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December 22, 2023

VIA eFILING

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

**Re: 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-2020-3019290**

Dear Secretary Chiavetta:

Attached please find the **Petition of PECO Energy Company to Modify Its Default Service Supplier Master Agreement** (the "Petition") in the above-referenced matter.

As indicated on the attached Certificate of Service, copies of the Petition have been served upon all parties of record.

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

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosures

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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : **DOCKET NO. P-2020-3019290**
THE PERIOD FROM JUNE 1, 2021 :
THROUGH MAY 31, 2025 :

**PETITION OF PECO ENERGY COMPANY TO
MODIFY ITS DEFAULT SERVICE SUPPLIER
MASTER AGREEMENT**

Pursuant to 52 Pa. Code § 5.41 and § 54.186(d), PECO Energy Company (“PECO” or the “Company”) hereby petitions the Pennsylvania Public Utility Commission (“Commission”) for approval to modify the Default Service Supplier Master Agreement (“SMA”) included in PECO’s fifth default service program (“DSP V”) incorporated in the settlement of these proceedings approved by the Commission on December 3, 2020.¹

Specifically, PECO proposes to add a new Appendix I to the SMA which incorporates the 2018 International Swaps and Derivatives Association, Inc. (“ISDA”) U.S. Resolution Stay Protocol (“Protocol”) into the SMA. This addition would enable market participants subject to the regulations issued by the Board of Governors of the Federal Reserve System (12 C.F.R. §§ 252.2, 252.81-88), the Federal Deposit Insurance Corporation (12 C.F.R. §§ 382.1-7) and the Office of the Comptroller of the Currency (12 C.F.R. §§ 47.1-8) (“US Stay Regulations”) to participate in the Company’s default service solicitations.

¹ *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Opinion and Order entered Dec. 3, 2020) (“DSP V Order”)

In order to provide adequate notice to potential bidders in PECO’s next default service procurement scheduled for March 2024, the Company is seeking expedited approval of the addition of Appendix I to the DSP V SMA on or before the Commission’s public meeting scheduled for February 1, 2024. In support of its request, PECO submits as follows:

1. PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office in Philadelphia, Pennsylvania. PECO provides electric delivery service to approximately 1.7 million customers.

2. PECO is an electric distribution company (“EDC”) as defined in the Pennsylvania Public Utility Code,² and is the default service provider within its service territory for retail customers who do not choose an alternative electric generation supplier (“EGS”) or whose EGS fails to provide service.

3. On March 13, 2020, PECO filed the above-captioned Petition, requesting that the Commission approve DSP V for the period from June 1, 2017 through May 31, 2021. A Joint Petition for Partial Settlement (“Joint Petition”) was filed on August 13, 2020, which detailed the settlement reached among most of parties³ (the “Settlement”) and reserved two items for litigation.⁴

² 66 Pa.C.S. § 2803.

³ The Sierra Club/PA Chapter, the Clean Air Council, and the Philadelphia Solar Energy Association (together, the “Environmental Stakeholders”) opposed the Settlement because they believed PECO did not adequately evaluate the possible inclusion of long-term renewable energy contracts and procurement from distributed energy resources. StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc., did not join or oppose the Settlement. All other parties to the proceeding joined the Settlement.

⁴ The items reserved for litigation involved how PECO’s time-of-use rate implementation costs should be allocated to the eligible procurement classes and (2) whether PECO should acquire Network Integration Transmission Service for all customer load and recover the associated PJM charges from all distribution customers on a non-bypassable basis.

4. Paragraph 26 of the Joint Petition provides that PECO will execute the form of SMA set forth in PECO Exhibit No. JJM-4 with wholesale suppliers that are successful bidders in PECO's default service supply procurements during the DSP V term.

5. On December 3, 2020, the Commission entered the DSP V Order approving the Joint Petition and Settlement without modification.

6. The SMA incorporated in the Settlement and approved by the Commission is a standardized generation supply contract that sets forth the rights and obligations of PECO and each generation supplier that successfully bids to serve a portion of PECO's default service load. Under the SMA, a supplier is obligated to supply full requirements service for a specified percentage of default service load assigned to that supplier through PECO's competitive procurement process, and PECO is obligated to pay for this supply. The SMA includes detailed provisions relating to billing, supplier credit requirements, default and termination, damages, indemnification, survival, and dispute resolution, in addition to customary provisions relating to representations and warranties by each party, as well as confidentiality and other obligations.

7. The U.S. Stay Regulations impose certain requirements on the terms of swaps, repurchase agreements and other qualified financial contracts for global systemically important banking organizations and their subsidiaries and affiliates ("GSIBs").

8. In the course of assisting the PECO DSP V Independent Evaluator (NERA Economic Consulting, or "NERA") in responding to bidder inquiries during a recent procurement, the Company became aware that wholesale suppliers that are GSIBs have not been able to participate in PECO's default service supply solicitations because the SMA approved by the Commission for DSP V, which is a covered agreement under the U.S. Stay Regulations, does not incorporate the 2018 ISDA U.S. Resolution Stay Protocol.

9. Under the new Appendix I attached hereto as Exhibit A, both PECO and the wholesale supplier will confirm adherence to the U.S. Resolution Stay Protocol to ensure compliance with the US Stay Regulations, which will allow additional parties to compete and bid in PECO's default service procurements.

10. Communications with potential bidders regarding the products that will be procured in the next DSP V solicitation scheduled for March 2024 will begin in January 2024 and the Part I application process will open in February 2024. Accordingly, PECO respectfully requests Commission approval of this Petition, on an expedited basis, no later than the Commission's February 1, 2024 public meeting to allow sufficient time to communicate the SMA change to suppliers.

11. The Companies have communicated their proposed change to the DSP V SMA to counsel for the parties to this proceeding, and as of the date of this filing, PECO has received responses from the following parties: the Office of Small Business Advocate ("OSBA"), the Philadelphia Area Industrial Energy Users Group, Calpine Retail Holdings, LLC ("Calpine"), the Sierra Club/PA Chapter, the Clean Air Council, and the Philadelphia Solar Energy Association. Calpine has authorized PECO to indicate that it takes no position with respect to revising the SMA agreed to in the Settlement to incorporate the 2018 ISDA U.S. Stay Protocol. The remainder of the responding parties do not object to the Petition.

12. PECO consulted with NERA regarding this proposed change to the SMA, and NERA supports the addition of Appendix I to the SMA.

13. The SMA currently in place and approved by the Commission under DSP V was approved as an affiliated interest agreement pursuant to 66 Pa.C.S. § 2102 because at that time, PECO's affiliate, Constellation Energy, was in the power sales business. Presently, PECO does

not engage in default service supply procurements with any affiliates, and PECO's former affiliate, Constellation Energy, is an entirely separate, non-affiliated company. Therefore, PECO's is not requesting that the revised SMA be approved as an affiliated interest agreement.

II. CONCLUSION

Based upon the foregoing, including Exhibit A attached hereto, PECO respectfully requests that the Commission grant this Petition and enter an Order, pursuant to the requirements of 52 Pa. Code § 54.185(e)(6), approving PECO's proposed revised DSP V Supplier Master Agreement and grant all other approvals necessary so that PECO can implement the revised SMA with Appendix I on a timely basis for the benefit of its customers.

Respectfully submitted,



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Dated: December 22, 2023

Counsel For PECO Energy Company

VERIFICATION

I, Sulma Dalessio, hereby declare that I am the Director of Energy Acquisition for PECO Energy Company; that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief; and that I make this verification subject to the penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.

Date: December 22, 2023



Sulma Dalessio

EXHIBIT A

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

APPENDIX I

ADHERENCE TO THE U.S. STAY PROTOCOL

The Parties may, by mutual agreement, execute this Appendix I for purposes of incorporating the Swaps and Derivatives Association 2018 U.S. Resolution Stay Protocol into this Default Service Supplier Master Agreement.

This Appendix I is part of the Default Service Supplier Master Agreement dated _____, 20__ (as amended, modified or extended from time to time) between PECO Energy Company (the “Buyer”) and [_____] (the “DS Supplier”).

DS Supplier hereby confirms that it is an adherent to the International Swaps and Derivatives Association (“ISDA”) 2018 U.S. Resolution Stay Protocol (“ISDA U.S. Stay Protocol”). Buyer confirms that it is or that it will become an adherent to the ISDA U.S. Stay Protocol. If Buyer is not an adherent to the ISDA U.S. Stay Protocol when this Appendix I is executed, Buyer will submit an Adherence Letter for acceptance by the ISDA no later than ten (10) Business Days after execution of this Appendix I.

The terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of the Default Service Supplier Master Agreement, and the Default Service Supplier Master Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, DS Supplier shall be deemed to be a Regulated Entity and Buyer shall be deemed to be an Adhering Party. In the event of any inconsistencies between the Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

The terms “Regulated Entity”, “Adhering Party”, “Adherence Letter” and “Protocol Covered Agreement” shall have the meanings given to them in the ISDA U.S. Stay Protocol. All other terms not defined herein shall have the meanings given to them in the Default Service Supplier Master Agreement between the Parties.

PECO ENERGY COMPANY (BUYER)

DS SUPPLIER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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PETITION OF PECO ENERGY	:	
COMPANY FOR APPROVAL OF ITS	:	
DEFAULT SERVICE PROGRAM FOR	:	Docket No. P-2020-3019290
THE PERIOD FROM JUNE 1, 2021	:	
THROUGH MAY 31, 2025	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Petition of PECO Energy Company to Modify Its Default Service Supplier Master Agreement** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: December 22, 2023

Counsel for PECO Energy Company

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