

Morgan Lewis

Kenneth M. Kulak

Partner

+1.215.963.5384

ken.kulak@morganlewis.com

March 8, 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 **PECO Energy Company's Proposed Protective Order (Corrected)**, 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.)

Morgan, Lewis & Bockius LLP

2222 Market Street
Philadelphia, PA 19103-3007
United States

T +1.215.963.5000
F +1.215.963.5001

**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 **PECO Energy Company's Proposed Protective Order (Corrected)**, on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

The Honorable Arlene Ashton
Philadelphia Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
aashton@pa.gov

The Honorable Eranda Vero
Philadelphia Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
evero@pa.gov

Barrett C. Sheridan
Andrew J. Zerby
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Philadelphia, PA 17101-1923
OCA2024PECODSP@paoca.org
Counsel for Office of Consumer Advocate (OCA)

Steven C. Gray
Rebecca Lyttle
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
sgray@pa.gov
relyttle@pa.gov
Counsel for Office of Small Business Advocate (OSBA)

Charis Mincavage
Adeolu A. Bakare
McNees, Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
Counsel for Philadelphia Area Industrial Energy Users Group

John F. Lushis, Jr.
Norris McLaughlin, P.A.
515 W. Hamilton Street, Suite 502
Allentown, PA 18101
jlushis@norris-law.com
Counsel for Calpine Retail Holdings, LLC

Lauren M. Burge
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com
*Counsel for Retail Energy Supply
Association and NRG Energy, Inc.*

Deanne M. O'Dell
Karen O. Moury
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
kmoury@eckertseamans.com
*Counsel for Retail Energy Supply
Association and NRG Energy, Inc.*

Daniela Rakhlina-Powsner
Robert W. Ballenger
Joline R. Price
Vikram A. Patel
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
drakhlinapowsner@clsphila.org
rballenger@clsphila.org
jprice@clsphila.org
vpatel@clsphila.org
*Counsel for Tenant Union Representative
Network (TURN) and Coalition for
Affordable Utility Services and Energy
Efficiency in Pennsylvania (CAUSE-PA)*

Devin McDougall
Clean Energy Program
Earthjustice
1617 John F. Kennedy Boulevard, Suite
2020
Philadelphia, PA 19103
dmcdougall@earthjustice.org
Counsel for Earth Justice Advocates

Elizabeth J. Sher
Day Pitney LLP
One Jefferson Road
Parsippany, NJ 07054-2891
esher@daypitney.com
*Counsel for Constellation NewEnergy, Inc. and
Constellation Energy Generation, LLC*

CONSULTANTS

Serhan Ogur
Exeter Associates, Inc.
10480 Little Patuxent Parkway, Suite 300
Columbia, MD 21044
OCA2024PECODSP@paoca.org
Consultant for OCA

Barbara R Alexander
Barbara Alexander Consulting, LLC
44 Beech Street
Hallowell, ME 04347
OCA2024PECODSP@paoca.org
Consultant for OCA

Mr. Mark D. Ewen
Industrial Economics, Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
mewen@indecon.com
Consultant for OSBA

Elizabeth Marx
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
emarx@pautilitylawproject.org
Consultant for TURN and CAUSE-PA



Kenneth M. Kulak (Pa. No. 75509)
Brooke E. McGlinn (Pa. No. 204918)
Maggie E. Curran (Pa. No. 330545)
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-3007
215.963.5384 (bus)
215.963.5001 (fax)
ken.kulak@morganlewis.com
brooke.mcglinn@morganlewis.com
maggie.curran@morganlewis.com

Dated: March 8, 2024

Counsel for PECO Energy Company

**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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. (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.

14. 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.

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 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.

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 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:
