

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
v.
PECO ENERGY COMPANY - ELECTRIC DIVISION**

DOCKET NO. R-2010-2161575

**JOINT PETITION
FOR
PARTIAL SETTLEMENT OF RATE INVESTIGATION**

VOLUME I of I

August 31, 2010

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**JOINT PETITION FOR
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**TO THE HONORABLE MARLANE R. CHESTNUT AND CHRISTOPHER PELL,
ADMINISTRATIVE LAW JUDGES:**

PECO Energy Company ("PECO or the "Company"), the **Office** of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the **Office** of Trial Staff ("OTS"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG), Pennsylvania Communities Organizing for Change, Inc. ("PCOC"), the International Brotherhood of Electrical Workers Local 614, AFL-CIO ("IBEW), Dominion Retail, Inc. ("Dominion Retail"), the City of Philadelphia ("City"), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("TURN, et al.") and the Commercial Group ("CG) (collectively, the "Joint Petitioners"), by their respective counsel, submit this Joint Petition For Partial Settlement Of Rate Investigation ("Joint Petition") and request that the Administrative Law Judges: (1) approve the partial settlement of this proceeding as set forth in this Joint Petition (the "Settlement"); and (2) recommend that the Pennsylvania Public Utility Commission ("Commission") adopt the Settlement and permit PECO to file the tariff supplement annexed

hereto as Exhibit 1 ("Settlement Rates") to become effective pursuant to the terms set forth therein.' In support of this Settlement, the Joint Petitioners represent as follows:

I. BACKGROUND

1. On March 31, 2010, PECO filed with the Commission Supplement No. 2 to **Tariff** Electric – Pa. P.U.C. No. 4. Supplement No. 2 reflects an increase in annual distribution revenues of \$289.7 million (which includes \$1.4 million in forfeited discounts), and an increase of annual transmission revenues of \$26.7 million. By Order issued May 20, 2010, the Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of **PECO's** existing and proposed rates, rules and regulations. Accordingly, Supplement No. 2 was suspended by operation of law until December 30, 2010. This case was then assigned to Administrative Law Judges **Marlane R. Chestnut** and **Christopher Pell** for purposes of conducting hearings and issuing a Recommended Decision.

2. The Company was served with Petitions to Intervene of the International Dark Sky Association ("IDA"), dated April 2, 2010; IBEW, dated April 12, 2010; Dominion Retail, dated April 16, 2010; the City, dated May 21, 2010; **PennFuture**, dated May 26, 2010; CG, dated June 7, 2010; PHA, dated June 30, 2010²; and C. Stanley **Stubbe**, dated July 14, 2010. Notices of Appearance were served on behalf of the OSBA along with its Complaint on April 20, 2010; the OTS, dated April 22, 2010; and the OCA, dated April 26, 2010, along with its Complaint. In addition, formal Complaints were filed by TURN et al., dated May 14, 2010; PAIEUG, dated May 20, 2010; the Trustees of the University of **Pennsylvania/The** Hospital at the University of

¹ Citizens For Pennsylvania's Future ("PennFuture"), the Philadelphia Housing Authority ("PHA") and C. Stanley Stubbe, who are also parties to this case, have authorized the Joint Petitioners to represent that they do not oppose the Settlement.

² PHA filed a revised Petition on July 12, 2010.

Pennsylvania ("UPENN"), dated May 28, 2010³; and PCOC, dated June 29,2010. Several Complaints also were filed by individual residential **customers**.⁴ The **ALJs** granted the Petitions to Intervene of **IBEW, IDA**⁵, Dominion Retail, the City, **PennFuture** and CG in Prehearing Order # 1, issued June 15,2010.

3. A prehearing conference was held on June 9,2010, at which a schedule was established for the submission of testimony and the conduct of evidentiary and public input hearings. Specifically, and consistent with Commission practice, a schedule was adopted whereby all case-in-chief, rebuttal and surrebuttal testimony would be submitted in advance of hearings and oral rejoinder could be offered at the hearings. Evidentiary hearings were scheduled for August 16-20,2010, at which time it was anticipated that all testimony and exhibits would be placed on the record and all witnesses presented for cross-examination, if any,, thereon.

4. Four public input hearings were held as follows:

DATE	LOCATION	TIME(S)
June 28,2010	Philadelphia	10:00 A.M. and 6:00 P.M.
June 29, 2010	Worcester Township, Montgomery County	6:00 P.M.
June 30, 2010	Ridley Township, Delaware County	6:00 P.M.

³ UPENN withdrew its Complaint by letter dated July 21, 2010 and the Commission closed the docket for **UPENN's** Complaint on July 22,2010.

⁴ All of these individual complainants requested that they not be served with copies of documents filed by the **parties** in this proceeding, except for: Cynthia **Gallagher, Ryan** Miller and Rita **Griggs**.

⁵ IDA filed a Motion to Withdraw on June 30,2010, which was granted by Order dated July 6,2010.

5. Accompanying Supplement No. 2, the Company filed the extensive and detailed supporting information required by the Commission's regulations (52 Pa. Code §53.52, et seq.) for both the historic test year ended December 31, 2009 and the **future** test year ending December 31, 2010. The Company's supporting information included the prepared direct testimony of ten initial witnesses and the various exhibits sponsored by them. Considerable additional information was supplied in a statement of supplemental testimony, distributed on June 8, 2010, and in response to approximately 574 interrogatories and data requests. In accordance with the previously established schedule, on July 7, 2010, OTS, OCA, OSBA, IBEW, the City, CG, PAIEUG, **TURN/PCOC**, C. Stanley **Stubbe** and UPENN submitted a total of eighteen written statements of direct testimony and associated exhibits. On August 3, 2010, PECO, OCA, OSBA, PAIEUG, the City, CG and **TURN/PCOC** submitted a total of sixteen statements of rebuttal testimony and associated exhibits. On August 12, PECO, OCA, OTS, OSBA and PAIEUG submitted a total of 10 statements of **surrebuttal** testimony and associated exhibits.

6. Negotiations were conducted by the Joint Petitioners to try to achieve a settlement of some or all of the issues in this case. As a result of those negotiations, the Joint Petitioners were able to agree to the partial settlement set forth herein and the evidentiary hearings scheduled for August 16-20 were canceled. The Joint Petitioners acknowledge that, except to the extent specifically set forth herein, they have not sought, nor would they be able, to agree upon the specific rate case adjustments which support their respective conclusions. Nonetheless, they are in full agreement that this Settlement is in the best interest of the Company and its **customers** and, therefore, is in the public interest.

II. TERMS AND CONDITIONS OF SETTLEMENT

7. The Settlement consists of the following terms and conditions:

A. Revenue Requirement

Upon the Commission's approval of this Settlement, PECO will be permitted to charge, effective for service rendered on and after January 1, 2011, the Settlement Rates set forth in the Tariff Supplement attached hereto as Exhibit 1. The Settlement Rates are designed to produce an annual distribution revenue increase of \$198.3 million, and an annual transmission revenue increase of \$26.7 million as shown on the proof of revenues attached hereto as Exhibit 2. The increase in annual operating revenue is in lieu of the as-filed net increase of approximately \$289.7 million for distribution and \$26.7 million for transmission.

B. Revenue Allocation and Rate Design

- (1) The Joint Petitioners agree to the terms set forth in Exhibit 3 attached hereto.
- (2) The customer charge for Rates R and RH will be \$7.25 per month, as opposed to the requested customer charge of \$8.10 per month. The Company's other proposed residential rate design changes are adopted.
- (3) The distribution rate for customers taking service under **PECO's LILR rate** as of April 1, 2010 shall be set at 50% of the full HT rate in 2011, **75%** in 2012, and full HT rates in 2013.
- (4) The auxiliary service rider rate for back up power and maintenance power shall be at 33% of the **full** HT rate for 2011, 66% for 2012, and full HT rates in 2013. This

three-year phase in of the HT rate applies to both distribution and transmission charges for customers taking service under the auxiliary service rider.

(5) The HT, PD, and GS Night Service Riders (“NSR”) shall remain in place until the next electric distribution base rate case. The percent increase applied to the NSR demand charge for HT, PD, GS shall be the same as the percent increase in the HT demand charge.

(6) The Company's proposed Transmission Service Charge ("TSC"), Generation Supply Working Capital ("GSWC") and Transmission Cost Working Capital ("TCWC") riders shall be implemented as proposed.

C. Smart Meters

(1) PECO agrees to withdraw its proposal to unbundle its metering costs.

(2) PECO has been awarded a \$200 million grant in American Recovery and Reinvestment Act ("ARRA") **funds** for smart meter and smart grid projects. The Company shall allocate the portion of the ARRA grant related to Act 129 smart meter costs consistent with the allocation of smart meter costs in the smart meter surcharge.

(3) In order to meet the Commission's requirement in *Petition of PECO Energy Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123944, PECO will use a common equity return rate of 10.00% for purposes of computing its smart meter charge. The 10.00% return on common equity is limited solely to the smart meter surcharge and does not reflect any Joint Petitioner's position with respect to **PECO's** overall current cost of common equity.

D. Universal Services

The Joint Petitioners agree to the terms set forth in Exhibit 4 attached hereto. PECO's proposed changes to the Universal Service Fund Charge and annual reconciliation mechanism, as set forth in its March 31, 2010 filing and Supplement No. 2 are accepted, with the following modification to reflect moving the target for Tiers D, D1, E, and E1 from 90% CAP population **affordability** to 88%. As shown in Appendix A to Exhibit 1, the Base Rate Credit used to calculate the amount of Reconcilable CAP Costs recovered through base rates is based on CAP discounts of \$80,707,000 rather than \$84,672,000 as originally proposed in **RLO-1**, Schedule D-5C. This results in a \$0.0068 per KWH rate to be used for annual reconciliation purposes.

E. Tax Accounting for Repairs

(1) PECO may, in the **future**, obtain a change in its method of **tax** accounting for repairs. If it does so, it anticipates that it will be required to reflect an IRC Section 481(a) "catch-up" adjustment on its **tax** return for the year of that change. PECO will notify each Joint Petitioner within ten days after the IRS issues an Industry Issue Resolution (**e.g.**, a published Revenue Procedure) **and/or** an Industry Directive regarding **tax** accounting for repairs applicable to electric distribution assets. Within sixty days after such guidance, PECO will notify the Joint Petitioners of its decision regarding whether or not to implement the repair method change. If PECO determines that it will not elect to make the repair method change, it will provide its reasons therefore in the notice. Each Joint Petitioner reserves its right to challenge **PECO's** decision to not elect to make the repair method change.

(2) PECO will defer the **tax** benefit attributable to **PECO's** catch-up adjustment and commence amortizing it for ratemaking purposes over a seven-year period upon implementation of the repairs method change (**i.e.**, the filing of its **tax** return for the year of the

change). Such amortization, appropriately grossed-up for taxes, shall be provided to customers through a bill credit or other mechanism. The bill credits will be allocated to customer classes based on net electric distribution plant as set forth in PECO's cost of service study. The amortization shall be without interest. The amortization is subject to adjustment (including reflection of any interest required to be paid to the IRS) in the event the IRS disallows a portion of the catch-up adjustment. To the extent the catch-up adjustment causes a state Net Operating Loss ("NOL"), the amount to be amortized shall be reduced to reflect any tax benefits lost because of the state NOL; if and when the NOL caused by the catch-up adjustment is utilized, the amount to be amortized will be adjusted accordingly. At the time of PECO's next electric distribution base rate case filing, PECO will propose accounting and rate treatment to provide to customers the **tax** benefits of any unamortized balance that remains at that time. Each Joint Petitioner reserves its right to challenge that proposed treatment and to propose alternatives.

(3) The annual **tax** benefits produced by the new repairs accounting method will be subject to "flow through" **tax** accounting. As a result, the **tax** benefit of the ongoing repair deductions claimed using the new method will be reflected in computing the Company's **tax** expense in the year in which they are actually claimed on the Company's **tax** return. The **future** annual benefits attributable to the new repair accounting method will be reflected in the determination of revenue requirements in PECO's next electric distribution base rate case filing.

F. Non-Residential Customer Deposits

PECO will **modify** its tariff concerning the **return** of deposits related to non-residential customer accounts. PECO will **return** the deposit on a non-residential account if the account was assessed fewer than two late payments in the previous **24** months. In addition, the first annual review of the customer's payment status will occur **24** months **after** the initial deposit date. **This**

change will become effective in 2011 after the appropriate tracking systems are modified to reflect the change.

G. Rate Case Expense

Joint Petitioners agree that the rate revenues authorized by this Settlement include a provision for rate case expense that, solely for accounting purposes, is based on an expense normalization period of no less than two years **from** the effective date of the rates approved in this proceeding.

H. Depreciation Rates

The Joint Petitioners acknowledge and agree that the depreciation rates proposed by PECO in its March 31, 2010 filing and as set forth in PECO Exhibit **JA-1** were not challenged in this case and that the Company will use such depreciation rates to calculate the depreciation expense it records on its regulated books of account.

I. Unbundling Generation-Related Uncollectibles

PECO and OTS have not been able to reach an agreement on the issue of the unbundling of generation-related uncollectibles. Accordingly, this issue is reserved for briefing.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

8. PECO, OCA, OSBA, OTS, PAIEUG, IBEW, Dominion Retail, the City, TURN et al., PCOC, and CG have each prepared, and have attached hereto as Statements A-K, Statements in Support setting forth the bases upon which they believe that the Settlement, including the Settlement Rates, is fair, just, reasonable, non-discriminatory, **lawful** and in the public interest.

9. The Joint Petitioners submit that the Settlement is in the public interest for the following additional reasons:

- The Settlement provides for an increase in **annual** distribution revenues of \$198.3 million, or approximately 20.5% (based on total electric distribution revenue), in lieu of the \$289.7 million, or 31.5%, increase originally requested.
- The Settlement provides for an increase in **annual** transmission revenues of \$26.7 million, or approximately 15.1%.

The Settlement amicably and expeditiously resolves a number of important and potentially contentious issues. The administrative burden and costs to litigate these matters to conclusion would be significant.

- The Settlement Rates will allocate the agreed upon revenue requirement to each customer class in a manner that is reasonable in light of the rate **structure/cost** of service positions of all Joint Petitioners.
- The Joint Petitioners arrived at the Settlement terms **after** conducting discovery, submitting testimony and engaging in in-depth discussions. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (see 52 Pa. Code §§ 5.231, 69.391, 69.401), and is supported by a substantial record.
- The Settlement provides for the expansion of **PECO's** low-income Customer Assistance Program Rate Rider and other universal services programs, which is

consistent with the Declaration of Policy at 66 Pa. C.S. §2802(17) that the public purpose is served by continuing such programs with full cost recovery.

IV. ADDITIONAL TERMS AND CONDITIONS

10. The Commission's approval of the Settlement shall not be construed **as** approval of any Joint Petitioner's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. Accordingly, this Settlement may not be cited **as** precedent in any future proceeding, except to the extent required to implement this Settlement.

11. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the **position(s)** that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated.

12. This Settlement is being presented only in the context of this proceeding in an effort to partially resolve the issues presented in this proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

13. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or **modify** any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five (5) business days following **entry** of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no

force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to **fully** litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

14. If the ALJs, in their Recommended Decision, recommend that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions with respect to any issues addressed by the Settlement. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the ALJs in their Recommended Decision (including the ALJs' determination regarding the issue of the unbundling of generation-related uncollectibles, which is reserved for litigation). The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.


WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request as follows:

1. That Administrative Law Judges Chestnut and Pell and the Commission approve the Settlement embodied in this Joint Petition, including all terms and conditions thereof,

2. That the Commission find the Settlement Rates to be just and reasonable and grant the Company permission to file the Tariff Supplement attached hereto as Exhibit 1 to become effective for service rendered on and after January 1, 2011, which Tariff Supplement, inter alia, is designed to produce an increase in annual distribution revenues of \$198.3 million and an increase in annual transmission revenues of \$26.7 million.

Respectfully submitted,

Dated: August 31, 2010



Anthony E. ~~Gay~~ (Pa. No. 74624)
Jack R. Garfinkle (Pa. No. 81892)
Exelon Business Services Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215.841.4635
Fax: 215.568.3389
anthony.gay@exeloncorp.com
jack.garfinkle@exeloncorp.com

Thomas P. Gadsden (Pa. No. 28478)
Anthony C. DeCusatis (Pa. No. 25700)
Catherine G. Vasudevan (Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5234
Fax: 215.963.5001
tgadsden@morganlewis.com
Counsel for PECO Energy Company

Candis A. Tunilo

Tanya J. McCloskey
Senior Assistant Consumer Advocate
Candis A. **Tunilo**
Assistant Consumer Advocate
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA **17101-1923**
Counsel for Office of Consumer Advocate

Sharon E. Webb
Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite **1102**
300 North Second Street
Harrisburg, PA **17101**
Counsel for Office of Small Business Advocate

J. Barry Davis
Chief Deputy City Solicitor
Scott J. **Schwarz**
Senior Attorney, Regulatory Affairs Unit
City of Philadelphia Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA **19102-1595**
Counsel for City of Philadelphia

Charis Mincavage, Esquire
Vasiliki **Karandrikas**, Esquire
Carl J. Zwick, Esquire
McNees Wallace & **Nurick** LLC
P.O. Box **1166**
100 Pine Street
Harrisburg, PA **17108-1166**
Counsel for PAIEUG

Tanya J. McCloskey
Senior Assistant Consumer Advocate
James A. Mullins
Assistant Consumer Advocate
Barrett C. Sheridan
Assistant Consumer Advocate
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA 17101-1923
Counsel for Office of Consumer Advocate

J. Barry Davis
Chief Deputy City Solicitor
Scott J. Schwarz
Senior Attorney, Regulatory Affairs Unit
City of Philadelphia Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA 19102-1595
Counsel for City of Philadelphia

Sharon E. Webb
Sharon E. Webb
Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
Counsel for Office of Small Business Advocate

Charis Mincavage, Esquire
Vasiliki Karandrikas, Esquire
Carl J. Zwick, Esquire
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
Counsel for PAIEUG

Tanya J. **McCloskey**
Senior Assistant Consumer Advocate
Candis A. **Tunilo**
Assistant Consumer Advocate
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA **17101-1923**
Counsel for Office of Consumer Advocate



J. Barry Davis
Chief Deputy City Solicitor
Scott J. **Schwarz**
Senior Attorney, Regulatory Affairs Unit
City of Philadelphia Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA **19102-1595**
Counsel for City of Philadelphia

Sharon E. Webb
Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite **1102**
300 North Second Street
Harrisburg, PA **17101**
Counsel for Office of Small Business Advocate

Charis Mincavage, Esquire
Vasiliki Karandrikas, Esquire
Carl J. Zwick, Esquire
McNees Wallace & Nurick LLC
P.O. Box **1166**
100 Pine Street
Harrisburg, PA **17108-1166**
Counsel for PAIEUG

Tanya J. **McCloskey**
Senior Assistant Consumer Advocate
Candis A. **Tunilo**
Assistant Consumer Advocate
Office of Consumer Advocate
Forum Place, **5** Floor
555 Walnut Street
Harrisburg, PA **17101-1923**
Counsel for Office of Consumer Advocate

Sharon E. Webb
Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite **1102**
300 North Second Street
Harrisburg, PA **17101**
Counsel for Office of Small Business Advocate

J. Barry Davis
Chief Deputy City Solicitor
Scott J. **Schwarz**
Senior Attorney, Regulatory Affairs Unit
City of Philadelphia Law Department
One Parkway Building
1515 Arch Street, **16** Floor
Philadelphia, PA **19102-1595**
Counsel for City of Philadelphia

Vasiliki Karandrikas
Charis Mincavage, Esquire
Vasiliki Karandrikas, Esquire
Carl J. Zwick, Esquire
McNees Wallace & Nurick LLC
P.O. Box **1166**
100 Pine Street
Harrisburg, PA **17108-1166**
Counsel for PAIEUG



Arthur Z. Schwartz, Esquire
Advocates for Justice and Reform Now, PC
c/o Schwartz, Lichten & Bright
275 Seventh Avenue, Suite 1760
New York, NY 10001
*Counsel for Pennsylvania Communities
Organizing for Change*

Todd S. Stewart
Hawke **McKeon** & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105-1778
Counsel for Dominion Retail, Inc.

Johnnie E. Simms
Adelou A. **Bakare**
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for Office of Trial Staff

Charles T. Joyce
Spear Wilderman, P.C.
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
*Counsel for International Brotherhood of
Electrical Workers Local 614, AFL-CIO*

Thu B. Tran, Esquire
Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
Counsel for TURN, et al.

Charles **McPhedran**
Law **Staff** Chair
John **Baillie**, Senior Attorney
PennFuture
1518 Walnut Street, Suite 1100
Philadelphia, PA 19102
Counsel for PennFuture

Arthur Z. Schwartz, Esquire
Advocates for Justice and Reform Now, PC
c/o **Schwartz, Lichten & Bright**
275 Seventh Avenue, Suite 1760
New York, NY 10001
*Counsel for Pennsylvania Communities
Organizing for Change*



Todd S. Stewart
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105-1778
Counsel for Dominion Retail, Inc.

Johnnie E. Simms
Adelou A. Bakare
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for Office of Trial Staff

Charles T. Joyce
Spear Wilderman, P.C.
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
*Counsel for International Brotherhood of
Electrical Workers Local 614, AFL-CIO*

Thu B. **Tran**, Esquire
Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
Counsel for TURN, et al.

Charles **McPhedran**
Law Staff Chair
John **Baillie**, Senior Attorney
PennFuture
1518 Walnut Street, Suite 1100
Philadelphia, PA 19102
Counsel for PennFuture

Arthur Z. Schwartz, Esquire
Advocates for Justice and Reform Now, PC
c/o Schwartz, Lichten & Bright
275 Seventh Avenue, Suite 1760
New York, NY 10001
*Counsel for Pennsylvania Communities
Organizing for Change*



Johnnie E. Simms
Adelou A. Bakare
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for Office of Trial Staff

Thu B. Tran, Esquire
Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
Counsel for TURN, et al.

Todd S. Stewart
Hawke **McKeon** & **Sniscak** LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105-1778
Counsel for Dominion Retail, Inc.

Charles T. Joyce
Spear **Wilderman**, P.C.
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
*Counsel for International Brotherhood of
Electrical Workers Local 614, AFL-CIO*

Charles **McPhedran**
Law Staff Chair
John **Baillie**, Senior Attorney
PennFuture
1518 Walnut Street, Suite 1100
Philadelphia, PA 19102
Counsel for PennFuture

Arthur Z. **Schwartz**, Esquire
Advocates for Justice and Reform Now, PC
c/o Schwartz, Lichten & Bright
275 Seventh Avenue, Suite 1760
New York, NY 10001
*Counsel for Pennsylvania Communities
Organizing for Change*

Johnnie E. Simms
Adelou A. Bakare
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for Office of Trial Staff

Thu B. Tran, Esquire
Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
Counsel for TURN, et al.

Todd S. Stewart
Hawke **McKeon** & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105-1778
Counsel for Dominion Retail, Inc.



Charles T. Joyce
Spear **Wilderman**, P.C.
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
*Counsel for International Brotherhood of
Electrical Workers Local 614, AFL-CIO*


Charles McPhedran
Law Staff Chair
John **Baillie**, Senior Attorney
PennFuture
1518 Walnut Street, Suite 1100
Philadelphia, PA 19102
Counsel for PennFuture

Arthur Z. Schwartz, Esquire
Advocates for Justice and Reform Now, PC
c/o **Schwartz, Lichten & Bright**
275 Seventh Avenue, Suite 1760
New York, NY 10001
*Counsel for Pennsylvania Communities
Organizing for Change*

Todd S. Stewart
Hawke **McKeon** & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105-1778
Counsel for Dominion Retail, Inc.

Johnnie E. Simms
Adelou A. Bakare
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for Office of Trial Staff

Charles T. Joyce
Spear Wilderman, P.C.
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
*Counsel for International Brotherhood of
Electrical Workers Local 614, AFL-CIO*



Thu B. Tran, Esquire
Philip A. **Bertocci**, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
Counsel for TURN, et al.

Charles **McPhedran**
Law Staff Chair
John **Baillie**, Senior Attorney
PennFuture
1518 Walnut Street, Suite 1100
Philadelphia, PA 19102
Counsel for PennFuture



Holly Rachel Smith

Holly Rachel Smith, PLLC

Hitt Business Center

3803 Rectortown Road

Marshall, VA 20115

Counsel for the Commercial Group