



**peco**<sup>SM</sup>

AN EXELON COMPANY

Jack R. Garfinkle  
Associate General Counsel  
2301 Market Street / S23-1  
Philadelphia, PA 19103

Direct Dial: 267-533-1999  
Email: [Jack.Garfinkle@exeloncorp.com](mailto:Jack.Garfinkle@exeloncorp.com)

February 19, 2025

**VIA ELECTRONIC FILING**

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

**Re: Pennsylvania Public Utility Commission,  
Bureau of Investigation & Enforcement v. PECO Energy Company  
Docket No. C-2024-3052320**

Dear Secretary Chiavetta:

Enclosed please find the **Prehearing Conference Memorandum of PECO Energy Company (the “Prehearing Memorandum”)** for filing in the above-referenced docket.

Copies of the Prehearing Memorandum have been served in accordance with the enclosed Certificate of Service.

If you have any questions regarding this filing, please contact me directly at 267.533.1999.  
Thank you.

Very truly yours,

Jack R. Garfinkle

c: Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION, BUREAU OF</b>	:	
<b>INVESTIGATION AND</b>	:	
<b>ENFORCEMENT</b>	:	<b>DOCKET NO. C-2024-3052320</b>
<b>V.</b>	:	
<b>PECO ENERGY COMPANY</b>	:	

**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** on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL**

The Honorable John M. Coogan  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
[jcoogan@pa.gov](mailto:jcoogan@pa.gov)

Lindsay Dearing Szymanski  
Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
[liszymansk@pa.gov](mailto:liszymansk@pa.gov)

Michael L. Swindler  
Deputy Chief Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Respectfully Submitted,



---

Kenneth M. Kulak (Pa. No. 75509)  
Morgan, Lewis & Bockius, LLP  
2222 Market Street  
Philadelphia, PA 19103-3007  
215.963.5384 (bus)  
215.963.5001 (fax)  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
*Counsel for PECO Energy Company*

Dated: February 19, 2025

DB1/ 155171275.1

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION, BUREAU OF</b>	:	
<b>INVESTIGATION AND</b>	:	
<b>ENFORCEMENT</b>	:	
	:	<b>Docket No. C-2024-3052320</b>
v.	:	
	:	
<b>PECO ENERGY COMPANY</b>	:	

**PREHEARING MEMORANDUM  
OF  
PECO ENERGY COMPANY**

This memorandum is submitted in response to the Prehearing Conference Order issued by Administrative Law Judge John M. Coogan dated January 15, 2025.

**I. INTRODUCTION**

On September 23, 2023, a PECO electric line came down in Yeadon, Pennsylvania after being struck by a tree during a period of heavy wind and rain. Current from the downed wire traveled to an abandoned ductile iron water/sewer pipe and eventually burned holes in an intersecting PECO gas main, resulting in a gas leak. A gas-fed fire was reported by emergency personnel, and PECO workers were dispatched to investigate; these workers coordinated with emergency personal, who asked the PECO team to investigate gas readings in a nearby apartment complex. Homes in the area were evacuated and, subsequently, an explosion occurred inside an empty home on West Providence Road in Yeadon. Gas meters were shut off on West Providence Road as a precaution, and no injuries occurred because of this event.

The Pennsylvania Public Utility Commission (“PUC”) Bureau of Investigation and Enforcement (“I&E”) Pipeline Safety Division also responded to the Yeadon incident and initiated an investigation. PECO has cooperated with I&E throughout the course of the investigation. The Company has responded to multiple sets of data requests, providing hundreds of pages of information to support the I&E investigation.

On November 27, 2024, I&E filed a Formal Complaint concerning a single data request that would require PECO to produce the contents of PECO’s Root Cause Investigation (“RCI”) related to the Yeadon incident – a document that is protected by attorney client privilege and the work product doctrine. I&E claims that PECO has improperly withheld RCI materials and is therefore inhibiting I&E’s investigation. On December 20, 2024, PECO filed an Answer to the I&E Complaint.<sup>1</sup> The Company and I&E are engaging in ongoing settlement discussions and PECO has provided additional information to I&E for review and consideration.

## **II. ISSUES**

The issue before the Commission is whether PECO properly withheld the Company’s RCI report related to the Yeadon incident on the grounds of attorney client privilege and work product doctrine.

## **III. WITNESSES AND EVIDENCE**

PECO has not identified any witnesses at this time but will notify the ALJ and parties as soon as any witnesses are identified.

## **IV. DISCOVERY**

PECO will work with the ALJ and I&E 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 electric base rate proceeding at Docket No. R-2024-3046931. PECO has circulated the foregoing Protective Order to I&E for its consideration and I&E does not have any objections.

---

<sup>1</sup> On December 17, 2024, PECO sought a three-day extension of the response period (from December 17, 2024 to December 20, 2024). I&E did not oppose the three-day extension. By Secretarial Letter dated December 18, 2024, the PUC approved the three-day extension.

## **V. PROPOSED PROCEDURAL SCHEDULE**

PECO will cooperate with the ALJ and I&E in order to facilitate the orderly conduct and disposition of this proceeding. The Company and I&E have conferred regarding a schedule for this proceeding and propose the schedule attached as Exhibit “B” to this Memorandum for the submission of testimony, the conduct of evidentiary hearings, and briefing.

## **VI. SETTLEMENT**

PECO intends to engage in settlement discussions with I&E in this proceeding in order to facilitate an effective and timely resolution of this matter.

## **VII. SERVICE LIST**

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

Anthony E. Gay (Pa. No. 74624)  
Jack R. Garfinkle (Pa. No. 81892)  
PECO Energy Company  
2301 Market Street  
Philadelphia, PA 19103  
Phone: 267.533.1999  
[anthony.gay@exeloncorp.com](mailto:anthony.gay@exeloncorp.com)  
[jack.garfinkle@exeloncorp.com](mailto:jack.garfinkle@exeloncorp.com)

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

Kenneth M. Kulak (Pa. No. 75509)  
Catherine G. Vasudevan (Pa. No. 210254)  
Morgan, Lewis & Bockius LLP  
2222 Market Street  
Philadelphia, PA 19103-3007  
Phone: 215.963.5384  
Fax: 215.963.5001  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)

Additionally, PECO also requests that a copy of all correspondence, discovery, testimony and other materials sent to the Company be provided to Andrea Preate via electronic mail at [andrea.preate-regni@morganlewis.com](mailto:andrea.preate-regni@morganlewis.com).

The lead attorney for the Company for purposes of the Prehearing Conference will be Jack Garfinkle.

### VIII. CONCLUSION

Based on the facts referenced above, PECO denies that I&E is entitled to the relief requested and asks that its Complaint at Docket No. C-2024-3052320 be dismissed.

Respectfully submitted,



---

Anthony E. Gay (Pa. No. 74624)  
Jack R. Garfinkle (Pa. No. 81892)  
PECO Energy Company  
2301 Market Street  
Philadelphia, PA 19103  
Phone: 267.533.1999  
[anthony.gay@exeloncorp.com](mailto:anthony.gay@exeloncorp.com)  
[jack.garfinkle@exeloncorp.com](mailto:jack.garfinkle@exeloncorp.com)

Kenneth M. Kulak (Pa. No. 75509)  
Catherine G. Vasudevan (Pa. No. 210254)  
Morgan, Lewis & Bockius LLP  
2222 Market Street  
Philadelphia, PA 19103-3007  
Phone: 215.963.5384  
Fax: 215.963.5001  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)

Dated: February 19, 2025

*Counsel for PECO Energy Company*

# **EXHIBIT A**

## **Proposed Protective Order**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION, BUREAU OF</b>	:	
<b>INVESTIGATION AND</b>	:	
<b>ENFORCEMENT</b>	:	
	:	
v.	:	<b>Docket No. C-2024-3052320</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

**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 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: \_\_\_\_\_, 2025

\_\_\_\_\_  
John M. Coogan  
Administrative Law Judge

**APPENDIX A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION, BUREAU OF</b>	:	
<b>INVESTIGATION AND</b>	:	
<b>ENFORCEMENT</b>	:	
	:	
v.	:	<b>Docket No. C-2024-3052320</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

**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

\_\_\_\_\_  
EMAIL

\_\_\_\_\_  
EMPLOYER

DATE: \_\_\_\_\_

# **EXHIBIT B**

## **Proposed Case Schedule**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT</b>	:	
	:	
	:	
	:	<b>Docket No. C-2024-3052320</b>
	:	
v.	:	
	:	
<b>PECO ENERGY COMPANY</b>	:	

**PROPOSED SCHEDULE**

Prehearing Conference	February 21, 2025
Direct Testimony	May 23, 2025
Rebuttal Testimony	June 20, 2025
Witness Schedule	Three business days before hearings
Hearings	Week of August 4, 2025
Main Briefs	To be determined at the Prehearing Conference
Reply Briefs	To be determined at the Prehearing Conference