

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY  
FOR APPROVAL TO  
PROCURE SOLAR ALTERNATIVE ENERGY CREDITS**

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**PETITION OF PECO ENERGY** :  
**COMPANY FOR APPROVAL TO** : **DOCKET NO. P-**  
**PROCURE SOLAR ALTERNATIVE** :  
**ENERGY CREDITS** :

**PETITION**

PECO Energy Company (“PECO” or the “Company”), pursuant to the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. § 1648.1 *et seq.* (“AEPS” or the “AEPS Act”), hereby petitions the Pennsylvania Public Utility Commission (the “Commission”) to approve PECO’s voluntary initial procurement of up to 8,000 solar Tier I alternative energy credits (“AECs”) annually (corresponding to the annual output of a six megawatt solar photovoltaic system) for a ten-year period to satisfy a portion of PECO’s solar-related future AEPS requirements. Specifically, PECO requests the Commission to: (1) approve PECO’s Request for Proposals (“RFP”) process and form Solar AEC Purchase and Sale Agreement (the “Solar AEC Agreement”), attached hereto, for procurement of solar AECs; and (2) approve PECO’s recovery of all costs associated with the procurement of solar AECs that are related to and in compliance with the RFP process herein as approved by the Commission, in accordance with PECO’s existing tariff.

This Petition is PECO’s second petition for early procurement and banking of AECs for future compliance with AEPS portfolio requirements. PECO’s proposed solar AEC procurement, as set forth herein, follows the same procedures for procurement and banking of non-solar Tier I AECs by PECO previously approved by the Commission. *See Petition of PECO*

*Energy Company For Approval of (1) A Process to Procure Alternative Energy Credits During The AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Credits*, Docket No. P-00072260 (Order entered December 26, 2007) (“*PECO AEPS I*”). These procedures have been extremely successful – in accordance with the Commission’s approval in *PECO AEPS I*, PECO will enter into contracts for delivery of 452,000 non-solar Tier I AECs annually (equivalent to the approximate annual output of a 240 megawatt wind farm) from wind energy and landfill gas generation facilities located in Pennsylvania and Illinois, which will be used to satisfy a significant portion of PECO’s future AEPS requirements.

While this voluntary solar AEC procurement may not satisfy all of PECO’s future solar-related AEPS obligations, PECO believes that early procurement and banking of solar AECs will facilitate its future compliance with the AEPS Act, as well as support early development of solar projects. PECO therefore requests that the Commission expedite review of this Petition so that PECO may issue its solar AEC RFP, begin procurement of solar AECs from successful bidders, and bank those credits for future AEPS compliance.

## **I. INTRODUCTION**

1. PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office in Philadelphia, Pennsylvania. PECO provides electric delivery service to approximately 1.6 million customers and natural gas delivery service to approximately 475,000 customers in Pennsylvania.

2. On November 30, 2004, Governor Edward Rendell signed the AEPS Act into law. As of its effective date on February 28, 2005, an alternative energy portfolio standard was established in Pennsylvania. Generally, the AEPS Act requires a certain increasing percentage of electricity sold to retail customers in Pennsylvania by electric distribution companies

("EDCs") and electric generation suppliers ("EGSs") be derived from alternative energy sources, as defined in the AEPS Act. An EDC's compliance with this requirement is measured using alternative energy credits ("AECs"). An alternative energy credit is equal to one-megawatt hour of qualified alternative energy generation, and may be purchased, traded, and owned separately from the underlying energy that generates the credit. *See generally* 73 P.S. § 1648.3.

3. The AEPS Act has several components, including (1) a timetable and associated yearly percentage requirements which EDCs and EGSs must satisfy, as well as an exemption period (the "Cost-Recovery Period") linked to an EDC's transition (or stranded cost recovery) period established under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801 *et seq.* (the "Competition Act"); (2) provisions under which EDCs may "bank" AECs for future compliance, including before the expiration of their Cost-Recovery Period; and (3) a provision which allows EDCs to fully recover all AEPS-related costs for generation from alternative energy sources and/or AECs from their retail customers pursuant to a Section 1307(g) surcharge.

4. On July 17, 2007, Governor Rendell signed into law several amendments to the AEPS Act (*see* 2007, July 17, P.L. 114, No. 35), and on September 25, 2008, the Commission issued final regulations implementing the AEPS Act. *See* 52 Pa. Code §§ 75.61-75.70 ("*AEPS Regulations*"). Subsequently, on October 15, 2008, Governor Rendell signed Act 129 (2008 Pa. Legis. Serv. 819) into law which, among other provisions, amended the Competition Act to require electric distribution companies (as default service suppliers, after the end of their Cost-Recovery Periods) to procure AECs through competitive processes and a "prudent mix" of contracts. *See* 66 Pa. C.S. § 2807(e)(3.5).

5. Under the AEPS Act as amended, for retail default service generation sales between January 1, 2011 and May 31, 2011, PECO will be required to procure AECs from Tier I resources (e.g., wind, geothermal, biomass) equal to three percent (3%) of the electricity sold by PECO to retail customers in Pennsylvania, and, of this Tier I requirement, an amount of AECs from solar photovoltaic (“solar PV”) systems equal to .0203% of PECO’s retail sales. These percentage requirements increase annually until 2020, with the Tier I requirement increasing to 8% of PECO’s retail sales and the solar PV requirement, as a subset of the Tier I requirement, increasing to 0.5%.

6. On March 15, 2007, PECO submitted a petition in *PECO AEPS I* for approval to voluntarily procure up to 450,000 non-solar Tier I AECs for future AEPS compliance and to recover the costs of that procurement and future AEC procurements pursuant to a Section 1307 surcharge. On December 20, 2007, the Commission entered an order in *PECO AEPS I*, approving PECO’s petition with certain modifications. To date, PECO has conducted two procurements in compliance with the Commission’s December 20, 2007 Order and will enter into several contracts for an annual delivery of 452,000 non-solar Tier I AECs. The AECs obtained through these procurements will be “banked” in accordance with the AEPS Act and applied to PECO’s AEPS requirements after December 31, 2010, the end of PECO’s transition period under the Competition Act.

7. Upon approval of this Petition, PECO will solicit bids for ten-year contracts to provide up to 8,000 solar Tier I AECs annually from facilities qualified as solar PV “Alternative Energy Systems” under the Act. All bidders must be owners of solar PV Alternative Energy Systems, or own the rights to solar AECs generated by such systems, and such systems must be physically located within Pennsylvania or the control area of PJM Interconnection, Inc. (“PJM”).

Systems must be able to deliver a minimum of 500 solar AECs annually. Both existing solar PV systems which have achieved commercial operation and solar PV projects under development are eligible to participate as bidders, including solar PV systems that are directly connected to an electric utility's distribution or transmission systems and solar PV systems that are or will be connected to an electric utility's distribution system pursuant to applicable net metering requirements. All systems must be qualified as a Tier I solar AEPS system and all deliveries of AECs to PECO must be through the Generation Attribute Tracking System operated by PJM Environmental Services, Inc. ("PJM GATS").

8. This Petition describes PECO's proposed RFP process and Solar AEC Agreement, and highlights the specific differences from PECO's earlier non-solar AEC procurement. This Petition includes the following exhibits, which are attached hereto and incorporated herein by reference:

Exhibit 1 – Solar AEC RFP (including the Solar AEC Agreement)

Exhibit 2 – Comparison of Exhibit 1 to the *PECO AEPS I* non-solar Tier I RFP and AEC Agreement

## **II. PECO'S SOLAR AEC REQUEST FOR PROPOSALS AND SOLAR AEC AGREEMENT**

9. As in *PECO AEPS I*, PECO's proposed RFP process for solar AECs is designed to obtain competitive, fixed price supply contracts for AECs, and PECO will enter into standardized Solar AEC Agreements with successful bidders under which PECO will purchase and bank solar AECs for its future AEPS compliance obligations. Upon approval of this Petition, PECO will promptly conduct its first solar AEC procurement, with the expectation of executing Solar AEC Agreements within ninety (90) days.

10. PECO's RFP for solar AECs is nearly identical to the RFP PECO used for non-solar Tier I AECs, and includes the same two-stage, competitive bid process in which bidders are first qualified and then permitted to submit a bid price (in \$/AEC) and a specified annual amount of AECs for delivery. Consistent with the competitive procurement process requirements under the *AEPS Regulations* (52 Pa. Code § 75.67), this bidding procedure permits PECO to select among equally qualified, competitive facilities solely on the basis of lowest price. The solar RFP also provides for an independent, third-party RFP monitor to participate throughout the RFP process, ensure compliance with the RFP rules, and confirm that PECO's affiliate, Exelon Generation, does not receive an advantage. The RFP again provides that the Commission will have three days for review and approval of the final RFP results, and that PECO will not enter into any agreement absent approval of the results by the Commission.

11. Additional provisions from PECO's non-solar AEC purchase and sale agreement that are beneficial to bidders similarly appear in the Solar AEC Agreement. PECO is purchasing only AECs, not energy and capacity, and each bidder remains free to sell the energy associated with its AECs and capacity of its system at any price. Bidders may also provide "replacement" solar AECs to PECO if there is a temporary shortfall in AEC production. Also, bidders may 'roll over' excess AEC production from one delivery year to help meet the delivery requirements in the next delivery year.

12. In light of the different nature of solar resources and the still-developing solar PV market, PECO's proposed solar RFP process and Solar AEC Agreement include the following changes from PECO's non-solar Tier I AEC procurement:

- **Contract Term.** PECO has proposed a contract length of ten years instead of the five-year term used in its non-solar Tier I AEC procurement. A ten-year term is

expected to lower the price of solar AECs when compared to pricing available under a five-year contract term.

- **Lower Minimum AEC Bid.** PECO has reduced the minimum number of AECs that may be bid from 1000 to 500. This lower threshold will permit smaller solar PV systems (i.e., systems as small as 400 kW capacity) to participate.
- **Commencement Date.** PECO has retained the concept of a flexible commencement date for facilities that are not yet operational to begin delivery of solar AECs, but PECO will require such facilities to achieve commercial operation within twelve months of the Commission's approval of the RFP results. As in PECO's non-solar Tier I AEC procurements, the contract term for a bidder whose facility commences delivery of solar AECs after an AEPS reporting period has begun will be extended by an initial period necessary to synchronize the ten contract term years with an AEPS reporting period (June 1 through May 31).
- **Credit Requirements.** Given the longer term of the proposed Solar AEC Agreement, PECO has proposed a declining annual credit requirement for bidders once a system is in commercial operation based upon the bidder's accepted solar AEC price and the quantity to be delivered. Through an adjustable credit mechanism, PECO's default service customers will remain protected during the later years of the contract while bidders will benefit by having to commit a lower amount of credit as their future obligations to deliver solar AECs diminish.
- **No Delivery of Generation to PJM.** In the *AEPS Regulations* issued in September 2008, the Commission determined that there is no underlying

requirement that the electricity associated with an AEC be consumed within or delivered to the distribution system of an EDC or the control area of a regional transmission organization (like PJM) that manages a portion of the Commonwealth's transmission system. *See AEPS Regulations*, p. 14-15. In light of the Commission's determination, the Solar AEC Agreement has been revised to remove all requirements that the generation associated with an AEC be delivered to PJM.

13. In addition to the above changes for solar AEC procurement, the solar RFP and the Solar AEC Agreement reflect additional revisions based upon PECO's experience in the non-solar Tier I AEC procurement, including:

- **Quarterly Delivery of AECs instead of Monthly Delivery.** PECO is willing to accept quarterly delivery of solar AECs instead of monthly AECs, which should reduce administrative costs for both PECO and successful bidders.
- **Insurance Requirements.** PECO has determined that it does not need to require bidders to add PECO as an additional insured party to any insurance policy relating to the system generating the solar AECs. Instead, the Solar AEC Agreement simply requires successful bidders to maintain insurance (including commercial general liability insurance) customary for similar facilities within the PJM control area.
- **Wiring of Bid Deposits and Electronic Transmission of Bidder Applications.** As a result of PECO's AEC procurement experience to date, PECO has concluded that bidders should have the option of electronically wiring bid deposits as part of the bidding process. In addition, PECO will permit a bidder to transmit its bidder

application electronically to PECO by the specified deadline, providing that a physical copy of the application is actually received by PECO on the next business day.

14. In light of the developing nature of the solar PV market in Pennsylvania and the likely participation of bidders who are not as familiar as non-solar Tier I suppliers with competitive procurements, PECO has also determined to permit bidders responding to the solar RFP to propose changes to the Solar AEC Agreement as part of the bidder qualification process. While such proposals are discouraged given PECO's successful use of a form of this agreement for non-solar AECs, PECO will consider changes in consultation with the RFP Monitor. In the event that PECO concludes that a change in the Solar AEC Agreement is appropriate, a revised agreement will be distributed to all qualified bidders well before submission of any bid is required.<sup>1</sup>

15. This solar AEC procurement will not satisfy all of PECO's solar AEPS requirements. To the contrary, PECO anticipates additional solar AECs will be obtained from default service suppliers, as explained in PECO's pending default service program. *See generally* *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 ("*PECO Default Service Program*"). Through this Petition, PECO expects to obtain long-term contracts for solar AECs as part of its "prudent mix" of AEC supplies, and at "least cost" to customers through competition by qualified suppliers to provide solar AECs.

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<sup>1</sup> Given the continued role of an RFP Monitor and Commission approval of the bid results, PECO also requests that the Commission find that the form Solar AEC Agreement also satisfies the requirements of 66 Pa. C.S. § 2102, such that an affiliate of PECO could enter into the Solar AEC Agreement with PECO if it is a successful bidder without triggering the need for additional Commission approvals.

### III. COST RECOVERY

16. The AEPS Act provides that all direct and indirect costs for alternative energy and/or AECs purchased by an EDC for compliance with the AEPS Act are recoverable on “a full and current basis pursuant to an automatic energy adjustment clause” under Section 1307, as a cost of generation supply. 73 P.S. § 1648.3(a)(3); *see also AEPS Regulations*, § 75.67(d) (providing for recovery of compliance costs).

17. In *PECO AEPS I*, the Commission approved a Section 1307(g) surcharge for recovery of PECO’s AEPS costs, including deferral of all costs associated with PECO’s procurement of non-solar Tier I AECs during PECO’s Cost-Recovery Period and the recovery of such costs following the end of PECO’s Cost-Recovery Period, with carrying charges computed at a rate of six percent (6%). *PECO AEPS I*, p. 6; PECO Tariff Electric Pa. P.U.C. No. 3, Original Page Nos. 34A-34B. In accordance with *PECO AEPS I*, PECO’s proposed default service program details how this surcharge will be collected after the end of PECO’s Cost-Recovery Period and included in the “price to compare” for all PECO customers, as provided in the Commission’s default service regulations. *See* 52 Pa. Code §§ 54.187 & 75.67(d); *see generally PECO Default Service Program*.

18. In this proceeding, consistent with *PECO AEPS I*, PECO’s existing tariff, and the *AEPS Regulations*, PECO requests recovery of its procurement costs for solar AECs related to and in compliance with the RFP process as approved by the Commission in this proceeding, including deferral and recovery of the costs incurred during PECO’s Cost Recovery Period and carrying charges computed at a rate of six percent (6%).

#### IV. PROCEDURAL ISSUES AND COMMISSION APPROVAL

19. PECO's decision to seek Commission approval to procure solar AECs at this time is based upon PECO's interest in continuing to take early action to meet its forecasted future AEPS requirements. As described above, this voluntary, interim procurement for AECs will not satisfy all of PECO's AEPS obligations, and it is not intended to be precedent for future procurements by PECO to satisfy those obligations. Based upon PECO's successful completion of its non-solar Tier I AEC procurement and the similar procedures set forth in this filing, PECO proposes the following schedule in order to facilitate the earliest possible solar AEC procurement and to maximize the remaining time available under the AEPS Act's Cost-Recovery Period banking provisions:

March 3, 2009	Petition Filing
May 14, 2009	Commission Order

20. Lastly, PECO emphasizes that the issues presented by this Petition are interrelated and must be considered as a whole by the Commission. Absent express approval of PECO's proposed RFP procedures, the form Solar AEC Agreement, and cost recovery in accordance with *PECO AEPS I* and its existing tariff, PECO will be unable to proceed with this RFP. Upon approval of this Petition by the Commission, PECO must also retain the right not to proceed with this voluntary procurement, in its sole discretion.

#### V. NOTICE

21. PECO respectfully requests that the Commission publish notice of this filing in the *Pennsylvania Bulletin*. Should the Commission conclude that further notice of this filing is appropriate, PECO will provide such additional notice as directed by the Commission.

## VI. CONCLUSION

Based upon the foregoing, PECO Energy Company respectfully requests that the Commission grant this Petition and enter an order providing:

(1) That PECO Energy Company's Request for Proposals (Exhibit 1) to procure up to 8,000 Tier I solar alternative energy credits annually for a ten-year period is approved;

(2) That the form Solar Alternative Energy Credits Purchase and Sale Agreement contained in Exhibit 1 is approved for use with any successful bidder, and in the event any affiliate of PECO Energy Company is a successful bidder, is approved for purposes of 66 Pa. C.S. § 2102; and

(3) That PECO Energy Company is permitted to recover all costs related to and in compliance with its Request for Proposals included herein consistent with its existing AEPS Section 1307(g) tariff provision approved by the Commission in *PECO AEPS I*, including deferral of all such costs during its Cost-Recovery Period as a regulatory asset and accrual of a carrying charge on the unamortized balance computed at the rate of six percent (6%).

Respectfully submitted,



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