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**SOLAR ALTERNATIVE ENERGY CREDITS PURCHASE AND SALE AGREEMENT**

*(Aggregator Version)*

Between

**PECO ENERGY COMPANY**

**and**

\_\_\_\_\_

Dated [\_\_\_\_\_, \_\_\_\_], 20XX

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## **SOLAR ALTERNATIVE ENERGY CREDITS PURCHASE AND SALE AGREEMENT**

This Solar Alternative Energy Credits Purchase and Sale Agreement (the “Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between \_\_\_\_\_, a \_\_\_\_\_ with principal offices located at \_\_\_\_\_ (“Seller”), and PECO Energy Company, a Pennsylvania corporation with principal offices located at 2301 Market Street, Philadelphia, Pennsylvania 19101 (“PECO” or the “Company”). PECO and the Seller are herein referred to collectively as the “Parties”, and individually as a “Party”.

### **RECITALS**

WHEREAS, PECO is an electric distribution company under the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 (“AEPS” or “the Act”); and

WHEREAS, Seller owns the rights to alternative energy credits associated with the electricity generated by solar alternative energy systems under the Act, and desires to sell such credits to PECO; and

WHEREAS, PECO desires to purchase such credits from Seller to satisfy PECO’s obligations under the Act, subject to the requirements and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, PECO and Seller agree as follows:

### **ARTICLE 1 DEFINITIONS**

**1.1 Definitions.** Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article 1. As used in this Agreement, the following terms shall have the respective meanings set forth below.

“AEC” shall be an alternative energy credit as defined in the Act and of the type specified in Exhibit 1.

“AEC Payment” shall have the meaning set forth in Section 3.4.

“AEPS” shall have the meaning set forth in the Recitals.

“AEPS Reporting Year” shall mean the period from June 1 through May 31 of the following year, or such period as the PaPUC may designate for AEPS compliance purposes.

“Affiliate” means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question.

“Agreement” means this Agreement.

“Alternative Compliance Payment” shall be equal to the amount per AEC determined by the PaPUC in accordance with the Act during the latest AEPS Reporting Period.

“Alternate Representative” has the meaning provided in Section 5.3.

“Authorized Representative” has the meaning provided in Section 5.3.

“Bankruptcy Code” means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq.

“Business Day” means a day on which Federal Reserve member banks in Philadelphia, PA are open for business, beginning at 0800 EPT and ending at 1700 EPT.

“Certificate” means a certificate corresponding to an AEC, as defined under the Registry Rules.

“Claim” shall mean any claim, demand, audit, cause of action, litigation, lawsuit, grievance, arbitration, mediation, proceeding (including, without limitation, any bankruptcy, reorganization, dissolution, insolvency, liquidation, extension of bankruptcy or similar proceeding).

“Company” shall have the meaning set forth in the Preamble.

“Contract Amount” means the Contract Amount specified on Exhibit 1, including during the first Contract Year, the Initial Period Contract Amount.

“Contract Price” means the price identified as “Contract Price” on Exhibit 1.

“Contract Year” means a twelve month period during the Term commencing on June 1 and ending on May 31 of the following year.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Deliver” or “Delivery” means the transfer of AECs from Seller to PECO using the Registry in accordance with the Registry Rules.

“Early Termination Date” means the date upon which an Early Termination becomes effective as specified in Section 2.3.

“Effective Date” shall have the meaning set forth in the Preamble.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

“EPT” means Eastern Prevailing Time (the time then prevailing in the Eastern Time Zone of the United States).

“Event of Default” has the meaning set forth in Section 9.1.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party affected thereby or attributable to such Party’s fault or negligence, and which by the exercise of due diligence the affected Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. Force Majeure includes, but is not restricted to: fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority, so long as the affected Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action. Force Majeure shall not include the following: (i) the Seller’s ability to sell Energy or AECs at a more advantageous price, (ii) insufficient sunlight, wind, or other natural resource; (iii) a change in a Requirement of Law or Registry Rules. Increased cost of performance by Seller shall not constitute an event of Force Majeure.

“Forward Contract” has the meaning ascribed to such term in Section 101(25) of the Bankruptcy Code.

“Forward Contract Merchant” has the meaning ascribed to such term in Section 101(26) of the Bankruptcy Code.

“Governmental Authority” means any federal, state or local government, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body.

“Indemnified Party” shall have the meaning set forth in Section 11.2.1.

“Interest Rate” means the average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

“Issuer Minimum Requirements” shall have the meaning set forth in Section 6.4.2.

“Letter of Credit” has the meaning set forth in Section 6.4. The Letter of Credit must be in the form of Exhibit 2, or another substantially similar form approved by the Company.

“Lien” shall mean any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, hypothecation, usufruct or encumbrance of any nature whatsoever, including any conditional sale agreement.

“Material Debt” shall have the meaning set forth in Section 9.1.1.

“Moody’s” means Moody’s Investors Service, Inc.

“Month” means a calendar month (or any partial calendar month at the outset of the Term in the event that the Term commences during a calendar month).

“MW” means megawatt.

“Nominal Contract Value” means the dollar amount resulting by multiplying the Contract Amount by the Contract Price by ten (10).

“Non-Defaulting Party” means (i) if the Company is the Defaulting Party, the Seller; or (ii) if the Seller is the Defaulting Party, the Company.

“PaPUC” means the Pennsylvania Public Utility Commission.

“PECO” means PECO Energy Company.

“Permit” shall mean any permit, license, registration, certificates of occupancy, approvals or other authorizations of any Governmental Authority.

“Person” shall mean any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

“PJM” means the regional transmission organization operated by PJM Interconnection, Inc.

“Registry” shall mean the PJM GATS system or any successor AEPS alternative energy credit registry designated by the PaPUC.

“Registry Rules” shall mean the operating rules of the Registry.

“Requirement of Law” means any federal, state and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment or decree enacted, adopted, issued or promulgated by any Governmental Authority (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“S&P” means Standard and Poor’s Rating Services.

“Safe Harbor Provisions of the Bankruptcy Code” means Sections 101(25), 101(26), 101(38A), 101(38B), 362(b)(6), 362 (b)(27), 546(e), 546(j), 556, 561, 562 and 767 of the Bankruptcy Code together with other sections pertaining or referring to any of them and any future amendments to the Bankruptcy Code which provide protections, rights or remedies to non-bankrupt Forward Contract Merchants or Master Netting Participants against bankrupt counterparties under Forward Contracts or Master Netting Agreements.

“Security Instrument” has the meaning set forth in Section 6.4.

“Seller” shall have the meaning set forth in the Preamble.

“Semi-Annual” means the six month calendar period commencing each July and January of the Contract Year (or any partial six month calendar period in the event the Term commences during such period).

“Semi-Annual AECs” shall have the meaning set forth in Section 3.2.

“Taxes” has the meaning set forth in Section 7.7.

“Term” shall mean the period from the Effective Date until the earlier of (i) the Termination Date and (ii) termination pursuant to Section 2.2.

“Termination Date” has the meaning set forth in Section 2.1.

**1.2 Interpretation.** In this Agreement, unless a different intention clearly appears: (a) the singular includes the plural and vice versa; (b) the reference to any Party includes such Party’s legal and/or permitted successors and assignees, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually; (c) the reference to any gender includes the other gender; (d) reference to any document other than this Agreement refers to such documents as may be amended, modified, replaced or superseded from time to time, or any successor document(s) thereto; (e) reference to any Article, Section or Exhibit means such Article, Section or Exhibit of this Agreement unless otherwise indicated; (f) “hereunder”, “hereof”, “hereto”, and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision; (g) “including” (and with correlative meaning “include”), when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”; (i) reference to any law or regulation refers to such law or regulation as may be amended, modified, replaced or superseded from time to time, or any successor law(s) or regulation(s) thereto; and (j) reference to “termination of this Agreement,” “this Agreement is terminated,” “this Agreement may be terminated” and similar phrases used in this Agreement refer to the termination of deliveries under this Agreement and related on-going rights and obligations, and does not imply or mean a termination of rights, remedies, obligations and provisions which by their nature or as provided elsewhere in the Agreement survive termination.

## **ARTICLE 2 TERM AND TERMINATION**

**2.1 Effective Date and Term.** This Agreement shall be effective on the Effective Date. Unless sooner terminated as provided herein, this Agreement shall end on May 31, 20\_\_ (the “Termination Date”).

**2.2 Early Termination.** This Agreement may be terminated prior to the Termination Date pursuant to the following:

2.2.1 At any time by the mutual written consent of the Parties;

2.2.2 By the Non-Defaulting Party if an Event of Default occurs as provided for in Article 9, with such notice as required therein;

2.2.3 By Either Party in the case of a Force Majeure event, the non-terminating Party fails to substantially perform its obligations under this Agreement on account of such Force

Majeure event for a period exceeding 180 days after the occurrence of such Force Majeure event, and after thirty (30) days written notice; provided that such 180-day period may be extended, by the written agreement of both Parties, for an additional 180 days if (i) such Force Majeure event is not remedied within such 180-day period with reasonable diligence, (ii) such Force Majeure event may reasonably be expected to be remedied within such 180-day period, and (iii) the Party not performing its obligations under this Agreement on account of such Force Majeure event promptly undertakes to remedy such Force Majeure event and continues with reasonable diligence to effect such remedy within the 180-day period.

**2.3 Effectiveness of Termination.** Termination under this Article 2 shall be effective immediately after written notice is given, subject to any applicable notice requirements or extensions agreed to by the Parties. If this Agreement is terminated pursuant to any of the provisions above, the effective date of such termination shall be deemed the “Early Termination Date.”

**2.4 Survival.**

2.4.1 Termination of this Agreement for any reason shall not relieve PECO or Seller of any obligation accrued or accruing prior to such termination, and the following provisions of this Agreement shall survive any termination: Article 1, Sections 2.4, 2.5, 3.2, 3.3, 3.4, 3.5, 6.4, 6.5, 7.4, 7.6, 7.7, 11.2, 11.3, 12.1, and Articles 9, 13 and 14.

2.4.2 In addition, if this Agreement is terminated pursuant to:

(a) Section 2.2.2, the Non-Defaulting Party may pursue the remedies provided in Article 9;

(b) Section 2.2.3, the Parties may not pursue the remedies provided for in Article 9 and are entitled to receive only amounts due and owing as of the Early Termination Date and under Section 6.1, if any.

**2.5 Preservation of Security.** In the event that Seller has provided a Letter of Credit under the terms of this Agreement, Seller will preserve the Letter of Credit in place until all payments due under this Agreement for which the Letter of Credit has been provided have been made in full.

**ARTICLE 3  
PURCHASE AND SALE OF AECS**

**3.1 Purchase and Sale of AECs.** Subject to the terms and upon the conditions and provisions of this Agreement, Seller shall sell, and PECO shall purchase, all rights, title and interest in the AECs specified in Exhibit 1 equal to the Contract Amount for each Contract Year. Each AEC transferred under this Agreement to satisfy the Contract Amount in each Contract Year shall be generated in that Contract Year.

**3.2 Delivery of AECs by Seller.** For each Semi-Annual period of the Contract Year during the Term, Seller shall Deliver Certificates to PECO for AECs equal to at least fifty percent of the Contract Amount (the “Semi-Annual AECs”) until PECO has received the

Contract Amount for the current Contract Year. The Delivery of the Semi-Annual AECs shall be completed no later than the fortieth (40th) day following the end of such Semi-Annual period, or such other date as PECO and the Seller may agree to in writing. Seller and PECO are each responsible for their own costs associated with establishing and administering any accounts with the Registry sufficient to accomplish the Delivery of all AECs. Seller agrees to execute all other documents or instruments, at its expense, necessary to effectuate the Delivery of the AECs to PECO or as may be reasonably requested by PECO. All AECs transferred to PECO shall be free and clear of all Liens. Nothing in this Section shall reduce Seller's obligations under Section 3.4.

**3.3 Ownership of and Title to AECs.** PECO shall have sole, exclusive and perpetual ownership of all AECs Delivered to PECO by Seller under this Agreement, including all rights to sell, assign, transfer, apply, or retire any AEC transferred to PECO by Seller. Title to AECs shall not transfer to PECO prior to Delivery by Seller. Any benefits derived from the AECs after Delivery to PECO shall inure solely to the benefit of PECO and not to Seller.

**3.4 Contract Amount Guarantee.** Seller shall transfer a total amount of AECs equal to the Contract Amount for each Contract Year. In the event that Seller fails to provide the AECs as provided under this Section, Seller shall pay PECO within forty-five (45) days of the end of the Contract Year an amount equal to the higher of the Contract Price or Alternative Compliance Payment ("AEC Payment") for each AEC which Seller fails to transfer to PECO for such Contract Year as liquidated damages. If the PaPUC subsequently determines that the Alternative Compliance Payment for the AEPS Reporting Year in which Seller failed to Deliver the Contract Amount is more than the amount Seller paid for each AEC not Delivered, Seller shall pay PECO the difference between the amount Seller paid per AEC and the actual Alternative Compliance Payment. If Seller has paid PECO an amount in excess of the actual Alternative Compliance Payment for each AEC not Delivered, PECO shall pay Seller the difference between the amount Seller paid per AEC and the actual Alternative Compliance Payment. All such additional payments shall be paid by PECO or Seller, as applicable, within thirty (30) days of the PaPUC's determination of the applicable Alternative Compliance Payment for an AEPS Reporting Year.

**3.5 Non-Compliant AECs.** In the event that any AEC transferred to PECO is subsequently determined to be unable to be used by PECO for AEPS compliance due to Seller's failure to comply with any obligation under this Agreement, Seller shall transfer an equivalent AEC to PECO. All AECs transferred to PECO under this Section shall be available for use by PECO for purposes of compliance under the Act as if the AEC had been created at the time the non-compliant AEC was created. Any additional costs or penalties incurred by PECO resulting from the transfer of non-compliant AECs by Seller shall be paid for by Seller.

**3.6 Financing.** PECO shall have no responsibility whatsoever for any financing or costs associated with Seller, including any expenditures necessary or desirable to deliver AECs to PECO under this Agreement.

**ARTICLE 4  
RESERVED**

**ARTICLE 5  
SELLER OBLIGATIONS**

**5.1 AEC Obligations.** During the Term, at its sole cost and expense, Seller represents, warrants and guarantees that:

5.1.1 Seller shall possess sole and exclusive title and legal rights to an AEC prior to the transfer of such AEC to PECO under this Agreement;

5.1.2 Seller shall transfer only valid AECs to PECO which have not been previously retired, claimed or used to satisfy any renewable energy requirements, obligations or voluntary undertaking by any entity in any jurisdiction; and

5.1.3 Seller shall comply with all Registry requirements that are necessary for Seller to perform its obligations under this Agreement.

**5.2 Insurance.**

5.2.1 Seller shall maintain at its sole expense, commencing with the Effective Date and continuing through the Term, insurance customarily maintained for aggregators of RECs, Seller shall provide certificates of insurance or other reasonable evidence of such insurance coverage acceptable to PECO upon request.

5.2.2 Failure to obtain and maintain the required insurance shall constitute a breach of the Agreement and Seller will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court, and settlement expenses) resulting to PECO from such breach, unless a written waiver of the specific insurance requirement is provided to Seller by PECO.

5.2.3 Failure of Seller to provide insurance as herein required or failure of PECO to require evidence of insurance or to notify Seller of any breach by Seller of the requirements of this Article 5 shall not be deemed to be a waiver by PECO of any of the terms and conditions of this Agreement, nor shall they be deemed to be a waiver of the obligation of Seller to defend, indemnify, and hold harmless PECO as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Seller and independent of the duty to furnish a copy or certificate of such insurance policies.

5.2.4 Notwithstanding any provision of this Agreement, none of the requirements contained herein as to insurance coverage to be maintained by Seller are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Seller under this Agreement, any other agreement with PECO or its Affiliates, or otherwise provided by law.

**5.3 Authorized Representatives.** As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between the Parties in connection with various administrative, commercial and technical issues that may arise during the performance of this Agreement, each Party shall appoint an authorized representative (with respect to each Party, the “Authorized Representative”) and may appoint an alternate (with respect to each Party, the “Alternate Representative”) to act in its Authorized Representative’s absence. The Authorized Representatives and Alternate Representatives shall be managers well experienced with regard to matters relating to the implementation of the Parties’ rights and obligations under this Agreement with full authority to act for and on behalf of the Party appointing them. Upon execution of this Agreement, each Party will notify the other in writing of the name of its Authorized Representative and Alternate Representative so appointed and these appointments will remain in full force and effect until written notice of substitution is delivered by such Party to the other Party.

**5.4 Publicity.** No party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other party, which approval shall not be unreasonably withheld.

## **ARTICLE 6 CREDIT AND COLLATERAL REQUIREMENTS**

**6.1 Credit Support.** Seller shall post security with PECO, at the commencement of the Contract Year, in an amount based on the number of months remaining in the Term, as determined from the table (Credit Support Requirement) in Exhibit 3.

**6.2 Grant of Security Interest.** To secure its obligations under this Agreement, Seller hereby grants to PECO a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PECO. Seller agrees to take such action as reasonably required to perfect in favor of PECO such security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

**6.3 Remedies.** Upon or any time after the occurrence of an Event of Default caused by Seller, PECO may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of Seller in the possession of PECO, whether held in connection with this Agreement or any other agreement(s) between PECO and Seller for the provision of Energy or AECs; (iii) draw on any outstanding Letter of Credit issued for PECO’s benefit; and (iv) liquidate all collateral security held by or for the benefit of the PECO free from any claim or right of any nature whatsoever of the Seller, including any equity or right of purchase or redemption by the Seller. PECO shall apply the proceeds of the collateral security realized upon the exercise of such rights or remedies to reduce Seller’s obligation under this Agreement or any other agreement(s) between PECO and Seller for the provision of Energy or AECs (the Seller remaining liable for any amounts owing to

the Company after such application), subject to PECO's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

**6.4 Security Instruments.** At Seller's choice, the following are deemed to be acceptable methods for posting security (each, a "Security Instrument"), if required:

6.4.1 Cash; or

6.4.2 An irrevocable transferable standby letter of credit (a "Letter of Credit") acceptable to the Company issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating from S&P or Moody's (the "Issuer Minimum Requirements"). (A standard format for the Letter of Credit is provided in Exhibit 2.) In the event that senior unsecured debt ratings are unavailable from S&P, the corporate issuer rating, discounted one notch, will be used. In the event that senior unsecured debt ratings are unavailable from Moody's, the issuer rating will be used. The Company will only rely on senior unsecured debt ratings, or if unavailable, issuer or corporate issuer ratings. If the Seller does not have a senior unsecured debt rating and does not have an issuer or corporate issuer rating from a rating agency, it will be deemed by the Company not to be rated by that rating agency. The Letter of Credit shall state that it shall renew automatically for successive one-year or shorter periods unless the Company receives written notice from the issuing financial institution at least thirty (30) days prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If the Company receives notice from the issuing financial institution that the Letter of Credit will not be extended, the Seller will be required to provide a substitute Letter of Credit from an alternative bank or financial institution satisfying the Issuer Minimum Requirements. The receipt of the substitute Letter of Credit must be effective on or before the expiration date of the expiring Letter of Credit and delivered to the Company at least fifteen (15) days before the expiration date of the original Letter of Credit. If the Seller fails to supply a substitute Letter of Credit as required herein, then the Company will have the right to draw on the expiring Letter of Credit and to hold the amount as collateral. If the credit rating of the issuer of a Letter of Credit falls below the Issuer Minimum Requirements, the Seller shall have two (2) Business Days (or such longer period as the Company in its sole discretion may permit in writing) following written notice by the Company to obtain a suitable Letter of Credit from another bank or other financial institution that meets the Issuer Minimum Requirements.

**6.5 Calling on Security.** The Company may call upon the Security Instrument posted by the Seller (i) if the Seller fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy and AECs after written notice of default is provided to the Seller and any applicable cure period ends; and (ii) with respect to the Development Security, to satisfy PECO's rights to such portions of the Development Security specified in Section 6.1. The foregoing notwithstanding, the Security Instrument posted by the Seller shall become due automatically, and may be called upon by the Company, without prior notice or right of cure in the case of any Event of Default involving the Seller arising under Section 9.1.1.

**6.6 Interest on Cash Held by Company.** The Company will pay simple interest (not compounded) calculated at the lower of the Interest Rate or six (6) percent per annum on any

Cash posted by the Seller as Performance Security and directly held by the Company pursuant to this Agreement.

## **ARTICLE 7 BILLING AND PAYMENT; RECORDS**

**7.1 Invoices.** Beginning with the end of the first Semi-Annual period after the Effective Date, Seller shall send PECO a statement following the Delivery of AECs after each Semi-Annual period setting forth all amounts due either to the Seller or to PECO arising during the preceding Semi-Annual period. The statement shall include (i) after the commencement of the Term, the quantity of AECs that were Delivered by Seller to PECO during such Semi-Annual period and the total amount owed by PECO for those AECs at the Contract Price, (ii) any interest due to Seller as provided in Section 6.6, and (iii) any other amount due Seller or to PECO under this Agreement in respect of such Semi-Annual period (including the amount of any Replacement AEC Payment). Such statement shall be sent by Seller to PECO no later than fifteen (15) Business Days following the Delivery of AECs for which the statement is applicable.

**7.2 Payment.** Subject to all conditions and provisions of this Agreement (including Section 7.7), no later than fifteen (15) Business Days after the date of a statement submitted by Seller, or if such day is not a Business Day, the immediately following Business Day, the Party owing the net amount shown to be due on such statement shall remit to the other Party, by wire transfer in accordance with Section 12.1, the amount due pursuant to such statement.

**7.3 Interest.** Amounts not paid shall accrue interest from the due date to the date of payment at the Interest Rate.

**7.4 Taxes.** Seller shall be responsible for all existing and any new taxes, fees, levies, assessments, penalties, licenses, or charges imposed or levied by any federal, state or local governmental agency (collectively, "Taxes") on all AECs prior to and including the Delivery of AECs under this Agreement. PECO shall be responsible for all existing and any new Taxes imposed or levied by any federal, state or local governmental agency on AECs after transfer to PECO. If PECO is required to remit or pay Taxes that are Seller's responsibility under this Agreement, then Seller shall promptly reimburse PECO for such Taxes. If Seller is required to remit or pay Taxes that are PECO's responsibility under this Agreement, then PECO shall promptly reimburse Seller for such Taxes.

**7.5 Disputed Amounts.** If either Party, in good faith, disputes any amount due pursuant to a statement rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and shall pay that portion of the amount shown to be due on the statement that is undisputed, on or before the due date. If any amount disputed by such Party is determined to be due the other Party, whether by agreement of the Parties or through arbitration in accordance with Section 13.2, the amount due shall be paid within five (5) Business Days of such determination or resolution, along with interest accrued at the Interest Rate from the date due to the date paid. Notwithstanding the above, no dispute may be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within one year after the date of such statement or payment.

**7.6 Records.** Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying such Party's performance hereunder. All such records shall be retained by each Party for at least three (3) calendar years following the calendar year in which such records were created.

**7.7 Audit Rights.** Each Party, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. If any statement is determined by the Parties or through arbitration to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such statement or payment within one year after the date of such statement or payment.

## **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

**8.1 Mutual Representations.** As a material inducement to execution of this Agreement, each Party hereby represents and warrants to the other Party that:

8.1.1 It is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and is qualified to conduct its business in all jurisdictions necessary to perform its obligations hereunder;

8.1.2 The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any agreement to which it is a party or by which it or any of its property is bound, or any Requirement of Law applicable to it;

8.1.3 Except as set forth in and as required by this Agreement, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required by such Party in connection with the execution, delivery or performance of this Agreement;

8.1.4 This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

8.1.5 No Event of Default has occurred and there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;

8.1.6 To such Party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any court or other governmental body, that would materially adversely affect its ability to perform its obligations under this Agreement;

8.1.7 It is, and will continue to be for the Term, a Forward Contract Merchant both generally and with respect to the AECs delivered and purchased under this Agreement.

**8.2 Forward Contract.** The Parties acknowledge that this Agreement is a Forward Contract and the Parties are Forward Contract Merchants, both generally and with respect to the deliveries of AECs pursuant to this Agreement, that each party is an "eligible contract participant" as set forth in the Commodities Exchange Act; and, accordingly, the Parties are entitled to the protections of the Safe Harbor Provisions of the Bankruptcy Code. The Parties therefore agree that this Agreement may be terminated and the remedies hereunder exercised by either Party in accordance with Article 2 and Article 9 hereof upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination.

**8.3 No Representation or Warranty By PECO.** Any review by PECO of any information or material pertaining to the Seller is solely for PECO's information only. By conducting such review, PECO makes no representation or warranty as to the Seller. PECO does not endorse or in any way approve of any representation or warranty of Seller in any agreement or to any Person, and Seller shall not make any such representation that PECO has given any such approval.

## **ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES**

**9.1 Events of Default.** An "Event of Default" by a Party (the "Defaulting Party") shall mean:

9.1.1 With respect to Seller, unless otherwise excused or permitted under the terms of this Agreement, the following events, without notice or the opportunity to cure, if the Seller:

(a) fails to meet the ratings requirements or to comply with the collateral requirements set forth in Article 6 within the time frames set forth in this Agreement;

(b) (1) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) in respect of any indebtedness for borrowed money involving a principal sum in excess of \$5,000,000 ("Material Debt") and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure, or (2) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any Material Debt, if, in any such event, the effect of such failure, event or condition is to cause, or permit the holder or holders thereof or beneficiary or beneficiaries thereof (or a trustee or agent on behalf of such holder

or holders or beneficiary or beneficiaries) to cause (after the expiration of any applicable grace period or notice period, if any, specified in the relevant document on the date of such failure) such Material Debt to become due and payable or to be repurchased, defeased or redeemed prior to its expressed maturity;

(c) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

(d) makes an assignment for the benefit of its creditors;

(e) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; or

(f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

9.1.2 With respect to either Party, an Event of Default shall occur if such Party:

(a) is the subject of a voluntary bankruptcy, insolvency or similar proceeding;

(b) applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;

(c) is the subject of an involuntary bankruptcy or similar proceeding, and fails to have such proceeding dismissed within 60 days; or

(d) commits an act or makes an omission that constitutes an “Event of Default” under any other agreement(s) between PECO and the Seller for the provision of Energy or AECs.

9.1.3 Unless otherwise excused or permitted under the terms of this Agreement, a Party’s failure to make, when due, any payment required pursuant to this Agreement, shall constitute an Event of Default unless a Party shall have cured the same within three (3) Business Days after receipt of written notice of such payment failure from the other Party.

9.1.4 Unless otherwise excused or permitted under the terms of this Agreement, any of the following events shall constitute an Event of Default unless a Party shall have cured the same within thirty (30) days after receipt of written notice of the occurrence of such event from the other Party:

(a) Any representation, warranty or covenant made by such Party herein is proven to be false or misleading in any material respect at the time it was made;

(b) A Party transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another entity without the other Party's prior written consent, to the extent such consent is required under this Agreement, or if at the time of such transfer, assignment or conveyance, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(c) A Party's unexcused failure to perform any other material covenant or obligation set forth in this Agreement that is not enumerated in this Section 9.1; or

(d) with respect to Seller, Seller fails to have and maintain, during the Term, all federal, state and local Permits to permit its performance under this Agreement.

**9.2 Rights Upon Default.** Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to elect or pursue one or more of the following remedies:

9.2.1 terminate the Agreement by providing written notice to the Defaulting Party of an Early Termination, as provided in Section 2.2;

9.2.2 accelerate all amounts then owing by the Defaulting Party to the Non-Defaulting Party;

9.2.3 withhold any payments due to the Defaulting Party under this Agreement;

9.2.4 suspend its performance under this Agreement; and

9.2.5 pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.

**9.3 Reliance on Netting.** The Parties are making credit, default, collateral and other decisions and changes based upon and in reliance on the effectiveness of the default, early termination, setoff and netting provisions of this Agreement. The Parties would not enter into this Agreement and would change their position with regard to netting except for their reliance on and with the understanding that these netting terms will be effective. Notwithstanding anything else in this Agreement or in any other agreement between the Parties to the contrary, if for any reason these terms or any right of offset or netting hereunder or under another agreement in favor of the Non-Defaulting Party against a bankrupt Defaulting Party is delayed from being exercised or is not enforceable in accordance with its terms because either Party asserts or is concerned that the Safe Harbor Provisions of the Bankruptcy Code do not apply to such rights of enforcement or for any other reason, the Non-Defaulting Party may (a) exercise its rights to effect a setoff under Section 553 of the Bankruptcy Code or other applicable provisions, equity and law, and (b) withhold payments subject to a claim of offset under any obligations due the Defaulting Party in respect of any transactions or deliveries under this Agreement or any other agreement until such setoff rights are exercised and effected.

**9.4 Setoff of Payment Obligations of the Non-Defaulting Party.** Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs that are unsecured; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs that are unsecured, but which are subject to a guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the Seller for the provision of Energy or AECs. Any setoff shall not be subject to the automatic stay by virtue of Section 362(b)(6) of the Bankruptcy Code.

**9.5 Preservation of Rights of the Non-Defaulting Party.** The rights of the Non-Defaulting Party under this Agreement, including Sections 9.3 and 9.4 shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable Requirements of Law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

**9.6 Integrated Transaction.** To the extent that Section 365 of the Bankruptcy Code applies to this Agreement, the Parties agree that all transactions under this Agreement constitute one integrated transaction that can only be assumed or rejected in its entirety.

## **ARTICLE 10 ASSIGNMENT**

**10.1 Assignment.** Neither Party shall assign this Agreement or any of its rights or obligations hereunder (including by lease, subcontract, or otherwise) without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party, transfer or assign this Agreement to an Affiliate of such Party, providing that the assigning Party shall provide notice to the other Party and shall remain responsible for its obligations under the Agreement. In all such transfers and assignments, the succeeding Party must agree to comply with all the provisions, terms and conditions of this Agreement, including the credit and collateral security requirements set out in Article 6. Except as specifically provided in this Article 10, any assignment or transfer of this Agreement or any rights, duties or interests hereunder by any Party without the written consent of the other Party shall be void and of no force or effect.

## **ARTICLE 11 FORCE MAJEURE; INDEMNITY; LIMITATION OF LIABILITY**

**11.1 Force Majeure.** If either Party is rendered unable by a Force Majeure event to carry out, in whole or in part, its obligations under this Agreement, then, during the pendency of such event of Force Majeure, but for no longer period, the obligations of the affected Party (other than the obligation to make payments hereunder when due) shall be suspended to the extent required. The affected Party shall (i) give the other Party written notice within 48 hours of the commencement of the Force Majeure event, with details to be supplied within three (3) Business

Days after the commencement of the Force Majeure event further describing the particulars of the occurrence of the Force Majeure event, and (ii) take all reasonable steps to remedy the cause of the Force Majeure event with all reasonable dispatch. Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period; provided, however, that in no event will any Force Majeure event extend this Agreement beyond its Term. A determination of force majeure by the PaPUC under the Act shall not constitute a determination of Force Majeure under this Agreement.

## **11.2 Indemnification.**

11.2.1 Each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, agents and employees (each an “Indemnified Party”) from and against any and all claims, demands, actions, losses, liabilities, expenses (including reasonable legal fees and expenses), suits and proceedings of any nature whatsoever for personal injury, death or property damage to third parties (collectively “Liabilities”) that arise out of or are in any manner connected with the performance of this Agreement.

11.2.2 Any fines, penalties or other costs incurred by a Party or its agents, employees or subcontractors for non-compliance by such Party, its agents, employees or subcontractors with any Requirement of Law will not be reimbursed by the other Party but will be the sole responsibility of such non-complying Party.

11.2.3 A Party seeking indemnification under this Section 11.2 shall give written notice to the indemnifying Party as soon as reasonably practicable after the Indemnified Party becomes aware of any fact, condition or event which may give rise to Liabilities for which indemnification may be sought under this Section 11.2.

**11.3 Limitations of Remedies, Liability and Damages.** The Parties agree that the remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no measure of damages or other remedy is expressly provided herein, the obligor’s liability shall be limited to direct actual damages only, which direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless otherwise provided herein, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, (other than consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages recovered by an unaffiliated third party against a Party subject to indemnification hereunder), whether such damages are allowed or provided by statute, in tort, under any indemnity provision or otherwise.

## **ARTICLE 12 NOTICES AND ADDRESS FOR PAYMENT**

### **12.1 Notices.**

12.1.1 Except as set forth in Section 12.1.2, all notices, requests, statements or payments, if by check, shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or

hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by mail or overnight courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To PECO:

with a copy to: PECO Energy Acquisition  
S18-2  
2301 Market Street  
Philadelphia, PA 19103  
Attn: Director, PECO Energy Acquisition

to Seller:

12.1.2 All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) to the addresses specified below:

To PECO:

with a copy to: PECO Energy Acquisition  
S18-2  
2301 Market Street  
Philadelphia, PA 19103  
Attn: Director, PECO Energy Acquisition

to Seller:

12.1.3 All amounts due Seller under this Agreement that are paid by check must be sent via United States mail to the address specified below:

12.1.4 All amounts due PECO under this Agreement that are paid by check must be sent via United States mail to the address specified below:

12.1.5 A Party's address or addressee to which notices or invoices shall be sent may be changed from time to time by such Party by notice served as hereinabove provided.

**12.2 Notice After Close of Business.** Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided, however, that notice by

facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

## **ARTICLE 13 DISPUTE RESOLUTION**

**13.1 Negotiations.** The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as provided in this Section. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) Business Days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) Business Days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) Business Days after such referral, either Party may initiate arbitration as provided in Section 13.2. All negotiations pursuant to this clause are confidential, shall be considered to be in the nature of settlement discussions and shall be subject to Section 13.3.

### **13.2 Arbitration.**

13.2.1 If the negotiation process provided for in Section 13.1 has not resolved the dispute, the dispute shall be decided by binding arbitration at Philadelphia, Pennsylvania in accordance with the Commercial Arbitration Rules of the American Arbitration Association (except as expressly provided otherwise herein). The arbitration shall be governed by the United States Arbitration Act (9 U.S.C. § 1 et seq.), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Any arbitration may be consolidated with any other arbitration proceedings between the Parties commenced under this Section 13.2. The award of the arbitrator shall be specifically enforceable in a court of competent jurisdiction.

13.2.2 Either Party may commence the arbitration by giving to the other Party written notice in sufficient detail of the existence and nature of any dispute proposed to be arbitrated. The demand must be made within a reasonable time after the dispute has arisen. In no event may the demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations. The Parties shall attempt to agree on a person to serve as arbitrator with respect to the matter at issue. If the Parties cannot agree on an arbitrator within ten (10) Business Days of such notice, each shall then appoint one individual to serve as an arbitrator within thirty (30) Business Days of such notice and the two (2) individuals thus appointed shall select a third arbitrator to serve as chairman of the panel of arbitrators. Such three (3) arbitrators shall determine all matters by majority vote; provided however, if the two (2) arbitrators appointed by the Parties are unable to agree upon the appointment of the third arbitrator within ten (10) Business Days after their appointment, both shall give written notice of such failure to agree to the Parties, and, if the

Parties fail to agree upon the selection of such third arbitrator within five (5) Business Days of such notice, then either of the Parties upon written notice to the other may require such appointment from, and pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any arbitrator appointed shall be a present or former executive of an electric utility, or private power producer, or an attorney, in each case with substantial experience in electric power purchase agreements. Prior to appointment, each arbitrator shall agree to conduct such arbitration in accordance with the terms of this Agreement.

13.2.3 The Parties shall have sixty (60) calendar days after appointment of all arbitrators to perform discovery and present evidence and argument to the arbitrators. During that period, the arbitrators shall be available to receive and consider all such evidence as is relevant and, within reasonable limits due to the restricted time period, to hear as much argument as is feasible, giving a fair allocation of time to each Party to the arbitration. The arbitrators shall use all reasonable means to expedite discovery and to sanction noncompliance with reasonable discovery requests or any discovery order. The arbitrators shall not consider any evidence or argument not presented during such period and shall not extend such period except by the written consent of both parties. At the conclusion of such period, the arbitrators shall have forty-five (45) calendar days to reach a determination.

13.2.4 The arbitrators shall have the right only to interpret and apply the terms and conditions of this Agreement and to order any remedy allowed by this Agreement, and may not change any term or condition of this Agreement, deprive either Party of any right or remedy expressly provided hereunder, or provide any right or remedy that has been excluded hereunder.

13.2.5 The arbitrators shall give a written decision to the Parties stating their findings of fact, conclusions of law and order, and shall furnish to each Party a copy thereof signed by them within five (5) calendar days from the date of their determination. Each party shall pay the cost of the arbitrator or arbitrators, with respect to those issues as to which they do not prevail, as determined by the arbitrator or arbitrators.

**13.3 Settlement Discussions.** The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in Section 13.1 above will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

**13.4 Preliminary Injunctive Relief.** Nothing in this Article 13 shall preclude, or be construed to preclude, the resort by either party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending arbitration pursuant to this Article 13.

## ARTICLE 14 MISCELLANEOUS

**14.1 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and it supersedes all prior oral or written agreements, commitments, negotiations or understandings with respect to the matters provided for herein.

**14.2 Schedules and Exhibits.** The Schedules and the Exhibits attached hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.

**14.3 Amendment.** Unless expressly provided otherwise in another provision of this Agreement, this Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties. It is agreed that no use of trade or other regular practice or method of dealing between the Parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

**14.4 Waiver.** Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by a Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

**14.5 Remedies Cumulative.** No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing.

**14.6 Binding Effect; Limitation of Benefits.** This Agreement shall be binding upon and shall insure to the benefit of the Parties hereto and, subject to the provisions of Article 10 hereof, their successors and permitted assigns. Nothing in this Agreement is intended to confer benefits, rights or remedies unto any Person other than the Parties and their permitted successors and assigns, and no third party shall have the right to enforce the provisions of this Agreement.

**14.7 Compliance with Laws.** Except as otherwise provided in this Agreement, each Party to this Agreement shall comply, at its own expense, with all applicable laws, statutes, regulations, rules, ordinances, orders, injunctions, writs, decrees or awards of any government or political subdivision thereof, or any agency, authority, bureau, commission, department or instrumentality thereof, or any court, tribunal, or arbitrator, in all applicable, material respects in connection with all activities and all performance under or in connection with this Agreement.

**14.8 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of conflict of law provision or rule (whether of the

Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the Commonwealth of Pennsylvania.

**14.9 No Partnership or Joint Venture.** This Agreement is not intended to create nor shall it be construed to create any partnership or joint venture relationship between PECO and Seller, and neither Party hereto shall have the power to bind or obligate the other Party. Neither Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker's compensation responsibilities.

**14.10 Headings.** The titles, headings and table of contents contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**14.11 Number of Days.** In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or holiday.

**14.12 E-mail in Place of Writing.** Where the parties agree, any written notification required by this Agreement may be transmitted via e-mail.

**14.13 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the domestic laws of the Commonwealth of Pennsylvania as provided herein, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future Laws effective during the term hereof, then (a) in lieu of such illegal, invalid or unenforceable provision, the Parties shall promptly endeavor, in good faith negotiations, to agree on a provision as may be possible and be legal, valid and enforceable, provided that no Party shall be required to agree to any provision that would materially alter any of its rights or obligations under this Agreement, and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. To the extent permitted by law, each Party hereby waives any Requirement of Law that renders any such provision prohibited or unenforceable in any respect.

**14.14 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.

*[Signatures Appear on the Following Page]*

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of PECO and Seller as of the date first written above.

PECO ENERGY COMPANY,  
a Pennsylvania Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SELLER]

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 1  
CONTRACT TERMS**

Type of AEC: AEPS Tier I solar photovoltaic

Contract Amount (AECs / Contract Year):

Contract Price (\$/AEC):

For Standard Offer to Purchase Phase Only:

Location(s) of AECs Generated In PECO's Service Territory (City and County):

**EXHIBIT 2**

**SAMPLE LETTER OF CREDIT**

[On Issuing Bank's Letterhead]

**IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT**

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: PECO Energy Company  
[address]  
Attention: \_\_\_\_\_

1. We hereby establish this Irrevocable Transferable Standby Letter of Credit (this "Letter of Credit") in your favor in the amount of USD \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank's location for presentments] and expiring at 5:00 PM [New York, NY time<sup>1</sup>] on \_\_\_\_\_, 200\_, [one year after date of issuance] (the "Initial Expiration Date"), unless terminated earlier in accordance with the provisions of Paragraph 11 hereof or extended one or more times in accordance with the provisions of Paragraph 10 hereof (the "Extended Expiration Date"; the latest of the Initial Expiration Date and any Extended Expiration Date being referred to herein as the "Expiration Date").
2. This Letter of Credit is issued at the request and for the account of \_\_\_\_\_ (including its successors and assigns, the "Applicant"), to secure its obligations under one or more Alternative Energy Purchase and Sale Agreements between you and the Applicant or its affiliates.
3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to \_\_\_\_\_ (identify Issuing Bank), \_\_\_\_\_ (U.S. address), (a) a notice executed by you substantially in the form of Annex 1 hereto, appropriately completed and duly signed by your Authorized Officer and (b) your draft substantially in the form of Annex 2 hereto, appropriately completed and duly signed by your Authorized Officer.

<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly

4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
  
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 PM [New York, NY time] on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM [New York, NY time] on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM [New York, NY time] on any Business Day.
  
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
  
7. Unless otherwise hereafter designated in writing to us by your Authorized Officer, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to you pursuant to the following instructions:

PECO Energy Company  
 Account No.: \_\_\_\_\_  
 Bank: \_\_\_\_\_  
 Bank's Address: \_\_\_\_\_  
 \_\_\_\_\_  
 ABA Routing No.: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Telephone No.: \_\_\_\_\_

8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced to the extent of the amount of any drawings referencing this Letter of Credit paid by us. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof,

provided that the amounts payable on any such demand shall not exceed the amount then available to be drawn under this Letter of Credit.

9. We may, but shall not be obligated to, accept any request by you to amend this Letter of Credit to increase or decrease the amount available hereunder. Such request may be made pursuant to a "New Availability Request" in the form of Annex 3 hereto appropriately completed and executed by your Authorized Officer delivered to us requesting us to amend this Letter of Credit to change the amount available hereunder to the amount set forth in such New Availability Request. Upon acceptance by us of your New Availability Request to change the amount of this Letter of Credit, we will issue to you an amendment of this Letter of Credit in the amount set forth in the New Availability Request. The amount available under this Letter of Credit from the date of such amendment shall be the full amount stated therein regardless of our honor and payment of draws under this Letter of Credit prior to such amendment. If we fail to issue an amendment complying with your New Availability Request within two (2) Business Days after we receive it, any such amendment issued thereafter decreasing the amount of this Letter of Credit, even if in accordance with your New Availability Request, shall require your express acceptance before it is effective.
10. It is a condition of this Letter of Credit that its Expiration Date shall be automatically extended from its Initial Expiration Date, or any Extended Expiration Date, for successive one year periods unless you receive written notice from us at least thirty (30) days prior to the then current Expiration Date, sent by Federal Express or other nationally recognized next business day courier or delivery service to you at your address stated above (or such other address an Authorized Officer of your notifies us of in writing) that we elect not to extend this Letter of Credit for such additional one year period.
11. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 4 hereto together with the original of this Letter of Credit returned for cancellation, or (c) unless extended, 5:00 PM [New York, NY time] on the Expiration Date.
12. Rule 3.14(a) of the ISP as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Rule 3.14(b) of the ISP is hereby modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

13. As used herein:

“Authorized Officer” shall mean President, Treasurer, any Vice President or any Assistant Treasurer.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in [New York, New York] and any day on which payments can be effected on the Fedwire system.

“New Availability Request” shall mean a request form substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your Authorized Officer.

14. This Letter of Credit is transferable pursuant to a notice of transfer in the form of Annex 5 hereto, to an entity you identify to us in such instrument as your transferee, and we hereby consent to such transfer. Any and all transfer fees, expenses and costs shall be borne by the Applicant. Any payments made under this Letter of Credit after its transfer shall be made to the account of the transferee as designated to you by an Authorized Officer of the transferee.
15. This Letter of Credit is subject to and shall be governed by the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590), or any successor publication thereto (the “ISP”), except to the extent that the terms hereof are inconsistent with the provisions of the ISP, in which case the terms of this Letter of Credit shall govern. This Letter of Credit shall, as to matters not governed by the ISP or matters inconsistent with the ISP, be governed and construed in accordance with the laws of the State of [New York], without regard to principles of conflicts of law.
16. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 5 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the beneficiary.
17. We certify that as of the date of issuance of this Letter of Credit our senior unsecured debt is rated “A” or better by Standard & Poor’s Rating Service.

18. This original Letter of Credit has been delivered to you as beneficiary in accordance with the Applicant's instructions. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by your Authorized Officer.

Very truly yours,  
(Issuing Bank)

By: \_\_\_\_\_

**ARTICLE 1: Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Issuing  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under Your Letter of Credit No. \_\_\_\_\_ (the Letter of Credit) in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit in the amount of USD \$\_\_\_\_\_ (the "Draw Amount").
3. [Check applicable drawing condition]:
  - An Event of Default has occurred under an Alternative Energy Credits Purchase and Sale Agreement between the Applicant and the undersigned, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.
  - The Letter of Credit is scheduled to expire within the next thirty (30) days and the Applicant has failed to deliver a replacement letter of credit as required by the terms of the Alternative Energy Credits Purchase and Sale Agreement between the Applicant and the undersigned, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.

4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

PECO Energy Company

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ [Applicant]

**ARTICLE 2: Annex 2 to Letter of Credit**

**SIGHT DRAFT**

Amount: \$ \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

At sight, pay to the order of PECO Energy Company, the sum of  
\_\_\_\_\_ U.S. Dollars.

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Drawn under Irrevocable Letter of Credit No. \_\_\_\_\_ of  
\_\_\_\_\_ [identify Issuing Bank] dated  
\_\_\_\_\_, 200\_.

To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address]  
\_\_\_\_\_

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:

**ARTICLE 3: Annex 3 to Letter of Credit**

**NEW AVAILABILITY REQUEST**

\_\_\_\_\_, 20\_\_\_\_  
To: (Issuing Bank)  
(Address)

Attn: Standby Letter of Credit Dept.

[Applicant]  
[Address]  
Attn:

Re: \_\_\_\_\_ [Issuing Bank] Letter of Credit No.  
\_\_\_\_\_ (the "Letter of Credit")

Ladies and Gentlemen:

Pursuant to Paragraph 9 of the above-referenced Letter of Credit, the undersigned hereby requests that \_\_\_\_\_ [Issuing Bank] issue and deliver to us as beneficiary of the above-referenced Letter of Credit, an amendment to it to provide that the amount available for drawing thereunder from the date of the amendment will be in the amount of \$\_\_\_\_\_ (the "New Amount"), but otherwise the terms of the above-referenced Letter of Credit shall remain unchanged.

Please acknowledge your agreement to amend the Letter of Credit to the New Amount by issuing and forwarding the requested amendment of the Letter of Credit in the New Amount to the attention of the undersigned at the address listed below within two Business Days after the first Business Day on which you receive this Request.

Very truly yours,

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_ [Address]

**ARTICLE 4: Annex 4 to Letter of Credit**

CERTIFICATE OF CANCELLATION

\_\_\_\_\_, 20\_\_

To: (Issuing Bank)  
(Address)

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit, marked cancelled.

PECO Energy Company

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ [Applicant Name]

**ARTICLE 5: Annex 5 to Letter of Credit**

NOTICE OF TRANSFER

\_\_\_\_\_, 20\_\_\_\_  
To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address]

To Whom It May Concern:  
Re: Your Letter of Credit No. \_\_\_\_\_

For value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned beneficiary to draw and receive payments under the above-referenced Letter of Credit in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee, and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original Letter of Credit is returned herewith, and we ask you to endorse the transfer thereon and forward it directly to the transferee at the address indicated above with your customary notice of transfer or issue a new Letter of Credit in the form of the Letter of Credit naming the transferee as the beneficiary thereof.

From and after the transfer of the Letter of Credit, payments under the Letter of Credit shall be made to an account of the transferee in accordance with written instructions you receive from an authorized officer of the transferee.

Pursuant to the Letter of Credit and your agreement with the Applicant, your transfer commission and any other expenses that may be incurred by you in conjunction with this transfer are payable by the Applicant.

Very truly yours,

Beneficiary:

PECO Energy Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The within signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

[Name of authenticating bank]

\_\_\_\_\_  
(Authorized signature of authenticating party)  
Name:  
Title:

### EXHIBIT 3

#### CREDIT SUPPORT REQUIREMENT

Nominal Contract Value(\$)=Contract Amount (AECs/year) x Contract Price (\$/AEC) x 10 years

Months Remaining in Term	Collateral Requirement for Credit Support
Over 108	Nominal Contract Value x 5.0%
97 to 108	Nominal Contract Value x 4.5%
85 to 96	Nominal Contract Value x 4.0%
73 to 84	Nominal Contract Value x 3.5%
61 to 72	Nominal Contract Value x 3.0%
49 to 60	Nominal Contract Value x 2.5%
37 to 48	Nominal Contract Value x 2.0%
25 to 36	Nominal Contract Value x 1.5%
13 to 24	Nominal Contract Value x 1.0%
1 to 12	Nominal Contract Value x 0.5%