

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION :
: **Docket No. R-2024-3048767**
v. :
PECO ENERGY COMPANY :

PREHEARING MEMORANDUM OF PECO ENERGY COMPANY

TO ADMINISTRATIVE LAW JUDGE F. JOSEPH BRADY:

This memorandum is submitted in anticipation of the June 24, 2024 Prehearing Conference regarding the above-referenced proceeding and pursuant to the regulations of the Pennsylvania Public Utility Commission (the “Commission”) at 52 Pa. Code § 5.224.

I. INTRODUCTION

This proceeding involves PECO Energy Company’s (“PECO” or the “Company”) annual purchased gas cost filing under Section 1307(f) of the Pennsylvania Public Utility Code (66 Pa. C.S. § 1307(f)). As required by the Commission’s regulations at 52 Pa. Code § 53.64(a) and (c), on April 30, 2024, PECO filed advance information (“Advance Information”) concerning its purchased natural gas costs. On May 31, 2024, PECO filed Supplement No. 7 to its Tariff Gas – Pa. P.U.C. No. 5 (“Supplement No. 7”) proposing tariff rate changes. Accompanying this filing, PECO included statements showing the calculation of the proposed purchased gas cost rates to become effective December 1, 2024, and supporting written direct testimony of PECO’s witnesses, all of which are described in more detail hereafter.

The proposed rate for the Commodity Charge (CC), Gas Cost Adjustment Charge (GCA), and the Balancing Service Charge (BSC) as set forth in Supplement No. 7 and the Direct Testimony of Anthony P. DiFelice, PECO Statement No. 4, page 8, Table APD-2, are as follows:

	Rates GR and CAP (\$/Mcf)	Rate GC and the Excess Off-Peak Use Rider (\$/Mcf)	Rates OL, L and MV-F (\$/Mcf)
CC	\$4.4203	\$4.4075	\$4.4036
GCA	(\$0.0468)	(\$0.0468)	(\$0.0468)
BSC	\$0.3843	\$0.3843	\$0.3843
Total PGC Rate			
Effective March 1, 2024	\$4.7578	\$4.7450	\$4.7411

In accordance with the Commission’s Order entered on December 6, 1985, at Docket No. P-00850081, PECO initiated the advance public notice of Supplement No. 7 and accompanying supporting data through bill inserts and newspaper advertisements.

By a Commission Notice dated June 6, 2024, a telephonic Prehearing Conference was scheduled for June 24, 2024, at 10:00 a.m.

II. STATEMENT OF ISSUES

In this case, as in every proceeding under Section 1307(f) of the Public Utility Code, the primary issue is the justness and reasonableness of the natural gas distribution company’s (“NGDC”) proposed purchased gas cost rates. In addressing this issue, the Commission is required to investigate and determine whether the NGDC is pursuing “a least cost fuel procurement policy, consistent with the utility’s obligation to provide safe, adequate and reliable service to its customers.” In order to reach such a determination, the Commission is required to make the specific findings set forth in Sections 1318 (a) and (b) of the Public Utility Code (66 Pa.C.S §1318(a) and (b)), and such further findings, if any, as may be required under provisions of the Natural Gas Choice and Competition Act (66 Pa. C.S. Ch. 22). As set forth below, the testimony and other supporting data is submitted by PECO to address these matters and provide adequate and sufficient evidence to support all of the findings the Commission is required to make to approve PECO’s proposed purchased natural gas cost rates.

III. WITNESSES

On April 30, 2024, PECO submitted its Advance Information, consisting of Sections 1 through 22, which respond to specific information requests set forth in the Commission's regulations at 52 Pa. Code § 53.64. Additionally, on May 31, 2024, PECO filed Supplement No. 7 and the further supporting data required by the Commission's regulations to be filed at that time. That filing includes the Direct Testimony of the following witnesses:

- | | |
|------------------|--|
| Statement No. 1: | Direct Testimony of Suzette E. Adams; |
| Statement No. 2: | Direct Testimony of Scott J. Hughes (including exhibits); |
| Statement No. 3: | Direct Testimony of Julie S. Drezner (including exhibits); and |
| Statement No. 4: | Direct Testimony of Anthony P. DiFelice (including exhibits). |

The names and job titles of these witnesses are listed below together with a brief summary of the subject matter of their respective testimony:

- **Suzette E. Adams.** Ms. Adams is the Senior Manager of PECO's Gas Supply & Transportation Department. Her Direct Testimony is set forth in PECO Statement No. 1 and she is sponsoring Sections 1 through 22 of the Advance Information. Ms. Adams' testimony presents the information outlined in Section 1317(a) of the Public Utility Code so that the Commission may make the findings required by Section 1318 for a determination that PECO's purchased natural gas cost rates and charges are just and reasonable.
- **Scott J. Hughes.** Mr. Hughes is the Manager of PECO's Gas Acquisition Department. His Direct Testimony is set forth in PECO Statement No. 2. Mr. Hughes' testimony presents the information outlined in Section 1317(a) of the Public Utility Code so that the Commission may make the findings required by Section 1318 for a determination that PECO's purchased natural gas cost rates and charges are just and reasonable. Mr. Hughes is sponsoring Exhibit SJH-1.
- **Julie S. Drezner.** Ms. Drezner is the Manager of Energy Supplier Services. Her Direct Testimony is set forth in PECO Statement No. 3. Ms. Drezner's testimony presents the information outlined in Section 1317(a) of the Public Utility Code so that the Commission may make the findings required by Section 1318 for a determination that PECO's purchased natural gas cost rates and charges are just and reasonable. Ms. Drezner is sponsoring Exhibits JSD-1 and JSD-2.

- **Anthony P. DiFelice.** Mr. DiFelice is a Senior Engineer in PECO’s Retail Rates Division. His Direct Testimony is set forth in PECO Statement No. 4 and describes the development of the purchased gas cost rates set forth in Supplement No. 7. Mr. DiFelice is sponsoring Exhibits APD-1 through APD-5, which support the proposed rates and attendant tariff changes.

PECO may present additional witnesses in rebuttal of the direct testimony of other parties. However, such witnesses cannot be identified until other parties file their testimony and the issues raised in that testimony have been evaluated. Accordingly, PECO reserves the right to supplement its witness list.

IV. DISCOVERY

PECO proposes several discovery modifications, attached as Exhibit “A” hereto, which are virtually identical to those that have been previously agreed upon by the Bureau of Investigation and Enforcement, Office of Consumer Advocate, Office of Small Business Advocate and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) (collectively, the “parties”) and approved by the Administrative Law Judge (“ALJ”) in prior PGC proceedings. Accordingly, PECO respectfully requests that ALJ Brady approve the proposed discovery modifications.

In addition, PECO has submitted to the parties for their consideration a proposed Protective Order, which is attached as Exhibit “B” hereto. Similar to the proposed discovery modifications, the proposed Protective Order is the same as that previously agreed upon by the parties and entered by the ALJ in prior PGC proceedings. Therefore, PECO respectfully requests that ALJ Brady enter the proposed Protective Order.

V. PROPOSED SCHEDULE

The parties have reviewed the schedule set forth in ALJ Brady’s June 13, 2024 Corrected Prehearing Conference Order. Due to some conflicts, PECO respectfully proposes (and all parties have agreed to) the following schedule for ALJ Brady’s review and consideration:

Prehearing Conference	June 24, 2024
Parties' Direct Testimony	July 10, 2024
PECO's Rebuttal Testimony	July 17, 2024
Parties' Surrebuttal Testimony	July 24, 2024
Hearings: (PECO will be permitted to present brief oral rejoinder)	July 29-30, 2024
Close of the record:	July 30, 2024
Main Briefs:	August 2, 2024
Reply Briefs:	August 9, 2024
Recommended Decision	September 8, 2024

The Parties have also agreed to hold the date of July 10, 2024 at 10:00 AM for a settlement conference.

PECO proposes that all dates for submission of testimony and briefs may be satisfied with an electronic (e-mail attachment or electronic file transfer) copy thereof being provided on the due date.

VI. POSSIBILITY OF SETTLEMENT

In the past several PECO PGC proceedings, the parties have settled all or virtually all issues arising out of Company's Section 1307(f) purchased gas cost filings. Therefore, PECO views settlement in this case as a distinct possibility. Once the parties have analyzed the Company's filing, PECO and the other parties will meet in person or by telephone conference to attempt to reach a mutually agreeable resolution.

VII. SERVICE LIST

PECO requests that the official service list entry for the Company be as follows:

Jack R. Garfinkle, Esq. (Pa. No. 81892)
Adesola K. Adegbesan, Esq. (Pa. No. 326242)
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Phone: (215) 841-4220
jack.garfinkle@exeloncorp.com
adesola.adegbesan@exeloncorp.com

PECO requests that all correspondence, discovery, testimony, and other materials be served electronically. PECO also requests that a copy of all correspondence, discovery, testimony, and other materials sent to the Company also be sent to:

Courtney L. Schultz, Esq. (Pa. No. 306479)
Shane P. Simon, Esq. (Pa. No. 319643)
Kruti B. Patel, Esq. (Pa. No. 329096)
Saul Ewing LLP
Centre Square West
1500 Market St., 38th Floor
Philadelphia, PA 19102
Phone: (215) 972-7717
Fax: (215) 972-1839
courtney.schultz@saul.com
shane.simon@saul.com
kruti.patel@saul.com

VIII. CONCLUSION

Based on the evidence described above, PECO submits that the rates proposed in Supplement No. 7 are just, reasonable, and lawful. Additionally, and as explained previously, PECO remains open to settling issues and concerns raised by other parties on fair and reasonable terms.

Respectfully submitted,

Shane P. Simon

Jack R. Garfinkle, Esq. (Pa. No. 81892)
Adesola K. Adegbesan, Esq. (Pa. No. 326242)
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Phone: (215) 841-4220
jack.garfinkle@exeloncorp.com
adesola.adegbesan@exeloncorp.com

Courtney L. Schultz, Esq. (Pa. No. 306479)
Shane P. Simon, Esq. (Pa. No. 319643)
Kruti B. Patel, Esq. (Pa. No. 329096)
Saul Ewing LLP
Centre Square West
1500 Market St., 38th Floor
Philadelphia, PA 19102
Phone: (215) 972-7717
Fax: (215) 972-1839
courtney.schultz@saul.com
shane.simon@saul.com
kruti.patel@saul.com

Counsel For PECO Energy Company

Dated: June 21, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	Docket No. R-2024-3048767
	:	
PECO ENERGY COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving copies of PECO’s Prehearing Memorandum, upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via E-Filing

Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265
rchiavetta@pa.gov

Via Electronic Mail

Steven C. Gray, Esquire
Senior Attorney
Assistant Small Business Advocate
Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
sgray@pa.gov

Via Electronic Mail

Hon. F. Joseph Brady
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
fbrady@pa.gov
pmcneal@pa.gov

Via Electronic Mail

Michael A. Podskoch, Esq.
Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17120
mpodskoch@pa.gov

Via Electronic Mail

Melanie J. El Atieh, Esq.
Emily A. Farren, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923
melatieh@paoca.org
efarren@paoca.org

Via Electronic Mail

Jo-Anne S. Thompson, Esq.
Adeolu A. Bakare, Esq.
Charis Mincavage, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
jthompson@mcneeslaw.com

Dated: June 21, 2024

Via Electronic Mail

Jack R. Garfinkle, Esq.
Adesola K. Adegbesan, Esq.
PECO Energy Company
2301 Market Street
23rd Floor
Philadelphia, PA 19103
Jack.Garfinkle@exeloncorp.com
Adesola.Adegbesan@exeloncorp.com

By: Shane P. Simon
Shane P. Simon, Esquire
PA Attorney No.: 319643
Counsel for PECO Energy Company

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	Docket Nos. R-2024-3048767
v.	:	C-2024-3049088
	:	
PECO ENERGY COMPANY	:	

PROPOSED DISCOVERY PROCEDURE MODIFICATIONS

1. When an interrogatory, request for production, request for admission or motion is served after 4:30 p.m. Monday through Thursday or after 1:30 p.m. on a Friday or the day before a holiday recognized by the Commission, the appropriate response period is deemed to start on the next business day.
2. The response period for replying to written interrogatories, requests for production and requests for admissions is eight (8) calendar days of receipt. Responses may be served electronically.
3. Objections to written interrogatories, requests for production and requests for admissions are to be communicated orally to the party serving the interrogatory within three (3) calendar days of receipt and in writing within five (5) calendar days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.
4. Motions to dismiss objections and to compel responses shall be filed with the Commission and served on the Administrative Law Judge and the other parties within three (3) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within three (3) calendar days after filing of the motion.
5. If the objections are not resolved, counsel will alert the presiding officer by e-mail of the need for a ruling, and a conference call will be scheduled. The presiding officer will make a ruling over the telephone and not reduce it to writing unless requested to do so.

6. Interrogatories, requests for production and requests for admissions that are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
7. Requests for admission shall be deemed admitted unless objected to within five (5) calendar days of receipt or answered within ten (10) calendar days of receipt.
8. Discovery requests, motions to compel and responses are to be served electronically.
9. Any discovery-related pleading such as objections, motions or answers served on a Friday or the day before a holiday recognized by the Commission will be deemed to have been served on the following business day for purposes of tracking due dates.
10. After rebuttal testimony is served, the foregoing deadlines should be reduced as follows:
 - A. Answers to interrogatories and responses to requests for document production, entry for inspection, or other purposes shall be served within five (5) calendar days of service of the interrogatories or requests for production.
 - B. Objections to interrogatories and/or requests for production shall be communicated orally to the propounding party within two (2) calendar days of service; unresolved objections shall be served on the propounding party in writing within three (3) calendar days of service of the interrogatories and/or requests for production.
 - C. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within two (2) calendar days of service of written objections.
 - D. Answers to motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within two (2) calendar days of service of such motions.
 - E. Requests for admission shall be deemed admitted unless answered or objected to within three (3) calendar days of service.
 - F. Discovery requests and discovery related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 1:30 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

EXHIBIT B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	Docket No. R-2024-3048767
v.	:	
	:	
PECO ENERGY COMPANY	:	

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order made by PECO Energy Company (“PECO”) and the parties participating in the June 24, 2024 Prehearing Conference in this matter:

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 Protective 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. Counsel for the Bureau of Investigation and Enforcement, Office of Consumer Advocate and Office of Small Business Advocate may share Proprietary Information with the Bureau Director, Consumer Advocate and Deputy Consumer Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of this Protective Order.

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 this 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.

14. 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 Law (65 P.S. § 67.101 *et seq.*) (“RTKL”) until such time as the information is found to be non-proprietary. As set forth at 65 P.S. § 67.708, if a Reviewing Representative receives a request for Proprietary Information covered by this Protective Order from an outside party, PECO will provide, within seven calendar days of receiving written notification from of such request, a written statement signed by PECO’s representative explaining why the requested material is exempt from public disclosure under the RTKL. The Reviewing Representative will rely upon the written statement from PECO in denying a RTKL request for the Proprietary Information. Proprietary Information provided to a Receiving Representative will be protected from disclosure as Proprietary Information under 66 Pa.C.S. § 335(d) and exempt from disclosure under the RTKL until such time as the Commission (or court of competent jurisdiction, if an appeal of a Commission

determination is taken) rules that the documents are not Proprietary Information and, therefore, are subject to public disclosure.

15. 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.

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

17. 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.

18. 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.

19. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within 30 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: June 24, 2024

/s/ _____
F. Joseph Brady
Administrative Law Judge

APPENDIX A

EXHIBIT "A"

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :
 : **Docket No. R-2024-3048767**
 v. :
 :
PECO ENERGY COMPANY :

NON-DISCLOSURE CERTIFICATE

I have read the attached Protective Order, which governs the disclosure and use of certain documents and other information produced in the above-captioned matter identified as Proprietary Information. I hereby acknowledge that I understand the terms of the Protective Order, and I agree 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: _____