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March 7, 2024

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, 2025 through May 31, 2029
Docket No. P-2024-3046008**

Dear Secretary Chiavetta:

Enclosed please find the **Prehearing Conference Memorandum of PECO Energy Company**, in the above-captioned matter. As indicated on the enclosed Certificate of Service, copies have been served upon The Honorable Arlene Ashton, The Honorable Evanda Vero, and all parties of record.

If you have any questions regarding this filing, 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-2024-3046008**
THE PERIOD FROM JUNE 1, 2025 :
THROUGH MAY 31, 2029 :

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 matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

BY EMAIL

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Dated: March 7, 2024

Counsel for PECO Energy Company

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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-2024-3046008**
THE PERIOD FROM JUNE 1, 2025 :
THROUGH MAY 31, 2029 :

**PREHEARING CONFERENCE MEMORANDUM OF
PECO ENERGY COMPANY**

**TO ADMINISTRATIVE LAW JUDGES ERANDA VERO AND ARLENE
ASHTON:**

Pursuant to the March 4, 2024 Prehearing Order issued by Administrative Law Judges Eranda Vero and Arlene Ashton (the “ALJs”) and the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.222(d), PECO Energy Company (“PECO” or the “Company”) hereby submits its Prehearing Conference Memorandum in the above-captioned proceeding.

I. PROCEDURAL HISTORY

On February 2, 2024, PECO filed the above-captioned petition (the “Petition”) requesting that the Commission approve its sixth Default Service Program (“DSP VI”) in accordance with its responsibilities as the default service provider for its certificated service territory for the period from June 1, 2025 through May 31, 2029, following the expiration of its current default service program (“DSP V”).¹ PECO requests that the Commission: (1) approve DSP VI,

¹ See *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”).

including its procurement plan, implementation plan, contingency plan, and associated procurement documents and agreements for default service supply for all PECO customers who do not take generation service from an alternative electric generation supplier (“EGS”) or who contract for energy with an EGS which is not delivered; (2) approve the Company’s proposal to solicit additional ten-year contracts for solar alternative energy credits (“AECs”) to satisfy the requirements of Pennsylvania’s Electricity Generation Customer Choice and Competition Act (the “Competition Act”),² as amended by Act 129 of 2008 (“Act 129”), and Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1643.1 *et seq.* (“AEPS” or “AEPS Act”); (3) approve NERA Economic Consulting, Inc. (“NERA”) to continue as the independent third-party evaluator for PECO’s default supply procurements; (4) approve PECO’s proposed default service rate design, including continuation of PECO’s time-of-use (“TOU”) rate options, and affirm PECO’s right to recover all of its default service costs in accordance with 66 Pa.C.S. § 2807(e)(3.9); (5) grant a waiver of the rate design provisions of 52 Pa. Code § 54.187, to the extent necessary; (6) find that DSP VI includes prudent steps necessary to negotiate favorable generation supply contracts; (7) find that DSP VI includes prudent steps necessary to obtain least-cost generation supply on a long-term, short-term and spot market basis; (8) find that PECO has not withheld from the market any generation supply in a manner that violates federal law; (9) approve continuation of PECO’s existing EGS Standard Offer Program (“Standard Offer Program” or “SOP”), including the associated cost recovery mechanism approved in PECO’s prior default service proceedings; and (10) approve PECO’s proposed bill format changes to enhance the transparency of shopping information for the Company’s residential customers.

This is PECO’s sixth proposed program for default service under the Competition Act.

² 66 Pa.C.S. §§ 2801-2812.

Under DSP V, PECO continued to meet its default service obligations while continuing certain retail market enhancements. In accordance with the Competition Act, the Commission’s Default Service Regulations, and the Default Service Policy Statement, DSP VI is designed to enable PECO to obtain a “prudent mix” of procurement contracts and thereby ensure that default service customers have access to an adequate and reliable supply of generation at least cost over time.

The Petition was served on the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Commission’s Bureau of Investigation & Enforcement (“I&E”), PJM Interconnection, L.L.C. (“PJM”), the Retail Energy Supply Association (“RESA”), and all EGSs registered in PECO’s certificated service area. PECO also served the Petition on all intervenors in its DSP V proceeding, specifically, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Calpine Retail Holdings, LLC (“Calpine”), the Electric Supplier Coalition,³ Clean Air Council, Sierra Club/PA Chapter and Philadelphia Solar Energy Association, the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc., and Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia. In addition, notice of the Companies’ filing was published in the *Pennsylvania Bulletin* on February 17, 2024.

As of this date, Answers to PECO’s Petition have been submitted by the OCA and OSBA on March 1, 2024 and March 4, 2024, respectively. In addition, the following parties filed Petitions to Intervene:

³ The Electric Supplier Coalition’s members are NRG Energy, Inc., Direct Energy Services LLC, Interstate Gas Supply Inc., d/b/a IGS Energy, Vistra Energy Corp., Shipley Choice LLC, ENGIE Resources LLC and WGL Energy Services, Inc.

<u>Party</u>	<u>Date</u>
CAUSE-PA and TURN	March 4, 2024
Calpine	March 1, 2024
Constellation NewEnergy, Inc. and Constellation Energy Generation, LLC	March 6, 2024
Energy Justice Advocates ⁴	March 4, 2024
NRG Energy Inc.	March 4, 2024
PAIEUG	February 21, 2024
RESA	March 4, 2024

II. STATEMENT OF ISSUES

The issue before the Commission is whether DSP VI is in the public interest and is consistent with the Competition Act, as amended by Act 129, the Commission’s default service regulations at 52 Pa. Code §§ 54.181-54.189 (“Default Service Regulations”), the Commission’s Policy Statement on Default Service at 52 Pa. Code §§ 69.1801-1817 (“Policy Statement”), and the Commission’s Orders in its *Investigation of Pennsylvania’s Retail Electricity Market* at Docket I-2011-2237952.⁵

PECO is proposing four principal changes to its default service program and the products previously approved by the Commission in DSP V. First, PECO is proposing to double the

⁴ The Energy Justice Advocates consist of POWER Interfaith, Vote Solar, Clean Air Council, Sierra Club, Physicians for Social Responsibility Pennsylvania and Penn Environment.

⁵ *See Implementation of Act 129 of October 15, 2008: Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011); *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580 (Final Policy Statement entered on September 22, 2011); *Investigation of Pennsylvania’s Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012); *Investigation of Pennsylvania’s Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered February 15, 2013) (“*End State Order*”).

amount of solar AECs procured through long-term (10-year) purchase agreements during the DSP VI term. Second, PECO is proposing to incorporate a Capacity Proxy Price (“CPP”) mechanism into the Company’s Supplier Master Agreement (“SMA”). The CPP will be used for default service solicitations in DSP VI to establish a capacity cost when PJM does not conduct its Base Residual Auction (“BRA”) for capacity in time for default service suppliers to incorporate the auction results into their bids. Third, PECO is proposing to implement a reserve price for the fixed-price full requirements (“FPFR”) contracts procured by PECO to help protect customers from paying high prices for FPFR products that could be considered outside of a reasonable market range. Finally, PECO proposes to increase the limit on the amount of default supply that a bidder can offer and win for the Large C&I procurement class. The principal components of DSP VI are described below.

A. Default Service Procurement Class and Supply Portfolio Design

Under DSP V, PECO conducts competitive procurements of wholesale power and associated services for three different default service customer classes: (i) Residential customers, (ii) Small Commercial customers with up to and including 100 kW of annual peak demand and lighting customers; and (iii) Consolidated Large C&I customers whose annual peak demand is greater than 100 kW. For DSP VI, PECO is proposing to maintain the same procurement groups, and thereby continue to reflect the nature of the load requirements of each customer class and other factors, including the evolution of competitive markets and rate stability. As in its prior default service programs, PECO is requesting a waiver, to the extent necessary, from the Commission’s regulations (52 Pa. Code § 54.187(g)) to use the proposed procurement classes.

As described in detail in the Petition, PECO is proposing to maintain the basic

procurement strategy established in prior default service programs, which utilizes short time periods between the solicitation and delivery of supply products, as well as fixed-price full requirements, load-following products, with the one change to further ensure that customers are provided with generation supply at the least cost as required by the Competition Act. Specifically, PECO is proposing to incorporate a reserve price for each of the 12-month and 24-month FPFPR products for the Residential class.

The following table summarizes the proposed procurement plan for each customer class:

Residential	Small Commercial	Consolidated Large C&I
<ul style="list-style-type: none"> • Approximately 99% of the load is supplied by a mix of products in the following proportions: <ul style="list-style-type: none"> ○ Approximately 38% 1-year fixed-price full requirements (“FPFR”) products with delivery periods that overlap on a semi-annual basis ○ Approximately 61% 2-year FPFPR products with delivery periods that overlap on a semi-annual basis • The other approximately 1% of the load will be supplied by spot purchases • All products are procured approximately two months before delivery of the product begins 	<ul style="list-style-type: none"> • 50% 1-year FPFPR products • 50% 2-year FPFPR products • Delivery periods overlap on a semi-annual basis • All products are procured approximately two months before delivery of the product begins 	<ul style="list-style-type: none"> • 100% spot-priced full requirements products, with 1-year delivery periods • All products are procured approximately two months before delivery of the product begins

During PECO’s first two default service programs, load serving entities (“LSEs”), including EGSs, were responsible for transmission costs charged by PJM, including Generation Deactivation/Reliability Must Run (“RMR”) charges, Expansion Cost Recovery charges and Transmission Enhancement (a/k/a Regional Transmission Expansion Plan “RTEP”) charges. In PECO’s DSP III proceeding, the Commission concluded that certain PJM transmission-related

charges should be recovered from customers on a non-bypassable basis.⁶ Consistent with that finding, on June 1, 2015, PECO implemented a Non-Bypassable Transmission Charge to recover the following PJM charges from all distribution customers in PECO's service territory:

Generation Deactivation/RMR charges (PJM bill line 1930) set after December 4, 2014; RTEP charges (PJM bill line 1108); and Expansion Cost Recovery charges (PJM bill line 1730).

During DSP VI, PECO will continue to be responsible for and will recover Network Integration Transmission Service and Non-Firm Point-to-Point Transmission costs through its unbundled, bypassable Transmission Service Charge ("TSC").

B. Competitive Bid Solicitation Process and Contingency Plans

PECO proposes to procure its full-requirements default service products through a fair, non-discriminatory, and competitive request for proposals ("RFP") process conducted by an independent third-party evaluator. PECO also proposes that NERA serve as the independent third-party evaluator for PECO's default supply solicitations, as it has done in the Company's prior default service programs. Finally, PECO proposes contingency plans to cover supply deficiencies resulting from either a supplier default or the receipt of insufficient bids to fill its competitive solicitations.

C. Supplier Master Agreement

Each seller of full requirements default service supply will deliver a percentage of PECO's default service load pursuant to the terms of the SMA. As envisioned by the Commission in the *End State Order*, PECO is proposing to continue to use the uniform SMA developed through the Office of Competitive Market Oversight ("OCMO") SMA stakeholder

⁶ See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Order entered Dec. 4, 2014), p. 46.

process, which has functioned well during DSP V, with modifications to reflect changes PECO is proposing related to the CPP and true-up mechanism.⁷

D. Alternative Energy Portfolio Standards Act Requirements

PECO proposes to continue to satisfy most of its requirements under the AEPS Act, as amended by Act 40 of 2017 (“Act 40”), by requiring each full-requirements default service supplier to transfer Tier I and Tier II alternative energy credits (“AECs”) to PECO corresponding to PECO’s AEPS obligations associated with the amount of default service load served by that supplier. PECO proposes to continue to allocate AECs obtained through separate AEPS procurements approved by the Commission towards suppliers’ AEPS obligations under the SMA in accordance with the percentage of load served by each supplier.

In the DSP V proceeding, the Commission authorized PECO to satisfy approximately 22.6% of its solar AEPS requirements associated with the load of PECO customers receiving default service during the DSP V term through two-stage solicitations in 2021 and 2022 for delivery of a total of 16,000 solar AECs annually (i.e., 4,000 solar AECs in each of the four solicitations). PECO subsequently conducted successful RFPs and, upon approval of the Commission, entered into contracts for the annual delivery of 16,000 solar AECs over a ten-year period, with 8,000 of each year’s solar AECs from solar generating facilities located within PECO’s service area. In light of PECO’s prior successful solar AEC RFPs in 2021 and 2022, PECO is proposing to procure an additional 16,000 solar AECs in the first two years of the DSP

⁷ On December 22, 2023, PECO filed a petition for Commission approval to add a new Appendix I to the SMA approved in the DSP V Order that 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. The Commission approved PECO’s petition to modify its DSP V SMA to add Appendix I on February 1, 2024. *See Petition of PECO Energy Co. for Approval to Modify its Default Serv. Supplier Master Agreement*, Docket No. P-2020-3045119 (Order entered Feb. 1, 2024), p. 3.

VI term using the same RFP process approved by the Commission for DSP V, with one change to lower the minimum bid amount to 50 solar AECs per year with a corresponding reduction in the bid deposit amount (from \$10,000 to \$2,500). This additional procurement would double the total annual number of solar AECs obtained under long-term agreements (from 16,000 solar AECs to 32,000 solar AECs), with the total annual solar AEC amount satisfying approximately 45% of PECO's solar AEPS requirements under DSP VI.

PECO's Commission-approved solar RFP process is designed to obtain competitive, fixed-price supply contracts at least cost and will continue to utilize form Solar AEC Purchase and Sale Agreements (tailored either for a project or an aggregator). The first stage of each annual RFP will consist of a competitive procurement where winning bidders will be determined by the lowest solar AEC prices offered. The second stage will be a Standard Offer to Purchase ("SOTP") solar AECs at the quantity-weighted average of the winning competitive prices determined by the first stage RFP, with the requirement that the solar AECs from stage two bidders come from solar generation resources located in the PECO service area. PECO also proposes a contingency plan if PECO's proposed 2025 procurement for Solar AECs is unsuccessful or if there is insufficient participant interest.

E. Rate Design And Tariff Changes

PECO proposes to recover default service costs through its existing Generation Supply Adjustment ("GSA") and TSC mechanisms. In DSP VI, PECO proposes to maintain the same rate design approved by the Commission in DSP V, including the current TOU rate options for the Residential and Small Commercial Classes.

The Company's TOU rate structure offers a higher rate during non-holiday weekday afternoons from 2 p.m. to 6 p.m. relative to PECO's non-time varying GSA default service rate

and a reduced rate during two off-peak periods. The current TOU rates include a super off-peak pricing period to encourage electric vehicle (“EV”) charging during overnight low-priced hours (12 a.m. to 6 a.m.). The off-peak period consists of all other hours. PECO is proposing to maintain the same time-differentiated pricing usage periods from DSP V that reasonably encompass the Company’s expected system peak usage times and account for the need for simplicity to encourage customer enrollment.

PECO proposes to continue sourcing both the standard and TOU default service for residential and small commercial customers from the same supply portfolio for each of those procurement classes. TOU customer kWh sales and costs will be included in the semi-annual reconciliation of GSA costs and revenues for the entire procurement class (i.e., Residential or Small Commercial). This approach will help mitigate potential large swings in GSA over/undercollections that could arise if customers switch between PECO’s standard default service rate and TOU default service rate.

F. Retail Market Enhancements

During DSP II, DSP III, DSP IV, and DSP V, PECO implemented a variety of programs to support EGSs and expand retail choice. These programs include PECO’s EGS purchase of receivables (“POR”) program, the Company’s Standard Offer Program, enhanced customer account number access for EGSs, and accelerated (three-day) switching.

Standard Offer Program. PECO proposes to continue offering the Standard Offer Program from June 1, 2025 to May 31, 2029. Consistent with PECO’s existing tariff, the Company further proposes to continue to recover Standard Offer Program costs through an EGS participant fee of \$30 per enrolled customer, with any remaining costs recovered in the following manner: (1) fifty percent from EGSs through a POR discount; and (2) fifty percent from

residential and small commercial default service customers through the GSA.

Residential Bill Improvements. PECO’s PTC in cents per kWh for the applicable billing period that customers may use to evaluate competitive generation service offerings by EGSs is currently printed in the Message Center on the residential customer bill. However, under its “bill-ready” billing platform, PECO does not receive sufficient information from EGSs that would allow PECO to automatically print EGS pricing in cents per kWh on the customer’s bill. In accordance with the DSP V Order, the Company convened a stakeholder process to discuss residential customer bill improvements that are compatible with PECO’s “bill ready” billing platform. Based on discussions with participants in that stakeholder process, PECO is proposing to add a chart to the first page of the residential customer bill that compares the customer’s total supplier charges for the billing period and what the dollar amount of the charges would be under PECO’s applicable PTC based on the customer’s usage during the billing period.

III. WITNESSES

As previously explained, on February 2, 2024, PECO submitted its Petition along with the direct testimony and accompanying exhibits of the following witnesses:

- **Sulma Dalessio** – Ms. Dalessio is PECO’s Director of Energy Acquisition. She provides an overview of PECO’s DSP VI, including PECO’s proposed litigation schedule for these proceedings and customer notice, describes PECO’s proposed default service procurement, implementation, and contingency plans for DSP VI, discusses continuation of PECO’s Standard Offer Program, and describes residential customer bill improvements.
- **Megan A. McDevitt** – Ms. McDevitt is Senior Manager, Retail Rates for PECO. Ms. McDevitt describes PECO’s existing Generation Supply Adjustment

(“GSA”) and Transmission Service Charge (“TSC”), TOU default service rate options, and DSP VI cost recovery.

- **Scott. G. Fisher** – Mr. Fisher is a Partner at the NorthBridge Group, an economic and strategic consulting firm. Mr. Fisher provides an expert evaluation of PECO’s proposed procurement plan, as well as a review of “lessons learned” under the Company’s prior default service programs, which includes a quantitative analysis of the prices obtained in PECO’s previous default service supply solicitations.
- **Katie Orlandi** - Ms. Orlandi is a Managing Director with NERA. Ms. Orlandi describes the procedures for PECO’s procurement of default service supply, including changes proposed in DSP VI, as well as the role and responsibilities of NERA as the proposed independent evaluator.

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.

IV. DISCOVERY

PECO will work with the other parties and the ALJs to develop a reasonable schedule for ongoing discovery. In addition, PECO proposes that the ALJs approve the Protective Order attached hereto as Appendix “A,” which is similar to the Protective Order entered in PECO’s DSP V Proceeding. PECO also proposes modifications to the Commission’s discovery regulations, as shown in Appendix “B.” The proposed discovery modifications are substantially similar to modifications approved in PECO’s DSP V proceeding. PECO circulated the foregoing Protective Order and discovery modifications with the parties and has received no objections.

V. SERVICE LIST

Pursuant to 52 Pa. Code § 1.55, PECO hereby designates the following individual for the service list in this proceeding:

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Parties are requested to also serve documents on the following attorneys as a courtesy:

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VI. PROPOSED SCHEDULE

PECO will cooperate with the ALJs and other parties in order to facilitate the orderly conduct and disposition of this proceeding. To that end, the Company proposed a schedule in its Petition, for this proceeding, but has revised that schedule in light of subsequent discussions with the parties. After consultation with the parties, PECO offers the following revised schedule:

April 25, 2024	Other Parties' Direct Testimony Due
May 15, 2024	Rebuttal Testimony Due

May 29, 2024	Surrebuttal Testimony Due
June 4-5, 2024	Oral Rejoinder and Hearings
June 21, 2024	Initial Briefs
July 9, 2024	Reply Briefs
August 16, 2024	Recommended Decision
October 10, 2024	Commission Order

All proposed dates for submission of testimony and briefs are for “in-hand” delivery, which may be satisfied by an e-mail of the relevant documents.

VI. POSSIBILITY OF SETTLEMENT

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

VII. CONCLUSION

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

Respectfully submitted,



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Dated: March 7, 2024

For PECO Energy Company

APPENDIX A

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY	:	
COMPANY FOR APPROVAL OF ITS	:	Docket No. P-2024-3046008
DEFAULT SERVICE PROGRAM FOR	:	
THE PERIOD FROM JUNE 1, 2025	:	
THROUGH MAY 31, 2029	:	

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. 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. 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.

Information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be made available to OCA counsel, the OCA’s consultants, experts, agents or representatives as set forth above describing the Non-Disclosure Certificate process. In addition to the Consumer Advocate and Deputy Consumer Advocate, OCA employees who do not have responsibility for developing or presenting the OCA’s positions in the case, e.g., clerical staff, do not have to execute the Non-Disclosure Certificate. Notwithstanding the foregoing, counsel for the OCA may afford access to Proprietary Information to the Consumer Advocate and Deputy Consumer Advocate, without the need for the Consumer Advocate’s or Deputy Consumer Advocate’s execution of the Non-Disclosure Certificate. The Consumer Advocate and Deputy Consumer Advocate are bound by all of the provisions of the Stipulated Protective Agreement by virtue of the OCA counsel’s execution of Appendix A. The Company or other Party producing Proprietary Information shall be notified promptly of the identity of all persons provided access to Proprietary Information pursuant to this paragraph.

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.

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: _____, 2024

Eranda Vero
Administrative Law Judge

Arlene Ashton
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS : **Docket No. P-2024-3046008**
DEFAULT SERVICE PROGRAM FOR :
THE PERIOD FROM JUNE 1, 2025 :
THROUGH MAY 31, 2029 :

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

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

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

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

EMAIL

DATE:

APPENDIX B

PROPOSED DISCOVERY PROCEDURE MODIFICATIONS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : **DOCKET NO. P-2024-3046008**
THE PERIOD FROM JUNE 1, 2025 :
THROUGH MAY 31, 2029 :

PECO PROPOSED DISCOVERY PROCEDURE MODIFICATIONS

1. Answers to written interrogatories are to be served in-hand within ten (10) calendar days of service of the interrogatories.
2. Objections to interrogatories are to be communicated orally within three (3) days of service; unresolved objections are to be served on the Administrative Law Judge in writing within five (5) calendar days after oral objections to interrogatories are due.
3. Motions to dismiss objections and/or direct the answering of interrogatories are to be filed within three (3) calendar days of service of written objections.
4. Answers to motions to dismiss objections and/or directing the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.
5. Responses to requests for documents production, entry for inspection, or other purposes are to be served in-hand within ten (10) calendar days of service.
6. Requests for admission are deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.
7. Discovery requests served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

8. 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.
9. Pursuant to 52 Pa. Code §5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the Administrative Law Judge, although a certificate of service may be filed with the Commission's Secretary.
10. Discovery requests, motions to compel and responses are to be served electronically and will only be served on paper upon request.

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