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October 19, 2020

VIA eFILING

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

Re: Tenant Union Representative Network v. PECO Energy Company
Docket No. C-2020-3021557

Dear Secretary Chiavetta:

Enclosed for filing is the **Prehearing Conference Memorandum of PECO Energy Company** (the “PCM”), in the above-referenced matter. As evidenced by the enclosed Certificate of Service, copies of the PCM have been served upon the presiding Administrative Law Judge Mary D. Long and all parties of record.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Jennedy S. Johnson

Enclosures

c: Per Certificate of Service (w/encls.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TENANT UNION REPRESENTATIVE	:	
NETWORK	:	
	:	
v.	:	Docket No. C-2020-3021557
	:	
PECO ENERGY COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Prehearing Conference Memorandum of PECO Energy Company** in the above-referenced proceeding on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

Honorable Mary D. Long
Administrative Law Judge
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh District Office, Piatt Place
301 5th Avenue, Suite 220
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Dated: October 19, 2020

Counsel for PECO Energy Company

Company's current Universal Service and Energy Conservation Plan² ("USECP") because the CAP FCO does not currently utilize the revised energy burdens ("EBs") that are a part of the Commission's revised CAP Policy Statement³ (see 52 Pa. Code §69.265(2)(i)).

On September 14, 2020, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") filed a Petition to Intervene and Answer.

On September 15, 2020, PECO filed an Answer to TURN's Formal Complaint.

On September 23, 2020, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Public Statement.

On September 25, 2020, PECO filed a Petition in the proceeding for its 2019-2024 USECP⁴ seeking Commission approval to utilize the EBs in the Revised Policy Statement in the CAP FCO until the Company transitions to its proposed Percent of Income Payment Plan (the "CAP PIPP") (the "EB Proposal"). In the Petition, PECO requests Commission approval of the EB Proposal by the Commission's November 19, 2020 Public Meeting.

On September 25, 2020, PECO also filed a Motion to Stay this proceeding pending the disposition of PECO's Petition at Docket No. P-2020-3022154.

On October 5, 2020, TURN filed Preliminary Objections to PECO's Answer and, on October 15, 2020, PECO filed an Answer to TURN's Preliminary Objections.

Also on October 15, 2020, TURN filed an Answer in Opposition to PECO's Motion to

² See *PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2015-2507139 (Order entered Aug. 11, 2016). A number of revisions were made to the USECP after its initial approval.

³ *2019 Amendments to Policy Statement on Customer Assistance Program*, 52 Pa. Code § 69.261–69.267, Docket No. M-2019-3012599 (Order entered Nov. 5, 2019) (the "Revised Policy Statement"). The Revised Policy Statement became effective on March 21, 2020 upon publication in the *Pennsylvania Bulletin*. See 50 Pa. B. No. 12 at 1691-1695 (Mar. 21, 2020).

⁴ See Docket No. M-2018-3005795. The Petition was docketed at P-2020-3022154.

Stay.

Finally, on October 19, 2020, PECO filed an Amended Answer to TURN's Complaint.

II. STATEMENT OF ISSUES AND POTENTIAL WITNESSES

The issue before the Commission is whether the Company's actions regarding the CAP FCO have been consistent with its CAP FCO obligations under the Settlement and PECO's current USECP in light of the Revised Policy Statement.

As noted in Section I of this Prehearing Conference Memorandum, PECO has filed a Motion to Stay this proceeding pending the disposition of PECO's Petition at Docket No. at P-2020-3022154, in which PECO has proposed to utilize the EBs until the Company transitions to the CAP PIPP under consideration by the Commission at Docket No. M-2018-3005795. If PECO's Motion to Stay is denied and this proceeding continues, the Company expects that it would submit the direct testimony and accompanying exhibits of the following witness:

- **Mark Kehl**, PECO's Manager of Universal Services. Mr. Kehl's business address is PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19103. Mr. Kehl's testimony would address the current and future operation of the CAP FCO as well as the Company's transition to a CAP PIPP as proposed in PECO's 2019-2024 USCEP at Docket No. M-2018-3005795.

III. DISCOVERY

PECO will work with the other parties and the ALJ to develop a reasonable schedule for ongoing discovery. In addition, PECO proposes that the ALJ approve the Protective Order attached hereto as Appendix "A", which is substantially similar to the Protective Order entered in PECO's recent DSP V proceeding at Docket No. P-2020-3019290. PECO circulated the foregoing Protective Order to the parties for their consideration.

IV. PECO’S COUNSEL AND SERVICE LIST

For purposes of the Prehearing Conference, PECO hereby designates the following individual as the primary speaker:

Catherine G. Vasudevan, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Parties are requested, however, to serve documents on all of the following attorneys:

Anthony E. Gay, Esquire
Jack R. Garfinkle, Esquire
Jennedy S. Johnson, Esquire
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PECO will serve all documents in this proceeding electronically until further notice in light of the Governor’s Emergency Order with respect to the COVID-19 pandemic.

VI. PROPOSED SCHEDULE

PECO will cooperate with the ALJ and other parties in order to facilitate the orderly conduct and disposition of this proceeding. In light of the Company’s pending Motion to Stay this proceeding, PECO does not have a proposed schedule at this time.

V. POSSIBILITY OF SETTLEMENT

PECO intends to engage in settlement discussions with the other parties in this proceeding in order to facilitate an effective and timely resolution of this matter.

VI. CONCLUSION

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

Respectfully submitted,



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Jack R. Garfinkle (Pa. No. 81892)
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For PECO Energy Company

Dated: October 19, 2020

APPENDIX A

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TENANT UNION REPRESENTATIVE	:	
NETWORK (TURN)	:	
	:	DOCKET NO. C-2020-3021557
v.	:	
	:	
PECO ENERGY COMPANY	:	

PROTECTIVE ORDER

IT IS ORDERED THAT:

1. This Protective Order is hereby GRANTED and shall establish procedures for the protection of all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, whether produced or reproduced or stored on paper, cards, tape, disk, film, electronic facsimile, magnetic or optical memory, computer storage devices or any other devices or media, including, but not limited to, electronic mail (e-mail), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Such materials are referred to in this Order as “Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. For purposes of this Protective Order there are two categories of Proprietary Information: “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” protected material. A producing party may designate as “CONFIDENTIAL” those materials that are customarily treated by that party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject that party or its clients to the risk of competitive disadvantage or other business injury. A producing party may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature, relative to the business interests of parties to this proceeding, or of such a private or personal nature, that the producing party determined that a heightened level of confidential protection with respect to those materials is appropriate. The parties shall endeavor to limit the information designated as “HIGHLY CONFIDENTIAL” protected material.

4. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a party who meets the criteria of a “Reviewing Representative” as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

5. Information deemed “CONFIDENTIAL” shall be provided to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above;
- iii. An expert or an employee of an expert retained by a party for the purpose of advising that party or testifying in this proceeding on behalf of that party; or
- iv. Employees or other representatives of a party to this proceeding who have significant responsibility for developing or presenting the party's positions in this docket.

6. Information deemed "HIGHLY CONFIDENTIAL" protected material shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for purposes of "HIGHLY CONFIDENTIAL" protected material, is limited to a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory advocate, pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
- iii. An outside expert or an employee of an outside expert retained by a party for the purposes of advising that party or testifying in this proceeding on behalf of that party; or
- iv. A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL protected material pursuant to paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(e)) any party may, by objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of the party producing the Proprietary Information pursuant to Paragraph 11. A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services or advising another person who has such duties; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor's products or services or advising another person who has such duties; (c) an officer, director, stockholder, owner, agent (excluding any person under Paragraph 6.i or 6.ii), or employee of a competitor of a customer of the parties or of a competitor of a vendor of the parties if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violating the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establish a significant motive for violation. A “Restricted Person” shall not include an expert for the Office of Consumer Advocate.

8. If an expert for a party, another member of the expert’s firm or the expert’s firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person (other than an expert or expert firm retained by the Office of Consumer Advocate), that expert must:

(1) identify for the parties each Restricted Person and all personnel in or associated with the expert's firm that work on behalf of the Restricted Person; (2) take all reasonable steps to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way adversely affect the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be adversely affected. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

9. Reviewing Representatives qualified to receive "HIGHLY CONFIDENTIAL" protected material may discuss HIGHLY CONFIDENTIAL protected material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person," but may not share with, or permit the client or entity to review or have access to, the HIGHLY CONFIDENTIAL protected material.

10. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 12(a). Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

11. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a

commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in paragraph 6 (i) through (iii) above, the party must first seek agreement to do so from the party providing the Proprietary Information. If an agreement is reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 6 (iv) above with respect to those materials. If no agreement is reached, the party seeking to have a person designated a Reviewing Representative shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

12. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably

practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Commission and all parties, including the statutory advocates and any other agency or department of state government will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.708(b)(11)) until such time as the information is found to be non-proprietary.

14. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

15. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in paragraph 14 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

16. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

17. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, and to refuse to produce Proprietary Information pending the adjudication of the objection.

18. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In its request, a providing party may specify whether such materials should be destroyed or returned. In the event that the materials are destroyed instead of returned, the receiving party shall certify in writing to the providing party that the Proprietary Information has been destroyed. In the event that the materials are returned instead of destroyed, the receiving party shall certify in writing to the providing party that no copies of materials containing the Proprietary Information have been retained.

Date: October __, 2020

Mary D. Long
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TENANT UNION REPRESENTATIVE	:	
NETWORK (TURN)	:	
	:	DOCKET NO. C-2020-3021557
v.	:	
	:	
PECO ENERGY COMPANY	:	

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____
(the receiving party).

The undersigned has read and understands the Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order, which are incorporated herein by reference.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE:
