

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Anthony C. DeCusatis
Of Counsel
215.963.5034
adecusatis@MorganLewis.com

September 7, 2012

RECEIVED

SEP - 7 2012

VIA OVERNIGHT MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
400 North Street
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

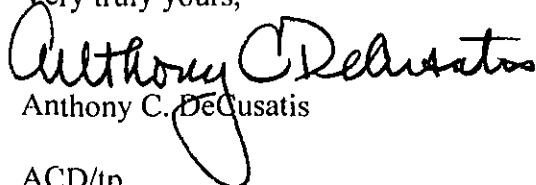
**Re: Petition of PECO Energy Company for an Evidentiary Hearing
 on the Energy Efficiency Benchmarks Established for the Period
 June 1, 2013 through May 31, 2016
 Docket No. P-2012-2320334**

Dear Secretary Chiavetta:

Enclosed please find an original and three copies of **PECO's Prehearing Conference Memorandum** in the above-referenced matter. Copies have been served on Administrative Law Judge Elizabeth H. Barnes and the intervenors of record in accordance with the attached Certificate of Service.

Kindly time-stamp and return the extra copy of this cover letter in the enclosed postage-paid envelope. Should you have any questions, please do not hesitate to contact me.

Very truly yours,


Anthony C. DeCusatis

ACD/tp
Enclosures

cc: David B. MacGregor
 Andrew S. Tubbs
 Kathy J. Kolich
 Per Certificate of Service

Almaty Beijing Boston Brussels Chicago Dallas Frankfurt Harrisburg Houston Irvine London Los Angeles Miami
Moscow New York Palo Alto Paris Philadelphia Pittsburgh Princeton San Francisco Tokyo Washington Wilmington

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY FOR AN :
EVIDENTIARY HEARING ON THE :
ENERGY EFFICIENCY BENCHMARKS : DOCKET NO. P-2012-2320334
ESTABLISHED FOR THE PERIOD :
JUNE 1, 2013 THROUGH MAY 31, 2016 :**

**PREHEARING CONFERENCE MEMORANDUM OF
PECO ENERGY COMPANY**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

Pursuant to the August 29, 2012 Prehearing Order issued by Administrative Law Judge Elizabeth H. Barnes (the "ALJ") 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 August 3, 2012, the Commission entered its Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887 ("*Implementation Order*").¹ In that Order, the Commission addressed the second phase ("Phase II") of energy efficiency and conservation ("EE&C") plans it would direct Pennsylvania electric distribution companies ("EDCs") to file under 66 Pa.C.S. § 2806.1, which was added to the Pennsylvania Public Utility Code by Act 129 of 2008 ("Act 129"). The Commission explained the purpose of the *Implementation Order* as

¹ *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411 and M-2008-2069887 (Order entered Aug. 3, 2012).

follows:

With this Implementation Order, the Commission adopts additional incremental reductions in consumption, and we establish the standards each [EDC] must meet and provide guidance on the procedures to be followed for submittal, review and approval of all aspects of EE&C plans for Phase II of the Program.

Id. at 5.

In the *Implementation Order*, the Commission “tentatively” adopted EDC-specific consumption reduction targets that must be achieved during Phase II (i.e., the period from June 1, 2013 to May 31, 2016). *Id.* at 30. In so doing, the Commission acknowledged that PECO had “raised a due process concern regarding the facts the Commission must rely upon to set individual EDC consumption reduction targets.” *Id.* As a consequence, the *Implementation Order* provided that the consumption reduction targets “will become final for any EDC that does not petition the Commission for an evidentiary hearing by August 20, 2012.” *Id.* at 31. The *Implementation Order* further provided that, upon receipt of a timely petition for evidentiary hearing, the matter would be assigned to the Office of Administrative Law Judge for expedited hearings and that the record would have to be certified to the Commission no later than November 2, 2012. *Id.* at 31 and 120. The Commission permitted interested parties to file petitions to intervene in EDC-initiated evidentiary hearings no later than August 30, 2012. *Id.*

On August 20, 2012, PECO filed the above-captioned petition (the “Petition”). The Petition requests an evidentiary hearing to address, generally, the factual issues surrounding the Commission’s selection of PECO’s tentative consumption reduction target, and specifically requests that the Commission recalculate PECO’s consumption reduction benchmarks by (1) allocating an appropriate level of funding to demand reduction (“DR”) programs; and (2) using a 2011 revenue baseline, excluding its EE&C surcharge and revenues it collects on behalf of

electric generation suppliers (“EGSs”) under “consolidated billing” (collectively, “EGS and EE&C billings”), to determine a spending “cap” under Section 2806.1(g) that is more representative of revenue levels to be experienced during Phase II than the 2006 data the Commission employed.

PECO served copies of its Petition on all parties who filed comments at Docket No. M-2012-2289411. On August 30, 2012, the Commission’s Law Bureau, through its counsel, Shaun A. Sparks and Krystle J. Sacavage, filed a notice of appearance on behalf of the Statewide Evaluator. As of September 7, 2012, PECO has been served with Notices of Intervention or Petitions to Intervene filed by the following parties:

Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”)

Citizen’s For Pennsylvania’s Future (“Penn Future”)

Clean Air Council and Sierra Club

Comverge, Inc.

Duquesne Light Company

Office of Consumer Advocate (“OCA”)

Philadelphia Area Industrial Energy Users Group (“PAIEUG”)

Community Action Association of Pennsylvania (“CAAP”)

On August 29, 2012, the ALJ issued a Prehearing Conference Order that scheduled a Prehearing Conference in this matter for September 10, 2012. In addition, the Prehearing Conference Order directed the parties to file Prehearing Conference Memoranda on or before September 7, 2012. This Prehearing Conference Memorandum is being submitted by PECO in compliance with the ALJ’s directive.

II. STATEMENT OF ISSUES

As set forth in detail in Section II of PECO's Petition, the primary issue before the Commission is the appropriate level of PECO's Company-specific Phase II energy consumption reduction benchmark for the period June 1, 2013 to May 31, 2016. In addition to addressing, generally, the issues surrounding the Commission's tentative adoption of a PECO-specific consumption reduction benchmark, PECO is proposing adjustments to that benchmark: (1) to reflect the allocation of an appropriate level of funding to DR with an attendant reduction in the amount that may permissibly be expended on consumption reduction; and (2) the use of a 2011 revenue baseline, exclusive of EGS and EE&C billings, to calculate the total amount of PECO's allowable spending over the three-year term of Phase II. These adjustments are addressed further in PECO's direct testimony and accompanying exhibits that were served on the ALJ and the parties on September 5, 2012, as explained below.

III. WITNESSES

On September 5, 2012, PECO submitted the direct testimony of Frank J. Jiruska (PECO Statement No. 1) and accompanying exhibits (PECO Exhibits FJJ-1 through FJJ-8). Mr. Jiruska is Director of PECO's Energy and Marketing Services department and, as such, is responsible for, among other things, PECO's energy efficiency, conservation and demand-side response programs. *See* PECO St. 1, p. 2. In his direct testimony, Mr. Jiruska explains that PECO's existing residential and small commercial direct load control ("DLC") programs are cost-effective and, therefore, satisfy the criterion the Commission established in the *Implementation Order* (p. 42) for EDCs to maintain DR measures on an interim basis during Phase II as part of their Act 129 demand response programs. Mr. Jiruska also explains that Phase II funding for DR measures in addition to DLC must be maintained for PECO to have a reasonable opportunity to achieve a meaningful reduction in peak demand by the statutory deadline of May 31, 2017 if the

Commission, hereafter, determines that an additional incremental peak DR target should be imposed under Section 2806.1(d). Mr. Jiruska quantifies the funding necessary for PECO to continue its DLC measures and to maintain additional DR measures that must be in place to achieve targeted peak demand reductions by the May 31, 2017 deadline imposed by Act 129, if peak demand reduction benchmarks are hereafter established. Finally, Mr. Jiruska explains that the Commission should calculate PECO's spending cap on the basis of PECO's 2011 annual revenue, exclusive of EGS and EE&C billings, because that figure is more representative of current and reasonably projected revenue levels for the Phase II period than the 2006 data that the Commission employed in the *Implementation Order*.

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.

On August 30, 2012, the Commission entered a final order granting Petitions for Reconsideration filed by PPL Electric Utilities Corporation ("PPL"), Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") pending further consideration on the merits. Additionally, on September 4, 2012, the Commission entered a final Order granting PECO's Petition for Reconsideration of the *Implementation Order* pending further consideration on the merits. The petitioning parties, particularly PECO, raised a number of issues for the Commission's reconsideration beyond those to be addressed in PECO's evidentiary hearing. It is possible that the Commission may enter orders adjudicating the merits of the respective Petitions for Reconsideration during the pendency of this proceeding. If so, it is

also possible that the Commission's orders on reconsideration will require PECO to supplement its evidentiary presentation in ways that cannot reasonably be predicted at this time, and, therefore, PECO reserves the right to do so.

IV. DISCOVERY

PECO proposes modifications to the Commission's discovery regulations, attached as Exhibit "A" hereto, and a Protective Order, attached as Exhibit "B" hereto. The discovery modifications and Protective Order are similar to those previously approved in PECO's recent default service proceeding.² PECO respectfully requests that the ALJ approve the discovery modifications and enter the proposed Protective Order for use in this proceeding.

V. SERVICE LIST

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

Anthony E. Gay (Pa. No. 74624)
Jack R. Garfinkle (Pa. No. 81892)
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215-841-4635
Fax: 215-568-3389
anthony.gay@exeloncorp.com
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:

² See Docket No. P-2012-2283641.

Anthony C. DeCusatis (Pa. No. 25700)
Brooke E. Leach (Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5034
Fax: 215.963.5001
adecusatis@morganlewis.com
bleach@morganlewis.com

VI. PROPOSED SCHEDULE

PECO will cooperate with the ALJ and other parties in order to facilitate the orderly conduct and disposition of this proceeding. As previously noted, the *Implementation Order* (p. 31) provides that the Office of Administrative Law Judge shall certify the record to the Commission no later than November 2, 2012. Consistent with that deadline, PECO proposes the following schedule for serving written testimony, conducting an evidentiary hearing and submitting briefs:

September 5, 2012	PECO Direct Testimony Filed
September 10, 2012	Prehearing Conference
September 20, 2012	Other Parties' Direct Testimony Due
September 28, 2012	Rebuttal Testimony
October 4, 2012	Evidentiary Hearing
October 19, 2012	Initial Briefs
October 30, 2012	Reply Briefs
November 2, 2012	Certification of the Record to the Commission

All proposed dates for submission of testimony and briefs are for "in-hand" delivery, which may be satisfied by an electronic (e-mail) or facsimile copy of the relevant documents.

VII. POSSIBILITY OF SETTLEMENT

PECO is willing to pursue with the parties, and encourages, the possible stipulation of individual issues and/or more far-ranging settlement discussions that might lead to a comprehensive resolution of this matter with some or all of the parties. However, PECO

believes it would be premature to address whether this matter should be decided upon legal briefs (or after an evidentiary hearing) until all parties that intend to do so submit their direct and rebuttal testimony. Accordingly, consistent with the procedural schedule proposed above, PECO requests that an evidentiary hearing be scheduled in this matter subject to subsequent cancellation if, after parties have reviewed the written testimony, an agreement is reached that an evidentiary hearing is not needed.

VIII. COORDINATION OF THIS PROCEEDING WITH OTHER PETITIONS FOR EVIDENTIARY HEARING

In addition to PECO, five other EDCs filed petitions for evidentiary hearings regarding their specific Phase II consumption reduction benchmark tentatively adopted in the *Implementation Order*.³ In this instance, however, formal consolidation would not be appropriate given the nature of the six proceedings that would be combined. There is only a limited overlap, if that, of legal and factual issues among the petitions filed by the various EDCs. Consequently, formal consolidation will not produce any material administrative efficiency and, in fact, could create procedural and logistical problems that might introduce delay. Moreover, the issues raised by PECO are fact-sensitive and relatively EDC specific. Consequently, parties that intervened in the Met-Ed, Penelec, Penn Power, West Penn Power and PPL proceedings may have no interest in the issues raised by PECO. As a result, a large number of parties, their counsel and their witnesses would be needlessly burdened if the scope of this proceeding were expanded to include the other EDCs' petitions for evidentiary hearing. Indeed, consolidation would likely produce delays and unnecessary costs for everyone involved.

While PECO opposes formal consolidation, it agrees that evidentiary hearings should, to the extent practicable, be coordinated across all of the EDC proceedings in order to promote

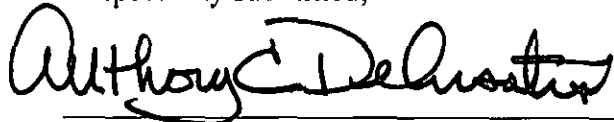
³ See Prehearing Order at ¶ 7(a).

administrative economy, to accommodate the ALJ's schedule and to facilitate travel and lodging arrangements for other parties' out-of-town witnesses, if any.

IX. CONCLUSION

WHEREFORE, PECO Energy Company respectfully submits this Prehearing Conference Memorandum and requests that the ALJ adopt its proposed procedural schedule, approve its proposed modifications to the discovery rules and enter its proposed Protective Order.

Respectfully submitted,



Anthony E. Gay, Esquire (Pa. No. 74624)
Jack R. Garfinkle, Esquire (Pa. No. 81892)
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215.841.4635
Fax: 215.568.3389
E-mail: Anthony.Gay@Exeloncorp.com

Anthony C. DeCusatis, Esquire (Pa. No. 25700)
Brooke E. Leach, Esquire (Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5034
Fax: 215.963.5001
E-mail: adecusatis@morganlewis.com

Dated: September 7, 2012

Counsel for PECO Energy Company

Exhibit A

PROPOSED DISCOVERY PROCEDURE MODIFICATIONS

RECEIVED
SEP 7 2012
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY FOR AN :
EVIDENTIARY HEARING ON THE :
ENERGY EFFICIENCY BENCHMARKS : DOCKET NO. P-2012-2320334
ESTABLISHED FOR THE PERIOD :
JUNE 1, 2013 THROUGH MAY 31, 2016 :**

PECO PROPOSED DISCOVERY PROCEDURE MODIFICATIONS

1. When an interrogatory, request for production, request for admission or motion is served after 12:00 p.m. on a Friday or the day before a holiday, 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 five (5) calendar days of receipt.
3. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within one (1) calendar day of receipt and in writing within two (2) 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 response shall be filed with the Commission and served on the Administrative Law Judge and the other parties within two (2) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within two (2) calendar days after filing of the motion.
5. If the objections are not resolved, counsel will alert the Administrative Law Judge by e-mail of the need for a ruling, and a conference call will be scheduled. The Administrative Law Judge 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 two (2) calendar days of service or answered within five (5) calendar days of service.
8. If the last day for filing or serving any document or taking any action required by these modified discovery procedures falls on a weekend or holiday, then the permissible time for filing such document or taking such action shall be extended to the next business day.
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 as well as on paper.

Exhibit B

PROPOSED PROTECTIVE ORDER

RECEIVED

SEP 7 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY FOR AN :
EVIDENTIARY HEARING ON THE :
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ESTABLISHED FOR THE PERIOD :
JUNE 1, 2013 THROUGH MAY 31, 2016 :**

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 5.431(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.431(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 Paragraphs 5.i, 5.ii, 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.

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, 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.

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 Act (65 P.S. § 67.101 *et seq.*) 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 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 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: _____, 2012

Elizabeth H. Barnes
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY FOR AN :
EVIDENTIARY HEARING ON THE :
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ESTABLISHED FOR THE PERIOD :
JUNE 1, 2013 THROUGH MAY 31, 2016 :**

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

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

The undersigned has read the Protective Order issued by the presiding Administrative Law Judge in this case and understands that the Protective Order deals with the treatment of Proprietary Information as the term is defined in the Protective Order. The undersigned agrees to be bound by, and comply with, the terms and conditions of the Protective Order, which are incorporated herein by reference.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY FOR AN :
EVIDENTIARY HEARING ON THE :
ENERGY EFFICIENCY BENCHMARKS : DOCKET NO. P-2012-2320334
ESTABLISHED FOR THE PERIOD :
JUNE 1, 2013 THROUGH MAY 31, 2016 :**

CERTIFICATE OF SERVICE

I hereby certify that I have this date served true and correct copies of **PECO Energy Company's Prehearing Conference Memorandum** upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

**VIA ELECTRONIC MAIL AND
OVERNIGHT DELIVERY**

Honorable Elizabeth H. Barnes
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
ebarnes@pa.gov

RECEIVED

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

VIA FIRST CLASS MAIL

Jennedy S. Johnson
Aron J. Beatty
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
jjohnson@paoca.org
abeatty@paoca.org
*Counsel for the Office of
Consumer Advocate*

Shaun A. Sparks
Krystle J. Sacavage
Pennsylvania Public Utility Commission
Law Bureau
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
shsparks@pa.gov
Counsel for Statewide Evaluator

Tishekia E. Williams
Duquesne Light Company
411 Seventh Avenue
Pittsburg, PA 15219
twilliams@duqlight.com
Counsel for Duquesne Light Company

Zachary M. Fabish
Sierra Club
50 F Street, N.W.
8th Floor
Washington, DC 20001
zachary.fabish@sierraclub.org
Counsel for the Sierra Club

Joseph Otis Minott
Clean Air Council
135 S. 19th Street
Suite 300
Philadelphia, PA 19103
joe_minott@cleanair.org
Counsel for the Clean Air Council

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

Harry S. Geller
Patrick M. Cicero
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
*Counsel for the Coalition of Affordable
Utility Services and Energy Efficiency
in Pennsylvania*

Jeffrey J. Norton
Carl R. Shultz
Eckert Seamans Cherin & Mellott, LLC
213 Market Street,
8th Floor
Harrisburg, PA 17101
jnorton@eckertseamans.com
cshultz@eckertseamans.com
Counsel for Comverge, Inc.

Joseph L. Vullo
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@aol.com
*Counsel of Community Action
Association of Pennsylvania*

Respectfully submitted,



Anthony E. Gay, Esquire (Pa. No. 74624)
Jack R. Garfinkle, Esquire (Pa. No. 81892)
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215.841.4635
Fax: 215.568.3389
E-mail: anthony.gay@exeloncorp.com

Thomas P. Gadsden, Esquire (Pa. No. 28478)
Kenneth M. Kulak, Esquire (Pa. No. 75509)
Anthony C. DeCusatis, Esquire (Pa. No. 25700)
Brooke E. Leach, Esquire (Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5234
Fax: 215.963.5001
E-mail: tgadsden@morganlewis.com
Counsel for PECO Energy Company

September 7, 2012

Express

TO: CHIAVETTA, R. PUC (CHIAVE)
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1701 Market Street
Philadelphia, PA 19103-2921

Morgan Lewis
C O U N S E L O R S A T L A W

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

ORIGIN ID: REDA (215) 953-5317
MAILROOM
MORGAN LEWIS & BOCKIUS LLP
1701 MARKET STREET

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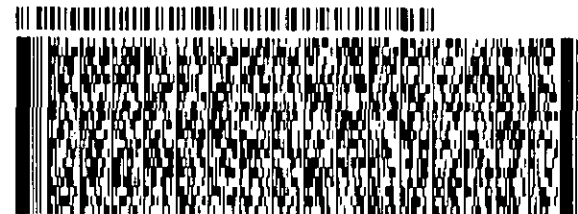
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UNITED STATES US

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PA PUBILC UTILITY COMMISSION
400 NORTH STREET

HARRISBURG PA 17120

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