, given project costs as currently known, at the bidder's proposed price and that the financier(s) has a strong interest in financing the project (Project bidders); and
- (j) Has or will own the right to all AECs associated with their bids in their entirety and be capable of transferring undivided rights to those AECs to PECO for the duration of the AEC Purchase and Sale Agreement, without restriction (All bidders).

In order to qualify to submit a bid proposal, an Aggregator bidder must demonstrate and document in the Application that it satisfies the following alternative criteria:

- (a) A business plan that supports the delivery of the Contract Amount of AECs in the Aggregator's bid;
- (b) Sufficient management and other personnel experienced in the business of aggregating AECs for resale, including the purchase and sale of at least 700 Tier 1 solar AECs in Pennsylvania in the calendar year preceding PECO's RFP; and
- (c) Sufficient financing for the business of aggregating and providing the Contract Amount of AECs.

4.3 Reserved.

4.4 Minimum Contract Amount. Only Applications in which the bidder intends to propose a Contract Amount equal to or in excess of 200 AECs shall be considered by PECO.

- 4.5 Confidentiality Agreement. All Bidder Applications shall include two copies of the Confidentiality Agreement (attached hereto as Exhibit 6) executed by the bidder. PECO will promptly execute the Agreement and return a copy to the bidder.
- 4.6 PECO Affiliates. Affiliates of PECO are permitted to submit Applications and to participate in this RFP to the same extent as any other entity.
- 4.7 Multiple Bids. Bidders will be permitted to submit up to three Bid Proposals for a single facility provided that each such Bid Proposal offers different Contract Amounts at different prices. Multiple bids must be structured in a way that, should all bids win, the facility is capable of delivering the total of Contract Amounts offered. If a bidder intends to bid more than one facility, a separate Application must be submitted for each facility. Aggregators may submit up to three bid Proposals at different prices for each proposal. Aggregators must demonstrate in their Application that, should all bids win, the Aggregator is prepared and capable of delivering the total of Contact Amounts offered. Multiple Bids only apply to the RFP stage; multiple bids do not apply to the SOTP stage of the solicitation process.
- 4.8 Bid Deposit. Each Application shall be accompanied by a bid deposit (a “Bid Deposit”), in the form of a certified check, or wire payment, equal to the amount corresponding to the Contract Amount of AECs the applying bidder intends to bid in response to the RFP:

Contract Amount (AECs)	Bid Deposit (US\$)
200 to 1,000	\$10,000
1,001 to 2,000	\$20,000
2,001 to 3,000	\$30,000
3,001 to 4,000	\$40,000

Bid Deposits submitted by a bidder whose Application is rejected or who is not selected for execution of an AEC Purchase and Sale Agreement shall be refunded at the time of rejection or upon notification of successful bidders. No interest shall be paid on Bid Deposits. A qualified bidder may not submit a Bid Proposal for a Contract Amount in excess of the Contract Amount for which the bidder provides a Bid Deposit. PECO will also refund the Bid Deposits of bidders who are qualified but who subsequently do not submit a Bid Proposal. Bid Proposals submitted for Contract Amounts that exceed that maximum Contract Amount for the Bid Deposit received will be rejected.

- 4.9 Additional Information. PECO may, but is not obligated to, request additional information and materials from any bidder for evaluation of an Application. Information submitted by a bidder absent a request by PECO which is not in the nature of a correction or clarification to the Application will not be considered by PECO. If any information in an Application is no longer true, Bidder shall immediately notify PECO of the changed

information. Failure to provide such notification or respond to a request for additional information and materials may result in disqualification of the bidder and rejection of any Bid Proposal. PECO shall have no duty to inform any bidder of any deficiency in its Application.

- 4.10 Application Evaluation and Notification of Applicants. PECO, in its sole discretion, will evaluate each Application using a standard protocol for its completeness and satisfaction of the Bidder Qualifications. The RFP Monitor will oversee this evaluation. PECO will provide each bidder with notice of its satisfaction or failure to satisfy the Bidder Qualifications by the date for Notification of Bidder Qualification set forth in Section 2.3 hereof.

## **ARTICLE 5 BID PROPOSALS**

- 5.1 Submission of Bid Proposals. Only bidders who submit an Application and receive notice of qualification as provided in Article 3 will be permitted to submit a Bid Proposal. PECO will provide Bid Proposal forms to qualified bidders substantially in the form of Exhibit 5. A bidder must submit an original and three copies of its Bid Proposal to the address specified on the Bid Proposal form provided by PECO no later than the Bid Proposal Due Date. Each Bid Proposal shall be submitted in a sealed envelope clearly marked “BID PROPOSAL” with bidder’s previously assigned bid number on the outside of the sealed envelope.
- 5.2 Other Limitations. Bid Proposals that are incomplete, unsigned, or otherwise do not conform to the form of the Bid Proposal provided herein shall be rejected by PECO. No Bid Proposal may be conditioned on any other Bid Proposal. Any bid that is contingent in any way shall be rejected as non-conforming. PECO may reject any Bid Proposal which it determines, in its sole discretion, is submitted by a bidder in coordination or in concert with any other bidder.

## **ARTICLE 6 EVALUATION OF BID PROPOSALS**

- 6.1 Preparation of Market Benchmarking Analysis. The RFP Monitor will prepare a solar AEC market benchmarking analysis and provide it to the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) (if they so desire) on a confidential basis five (5) days ahead of Bid Proposal Due Date. OCA and OSBA will then have three (3) days to submit, on a confidential basis, any comments on the benchmarking analysis to the RFP Monitor and to PECO.
- 6.2 Evaluation of Bid Proposals. For the RFP stage, all Bid Proposals will be opened by the RFP Monitor, who will rank proposals by price and Contract Amount. A Bid Proposal offering a larger Contract Amount at the same price as another Bid Proposal will be prioritized over the Bid Proposal offering the lower Contract Amount, provided that the RFP Monitor may assign a higher priority to a Bid Proposal with a lower Contract Amount where the Bid Proposal offering the larger Contract Amount will cause PECO to

exceed the maximum number of AECs sought in a procurement (the “RFP Maximum”). Where acceptance of a Bid Proposal will cause PECO to exceed the RFP Maximum but rejection would require PECO to contract with a bidder offering AECs at a higher price in order to obtain the RFP Maximum, PECO shall have the right to negotiate a lower Contract Amount with the bidder offering the lower price. In the SOTP stage, Bid Proposals will be ranked by the Application Receipt Date and Contract Amount until the RFP Maximum quantity is met or the 90-day SOTP Window ends, whichever comes first. Any Applications received on or after midnight will be deemed to have been received on that date; PECO will not differentiate Application receipt times within a day. A Bid Proposal offering a lower Contract Amount at the same Application Receipt Date as another Bid Proposal will be prioritized over the Bid Proposal offering the larger Contract Amount. Where acceptance of a Bid Proposal will cause PECO to exceed the RFP Maximum but rejection would require PECO to contract with a bidder offering AECs at a later Application Receipt Date in order to obtain the RFP Maximum, PECO shall have the right to negotiate a lower Contract Amount.

- 6.3 Selection of Successful Bidders and PA PUC Approval. Upon completion of the evaluation of Bid Proposals, the RFP Monitor shall prepare a report of the RFP results in consultation with PECO, summarizing the bidder qualification process and the Bid Proposals and identifying the successful and unsuccessful bidders, along with successful and unsuccessful Bid Proposals. The report in the RFP stage shall include the market benchmarking analysis prepared under Section 6.1. The RFP Monitor will append any comments on the analysis submitted by OCA and/or OSBA to its report to the Commission, but shall retain the discretion to take the comments of OCA and/or OSBA into account or not in its own report, as it believes appropriate. The report shall then be submitted to the PA PUC for approval. A report will be submitted to the PA PUC for approvals after the RFP stage and after the SOTP stage.
- 6.4 PA PUC Approval. The PA PUC will have ten (10) calendar days to review the report of the RFP Monitor and approve the report and bid prices submitted by successful bidders as consistent with the PUC Order. Bids from at least three bidders, who are not affiliated with each other, must be received in response to the RFP as a condition for PA PUC approval of any successful bids. If the results are approved, PECO shall notify all bidders of the PA PUC’s decision and the results of the RFP. If the results are not approved, PECO will not sign any AEC Purchase and Sale Agreement with winning bidders.
- 6.5 Execution of AEC Purchase and Sale Agreement. Upon approval of the results by the PA PUC and subject to all provisions of this RFP (including Section 7.8), PECO shall prepare two copies of an AEC Purchase and Sale Agreement with information from the successful bidder’s Application and Bid Proposal inserted and transmit those copies to the applicable bidder within five (5) business days of notification by PECO. Bidder shall execute and return the AEC Purchase and Sale Agreement to PECO with all Development Security or Performance Security as required under the AEC Purchase and Sale Agreement within ten (10) business days.

- 6.6 Forfeiture of Bid Deposit and Disqualification; Alternative Selection. Failure of a successful bidder to execute the AEC Purchase and Sale Agreement and provide Development Security or Performance Security to PECO as provided in Section 6.5 may result in the disqualification of such bidder from this RFP and forfeit of the entire Bid Deposit of that bidder.
- 6.7 Consideration of Additional Bidders. PECO reserves the right to enter into discussions with higher cost bidders if agreements with lower cost bidders are not executed.
- 6.8 Release of Winning Bid Price Information. PECO will release the average weighted price of the winning bids in the RFP Stage no later than fourteen (14) days after all agreements are executed. The average weighted price will be released regardless of the number of winning bidders, but the number of winning bidders will not be released. This average weighted price of winning bids from the RFP stage will determine the price for the SOTP stage.

## ARTICLE 7 GENERAL CONDITIONS

- 7.1 Address for submissions. All submissions to PECO, unless otherwise communicated at the Bidder Conference and subsequently posted to the website, for this RFP shall be delivered via registered mail, certified mail, overnight courier, or hand delivery to the following address:

PECO AEPS RFP  
c/o [Name],  
PECO Energy Company  
S18-2  
2301 Market Street  
Philadelphia, PA 19103

Bidder is solely responsible for the timely delivery of any submission for this RFP. Applications and other materials received after the applicable date specified in this RFP shall be accepted only in PECO's sole discretion; however, any Bid Proposal submitted after the date and time specified will be returned unopened and without consideration. Electronic emails of materials other than Bid Proposals (which may not be sent electronically) shall be sent to: [to be supplied]@peco-energy.com.

Address for Bid Proposals. **DO NOT SEND BID PROPOSALS TO THE PECO Market Street address.**

BID PROPOSAL shall be submitted to the RFP Monitor at the following address:

[address to be specified]

- 7.2 No Unauthorized Modifications. No interpretation or change to this RFP shall be valid unless it is signed by a duly authorized representative designated by an Officer of PECO.
- 7.3 Ownership of RFP Materials; Confidentiality. All materials submitted to PECO pursuant to this RFP shall be the property of PECO and shall be treated as confidential in accordance with the terms of the Confidentiality Agreement.
- 7.4 Presentation and Formatting. All information submitted by a bidder must be in the English language.
- 7.5 Costs. PECO shall have no responsibility whatsoever with respect to the costs of any bidder in considering or responding to this RFP, including but not limited to (i) any costs of preparing any materials submitted to PECO; (ii) any costs associated with any studies, permits, or other agreements contemplated by this RFP; (iii) any costs associated with any Alternative Energy System or a Host; (iv) any costs associated with financing, employees or consultants, or real property.
- 7.6 Publicity. Bidders are not permitted to announce or release any information regarding this RFP or PECO's evaluation process without PECO's prior written approval, which PECO may withhold approval in its sole discretion. Each bidder understands and agrees that PECO does not participate in, nor does it allow, bidders to utilize media releases of any kind to publicize bidder's business relationship with PECO. Each bidder shall not use any trade name, trademark, service mark or any other information which identifies PECO in such bidder's sales, marketing and publicity activities, including interviews with representatives of any written publication, or television or radio station or network, without PECO's express prior written consent. Successful bidders agree to cooperate with PECO in preparation of any press release announcing the results of this RFP.
- 7.7 Disclaimer. PECO makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFP and its exhibits or any statements made by representatives of PECO during the RFP process. Each bidder is responsible for making its own evaluation of information and data contained in this RFP and in preparing and submitting responses to this RFP. The issuance of this RFP and the receipt of information in response to this RFP shall not, in any way, cause PECO to incur any liability (whether contractual, financial or otherwise) to any bidder participating in the RFP process, and by submitting an Application, bidder releases PECO from any and all claims, demands, actions, losses, liabilities, and expenses (including reasonable legal fees and expenses) relating to this RFP.
- 7.8 Not an Offer. This RFP is issued to elicit responses to PECO's inquiry and is not an offer. The issuance of the RFP and the submission of bidder's information do not create any obligation upon PECO to buy goods or services from a bidder, and PECO reserves the right to accept or reject any or all proposals received. PECO also reserves the right to amend, suspend, or terminate the RFP process at any time, without reason and without liability, and makes no commitments, implied or otherwise, that this process will result in a business transaction with one or more bidders. No contract or other binding obligation on PECO will be implied unless and until an agreement has been executed on terms and

conditions acceptable to PECO. PECO also reserves the right to not execute agreements with any or all bidders should the Company determine, in its sole discretion, that would not guarantee delivery, would impose unreasonably high costs on the Company's customers and/or would violate existing regulatory standards.

- 7.9 Non-conforming Applications and Bid Proposals. PECO reserves the right to reject any Application or Bid Proposal at any time on the grounds that it does not conform to the terms and conditions of this RFP or the bidder has not complied with the provisions of this RFP.
- 7.10 Interpretation. Notwithstanding any provision of this Agreement, in the event an AEC Purchase and Sale Agreement is executed between a bidder and PECO, that agreement shall control over any provision of this RFP.

EXHIBIT 1-a

FORM SOLAR ALTERNATIVE ENERGY CREDIT PURCHASE AND SALE AGREEMENT  
(Project Version)

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**SOLAR ALTERNATIVE ENERGY CREDITS PURCHASE AND SALE AGREEMENT**

*(Project Version)*

Between

**PECO ENERGY COMPANY**

**and**

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Dated [\_\_\_\_\_, \_\_\_\_], 20XX

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## SOLAR ALTERNATIVE ENERGY CREDITS PURCHASE AND SALE AGREEMENT

This Solar Alternative Energy Credits Purchase and Sale Agreement (the “Agreement”) is entered into as of \_\_\_\_\_, 200\_, by and between \_\_\_\_\_, a \_\_\_\_\_ corporation with principal offices located at \_\_\_\_\_ (“Seller”), and PECO Energy Company, a Pennsylvania corporation with principal offices located at 2301 Market Street, Philadelphia, Pennsylvania 19101 (“PECO” or the “Company”). PECO and the Seller are herein referred to collectively as the “Parties”, and individually as a “Party”.

### RECITALS

WHEREAS, PECO is an electric distribution company under the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 (“AEPS” or “the Act”); and

WHEREAS, Seller owns the rights to alternative energy credits associated with the electricity generated by [Facility Name], and desires to sell such credits to PECO; and

WHEREAS, PECO desires to purchase such credits from Seller to satisfy PECO’s obligations under the Act, subject to the requirements and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, PECO and Seller agree as follows:

### ARTICLE 1 DEFINITIONS

**1.1 Definitions.** Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article 1. As used in this Agreement, the following terms shall have the respective meanings set forth below.

“AEC” shall be an alternative energy credit as defined in the Act and of the type specified in Exhibit 3.

“AEC Procurement Order” shall mean the order of the PaPUC entered \_\_\_\_\_ in Docket No. \_\_\_\_\_ approving the procurement of AECs by PECO.

“AEPS” shall have the meaning set forth in the Recitals.

“AEPS Reporting Year” shall mean the period from June 1 through May 31 of the following year, or such period as the PaPUC may designate for AEPS compliance purposes.

“Affiliate” means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question.

“Agreement” means this Agreement.

“Alternative Compliance Payment” shall be equal to the amount per AEC determined by the PaPUC in accordance with the Act during the latest AEPS Reporting Period.

“Alternate Representative” has the meaning provided in Section 5.5.

“Authorized Representative” has the meaning provided in Section 5.5.

“Bankruptcy Code” means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq.

“Business Day” means a day on which Federal Reserve member banks in Philadelphia, PA are open for business, beginning at 0800 EPT and ending at 1700 EPT.

“Certificate” means a certificate corresponding to an AEC, as defined under the Registry Rules.

“Claim” shall mean any claim, demand, audit, cause of action, litigation, lawsuit, grievance, arbitration, mediation, proceeding (including, without limitation, any bankruptcy, reorganization, dissolution, insolvency, liquidation, extension of bankruptcy or similar proceeding).

“Commercial Operation” shall occur for a Facility when (i) the Interconnection Agreement (if applicable) has been executed and delivered, (ii) the Facility has been Commissioned and is capable of generating AECs for Delivery to PECO, and (iii) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement (if applicable), to allow regular operation of the Facility and permit Delivery of AECs to PECO.

“Commercial Operation Date” means (i) the date designated by Seller as the Commercial Operation Date Milestone, subject to adjustment pursuant to Section 6.1, or (ii) the Effective Date for a Facility which has achieved Commercial Operation on or prior to the Effective Date.

“Commercial Operation Date Milestone” means the Commercial Operation Date Milestone specified on the Significant Milestone Schedule.

“Commercially Reasonable Efforts” means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, the level of effort in light of the facts known to such Party at the time a decision is made that (i) can reasonably be expected to accomplish the desired action at a reasonable cost, and (ii) is consistent with Prudent Utility Practices.

“Commissioned,” as to any equipment, means that such equipment has been functionally tested to ensure that it meets its manufacture and design specifications and is suitable for continuous operation, and has been placed in service.

“Construction Service Agreement” means an agreement relating to the construction and installation of the Interconnection Facilities.

“Contract Amount” means the Contract Amount specified on Exhibit 3, including during the first Contract Year, the Initial Period Contract Amount.

“Contract-Related Capacity” means the design capacity of the Facility to be used to generate the Contract Amount, as set forth on Exhibit 3.

“Contract Price” means the price identified as “Contract Price” on Exhibit 3.

“Contract Year” means a twelve month period during the Term commencing on June 1 and ending on May 31 of the following year, provided that the first Contract Year under this Agreement may be extended for a period of up to eleven months from the Commercial Operation Date to the following June 1 (corresponding to the commencement of the next AEPS Reporting Year).

“Defaulting Party” has the meaning set forth in Section 9.1.

“Deliver” or “Delivery” means the transfer of AECs from Seller to PECO using the Registry in accordance with the Registry Rules.

“Development Security” shall have the meaning set forth in Section 6.1.

“Early Termination Date” means the date upon which an Early Termination becomes effective as specified in Section 2.3.

“Effective Date” means the date upon which this Agreement is executed by the Parties.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

“Energy Delivery Point” has the meaning set forth on Exhibit 1.

“EPT” means Eastern Prevailing Time (the time then prevailing in the Eastern Time Zone of the United States).

“Estimated Annual Total Facility AEC Production” means the annual amount of AECs that the Facility is expected to produce during a Contract Year, as set forth on Exhibit 3.

“Event of Default” has the meaning set forth in Section 9.1.

“Facility” means the generation facility located at the Premises as described in Exhibit 1.

“Facility Benefits” means production tax credits, investment tax credits, or other direct, third-party federal, state or local subsidies, incentives, grants, credits, rebates or funding for the purchase, ownership, construction or operation of the Facility, or the generation of electricity or production of AECs by the Facility.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party affected thereby or attributable to such Party’s fault or negligence, and which by the exercise of due diligence the affected Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. Force Majeure

includes, but is not restricted to: fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority, so long as the affected Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action. Force Majeure shall not include the following: (i) the Seller's ability to sell Energy or AECs from the Facility at a more advantageous price, (ii) insufficient sunlight, wind, or other natural resource; (iii) Seller's failure to obtain any Permit; (iv) a change in a Requirement of Law or Registry Rules; and (v) Seller's failure to finance and/or construct the Facility. Increased cost of performance by Seller (including the reduction or elimination of Facility Benefits) shall not constitute an event of Force Majeure.

"Forward Contract" has the meaning ascribed to such term in Section 101(25) of the Bankruptcy Code.

"Forward Contract Merchant" has the meaning ascribed to such term in Section 101(26) of the Bankruptcy Code.

"Forward Pricing" meaning the cost per AEC for the next 12, 24 and 36 month periods determined by the average of 3 separate broker quotes.

"Generating Unit" means an electric generator of the Facility that generates the Energy associated with the AECs to be Delivered to PECO.

"Governmental Authority" means any federal, state or local government, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body.

"Grid" means the interconnected electric transmission system to which the Facility or its Host, as applicable, is connected, including through direct interconnection with intermediate distribution facilities of PECO, or other electric utilities located in PJM's service territory, or Pennsylvania.

"Host" means the retail electric utility customer specified on Exhibit 1 to which the Facility is interconnected in accordance with the applicable net metering requirements in the service territory of the electric utility in which the Facility is located.

"Indemnified Party" shall have the meaning set forth in Section 11.1.

"Initial Period Contract Amount" shall have the meaning set forth in Exhibit 3. Such amount shall not exceed the Contract Amount.

"Interconnection Agreement" means a generation interconnection agreement with either or both the RTO and the entity (if different from the RTO) that owns the Grid to which the Facility (or its Host, if applicable) is interconnected that contains the rights and obligations of those Persons with respect to the interconnection of the Facility, and prescribing the methods and procedures to be used for the safe operation and maintenance of the Interconnection Facilities.

"Interconnection Facilities" means all the facilities installed for the purpose of interconnecting the Facility in accordance with the Interconnection Agreement or net metering

requirements, if applicable, including all transformers and associated equipment, relay and switching equipment, and safety equipment.

“Interest Rate” means the average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

“Issuer Minimum Requirements” shall have the meaning set forth in Section 6.5.2.

“Letter of Credit” has the meaning set forth in Section 6.5. The Letter of Credit must be in the form of Exhibit 5, or another substantially similar form approved by the Company.

“Lien” shall mean any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, hypothecation, usufruct or encumbrance of any nature whatsoever, including any conditional sale agreement.

“Material Debt” shall have the meaning set forth in Section 9.1.1.

“Moody’s” means Moody’s Investors Service, Inc.

“Month” means a calendar month (or any partial calendar month at the outset of the Term in the event that the Term commences during a calendar month).

“MW” means megawatt.

“Net Electricity” means all of the Energy generated at the Facility (other than that needed for a Host or operation of the Facility) that is delivered to the Energy Delivery Point.

“Nominal Contract Value” means the dollar amount resulting by multiplying the Contract Amount by the Contract Price by ten (10).

“Non-Defaulting Party” means (i) if the Company is the Defaulting Party, the Seller; or (ii) if the Seller is the Defaulting Party, the Company.

“PaPUC” means the Pennsylvania Public Utility Commission.

“PECO” means PECO Energy Company.

“Permit” shall mean any permit, license, registration, certificates of occupancy, approvals or other authorizations of any Governmental Authority.

“Person” shall mean any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

“PJM” means the regional transmission organization operated by PJM Interconnection, Inc.

“Premises” shall mean the location of the Facilities as set forth in Exhibit 1.

“Prudent Utility Practice” means any of the practices, methods and acts required or approved by the RTO or engaged in or approved by a significant portion of the electric utility industry in the geographic region covered by RFC during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. “Prudent Utility Practice” is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to include acceptable practices, methods or acts generally accepted in the geographic region covered by the RTO or RFC.

“Registry” shall mean the PJM GATS system or any successor AEPS alternative energy credit registry designated by the PaPUC.

“Registry Rules” shall mean the operating rules of the Registry.

“Replacement AEC” means an AEC that the Seller provides to PECO as provided for in Section 3.4 due to the failure of the Seller to meet the minimum output requirements in this Agreement.

“Replacement AEC Payment” shall have the meaning set forth in Section 3.4.

“Requirement of Law” means any federal, state and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment or decree enacted, adopted, issued or promulgated by any Governmental Authority or RTO (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“RFC” means the ReliabilityFirst Corporation or any successor thereto. If RFC ceases to exist, the successor to RFC shall be any regional reliability organization to which PECO belongs. Any regional entity to which an FERC delegates authority to enforce reliability standards upon PECO shall be deemed to be successor to RFC.

“RTO” means the entity that controls and operates the Grid.

“RTO Requirements” means all the RTO agreements, all tariffs, operational manuals, rules and regulations established by the RTO, and the normal business practices, as they may be amended and modified from time to time, of the RTO.

“S&P” means Standard and Poor’s Rating Services.

“Safe Harbor Provisions of the Bankruptcy Code” means Sections 101(25), 101(26), 101(38A), 101(38B), 362(b)(6), 362 (b)(27), 546(e), 546(j), 556, 561, 562 and 767 of the Bankruptcy Code together with other sections pertaining or referring to any of them and any future amendments to the Bankruptcy Code which provide protections, rights or remedies to non-bankrupt Forward Contract Merchants or Master Netting Participants against bankrupt counterparties under Forward Contracts or Master Netting Agreements.

“Security Instrument” has the meaning set forth in Section 6.5.

“Semi-annual” means the six month calendar period commencing each July and January of the Contract Year (or any partial six month calendar period in the event the Term commences during such period).

“Semi-Annual AECs” shall have the meaning set forth in Section 3.2.

“Significant Milestone” shall mean the events identified as significant milestones on Exhibit 2.

“Significant Milestone Schedule” shall mean the dates associated with the Significant Milestones set forth on Exhibit 2.

“Site Control” shall have the meaning set forth in Section 5.3.

“Taxes” has the meaning set forth in Section 7.7.

“Term” has the meaning set forth in Section 2.1.

“Termination Date” has the meaning set forth in Section 2.1.

**1.2 Interpretation.** In this Agreement, unless a different intention clearly appears: (a) the singular includes the plural and vice versa; (b) the reference to any Party includes such Party’s legal and/or permitted successors and assignees, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually; (c) the reference to any gender includes the other gender; (d) reference to any document other than this Agreement refers to such documents as may be amended, modified, replaced or superseded from time to time, or any successor document(s) thereto; (e) reference to any Article, Section or Exhibit means such Article, Section or Exhibit of this Agreement unless otherwise indicated; (f) “hereunder”, “hereof”, “hereto”, and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision; (g) “including” (and with correlative meaning “include”), when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”; (i) reference to any law or regulation refers to such law or regulation as may be amended, modified, replaced or superseded from time to time, or any successor law(s) or regulation(s) thereto; and (j) reference to “termination of this Agreement,” “this Agreement is terminated,” “this Agreement may be terminated” and similar phrases used in this Agreement refer to the termination of deliveries under this Agreement and related on-going rights and obligations, and does not imply or mean a termination of rights, remedies, obligations and provisions which by their nature or as provided elsewhere in the Agreement survive termination.

## ARTICLE 2 TERM AND TERMINATION

**2.1 Effective Date and Term.** This Agreement shall be effective on the Effective Date. If the Facility has achieved Commercial Operation on or prior to the Effective Date, the Term shall commence on the Effective Date; otherwise, the Term shall commence on the Commercial Operation Date. Unless sooner terminated as provided herein, this Agreement shall end on May 31, 20\_\_ (the “Termination Date”).

**2.2 Early Termination.** This Agreement may be terminated prior to the Termination Date pursuant to the following:

2.2.1 At any time by the mutual written consent of the Parties;

2.2.2 By the Non-Defaulting Party if an Event of Default occurs as provided for in Article 9, with such notice as required therein;

2.2.3 By Either Party:

(a) In the event that the Seller shall have failed to enter into an Interconnection Agreement, if applicable, and, if necessary, a Construction Service Agreement within 180 days after the Effective Date, but only if the Party seeking to terminate this Agreement provides notice of its intent to terminate no later than 150 days after the Effective Date;

(b) In the case of a Force Majeure event, the non-terminating Party fails to substantially perform its obligations under this Agreement on account of such Force Majeure event for a period exceeding 180 days after the occurrence of such Force Majeure event, and after thirty (30) days written notice; provided that such 180-day period may be extended, by the written agreement of both Parties, for an additional 180 days if (i) such Force Majeure event is not remedied within such 180-day period with reasonable diligence, (ii) such Force Majeure event may reasonably be expected to be remedied within such 180-day period, and (iii) the Party not performing its obligations under this Agreement on account of such Force Majeure event promptly undertakes to remedy such Force Majeure event and continues with reasonable diligence to effect such remedy within the 180-day period.

**2.3 Effectiveness of Termination.** Termination under this Article 2 shall be effective immediately after written notice is given, subject to any applicable notice requirements or extensions agreed to by the Parties. If this Agreement is terminated pursuant to any of the provisions above, the effective date of such termination shall be deemed the “Early Termination Date.”

**2.4 Survival.**

2.4.1 Termination of this Agreement for any reason shall not relieve PECO or Seller of any obligation accrued or accruing prior to such termination, and the following

provisions of this Agreement shall survive any termination: Article 1, Sections 2.4, 2.5, 3.2, 3.3, 3.4, 3.5, 3.7, 6.4, 6.6, 7.4, 7.6, 7.7, 11.2, 11.3, 12.1, and Articles 9, 13 and 14.

2.4.2 In addition, if this Agreement is terminated pursuant to:

(a) Section 2.2.2, the Non-Defaulting Party may pursue the remedies provided in Article 9;

(b) Section 2.2.3, the Parties may not pursue the remedies provided for in Article 9 and are entitled to receive only amounts due and owing as of the Early Termination Date and under Section 6.1, if any.

**2.5 Preservation of Security.** In the event that Seller has provided a Letter of Credit under the terms of this Agreement, Seller will preserve the Letter of Credit in place until all payments due under this Agreement for which the Letter of Credit has been provided have been made in full.

### **ARTICLE 3 PURCHASE AND SALE OF AECS**

**3.1 Purchase and Sale of AECS.** Subject to the terms and upon the conditions and provisions of this Agreement, Seller shall sell, and PECO shall purchase, all rights, title and interest in the AECS generated by the Facility up to the Contract Amount for each Contract Year.

**3.2 Delivery of AECS by Seller.** For each Semi-Annual period of the Contract Year during the Term, Seller shall Deliver Certificates to PECO for all AECS created by the Facility in such Semi-Annual period (the "Semi-Annual AECS") until PECO has received the Contract Amount for the current Contract Year, provided that where the Contract Amount is less than the Estimated Annual Total Facility AEC Production, Seller may Deliver a proportion of the Semi-Annual AECS equal to the product of the number of Semi-Annual AECS multiplied by the Contract Amount and divided by the Estimated Annual Total Facility AEC Production. The Delivery of the Semi-Annual AECS shall be completed no later than the fortieth (40th) day following the end of such Semi-Annual period, or such other date as PECO and the Seller may agree to in writing. Seller and PECO are each responsible for their own costs associated with establishing and administering any accounts with the Registry sufficient to accomplish the Delivery of all AECS. Seller agrees to execute all other documents or instruments, at its expense, necessary to effectuate the Delivery of the AECS to PECO or as may be reasonably requested by PECO. All AECS transferred to PECO shall be free and clear of all Liens. Nothing in this Section shall reduce Seller's obligations under Section 3.4.

**3.3 Ownership of and Title to AECS.** PECO shall have sole, exclusive and perpetual ownership of all AECS Delivered to PECO by Seller under this Agreement, including all rights to sell, assign, transfer, apply, or retire any AEC transferred to PECO by Seller, provided, however, that Delivery of an AEC shall not transfer eligibility or other rights to Facility Benefits. Title to AECS shall not transfer to PECO prior to Delivery by Seller. Any benefits derived from the AECS after Delivery to PECO shall inure solely to the benefit of PECO and not to Seller.

**3.4 Contract Amount Guarantee.** Seller shall transfer a total amount of AECs from the Facility equal to the Contract Amount for each Contract Year. In the event that Seller is unable to transfer an amount of AECs equal to the Contract Amount for each Contract Year for any reason other than a Force Majeure Event, Seller shall, within forty-five (45) days of the end of such Contract Year, transfer an amount of AECs to PECO through the Registry which is equal to the amount of AECs Seller failed to provide from the Facility for such Contract Year (each a “Replacement AEC”). Any Replacement AEC transferred to PECO by Seller pursuant to the preceding sentence shall be available to PECO for purposes of compliance under the Act for the two AEPS Reporting Years following the last Month of the Contract Year. In the event that Seller fails to provide Replacement AECs as provided under this Section, Seller shall pay PECO within forty-five (45) days of the end of the Contract Year an amount equal to the Alternative Compliance Payment (a “Replacement AEC Payment”) for each AEC which Seller fails to transfer to PECO for such Contract Year as liquidated damages. If the PaPUC subsequently determines that the Alternative Compliance Payment for the AEPS Reporting Year in which Seller failed to Deliver the Contract Amount is more than the amount Seller paid for each AEC not Delivered, Seller shall pay PECO the difference between the amount Seller paid per AEC and the actual Alternative Compliance Payment. If Seller has paid PECO an amount in excess of the actual Alternative Compliance Payment for each AEC not Delivered, PECO shall pay Seller the difference between the amount Seller paid per AEC and the actual Alternative Compliance Payment. All such additional payments shall be paid by PECO or Seller, as applicable, within thirty (30) days of the PaPUC’s determination of the applicable Alternative Compliance Payment for an AEPS Reporting Year.

**3.5 Non-Compliant AECs.** In the event that any AEC transferred to PECO is subsequently determined to be unable to be used by PECO for AEPS compliance due to Seller’s failure to comply with any obligation under this Agreement, Seller shall transfer an equivalent AEC to PECO. All AECs transferred to PECO under this Section shall be available for use by PECO for purposes of compliance under the Act as if the AEC had been created at the time the non-compliant AEC was created. Any additional costs or penalties incurred by PECO resulting from the transfer of non-compliant AECs by Seller shall be paid for by Seller.

**3.6 Excess AECs.** In the event that Seller shall generate from the Facility and possess AECs in excess of the Contract Amount during any Contract Year, Seller shall have the right to Deliver such excess AECs to PECO during the first Semi-Annual period of the subsequent Contract Year, to be applied towards Seller’s obligations to Deliver AECs in that subsequent year, provided that Seller shall provide notice to PECO of its intent to apply such excess AECs no later than June 30 of the subsequent Contract Year in which the excess AECs are created. Such excess AECs must be delivered no later than July 31 of such year. Except as provided in this Section, PECO shall have no obligation to purchase any AECs in excess of the Contract Amount generated in any Contract Year. Any other AECs created by the Facility in excess of the Contract Amount shall not be Delivered or otherwise transferred to PECO except to the extent Seller elects to Deliver such AECs for purposes of satisfying its obligations under Section 3.4.

**3.7 No Sale of Electricity and Capacity.** Seller shall retain all rights and title to all electricity generated by the Facility and all capacity associated with the Facility, and shall be responsible for any and all costs and charges associated with such electricity and capacity,

including all costs and charges applicable to or required for the delivery of Energy to or from a Host and to or from the Energy Delivery Point. As between PECO and Seller, Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, the Facility or electricity generated by the Facility.

**3.8 Financing.** PECO shall have no responsibility whatsoever for any financing or costs associated with the Facility or a Host, including any expenditures necessary or desirable to construct, operate, or remove the Facility or to deliver AECs to PECO under this Agreement.

#### **ARTICLE 4**

#### **FACILITY DEVELOPMENT [ARTICLE MAY BE MARKED RESERVED FOR FACILITIES THAT HAVE ACHIEVED COMMERCIAL OPERATION]**

**4.1 Development of Facility.** Subject to the terms and conditions of this Agreement, Seller represents, warrants and guarantees:

4.1.1 Except as expressly permitted otherwise by this Agreement, the Facility shall be developed and achieve Commercial Operation in accordance with this Agreement and the Significant Milestone Schedule set forth in Exhibit 2.

4.1.2 The Facility shall be designed in compliance with all applicable Permits, each applicable Requirement of Law and Prudent Utility Practice, and for qualification as an Alternative Energy System. The Facility will be capable of generating Energy to create AECs in a safe and reliable manner, consistent with the requirements of each applicable Requirement of Law, the Interconnection Agreement (if applicable), and Prudent Utility Practice.

4.1.3 All Permits necessary for the construction and operation of the Facility, including land use permits, environmental review and authorizations, grading and building permits, and licenses necessary to operate the Facility shall be obtained and maintained, and Seller will provide PECO with evidence of all essential Permits (including copies of any Permit upon PECO's request).

4.1.4 All construction and testing of the Facility shall be in compliance with all applicable Permits, each applicable Requirement of Law, the Interconnection Agreement (if applicable) and Prudent Utility Practice.

4.1.5 Seller shall give prompt written notice to PECO of any material modifications to the Facility after the Effective Date and a brief description of the reasons for the modifications and confirmation that such modifications shall not affect the general location of the Facility or the Contract Amount, except that Seller may modify or revise the Contract Amount and Contract-Related Capacity in accordance with Section 4.5.

**4.2 Seller Reports.** Seller shall provide monthly reports to PECO on the Facility prior to the Commercial Operation Date in the form attached as Exhibit 4.

**4.3 Failure to Achieve Significant Milestones or Contract Amount.** Seller shall immediately notify PECO of (i) any inability of Seller to achieve a Significant Milestone in accordance with the Significant Milestone Schedule for any reason, or (ii) any determination by

Seller that the Facility shall be incapable of providing the Contract Amount upon Commercial Operation. Seller acknowledges that failure to achieve a Significant Milestone in accordance with the Significant Milestone Schedule or inability to provide the Contract Amount upon Commercial Operation, unless otherwise excused under the provisions of this Agreement, shall constitute a material breach of this Agreement and permit PECO to terminate this Agreement and retain the Development Security as provided in Section 6.1.

**4.4 Extension of Significant Milestones.** Subject to the notice requirements of Section 4.3, in the event that Seller does not achieve or determines that it will not achieve a Significant Milestone in accordance with the Significant Milestone Schedule, Seller shall provide a revised Significant Milestone Schedule to PECO. PECO shall review this revised Significant Milestone Schedule and, in PECO's sole discretion and subject to Section 6.1, PECO may approve an extension of one or more Significant Milestones. Any such approval by PECO shall be in writing.

**4.5 Downsizing of Facility.** In the event that Seller determines that the Facility shall be incapable of providing the Contract Amount upon Commercial Operation, Seller may request that PECO agree to a downsizing of the Facility under which the Facility would provide a lesser amount of AECs. PECO shall review any downsizing request and, in PECO's sole discretion and subject to Section 6.1, may approve a downsizing of the Facility and a revised Contract Amount and Contract-Related Capacity. Any such approval by PECO shall be in writing.

**4.6 Other Reasons for Delay.** Seller shall be excused from a failure to meet the Commercial Operation Date where Seller can establish that such a failure is attributable solely to any delay or failure by PECO in taking any action or obtaining any consents or approvals from Governmental Authorities or third parties required for PECO to perform its obligations under this Agreement, the Interconnection Agreement or any Construction Service Agreement (if applicable), unless such delay or failure to act is consistent with Prudent Utility Practice or results from delays or failure to take timely action by Seller or other third party, whether or not caused by any conditions or events of Force Majeure, and in the event of such a failure, the Commercial Operation Date shall be extended for a period of time equal to the duration of the resulting delay.

## ARTICLE 5 SELLER OBLIGATIONS

**5.1 Generation of AECs.** Subject to the terms and conditions of this Agreement, Seller shall ensure operation of the Facility to generate Energy sufficient to deliver the Contract Amount of AECs during each Contract Year of the Term.

**5.2 Facility Obligations.** During the Term, at its sole cost and expense, Seller represents, warrants and guarantees that:

5.2.1 The Facility (including all Generating Units) shall be operated, controlled and maintained in compliance with all Requirements of Laws and Prudent Utility Practice;

5.2.2 All of the Interconnection Facilities located at the Facility shall be operated, controlled and maintained to the extent required without expense to PECO (except as

may be otherwise provided in an applicable Interconnection Agreement or applicable net metering requirements), including any system upgrades beyond the Energy Delivery Point necessary to interconnect with the Grid for delivery of Net Electricity;

5.2.3 The Facility shall obtain, maintain and comply with all Permits and agreements (including the Interconnection Agreement, if applicable, and all environmental permits) that are required or desirable in order for the Facility and Seller to generate, schedule, deliver, meter and transmit electricity and generate and Deliver AECs in compliance with this Agreement, except as otherwise permitted by Requirements of Law or by written agreement with PECO;

5.2.4 Seller shall take all actions necessary for the scheduling and delivery of any Energy to a Host and/or any Net Electricity to PJM, as applicable;

5.2.5 The Facility shall be maintained as an Alternative Energy System under the Act;

5.2.6 Seller shall possess sole and exclusive title and legal rights to an AEC prior to the transfer of such AEC to PECO under this Agreement;

5.2.7 Seller shall transfer only valid AECs to PECO which have not been previously retired, claimed or used to satisfy any renewable energy requirements, obligations or voluntary undertaking by any entity in any jurisdiction;

5.2.8 Seller and the Facility shall comply with all RTO requirements that are necessary for Seller to comply with its obligations under this Agreement, and Seller shall be responsible for all costs or charges that are required by the RTO to enable the Grid to accept any Net Electricity from the Facility; and

5.2.9 Seller shall comply with all Registry requirements that are necessary for Seller to perform its obligations under this Agreement.

**5.3 Site Control.** At all times after the Effective Date, Seller shall ensure site control (“Site Control”) of the Premises, which means that Seller shall have all rights to the Premises necessary to perform its obligations under the Agreement. Seller shall provide PECO with prompt notice of any change in the status of Seller’s Site Control.

**5.4 Insurance.**

5.4.1 Seller shall maintain at its sole expense, commencing with the Effective Date and continuing through the Term, insurance for the Facility (including commercial general liability insurance) customarily maintained for facilities of similar fuel source and electric generating capacity in the state in which the Facility is located, but no less than a commercially reasonable business would obtain for a facility of similar value and operation. Seller shall provide certificates of insurance or other reasonable evidence of such insurance coverage acceptable to PECO upon request.

5.4.2 Failure to obtain and maintain the required insurance shall constitute a breach of the Agreement and Seller will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court, and settlement expenses) resulting to PECO from such breach, unless a written waiver of the specific insurance requirement is provided to Seller by PECO.

5.4.3 Failure of Seller to provide insurance as herein required or failure of PECO to require evidence of insurance or to notify Seller of any breach by Seller of the requirements of this Article 5 shall not be deemed to be a waiver by PECO of any of the terms and conditions of this Agreement, nor shall they be deemed to be a waiver of the obligation of Seller to defend, indemnify, and hold harmless PECO as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Seller and independent of the duty to furnish a copy or certificate of such insurance policies.

5.4.4 Notwithstanding any provision of this Agreement, none of the requirements contained herein as to insurance coverage to be maintained by Seller are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Seller under this Agreement, any other agreement with PECO or its Affiliates, or otherwise provided by law.

**5.5 Authorized Representatives.** As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between the Parties in connection with various administrative, commercial and technical issues that may arise during the performance of this Agreement, each Party shall appoint an authorized representative (with respect to each Party, the "Authorized Representative") and may appoint an alternate (with respect to each Party, the "Alternate Representative") to act in its Authorized Representative's absence. The Authorized Representatives and Alternate Representatives shall be managers well experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement with full authority to act for and on behalf of the Party appointing them. Upon execution of this Agreement, each Party will notify the other in writing of the name of its Authorized Representative and Alternate Representative so appointed and these appointments will remain in full force and effect until written notice of substitution is delivered by such Party to the other Party.

**5.6 Access to Facility; Publicity.** Upon reasonable prior notice (in light of the circumstances), Seller will provide PECO and its authorized agents, employees and inspectors with reasonable access to the Facility: (i) to provide tours of the Facility to guests of PECO, to the extent practicable, (ii) to ascertain the status of the Facility with respect to any Significant Milestone or any other obligation of Seller under this Agreement, and (iii) for other reasonable purposes at the reasonable request of PECO. Upon request by PECO, Seller shall use reasonable efforts to permit PECO to take photographs of the Facility for use by PECO for publicity purposes and internal communications. No party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other party, which approval shall not be unreasonably withheld.

**ARTICLE 6**  
**CREDIT AND COLLATERAL REQUIREMENTS**

**6.1 Development Security.** *[Section may be marked reserved for Facilities that have achieved Commercial Operation]*

6.1.1 If the Facility has not achieved Commercial Operation by the Effective Date, Seller shall post and thereafter maintain development security equal to two percent (2%) of the Nominal Contract Value upon execution of this Agreement. The Development Security shall be held by PECO as security for Seller meeting the Commercial Operation Date. The Development Security shall be in the form of either a cash deposit or a Letter of Credit as provided for in Section 6.5.

6.1.2 The following provisions shall govern disposition of the Development Security:

(a) In the event that the Facility achieves Commercial Operation by the original Commercial Operation Date established on the Effective Date, the entire Development Security shall be returned to Seller.

(b) In the event that the Commercial Operation Date is extended pursuant to the provisions of Section 4.4 for a period of 180 days or less and the Facility achieves Commercial Operation on such extended date, Seller shall be entitled only to a portion of the Development Security equal to (i) the Development Security, less (ii) the ratio of the number of calendar days that the Commercial Operation Date is delayed beyond the original Commercial Operation Date to 180 days, multiplied by the Development Security. The portion of the Development Security retained by PECO shall be kept as liquidated damages, and PECO shall be entitled to retain the entire Development Security as such liquidated damages in the event that the Commercial Operation Date is extended more than 180 days.

(c) In the event that the Commercial Operation Date is not extended pursuant to the provisions of Section 4.4, but the Facility is resized pursuant to the provisions of Section 4.5, Seller shall be entitled only to a portion of the Development Security equal to (i) two percent (2%) times the Nominal Contract Value multiplied by (ii) the ratio of the revised Contract Amount resulting from the resizing to the original Contract Amount prior to the resizing. The remainder of the Development Security shall be kept by PECO as liquidated damages.

(d) In the event that the Commercial Operation Date is extended pursuant to the provisions of Section 4.4 and the Seller meets such extended date but the Facility is resized pursuant to the provisions of Section 4.5, Seller shall be entitled only to a portion of the Development Security equal to (i) two percent (2%) times the Nominal Contract Value multiplied by (ii) the ratio of the revised Contract Amount resulting from the resizing to the original Contract Amount

prior to the resizing multiplied by (iii)  $1 - [(the\ number\ of\ calendar\ days\ that\ the\ Commercial\ Operation\ Date\ is\ delayed\ beyond\ the\ original\ Commercial\ Operation\ Date)\ divided\ by\ 180]$ . The remainder of the Development Security shall be kept by PECO as liquidated damages.

(e) If some or all of the Development Security is to be returned to the Seller under this Section 6.1, it shall be returned within thirty (30) Business Days of the achievement of the Commercial Operation Date, with interest paid only if Seller satisfied the Development Security requirements by providing Cash to PECO. Such interest shall be calculated using the London Interbank Offered Rate (LIBOR) at the time of the Cash is returned to Seller, plus thirty (30) basis points.

(f) In the event the Seller fails to obtain the Commercial Operation Date Milestone, as may be extended pursuant to Section 4.4, PECO may terminate this Agreement pursuant to Section 9.1 and retain the entire Development Security.

6.1.3 The Parties acknowledge and agree that it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by PECO as a result of the Facility failing to operate by the Commercial Operation Date Milestone. It is understood and agreed by the Parties that (a) PECO shall be damaged by failure of Seller to meet such obligations, (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (c) any sums which would be creditable or payable under this Article 6 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and (d) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from each such failure. The liquidated damages available under this Section shall constitute PECO's sole damages for failure of the Seller to achieve the Commercial Operation Date or for any resizing of the Facility as provided in Article 4.

**6.2 Credit Support.** The Seller shall post security with PECO, on the Commercial Operation Date, in an amount based on the number of months remaining in the Term, as determined from the table (Credit Support Requirement) in Exhibit 6.

**6.3 Grant of Security Interest.** To secure its obligations under this Agreement, Seller hereby grants to PECO a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PECO, provided, however, that such interest may be junior to an interest granted by Seller in such collateral or proceeds for purposes of financing the development, construction or operation of the Facility. Seller agrees to take such action as reasonably required to perfect in favor of PECO such security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

**6.4 Remedies.** Upon or any time after the occurrence of an Event of Default caused by Seller, PECO may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies

under law then in effect; (ii) exercise its rights of setoff against any and all property of Seller in the possession of PECO, whether held in connection with this Agreement or any other agreement(s) between PECO and Seller for the provision of Energy or AECs; (iii) draw on any outstanding Letter of Credit issued for PECO's benefit; and (iv) liquidate all collateral security held by or for the benefit of the PECO free from any claim or right of any nature whatsoever of the Seller, including any equity or right of purchase or redemption by the Seller. PECO shall apply the proceeds of the collateral security realized upon the exercise of such rights or remedies to reduce Seller's obligation under this Agreement or any other agreement(s) between PECO and Seller for the provision of Energy or AECs (the Seller remaining liable for any amounts owing to the Company after such application), subject to PECO's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

**6.5 Security Instruments.** At Seller's choice, the following are deemed to be acceptable methods for posting security (each, a "Security Instrument"), if required:

6.5.1 Cash; or

6.5.2 An irrevocable transferable standby letter of credit (a "Letter of Credit") acceptable to the Company issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating from S&P or Moody's (the "Issuer Minimum Requirements"). (A standard format for the Letter of Credit is provided in Exhibit 5.) In the event that senior unsecured debt ratings are unavailable from S&P, the corporate issuer rating, discounted one notch, will be used. In the event that senior unsecured debt ratings are unavailable from Moody's, the issuer rating will be used. The Company will only rely on senior unsecured debt ratings, or if unavailable, issuer or corporate issuer ratings. If the Seller does not have a senior unsecured debt rating and does not have an issuer or corporate issuer rating from a rating agency, it will be deemed by the Company not to be rated by that rating agency. The Letter of Credit shall state that it shall renew automatically for successive one-year or shorter periods unless the Company receives written notice from the issuing financial institution at least thirty (30) days prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If the Company receives notice from the issuing financial institution that the Letter of Credit will not be extended, the Seller will be required to provide a substitute Letter of Credit from an alternative bank or financial institution satisfying the Issuer Minimum Requirements. The receipt of the substitute Letter of Credit must be effective on or before the expiration date of the expiring Letter of Credit and delivered to the Company at least fifteen (15) days before the expiration date of the original Letter of Credit. If the Seller fails to supply a substitute Letter of Credit as required herein, then the Company will have the right to draw on the expiring Letter of Credit and to hold the amount as collateral. If the credit rating of the issuer of a Letter of Credit falls below the Issuer Minimum Requirements, the Seller shall have two (2) Business Days (or such longer period as the Company in its sole discretion may permit in writing) following written notice by the Company to obtain a suitable Letter of Credit from another bank or other financial institution that meets the Issuer Minimum Requirements.

**6.6 Calling on Security.** The Company may call upon the Security Instrument posted by the Seller (i) if the Seller fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of

Energy and AECs after written notice of default is provided to the Seller and any applicable cure period ends; and (ii) with respect to the Development Security, to satisfy PECO's rights to such portions of the Development Security specified in Section 6.1. The foregoing notwithstanding, the Security Instrument posted by the Seller shall become due automatically, and may be called upon by the Company, without prior notice or right of cure in the case of any Event of Default involving the Seller arising under Section 9.1.1.

**6.7 Interest on Cash Held by Company.** The Company will pay simple interest (not compounded) calculated at the lower of the Interest Rate or six (6) percent per annum on any Cash posted by the Seller as Performance Security and directly held by the Company pursuant to this Agreement.

## **ARTICLE 7 BILLING AND PAYMENT; RECORDS**

**7.1 Invoices.** Beginning with the end of the first Semi-Annual period after the Effective Date, Seller shall send PECO a statement following the Delivery of AECs after each Semi-Annual period setting forth all amounts due either to the Seller or to PECO arising during the preceding Semi-Annual period. The statement shall include (i) after the commencement of the Term, the quantity of AECs that were Delivered by Seller to PECO during such Semi-Annual period and the total amount owed by PECO for those AECs at the Contract Price, (ii) any interest due to Seller as provided in Section 6.7, and (iii) any other amount due Seller or to PECO under this Agreement in respect of such Semi-Annual period (including the amount of any Replacement AEC Payment). Such statement shall be sent by Seller to PECO no later than fifteen (15) Business Days following the Delivery of AECs for which the statement is applicable.

**7.2 Payment.** Subject to all conditions and provisions of this Agreement (including Section 7.7), no later than fifteen (15) Business Days after the date of a statement submitted by Seller, or if such day is not a Business Day, the immediately following Business Day, the Party owing the net amount shown to be due on such statement shall remit to the other Party, by wire transfer in accordance with Section 12.1, the amount due pursuant to such statement.

**7.3 Interest.** Amounts not paid shall accrue interest from the due date to the date of payment at the Interest Rate.

**7.4 Taxes.** Seller shall be responsible for all existing and any new taxes, fees, levies, assessments, penalties, licenses, or charges imposed or levied by any federal, state or local governmental agency (collectively, "Taxes") on the electricity and capacity associated with the Facility and on all AECs prior to and including the Delivery of AECs under this Agreement. PECO shall be responsible for all existing and any new Taxes imposed or levied by any federal, state or local governmental agency on AECs after transfer to PECO. If PECO is required to remit or pay Taxes that are Seller's responsibility under this Agreement, then Seller shall promptly reimburse PECO for such Taxes. If Seller is required to remit or pay Taxes that are PECO's responsibility under this Agreement, then PECO shall promptly reimburse Seller for such Taxes.

**7.5 Disputed Amounts.** If either Party, in good faith, disputes any amount due pursuant to a statement rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and shall pay that portion of the amount shown to be due on the statement that is undisputed, on or before the due date. If any amount disputed by such Party is determined to be due the other Party, whether by agreement of the Parties or through arbitration in accordance with Section 13.2, the amount due shall be paid within five (5) Business Days of such determination or resolution, along with interest accrued at the Interest Rate from the date due to the date paid. Notwithstanding the above, no dispute may be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within one year after the date of such statement or payment.

**7.6 Records.** Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying such Party's performance hereunder. All such records shall be retained by each Party for at least three (3) calendar years following the calendar year in which such records were created.

**7.7 Audit Rights.** Each Party, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. If any statement is determined by the Parties or through arbitration to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such statement or payment within one year after the date of such statement or payment.

## **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

**8.1 Mutual Representations.** As a material inducement to execution of this Agreement, each Party hereby represents and warrants to the other Party that:

8.1.1 It is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and is qualified to conduct its business in all jurisdictions necessary to perform its obligations hereunder;

8.1.2 The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any agreement to which it is a party or by which it or any of its property is bound, or any Requirement of Law applicable to it;

8.1.3 Except as set forth in and as required by this Agreement, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental

Authority is required by such Party in connection with the execution, delivery or performance of this Agreement;

8.1.4 This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

8.1.5 No Event of Default has occurred and there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;

8.1.6 To such Party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any court or other governmental body, that would materially adversely affect its ability to perform its obligations under this Agreement;

8.1.7 It is, and will continue to be for the Term, a Forward Contract Merchant both generally and with respect to the AECs delivered and purchased under this Agreement.

**8.2 Forward Contract.** The Parties acknowledge that this Agreement is a Forward Contract and the Parties are Forward Contract Merchants, both generally and with respect to the deliveries of AECs pursuant to this Agreement, that each party is an "eligible contract participant" as set forth in the Commodities Exchange Act; and, accordingly, the Parties are entitled to the protections of the Safe Harbor Provisions of the Bankruptcy Code. The Parties therefore agree that this Agreement may be terminated and the remedies hereunder exercised by either Party in accordance with Article 2 and Article 9 hereof upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination.

**8.3 No Representation or Warranty By PECO of Facility or Seller.** Any review by PECO of any information or material pertaining to the Seller or the Facility (including its design, operation, and compliance with Requirements of Law) is solely for PECO's information only. By conducting such review, PECO makes no representation or warranty as to the Seller or to the Facility, including its reliability, capacity, economic viability, operation, performance, safety, or compliance with Requirements of Law, RTO Requirements, or Prudent Utility Practice. PECO does not endorse or in any way approve of any representation or warranty of Seller in any agreement or to any Person, and Seller shall not make any such representation that PECO has given any such approval.

## ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES

**9.1 Events of Default.** An "Event of Default" by a Party (the "Defaulting Party") shall mean:

9.1.1 With respect to Seller, unless otherwise excused or permitted under the terms of this Agreement, the following events, without notice or the opportunity to cure, if the Seller:

(a) fails to achieve the Commercial Operation Date or any other Significant Milestone in accordance with the Significant Milestone Schedule, as may be extended pursuant to the provisions of Article 4;

(b) fails to meet the ratings requirements or to comply with the collateral requirements set forth in Article 6 within the time frames set forth in this Agreement;

(c) fails to provide at least ten percent (10%) of the Contract Amount of AECs for any Contract Year from the Facility;

(d) (1) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) in respect of any indebtedness for borrowed money involving a principal sum in excess of \$5,000,000 (“Material Debt”) and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure, or (2) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any Material Debt, if, in any such event, the effect of such failure, event or condition is to cause, or permit the holder or holders thereof or beneficiary or beneficiaries thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause (after the expiration of any applicable grace period or notice period, if any, specified in the relevant document on the date of such failure) such Material Debt to become due and payable or to be repurchased, defeased or redeemed prior to its expressed maturity;

(e) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

(f) makes an assignment for the benefit of its creditors;

(g) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; or

(h) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

9.1.2 With respect to either Party, an Event of Default shall occur if such Party:

(a) is the subject of a voluntary bankruptcy, insolvency or similar proceeding;

(b) applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;

(c) is the subject of an involuntary bankruptcy or similar proceeding, and fails to have such proceeding dismissed within 60 days; or

(d) commits an act or makes an omission that constitutes an “Event of Default” under any other agreement(s) between PECO and the Seller for the provision of Energy or AECs.

9.1.3 Unless otherwise excused or permitted under the terms of this Agreement, a Party’s failure to make, when due, any payment required pursuant to this Agreement, regardless of whether a payment or portion thereof may be subject to a billing dispute, shall constitute an Event of Default unless a Party shall have cured the same within three (3) Business Days after receipt of written notice of such payment failure from the other Party.

9.1.4 Unless otherwise excused or permitted under the terms of this Agreement, any of the following events shall constitute an Event of Default unless a Party shall have cured the same within thirty (30) days after receipt of written notice of the occurrence of such event from the other Party:

(a) Any representation, warranty or covenant made by such Party herein is proven to be false or misleading in any material respect at the time it was made;

(b) A Party transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another entity without the other Party’s prior written consent, to the extent such consent is required under this Agreement, or if at the time of such transfer, assignment or conveyance, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(c) A Party’s unexcused failure to perform any other material covenant or obligation set forth in this Agreement that is not enumerated in this Section 9.1; or

(d) with respect to Seller, Seller fails to have and maintain, during the Term, all federal, state and local Permits to permit its performance under this Agreement.

**9.2 Rights Upon Default.** Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to elect or pursue one or more of the following remedies:

9.2.1 terminate the Agreement by providing written notice to the Defaulting Party of an Early Termination, as provided in Section 2.2;

9.2.2 accelerate all amounts then owing by the Defaulting Party to the Non-Defaulting Party;

9.2.3 withhold any payments due to the Defaulting Party under this Agreement;

9.2.4 suspend its performance under this Agreement; and

9.2.5 pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.

**9.3 Reliance on Netting.** The Parties are making credit, default, collateral and other decisions and changes based upon and in reliance on the effectiveness of the default, early termination, setoff and netting provisions of this Agreement. The Parties would not enter into this Agreement and would change their position with regard to netting except for their reliance on and with the understanding that these netting terms will be effective. Notwithstanding anything else in this Agreement or in any other agreement between the Parties to the contrary, if for any reason these terms or any right of offset or netting hereunder or under another agreement in favor of the Non-Defaulting Party against a bankrupt Defaulting Party is delayed from being exercised or is not enforceable in accordance with its terms because either Party asserts or is concerned that the Safe Harbor Provisions of the Bankruptcy Code do not apply to such rights of enforcement or for any other reason, the Non-Defaulting Party may (a) exercise its rights to effect a setoff under Section 553 of the Bankruptcy Code or other applicable provisions, equity and law, and (b) withhold payments subject to a claim of offset under any obligations due the Defaulting Party in respect of any transactions or deliveries under this Agreement or any other agreement until such setoff rights are exercised and effected.

**9.4 Setoff of Payment Obligations of the Non-Defaulting Party.** Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs that are unsecured; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs that are unsecured, but which are subject to a guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs. Any setoff shall not be subject to the automatic stay by virtue of Section 362(b)(6) of the Bankruptcy Code.

**9.5 Preservation of Rights of the Non-Defaulting Party.** The rights of the Non-Defaulting Party under this Agreement, including Sections 9.3 and 9.4 shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable Requirements of Law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

**9.6 Integrated Transaction.** To the extent that Section 365 of the Bankruptcy Code applies to this Agreement, the Parties agree that all transactions under this Agreement constitute one integrated transaction that can only be assumed or rejected in its entirety.

## ARTICLE 10 ASSIGNMENT

**10.1 Assignment.** Neither Party shall assign this Agreement or any of its rights or obligations hereunder (including by lease, subcontract, or otherwise) without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party, transfer or assign this Agreement to an Affiliate of such Party, providing that the assigning Party shall provide notice to the other Party and shall remain responsible for its obligations under the Agreement. In all such transfers and assignments, the succeeding Party must agree to comply with all the provisions, terms and conditions of this Agreement, including the credit and collateral security requirements set out in Article 6. Except as specifically provided in this Article 10, any assignment or transfer of this Agreement or any rights, duties or interests hereunder by any Party without the written consent of the other Party shall be void and of no force or effect.

**10.2 Collateral Assignment by Seller.** Without the consent of PECO, Seller may, in its discretion, make a collateral assignment of this Agreement to any and all lenders or grant any or all lenders a lien or security interest in any right, title or interest in part or all of the Facility or any or all of Seller's rights under this Agreement for the purpose of the financing or refinancing of the Facility; provided, however, that Seller shall provide notice of each such assignment (including the identity of the assignee) prior to assignment and such assignment shall recognize PECO's rights under this Agreement. In order to facilitate the obtaining of financing or refinancing of the Facility, PECO shall cooperate with Seller and execute consents, agreements or similar documents with respect to a collateral assignment hereof to any lender as such lender may reasonably request in connection with the financing or refinancing of the Facility, including an agreement to give notice to such lenders of any default by Seller under this Agreement and to allow such lenders to cure any such default during periods which are equal to and consistent with the cure periods Seller has under this Agreement, provided that PECO shall be reasonably satisfied that any such consents, agreements or similar documents do not in any manner adversely affect its rights under this Agreement or impose material obligations on PECO except with respect to providing any additional notice of default and opportunity to cure consistent with this Agreement.

## ARTICLE 11 FORCE MAJEURE; INDEMNITY; LIMITATION OF LIABILITY

**11.1 Force Majeure.** If either Party is rendered unable by a Force Majeure event to carry out, in whole or in part, its obligations under this Agreement, then, during the pendency of such event of Force Majeure, but for no longer period, the obligations of the affected Party (other than the obligation to make payments hereunder when due) shall be suspended to the extent required. The affected Party shall (i) give the other Party written notice within 48 hours of the commencement of the Force Majeure event, with details to be supplied within three (3) Business Days after the commencement of the Force Majeure event further describing the particulars of the occurrence of the Force Majeure event, and (ii) take all reasonable steps to remedy the cause of the Force Majeure event with all reasonable dispatch. Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such

period; provided, however, that in no event will any Force Majeure event extend this Agreement beyond its Term. A determination of force majeure by the PaPUC under the Act shall not constitute a determination of Force Majeure under this Agreement.

## **11.2 Indemnification.**

11.2.1 Each Party shall indemnify and hold harmless the other Party and its officers, directors, agents and employees (each an “Indemnified Party”) from and against any and all claims, demands, actions, losses, liabilities, expenses (including reasonable legal fees and expenses), suits and proceedings of any nature whatsoever for personal injury, death or property damage to third parties (collectively “Liabilities”) that arise out of or are in any manner connected with the performance of this Agreement.

11.2.2 Without limiting the foregoing, Seller shall indemnify, defend and hold harmless PECO (and any PECO Indemnified Party) from any Liabilities arising from the generation of Energy by the Facility prior to delivery of any Energy to the Energy Delivery Point and for any Claims arising from the design, construction, operation and removal of the Facility.

11.2.3 Any fines, penalties or other costs incurred by a Party or its agents, employees or subcontractors for non-compliance by such Party, its agents, employees or subcontractors with any Requirement of Law will not be reimbursed by the other Party but will be the sole responsibility of such non-complying Party.

11.2.4 A Party seeking indemnification under this Section 11.2 shall give written notice to the indemnifying Party as soon as reasonably practicable after the Indemnified Party becomes aware of any fact, condition or event which may give rise to Liabilities for which indemnification may be sought under this Section 11.2.

**11.3 Limitations of Remedies, Liability and Damages.** The Parties agree that the remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no measure of damages or other remedy is expressly provided herein, the obligor’s liability shall be limited to direct actual damages only, which direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless otherwise provided herein, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, (other than consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages recovered by an unaffiliated third party against a Party subject to indemnification hereunder), whether such damages are allowed or provided by statute, in tort, under any indemnity provision or otherwise.

## **ARTICLE 12 NOTICES AND ADDRESS FOR PAYMENT**

### **12.1 Notices.**

12.1.1 Except as set forth in Section 12.1.2, all notices, requests, statements or payments, if by check, shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or

hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by mail or overnight courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To PECO:

with a copy to: PECO Energy Acquisition  
S18-2  
2301 Market Street  
Philadelphia, PA 19103  
Attn: Director, PECO Energy Acquisition

to Seller:

12.1.2 All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) to the addresses specified below:

To PECO:

with a copy to: PECO Energy Acquisition  
S18-2  
2301 Market Street  
Philadelphia, PA 19103  
Attn: Director, PECO Energy Acquisition

to Seller:

12.1.3 All amounts due Seller under this Agreement that are paid by check must be sent via United States mail to the address specified below:

12.1.4 All amounts due PECO under this Agreement that are paid by check must be sent via United States mail to the address specified below:

12.1.5 A Party's address or addressee to which notices or invoices shall be sent may be changed from time to time by such Party by notice served as hereinabove provided.

**12.2 Notice After Close of Business.** Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided, however, that notice by

facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

### **ARTICLE 13 DISPUTE RESOLUTION**

**13.1 Negotiations.** The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as provided in this Section. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) Business Days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) Business Days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) Business Days after such referral, either Party may initiate arbitration as provided in Section 13.2. All negotiations pursuant to this clause are confidential, shall be considered to be in the nature of settlement discussions and shall be subject to Section 13.3.

#### **13.2 Arbitration.**

13.2.1 If the negotiation process provided for in Section 13.1 has not resolved the dispute, the dispute shall be decided by binding arbitration at Philadelphia, Pennsylvania in accordance with the Commercial Arbitration Rules of the American Arbitration Association (except as expressly provided otherwise herein). The arbitration shall be governed by the United States Arbitration Act (9 U.S.C. § 1 et seq.), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Any arbitration may be consolidated with any other arbitration proceedings between the Parties commenced under this Section 13.2. The award of the arbitrator shall be specifically enforceable in a court of competent jurisdiction.

13.2.2 Either Party may commence the arbitration by giving to the other Party written notice in sufficient detail of the existence and nature of any dispute proposed to be arbitrated. The demand must be made within a reasonable time after the dispute has arisen. In no event may the demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations. The Parties shall attempt to agree on a person to serve as arbitrator with respect to the matter at issue. If the Parties cannot agree on an arbitrator within ten (10) Business Days of such notice, each shall then appoint one individual to serve as an arbitrator within thirty (30) Business Days of such notice and the two (2) individuals thus appointed shall select a third arbitrator to serve as chairman of the panel of arbitrators. Such three (3) arbitrators shall determine all matters by majority vote; provided however, if the two (2) arbitrators appointed by the Parties are unable to agree upon the appointment of the third arbitrator within ten (10) Business Days after their appointment, both shall give written notice of such failure to agree to the Parties, and, if the

Parties fail to agree upon the selection of such third arbitrator within five (5) Business Days of such notice, then either of the Parties upon written notice to the other may require such appointment from, and pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any arbitrator appointed shall be a present or former executive of an electric utility, or private power producer, or an attorney, in each case with substantial experience in electric power purchase agreements. Prior to appointment, each arbitrator shall agree to conduct such arbitration in accordance with the terms of this Agreement.

13.2.3 The Parties shall have sixty (60) calendar days after appointment of all arbitrators to perform discovery and present evidence and argument to the arbitrators. During that period, the arbitrators shall be available to receive and consider all such evidence as is relevant and, within reasonable limits due to the restricted time period, to hear as much argument as is feasible, giving a fair allocation of time to each Party to the arbitration. The arbitrators shall use all reasonable means to expedite discovery and to sanction noncompliance with reasonable discovery requests or any discovery order. The arbitrators shall not consider any evidence or argument not presented during such period and shall not extend such period except by the written consent of both parties. At the conclusion of such period, the arbitrators shall have forty-five (45) calendar days to reach a determination.

13.2.4 The arbitrators shall have the right only to interpret and apply the terms and conditions of this Agreement and to order any remedy allowed by this Agreement, and may not change any term or condition of this Agreement, deprive either Party of any right or remedy expressly provided hereunder, or provide any right or remedy that has been excluded hereunder.

13.2.5 The arbitrators shall give a written decision to the Parties stating their findings of fact, conclusions of law and order, and shall furnish to each Party a copy thereof signed by them within five (5) calendar days from the date of their determination. Each party shall pay the cost of the arbitrator or arbitrators, with respect to those issues as to which they do not prevail, as determined by the arbitrator or arbitrators.

**13.3 Settlement Discussions.** The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in Section 13.1 above will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

**13.4 Preliminary Injunctive Relief.** Nothing in this Article 13 shall preclude, or be construed to preclude, the resort by either party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending arbitration pursuant to this Article 13.

## ARTICLE 14 MISCELLANEOUS

**14.1 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and it supersedes all prior oral or written agreements, commitments, negotiations or understandings with respect to the matters provided for herein.

**14.2 Schedules and Exhibits.** The Schedules and the Exhibits attached hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.

**14.3 Amendment.** Unless expressly provided otherwise in another provision of this Agreement, this Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties. It is agreed that no use of trade or other regular practice or method of dealing between the Parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

**14.4 Waiver.** Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by a Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

**14.5 Remedies Cumulative.** No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing.

**14.6 Binding Effect; Limitation of Benefits.** This Agreement shall be binding upon and shall insure to the benefit of the Parties hereto and, subject to the provisions of Article 10 hereof, their successors and permitted assigns. Nothing in this Agreement is intended to confer benefits, rights or remedies unto any Person other than the Parties and their permitted successors and assigns, and no third party shall have the right to enforce the provisions of this Agreement.

**14.7 Compliance with Laws.** Except as otherwise provided in this Agreement, each Party to this Agreement shall comply, at its own expense, with all applicable laws, statutes, regulations, rules, ordinances, orders, injunctions, writs, decrees or awards of any government or political subdivision thereof, or any agency, authority, bureau, commission, department or instrumentality thereof, or any court, tribunal, or arbitrator, in all applicable, material respects in connection with all activities and all performance under or in connection with this Agreement.

**14.8 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of conflict of law provision or rule (whether of the

Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the Commonwealth of Pennsylvania.

**14.9 No Partnership or Joint Venture.** This Agreement is not intended to create nor shall it be construed to create any partnership or joint venture relationship between PECO and Seller, and neither Party hereto shall have the power to bind or obligate the other Party. Neither Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker's compensation responsibilities.

**14.10 Headings.** The titles, headings and table of contents contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**14.11 Number of Days.** In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or holiday.

**14.12 E-mail in Place of Writing.** Where the parties agree, any written notification required by this Agreement may be transmitted via e-mail.

**14.13 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the domestic laws of the Commonwealth of Pennsylvania as provided herein, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future Laws effective during the term hereof, then (a) in lieu of such illegal, invalid or unenforceable provision, the Parties shall promptly endeavor, in good faith negotiations, to agree on a provision as may be possible and be legal, valid and enforceable, provided that no Party shall be required to agree to any provision that would materially alter any of its rights or obligations under this Agreement, and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. To the extent permitted by law, each Party hereby waives any Requirement of Law that renders any such provision prohibited or unenforceable in any respect.

**14.14 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.

*[Signatures Appear on the Following Page]*

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of PECO and Seller as of the date first written above.

PECO ENERGY COMPANY,  
a Pennsylvania Corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SELLER]

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 1  
FACILITY DESCRIPTION**

Facility Name:

Facility Address:

Type of AEPS Alternative Energy Source: [solar photovoltaic]

Energy Delivery Point (if applicable):

Description of Facility Generating Units and related facilities (including number, manufacturer and model of Facility Generating Units, and layout):

Description of Interconnection Facilities (if applicable):

Description of Host (if applicable):

Nameplate Capacity Rating (MW):

Estimated Capacity Factor (%):

The attached site map indicates the location and layout of the Facility equipment and other site details.

The attached diagram shows the Energy Delivery Point and/or Host (if applicable), metering devices and other equipment installed at the Facility.

**EXHIBIT 2**  
**SIGNIFICANT MILESTONE SCHEDULE**

Major Permits Milestone date:

Major Permits [list here]:

- 1.
- 2.
- 3.

Financing Milestone date:

Notice to Proceed Date to Major Generation Equipment Supplier(s):

Notice to Proceed Date to Balance of Plant Contractor:

Construction Milestone Dates:

Commercial Operation Date Milestone:

**EXHIBIT 3  
CONTRACT TERMS**

Type of AEC: AEPS Tier I solar photovoltaic

Contract Amount (AECs / Contract Year):

Initial Period Contract Amount (AECs to be Delivered to PECO during a partial AEPS Reporting Period after Commercial Operation):

Contract-Related Capacity (MW):

Estimated Annual Total Facility AEC Production (Total AECs/Contract Year):

Contract Price (\$/AEC):

## **EXHIBIT 4**

### **MILESTONE PROGRESS REPORTING FORM**

Each Milestone Progress Report shall include the following items:

1. Cover Page
2. Brief Facility description
3. Description of any planned changes to the Facility and the Site description in Exhibit 1.
4. Bar chart schedule showing progress on achieving Seller's Significant Milestone Schedule, together with a written explanation of such progress.
5. PERT or GANT chart showing critical path schedule of major items and activities.
6. Summary of activities during the Month covered by the report.
7. Forecast of activities scheduled for the current Month.
8. List of issues that could potentially impact achievement of Seller's Significant Milestone Schedule.
9. Enumeration and schedule of any support or actions requested of PECO.
10. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
11. A status report of start-up activities, including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) Months.

**EXHIBIT 5****SAMPLE LETTER OF CREDIT**

[On Issuing Bank's Letterhead]

**IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT**

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: PECO Energy Company  
[address]  
Attention: \_\_\_\_\_

1. We hereby establish this Irrevocable Transferable Standby Letter of Credit (this "Letter of Credit") in your favor in the amount of USD \$\_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank's location for presentments] and expiring at 5:00 PM [New York, NY time<sup>1</sup>] on \_\_\_\_\_, 200\_, [one year after date of issuance] (the "Initial Expiration Date"), unless terminated earlier in accordance with the provisions of Paragraph 11 hereof or extended one or more times in accordance with the provisions of Paragraph 10 hereof (the "Extended Expiration Date"; the latest of the Initial Expiration Date and any Extended Expiration Date being referred to herein as the "Expiration Date").
2. This Letter of Credit is issued at the request and for the account of \_\_\_\_\_ (including its successors and assigns, the "Applicant"), to secure its obligations under one or more Alternative Energy Purchase and Sale Agreements between you and the Applicant or its affiliates.
3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to \_\_\_\_\_ (identify Issuing Bank), \_\_\_\_\_ (U.S. address), (a) a notice executed by you substantially in the form of Annex 1 hereto, appropriately completed and duly signed by your Authorized Officer and (b) your draft substantially in the form of Annex 2 hereto, appropriately completed and duly signed by your Authorized Officer.

<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly

4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 PM [New York, NY time] on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM [New York, NY time] on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM [New York, NY time] on any Business Day.
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. Unless otherwise hereafter designated in writing to us by your Authorized Officer, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to you pursuant to the following instructions:

PECO Energy Company  
Account No.: \_\_\_\_\_  
Bank: \_\_\_\_\_  
Bank's Address: \_\_\_\_\_  
\_\_\_\_\_  
ABA Routing No.: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced to the extent of the amount of any drawings referencing this Letter of Credit paid by

us. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof, provided that the amounts payable on any such demand shall not exceed the amount then available to be drawn under this Letter of Credit.

9. We may, but shall not be obligated to, accept any request by you to amend this Letter of Credit to increase or decrease the amount available hereunder. Such request may be made pursuant to a "New Availability Request" in the form of Annex 3 hereto appropriately completed and executed by your Authorized Officer delivered to us requesting us to amend this Letter of Credit to change the amount available hereunder to the amount set forth in such New Availability Request. Upon acceptance by us of your New Availability Request to change the amount of this Letter of Credit, we will issue to you an amendment of this Letter of Credit in the amount set forth in the New Availability Request. The amount available under this Letter of Credit from the date of such amendment shall be the full amount stated therein regardless of our honor and payment of draws under this Letter of Credit prior to such amendment. If we fail to issue an amendment complying with your New Availability Request within two (2) Business Days after we receive it, any such amendment issued thereafter decreasing the amount of this Letter of Credit, even if in accordance with your New Availability Request, shall require your express acceptance before it is effective.
10. It is a condition of this Letter of Credit that its Expiration Date shall be automatically extended from its Initial Expiration Date, or any Extended Expiration Date, for successive one year periods unless you receive written notice from us at least thirty (30) days prior to the then current Expiration Date, sent by Federal Express or other nationally recognized next business day courier or delivery service to you at your address stated above (or such other address an Authorized Officer of your notifies us of in writing) that we elect not to extend this Letter of Credit for such additional one year period.
11. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 4 hereto together with the original of this Letter of Credit returned for cancellation, or (c) unless extended, 5:00 PM [New York, NY time] on the Expiration Date.
12. Rule 3.14(a) of the ISP as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Rule 3.14(b) of the ISP is hereby modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

13. As used herein:

“Authorized Officer” shall mean President, Treasurer, any Vice President or any Assistant Treasurer.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in [New York, New York] and any day on which payments can be effected on the Fedwire system.

“New Availability Request” shall mean a request form substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your Authorized Officer.

14. This Letter of Credit is transferable pursuant to a notice of transfer in the form of Annex 5 hereto, to an entity you identify to us in such instrument as your transferee, and we hereby consent to such transfer. Any and all transfer fees, expenses and costs shall be borne by the Applicant. Any payments made under this Letter of Credit after its transfer shall be made to the account of the transferee as designated to you by an Authorized Officer of the transferee.
15. This Letter of Credit is subject to and shall be governed by the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590), or any successor publication thereto (the “ISP”), except to the extent that the terms hereof are inconsistent with the provisions of the ISP, in which case the terms of this Letter of Credit shall govern. This Letter of Credit shall, as to matters not governed by the ISP or matters inconsistent with the ISP, be governed and construed in accordance with the laws of the State of [New York], without regard to principles of conflicts of law.
16. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 5 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the beneficiary.
17. We certify that as of the date of issuance of this Letter of Credit our senior unsecured debt is rated “A” or better by Standard & Poor’s Rating Service.
18. This original Letter of Credit has been delivered to you as beneficiary in accordance with the Applicant’s instructions. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by your Authorized Officer.

Very truly yours,  
(Issuing Bank)

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

**ARTICLE 1: Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Issuing  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under Your Letter of Credit No. \_\_\_\_\_ (the Letter of Credit) in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit in the amount of USD \$\_\_\_\_\_ (the “Draw Amount”).
3. [Check applicable drawing condition]:
  - An Event of Default has occurred under an Alternative Energy Credits Purchase and Sale Agreement between the Applicant and the undersigned, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.
  - The Commercial Operation Date for the Facility that is subject to an Alternative Energy Credits Purchase and Sale Agreement between the Applicant and the undersigned has been delayed, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.
  - The Facility that is subject to an Alternative Energy Credits Purchase and Sale Agreement between the Applicant and the undersigned has been downsized, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.
  - The Letter of Credit is scheduled to expire within the next thirty (30) days and the Applicant has failed to deliver a replacement letter of credit as required by the terms of the Alternative Energy Credits Purchase and Sale Agreement between the Applicant and the undersigned, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.

4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

PECO Energy Company

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ [Applicant]

**ARTICLE 2: Annex 2 to Letter of Credit**

**SIGHT DRAFT**

Amount: \$\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

At sight, pay to the order of PECO Energy Company, the sum of \_\_\_\_\_ U.S. Dollars.

---

Drawn under Irrevocable Letter of Credit No. \_\_\_\_\_ of \_\_\_\_\_ [identify Issuing Bank] dated \_\_\_\_\_, 200\_.

To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address]  
\_\_\_\_\_

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:

**ARTICLE 3: Annex 3 to Letter of Credit**

**NEW AVAILABILITY REQUEST**

\_\_\_\_\_, 20\_\_  
To: (Issuing Bank)  
(Address)

Attn: Standby Letter of Credit Dept.

[Applicant]  
[Address]  
Attn:

Re: \_\_\_\_\_ [Issuing Bank] Letter of Credit No.  
\_\_\_\_\_ (the "Letter of Credit")

Ladies and Gentlemen:

Pursuant to Paragraph 9 of the above-referenced Letter of Credit, the undersigned hereby requests that \_\_\_\_\_ [Issuing Bank] issue and deliver to us as beneficiary of the above-referenced Letter of Credit, an amendment to it to provide that the amount available for drawing thereunder from the date of the amendment will be in the amount of \$\_\_\_\_\_ (the "New Amount"), but otherwise the terms of the above-referenced Letter of Credit shall remain unchanged.

Please acknowledge your agreement to amend the Letter of Credit to the New Amount by issuing and forwarding the requested amendment of the Letter of Credit in the New Amount to the attention of the undersigned at the address listed below within two Business Days after the first Business Day on which you receive this Request.

Very truly yours,

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_ [Address]

**ARTICLE 4: Annex 4 to Letter of Credit**

CERTIFICATE OF CANCELLATION

\_\_\_\_\_, 20\_\_

To: (Issuing Bank)  
(Address)

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit, marked cancelled.

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ [Applicant Name]

**ARTICLE 5: Annex 5 to Letter of Credit**

NOTICE OF TRANSFER

\_\_\_\_\_, 20\_\_\_\_  
To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address]

To Whom It May Concern:  
Re: Your Letter of Credit No. \_\_\_\_\_

For value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned beneficiary to draw and receive payments under the above-referenced Letter of Credit in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee, and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original Letter of Credit is returned herewith, and we ask you to endorse the transfer thereon and forward it directly to the transferee at the address indicated above with your customary notice of transfer or issue a new Letter of Credit in the form of the Letter of Credit naming the transferee as the beneficiary thereof.

From and after the transfer of the Letter of Credit, payments under the Letter of Credit shall be made to an account of the transferee in accordance with written instructions you receive from an authorized officer of the transferee.

Pursuant to the Letter of Credit and your agreement with the Applicant, your transfer commission and any other expenses that may be incurred by you in conjunction with this transfer are payable by the Applicant.

Very truly yours,

Beneficiary:

PECO Energy Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The within signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

[Name of authenticating bank]

\_\_\_\_\_  
(Authorized signature of authenticating party)  
Name:  
Title:

**EXHIBIT 6****CREDIT SUPPORT REQUIREMENT**

Nominal Contract Value(\$)=Contract Amount (AECs/year) x Contract Price (\$/AEC) x 10 years

Months Remaining in Term	Collateral Requirement for Credit Support
Over 108	Nominal Contract Value x 5.0%
97 to 108	Nominal Contract Value x 4.5%
85 to 96	Nominal Contract Value x 4.0%
73 to 84	Nominal Contract Value x 3.5%
61 to 72	Nominal Contract Value x 3.0%
49 to 60	Nominal Contract Value x 2.5%
37 to 48	Nominal Contract Value x 2.0%
25 to 36	Nominal Contract Value x 1.5%
13 to 24	Nominal Contract Value x 1.0%
1 to 12	Nominal Contract Value x 0.5%

EXHIBIT 1-b

FORM SOLAR ALTERNATIVE ENERGY CREDIT PURCHASE AND SALE AGREEMENT  
(Aggregator Version)

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**SOLAR ALTERNATIVE ENERGY CREDITS PURCHASE AND SALE AGREEMENT**

*(Aggregator Version)*

Between

**PECO ENERGY COMPANY**

**and**

---

Dated [\_\_\_\_\_, \_\_\_\_], 20XX

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## SOLAR ALTERNATIVE ENERGY CREDITS PURCHASE AND SALE AGREEMENT

This Solar Alternative Energy Credits Purchase and Sale Agreement (the “Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between \_\_\_\_\_, a \_\_\_\_\_ with principal offices located at \_\_\_\_\_ (“Seller”), and PECO Energy Company, a Pennsylvania corporation with principal offices located at 2301 Market Street, Philadelphia, Pennsylvania 19101 (“PECO” or the “Company”). PECO and the Seller are herein referred to collectively as the “Parties”, and individually as a “Party”.

### RECITALS

WHEREAS, PECO is an electric distribution company under the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 (“AEPS” or “the Act”); and

WHEREAS, Seller owns the rights to alternative energy credits associated with the electricity generated by solar alternative energy systems under the Act, and desires to sell such credits to PECO; and

WHEREAS, PECO desires to purchase such credits from Seller to satisfy PECO’s obligations under the Act, subject to the requirements and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, PECO and Seller agree as follows:

### **ARTICLE 1 DEFINITIONS**

**1.1 Definitions.** Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article 1. As used in this Agreement, the following terms shall have the respective meanings set forth below.

“AEC” shall be an alternative energy credit as defined in the Act and of the type specified in Exhibit 1.

“AEC Payment” shall have the meaning set forth in Section 3.4.

“AEPS” shall have the meaning set forth in the Recitals.

“AEPS Reporting Year” shall mean the period from June 1 through May 31 of the following year, or such period as the PaPUC may designate for AEPS compliance purposes.

“Affiliate” means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question.

“Agreement” means this Agreement.

“Alternative Compliance Payment” shall be equal to the amount per AEC determined by the PaPUC in accordance with the Act during the latest AEPS Reporting Period.

“Alternate Representative” has the meaning provided in Section 5.3.

“Authorized Representative” has the meaning provided in Section 5.3.

“Bankruptcy Code” means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq.

“Business Day” means a day on which Federal Reserve member banks in Philadelphia, PA are open for business, beginning at 0800 EPT and ending at 1700 EPT.

“Certificate” means a certificate corresponding to an AEC, as defined under the Registry Rules.

“Claim” shall mean any claim, demand, audit, cause of action, litigation, lawsuit, grievance, arbitration, mediation, proceeding (including, without limitation, any bankruptcy, reorganization, dissolution, insolvency, liquidation, extension of bankruptcy or similar proceeding).

“Company” shall have the meaning set forth in the Preamble.

“Contract Amount” means the Contract Amount specified on Exhibit 1, including during the first Contract Year, the Initial Period Contract Amount.

“Contract Price” means the price identified as “Contract Price” on Exhibit 1.

“Contract Year” means a twelve month period during the Term commencing on June 1 and ending on May 31 of the following year.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Deliver” or “Delivery” means the transfer of AECs from Seller to PECO using the Registry in accordance with the Registry Rules.

“Early Termination Date” means the date upon which an Early Termination becomes effective as specified in Section 2.3.

“Effective Date” shall have the meaning set forth in the Preamble.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

“EPT” means Eastern Prevailing Time (the time then prevailing in the Eastern Time Zone of the United States).

“Event of Default” has the meaning set forth in Section 9.1.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party affected thereby or attributable to such Party’s fault or negligence, and which by the exercise of due diligence the affected Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. Force Majeure includes, but is not restricted to: fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority, so long as the affected Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action. Force Majeure shall not include the following: (i) the Seller’s ability to sell Energy or AECs at a more advantageous price, (ii) insufficient sunlight, wind, or other natural resource; (iii) a change in a Requirement of Law or Registry Rules. Increased cost of performance by Seller shall not constitute an event of Force Majeure.

“Forward Contract” has the meaning ascribed to such term in Section 101(25) of the Bankruptcy Code.

“Forward Contract Merchant” has the meaning ascribed to such term in Section 101(26) of the Bankruptcy Code.

“Governmental Authority” means any federal, state or local government, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body.

“Indemnified Party” shall have the meaning set forth in Section 11.2.1.

“Interest Rate” means the average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

“Issuer Minimum Requirements” shall have the meaning set forth in Section 6.4.2.

“Letter of Credit” has the meaning set forth in Section 6.4. The Letter of Credit must be in the form of Exhibit 2, or another substantially similar form approved by the Company.

“Lien” shall mean any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, hypothecation, usufruct or encumbrance of any nature whatsoever, including any conditional sale agreement.

“Material Debt” shall have the meaning set forth in Section 9.1.1.

“Moody’s” means Moody’s Investors Service, Inc.

“Month” means a calendar month (or any partial calendar month at the outset of the Term in the event that the Term commences during a calendar month).

“MW” means megawatt.

“Nominal Contract Value” means the dollar amount resulting by multiplying the Contract Amount by the Contract Price by ten (10).

“Non-Defaulting Party” means (i) if the Company is the Defaulting Party, the Seller; or (ii) if the Seller is the Defaulting Party, the Company.

“PaPUC” means the Pennsylvania Public Utility Commission.

“PECO” means PECO Energy Company.

“Permit” shall mean any permit, license, registration, certificates of occupancy, approvals or other authorizations of any Governmental Authority.

“Person” shall mean any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

“PJM” means the regional transmission organization operated by PJM Interconnection, Inc.

“Registry” shall mean the PJM GATS system or any successor AEPS alternative energy credit registry designated by the PaPUC.

“Registry Rules” shall mean the operating rules of the Registry.

“Requirement of Law” means any federal, state and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment or decree enacted, adopted, issued or promulgated by any Governmental Authority (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“S&P” means Standard and Poor’s Rating Services.

“Safe Harbor Provisions of the Bankruptcy Code” means Sections 101(25), 101(26), 101(38A), 101(38B), 362(b)(6), 362 (b)(27), 546(e), 546(j), 556, 561, 562 and 767 of the Bankruptcy Code together with other sections pertaining or referring to any of them and any future amendments to the Bankruptcy Code which provide protections, rights or remedies to non-bankrupt Forward Contract Merchants or Master Netting Participants against bankrupt counterparties under Forward Contracts or Master Netting Agreements.

“Security Instrument” has the meaning set forth in Section 6.4.

“Seller” shall have the meaning set forth in the Preamble.

“Semi-Annual” means the six month calendar period commencing each July and January of the Contract Year (or any partial six month calendar period in the event the Term commences during such period).

“Semi-Annual AECs” shall have the meaning set forth in Section 3.2.

“Taxes” has the meaning set forth in Section 7.7.

“Term” shall mean the period from the Effective Date until the earlier of (i) the Termination Date and (ii) termination pursuant to Section 2.2.

“Termination Date” has the meaning set forth in Section 2.1.

**1.2 Interpretation.** In this Agreement, unless a different intention clearly appears: (a) the singular includes the plural and vice versa; (b) the reference to any Party includes such Party’s legal and/or permitted successors and assignees, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually; (c) the reference to any gender includes the other gender; (d) reference to any document other than this Agreement refers to such documents as may be amended, modified, replaced or superseded from time to time, or any successor document(s) thereto; (e) reference to any Article, Section or Exhibit means such Article, Section or Exhibit of this Agreement unless otherwise indicated; (f) “hereunder”, “hereof”, “hereto”, and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision; (g) “including” (and with correlative meaning “include”), when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”; (i) reference to any law or regulation refers to such law or regulation as may be amended, modified, replaced or superseded from time to time, or any successor law(s) or regulation(s) thereto; and (j) reference to “termination of this Agreement,” “this Agreement is terminated,” “this Agreement may be terminated” and similar phrases used in this Agreement refer to the termination of deliveries under this Agreement and related on-going rights and obligations, and does not imply or mean a termination of rights, remedies, obligations and provisions which by their nature or as provided elsewhere in the Agreement survive termination.

## ARTICLE 2 TERM AND TERMINATION

**2.1 Effective Date and Term.** This Agreement shall be effective on the Effective Date. Unless sooner terminated as provided herein, this Agreement shall end on May 31, 20\_\_ (the “Termination Date”).

**2.2 Early Termination.** This Agreement may be terminated prior to the Termination Date pursuant to the following:

2.2.1 At any time by the mutual written consent of the Parties;

2.2.2 By the Non-Defaulting Party if an Event of Default occurs as provided for in Article 9, with such notice as required therein;

2.2.3 By Either Party in the case of a Force Majeure event, the non-terminating Party fails to substantially perform its obligations under this Agreement on account of such Force

Majeure event for a period exceeding 180 days after the occurrence of such Force Majeure event, and after thirty (30) days written notice; provided that such 180-day period may be extended, by the written agreement of both Parties, for an additional 180 days if (i) such Force Majeure event is not remedied within such 180-day period with reasonable diligence, (ii) such Force Majeure event may reasonably be expected to be remedied within such 180-day period, and (iii) the Party not performing its obligations under this Agreement on account of such Force Majeure event promptly undertakes to remedy such Force Majeure event and continues with reasonable diligence to effect such remedy within the 180-day period.

**2.3 Effectiveness of Termination.** Termination under this Article 2 shall be effective immediately after written notice is given, subject to any applicable notice requirements or extensions agreed to by the Parties. If this Agreement is terminated pursuant to any of the provisions above, the effective date of such termination shall be deemed the “Early Termination Date.”

**2.4 Survival.**

2.4.1 Termination of this Agreement for any reason shall not relieve PECO or Seller of any obligation accrued or accruing prior to such termination, and the following provisions of this Agreement shall survive any termination: Article 1, Sections 2.4, 2.5, 3.2, 3.3, 3.4, 3.5, 6.4, 6.5, 7.4, 7.6, 7.7, 11.2, 11.3, 12.1, and Articles 9, 13 and 14.

2.4.2 In addition, if this Agreement is terminated pursuant to:

(a) Section 2.2.2, the Non-Defaulting Party may pursue the remedies provided in Article 9;

(b) Section 2.2.3, the Parties may not pursue the remedies provided for in Article 9 and are entitled to receive only amounts due and owing as of the Early Termination Date and under Section 6.1, if any.

**2.5 Preservation of Security.** In the event that Seller has provided a Letter of Credit under the terms of this Agreement, Seller will preserve the Letter of Credit in place until all payments due under this Agreement for which the Letter of Credit has been provided have been made in full.

**ARTICLE 3  
PURCHASE AND SALE OF AECS**

**3.1 Purchase and Sale of AECs.** Subject to the terms and upon the conditions and provisions of this Agreement, Seller shall sell, and PECO shall purchase, all rights, title and interest in the AECs specified in Exhibit 1 equal to the Contract Amount for each Contract Year. Each AEC transferred under this Agreement to satisfy the Contract Amount in each Contract Year shall be generated in that Contract Year.

**3.2 Delivery of AECs by Seller.** For each Semi-Annual period of the Contract Year during the Term, Seller shall Deliver Certificates to PECO for AECs equal to at least fifty percent of the Contract Amount (the “Semi-Annual AECs”) until PECO has received the

Contract Amount for the current Contract Year. The Delivery of the Semi-Annual AECs shall be completed no later than the fortieth (40th) day following the end of such Semi-Annual period, or such other date as PECO and the Seller may agree to in writing. Seller and PECO are each responsible for their own costs associated with establishing and administering any accounts with the Registry sufficient to accomplish the Delivery of all AECs. Seller agrees to execute all other documents or instruments, at its expense, necessary to effectuate the Delivery of the AECs to PECO or as may be reasonably requested by PECO. All AECs transferred to PECO shall be free and clear of all Liens. Nothing in this Section shall reduce Seller's obligations under Section 3.4.

**3.3 Ownership of and Title to AECs.** PECO shall have sole, exclusive and perpetual ownership of all AECs Delivered to PECO by Seller under this Agreement, including all rights to sell, assign, transfer, apply, or retire any AEC transferred to PECO by Seller. Title to AECs shall not transfer to PECO prior to Delivery by Seller. Any benefits derived from the AECs after Delivery to PECO shall inure solely to the benefit of PECO and not to Seller.

**3.4 Contract Amount Guarantee.** Seller shall transfer a total amount of AECs equal to the Contract Amount for each Contract Year. In the event that Seller fails to provide the AECs as provided under this Section, Seller shall pay PECO within forty-five (45) days of the end of the Contract Year an amount equal to the higher of the Contract Price or Alternative Compliance Payment ("AEC Payment") for each AEC which Seller fails to transfer to PECO for such Contract Year as liquidated damages. If the PaPUC subsequently determines that the Alternative Compliance Payment for the AEPS Reporting Year in which Seller failed to Deliver the Contract Amount is more than the amount Seller paid for each AEC not Delivered, Seller shall pay PECO the difference between the amount Seller paid per AEC and the actual Alternative Compliance Payment. If Seller has paid PECO an amount in excess of the actual Alternative Compliance Payment for each AEC not Delivered, PECO shall pay Seller the difference between the amount Seller paid per AEC and the actual Alternative Compliance Payment. All such additional payments shall be paid by PECO or Seller, as applicable, within thirty (30) days of the PaPUC's determination of the applicable Alternative Compliance Payment for an AEPS Reporting Year.

**3.5 Non-Compliant AECs.** In the event that any AEC transferred to PECO is subsequently determined to be unable to be used by PECO for AEPS compliance due to Seller's failure to comply with any obligation under this Agreement, Seller shall transfer an equivalent AEC to PECO. All AECs transferred to PECO under this Section shall be available for use by PECO for purposes of compliance under the Act as if the AEC had been created at the time the non-compliant AEC was created. Any additional costs or penalties incurred by PECO resulting from the transfer of non-compliant AECs by Seller shall be paid for by Seller.

**3.6 Financing.** PECO shall have no responsibility whatsoever for any financing or costs associated with Seller, including any expenditures necessary or desirable to deliver AECs to PECO under this Agreement.

**ARTICLE 4  
RESERVED**

**ARTICLE 5  
SELLER OBLIGATIONS**

**5.1 AEC Obligations.** During the Term, at its sole cost and expense, Seller represents, warrants and guarantees that:

5.1.1 Seller shall possess sole and exclusive title and legal rights to an AEC prior to the transfer of such AEC to PECO under this Agreement;

5.1.2 Seller shall transfer only valid AECs to PECO which have not been previously retired, claimed or used to satisfy any renewable energy requirements, obligations or voluntary undertaking by any entity in any jurisdiction; and

5.1.3 Seller shall comply with all Registry requirements that are necessary for Seller to perform its obligations under this Agreement.

**5.2 Insurance.**

5.2.1 Seller shall maintain at its sole expense, commencing with the Effective Date and continuing through the Term, insurance customarily maintained for aggregators of RECs, Seller shall provide certificates of insurance or other reasonable evidence of such insurance coverage acceptable to PECO upon request.

5.2.2 Failure to obtain and maintain the required insurance shall constitute a breach of the Agreement and Seller will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court, and settlement expenses) resulting to PECO from such breach, unless a written waiver of the specific insurance requirement is provided to Seller by PECO.

5.2.3 Failure of Seller to provide insurance as herein required or failure of PECO to require evidence of insurance or to notify Seller of any breach by Seller of the requirements of this Article 5 shall not be deemed to be a waiver by PECO of any of the terms and conditions of this Agreement, nor shall they be deemed to be a waiver of the obligation of Seller to defend, indemnify, and hold harmless PECO as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Seller and independent of the duty to furnish a copy or certificate of such insurance policies.

5.2.4 Notwithstanding any provision of this Agreement, none of the requirements contained herein as to insurance coverage to be maintained by Seller are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Seller under this Agreement, any other agreement with PECO or its Affiliates, or otherwise provided by law.

**5.3 Authorized Representatives.** As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between the Parties in connection with various administrative, commercial and technical issues that may arise during the performance of this Agreement, each Party shall appoint an authorized representative (with respect to each Party, the “Authorized Representative”) and may appoint an alternate (with respect to each Party, the “Alternate Representative”) to act in its Authorized Representative’s absence. The Authorized Representatives and Alternate Representatives shall be managers well experienced with regard to matters relating to the implementation of the Parties’ rights and obligations under this Agreement with full authority to act for and on behalf of the Party appointing them. Upon execution of this Agreement, each Party will notify the other in writing of the name of its Authorized Representative and Alternate Representative so appointed and these appointments will remain in full force and effect until written notice of substitution is delivered by such Party to the other Party.

**5.4 Publicity.** No party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other party, which approval shall not be unreasonably withheld.

## **ARTICLE 6 CREDIT AND COLLATERAL REQUIREMENTS**

**6.1 Credit Support.** Seller shall post security with PECO, at the commencement of the Contract Year, in an amount based on the number of months remaining in the Term, as determined from the table (Credit Support Requirement) in Exhibit 3.

**6.2 Grant of Security Interest.** To secure its obligations under this Agreement, Seller hereby grants to PECO a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PECO. Seller agrees to take such action as reasonably required to perfect in favor of PECO such security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

**6.3 Remedies.** Upon or any time after the occurrence of an Event of Default caused by Seller, PECO may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of Seller in the possession of PECO, whether held in connection with this Agreement or any other agreement(s) between PECO and Seller for the provision of Energy or AECs; (iii) draw on any outstanding Letter of Credit issued for PECO’s benefit; and (iv) liquidate all collateral security held by or for the benefit of the PECO free from any claim or right of any nature whatsoever of the Seller, including any equity or right of purchase or redemption by the Seller. PECO shall apply the proceeds of the collateral security realized upon the exercise of such rights or remedies to reduce Seller’s obligation under this Agreement or any other agreement(s) between PECO and Seller for the provision of Energy or AECs (the Seller remaining liable for any amounts owing to

the Company after such application), subject to PECO's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

**6.4 Security Instruments.** At Seller's choice, the following are deemed to be acceptable methods for posting security (each, a "Security Instrument"), if required:

6.4.1 Cash; or

6.4.2 An irrevocable transferable standby letter of credit (a "Letter of Credit") acceptable to the Company issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating from S&P or Moody's (the "Issuer Minimum Requirements"). (A standard format for the Letter of Credit is provided in Exhibit 2.) In the event that senior unsecured debt ratings are unavailable from S&P, the corporate issuer rating, discounted one notch, will be used. In the event that senior unsecured debt ratings are unavailable from Moody's, the issuer rating will be used. The Company will only rely on senior unsecured debt ratings, or if unavailable, issuer or corporate issuer ratings. If the Seller does not have a senior unsecured debt rating and does not have an issuer or corporate issuer rating from a rating agency, it will be deemed by the Company not to be rated by that rating agency. The Letter of Credit shall state that it shall renew automatically for successive one-year or shorter periods unless the Company receives written notice from the issuing financial institution at least thirty (30) days prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If the Company receives notice from the issuing financial institution that the Letter of Credit will not be extended, the Seller will be required to provide a substitute Letter of Credit from an alternative bank or financial institution satisfying the Issuer Minimum Requirements. The receipt of the substitute Letter of Credit must be effective on or before the expiration date of the expiring Letter of Credit and delivered to the Company at least fifteen (15) days before the expiration date of the original Letter of Credit. If the Seller fails to supply a substitute Letter of Credit as required herein, then the Company will have the right to draw on the expiring Letter of Credit and to hold the amount as collateral. If the credit rating of the issuer of a Letter of Credit falls below the Issuer Minimum Requirements, the Seller shall have two (2) Business Days (or such longer period as the Company in its sole discretion may permit in writing) following written notice by the Company to obtain a suitable Letter of Credit from another bank or other financial institution that meets the Issuer Minimum Requirements.

**6.5 Calling on Security.** The Company may call upon the Security Instrument posted by the Seller (i) if the Seller fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy and AECs after written notice of default is provided to the Seller and any applicable cure period ends; and (ii) with respect to the Development Security, to satisfy PECO's rights to such portions of the Development Security specified in Section 6.1. The foregoing notwithstanding, the Security Instrument posted by the Seller shall become due automatically, and may be called upon by the Company, without prior notice or right of cure in the case of any Event of Default involving the Seller arising under Section 9.1.1.

**6.6 Interest on Cash Held by Company.** The Company will pay simple interest (not compounded) calculated at the lower of the Interest Rate or six (6) percent per annum on any

Cash posted by the Seller as Performance Security and directly held by the Company pursuant to this Agreement.

## ARTICLE 7 BILLING AND PAYMENT; RECORDS

**7.1 Invoices.** Beginning with the end of the first Semi-Annual period after the Effective Date, Seller shall send PECO a statement following the Delivery of AECs after each Semi-Annual period setting forth all amounts due either to the Seller or to PECO arising during the preceding Semi-Annual period. The statement shall include (i) after the commencement of the Term, the quantity of AECs that were Delivered by Seller to PECO during such Semi-Annual period and the total amount owed by PECO for those AECs at the Contract Price, (ii) any interest due to Seller as provided in Section 6.6, and (iii) any other amount due Seller or to PECO under this Agreement in respect of such Semi-Annual period (including the amount of any Replacement AEC Payment). Such statement shall be sent by Seller to PECO no later than fifteen (15) Business Days following the Delivery of AECs for which the statement is applicable.

**7.2 Payment.** Subject to all conditions and provisions of this Agreement (including Section 7.7), no later than fifteen (15) Business Days after the date of a statement submitted by Seller, or if such day is not a Business Day, the immediately following Business Day, the Party owing the net amount shown to be due on such statement shall remit to the other Party, by wire transfer in accordance with Section 12.1, the amount due pursuant to such statement.

**7.3 Interest.** Amounts not paid shall accrue interest from the due date to the date of payment at the Interest Rate.

**7.4 Taxes.** Seller shall be responsible for all existing and any new taxes, fees, levies, assessments, penalties, licenses, or charges imposed or levied by any federal, state or local governmental agency (collectively, "Taxes") on all AECs prior to and including the Delivery of AECs under this Agreement. PECO shall be responsible for all existing and any new Taxes imposed or levied by any federal, state or local governmental agency on AECs after transfer to PECO. If PECO is required to remit or pay Taxes that are Seller's responsibility under this Agreement, then Seller shall promptly reimburse PECO for such Taxes. If Seller is required to remit or pay Taxes that are PECO's responsibility under this Agreement, then PECO shall promptly reimburse Seller for such Taxes.

**7.5 Disputed Amounts.** If either Party, in good faith, disputes any amount due pursuant to a statement rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and shall pay that portion of the amount shown to be due on the statement that is undisputed, on or before the due date. If any amount disputed by such Party is determined to be due the other Party, whether by agreement of the Parties or through arbitration in accordance with Section 13.2, the amount due shall be paid within five (5) Business Days of such determination or resolution, along with interest accrued at the Interest Rate from the date due to the date paid. Notwithstanding the above, no dispute may be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within one year after the date of such statement or payment.

**7.6 Records.** Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying such Party's performance hereunder. All such records shall be retained by each Party for at least three (3) calendar years following the calendar year in which such records were created.

**7.7 Audit Rights.** Each Party, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. If any statement is determined by the Parties or through arbitration to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such statement or payment within one year after the date of such statement or payment.

## **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

**8.1 Mutual Representations.** As a material inducement to execution of this Agreement, each Party hereby represents and warrants to the other Party that:

8.1.1 It is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and is qualified to conduct its business in all jurisdictions necessary to perform its obligations hereunder;

8.1.2 The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any agreement to which it is a party or by which it or any of its property is bound, or any Requirement of Law applicable to it;

8.1.3 Except as set forth in and as required by this Agreement, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required by such Party in connection with the execution, delivery or performance of this Agreement;

8.1.4 This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

8.1.5 No Event of Default has occurred and there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;

8.1.6 To such Party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any court or other governmental body, that would materially adversely affect its ability to perform its obligations under this Agreement;

8.1.7 It is, and will continue to be for the Term, a Forward Contract Merchant both generally and with respect to the AECs delivered and purchased under this Agreement.

**8.2 Forward Contract.** The Parties acknowledge that this Agreement is a Forward Contract and the Parties are Forward Contract Merchants, both generally and with respect to the deliveries of AECs pursuant to this Agreement, that each party is an "eligible contract participant" as set forth in the Commodities Exchange Act; and, accordingly, the Parties are entitled to the protections of the Safe Harbor Provisions of the Bankruptcy Code. The Parties therefore agree that this Agreement may be terminated and the remedies hereunder exercised by either Party in accordance with Article 2 and Article 9 hereof upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination.

**8.3 No Representation or Warranty By PECO.** Any review by PECO of any information or material pertaining to the Seller is solely for PECO's information only. By conducting such review, PECO makes no representation or warranty as to the Seller. PECO does not endorse or in any way approve of any representation or warranty of Seller in any agreement or to any Person, and Seller shall not make any such representation that PECO has given any such approval.

## ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES

**9.1 Events of Default.** An "Event of Default" by a Party (the "Defaulting Party") shall mean:

9.1.1 With respect to Seller, unless otherwise excused or permitted under the terms of this Agreement, the following events, without notice or the opportunity to cure, if the Seller:

- (a) fails to meet the ratings requirements or to comply with the collateral requirements set forth in Article 6 within the time frames set forth in this Agreement;
- (b) (1) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) in respect of any indebtedness for borrowed money involving a principal sum in excess of \$5,000,000 ("Material Debt") and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure, or (2) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any Material Debt, if, in any such event, the effect of such failure, event or condition is to cause, or permit the holder or holders thereof or beneficiary or beneficiaries thereof (or a trustee or agent on behalf of such holder

or holders or beneficiary or beneficiaries) to cause (after the expiration of any applicable grace period or notice period, if any, specified in the relevant document on the date of such failure) such Material Debt to become due and payable or to be repurchased, defeased or redeemed prior to its expressed maturity;

- (c) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (d) makes an assignment for the benefit of its creditors;
- (e) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; or
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

9.1.2 With respect to either Party, an Event of Default shall occur if such Party:

- (a) is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (b) applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (c) is the subject of an involuntary bankruptcy or similar proceeding, and fails to have such proceeding dismissed within 60 days; or
- (d) commits an act or makes an omission that constitutes an “Event of Default” under any other agreement(s) between PECO and the Seller for the provision of Energy or AECs.

9.1.3 Unless otherwise excused or permitted under the terms of this Agreement, a Party’s failure to make, when due, any payment required pursuant to this Agreement, shall constitute an Event of Default unless a Party shall have cured the same within three (3) Business Days after receipt of written notice of such payment failure from the other Party.

9.1.4 Unless otherwise excused or permitted under the terms of this Agreement, any of the following events shall constitute an Event of Default unless a Party shall have cured the same within thirty (30) days after receipt of written notice of the occurrence of such event from the other Party:

- (a) Any representation, warranty or covenant made by such Party herein is proven to be false or misleading in any material respect at the time it was made;

(b) A Party transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another entity without the other Party's prior written consent, to the extent such consent is required under this Agreement, or if at the time of such transfer, assignment or conveyance, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(c) A Party's unexcused failure to perform any other material covenant or obligation set forth in this Agreement that is not enumerated in this Section 9.1; or

(d) with respect to Seller, Seller fails to have and maintain, during the Term, all federal, state and local Permits to permit its performance under this Agreement.

**9.2 Rights Upon Default.** Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to elect or pursue one or more of the following remedies:

9.2.1 terminate the Agreement by providing written notice to the Defaulting Party of an Early Termination, as provided in Section 2.2;

9.2.2 accelerate all amounts then owing by the Defaulting Party to the Non-Defaulting Party;

9.2.3 withhold any payments due to the Defaulting Party under this Agreement;

9.2.4 suspend its performance under this Agreement; and

9.2.5 pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.

**9.3 Reliance on Netting.** The Parties are making credit, default, collateral and other decisions and changes based upon and in reliance on the effectiveness of the default, early termination, setoff and netting provisions of this Agreement. The Parties would not enter into this Agreement and would change their position with regard to netting except for their reliance on and with the understanding that these netting terms will be effective. Notwithstanding anything else in this Agreement or in any other agreement between the Parties to the contrary, if for any reason these terms or any right of offset or netting hereunder or under another agreement in favor of the Non-Defaulting Party against a bankrupt Defaulting Party is delayed from being exercised or is not enforceable in accordance with its terms because either Party asserts or is concerned that the Safe Harbor Provisions of the Bankruptcy Code do not apply to such rights of enforcement or for any other reason, the Non-Defaulting Party may (a) exercise its rights to effect a setoff under Section 553 of the Bankruptcy Code or other applicable provisions, equity and law, and (b) withhold payments subject to a claim of offset under any obligations due the Defaulting Party in respect of any transactions or deliveries under this Agreement or any other agreement until such setoff rights are exercised and effected.

**9.4 Setoff of Payment Obligations of the Non-Defaulting Party.** Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs that are unsecured; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs that are unsecured, but which are subject to a guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs. Any setoff shall not be subject to the automatic stay by virtue of Section 362(b)(6) of the Bankruptcy Code.

**9.5 Preservation of Rights of the Non-Defaulting Party.** The rights of the Non-Defaulting Party under this Agreement, including Sections 9.3 and 9.4 shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable Requirements of Law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

**9.6 Integrated Transaction.** To the extent that Section 365 of the Bankruptcy Code applies to this Agreement, the Parties agree that all transactions under this Agreement constitute one integrated transaction that can only be assumed or rejected in its entirety.

## ARTICLE 10 ASSIGNMENT

**10.1 Assignment.** Neither Party shall assign this Agreement or any of its rights or obligations hereunder (including by lease, subcontract, or otherwise) without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party, transfer or assign this Agreement to an Affiliate of such Party, providing that the assigning Party shall provide notice to the other Party and shall remain responsible for its obligations under the Agreement. In all such transfers and assignments, the succeeding Party must agree to comply with all the provisions, terms and conditions of this Agreement, including the credit and collateral security requirements set out in Article 6. Except as specifically provided in this Article 10, any assignment or transfer of this Agreement or any rights, duties or interests hereunder by any Party without the written consent of the other Party shall be void and of no force or effect.

## ARTICLE 11 FORCE MAJEURE; INDEMNITY; LIMITATION OF LIABILITY

**11.1 Force Majeure.** If either Party is rendered unable by a Force Majeure event to carry out, in whole or in part, its obligations under this Agreement, then, during the pendency of such event of Force Majeure, but for no longer period, the obligations of the affected Party (other than the obligation to make payments hereunder when due) shall be suspended to the extent required. The affected Party shall (i) give the other Party written notice within 48 hours of the commencement of the Force Majeure event, with details to be supplied within three (3) Business

Days after the commencement of the Force Majeure event further describing the particulars of the occurrence of the Force Majeure event, and (ii) take all reasonable steps to remedy the cause of the Force Majeure event with all reasonable dispatch. Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period; provided, however, that in no event will any Force Majeure event extend this Agreement beyond its Term. A determination of force majeure by the PaPUC under the Act shall not constitute a determination of Force Majeure under this Agreement.

## **11.2 Indemnification.**

11.2.1 Each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, agents and employees (each an “Indemnified Party”) from and against any and all claims, demands, actions, losses, liabilities, expenses (including reasonable legal fees and expenses), suits and proceedings of any nature whatsoever for personal injury, death or property damage to third parties (collectively “Liabilities”) that arise out of or are in any manner connected with the performance of this Agreement.

11.2.2 Any fines, penalties or other costs incurred by a Party or its agents, employees or subcontractors for non-compliance by such Party, its agents, employees or subcontractors with any Requirement of Law will not be reimbursed by the other Party but will be the sole responsibility of such non-complying Party.

11.2.3 A Party seeking indemnification under this Section 11.2 shall give written notice to the indemnifying Party as soon as reasonably practicable after the Indemnified Party becomes aware of any fact, condition or event which may give rise to Liabilities for which indemnification may be sought under this Section 11.2.

**11.3 Limitations of Remedies, Liability and Damages.** The Parties agree that the remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no measure of damages or other remedy is expressly provided herein, the obligor’s liability shall be limited to direct actual damages only, which direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless otherwise provided herein, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, (other than consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages recovered by an unaffiliated third party against a Party subject to indemnification hereunder), whether such damages are allowed or provided by statute, in tort, under any indemnity provision or otherwise.

## **ARTICLE 12 NOTICES AND ADDRESS FOR PAYMENT**

### **12.1 Notices.**

12.1.1 Except as set forth in Section 12.1.2, all notices, requests, statements or payments, if by check, shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or

hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by mail or overnight courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To PECO:

with a copy to: PECO Energy Acquisition  
S18-2  
2301 Market Street  
Philadelphia, PA 19103  
Attn: Director, PECO Energy Acquisition

to Seller:

12.1.2 All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) to the addresses specified below:

To PECO:

with a copy to: PECO Energy Acquisition  
S18-2  
2301 Market Street  
Philadelphia, PA 19103  
Attn: Director, PECO Energy Acquisition

to Seller:

12.1.3 All amounts due Seller under this Agreement that are paid by check must be sent via United States mail to the address specified below:

12.1.4 All amounts due PECO under this Agreement that are paid by check must be sent via United States mail to the address specified below:

12.1.5 A Party's address or addressee to which notices or invoices shall be sent may be changed from time to time by such Party by notice served as hereinabove provided.

**12.2 Notice After Close of Business.** Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided, however, that notice by

facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

## **ARTICLE 13 DISPUTE RESOLUTION**

**13.1 Negotiations.** The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as provided in this Section. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) Business Days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) Business Days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) Business Days after such referral, either Party may initiate arbitration as provided in Section 13.2. All negotiations pursuant to this clause are confidential, shall be considered to be in the nature of settlement discussions and shall be subject to Section 13.3.

### **13.2 Arbitration.**

13.2.1 If the negotiation process provided for in Section 13.1 has not resolved the dispute, the dispute shall be decided by binding arbitration at Philadelphia, Pennsylvania in accordance with the Commercial Arbitration Rules of the American Arbitration Association (except as expressly provided otherwise herein). The arbitration shall be governed by the United States Arbitration Act (9 U.S.C. § 1 et seq.), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Any arbitration may be consolidated with any other arbitration proceedings between the Parties commenced under this Section 13.2. The award of the arbitrator shall be specifically enforceable in a court of competent jurisdiction.

13.2.2 Either Party may commence the arbitration by giving to the other Party written notice in sufficient detail of the existence and nature of any dispute proposed to be arbitrated. The demand must be made within a reasonable time after the dispute has arisen. In no event may the demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations. The Parties shall attempt to agree on a person to serve as arbitrator with respect to the matter at issue. If the Parties cannot agree on an arbitrator within ten (10) Business Days of such notice, each shall then appoint one individual to serve as an arbitrator within thirty (30) Business Days of such notice and the two (2) individuals thus appointed shall select a third arbitrator to serve as chairman of the panel of arbitrators. Such three (3) arbitrators shall determine all matters by majority vote; provided however, if the two (2) arbitrators appointed by the Parties are unable to agree upon the appointment of the third arbitrator within ten (10) Business Days after their appointment, both shall give written notice of such failure to agree to the Parties, and, if the

Parties fail to agree upon the selection of such third arbitrator within five (5) Business Days of such notice, then either of the Parties upon written notice to the other may require such appointment from, and pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any arbitrator appointed shall be a present or former executive of an electric utility, or private power producer, or an attorney, in each case with substantial experience in electric power purchase agreements. Prior to appointment, each arbitrator shall agree to conduct such arbitration in accordance with the terms of this Agreement.

13.2.3 The Parties shall have sixty (60) calendar days after appointment of all arbitrators to perform discovery and present evidence and argument to the arbitrators. During that period, the arbitrators shall be available to receive and consider all such evidence as is relevant and, within reasonable limits due to the restricted time period, to hear as much argument as is feasible, giving a fair allocation of time to each Party to the arbitration. The arbitrators shall use all reasonable means to expedite discovery and to sanction noncompliance with reasonable discovery requests or any discovery order. The arbitrators shall not consider any evidence or argument not presented during such period and shall not extend such period except by the written consent of both parties. At the conclusion of such period, the arbitrators shall have forty-five (45) calendar days to reach a determination.

13.2.4 The arbitrators shall have the right only to interpret and apply the terms and conditions of this Agreement and to order any remedy allowed by this Agreement, and may not change any term or condition of this Agreement, deprive either Party of any right or remedy expressly provided hereunder, or provide any right or remedy that has been excluded hereunder.

13.2.5 The arbitrators shall give a written decision to the Parties stating their findings of fact, conclusions of law and order, and shall furnish to each Party a copy thereof signed by them within five (5) calendar days from the date of their determination. Each party shall pay the cost of the arbitrator or arbitrators, with respect to those issues as to which they do not prevail, as determined by the arbitrator or arbitrators.

**13.3 Settlement Discussions.** The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in Section 13.1 above will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

**13.4 Preliminary Injunctive Relief.** Nothing in this Article 13 shall preclude, or be construed to preclude, the resort by either party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending arbitration pursuant to this Article 13.

## ARTICLE 14 MISCELLANEOUS

**14.1 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and it supersedes all prior oral or written agreements, commitments, negotiations or understandings with respect to the matters provided for herein.

**14.2 Schedules and Exhibits.** The Schedules and the Exhibits attached hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.

**14.3 Amendment.** Unless expressly provided otherwise in another provision of this Agreement, this Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties. It is agreed that no use of trade or other regular practice or method of dealing between the Parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

**14.4 Waiver.** Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by a Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

**14.5 Remedies Cumulative.** No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing.

**14.6 Binding Effect; Limitation of Benefits.** This Agreement shall be binding upon and shall insure to the benefit of the Parties hereto and, subject to the provisions of Article 10 hereof, their successors and permitted assigns. Nothing in this Agreement is intended to confer benefits, rights or remedies unto any Person other than the Parties and their permitted successors and assigns, and no third party shall have the right to enforce the provisions of this Agreement.

**14.7 Compliance with Laws.** Except as otherwise provided in this Agreement, each Party to this Agreement shall comply, at its own expense, with all applicable laws, statutes, regulations, rules, ordinances, orders, injunctions, writs, decrees or awards of any government or political subdivision thereof, or any agency, authority, bureau, commission, department or instrumentality thereof, or any court, tribunal, or arbitrator, in all applicable, material respects in connection with all activities and all performance under or in connection with this Agreement.

**14.8 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of conflict of law provision or rule (whether of the

Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the Commonwealth of Pennsylvania.

**14.9 No Partnership or Joint Venture.** This Agreement is not intended to create nor shall it be construed to create any partnership or joint venture relationship between PECO and Seller, and neither Party hereto shall have the power to bind or obligate the other Party. Neither Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker's compensation responsibilities.

**14.10 Headings.** The titles, headings and table of contents contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**14.11 Number of Days.** In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or holiday.

**14.12 E-mail in Place of Writing.** Where the parties agree, any written notification required by this Agreement may be transmitted via e-mail.

**14.13 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the domestic laws of the Commonwealth of Pennsylvania as provided herein, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future Laws effective during the term hereof, then (a) in lieu of such illegal, invalid or unenforceable provision, the Parties shall promptly endeavor, in good faith negotiations, to agree on a provision as may be possible and be legal, valid and enforceable, provided that no Party shall be required to agree to any provision that would materially alter any of its rights or obligations under this Agreement, and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. To the extent permitted by law, each Party hereby waives any Requirement of Law that renders any such provision prohibited or unenforceable in any respect.

**14.14 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.

*[Signatures Appear on the Following Page]*

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of PECO and Seller as of the date first written above.

PECO ENERGY COMPANY,  
a Pennsylvania Corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SELLER]

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 1  
CONTRACT TERMS**

Type of AEC: AEPS Tier I solar photovoltaic

Contract Amount (AECs / Contract Year):

Contract Price (\$/AEC):

For Standard Offer to Purchase Phase Only:

Location(s) of AECs Generated In PECO's Service Territory (City and County):

**EXHIBIT 2**

**SAMPLE LETTER OF CREDIT**

[On Issuing Bank’s Letterhead]

**IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT**

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: PECO Energy Company  
 [address]  
 Attention: \_\_\_\_\_

1. We hereby establish this Irrevocable Transferable Standby Letter of Credit (this “Letter of Credit”) in your favor in the amount of USD \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank’s location for presentments] and expiring at 5:00 PM [New York, NY time<sup>1</sup>] on \_\_\_\_\_, 200\_, [one year after date of issuance] (the “Initial Expiration Date”), unless terminated earlier in accordance with the provisions of Paragraph 11 hereof or extended one or more times in accordance with the provisions of Paragraph 10 hereof (the “Extended Expiration Date”; the latest of the Initial Expiration Date and any Extended Expiration Date being referred to herein as the “Expiration Date”).
2. This Letter of Credit is issued at the request and for the account of \_\_\_\_\_ (including its successors and assigns, the “Applicant”), to secure its obligations under one or more Alternative Energy Purchase and Sale Agreements between you and the Applicant or its affiliates.
3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to \_\_\_\_\_ (identify Issuing Bank), \_\_\_\_\_ (U.S. address), (a) a notice executed by you substantially in the form of Annex 1 hereto, appropriately completed and duly signed by your Authorized Officer and (b) your draft substantially in the form of Annex 2 hereto, appropriately completed and duly signed by your Authorized Officer.

<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly

4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
  
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 PM [New York, NY time] on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM [New York, NY time] on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM [New York, NY time] on any Business Day.
  
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
  
7. Unless otherwise hereafter designated in writing to us by your Authorized Officer, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to you pursuant to the following instructions:

PECO Energy Company  
 Account No.: \_\_\_\_\_  
 Bank: \_\_\_\_\_  
 Bank's Address: \_\_\_\_\_  
 \_\_\_\_\_  
 ABA Routing No.: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Telephone No.: \_\_\_\_\_

8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced to the extent of the amount of any drawings referencing this Letter of Credit paid by us. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof,

provided that the amounts payable on any such demand shall not exceed the amount then available to be drawn under this Letter of Credit.

9. We may, but shall not be obligated to, accept any request by you to amend this Letter of Credit to increase or decrease the amount available hereunder. Such request may be made pursuant to a "New Availability Request" in the form of Annex 3 hereto appropriately completed and executed by your Authorized Officer delivered to us requesting us to amend this Letter of Credit to change the amount available hereunder to the amount set forth in such New Availability Request. Upon acceptance by us of your New Availability Request to change the amount of this Letter of Credit, we will issue to you an amendment of this Letter of Credit in the amount set forth in the New Availability Request. The amount available under this Letter of Credit from the date of such amendment shall be the full amount stated therein regardless of our honor and payment of draws under this Letter of Credit prior to such amendment. If we fail to issue an amendment complying with your New Availability Request within two (2) Business Days after we receive it, any such amendment issued thereafter decreasing the amount of this Letter of Credit, even if in accordance with your New Availability Request, shall require your express acceptance before it is effective.
10. It is a condition of this Letter of Credit that its Expiration Date shall be automatically extended from its Initial Expiration Date, or any Extended Expiration Date, for successive one year periods unless you receive written notice from us at least thirty (30) days prior to the then current Expiration Date, sent by Federal Express or other nationally recognized next business day courier or delivery service to you at your address stated above (or such other address an Authorized Officer of your notifies us of in writing) that we elect not to extend this Letter of Credit for such additional one year period.
11. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 4 hereto together with the original of this Letter of Credit returned for cancellation, or (c) unless extended, 5:00 PM [New York, NY time] on the Expiration Date.
12. Rule 3.14(a) of the ISP as it applies to this Letter of Credit is hereby modified to provide as follows:
 

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Rule 3.14(b) of the ISP is hereby modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.
13. As used herein:

“Authorized Officer” shall mean President, Treasurer, any Vice President or any Assistant Treasurer.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in [New York, New York] and any day on which payments can be effected on the Fedwire system.

“New Availability Request” shall mean a request form substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your Authorized Officer.

14. This Letter of Credit is transferable pursuant to a notice of transfer in the form of Annex 5 hereto, to an entity you identify to us in such instrument as your transferee, and we hereby consent to such transfer. Any and all transfer fees, expenses and costs shall be borne by the Applicant. Any payments made under this Letter of Credit after its transfer shall be made to the account of the transferee as designated to you by an Authorized Officer of the transferee.
15. This Letter of Credit is subject to and shall be governed by the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590), or any successor publication thereto (the “ISP”), except to the extent that the terms hereof are inconsistent with the provisions of the ISP, in which case the terms of this Letter of Credit shall govern. This Letter of Credit shall, as to matters not governed by the ISP or matters inconsistent with the ISP, be governed and construed in accordance with the laws of the State of [New York], without regard to principles of conflicts of law.
16. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 5 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the beneficiary.
17. We certify that as of the date of issuance of this Letter of Credit our senior unsecured debt is rated “A” or better by Standard & Poor’s Rating Service.

18. This original Letter of Credit has been delivered to you as beneficiary in accordance with the Applicant's instructions. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by your Authorized Officer.

Very truly yours,  
(Issuing Bank)

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

**ARTICLE 1: Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Issuing  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under Your Letter of Credit No. \_\_\_\_\_ (the Letter of Credit) in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit in the amount of USD \$\_\_\_\_\_ (the "Draw Amount").
3. [Check applicable drawing condition]:
  - An Event of Default has occurred under an Alternative Energy Credits Purchase and Sale Agreement between the Applicant and the undersigned, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.
  - The Letter of Credit is scheduled to expire within the next thirty (30) days and the Applicant has failed to deliver a replacement letter of credit as required by the terms of the Alternative Energy Credits Purchase and Sale Agreement between the Applicant and the undersigned, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.

4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

PECO Energy Company

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ [Applicant]

**ARTICLE 2: Annex 2 to Letter of Credit**

**SIGHT DRAFT**

Amount: \$ \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

At sight, pay to the order of PECO Energy Company, the sum of \_\_\_\_\_ U.S. Dollars.

---

Drawn under Irrevocable Letter of Credit No. \_\_\_\_\_ of \_\_\_\_\_ [identify Issuing Bank] dated \_\_\_\_\_, 200\_.

To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address}  
\_\_\_\_\_

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:

**ARTICLE 3: Annex 3 to Letter of Credit**

**NEW AVAILABILITY REQUEST**

\_\_\_\_\_, 20\_\_\_\_  
To: (Issuing Bank)  
(Address)

Attn: Standby Letter of Credit Dept.

[Applicant]  
[Address]  
Attn:

Re: \_\_\_\_\_ [Issuing Bank] Letter of Credit No.  
\_\_\_\_\_ (the "Letter of Credit")

Ladies and Gentlemen:

Pursuant to Paragraph 9 of the above-referenced Letter of Credit, the undersigned hereby requests that \_\_\_\_\_ [Issuing Bank] issue and deliver to us as beneficiary of the above-referenced Letter of Credit, an amendment to it to provide that the amount available for drawing thereunder from the date of the amendment will be in the amount of \$\_\_\_\_\_ (the "New Amount"), but otherwise the terms of the above-referenced Letter of Credit shall remain unchanged.

Please acknowledge your agreement to amend the Letter of Credit to the New Amount by issuing and forwarding the requested amendment of the Letter of Credit in the New Amount to the attention of the undersigned at the address listed below within two Business Days after the first Business Day on which you receive this Request.

Very truly yours,

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_ [Address]

**ARTICLE 4: Annex 4 to Letter of Credit**

CERTIFICATE OF CANCELLATION

\_\_\_\_\_, 20\_\_

To: (Issuing Bank)  
(Address)

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit, marked cancelled.

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ [Applicant Name]

**ARTICLE 5: Annex 5 to Letter of Credit**

NOTICE OF TRANSFER

\_\_\_\_\_, 20\_\_  
To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address]

To Whom It May Concern:  
Re: Your Letter of Credit No. \_\_\_\_\_

For value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned beneficiary to draw and receive payments under the above-referenced Letter of Credit in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee, and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original Letter of Credit is returned herewith, and we ask you to endorse the transfer thereon and forward it directly to the transferee at the address indicated above with your customary notice of transfer or issue a new Letter of Credit in the form of the Letter of Credit naming the transferee as the beneficiary thereof.

From and after the transfer of the Letter of Credit, payments under the Letter of Credit shall be made to an account of the transferee in accordance with written instructions you receive from an authorized officer of the transferee.

Pursuant to the Letter of Credit and your agreement with the Applicant, your transfer commission and any other expenses that may be incurred by you in conjunction with this transfer are payable by the Applicant.

Very truly yours,

Beneficiary:

PECO Energy Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The within signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

[Name of authenticating bank]

\_\_\_\_\_  
(Authorized signature of authenticating party)  
Name:  
Title:

**EXHIBIT 3****CREDIT SUPPORT REQUIREMENT**

Nominal Contract Value(\$)=Contract Amount (AECs/year) x Contract Price (\$/AEC) x 10 years

Months Remaining in Term	Collateral Requirement for Credit Support
Over 108	Nominal Contract Value x 5.0%
97 to 108	Nominal Contract Value x 4.5%
85 to 96	Nominal Contract Value x 4.0%
73 to 84	Nominal Contract Value x 3.5%
61 to 72	Nominal Contract Value x 3.0%
49 to 60	Nominal Contract Value x 2.5%
37 to 48	Nominal Contract Value x 2.0%
25 to 36	Nominal Contract Value x 1.5%
13 to 24	Nominal Contract Value x 1.0%
1 to 12	Nominal Contract Value x 0.5%

EXHIBIT 2

NON-BINDING NOTICE OF INTENT TO BID

**NON-BINDING NOTICE OF INTENT TO BID**

*All entities intending to bid in response to this PECO RFP must submit a Notice of Intent to Bid by \_\_\_\_\_. Neither this requirement nor bidder's submission of this Notice shall constitute an offer. Submission of this Notice does not impose any requirement or obligation to submit an Application or Bid Proposal.*

Name of Facility (n/a for Aggregator Bidders):

Legal Name of Bidder:

Brief Description of Solar Facility, including nameplate capacity, location, and development or operational status (n/a for Aggregator Bidders):

Contact Information for Authorized Representative:

- Name:
- Title:
- Address:
  
- E-Mail:

I hereby certify that I am an officer or other authorized representative of the Bidder named above and submit this Notice of Intent to Bid on behalf of the Bidder.

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Date:

EXHIBIT 3

RFP BIDDER APPLICATION CHECKLIST

**BIDDER APPLICATION CHECKLIST**

Facility Name:		Bidder No.:	
Name of Bidder:			
Contact:		Title:	
E-mail:		Phone:	
Address:	City:	State:	Zip Code:

**INSTRUCTIONS**

**A signed original of this checklist must be attached to the Bidder’s original Application, with a copy attached to each of the three required additional Application copies.**

- RFP Bidder Application Checklist (this document)
- Bidder Application
- Executed Confidentiality Agreement
- Bid Deposit (certified check or wire payment only)

Contract Amount (Solar AECs)	Bid Deposit:
<input type="checkbox"/> 200 to 1,000	\$10,000
<input type="checkbox"/> 1,001 to 2,000	\$20,000
<input type="checkbox"/> 2,001 to 3,000	\$30,000
<input type="checkbox"/> 3,001 to 4,000	\$40,000

**SIGNATURE OF AUTHORIZED REPRESENTATIVE**

I am an officer or other authorized representative of the Bidder and certify that all of the information, statements, data and representations in the attached Application are true to the best of my knowledge and belief. I hereby submit this Application on behalf of the Bidder and acknowledge that this submission constitutes acceptance and agreement to all terms of PECO’s Solar Alternative Energy Credits Requests for Proposal (issued [date]).

Signature:	Date:
Name:	Title:

EXHIBIT 4  
FORM OF BIDDER APPLICATION

## **FORM OF BIDDER APPLICATION**

*All Bidder Applications shall be in PDF electronic format with Bidder information organized in sections in the following order. All capitalized terms shall have the meaning set forth in the form Alternative Energy Credit and Purchase Agreement. Aggregator Bidders should not complete Sections 1 through 7. Bidders who are not aggregating AECs should not complete Section 8.*

### Section 1. Facility Information.

Bidder shall provide a written description of the Facility of no more than 20 pages, which details the following:

- Address of the Facility and legal description of the Facility site
- Basis for certification of Facility as an Alternative Energy System, including description of the electric generation process at the Facility
- Nameplate capacity and anticipated annual energy output of the Facility
- Major equipment, with specifications
- Impact Assessment studies (e.g., environmental reports)
- Interconnection Status
- Plans for use or sale of generation from the Facility
- Anticipated useful life of the Facility

Bidder shall also include a site layout plan and one-line diagrams showing electric generation and any collection and delivery to a Host or, if applicable, delivery point for PJM (or delivery into another delivery point in Pennsylvania if not in PJM).

### Section 2. Project Schedule.

For a Facility in development, Bidder shall provide a project milestone schedule. The schedule should include milestone dates for site control, facility construction, equipment supply and delivery, permitting, interconnection, financing, commissioning, and commercial operation.

### Section 3. Property Rights.

Bidder shall describe bidder's level of Site Control (including easements and rights-of-way) and provide documentation of Bidder's rights to the property on which the Facility is (or will be) located, including and conditions or limitations upon use affecting those rights, including any rights necessary to interconnect with the Grid.

### Section 4. Permits and Government Approvals.

Bidder shall list all federal, state and local permits or approvals required for the Facility, including (i) permit or approval status; (ii) date of issue or expected date of issue; and (iii) expected expiration date. Bidder shall provide copies of all permits and approvals, applications, and relevant associated correspondence.

## Section 5. Contracts.

Bidder shall describe all contracts or agreements necessary for development and commercial operation of the Facility and the status of such contracts or agreements, including:

- Contracts for sale of generation or AECs from the Facility.
- Equipment supply agreements
- Equipment warranty agreements
- Any EPC Agreement
- Any Operations and Maintenance Agreements
- Any agreement with a Host

## Section 6. Interconnection.

Bidder shall describe in detail the status of any connection of the Facility to its Host or to PJM, including: (i) any interconnection point; (ii) the status of any interconnection agreement or request for interconnection agreement and anticipated date for execution; (iii) the status of any interconnection studies (e.g., Feasibility, System Impact), or (iv) the satisfaction (or anticipated satisfaction) of applicable net metering requirements. Bidder shall attach correspondence documenting any interconnection status of the Facility and the method by which electricity from the Facility will be measured for purposes of PJM GATS.

## Section 7. Facility Financing.

For new projects, Bidder shall describe, in detail, the financing structure for the Facility and attach any necessary documentation, including a letter(s) from the institution(s) that will finance the project. A separate letter should be provided for each entity providing financing except in the case in which there is a lead financier authorized to act on behalf of other interests. The letter should include the following:

- The name of the financial institution.
- The contact information for the person preparing the letter.
- The structure of any proposed financing (confidential information such as proposed financing costs need not be disclosed).
- A statement to the effect that the financier(s) have reviewed project pro forma statements.
- A statement to the effect that the financier(s) have reviewed the form Alternative Energy Credit Purchase and Sale Agreement.
- A statement to the effect that the financier(s) have reviewed the bidder's offer to the Company, including pricing terms.
- A statement to the effect that the financier(s) has a strong interest in financing the project.
- A statement confirming that financing will be finalized within sixty (60) days of executing the AEC Purchase and Sale Agreement.

The letter(s) shall not be interpreted to constitute an irrevocable commitment to finance, unless otherwise stated in the letter(s). Rather, the letter (s) will be used by PECO to assess the likelihood that the project can be completed on the schedule and as the price proposed by the bidder. PECO may, at its discretion, contact the person and institution listed in the letter to verify the information presented. By submitting a bid, bidder acknowledges PECO's right to contact the listed institution and person. PECO reserves the right to reject any bid for which it is unable to confirm information presented in the letter(s).

#### Section 8. Aggregator Bidder Business Plan

Bidder shall provide the following information:

- Provide Business Plan for how Bidder intends to acquire and deliver the maximum Contract Amount bid and to be delivered over the ten year term.
- Documentation of sufficient management and other personnel experienced in the business if aggregating AECs for resale, including the purchase and sale of at least 700 Tier 1 solar AECs in Pennsylvania in the calendar year preceding PECO's RFP.
- Documentation of sufficient financing for aggregation and provision of the Contract Amount of AECs.

#### Section 9. Bidder Information.

Bidder shall provide the following information:

- Bidder organizational structure (Corporation, LLC, Partnership) and description of principle business (All bidders)
- Description of all ownership interests holding more than 5% of equity in the Facility (including partners, joint venturers), including ultimate corporate parent of each interest (Project bidders)
- Description of Bidder management, consultants, and advisors, and their experience in developing, financing, owning and/or operating generating facilities (Project bidders)
- Description of Bidder's operational plans and maintenance capabilities (Project bidders)
- Description of Bidder's long-term plans for the Facility (Project bidders)
- Documentation of Bidder's ability to satisfy AEC Purchase and Sale Agreement terms, including Development and Performance Security requirements (All bidders)
- For public companies with an ownership interest in the Facility, copies of the most recent 10-K and 10-Q for each company (Project bidders)
- For non-public companies, copies of the most recent audited financial statements and unaudited financial statements (income and balance sheet) for the most recent quarter (Project bidders)

Section 9. Other Bidder Information.

Bidder shall address each of the following specific questions and provide detail with any affirmative answer:

- Has Bidder ever defaulted on a contract?
- Has Bidder ever not met a contractual delivery date?
- Has Bidder ever requested to renegotiate contract pricing in an executed agreement?
- Is there any pending litigation relating to Bidder or the Facility?
- As Bidder or any Affiliate of Bidder ever filed for bankruptcy?

Bidder shall set forth any additional information Bidder believes should be considered by PECO in evaluating its Application.

EXHIBIT 5  
BID PROPOSAL FORM

**BID PROPOSAL**

*(not to be submitted with Bidder Application)*

Facility (n/a for Aggregators):

Legal Name of Bidder:

**Contract Amount of Solar Alternative Energy Credits (AECs) to be delivered annually to PECO for each AEPS reporting period during the Term:**

\_\_\_\_\_ AECs

**Amount of Solar Alternative Energy Credits (AECs) to be delivered to PECO during the first AEPS reporting period if such period is less than twelve months in length (not to exceed the product of the Contract Amount and the ratio of the length of the first delivery period to twelve months, adjusted for peak season production):**

\_\_\_\_\_ AECs

**Price per Solar AEC (in whole dollars/cents) delivered annually to PECO during the Term:**

\$ \_\_\_\_\_ / AEC

Multiple bids have been submitted for this Facility (Check box if applicable; multiple bids may not exceed 100% of Facility production capability).

I hereby certify that I am an officer or other authorized representative of the Bidder named above and submit this Bid Proposal on behalf of the Bidder. By submitting this Bid Proposal, Bidder acknowledges and accepts all terms of PECO’s Request for Proposal dated \_\_\_\_\_ and offers to enter into a Solar Alternative Energy Credit Purchase and Sale Agreement for the Contract Amount of solar AECs at the price specified above.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT 6  
CONFIDENTIALITY AGREEMENT

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is made on \_\_\_\_\_, 202[\_\_\_] by and between PECO Energy Company, a Pennsylvania company (“PECO”), and [Bidder], a \_\_\_\_\_ company (“Bidder”), each a “Party” and collectively the “Parties.”

### Background

- A. Bidder has determined to submit an application (the “Application”) in response to PECO’s Request for Proposals (“RFP”) for Solar Alternative Energy Credits (“AECs”), as defined by the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 *et seq.*; and provide certain non-public, confidential information to PECO as part of its Application;
- B. If Bidder is selected as a successful bidder and Bidder enters into a Solar Alternative Energy Credit and Purchase Agreement (the “AECPA”) with PECO, the Parties anticipate the exchange of additional non-public, confidential information with respect to the AECPA;
- C. The Parties desire to formally set forth their understanding and agreement with respect to the treatment to be accorded to the non-public, confidential information and have done so in the provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

- 1. For purposes of this Agreement, the term “Confidential Information” is defined to mean any knowledge, data, business plans, records, operational methods, policies and/or other information disclosed by or on behalf of a Party (the “Disclosing Party”), its officers, employees, contractors, agents, consultants, or representatives (including, without limitation, financial advisors, attorneys and accountants) or those of its affiliates (collectively, the “Representatives” of a Party) to the other Party (the “Receiving Party”) or its Representatives, which is not otherwise available to the public or to the Disclosing Party’s competitors. Prior to disclosure, the Disclosing Party or its Representatives shall mark or otherwise identify all Confidential Information as “Confidential” or “Proprietary” or with terms or markings of similar import.
- 2. The term “Confidential Information” does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by a Receiving Party, (ii) was within a Receiving Party’s possession prior to being furnished to the Receiving Party on a non-confidential basis, (iii) becomes available to a Receiving Party on a non-confidential basis from a source other than the other Disclosing Party, or (iv) is developed by or for the Receiving Party independently of Confidential Information.
- 3. The Parties acknowledge that Confidential Information is proprietary to, and a valuable asset of, the Disclosing Party and that any disclosure or unauthorized use thereof in violation of this Agreement may cause irreparable harm and loss to the Disclosing Party.
- 4. The Receiving Party and its Representatives shall retain the Disclosing Party’s Confidential Information in confidence and shall not use, disclose or permit the use or disclosure of the Disclosing Party’s Confidential Information, except to persons directly involved in the

- Application evaluation process or in the execution and implementation of the AECPA, and then only to the extent necessary in connection with the RFP or AECPA (as applicable), or as otherwise required by law.
5. Each Receiving Party covenants and agrees that it shall not, either directly or indirectly, publish or disclose any of the Disclosing Party's Confidential Information subject to this Agreement or use such Confidential Information for the benefit of itself, another party or any third parties without the prior written consent of the Disclosing Party, except as expressly permitted by this Agreement.
  6. The Receiving Party shall continue to treat the Disclosing Party's Confidential Information as confidential in accordance with the terms of this Agreement until three (3) years after the last of (i) the termination of this Agreement, (ii) the completion of the RFP process, (iii) the termination of the AECPA, and (iv) the last disclosure of Confidential Information received by a Receiving Party (the "Confidentiality Period"). After the conclusion of such Confidentiality Period, the Receiving Party shall be under no further duty to treat or protect the Disclosing Party's Confidential Information as confidential under this Agreement.
  7. The Parties acknowledge that breach of the terms, covenants or conditions contained in this Agreement by either of them may cause irreparable damage to the other for which a remedy at law would not be adequate. In the event of such breach or threatened breach, the non-breaching Party shall be entitled to seek appropriate injunctive relief in any court of competent jurisdiction, restraining the breaching Party from any such threatened or actual violation of the provision of this Agreement. This provision does not limit a non-breaching Party's right to seek monetary damages in addition to the injunctive relief mentioned above. EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUE OR LOST PROFITS, IN CONNECTION WITH THIS CONFIDENTIALITY AGREEMENT.
  8. In the event that a Receiving Party is required to disclose any of a Disclosing Party's Confidential Information by court order or regulation, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such requirement (unless forbidden to do so by court order or regulation) in order to provide the Disclosing Party with an opportunity to seek a protective order or other appropriate remedy. The Parties agree to cooperate with each other in any Party's efforts to prevent disclosure of its Confidential Information. Notwithstanding any provision of this Agreement, PECO shall be free to provide any information received from Bidder to the Pennsylvania Public Utility Commission (the "Commission") or its representatives and to any third party monitor participating in the RFP.
  9. Nothing in this Agreement shall authorize or empower the Receiving Party to assume or create any obligation or responsibility whatsoever, expressed or implied, on behalf of or in the name of the Disclosing Party, or to bind the Disclosing Party in any manner, or to make any representation, warranty or commitment on behalf of the Disclosing Party.
  10. This Agreement shall terminate without further action by either Party (i) in the event that Bidder is not selected as a successful bidder in the RFP, or (ii) Bidder is disqualified by PECO as provided in the RFP, or (iii) Bidder withdraws its Application, or (iv) if Bidder is selected as a successful bidder, upon Bidder's failure to execute the AECPA after written request by PECO or

upon termination of the AECPA. Notwithstanding any such termination, all rights and obligations hereunder shall survive with respect to Confidential Information disclosed prior to such termination.

- 11. The laws, but not the rules relating to the choice of law, of the Commonwealth of Pennsylvania, shall govern this Agreement. Any action or dispute may only be brought in the Court of Common Pleas in Philadelphia, Pennsylvania, or in the United States District Court for the Eastern District of Pennsylvania.
- 12. This Agreement and all of its terms and provisions shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns as may be permitted by law.
- 13. The invalidity or non-enforceability of any term or provision contained in this Agreement shall not void or impair the Agreement’s remaining provisions, which shall remain in full force and effect as if no such invalid or unenforceable provision existed.
- 14. Confidential Information is provided on an “As-Is” basis, with no warranty of any nature whether oral or written, statutory, express or implied.
- 15. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed to the Receiving Party or in any intellectual property rights related thereto. Except as provided in the RFP and AECPA, this Agreement is the complete and exclusive agreement regarding the Parties’ disclosures of information.
- 16. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above.

**PECO ENERGY COMPANY**

**[Bidder]**

\_\_\_\_\_

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

Title: \_\_\_\_\_

\_\_\_\_\_

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

Title: \_\_\_\_\_