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January 7, 2021

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

**Re: Petition of PECO Energy Company for Approval of Its
Act 129 Phase IV Energy Efficiency and Conservation Plan
Docket No. M-2020-3020830**

Dear Secretary Chiavetta:

Enclosed please find the **Prehearing Conference Memorandum of PECO Energy Company** in the above-referenced matter. Copies have been served on Deputy Chief Administrative Law Judge Mark A. Hoyer, Administrative Law Judge Emily DeVoe and all parties of record in accordance with the attached Certificate of Service.

Very truly yours,



Jack R. Garfinkle

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
ACT 129 PHASE IV ENERGY : **Docket No. M-2020-3020830**
EFFICIENCY AND CONSERVATION :
PLAN :

CERTIFICATE OF SERVICE

I hereby certify that I have this date served true and correct copies of the **Prehearing Conference Memorandum of PECO Energy Company** on the following individuals in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
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Dated: January 7, 2021

Counsel for PECO Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
ACT 129 PHASE IV ENERGY : **DOCKET NO. M-2020-3020830**
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PREHEARING CONFERENCE MEMORANDUM OF PECO ENERGY COMPANY

INTRODUCTION

Pursuant to the December 30, 2020, Prehearing Conference Order of Deputy Chief Administrative Law Judge Mark A. Hoyer, PECO Energy Company (“PECO” or the “Company”) hereby submits its Prehearing Conference Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

On November 30, 2020, PECO petitioned the Pennsylvania Public Utility Commission (the “Commission”) for approval of the Company’s Phase IV Energy Efficiency and Conservation Plan (“Phase IV Plan” or “Plan”) to achieve energy and demand savings in accordance with the requirements of Act 129 of 2008, 66 Pa.C.S. § 2806.1 (“Act 129”), and the Commission’s Implementation Order entered June 18, 2020 at Docket No. M-2020-3015228 (the “*Phase IV Implementation Order*”). In its Petition, PECO requests that the Commission: (1) find that the Phase IV Plan satisfies the requirements of 66 Pa.C.S. § 2806.1(b)(1) and the *Phase IV Implementation Order*, including those provisions mandating the implementation of programs designed to achieve the peak demand reduction (“PDR”) and consumption reduction targets established for PECO and the energy savings carve-out for the low-income customer sector; and

(2) approve a supplement to PECO's Electric Service Tariff to implement a Section 1307 surcharge to recover Phase IV Plan costs..

PECO served its Petition, Phase IV Plan and supporting testimony on the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Commission's Bureau of Investigation and Enforcement ("I&E"), and all parties to the Company's Phase III Plan proceeding (Docket No. M-2015-2515691). PECO also posted copies of the filing on its website.

At the time of filing this Prehearing Conference Memorandum, PECO has been served with a Petition to Intervene and Answer of The Coalition For Affordable Utility Services And Energy Efficiency In Pennsylvania ("CAUSE-PA"), dated December 11, 2020; a Notice of Intervention and Public Statement and a Notice of Appearance by OSBA, dated December 21, 2020; a Petition to Intervene by the Natural Resources Defense Council ("NRDC"), dated December 29, 2020; a Notice of Intervention and Public Statement by OCA, dated December 30, 2020; and a Petition to Intervene by the Philadelphia Area Industrial Energy Users Group, dated January 7, 2021.

II. STATEMENT OF ISSUES

The ultimate issue before the Commission is whether the Company's Phase IV Plan meets the requirements of Act 129 and the *Phase IV Implementation Order*. PECO has submitted direct testimony and exhibits with its Petition demonstrating that the Phase IV Plan is designed to meet Act 129 and *Phase IV Implementation Order* requirements, stay within applicable cost limitations, and provide meaningful opportunities for customers to save energy and money.

The *Phase IV Implementation Order* establishes a total Phase IV MWh savings target of 1,380,837 MWh for PECO. The Company's total Phase IV PDR target is 256 MW and must be achieved exclusively with energy efficiency measures. PECO must also obtain 5.8% of its total Phase IV savings (80,089 MWh) from programs solely directed at low-income customers or low-income-verified participants in multifamily housing programs.

Overall, PECO anticipates saving a total of 1,605,107 MWh and achieving 327 MW of PDRs in Phase IV, which represent approximately 116% and 128% of PECO's mandated targets. PECO also anticipates that 7.1% of its total savings (97,421 MWh) will come from low-income targeted programs or low-income verified participants in multifamily housing programs. The Company's Plan is designed to achieve these savings and PDRs while remaining within the Company's Phase IV spending cap of \$427.4 million.

III. WITNESSES

PECO submitted the direct testimony of the following witnesses with its Petition and Phase IV Plan:

PECO Statement No. 1, Direct Testimony of Doreen L. Masalta. Ms. Masalta is the Director of Energy and Marketing Services for PECO, and her testimony provides an overview of the Phase IV Plan;

PECO Statement No. 2, Direct Testimony of Nicholas DeDominicis. Mr. DeDominicis is the Manager of Evaluation, Measurement and Verification for PECO, and his testimony describes PECO's market-based Plan design process, the programs comprising the Plan, and expected research and development efforts during Phase IV;

PECO Statement No. 3, Direct Testimony of William R. Supple. Mr. Supple is a Managing Consultant in the Energy, Sustainability and Infrastructure Practice at Guidehouse,

Inc. and his testimony summarizes PECO's Phase IV projected energy and demand savings, program expenditures, and Total Resource Cost benefits.

PECO Statement No. 4, Direct Testimony of Richard A. Schlesinger. Mr.

Schlesinger is PECO's Manager of Retail Rates, and his testimony discusses the Phase IV Plan's cost recovery mechanism and tariff.

PECO may present additional witnesses to address the direct testimony of other parties; however, such witnesses cannot be identified until the direct testimony of other parties is served on PECO and evaluated.

IV. PROPOSED SCHEDULE

The Company proposes the following schedule for this proceeding:

| | |
|-------------------|---|
| January 22, 2021 | Evidentiary Hearings |
| January 22, 2021 | Answers or Comments |
| January 29, 2021 | Briefs |
| February 10, 2021 | PECO Reply Comments and/or Revised Plan |

V. DISCOVERY AND PROPOSED PROTECTIVE ORDER

PECO agrees to work with the parties to conduct discovery in an expeditious manner. PECO respectfully requests that Deputy Chief Administrative Law Judge Hoyer and Administrative Law Judge DeVoe approve the Company's proposed Protective Order, attached as Appendix A, for use in this proceeding. The proposed Protective Order is substantially similar to the Protective Order entered by Deputy Chief Administrative Law Judge Christopher P. Pell in PECO's most recent gas base rate proceeding (Docket No. R-2020-3018929).

VI. POSSIBILITY OF SETTLEMENT

PECO intends to engage in settlement discussions and informal resolution of issues to the extent other parties are amenable to such discussions.

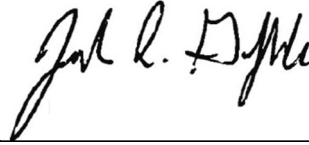
VII. LEAD ATTORNEY FOR THE PREHEARING CONFERENCE

The lead attorney for purposes of the Prehearing Conference will be Mr. Jack R. Garfinkle, Associate General Counsel for the Company.

VIII. CONCLUSION

WHEREFORE, PECO Energy Company submits this Prehearing Conference Memorandum and respectfully requests that Deputy Chief Administrative Law Judge Hoyer and Administrative Law Judge DeVoe approve the proposed schedule herein and issue the proposed Protective Order attached as Appendix A.

Respectfully submitted,



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January 7, 2021

Counsel for PECO Energy Company

APPENDIX A

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------------------|---|----------------------------------|
| PETITION OF PECO ENERGY | : | |
| COMPANY FOR APPROVAL OF ITS | : | |
| ACT 129 PHASE IV ENERGY | : | DOCKET NO. M-2020-3020830 |
| EFFICIENCY AND CONSERVATION | : | |
| PLAN | : | |

PROTECTIVE ORDER

IT IS ORDERED THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 12(a). Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding, provided, however, that counsel for I&E, the Office of Consumer Advocate, and Office of Small Business Advocate may share Proprietary Information with the I&E Director, the Consumer Advocate, and the Small Business Advocate, respectively, without obtaining a Non-Disclosure

Certificate from these individuals, provided, however, that these individuals otherwise abide by the terms of the Protective Order.

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 Judges 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: _____, 2021

Mark A. Hoyer
Deputy Chief Administrative Law Judge
Emily DeVoe
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

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

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

SIGNATURE

PRINT NAME

EMPLOYER

ADDRESS

DATE: _____