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March 20, 2013

VIA e-FILING

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
Smart Meter Universal Deployment Plan
Docket No. M-2009-2123944**

Dear Secretary Chiavetta:

Enclosed please find **PECO Energy Company's Prehearing Conference Memorandum** in the above-referenced matter. Copies have been served on Administrative Law Judge Angela T. Jones, statutory parties and the intervenors of record in accordance with the attached Certificate of Service.

Should you have any questions regarding this filing, please contact me at 215-841-5974.

Sincerely,

A handwritten signature in blue ink, appearing to read "Craig Williams", is written over a light blue horizontal line.

W. Craig Williams

Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
SMART METER UNIVERSAL : **DOCKET NO. M-2009-2123944**
DEPLOYMENT PLAN :

**PECO ENERGY COMPANY'S
PREHEARING MEMORANDUM**

INTRODUCTION

Pursuant to the February 26, 2013, Prehearing Conference Order of Administrative Law Judge (“ALJ”) Angela T. Jones, PECO Energy Company (“PECO” or the “Company”) hereby submits its Prehearing Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

On October 15, 2008, then Governor Edward G. Rendell signed into law Act 129 of 2008 (“Act 129”), which, in relevant part, requires electric distribution companies (“EDCs”) with at least 100,000 customers to furnish “smart meter technology,” as defined in Section 2807(g), to all of their customers “[i]n accordance with a depreciation schedule not to exceed 15 years.” 66 Pa.C.S. § 2807(f)(2). It also requires such EDCs to install smart meters “in new building construction” and to furnish smart meter technology to any customer upon request if the customer agrees to pay the applicable cost. *Id.*

On June 24, 2009, the Pennsylvania Public Utility Commission (“Commission”) entered an order that established standards and provided guidance for implementing the smart meter requirements of Act 129. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (“Implementation Order”). The Commission established a 30-month “grace period” after a smart meter plan is approved for EDCs to develop and install

smart meter networks. Implementation Order, Slip Op. at 7. In the same order, the Commission also provided detailed plan requirements, including key milestones that should be addressed within the 30-month grace period and smart meter capabilities that an EDC's smart meter technology must support. *Id.* at 7-8, 15-17. The Implementation Order included guidance on smart meter plan cost recovery and cost allocation. *Id.* at 28-33.

On August 14, 2009, PECO petitioned the Commission to approve PECO's Smart Meter Technology Procurement and Installation Plan (the "Smart Meter Plan" or "Plan") in accordance with the requirements of Act 129 of 2008, 66 Pa.C.S. § 2807(f)(1). The Plan described PECO's two-phase strategy to select, procure, and test smart meter technology in the first phase ("Phase One") and then deploy smart meters throughout its service territory in the second phase ("Phase Two").

PECO's Smart Meter Plan was assigned to the Office of Administrative Law Judge for hearing and an Initial Decision. Numerous parties intervened in the proceeding, submitted comments, conducted discovery, filed written testimony and participated in technical and evidentiary hearings. From that process, a partial settlement was reached resolving all but two issues ("Smart Meter Settlement"), which related to the allocation among, and recovery from, each customer class of certain common costs.

On January 28, 2010, presiding Administrative Law Judge Marlane R. Chestnut issued an Initial Decision recommending that the Smart Meter Settlement be approved and that the common costs in question be allocated on the basis of the number of customers in each customer class. By Orders entered May 6, 2010 and June 3, 2010, the Commission approved the Company's proposed Smart Meter Plan, as modified by the Smart Meter Settlement; affirmed Judge Chestnut's recommendations regarding the allocation of costs and design of rates; and

directed PECO to work with the Commission's Electronic Data Exchange Working Group to develop appropriate enrollment and electronic data interchange transaction protocols. *Petition of PECO Energy Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123944 (hereafter, the "Phase One Orders").

As contemplated by the Company's initial Smart Meter Plan and the Commission's Phase One Orders approving it, PECO developed, and submitted on January 18, 2013, a Petition containing its proposals for Phase Two of its Smart Meter Plan. The Petition described PECO's recommended full-scale deployment of smart meters and explains the net benefits of doing so on the schedule set forth in PECO's Smart Meter Universal Deployment Plan ("Universal Deployment Plan").

The Petition was served on the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Bureau of Investigation & Enforcement ("BI&E"), and other parties to the Company's prior Smart Meter Plan proceeding. On February 7, 2013 the OCA submitted an Answer to PECO's Petition. Petitions to Intervene were submitted by the Philadelphia Area Industrial Energy Users Group ("PAIEUG") on February 11, 2012 and by Direct Energy Services, LLC on February 20, 2013.

II. STATEMENT OF ISSUES

The ultimate issue before the Commission is whether the proposed accelerated schedule to substantially complete the universal deployment of smart meters by the end of 2014 is in the public interest and consistent with Act 129, 66 Pa.C.S. § 2807(f). Based on a comprehensive analysis of costs and benefits, PECO has determined that moving forward expeditiously with smart meter deployment, as proposed in PECO's Universal Deployment Plan, will provide customers a net benefit of \$58 million, as compared to the ten-year deployment plan envisioned

in PECO's initial Smart Meter Plan, when costs and benefits are discounted to present value. PECO has submitted direct testimony and exhibits with its Petition demonstrating that its Universal Deployment Plan is in the public interest and complies fully with Act 129 and the Implementation Order.

III. WITNESSES

PECO submitted the Direct Testimony and accompanying exhibits of the following witnesses with its Petition and Universal Deployment Plan:

PECO Statement No. 1, Direct Testimony of Michael Innocenzo. Mr. Innocenzo is PECO's Senior Vice President, Operations. His testimony provides a comprehensive overview of Phase Two of PECO's Smart Meter Plan and describes: (1) PECO's smart meter obligations under Act 129; (2) the key components of the Company's smart meter project; (3) the actions taken by PECO to implement Phase One of the Plan; (4) the proposed Universal Deployment Plan; and (5) plans to address cyber security, data privacy and meter incident cost recovery issues.

PECO Statement No. 2, Direct Testimony of Michael J. Trzaska. Mr. Trzaska is a Principal Engineer, Regulatory and Rates Specialist in the Regulatory Policy and Strategy Department at PECO. His testimony describes PECO's proposal to accelerate the implementation of Phase Two of its Smart Meter Plan as well as the comprehensive cost benefit analysis that supports PECO's proposed Universal Deployment Plan.

PECO Statement No. 3, Direct Testimony of Alan B. Cohn. Mr. Cohn is Manager of Regulatory Strategy in PECO's Regulatory Group. His testimony describes the impact on revenue requirement associated with depreciation and the Pennsylvania Corporate Net Income

Tax that results from the Company's decision to complete the universal deployment of smart meters by the end of 2014, instead of 2019 as PECO proposed in its initial Smart Meter Plan.

PECO's witnesses may be contacted through PECO's counsel. The Company may present additional witnesses to address the direct testimony of other parties; however, such witnesses cannot be identified until the direct testimony of such parties is reviewed and evaluated.

IV. PROPOSED SCHEDULE

PECO will cooperate with the ALJ and other parties in order to facilitate the orderly conduct and disposition of this proceeding. PECO has consulted with the other parties, who have indicated that they find the following proposed schedule for this proceeding acceptable:

Comments and Petitions to Intervene filed and served	February 26, 2013
Prehearing Conference	March 22, 2013
Other Party Direct Testimony	May 10, 2013
Rebuttal Testimony	June 5, 2013
Surrebuttal Testimony	June 19, 2013
Evidentiary Hearings	June 24-26, 2013
Main Briefs	July 16, 2013
Reply Briefs	July 26, 2013
Initial Decision	August 23, 2013
Commission Order	October 17, 2013

V. PROPOSED DISCOVERY PROCEDURES

PECO has submitted to the parties for their consideration a proposed Protective Order, which is attached as Exhibit "A" hereto. It is substantially the same form of Protective Order agreed upon by the parties and approved by the Presiding Administrative Law Judge in PECO's Default Service and Energy Efficiency and Conservation Plan proceedings. After consultation with the parties to this proceeding, PECO anticipates that the parties will stipulate to the proposed Protective Order. PECO respectfully requests that the ALJ enter the proposed Protective Order.

The parties have agreed to proposed discovery modifications, attached as Exhibit "B" hereto. These procedures are also substantially the same as those previously approved by the Presiding Administrative Law Judge in PECO's Default Service and Energy Efficiency and Conservation Plan proceedings. Accordingly, the parties respectfully request that the ALJ approve the proposed discovery modifications.

VI. SETTLEMENT

PECO will participate in any settlement discussions and informal resolution of issues to the extent other parties are amenable to such discussions. On February 11, 2013, PECO hosted in Harrisburg "PECO Act 129 Smart Meter Plan, Stakeholder Collaborative #15", where PECO presented an overview of the Universal Deployment Plan to stakeholders, including some parties to this proceeding. PECO will continue to make use of informal stakeholder meetings to address possible discovery matters and facilitate settlement discussions.

VII. SERVICE LIST

Pursuant to 52 Pa. Code § 1.55, PECO hereby designates the following entry 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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VIII. CONCLUSION

WHEREFORE, PECO Energy Company submits this Prehearing Memorandum and respectfully requests that the Administrative Law Judge approve the proposed schedule, proposed discovery modifications, and enter the proposed Protective Order provided herewith.

Respectfully submitted,



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Counsel for PECO Energy Company

March 20, 2013

EXHIBIT A

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY	:	
COMPANY FOR APPROVAL OF ITS	:	
SMART METER UNIVERSAL	:	DOCKET NO. M-2009-2123944
DEPLOYMENT PLAN	:	

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 (email), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being labeled "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 developing, 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 developing, 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.

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. The parties may also seek further protection for Proprietary Information beyond that provided by this Order.

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: _____, 2013

Angela T. Jones
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
SMART METER UNIVERSAL : DOCKET NO. M-2009-2123944
DEPLOYMENT PLAN :**

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

DATE: _____

EXHIBIT B

PROPOSED DISCOVERY PROCEDURE MODIFICATIONS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
SMART METER UNIVERSAL : **DOCKET NO. M-2009-2123944**
DEPLOYMENT PLAN :

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 ten (10) calendar days of receipt. Responses may be served electronically but hard copies must follow by first-class mail.
3. Objections to written interrogatories, requests for production and requests for admissions are to be communicated orally to the party serving the interrogatory within three (3) calendar days of receipt and in writing within five (5) calendar days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.
4. Motions to dismiss objections and to compel response shall be filed with the Commission and served on the Administrative Law Judge and the other parties within three (3) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within three (3) calendar days after filing of the motion.
5. If the objections are not resolved, counsel will alert the presiding officer by e-mail of the need for a ruling, and a conference call will be scheduled. The presiding officer will make a ruling over the telephone and not reduce it to writing unless requested to do so.

6. Interrogatories, requests for production and requests for admissions that are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
7. Requests for admission shall be deemed admitted unless objected to within five (5) calendar days of service or answered within ten (10) calendar days of service.
8. 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.
9. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
SMART METER UNIVERSAL : **DOCKET NO. M-2009-2123944**
DEPLOYMENT PLAN :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of **PECO Energy Company's Prehearing Memorandum** upon the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC AND FIRST CLASS MAIL

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Pennsylvania Public Utility Commission
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Counsel for PECO Energy Company

Date: March 20, 2013