

**PECO Energy Company
Default Service Program
Request for Proposals
For Block Energy Supply**

_____, 2009

TABLE OF CONTENTS

ARTICLE I.	INTRODUCTION	1
I.1.	Overview	1
I.2.	Products and Bids.....	4
I.3.	Submission of Proposals	8
I.4.	Supplier’s Obligations.....	10
ARTICLE II.	Information and Schedule.....	12
II.1.	RFP Web Site	12
II.2.	RFP Schedule	13
ARTICLE III.	General Requirements for Proposals	14
ARTICLE IV.	Part 1 Proposal Requirements.....	17
IV.1.	Contact Information and Representations.....	17
IV.2.	Financial Requirements.....	18
IV.3.	Regulatory Representations.....	22
IV.4.	Additional Representations	23
IV.5.	RFP Bidders Under an Agency Agreement	23
IV.6.	Foreign RFP Bidders and Foreign Entities.....	25
ARTICLE V.	Part 2 Proposal Requirements.....	29
V.1.	Contact Information and Representations.....	29
V.2.	Pre-Bid Letter of Credit	31
V.3.	Block Energy SMA Documents.....	33
V.4.	RFP Bidders Under an Agency Agreement	34
V.5.	Foreign RFP Bidders and Foreign Entities.....	35
ARTICLE VI.	Bid Submission	39
ARTICLE VII.	Process.....	41
VII.1.	Part 1 and Part 2 Proposals: Submission and Processing	41
VII.2.	Bids: Submission, Processing, and Evaluation.....	51
VII.3.	Post-Bid Process	55
VII.4.	Personnel and Confidentiality	56
ARTICLE VIII.	Reserved Rights.....	59

ARTICLE I. INTRODUCTION

I.1. Overview

I.1.1. Capitalized terms in this document, which are not defined explicitly herein, are defined in the Default Service Program Block Energy Supply Master Agreement (“Block Energy SMA”). The Block Energy SMA is attached as Appendix 1 to this document.

I.1.2. PECO Energy Company (“Company” or “PECO”) has proposed a competitive bidding process to obtain electric supply for the Company to meet a portion of its obligations as Default Service Provider, pursuant to Chapter 28 of the Pennsylvania Public Utility Code, 66 Pa. C. S. §§ 2801-2812. This competitive bidding process uses a Request for Proposals (“RFP”) for the procurement of blocks of around-the-clock energy (“Baseload Block Energy Supply”) as well as for the procurement of blocks of energy for peak hours (“Peak Block Energy Supply”). Block Energy Supply is procured for various durations. This competitive bidding process also includes a second RFP for the procurement of full requirements service. Whenever necessary to avoid confusion, these two RFPs will be referred to as the “Block Energy RFP” and the “Full Requirements RFP” respectively.

I.1.3. This RFP consists of a total of eleven (11) documents. This main document is called the “RFP Rules”. The following documents are appended to the RFP Rules:

- Appendix 1: Block Energy SMA
- Appendix 2: Subsequent Solicitations
- Appendix 3: Guaranty Process
- Appendix 4: Part 1 Form
- Appendix 5: Part 2 Form
- Appendix 6: Sample Bid Form
- Appendix 7: Chief Financial Officer Attestation
- Appendix 8: Officers’ Certificate (for RFP Bidders under an Agency Agreement)
- Appendix 9: Standard Pre-Bid Letter of Credit
- Appendix 10: Confidentiality Statement

I.1.4. The RFP will select electricity suppliers to provide Block Energy Supply for the term of the procurement plan of PECO’s Default Service Program, namely January 1, 2011

Exhibit D

through May 31, 2013. Some contracts that begin during this period extend beyond the term of the Default Service Program, expiring on December 31 of 2013, 2014, and 2015.

I.1.5. There are eight (8) solicitations pursuant to this RFP. Each solicitation will be identified by the season and year during which it will take place. Solicitations will be held in the Spring and Fall of 2009, 2010, 2011, and 2012.

I.1.6. All eight (8) solicitations will procure Baseload Block Energy Supply. The first four (4) solicitations will procure Baseload Block Energy Supply for a duration of 12 months beginning on January 1, 2011 and ending on December 31, 2011. Starting with the Spring 2011 solicitation, the Spring and Fall solicitations of a given year will procure Baseload Block Energy Supply for the next year, beginning on January 1 and ending on December 31. Solicitations in the Spring and Fall 2010 will also procure Baseload Block Energy Supply for a duration of 24 months, beginning on January 1, 2011 and ending on December 31, 2012. Solicitations in the Spring and Fall 2012 will also procure Baseload Block Energy Supply for a duration of 24 months, beginning on January 1, 2013 and ending on December 31, 2014. The Spring 2010 solicitation will also procure Baseload Block Energy Supply for a period of 60 months beginning on January 1, 2011.

I.1.7. The last six (6) solicitations will procure Peak Block Energy Supply. For purposes of this RFP, June 1 of a given year through August 31 of the same year are referred to as "Summer Months". Starting with the Fall 2010 solicitation, a Fall solicitation and the next Spring solicitation will procure Peak Block Energy Supply for the coming Summer Months. The Spring 2010 and Fall 2010 solicitations will also procure Peak Block Energy Supply for two months, beginning on January 1, 2011 and ending on February 28, 2011. Starting with the Spring 2011 solicitation, the Spring and Fall solicitation of a given year will procure Peak Block Energy Supply for three months, beginning on December 1 of that year and ending on the last day of February of the next year.

Exhibit D

- I.1.8. The schedule in these RFP Rules refers only to the Spring 2009 solicitation. For each solicitation, these RFP Rules will be updated to include the dates for that solicitation and to refer to the particular products to be procured in that solicitation. Provisions of this RFP will be updated to allow suppliers that have qualified to bid in one solicitation under this RFP to take part in an abbreviated qualification process for subsequent solicitations under this RFP. The provisions of the RFP that are expected to be updated, as well as the tentative schedule for future solicitations, are provided in Appendix 2. The RFP Rules may be further updated to reflect additional decisions by the Commission, relevant changes in law, or non-material modifications to the processing of Proposals expected to improve potential participation by suppliers. Further, the Independent Evaluator and the Company may amend the RFP Rules if necessary to cure inconsistencies in the provisions of this RFP. The Independent Evaluator and the Company may advise the Commission to postpone or modify the schedule of a solicitation when market conditions are impacted by extraordinary events, such as the advent of war, terrorism, or an act of God.
- I.1.9. A "Class" is a grouping of customers on PECO's existing rate schedules. The Residential Class consists of the following rate schedules: Residence Service ("R"), Residential Heating Service ("RH"), and Off-Peak Service ("OP"). PECO will serve 25% of the Residential Class Default Service Load, referred to as the "PECO Share". PECO will use Block Energy Supply to meet 20% of the expected seasonal energy requirements of the Residential Class Default Service Load (80% of the PECO Share). PECO will balance the blocks of energy and load of the PECO Share on an hourly basis through the hourly spot market energy in PJM. PECO will purchase all other necessary products to serve the PECO Share, including without limitation ancillary services and capacity, in PJM-administered markets. For the PECO Share, PECO will make purchases necessary to meet its obligations under the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8, ("AEPS Act"), as well as other Orders, regulations and rules that may be promulgated by the PUC with respect to the AEPS.

Exhibit D

- I.1.10. An electric supplier participating in this RFP bids to provide Block Energy Supply, either Baseload Block Energy Supply or Peak Block Energy Supply or both, for one or more supply periods. An electric supplier selected through this RFP to provide Block Energy Supply and approved by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) becomes a Block Energy Supplier. An electric supplier participating in this Block Energy RFP may also participate in the Full Requirements RFP for fixed-price and spot-price full requirements products.
- I.1.11. The obligations of the Block Energy Supplier are described in the Block Energy SMA. The main provisions of the Block Energy SMA are summarized in Section I.4.
- I.1.12. A Proposal is a response to this RFP for a solicitation pursuant to these RFP Rules. An entity that submits any part of a response to this Block Energy RFP for a solicitation is an RFP Bidder (Block Energy). An entity that submits any part of a response to the Full Requirements RFP for a solicitation is an RFP Bidder (Full Requirements). In the documents for this Block Energy RFP, “RFP Bidder” means “RFP Bidder (Block Energy)” unless specifically stated otherwise.
- I.1.13. A Proposal consists of three (3) parts. The first part of the Proposal (“Part 1 Proposal”) is the RFP Bidder’s response to the qualification standards described in Article IV of these RFP Rules. RFP Bidders that qualify pursuant to a successful Part 1 Proposal may submit the second part of the Proposal (“Part 2 Proposal”). The Part 2 Proposal, described in detail in Article V, includes the signed Block Energy SMA and financial support for the RFP Bidder’s offers. RFP Bidders that present a successful Part 1 Proposal and Part 2 Proposal may submit the third part of the Proposal, which consists of the RFP Bidder’s price offers.

I.2. Products and Bids

- I.2.1. This RFP solicits electric suppliers to deliver specific quantities of around-the-clock energy, generally for periods of 12 or 24 months, or to deliver specific quantities of on-peak energy, generally for 3 months. A product, for purposes of this RFP, is either

Exhibit D

a Baseload Product or a Peak Product to be delivered in specific months. A Baseload Product is a constant quantity of energy to be delivered to the PE Zone in all hours of specific months. A Peak Product is a constant quantity of energy to be delivered only in on-peak hours of specific months. There are six (6) Baseload Products and five (5) Peak Products, as completely specified in the table below. In the table below, each product is named by a sequence of three elements: a letter “B” for a Baseload Product or “P” for a Peak Product; a number corresponding to the duration of the delivery period in months; and the month and year of the start of the delivery. Thus, the B-24-Jan2011 Product is a Baseload Product with a delivery period starting on January 1, 2011 and ending on December 31, 2012.

Table I-1. Description of Products.

Product	Type	Delivery Period	Duration (in months)
B-12-Jan2011	Baseload	January 1, 2011 to December 31, 2011	12
B-12-Jan2012	Baseload	January 1, 2012 to December 31, 2012	12
B-12-Jan2013	Baseload	January 1, 2013 to December 31, 2013	12
B-24-Jan2011	Baseload	January 1, 2011 to December 31, 2012	24
B-24-Jan2013	Baseload	January 1, 2013 to December 31, 2014	24
B-60-Jan2011	Baseload	January 1, 2011 to December 31, 2015	60
P-2-Jan2011	Peak	January 1, 2011 to February 28, 2011	2
P-3-Jun2011	Peak	June 1, 2011 to August 31, 2011	3
P-3-Dec2011	Peak	December 1, 2011 to February 29, 2012	3
P-3-Jun2012	Peak	June 1, 2012 to August 31, 2012	3
P-3-Dec2012	Peak	December 1, 2012 to February 28, 2013	3

I.2.2. PECO’s Default Service Program Plan specifies a quantity in megawatts (“MW”) that this RFP seeks to procure of each product with delivery beginning on January 1, 2011, as well as for the P-3-Jun2011 Product. These quantities are expressed in number of 10 MW blocks and are given in the table below.

Table I-2. Available Blocks with Delivery Prior to December 1, 2011.

Products	Number of Available Blocks	Total MW
B-12-Jan2011	16	160
B-24-Jan2011	10	100
B-60-Jan2011	5	50
P-2-Jan2011	8	80
P-3-Jun2011	13	130

- I.2.3. The quantities of all remaining products with delivery beginning on December 1, 2011 or later will be subject to an adjustment mechanism based on the updated data for the Default Service Load of the Residential Class. Under this adjustment mechanism, the size of energy blocks will be determined based on weather normalized hourly Default Service Load data for the most recent 12 months for the Residential Class. If this determination results in block sizes that are outside a +/- 5% deadband, when compared to the current block sizing, then upcoming procurement quantities will be based on the newly calculated block energy sizes. If this determination results in block sizes that are within the +/- 5% deadband, then upcoming procurement quantities will be based on the current block energy sizes.
- I.2.4. An RFP Bidder can offer to supply one or several of the products in a given solicitation. A Bid for a block of 10 MW of any product is a price in dollars per MWh rounded to the nearest cent. An RFP Bidder may submit different Bids for different blocks of a given product. The number of blocks bid by an RFP Bidder on a product is the number of blocks of that product for which the RFP Bidder provides a Bid.
- I.2.5. The Spring 2009 solicitation will solicit offers for 4 blocks of the B-12-Jan2011 Product (i.e., for 40 MW of Baseload Block Energy Supply for a duration of 12 months starting on January 1, 2011). No RFP Bidder can bid on more than 2 blocks of this product, which is the Load Cap for the Spring 2009 solicitation. The Load Cap ensures that there will be a diversified pool of Block Energy Suppliers. For the Spring 2009 solicitation, the Load Cap is the same for all RFP Bidders. In future solicitations, the

Exhibit D

Load Cap will be set individually for each RFP Bidder to take into account the number of blocks for which the RFP Bidder's Bids were accepted in previous solicitations. The Load Cap for an RFP Bidder will allow the RFP Bidder to be a Block Energy Supplier for no more than 65% of blocks to be delivered at any given time.

I.2.6. For products that are procured in more than one solicitation, if PECO is unable to obtain Block Energy Supply for all blocks for a product in a solicitation, unfilled blocks for that product will be placed for re-bid in the next solicitation in which the same product is scheduled to be purchased (if there is such a solicitation). Products in the Spring 2009 solicitation are also procured in the Fall 2009, Spring 2010, and Fall 2010 solicitations and thus any unfilled blocks will be up for re-bid in the Fall 2009 solicitation. The last solicitation in which some products (such as the B-12-Jan2011, B-24-Jan2011, and P-2-Jan2011 Products) are procured is the Fall 2010 solicitation and these products are not scheduled to be purchased again in a subsequent solicitation. If there is no subsequent solicitation in which a product with unfilled blocks is scheduled to be purchased, at the start of the supply period, PECO will instead purchase additional hourly spot market energy in PJM. For products with a duration of 24 months, the unfilled blocks will be placed for re-bid in the first solicitation after the start of the supply period. The blocks will be added to the supply to be purchased for the product with the longest supply period that expires on or before the original expiration date.

I.2.7. One product, the B-60-Jan2011 Product, is procured in a single solicitation. If PECO is unable to obtain Block Energy Supply for all blocks of that product, unfilled blocks will be placed in the next solicitation and will be added to the supply to be purchased for the product with the longest supply period that expires before the original expiration date. Supply upon expiry of the re-bid product will be purchased equally in the two solicitations in the year before the expiration date of the re-bid product. Expiring blocks of the re-bid product will be added to the supply to be purchased for the

Exhibit D

product with the longest supply period that expires on or before the original expiration date.

- I.2.8. Any prospective supplier that meets the qualification standards established in these RFP Rules, and that is willing to provide prices at which to provide Block Energy Supply can respond to this RFP, including Exelon Generation Company (a PECO affiliate).

I.3. Submission of Proposals

- I.3.1. PECO and the Independent Evaluator will hold a Guaranty Process, described in more detail in Appendix 3. The Guaranty Process allows a supplier unable to use the Form of Guaranty provided as Exhibit F to the Block Energy SMA to submit for consideration by PECO the guaranty that the supplier uses in its normal course of business. An alternate guaranty form is approved according to specific criteria provided in Appendix 3. In particular, the alternate guaranty form must not have a monetary limit and must provide credit protections to PECO and its customers that are substantially similar to the credit protections provided to PECO by the Form of Guaranty. The Guaranty Process also allows a supplier able to use the Form of Guaranty provided as Exhibit F to the Block Energy SMA to propose modifications to the Form of Guaranty that are non-material in nature, or that are advantageous to both PECO and the prospective supplier. All approved modifications will be posted in a single document on the RFP Web site in advance of the Part 1 Proposal. An RFP Bidder using the Form of Guaranty may elect to incorporate any or all of the approved modifications to the Form of Guaranty, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification. Each RFP Bidder that relies on the financial standing of an RFP Guarantor must use the supplement to the Part 1 Form to make its elections to incorporate any of the approved modifications to the Form of Guaranty.

Exhibit D

- I.3.2. RFP Bidders must use the Part 1 Form provided as Appendix 4 of these RFP Rules to respond to the qualification standards described in Article IV of these RFP Rules. The Part 1 Form, as well as other forms mentioned in these RFP Rules, are provided as Appendices to these RFP Rules and are also available electronically on the RFP Web site www.pecoprocurement.com.
- I.3.3. The Part 1 Proposal for an RFP Bidder consists of three (3) original completed Part 1 Forms as well as one (1) copy of all documents required by the Part 1 Form. These documents can be submitted either in hard copy, or in electronic format. The qualification standards include the submission of contact information, general representations, and the submission of financial information for a creditworthiness assessment.
- I.3.4. RFP Bidders must use the Part 2 Form provided as Appendix 5 of these RFP Rules to respond to the Part 2 Proposal requirements described in Article V of these RFP Rules. The Part 2 Proposal consists of three (3) original completed Part 2 Forms as well as all other documents required by the Part 2 Form, in the number of originals specified in Article V. The Part 2 Proposal requirements include additional representations, submission of the Block Energy SMA, and a Pre-Bid Letter of Credit in an amount sufficient to support the Bids.
- I.3.5. RFP Bidders must use the Bid Form provided with the Part 1 Notification to submit their Bids. A sample Bid Form is provided for illustrative purposes as Appendix 6 of these RFP Rules.
- I.3.6. The schedule for this solicitation is provided in Table II-1 and will be updated if necessary on the RFP Web site www.pecoprocurement.com. Part 1 Proposals are received and processed during a specific timeframe, the Part 1 Proposal Window. The last day of the Part 1 Proposal Window is called the Part 1 Date. Part 1 Proposals must be received by noon on the Part 1 Date. All times in this RFP are Eastern Prevailing Times ("EPT") unless specifically noted. An RFP Bidder that submits a Part 1 Proposal during the Part 1 Proposal Window and who is qualified pursuant to its Part

Exhibit D

1 Proposal may submit a Part 2 Proposal. Each RFP Bidder that submits a Part 1 Proposal will be notified whether it has qualified to submit a Part 2 Proposal no later than 6:00 PM on the Part 1 Notification Date.

I.3.7. Part 2 Proposals are received and processed during a specific timeframe, the Part 2 Proposal Window. The last day of the Part 2 Proposal Window is called the Part 2 Date. Part 2 Proposals must be received by noon on the Part 2 Date. An RFP Bidder who is qualified pursuant to its Part 1 Proposal and who submits a successful Part 2 Proposal may submit Bids. Each RFP Bidder that submits a Part 2 Proposal will be notified whether it has qualified to submit Bids no later than 6:00 PM on the Part 2 Notification Date.

I.3.8. The day on which Bids are submitted is called the Bid Date. Each RFP Bidder's Bids must be received between 10:00 AM and noon on the Bid Date. All Bids are evaluated on the Bid Date.

I.3.9. For each solicitation, the Independent Evaluator will present on the Bid Date to the PUC the results of that solicitation in a confidential report to the PUC. The results of a solicitation may include the results for Block Energy Supply under this RFP as well as the results for full-requirements products under the Full Requirements RFP. This confidential report will include the winning Bids determined during the evaluation. The Independent Evaluator will notify each RFP Bidder whether each of its Bids is or is not being presented to the PUC as a winning Bid by 6:00 PM on the Bid Date.

I.3.10. The PUC will have one (1) business day to consider the report of the Independent Evaluator and to approve or reject each of the winning Bids. If the PUC does not act within one (1) business day, the winning Bids are deemed to be approved.

I.4. Supplier's Obligations

Exhibit D

- I.4.1. An electric supplier selected through this RFP to provide Block Energy Supply and approved by the PUC becomes a Block Energy Supplier. A Block Energy Supplier may be providing Baseload Block Energy Supply, or Peak Block Energy Supply, or both.
- I.4.2. This section describes in general terms several provisions of the Block Energy SMA. This is a summary only and is subject to and qualified in its entirety by the Block Energy SMA provided as Appendix 1 to the RFP Rules. Each RFP Bidder accepts the obligations and associated rights to provide Block Energy Supply as defined in the Block Energy SMA.
- I.4.3. Block Energy Supply includes the Energy, transmission other than Network Integration Transmission Service, transmission losses, congestion management costs, and such other services or products that are required by PJM to deliver the specified product to the PE Zone.
- I.4.4. A Block Energy Supplier that has won blocks of Baseload Block Energy Supply for a specific delivery period will provide a constant amount of energy every hour corresponding to the number of blocks won for that specific delivery period times 10MW. The price received by the Block Energy Supplier is the average of the prices of the blocks won by that Block Energy Supplier for that specific delivery period. A Block Energy Supplier that has won Peak Block Energy Supply for a specific delivery period will provide a constant amount of energy every on-peak hour corresponding to the number of blocks won for that specific delivery period times 10 MW. The price received by the Block Energy Supplier is the average of the prices of the blocks won by that Block Energy Supplier for that specific delivery period. In any month or hour, a Block Energy Supplier may be providing Baseload Block Energy Supply for more than one specific delivery period, or may be providing both Baseload Block Energy Supply and Peak Block Energy Supply, or both.

ARTICLE II. Information and Schedule

II.1. RFP Web Site

II.1.1. PECO and its Independent Evaluator have established an RFP Web site that is the main source of information for the RFP. RFP Bidders and other stakeholders can visit this RFP Web site to obtain information and documents related to this RFP. The RFP Web site address is www.pecoprocedure.com.

II.1.2. The RFP Web site contains the sections described below. New sections may be added as necessary to assist RFP Bidders.

Home: This section provides announcements of interest to RFP Bidders and to other interested parties, an outline of the RFP process, and a summary of important dates.

Documents and Data: These sections provide documents and data regarding the RFP.

Announcements: This section provides RFP-related announcements and links to the relevant documents.

Calendar: This section provides the timeline for the main events in the upcoming solicitation.

FAQs: In this section, all stakeholders, including RFP Bidders, will be able to ask questions via a web form. The Independent Evaluator will provide an answer to the question via email to the questioner, and a copy of the question and answer will be posted in this section of the RFP Web site so that all stakeholders and RFP Bidders have access to the same information. Aspects of the question and/or answer that might identify the party asking the question will be removed before posting.

Links: This section provides various links that may be of interest to RFP Bidders.

Register: This section gives any stakeholder an opportunity to register their email address to receive updates and announcements regarding this RFP.

II.2. RFP Schedule

II.2.1. The following is the schedule for the Spring 2009 solicitation. Specific times for submission of materials for the Part 1 Proposals, the Part 2 Proposals, and the Bids are provided elsewhere in this RFP. All such times are EPT unless specifically noted. This schedule may be amended if circumstances warrant. Any such amendments will be posted to the RFP Web site.

Table II-1. RFP Schedule

Activity	Date
RFP Web site is launched	Friday, March 27, 2009
Initial Bidder Information Conference Call	Tuesday, March 31, 2009
Spring 2009 Solicitation	
Bidder Information Session	Tuesday, May 5, 2009
Prospective suppliers submit proposed modifications to Form of Guaranty	Friday, May 8, 2009
Prospective suppliers submit alternate guaranty form for consideration	Friday, May 8, 2009
Approved modifications to Form of Guaranty posted	Wednesday, May 13, 2009
Supplement to Part 1 Form issued	Thursday, May 14, 2009
Part 1 Proposal Window Opens	Tuesday, May 19, 2009
Decision on alternate guaranty forms	Friday, May 22, 2009
Part 1 Date (Part 1 Proposal Window Closes)	Wednesday, May 27, 2009
Part 1 Notification Date	Monday, June 1, 2009
Part 2 Proposal Window Opens	Tuesday, June 2, 2009
Bid Submission Training	Friday, June 5, 2009
Part 2 Date (Part 2 Proposal Window Closes)	Tuesday, June 9, 2009
Part 2 Notification Date	Friday, June 12, 2009
Bid Date (Bids are Due)	Monday, June 15, 2009
PUC Decision	No later than Tuesday, June 16, 2009
<i>If Bids are approved by the PUC:</i>	
PECO executes the Block Energy SMA	Within two business days of the Bid Date
PECO sends Transaction Confirmations by overnight delivery service	By noon of the third business day after the Bid Date
Block Energy Supplier meets the creditworthiness requirements and executes all Transaction Confirmation(s)	By 2:00 PM on the fourth business day after the Bid Date

ARTICLE III. General Requirements for Proposals

- III.1.1. An entity that submits any part of a response to this RFP for a solicitation is an RFP Bidder. Each RFP Bidder can submit at most one Part 1 Proposal and one Part 2 Proposal for each solicitation. An RFP Bidder that qualifies for the Spring 2009 solicitation by submitting a Part 1 Proposal that fulfills all requirements described in Article IV may submit a Part 2 Proposal.
- III.1.2. All Part 1 Proposals and all Part 2 Proposals are submitted to the Independent Evaluator in accordance with the instructions provided in Article VII.
- III.1.3. For a given solicitation, all representations and certifications required by this RFP must be made by a single individual. This individual must be an Officer of the RFP Bidder. An Officer of the RFP Bidder is an individual authorized to undertake contracts (including the Block Energy SMA) and bind that RFP Bidder. As a requirement of the Part 1 Proposal, the RFP Bidder must name an individual as Officer of the RFP Bidder and must provide full contact information for this individual. As a requirement of the Part 2 Proposal, this individual must sign the Block Energy SMA and must sign the Transaction Confirmation(s) if any of the RFP Bidder's Bids are approved by the Commission.
- III.1.4. Each RFP Bidder must comply with all Part 1 Proposal requirements described in Article IV. Section IV.1 describes the contact information and representations required. Section IV.2 describes financial requirements, including the process for RFP Bidders to propose modifications to the standard credit instruments. Section IV.3 describes the regulatory representations required. Section IV.4 lists additional representations that are required of all RFP Bidders. Section IV.5 lists additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section IV.6 lists additional requirements applicable only to RFP Bidders that have not been incorporated or otherwise formed under the laws of a state of the

Exhibit D

United States or of the District of Columbia (“Foreign RFP Bidders”), or to RFP Bidders that rely on the financial standing of an entity that has not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia (“Foreign Entity”).

- III.1.5. All information provided and certifications made in the Part 1 Proposal must remain valid and remain in full force and effect until five (5) business days after the Bid Date. Regardless of the reason, if any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid, it is the sole responsibility of the RFP Bidder to notify the Independent Evaluator as soon as practicable. Failing to do so may result in disqualification of the RFP Bidder and of its Proposal. The Independent Evaluator reserves the right to change the assessment of an RFP Bidder’s qualifications based on any revised information provided by the RFP Bidder.
- III.1.6. Each RFP Bidder must comply with all Part 2 Proposal requirements as described in Article V. Section V.1 describes the contact information and representations required by the Part 2 Proposal. Section V.2 describes the Pre-Bid Letter of Credit required to support the RFP Bidder’s Bids. Section V.3 lists the Block Energy SMA documents required of an RFP Bidder, including the guaranty required of RFP Bidders relying on the financial standing of an RFP Guarantor. Section V.4 lists additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section V.5 lists additional requirements applicable only to Foreign RFP Bidders or to RFP Bidders that rely on the financial standing of a Foreign Entity.
- III.1.7. Each RFP Bidder must comply with the instructions for the submission of Bids provided with its Part 1 Notification. Article VI describes in general terms the requirements for the submission of Bids.
- III.1.8. Proposals that do not adhere to the terms and conditions of this RFP, or that do not fulfill all requirements of Article IV, Article V, and Article VI of this RFP, or that are not submitted in accordance with the process of Article VII, will not be considered.

Exhibit D

- III.1.9. The submission of a Part 1 or a Part 2 Proposal to the Independent Evaluator constitutes the RFP Bidder's acknowledgement and acceptance of all the terms and conditions of this RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.
- III.1.10. The RFP Bidder, at its own cost and expense, shall defend PECO, and the Independent Evaluator and their subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders, executors, administrators, successors and assigns, other than entities that are also RFP Bidders, against any and all manner of past, present, or future claims, demands, disputes, controversies, complaints, suits, actions, proceedings, or allegations of any kind which in any manner relate to, arise out of, or result from any false statement in the Proposal or breach of any covenant by the RFP Bidder set forth herein. The RFP Bidder shall indemnify and hold harmless PECO, the Independent Evaluator, their parent companies, subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders and agents, as well as the heirs, executors, administrators, successors and assigns, other than entities that are RFP Bidders, against any and all liens, judgments, liabilities, losses, injuries, damages, fees, fines, penalties, costs or expenses which in any manner relate to, arise out of, or result from any false statement or misrepresentation in the Proposal or breach of any warranty by the RFP Bidder as set forth herein.

ARTICLE IV. Part 1 Proposal Requirements

IV.1. Contact Information and Representations

IV.1.1. An RFP Bidder must submit the following contact information in its Part 1 Proposal:

(i) the RFP Bidder's legal name and address; (ii) the name, title, and full contact information (address, phone number, fax number, email address) of an Officer of the RFP Bidder; (iii) the name, title, and full contact information (address, phone number, fax number, email address) of an individual named by the Officer of the RFP Bidder who will serve as Representative of the RFP Bidder for purposes of this solicitation.

IV.1.2. The Officer of the RFP Bidder must be an officer, a director, or an individual otherwise authorized to undertake contracts (including the Block Energy SMA) and bind the RFP Bidder. The Officer of the RFP Bidder whose contact information is provided in the Part 1 Proposal must make all representations required in the Part 1 Proposal. Should the RFP Bidder submit a Part 2 Proposal, the individual named as Officer of the RFP Bidder will sign the Block Energy SMA. Should the RFP Bidder have Bids approved by the Commission, the individual named as Officer of the RFP Bidder will sign the Transaction Confirmation(s).

IV.1.3. In the Part 1 Proposal, the Officer of the RFP Bidder must name a Representative of the RFP Bidder. The Officer of the RFP Bidder may name himself or herself as the Representative. The Representative is the point of contact if the Independent Evaluator has questions on the documentation provided by the RFP Bidder in response to this RFP or requires additional information. The Independent Evaluator sends all correspondence related to the solicitation to the Representative, including confidential information required to submit Bids on the Bid Date. The Independent Evaluator, for the purposes of this RFP, will communicate exclusively with the Representative or the Officer. Communications with the Representative will typically be done via fax and by overnight delivery service. The RFP Bidder is urged to provide

Exhibit D

a fax number at which the Representative will be able to receive faxes from the Independent Evaluator in a secure and timely manner.

- IV.1.4. The Officer of the RFP Bidder must certify that the Part 1 Proposal will remain valid and remain in full force and effect until five (5) business days after the Bid Date.
- IV.1.5. The Officer of the RFP Bidder must certify that all information provided in the Part 1 Proposal is true and accurate to the best of the Officer's knowledge and belief.
- IV.1.6. The Officer of the RFP Bidder must certify that if, for any reason or due to any circumstance, any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid before the fifth business day after the Bid Date, the Officer of the RFP Bidder or the Representative will notify the Independent Evaluator of such changes as soon as practicable.
- IV.1.7. All information and certifications in this Section IV.1 must be provided exclusively by completing Section 1 of the Part 1 Form, as further explained in Article VII.

IV.2. Financial Requirements

- IV.2.1. For purposes of a creditworthiness evaluation, each RFP Bidder must clearly select one of the following two (2) options for purposes of submitting to these financial requirements: (a) relying on its own financial standing; or (b) relying on the financial standing of another entity. The other entity on whose financial standing the RFP Bidder is relying is either a guarantor (the "RFP Guarantor"), or a Principal if the RFP Bidder is submitting a Proposal under an Agency Agreement. The requirements for an RFP Bidder submitting a Proposal under an Agency Agreement are further explained in Section IV.5.
- IV.2.2. An RFP Bidder includes in its Part 1 Proposal one (1) copy of the financial documents required in this Section IV.2, either in hard copy or electronically on a CD.
- IV.2.3. An RFP Bidder that selects option (a) in Paragraph IV.2.1 must include available financial information for the RFP Bidder in its Part 1 Proposal. If available, the RFP Bidder must submit its most recent quarterly financial information, including a

Exhibit D

balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent Securities and Exchange Commission ("SEC") Form 10-Q must be submitted to fulfill this requirement. If the SEC Form 10-Q is unavailable, the RFP Bidder must submit its most recent quarterly, monthly or bi-annual financial information accompanied by an attestation by the RFP Bidder's Chief Financial Officer (or equivalent position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are more specifically provided in Appendix 7 of these RFP Rules. If such financial information is unavailable for the RFP Bidder, the RFP Bidder must clearly state this fact.

IV.2.4. An RFP Bidder that selects option (b) in Paragraph IV.2.1 relies on the financial standing of another entity, either an RFP Guarantor or a Principal. Financial information must be available for such an entity. An RFP Bidder must submit, if available, the entity's most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent SEC Form 10-Q must be submitted to fulfill this requirement. If the SEC Form 10-Q is unavailable, the RFP Bidder must submit the entity's most recent quarterly, monthly, or bi-annual financial information accompanied by an attestation by the entity's Chief Financial Officer (or equivalent position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the entity. The requirements for this attestation are more specifically provided in Appendix 7 of these RFP Rules.

IV.2.5. In its Part 1 Proposal, an RFP Bidder must submit all available credit ratings for the entity on whose financial standing it is relying. This entity is the RFP Bidder if the RFP Bidder selects option (a) in Paragraph IV.2.1. This entity is the RFP Guarantor or a Principal if the RFP Bidder selects option (b) in Paragraph IV.2.1. The RFP Bidder must

Exhibit D

submit all available ratings from the following rating agencies: Standard & Poor's Ratings Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), and Fitch Ratings ("Fitch"). For each rating agency that rates the entity, the RFP Bidder must submit a print-out of the agency's Web site or other documentation from the agency providing the name of the rating agency, the type of rating, and the rating of the entity. If no ratings are available for the entity, the RFP Bidder must clearly state this fact.

- IV.2.6. Each RFP Bidder must, in its Part 2 Proposal, submit a Pre-Bid Letter of Credit in an amount of at least \$20,000 per block bid. This Pre-Bid Letter of Credit must be in the form of the Standard Pre-Bid Letter of Credit provided as Appendix 9 to these RFP Rules or must incorporate only modifications that have been approved by PECO and the Independent Evaluator. As part of the Part 1 Proposal, an RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Pre-Bid Letter of Credit by submitting a Draft Pre-Bid Letter of Credit substantially in the form of the Standard Pre-Bid Letter of Credit indicating clearly any and all modifications to the Standard Pre-Bid Letter of Credit. The Draft Pre-Bid Letter of Credit must be submitted electronically, in Microsoft Word with tracked changes, and may be saved to a CD that is included with the Part 1 Proposal, or it may be emailed to the Independent Evaluator at [[insert: Email Address]]. A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated.
- IV.2.7. All approved modifications to the Standard Pre-Bid Letter of Credit will be posted to the RFP Web site. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- IV.2.8. An RFP Bidder that selects option (b) in Paragraph IV.2.1 must, in its Part 2 Proposal, submit two (2) signed originals of the guaranty. The guaranty must be in the Form of

Exhibit D

Guaranty provided as Exhibit F to the Block Energy SMA, or must incorporate only modifications that have been approved by PECO and the Independent Evaluator pursuant to the Guaranty Process, or must be a guaranty approved by PECO pursuant to the Guaranty Process. The Guaranty Process is explained in Paragraph I.3.1 and in Appendix 3.

- IV.2.9. The Block Energy SMA includes, as Exhibit C, a Form of Letter of Credit that may be used to post security under the terms of the Block Energy SMA. This paragraph refers to this letter of credit as the "Standard Post-Bid Letter of Credit". An RFP Bidder may, in its Part 1 Proposal, request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Post-Bid Letter of Credit by submitting a Draft Post-Bid Letter of Credit substantially in the form of the Standard Post-Bid Letter of Credit indicating clearly any and all modifications to the Standard Post-Bid Letter of Credit. The Draft Post-Bid Letter of Credit must be submitted electronically, in Microsoft Word with tracked changes, and may be saved to a CD that is included with the Part 1 Proposal, or it may be emailed to the Independent Evaluator at [[insert: Email Address]]. A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated.
- IV.2.10. All approved modifications to the Standard Post-Bid Letter of Credit will be posted to the RFP Web site. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- IV.2.11. Each RFP Bidder must, in its Part 2 Proposal, submit two (2) signed original Block Energy SMA, including all necessary exhibits. The Independent Evaluator sends, along with the Part 1 Notification, the Block Energy SMA to each RFP Bidder that qualified pursuant to a successful Part 1 Proposal. The RFP Bidder, in its Part 1 Proposal, must provide all information needed to prepare for execution the Block Energy SMA,

Exhibit D

including all necessary exhibits. The RFP Bidder will be required to specify any elections to be made in the Block Energy SMA and to provide the contact information to prepare the form of notice, which is appended as Exhibit H to the Block Energy SMA.

- IV.2.12. An RFP Bidder that relies on the financial standing of an RFP Guarantor must, in its Part 2 Proposal, submit two (2) signed originals of the guaranty. If the RFP Bidder qualifies pursuant to a successful Part 1 Proposal, the Independent Evaluator sends, along with the Part 1 Notification, the guaranty to be signed by the RFP Guarantor. The RFP Bidder must, in its Part 1 Proposal, provide all information that will be needed to prepare for execution the guaranty. The RFP Bidder will be required to specify the governing laws under which the RFP Guarantor is organized and to provide contact information, including the name and title of the signatory of the guaranty for notices under the guaranty. The RFP Bidder must, by using the supplement to the Part 1 Form and including this supplement in its Part 1 Proposal, make its elections to incorporate any or all of the approved modifications to the Form of Guaranty.
- IV.2.13. The Officer of the RFP Bidder must certify that the RFP Bidder has no pending legal proceedings or, to its knowledge, threatened legal proceedings against it or any of its affiliates that could materially adversely affect its ability to perform its obligations under the Block Energy SMA and each Transaction Confirmation.
- IV.2.14. All information and certifications in this Section IV.2 must be provided exclusively by completing Section 2 of the Part 1 Form, as further explained in Article VII.

IV.3. Regulatory Representations

- IV.3.1. The Officer of the RFP Bidder must certify that the RFP Bidder has FERC authorization to make sales of energy at market-based rates in PJM. Although a copy of the FERC Order granting such authority is not required, PECO may request a copy of this Order if the RFP Bidder becomes a Block Energy Supplier.

Exhibit D

IV.3.2. The RFP Bidder, in its Part 1 Proposal, must certify that the RFP Bidders (i) is a member in good standing of PJM; and (ii) is qualified as a PJM “Market Buyer” and “Market Seller” pursuant to the PJM Agreements.

IV.3.3. The certifications and documents in this Section IV.3 must be provided exclusively by completing Section 3 of the Part 1 Form, as further explained in Article VII.

IV.4. Additional Representations

IV.4.1. The Officer of the RFP Bidder must, in the Part 1 Proposal, certify that the Officer of the RFP Bidder has read the Block Energy SMA, that the RFP Bidder accepts all of the terms of the Block Energy SMA without modifications, and that the RFP Bidder will execute Transaction Confirmation(s) for all Bids approved by the Commission.

IV.4.2. The Officer of the RFP Bidder must acknowledge that the submission of the Part 1 Proposal constitutes the RFP Bidder’s acknowledgement and acceptance of all the terms and conditions of this RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.

IV.4.3. The Officer of the RFP Bidder must, in its Part 1 Proposal, certify that the RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this Block Energy RFP or for the Full Requirements RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of these RFPs. An RFP Bidder (Block Energy) found to be acting in concert with another RFP Bidder (Full Requirements or Block Energy) may be disqualified by the Independent Evaluator.

IV.4.4. The certifications in this Section IV.4 must be provided exclusively by completing Section 4 of the Part 1 Form, as further explained in Article VII.

IV.5. RFP Bidders Under an Agency Agreement

Exhibit D

- IV.5.1. An RFP Bidder submitting a Proposal under an agency authorization (“Agency Agreement”) must comply with additional requirements in its Part 1 Proposal. This section details those additional requirements. The requirements of this Section IV.5 apply only to RFP Bidders submitting a Proposal under an Agency Agreement; other RFP Bidders are not subject to the requirements of this Section IV.5.
- IV.5.2. An RFP Bidder submitting a Proposal under an Agency Agreement must identify the Principal or Principals to the Agency Agreement.
- IV.5.3. An RFP Bidder that is submitting a Proposal under an Agency Agreement must provide a copy of its Agency Agreement with its Part 1 Proposal, either in hard copy or electronically on a CD.
- IV.5.4. The RFP Bidder must identify a Principal as the entity on whose financial standing the RFP Bidder relies, and for which financial information is provided under Section IV.2. If the RFP Bidder is acting as an agent for multiple Principals, the RFP Bidder must identify the Principal with the lowest credit rating as the entity on whose financial standing the RFP Bidder relies. The financial requirements of Section IV.2 apply to this entity.
- IV.5.5. The Officer of the RFP Bidder must certify that the Officer of the RFP Bidder has the authority to bind the Principal(s).
- IV.5.6. In its Part 1 Proposal, the Officer of the RFP Bidder must acknowledge that an Officers’ Certificate, substantially in the form of Appendix 8 to these RFP Rules, must be provided with the Part 2 Proposal. This Officers’ Certificate will state that: (i) the copy of the Agency Agreement submitted with the Part 1 Proposal is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to five (5) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement, contemplated by the RFP Bidder, or contemplated by the Principal(s) to the RFP Bidder’s knowledge; (iv) each individual who has executed the Officers’ Certificate,

the Agency Agreement, and the Block Energy SMA submitted with the Part 2 Proposal is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the RFP Bidder is authorized to execute any Transaction Confirmation(s) pursuant to the Block Energy SMA on behalf of the Principal(s). An RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft Officers' Certificate for evaluation. If an RFP Bidder submits a draft Officers' Certificate for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the Officers' Certificate, along with the Part 1 Notification.

IV.5.7. The information required by this Section IV.5 must be provided exclusively by completing Section 5 of the Part 1 Form, as further explained in Article VII.

IV.6. Foreign RFP Bidders and Foreign Entities

IV.6.1. Additional requirements in the Part 1 Proposal apply to a Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Block Energy SMA, or to an RFP Bidder that relies on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal). This section details those additional requirements. The requirements of this Section IV.6 apply only to Foreign RFP Bidders that seek to be granted unsecured credit under the terms of the Block Energy SMA or to RFP Bidders that rely on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal). Other RFP Bidders are not subject to the requirements of this Section IV.6.

IV.6.2. In addition to supplying all required information and documents under Section IV.2, a Foreign RFP Bidder or an RFP Bidder relying on the financial standing of a Foreign Entity may provide any additional evidence of creditworthiness for the Foreign RFP Bidder or the Foreign Entity so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.

Exhibit D

- IV.6.3. In its Part 1 Proposal, the Officer of a Foreign RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign RFP Bidder to be granted unsecured credit under the terms of the Block Energy SMA: (i) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Block Energy SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Block Energy SMA on behalf of the Foreign RFP Bidder has the authority to execute the Block Energy SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Block Energy SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Block Energy SMA.
- IV.6.4. A Foreign RFP Bidder RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of the documents listed in Paragraph IV.6.3. Exhibit G to the Block Energy SMA includes a sample of the legal opinion of counsel for the Foreign RFP Bidder that is sufficient. If a Foreign RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will provide this evaluation to the Foreign RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.
- IV.6.5. In its Part 1 Proposal, the Officer of an RFP Bidder that seeks to rely on the financial standing of an RFP Guarantor that is a Foreign Entity must acknowledge that the following additional documents are required with the Part 2 Proposal for the RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Block Energy SMA: (i) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the

Exhibit D

RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Block Energy SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Block Energy SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Block Energy SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Block Energy SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Block Energy SMA.

IV.6.6. An RFP Bidder that seeks to rely on the financial standing of an RFP Guarantor that is a Foreign Entity may, but is not required to, submit with its Part 1 Proposal a draft of the documents listed in Paragraph IV.6.5. Exhibit G to the SMA includes a sample for the legal opinion of counsel for the RFP Guarantor that is sufficient. If an RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.

IV.6.7. In its Part 1 Proposal, the Officer of an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal must acknowledge that the following additional documents are required with the Part 2 Proposal for the RFP Bidder and its Principal to be granted unsecured credit under the terms of the Block Energy SMA: (i) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Block Energy SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or

Exhibit D

similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Block Energy SMA.

IV.6.8. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal may, but is not required to, submit with its Part 1 Proposal a draft of the documents listed in Paragraph IV.6.7. Exhibit G to the Block Energy SMA includes a sample of the legal opinion of counsel for the Principal (Seller) that is sufficient. If an RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.

IV.6.9. The information required by this Section IV.6 must be provided exclusively by completing Section 6 of the Part 1 Form, as further explained in Article VII.

ARTICLE V. Part 2 Proposal Requirements

V.1. Contact Information and Representations

- V.1.1. An RFP Bidder submits contact information in its Part 1 Proposal. The Independent Evaluator provides, along with the Part 1 Notification, a record of the contact information contained in the Part 1 Proposal. An RFP Bidder must confirm in its Part 2 Proposal that the record of the contact information is correct. If it is not correct, the RFP Bidder must provide corrected contact information.
- V.1.2. If the RFP Bidder must change the individual who serves as Officer of the RFP Bidder, the RFP Bidder must re-submit by the Part 2 Date its Part 1 Form in its entirety naming the new individual as Officer of the RFP Bidder, and that Officer of the RFP Bidder must make all representations and certifications required in this RFP for this solicitation.
- V.1.3. The Officer of the RFP Bidder must certify that the Part 2 Proposal will remain valid and remain in full force and effect until five (5) business days after the Bid Date.
- V.1.4. The Officer of the RFP Bidder must certify that all information provided in the Part 2 Proposal is true and accurate to the best of the Officer of the RFP Bidder's knowledge and belief.
- V.1.5. The Officer of the RFP Bidder must certify that the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal being submitted by another RFP Bidder (Block Energy or Full Requirements) in response to this solicitation or any future solicitation in this Block Energy RFP or in the Full Requirements RFP. Such information includes, but is not limited to: the fact that another RFP Bidder (Block Energy or Full Requirements) is submitting a Proposal in response to this Block Energy RFP or the Full Requirements RFP; the Bids by another RFP Bidder in this or in a subsequent solicitation under this RFP; the price offers by another RFP Bidder (Full Requirements) in this or in a subsequent solicitation under

Exhibit D

the Full Requirements RFP; the number of blocks bid by another RFP Bidder for any product in this or in a subsequent solicitation under this RFP; the number of tranches bid by another RFP Bidder (Full Requirements) for any product in this or in a subsequent solicitation under the Full Requirements RFP; the estimation by another RFP Bidder (Block Energy) of the value of a block of a product; the estimation by another RFP Bidder (Full Requirements) of the value of a tranche of a product; the estimation by another RFP Bidder (Block Energy) of the risks associated with providing supply under the Block Energy SMA; the estimation by another RFP Bidder (Full Requirements) of the risks associated with providing supply under the Default Service Program Supply Master Agreement (“Default Service SMA”); the preference of another RFP Bidder (Full Requirements or Block Energy) for bidding on specific products in this or in a subsequent solicitation under one or both of the RFPs; and the contractual arrangements for power of another RFP Bidder (Full Requirements) to serve tranches of Default Service Load were that RFP Bidder (Full Requirements) to become a Supplier under the Default Service SMA. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.

- V.1.6. The Officer of the RFP Bidder must certify that the RFP Bidder has maintained and will continue to maintain the confidentiality of its Proposal during the preparation of the Proposal, including in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors, if any.
- V.1.7. The Officer of the RFP Bidder must certify that, with only the exceptions noted in Paragraph V.1.6, the RFP Bidder has not disclosed, and will not otherwise disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal in any solicitation under one or both of the RFPs (Block Energy RFP or Full Requirements RFP), or on the contents of the Proposal that another RFP Bidder (Block Energy or Full Requirements) would be willing to submit in response to one or both of the RFPs. Such information

Exhibit D

includes, but is not limited to: the fact that the RFP Bidder is submitting a Proposal in response to this RFP; the RFP Bidder's Bids in this or in a subsequent solicitation under this RFP; the RFP Bidder's number of blocks bid for any product in this or in a subsequent solicitation under this RFP; the RFP Bidder's estimation of the value of a block of a product; the RFP Bidder's estimation of the risks associated with providing supply under the Block Energy SMA; and the RFP Bidder's preference for bidding on specific products in a subsequent solicitation under this RFP. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation.

- V.1.8. The Officer of the RFP Bidder must certify that any Bid on any product submitted in response to this RFP for this solicitation is binding until five (5) business days after the Bid Date and constitutes a binding and irrevocable offer to supply under the terms of the Block Energy SMA at the price specified in the Bid.
- V.1.9. The Officer of the RFP Bidder must certify that if the Commission approves some or all of the RFP Bidder's Bids, the Officer of the RFP Bidder will execute all Transaction Confirmation(s) required by the Commission's decision under the Block Energy SMA by 2:00 PM of the fourth business day after the Bid Date.
- V.1.10. The Officer of the RFP Bidder must confirm that the RFP Bidder has received all information from the Independent Evaluator for the submission of Bids, including the RFP Bidder's username, password, and security codes. The Officer of the RFP Bidder further certifies that the information was received intact and that no one but authorized personnel of the RFP Bidder has had access to this information.
- V.1.11. The information required by this Section V.1 must be provided exclusively by completing Section 1 of the Part 2 Form, as further explained in Article VII.

V.2. Pre-Bid Letter of Credit

- V.2.1. The RFP Bidder must provide an executed Pre-Bid Letter of Credit, drawn for the account of the RFP Bidder, in an amount of \$20,000 per block bid. If the RFP Bidder is

Exhibit D

also submitting a Proposal under the Full Requirements RFP, the RFP Bidder must submit two separate Pre-Bid Letters of Credit.

- V.2.2. The RFP Bidder must either use the Standard Pre-Bid Letter of Credit provided in Appendix 9 to these RFP Rules, or the RFP Bidder must submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of the Part 1 Proposals. All approved modifications will be posted to the RFP Web site. An RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification. The RFP Bidder cannot, in its Part 2 Proposal, propose or incorporate any modification to its Pre-Bid Letter of Credit other than the modifications approved and posted as such on the RFP Web site.
- V.2.3. Payment under the Pre-Bid Letter of Credit can be demanded by PECO if: (i) the RFP Bidder has made a material omission or misrepresentation in its Part 1 Proposal or in its Part 2 Proposal; (ii) the RFP Bidder discloses information relating to its Proposal publicly or to any other party before the Commission has either approved or rejected each of the winning Bids for this solicitation; or (iii) the Commission approves some or all of the RFP Bidder's Bids and the RFP Bidder fails to execute all Transaction Confirmations in the timeframe required by the Block Energy SMA or fails to meet the creditworthiness requirements of the Block Energy SMA upon execution of the Transaction Confirmation(s).
- V.2.4. PECO and the Independent Evaluator will release the Pre-Bid Letter of Credit no later than five (5) business days after the Bid Date. An RFP Bidder may, in Section 2 of the Part 2 Form, provide special instructions for the return of the Pre-Bid Letter of Credit. If the Commission does not approve any of a particular RFP Bidder's Bids, PECO and the Independent Evaluator will release that RFP Bidder's Pre-Bid Letter of Credit within two (2) business days of the Bid Date.

Exhibit D

V.2.5. The Officer of the RFP Bidder confirms that the Pre-Bid Letter of Credit is included with the Part 2 Proposal exclusively by completing Section 2 of the Part 2 Form, as further explained in Article VII.

V.3. Block Energy SMA Documents

V.3.1. Using the information provided by the RFP Bidder in its Part 1 Proposal in response to the requirements of Paragraph IV.2.11, the Independent Evaluator prepares for execution the Block Energy SMA, including all necessary exhibits. The Independent Evaluator sends, along with the Part 1 Notification, the Block Energy SMA including all necessary exhibits to each RFP Bidder that qualified pursuant to a successful Part 1 Proposal. The Block Energy SMA including all necessary exhibits is provided electronically on a CD. For the avoidance of doubt, the necessary exhibits are: the Mark-to-Market exposure calculation methodology (Exhibit E) and the form of Notice (Exhibit H). The RFP Bidder must print two (2) originals of the Block Energy SMA. The Officer of the RFP Bidder must sign each of the two (2) signature pages of the originals of the Block Energy SMA. The RFP Bidder must include both originals of the Block Energy SMA, including all necessary exhibits, with its Part 2 Proposal. For the avoidance of doubt, the Officer of the RFP Bidder for purposes of this paragraph is the individual designated as Officer of the RFP Bidder in the Part 1 Proposal and whose contact information is confirmed in the Part 2 Proposal.

V.3.2. Using the information provided by the RFP Bidder in its Part 1 Proposal in response to the requirements of Paragraph IV.2.12, the Independent Evaluator prepares for execution the guaranty. The Independent Evaluator sends, along with the Part 1 Notification, the guaranty to each RFP Bidder that qualified pursuant to a successful Part 1 Proposal and that relies on the financial standing of an RFP Guarantor. The guaranty is provided electronically on a CD. The RFP Bidder or RFP Guarantor must print two (2) signed originals of the guaranty. The RFP Guarantor fills in the maximum aggregate liability under the terms of the guaranty (the "Guaranty Amount") and signs

Exhibit D

the guaranty. The Guaranty Amount must equal or exceed the lesser of: (a) the Tangible Net Worth ("TNW") Amount as defined in the Block Energy SMA; and (b) the total number of blocks bid (for all products) times \$50,000.

V.3.3. An RFP Bidder that has obtained approval from PECO to use an alternate guaranty form must provide, with its Part 2 Proposal, an executed enforceability opinion for this alternate guaranty form on the letterhead of a law firm of national standing.

V.3.4. The Officer of the RFP Bidder confirms that all Block Energy SMA documents required by this Section V.3 are included with the Part 2 Proposal must be provided exclusively by completing Section 3 of the Part 2 Form, as further explained in Article VII.

V.4. RFP Bidders Under an Agency Agreement

V.4.1. An RFP Bidder submitting a Proposal under an Agency Agreement must comply with additional requirements in its Part 2 Proposal. This section details those additional requirements. The requirements of this Section V.4 apply only to RFP Bidders submitting a Proposal under an Agency Agreement; other RFP Bidders are not subject to the requirements of this Section V.4.

V.4.2. The RFP Bidder must submit, with its Part 2 Proposal, an Officers' Certificate substantially in the form of Appendix 8 to these RFP Rules. The Officers' Certificate must be signed by an officer of each Principal. This Officers' Certificate states that: (i) the copy of the Agency Agreement submitted with the Part 1 Proposal is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to five (5) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement; (iv) each individual who has executed the Officers' Certificate, the Agency Agreement, and the Block Energy SMA submitted with the Part 2 Proposal is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the RFP Bidder is authorized to

Exhibit D

execute any Transaction Confirmation pursuant to the Block Energy SMA on behalf of the Principal(s).

- V.4.3. If no representative of the RFP Bidder is authorized to execute a Transaction Confirmation pursuant to the Block Energy SMA, the RFP Bidder must name a representative of a Principal that is so authorized. This individual must then also be the individual who signs the Block Energy SMA and all necessary exhibits as required by Section V.3.
- V.4.4. An RFP Bidder who relies on the financial standing of a Principal that is a Foreign Entity must also comply with requirements detailed in Section V.5.
- V.4.5. The Officer of the RFP Bidder confirms that the documents and information required by this Section V.4 are included with the Part 2 Proposal exclusively by completing Section 4 of the Part 2 Form, as further explained in Article VII.

V.5. Foreign RFP Bidders and Foreign Entities

- V.5.1. Additional requirements in the Part 2 Proposal apply to a Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Block Energy SMA, or to an RFP Bidder that relies on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal). This section details those additional requirements. The requirements of this Section V.5 apply only to Foreign RFP Bidders that seek to be granted unsecured credit under the terms of the Block Energy SMA or to RFP Bidders that rely on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal). Other RFP Bidders are not subject to the requirements of this Section V.5.
- V.5.2. A Foreign RFP Bidder receives, with its Part 1 Notification, a provisional creditworthiness assessment that presumes the receipt of the following fully executed documents with the Part 2 Proposal: (i) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Block Energy SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in

Exhibit D

which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Block Energy SMA on behalf of the Foreign RFP Bidder has the authority to execute the Block Energy SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Block Energy SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Block Energy SMA. If the Foreign RFP Bidder submits these fully executed documents and the documents are sufficient, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. In fulfilling requirement (i) of this paragraph, Exhibit G to the Block Energy SMA includes a sample of the legal opinion of counsel for the Foreign RFP Bidder that is sufficient. If the Foreign RFP Bidder does not submit these documents, or if these documents are not sufficient, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the Foreign RFP Bidder is not granted unsecured credit.

V.5.3. An RFP Bidder that relies on the financial standing of an RFP Guarantor that is a Foreign Entity receives, with its Part 1 Notification, a provisional creditworthiness assessment for its RFP Guarantor that presumes the receipt of the following fully executed documents with the Part 2 Proposal: (i) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Block Energy SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Block Energy SMA on behalf of the RFP Guarantor has the authority to execute the guaranty

Exhibit D

pursuant to the Block Energy SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Block Energy SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Block Energy SMA. If the RFP Bidder submits these fully executed documents and these documents are sufficient, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. In fulfilling requirement (i) of this paragraph, Exhibit G to the Block Energy SMA includes a sample of the legal opinion of counsel for the RFP Guarantor that is sufficient. If the RFP Bidder does not submit these documents, or if these documents are not sufficient, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor. Any guaranty submitted with the Part 2 Proposal will be removed from consideration and the Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2.

- V.5.4. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal receives, with its Part 1 Notification, a provisional creditworthiness assessment that presumes the receipt of the following fully executed documents with the Part 2 Proposal: (i) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Block Energy SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Block Energy SMA. If the RFP Bidder submits these fully executed documents and these documents are

Exhibit D

sufficient, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. In fulfilling requirement (i) of this paragraph, Exhibit G to the Block Energy SMA includes a sample of the legal opinion of counsel for the Principal that is sufficient. If the RFP Bidder does not submit these documents, or if these documents are not sufficient, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and its Principal(s) are not granted unsecured credit.

- V.5.5. The Officer of the RFP Bidder confirms that all documents required by this Section V.5 are included with the Part 2 Proposal exclusively by completing Section 5 of the Part 2 Form, as further explained in Article VII.

ARTICLE VI. Bid Submission

- VI.1.1. An RFP Bidder who is qualified pursuant to its Part 1 Proposal and who submits a successful Part 2 Proposal may submit Bids.
- VI.1.2. The Independent Evaluator sends the electronic Bid Form to each RFP Bidder qualified pursuant to a successful Part 1 Proposal. The Independent Evaluator sends at the same time instructions for completion of the Bid Form, for encryption of the Bid Form, and for electronic transfer of the completed Bid Form to the Independent Evaluator, instructions for fax submission of the Bids in case of technical difficulties with the electronic transfer, as well as information used for authenticating the Bids, including the RFP Bidder's unique username, password, and security codes. The Independent Evaluator sends the Part 1 Notification and these materials saved electronically to a CD by overnight delivery service within two (2) business days of the Part 1 Notification Date.
- VI.1.3. The exclusive method for submitting an RFP Bidder's Bids is the Bid Form. An RFP Bidder must fill out all required information on the Bid Form according to the instructions provided by the Independent Evaluator with its Part 1 Notification. An RFP Bidder must encrypt its Bid Form and submit the Bid Form to the Independent Evaluator through a secure electronic transfer according to the instructions provided by the Independent Evaluator with its Part 1 Notification. An RFP Bidder must fill out contact information on its Bid Form and the Independent Evaluator will use that information to confirm receipt of the Bids.
- VI.1.4. An RFP Bidder may print the Bid Form and fax it to the Independent Evaluator only in case of technical difficulties while using the secure electronic transfer. The Independent Evaluator will provide instructions for such a contingency. These instructions will include a representative of the RFP Bidder phoning the Independent

Exhibit D

Evaluator to advise the Independent Evaluator of the use of a fax transmission and to provide authenticating information.

- VI.1.5. All Bid Forms must be received between 10:00 AM and noon (EPT) on the Bid Date. No late Bid Forms will be accepted regardless of the method used by the RFP Bidder to submit its Bid Form.
- VI.1.6. A Bid for a block for any product is a price in U.S. Dollars per MWh, in the format \$xx.xx or \$xxx.xx, rounded to the nearest cent. The number of blocks bid on a product is the number of blocks of that product for which a Bid is provided.
- VI.1.7. A Bid that is not expressed in dollars per MWh will automatically be rejected. A Bid that that has more than two (2) decimals will be automatically rounded to the nearest cent.
- VI.1.8. The RFP Bidder may not bid on less than a full block for a product. The RFP Bidder may not bid on fractions, portions, or parts of blocks.
- VI.1.9. The RFP Bidder may not submit any additional instructions, contingencies, or conditions on their Bids. Any such additional instructions, contingencies, or conditions will be ignored.
- VI.1.10. An RFP Bidder may submit Bids for one or two blocks of the B-12-Jan2011 Product (i.e., of Baseload Block Energy Supply for a duration of 12 months starting on January 1, 2011). As explained in Section I.2, the Load Cap for the B-12-Jan2011 Product in the Spring 2009 solicitation is two blocks.
- VI.1.11. Bids will be evaluated on a price-only basis, in accordance with the process described in Article VII.

ARTICLE VII. Process

VII.1. Part 1 and Part 2 Proposals: Submission and Processing

- VII.1.1. The Independent Evaluator, for the purposes of this RFP, will communicate exclusively with the Representative or the Officer of the RFP Bidder. Any notification or other written communication given by the Independent Evaluator to an RFP Bidder will be delivered by overnight delivery service at the address provided for the Representative or sent by fax at the fax number provided for the Representative. Any such notification or written communication will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that when delivery or transmission occurs after 6:00 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9:00 AM on the following business day. The RFP Bidder is urged to provide a fax number at which the Representative will be able to receive faxes from the Independent Evaluator in a secure and timely manner.
- VII.1.2. The Representative or the Officer of the RFP Bidder may request that the Independent Evaluator send a notification or other written communication to another representative of the RFP Bidder. Such a request must be made in writing to the Independent Evaluator.
- VII.1.3. The exclusive method of responding to the qualification standards for the Part 1 Proposal listed in Article IV of these RFP Rules is the use of the Part 1 Form provided as Appendix 4 of these RFP Rules. An RFP Bidder must provide the contact information and make general representations required by Section IV.1, including information regarding the Officer of the RFP Bidder and the Representative, exclusively by completing Section 1 of the Part 1 Form. An RFP Bidder must show compliance with the financial requirements of Section IV.2 exclusively by completing Section 2 of the Part 1 Form and by providing all documents supporting the financial information and credit information requested in that section. The Officer of the RFP

Exhibit D

Bidder must certify, as required by Section IV.3, that the RFP Bidder has all regulatory authorizations necessary for it to legally perform its obligations under the Block Energy SMA and the Transaction Confirmations exclusively by completing Section 3 of the Part 1 Form. An RFP Bidder must make additional representations, as required by Section IV.4, including acceptance of all the terms of the Block Energy SMA without modifications, exclusively by completing Section 4 of the Part 1 Form. An RFP Bidder submitting a Proposal under an Agency Agreement must provide additional information, as required by Section IV.5, including acknowledging that an Officers' Certificate must be provided with the Part 2 Proposal, exclusively by completing Section 5 of the Part 1 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Block Energy SMA, or an RFP Bidder relying on the financial standing of a Foreign Entity, either an RFP Guarantor or a Principal, must acknowledge that additional documents must be provided with the Part 2 Proposal, as required by Section IV.6, exclusively by completing Section 6 of the Part 1 Form. Responses to the qualification standards of Article IV that do not use the Part 1 Form will not be considered and the Part 1 Proposal will be considered deficient.

- VII.1.4. The Part 1 Proposal consists of three (3) original Part 1 Forms and one (1) copy of all documents requested in the Part 1 Form and in Article IV of these RFP Rules. Article IV provides all instructions on whether a given document may be provided in hard copy or electronically.
- VII.1.5. An RFP Bidder must deliver its Part 1 Proposal by certified mail, registered mail, hand delivery, or overnight delivery service to the Independent Evaluator by 12:00 PM (noon EPT) on the Part 1 Date at the following address: Independent Evaluator, [[insert Address]]. Photocopies and facsimiles of the Part 1 Form will not be considered. No late Part 1 Proposals will be accepted under any circumstances.
- VII.1.6. The Independent Evaluator receives and processes the Part 1 Proposals during the Part 1 Proposal Window. If a Part 1 Proposal is received by post, the Independent Evaluator faxes an acknowledgment to the RFP Bidder consisting of a photocopy of the

Exhibit D

first page of the Part 1 Form stamped with the time and the date that it was received. If a Part 1 Proposal is hand-delivered, the Independent Evaluator provides an acknowledgment consisting of a photocopy of the first page of the Part 1 Form stamped with the time and the date that it was received. The Independent Evaluator confirms receipt regardless of whether or not the Part 1 Proposal arrives during the Part 1 Proposal Window; however, Part 1 Proposals are only processed during the Part 1 Proposal Window.

- VII.1.7. If the Part 1 Proposal arrives before noon on any business day during the Part 1 Proposal Window, the Independent Evaluator sends the acknowledgment confirming receipt on the day the Part 1 Proposal is received with the results of an initial review. The initial review states either that the Part 1 Proposal is complete and is being considered, or the initial review lists items of the Part 1 Proposal that are deficient or require clarification. If a Part 1 Proposal arrives after noon on any business day during the Part 1 Proposal Window prior to the Part 1 Date, the Independent Evaluator sends the acknowledgment along with the initial review by noon of the next business day.
- VII.1.8. An RFP Bidder that submits a Draft Pre-Bid Letter of Credit will receive a review of any proposed modifications within two (2) business days. The RFP Bidder can only submit one (1) Draft Pre-Bid Letter of Credit. Any review communicated to the RFP Bidder of the Draft Pre-Bid Letter of Credit is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Pre-Bid Letter of Credit for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP Web site that will be updated daily during the Part 1 Proposal Window. By noon on the day the Part 2 Proposal Window opens, the final document containing all accepted modifications will be posted.
- VII.1.9. An RFP Bidder that submits a Draft Post-Bid Letter of Credit will receive a review of any proposed modifications within seven (7) business days. The RFP Bidder can only

Exhibit D

submit one (1) Draft Post-Bid Letter of Credit. Any review communicated to the RFP Bidder of the Draft Post-Bid Letter of Credit is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Post-Bid Letter of Credit for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP Web site that will be posted no later than 6:00 PM on the Part 2 Date.

VII.1.10. An RFP Bidder submitting a Proposal under an Agency Agreement that submits a Draft Officers' Certificate will receive an evaluation of this document along with the Part 1 Notification. Any evaluation communicated to the RFP Bidder of the Draft Officers' Certificate is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

VII.1.11. A Foreign RFP Bidder that submits a draft of any of the documents described in Paragraph IV.6.3 will receive an evaluation of these documents along with the Part 1 Notification. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

VII.1.12. An RFP Bidder that relies on the financial standing of a Foreign Entity acting as RFP Guarantor and that submits a draft of any of the documents described in Paragraph IV.6.5 will receive an evaluation of these documents along with the Part 1 Notification. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

VII.1.13. An RFP Bidder submitting a Proposal under an Agency Agreement that relies on the financial standing of a Principal as a Foreign Entity and that submits a draft of any of the documents described in Paragraph IV.6.7 will receive an evaluation of these documents along with the Part 1 Notification. Any evaluation communicated to the

Exhibit D

RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.

VII.1.14. The RFP Bidder includes, in its Part 1 Proposal, a certification from the Officer of the RFP Bidder that the RFP Bidder is bidding independently and is not acting in concert with another RFP Bidder (Block Energy or Full Requirements). The Independent Evaluator may request additional information to ascertain that the RFP Bidder is bidding independently of other RFP Bidders (Block Energy or Full Requirements). An RFP Bidder that is not bidding independently of another RFP Bidder (Block Energy or Full Requirements) may fail to qualify.

VII.1.15. If an RFP Bidder receives any notice from the Independent Evaluator that any item of the Part 1 Proposal is deficient or requires clarification, the RFP Bidder has until noon on the Part 1 Date, or until 6:00 PM on the business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond. If the RFP Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 1 Proposal may be rejected.

VII.1.16. An RFP Bidder is qualified to submit a Part 2 Proposal if its Part 1 Proposal is received on or before noon on the Part 1 Date, if its Part 1 Proposal is complete, and if its Part 1 Proposal fully complies with the qualification standards of Article IV of these RFP Rules.

VII.1.17. An RFP Bidder that submits a Part 1 Proposal will be notified by fax whether it has qualified to submit a Part 2 Proposal for the solicitation no later than 6:00 PM on the Part 1 Notification Date. Within two (2) business days of the Part 1 Notification Date, the Independent Evaluator sends by overnight delivery service the Part 1 Notification, a record of the contact information contained in the Part 1 Proposal, as well as a CD to which are saved: (i) the Block Energy SMA, including all necessary exhibits; (ii) the Bid Form; (iii) instructions for filling out and encrypting the Bid Form; (iv) instructions for the electronic transfer of the completed Bid Form from the RFP Bidder to the Independent Evaluator; (v) instructions for fax submission of the Bids in case of

Exhibit D

technical difficulties with the electronic transfer; (vi) an invitation to a training session on the bid submission process; (vii) a username, a password, and security codes to be used for bid submission uniquely by that RFP Bidder; and, for an RFP Bidder that relies on the financial standing of an RFP Guarantor, (viii) the guaranty.

VII.1.18. If an RFP Bidder fails to qualify, the Independent Evaluator notifies the RFP Bidder of that fact by fax and by overnight delivery service. The Independent Evaluator returns one (1) copy of the Part 1 Form by overnight delivery service.

VII.1.19. The exclusive method of responding to the requirements for Part 2 Proposals listed in Article V of these RFP Rules is the use of the Part 2 Form provided as Appendix 5 of these RFP Rules. An RFP Bidder must confirm its contact information and make general representations required by Section V.1, including certifying that its Bids will remain binding until five (5) business days after the Bid Date, exclusively by completing Section 1 of the Part 2 Form. An RFP Bidder must confirm that it is submitting the Pre-Bid Letter of Credit exclusively by completing Section 2 of the Part 2 Form. An RFP Bidder must confirm that it is submitting all documents related to the Block Energy SMA, duly executed, exclusively by completing Section 3 of the Part 2 Form. An RFP Bidder submitting a Proposal under an Agency Agreement must confirm that it is submitting all required additional documents exclusively by completing Section 4 of the Part 2 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Block Energy SMA, or an RFP Bidder that seeks to rely on the financial standing of a Foreign Entity must indicate whether it is submitting all required additional documents exclusively by completing Section 5 of the Part 2 Form. Responses to the requirements of Article V that do not use the Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

VII.1.20. The Part 2 Proposal consists of three (3) original Part 2 Forms, the Pre-Bid Letter of Credit, two (2) signed originals of the Block Energy SMA, including all necessary exhibits, as well as one (1) hard copy of any other document requested of the RFP Bidder in the Part 2 Form and in Article V of these RFP Rules. For an RFP Bidder

Exhibit D

relying on the financial standing of an RFP Guarantor, the Part 2 Proposal also includes two (2) signed originals of the guaranty. For an RFP Bidder submitting a Proposal under an Agency Agreement, the Part 2 Proposal also includes an executed Officers' Certificate. For an RFP Bidder submitting a Proposal under an Agency Agreement and relying on the financial standing of a Principal that is a Foreign Entity, the Part 2 Proposal also includes, as a condition of being granted unsecured credit, an executed legal opinion of counsel qualified to practice in the foreign jurisdiction that the Block Energy SMA is binding and a sworn certificate of the corporate secretary that its governing board has authorized agreements of the same type as the Block Energy SMA in the past. For a Foreign RFP Bidder, the Part 2 Proposal also includes, as a condition of being granted unsecured credit, an executed legal opinion of counsel qualified to practice in the foreign jurisdiction that the Block Energy SMA is binding, a sworn certificate of the corporate secretary that the person executing the Block Energy SMA is so authorized and that its governing board has approved the execution of the Block Energy SMA, and a sworn certificate of the corporate secretary that its governing board has authorized agreements of the same type as the Block Energy SMA in the past. For an RFP Bidder relying on the financial standing of an RFP Guarantor that is a Foreign Entity, the Part 2 Proposal also includes, as a condition of being granted unsecured credit and as a condition of the RFP Bidder being able to rely on the financial standing of the RFP Guarantor, an executed legal opinion of counsel qualified to practice in the foreign jurisdiction that the guaranty pursuant to the Block Energy SMA is binding, a sworn certificate of the corporate secretary that the person executing the guaranty is so authorized and that its governing board has approved the execution of the guaranty pursuant to the Block Energy SMA, and a sworn certificate of the corporate secretary that its governing board has authorized the execution of a guaranty of the same type as the guaranty pursuant to the Block Energy SMA in the past.

Exhibit D

- VII.1.21. An RFP Bidder must deliver its Part 2 Proposal by certified mail, registered mail, hand delivery or overnight delivery service to the Independent Evaluator by noon on the Part 2 Date at the following address: Independent Evaluator, [insert address]. Photocopies and facsimiles of the Part 2 Form will not be considered. No late Part 2 Proposals will be accepted under any circumstances.
- VII.1.22. The Independent Evaluator receives and processes the Part 2 Proposals during the Part 2 Proposal Window. If a Part 2 Proposal is received by post, the Independent Evaluator faxes an acknowledgment to the RFP Bidder consisting of a photocopy of the first page of the Part 2 Form stamped with the time and the date that it was received. If a Part 2 Proposal is hand-delivered, the Independent Evaluator provides an acknowledgment consisting of a photocopy of the first page of the Part 2 Form stamped with the time and the date that it was received. The Independent Evaluator confirms receipt regardless of whether or not the Part 2 Proposal arrives during the Part 2 Proposal Window; however, Part 2 Proposals are only processed during the Part 2 Proposal Window.
- VII.1.23. If the Part 2 Proposal arrives before noon on any business day during the Part 2 Proposal Window, the Independent Evaluator sends the acknowledgment confirming receipt on the day the Part 2 Proposal is received with the results of an initial review. The initial review states either that the Part 2 Proposal is complete and is being considered, or the initial review lists items of the Part 2 Proposal that are deficient or require clarification. If a Part 2 Proposal arrives after noon on any business day during the Part 2 Proposal Window prior to the Part 2 Date, the Independent Evaluator sends the acknowledgment along with the initial review by noon of the next business day.
- VII.1.24. An RFP Bidder's Part 2 Proposal is automatically deficient if the Pre-Bid Letter of Credit proposes or includes modifications to the Standard Pre-Bid Letter of Credit included as Appendix 9 of these RFP Rules other than those accepted modifications posted in a single document on the RFP Web site. If an RFP Bidder receives notice from the Independent Evaluator that its Pre-Bid Letter of Credit is deficient, the RFP

Exhibit D

Bidder has until noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond.

VII.1.25. The amount of the Pre-Bid Letter of Credit is equal to the total number of blocks bid times \$20,000. The Guaranty Amount must be equal or exceed the lesser of (a) the TNW Amount as defined in the Block Energy SMA; and (b) the total number of blocks bid (for all products) times \$50,000. An RFP Bidder's Part 2 Proposal is automatically deficient if the amount of the Pre-Bid Letter of Credit is not consistent with the Guaranty Amount. If an RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond.

VII.1.26. For an RFP Bidder submitting a Proposal under an Agency Agreement that provides the documents required under Paragraph V.4.2 and Paragraph V.5.4, PECO and the Independent Evaluator will determine whether the documents provided are sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). If the documents are insufficient and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond. If the documents required under Paragraph V.4.2 remain insufficient, the RFP Bidder's Part 2 Proposal may be rejected. If the documents required under Paragraph V.5.4 remain insufficient, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and its Principal(s) are not granted unsecured credit. If the RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the RFP Bidder conforms the documents submitted with the Part 2 Proposal to the

Exhibit D

evaluation provided with its Part 1 Notification, then these documents will automatically be considered sufficient.

VII.1.27. For a Foreign RFP Bidder that submits the documents required under Paragraph V.5.2, PECO and the Independent Evaluator will determine whether the documents provided are sufficient, without any liability or obligation to the Foreign RFP Bidder. If the documents are insufficient and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond. If the documents remain insufficient, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the Foreign RFP Bidder is not granted unsecured credit. If the Foreign RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the Foreign RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered sufficient.

VII.1.28. For an RFP Bidder relying on the financial standing of an RFP Guarantor that is a Foreign Entity and that submits the documents required under Paragraph V.5.3, PECO and the Independent Evaluator will determine whether the documents provided are sufficient, without any liability or obligation to the RFP Bidder or the RFP Guarantor. If the documents are insufficient and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond. If the documents remain insufficient, the RFP Bidder the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP

Exhibit D

Guarantor and the Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2. If the RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered sufficient.

VII.1.29. With the exceptions noted in Paragraphs VII.1.24 to VII.1.28, if an RFP Bidder receives any notice from the Independent Evaluator that an item of the Part 2 Proposal is deficient or requires clarification, the RFP Bidder has until noon on the Part 2 Date, or until 6:00 PM on the business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond. If the RFP Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 2 Proposal may be rejected.

VII.1.30. An RFP Bidder's Part 2 Proposal is successful if its Part 2 Proposal is received on or before noon on the Part 2 Date, if its Part 2 Proposal is complete, and if its Part 2 Proposal fully complies with the requirements of Article V of these RFP Rules.

VII.1.31. An RFP Bidder that submits a Part 2 Proposal will be notified whether it has qualified to submit Bids no later than 6:00 PM on the Part 2 Notification Date.

VII.1.32. If the RFP Bidder has not qualified to submit Bids, the Independent Evaluator notifies the RFP Bidder of that fact by fax and by overnight delivery service. The Independent Evaluator returns one (1) copy of the Part 2 Form and all documents except for the Pre-Bid Letter of Credit.

VII.2. Bids: Submission, Processing, and Evaluation

VII.2.1. An RFP Bidder must submit its Bids in accordance with the instructions received from the Independent Evaluator with its Part 1 Notification and in accordance with the

Exhibit D

requirements of Article VI. An RFP Bidder's Bids must be received between 10:00 AM and noon on the Bid Date.

- VII.2.2. The Bid Form, as provided to each RFP Bidder with the Part 1 Notification, is the exclusive method for the submission of Bids. A sample of the Bid Form is provided for illustrative purposes as Appendix 6 of these RFP Rules. The Bid Form must be filled out completely, encrypted, and transferred according to the instructions provided by the Independent Evaluator. Bids on any Bid Form that is incompletely or inconsistently filled out will be considered deficient and will not be evaluated.
- VII.2.3. An RFP Bidder submits its Bids electronically, by transferring an encrypted Bid Form through a secure file transfer interface. The RFP Bidder must use the username and the password provided by the Independent Evaluator to access the secure interface. The RFP Bidder must use a security code provided by the Independent Evaluator to encrypt the file.
- VII.2.4. An RFP Bidder that must resort to submitting its Bid Form by fax because of technical difficulties must follow the instructions provided by the Independent Evaluator for this contingency. These instructions will include a representative of the RFP Bidder phoning the Independent Evaluator to advise the Independent Evaluator of the use of a fax transmission to submit Bids and to provide authenticating information.
- VII.2.5. All Bid Forms must be received between 10:00 AM and noon on the Bid Date. No late Bid Forms will be considered regardless of the method used by the RFP Bidder to submit its Bid Form.
- VII.2.6. An RFP Bidder may only submit its Bid Form once unless the RFP Bidder is invited to resubmit its Bid Form by the Independent Evaluator pursuant to the circumstances described in Paragraph VII.2.8 or Paragraph VII.2.11. If an RFP Bidder resubmits its Bid Form under these circumstances and the Bid Form is received between 10:00 AM and noon on the Bid Date, the resubmitted Bid Form automatically supersedes all previously submitted Bid Form(s). If an RFP Bidder resubmits a Bid Form under any

Exhibit D

other circumstances, only the Bid Form that was first submitted between 10:00 AM and noon on the Bid Date will be evaluated.

- VII.2.7. The Independent Evaluator acknowledges receipt of the Bid Form with each RFP Bidder by telephone. The telephone number used is the telephone number provided on the Bid Form. The Independent Evaluator makes this acknowledgment within fifteen (15) minutes of receipt of the Bid Form. An RFP Bidder that does not receive an acknowledgment within fifteen (15) minutes of submitting its Bid Form should assume technical difficulties, should proceed to submitting its Bid Form by fax, and should phone the Independent Evaluator immediately.
- VII.2.8. If the Bid Form received by the Independent Evaluator is incomplete or inconsistent, the Independent Evaluator will advise the RFP Bidder of that fact when confirming receipt of the Bid Form. The RFP Bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10:00 AM and noon on the Bid Date. If the corrected Bid Form is not received between 10:00 AM and noon on the Bid Date, the Bids on the Bid Form will not be evaluated.
- VII.2.9. It is the responsibility of the RFP Bidder to ensure that a completely and consistently filled out Bid Form is submitted between 10:00 AM and noon on the Bid Date. The Independent Evaluator will hold a training session for RFP Bidders to practice the bid submission process. RFP Bidders are encouraged to participate to minimize the possibility of technical difficulties with the submission of their Bid Forms.
- VII.2.10. The Independent Evaluator contacts each RFP Bidder that has submitted Bids by 6:00 PM on the Bid Date and identifies the RFP Bidder's Bids that are being identified to the Commission as winning Bids. This notification occurs by telephone with a written acknowledgment by fax upon request by the RFP Bidder.
- VII.2.11. The Independent Evaluator will verify that the Pre-Bid Letter of Credit is in an amount sufficient to support the number of blocks bid by each RFP Bidder. If an RFP Bidder's Pre-Bid Letter of Credit is insufficient to support the number of blocks bid by the RFP Bidder, the Independent Evaluator will contact the RFP Bidder on a best efforts basis.

Exhibit D

The RFP Bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10:00 AM and noon on the Bid Date. If the Independent Evaluator is not able to contact the RFP Bidder in time or if the RFP Bidder has not submitted a revised Bid Form between 10:00 AM and noon on the Bid Date, the Independent Evaluator will modify the Bid Form. The Independent Evaluator will determine for such RFP Bidder the greatest number of whole blocks that its Pre-Bid Letter of Credit is sufficient to support. The Independent Evaluator will strike a Bid from a Bid Form for any block that is not supported by the Pre-Bid Letter of Credit. The Independent Evaluator will remove a Bid first from the product where there is most competition, as measured by the ratio of the number of blocks bid to the number of blocks needed. For that product, the Independent Evaluator will start with the block that has the highest Bid. If more than one RFP Bidder submitted Pre-Bid Letters of Credit that are insufficient to support the number of blocks bid by each such RFP Bidders, the Independent Evaluator will first modify the Bid Form from the RFP Bidder whose Bid Form is received last.

VII.2.12. By submitting a Proposal in response to an RFP, each RFP Bidder is authorizing the Independent Evaluator to modify the RFP Bidder's Bid Form as specified Paragraph VII.2.11. Each RFP Bidder acknowledges and accepts that the methodology may result in removal of a Bid that would have been approved by the Commission or the retention of a Bid that was not approved by the Commission.

VII.2.13. The Bids supported by adequate Pre-Bid Letters of Credit will be evaluated on a price-only basis. The Bids for each product will be ranked from lowest to highest price until all Bids are ranked or until the number of Bids that are ranked equals the number of blocks available for the product.

VII.2.14. If two or more RFP Bidders submit Bids that are identical for a product, these Bids will be considered "Tied Bids" at that price. The Independent Evaluator will use the tie-breaking procedure described in the next paragraph if: i) in total, more Bids must be ranked for a product than there are blocks available for that product; ii) the tie

Exhibit D

among two or more Tied Bids must be broken in order to determine the lowest Bids on that product.

VII.2.15. The tie-breaking procedure will award blocks in the following order: (1) to the RFP Bidder who, if awarded the block, would hold the fewest blocks for the product for any one month during the product term; and (2) to the RFP Bidder who, if awarded the block, would hold the fewest blocks in aggregate for any one month during the product term. If a tie were to remain, it would be broken by random selection.

VII.2.16. An RFP Bidder acting in concert with another RFP Bidder (Block Energy or Full Requirements) may be disqualified by the Independent Evaluator on behalf of the Company in its sole and exclusive discretion. The RFP Bidder will be considered to have made a material misrepresentation in its Part 2 Proposal and payment under the Pre-Bid Letter of Credit can be demanded by PECO.

VII.2.17. For the product in this solicitation, a Block Energy Supplier will be paid a supplier-specific price for each MWh as specified in the Transaction Confirmation. The supplier-specific price will be the average of approved Bids for the product.

VII.3. Post-Bid Process

VII.3.1. The Independent Evaluator will present the results of the solicitation to the PUC on the Bid Date in a confidential report. The results of a solicitation may include the results for Block Energy Supply under this RFP as well as the results for full-requirements products under the Full Requirements RFP. This confidential report will include the winning Bids determined during the evaluation.

VII.3.2. The PUC will have one (1) business day to consider the report of the Independent Evaluator and to approve or reject each of the winning Bids. If the PUC does not act within one (1) business day, the winning Bids are deemed to be approved.

VII.3.3. The Independent Evaluator will notify all RFP Bidders that have approved Bids. Such RFP Bidders are called approved Block Energy Suppliers. The Independent Evaluator provides to PECO the name of each approved Block Energy Supplier, and for each such

Exhibit D

supplier, the number of blocks won by the approved Block Energy Supplier and the approved Supplier's price for each product. The price for each such supplier and for a given product is the average of the supplier's approved Bids for that product.

VII.3.4. If the RFP Bidder is not awarded block(s), the Independent Evaluator will return within two (2) business days of the Bid Date the two (2) signed originals of the Block Energy SMA, and (if applicable) the two (2) signed originals of the guaranty to the RFP Bidder.

VII.3.5. By the second business day after the Bid Date, PECO executes the two (2) originals of the Block Energy SMA. If the approved Block Energy Supplier has an RFP Guarantor, PECO will also execute the two (2) originals of the guaranty provided by the approved Block Energy Supplier with its Part 2 Proposal by the second business day after the Bid Date. PECO sends one (1) original Block Energy SMA and one (1) original guaranty to the approved Block Energy Supplier.

VII.3.6. By 12:00 PM (noon) of the third business day after the Bid Date, PECO partially executes all Transaction Confirmations for an approved Block Energy Supplier and sends by fax one (1) copy of each Transaction Confirmation to the approved Block Energy Supplier. PECO also sends at that time three (3) partially executed originals of each Transaction Confirmation by overnight delivery service to the approved Block Energy Supplier. There is one (1) Transaction Confirmation for each product, for each approved Block Energy Supplier, and for each solicitation.

VII.3.7. By 2:00 PM on the fourth business day after the Bid Date, the approved Block Energy Supplier executes each Transaction Confirmation and sends a copy by fax of all Transaction Confirmations to PECO. The approved Block Energy Suppliers also sends to PECO two (2) originals of each Transaction Confirmation by overnight delivery service.

VII.4. Personnel and Confidentiality

VII.4.1. Any information provided by an RFP Bidder in its Part 1 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a

Exhibit D

confidential basis to the Commission Staff. PECO representatives will review the information provided to fulfill the requirements of Section IV.2, Section IV.5, and Section IV.6 and will participate in the evaluation of the creditworthiness of each RFP Bidder.

- VII.4.2. Any information provided by an RFP Bidder in its Part 2 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Commission Staff. PECO representatives will review the Pre-Bid Letter of Credit with the name of the RFP Bidder and the amount redacted and will participate in the evaluation of this Pre-Bid Letter of Credit. PECO representatives will also review the documents provided to fulfill the requirements of Section V.4 and Section V.5.
- VII.4.3. The Independent Evaluator and representatives from PECO involved in the evaluation of Proposals will consider all data and information provided by RFP Bidders in response to this RFP to be confidential and will attempt to limit its disclosure to the public in accordance with the provisions of this section. PECO will also take reasonable action to ensure that its employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. Each Representative of the Independent Evaluator and PECO that has access to any portion of the Proposals is required to sign a Confidentiality Statement in the form of Appendix 10 to these RFP Rules prior to evaluation of any portion of the Proposals. The list of all signatories is available to an RFP Bidder upon request.
- VII.4.4. However, absolute protection from public disclosure of the RFP Bidders' data and information filed in response to this RFP cannot be provided and is not intended. By submitting a Proposal in response to this RFP, each RFP Bidder acknowledges and agrees to the limitations of the confidentiality provisions set forth in this section.
- VII.4.5. In addition, the RFP Bidders' data and information filed in response to the RFP will be disclosed if required by any federal, state or local agency (including, without limitation, the Commission) or by a court of competent jurisdiction. PECO or the

Exhibit D

Independent Evaluator will notify the RFP Bidder in advance of such disclosure and cooperate with such RFP Bidder, to the extent deemed reasonable by PECO, and at the expense of the RFP Bidder, to prevent the disclosure of such materials. In any event, PECO, its employees, and agents including the Independent Evaluator will not be responsible to the RFP Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to this RFP.

ARTICLE VIII. Reserved Rights

VIII.1.1. PECO will not be liable to any RFP Bidder or any other party for failure to execute a Block Energy SMA or any Transaction Confirmation. Nothing herein may be construed to bind PECO unless and until the Commission has approved winning Bids, and the Block Energy SMA and each Transaction Confirmation with an approved Block Energy Supplier has been executed and is effective. Once effective, it is the Block Energy SMA and not the RFP Rules or any documents relating thereto that will govern the relationship between and the responsibilities of the parties.

VIII.1.2. The Independent Evaluator reserves the right to reject Proposals submitted in response to this RFP that are incomplete, or do not conform with the requirements of this RFP, or are submitted beyond the deadline for submission, or are submitted by an RFP Bidder that tries to unduly influence in any way the evaluation process.