

RE: CHAPTER 28 ELECTRICITY  
GENERATION CUSTOMER  
CHOICE AND COMPETITION ACT:  
CAPACITY ISSUES WITHIN THE  
PJM INTERCONNECTION

PUBLIC MEETING -  
SEPTEMBER 17, 1998  
SEP-98-C-11

Metropolitan Edison Company  
Pennsylvania Electric Company  
PECO Energy Company  
Pennsylvania Power & Light Co.  
UGI Utilities, Inc.  
West Penn Power Company  
Pennsylvania Power Company  
Duquesne Light Company

Docket No. ~~R-00974104~~  
Docket No. ~~R-00974068~~  
Docket No. ~~R-00974060~~  
Docket No. ~~R-00973958~~  
Docket No. ~~R-00973954~~  
Docket No. ~~R-00973975~~  
Docket No. ~~R-00973984~~  
Docket No. ~~R-00974119~~  
Docket No. R-00974104

KJR

MOTION BY: Commissioner Chm. Quain  
seconded Commissioner Bloom

Commissioner Rolka - Yes  
Commissioner Brownell - Yes  
Commissioner Wilson - Yes

CONTENT OF MOTION:

1. PJM capacity holders are to immediately release/offer capacity at the presumptive \$19.72 per kw-year level absent ISO directed capacity deficiency findings;
2. Capacity holders will file confidential reports with the Secretary of the Commission specifically identifying capacity sources and prices for shopping customers as of September 17, 1998; marketers will file confidential reports, including copies of correspondence to and from the capacity holders, establishing their requests for capacity on or before September 17, 1998; all of these materials are to be filed no later than September 24, 1998 at an "I" docket to be established by the Office of the Secretary of the Commission;
3. The data received pursuant to Ordering Paragraph 2, above, will be correlated with any confidential information received from the PJM ISO and reviewed by the Law Bureau and any necessary supporting staff assigned by the Office of the Executive Director with a view towards appropriate action by the Law Bureau to meet the Commission's market monitoring responsibility under Section 2811 of the Act;
4. The Interim Order will offer reconsideration if viable alternatives that take into account the January 1, 1999, start date emerge from the ECAR participants or from the September 17, 1998, PJM conference and are jointly presented by the ECAR participants, or by PJM EDC's, EGS's and the PJM ISO:

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90-A

I-00980078  
R-00974008, Et Al

**CONTENT OF MOTION:**

5. Absent further action by the Commission, the effective period of the Interim Order will be calendar year 1999.
6. The Law Bureau, in conjunction with the Office of Special Assistants, prepare the Interim Order for expedited entry.



COMMONWEALTH OF PENNSYLVANIA  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION  
 P.O. BOX 3265, HARRISBURG, PA 17105-3265  
 September 21, 1998

IN REPLY PLEASE  
 REFER TO OUR FILE

TO ALL PARTIES

Metropolitan Edison Company	R-00974009
Pennsylvania Electric Company	R-00974008
PECO Energy Company	R-00973953
Pennsylvania Power & Light Company	R-00973954
UGI Utilities, Inc.	R-00973975
West Penn Power Company	R-00973981
Duquesne Light Company	R-00974104

**DOCKETED**  
 SEP 24 1998

Re: Chapter 28 Electricity Generation Customer Choice and Competition Act; Capacity Issues Within the PJM Interconnection	I-00980078
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KJR

DOCUMENT  
FOLDER

To Whom It May Concern:

This is to advise you that an Interim Order has been adopted by the Commission in Public Meeting on September 17, 1998 in the above entitled proceeding.

An Interim Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
 Secretary

Enclosure  
 Certified Mail  
 JEP

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held September 17, 1998

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
David W. Rolka  
Nora Mead Brownell  
Aaron Wilson, Jr.

Metropolitan Edison Company	:	Docket No. R-00974009
Pennsylvania Electric Company	:	Docket No. R-00974008
PECO Energy Company	:	Docket No. R-00973953
Pennsylvania Power & Light Company	:	Docket No. R-00973954
UGI Utilities, Inc.	:	Docket No. R-00973975
Pennsylvania Electric Company	:	Docket No. R-00974009
West Penn Power Company	:	Docket No. R-00973981
Duquesne Light Company	:	Docket No. R-00974104
	:	
Re: Chapter 28 Electricity	:	Docket No. I-00980078
Generation Customer Choice	:	
and Competition Act; Capacity	:	
Issues Within the PJM Interconnection	:	

DOCUMENT  
FOLDER

INTERIM ORDER

DOCKETED  
SEP 24 1998

BY THE COMMISSION:

Today, the Commission is obliged to adopt the following interim order to ensure that the Commonwealth's transition to retail electric choice meets the statutory schedule set forth in the Electricity Generation Customer Choice and Competition Act. This interim order reflects the Commission's ongoing commitment to take appropriate action in its own right, or in cooperation with federal agencies, to implement the statutory directive for electricity customer choice through each utility's restructuring order and any

related settlement. We note that this issue may exist in both the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") and the East Central Area Reliability Coordination Agreement ("ECAR"). This interim order applies to all Electric Distribution Companies ("EDCs") and capacity holders under our jurisdiction ("jurisdictional entities").

We must note that this is not the first time the issue of capacity availability, particularly in the PJM Interconnection, has come before the Commission. A brief review of this matter is in order.

One year ago, on the eve of the electricity choice pilot programs, the Commission received information that there were similar concerns related to the availability and price of capacity within PJM and energy within ECAR. Specifically, there was a concern that capacity might not be available in PJM and that energy was not available in ECAR, or, if capacity was available, it would be offered at a price without any economic justification well-above the rate acknowledged as accurate in the pilot program implementation orders.

In October, 1997, the Commission was compelled to order electric distribution companies to adhere to the capacity prices acknowledged in the pilot program dockets and to file confidential reports identifying capacity sources and prices for pilot customers as of November 1, 1997. The generation credit (shopping credit or comparison cost) for residential, commercial, and industrial customers was based, in part, on a finding of the presumptive, reasonable price of capacity set forth in our pilot program orders. That price was a fraction of the PJM capacity deficiency charge of \$58.00 per KW/year.

We should note that the issues differ somewhat depending on region. In the PJM region, PJM rules apply to require each load serving entity to demonstrate sufficient installed capacity reserves (ICAP) so as to meet the terms of the PJM reliability assurance agreement. Failure to meet the ICAP obligation results in the imposition of a substantial penalty based upon the avoided cost of constructing a new gas turbine generation unit. No such installed capacity obligation exists in the ECAR region in the western portion of the

Commonwealth. There, the concern is with regard to the availability of energy that may be needed for serving end use customers. In early September, 1998, informal complaints once again began to reach the Commission indicating that capacity was either not being offered at all, or if offered, it was at economically unjustifiable and inexplicably excessive rates, in some cases even higher than the PJM installed capacity deficiency charge. As in 1997, if suppliers are required to pay capacity charges well beyond that contemplated in Commission restructuring orders, the generation shopping credits adopted by the Commission with the parties may not be sufficient to develop a competitive market nor to initiate competition as mandated by the Act on January 1, 1999. Clearly, this is both an incongruous and unacceptable outcome without justification in any record heretofore established before this Commission by the incumbent local distribution companies and other jurisdictional entities who are members of the incumbent group of integrated holders of transmission, distribution and generation facilities that are the major holders of capacity within the PJM area.

On September 3, 1998, in an effort to resolve this matter, an informal meeting was held at the Commission to address the capacity issue. That meeting was attended by a number of capacity holders, electric generation suppliers, the staff of the PJM ISO, and a representative of FERC. A number of questions were raised about the necessity of continuing the discussion in front of the Commission when the more appropriate venue seemed to be the PJM ISO. Consequently, the Commission asked the PJM ISO staff whether they would convene a meeting to address the capacity issue. The ISO staff agreed to do this by adding the capacity issue to the PJM Reliability Committee agenda for the September 10, 1998, meeting in Wilmington, Delaware.

The September 10, 1998, PJM membership meeting in Wilmington did not see a meaningful, productive discussion of the capacity issue. Indeed, several non-PaPUC jurisdictional capacity holders acted affirmatively to remove the capacity discussion and any possible resolution from the agenda, further delaying consideration of these issues

until a special meeting subsequently called for by the ISO and now scheduled for September 17, 1998, in Valley Forge, Pennsylvania. Counsel for the Commission expressed grave concern at this unwarranted delay and its possible consequences.

It is our strong preference that the parties resolve these matters in a spirit of timely cooperation. However, because of the imminence of the January 1, 1999, statutory phase-in of retail electric choice, and given the lack of discussion of the capacity issue on September 3, 1998, and again on September 10, 1998, by PJM ISO and the market participants, and the continuing appearance of similar difficulties in ECAR, the Commission has no choice but to act affirmatively to meet its statutorily mandated duties to implement retail access under Section 2806(b) of the Act. We take this action as an interim order, leaving open the possibility of consideration of any reasonable and acceptable alternative arrived at by the PJM membership meeting in Valley Forge on September 17, 1998.

A number of options are available to our Commission to address the capacity issue, including but not limited to an immediate Section 2811 investigation or possible injunctive action by a federal court. Our preferred approach, at this point, is to enter an Interim Order as we did last year with the expectation that the parties will recognize the necessity of abiding by the spirit of the law and of honoring their restructuring orders and subsequent settlement agreements. Having reviewed the record in utility restructuring proceedings and settlements, we believe that capacity follows the departing customer. The competitive transition charge ("CTC") and associated shopping credit in each of those proceedings already reflects a value for PJM installed capacity and for the cost of energy in the ECAR region.

Capacity must follow the departing customer at the presumptive \$19.72 per kw-year amount that appears in each PJM utility's restructuring order for calendar year 1999. This figure was a part of the record before us and the basis for restructuring orders. It has not been disturbed by any subsequent settlements, and given that our restructuring orders

and stranded cost award calculations have been based upon it, has the force of law. We note, moreover, that utilities that offered installed capacity cost estimates in the record of the restructuring proceedings provided evidence which essentially supports our \$19.72 KW/year conclusion. It should be noted that had the utilities appearing before us offered higher estimates of installed capacity cost, it would have increased the estimated future value of installed generation for which competitive transition charge recovery was claimed and would have reduced the overall stranded cost award because the higher the value of generation assets, the lower the amount stranded. There is, therefore, a potential question as to whether the record in some of the above restructuring cases contains knowing misrepresentations about the cost of installed capacity. We would note that the issue does not seem to apply to those utilities which are not PJM members, as only PJM obligates load serving entities to maintain a specific installed capacity inventory.

We therefore direct PJM capacity holders which are jurisdictional entities to immediately release/offer installed capacity at \$19.72 per KW/year. Notwithstanding the foregoing, participants would remain responsible for capacity deficiency payments calculated pursuant to the FERC-filed PJM Reliability Assurance Agreement and administered by the ISO. To the extent necessary, we shall ask FERC to take action in support of this interim order. This \$19.72 installed capacity price shall continue to be binding upon our jurisdictional entities until either FERC or PJM and its members establish an effective day-ahead liquid capacity auction and capacity hoarding prohibitions that include adequate uncommitted installed capacity monitoring rules.

We recognize that, on the path towards creating a retail market, we are continuing a traditional form of price regulation, as authorized by 66 Pa.C.S. §1301 and §2809(e). This apparent paradox is necessitated by recent actions of the holders of capacity in PJM, in which a few entities hold virtually all of the installed capacity necessary for every market participant to serve end use customers in the PJM area. The inexplicable market failure in installed capacity in PJM appears to present a situation in which capacity

holders are acting in a monopolistic or oligopolistic fashion in an attempted exercise of market power and to resist market entry by new competitors. Chapter 28 calls for the establishment of a true competitive market, and we intend to carry out the mandate of the legislature by all means within our authority. It would indeed be a bitter blow were Pennsylvanians to discover that they have committed to the elimination of rate regulation and the funding of utility stranded costs and have not in return obtained the essential benefits of the competitive retail generation market intended by the legislature.

As in 1997, we include in this Interim Order a directive to the capacity-holders to file confidential reports with the Commission specifically identifying capacity (for PJM) or energy sources (for ECAR) and prices for shopping customers as of September 17, 1998. Likewise, marketers licensed by our Commission must also file confidential reports, including copies of correspondence to and from the capacity holders, establishing their requests for capacity or energy made on or before September 17, 1998. Those reports must be filed with the Secretary of the Commission at the above investigation docket, no later than September 24, 1998. In view of the fact that this is the second time that the Commission has been compelled to act on this matter, that data should be correlated by the Law Bureau and supporting staff with any confidential data received from the PJM ISO on capacity availability and pricing, with a view towards pursuing the Commission's market monitoring responsibility under Section 2811 of the Act. The refusal to discuss capacity availability and to establish *meaningful*, market-based pricing with EGSs up to this point may raise substantial anti-trust concerns.

Finally, it is important to note that this was not, and is not, a reliability issue. A physical capacity problem is not created by retail choice because existing load neither increases nor decreases the capacity requirements of the system.

We stress that ECAR utilities, marketers operating within ECAR and licensed by the Commission, the PJM ISO and the PJM membership are free to pursue other solutions, such as the implementation of a day-ahead liquid capacity trading system and

the institution of a no-hoarding rule. Our Interim Order will offer reconsideration at any time if *viable* alternatives that take into account the January 1, 1999, start date emerge from ECAR participants or from the September 17, 1998, PJM conference and are jointly presented by the EDCs and EGSs and are supported by the PJM ISO. Absent such a resolution, the Commission is committed to implementing this Interim Order for the calendar year 1999, to ensure an orderly transition to generation competition. It is essential to address this issue now to implement the law and to avoid frustrating the legitimate expectations of all who have secured an opportunity to participate in the first year of customer choice.

We look forward to prompt resolution of this matter and timely compliance on the part of our jurisdictional utilities and licensees affected by this Motion and Order.

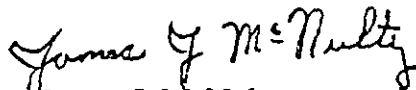
Accordingly, pursuant to the Public Utility Code and the regulations promulgated thereunder the Commission herewith issues this interim order; THEREFORE,

IT IS ORDERED:

1. That PJM capacity holders are to immediately release/offer capacity at the presumptive \$19.72 per kw-year level absent ISO directed capacity deficiency findings;
2. That jurisdictional entities with installed capacity within the PJM area shall file confidential reports with the Secretary of the Commission specifically identifying capacity sources and prices for shopping customers as of September 17, 1998; electric generation suppliers shall file confidential reports, including copies of correspondence to and from the capacity holders, establishing their requests for capacity on or before September 17, 1998; that ECAR members shall file confidential reports with the Secretary of the Commission specifically identifying energy sources and prices for shopping customers as of September 17, 1998; electric generation suppliers in the ECAR area shall file confidential reports, including correspondence establishing their requests for energy on or before September 17, 1998; all of these materials are to be filed no later than September 24, 1998 at the above investigation docket;

3. That the data received pursuant to ordering Paragraph 2, above, will be correlated with any confidential information received from the PJM ISO and reviewed by the Law Bureau and any necessary supporting staff assigned by the Office of the Executive Director with a view towards appropriate action by the Law Bureau to meet the Commission's market monitoring responsibility under Section 2811 of the Act;
4. That this Commission will reconsider this interim order if viable alternatives that take into account the January 1, 1999, start date emerge from the ECAR participants or from the September 17, 1998, PJM conference and are jointly presented by the ECAR participants, or by PJM EDCs, EGSs, and the PJM ISO;
5. That absent further action by the Commission, the effective period of the Interim Order will be calendar year 1999;
6. That a copy of this Interim Order shall be served upon all Commission jurisdictional electric distribution companies, electricity generation suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, the Federal Energy Regulatory Commission, and the United States Department of Justice -- Antitrust Division.

BY THE COMMISSION

  
James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: September 17, 1998

ORDER ENTERED: September 21, 1998

J ALAN CRITTENDEN ESQUIRE  
GARY A JEFFRIES ATTORNEY  
ONE PARK RIDGE CENTER  
P O BOX 15746  
PITTSBURGH PA 15244-0746

JAMES M HOSTETLER  
ATTORNEY  
CNG RETAIL SERVICES CORP  
CNG TOWER  
625 LIBERTY AVENUE  
PITTSBURGH PA 15222

DAVID J BONENBERGER ESQUIRE  
RUSSELL ESQUIRE  
PA POWER & LIGHT COMPANY  
TWO NORTH NINTH STREET  
ALLENTOWN PA 18101

JOHN G SAHN ATTORNEY  
VICKIREN AESCHLEMAN  
QST ENERGY INC  
300 HAMILTON BLVD STE 330  
PEORIA IL 61602

STEPHANIE A SUGRUE ESQ  
DUANE MORRIS & HECKSCHER  
1667 K NORTHWEST STE 700  
WASHINGTON DC 20006

LARRY GUNN ATTORNEY  
KEITH M SAPPENFIELD II  
NORAM ENERGY MANAGEMENT  
1600 SMITH STREET  
HOUSTON TX 77002-7345

MICHAEL J CONNOLLY ESQUIRE  
GPU ADVANCED RESOURCES INC  
100 INTERPACE PARKWAY  
PARSIPPANY NJ 07054-1149

PHILIP M MARSTON ESQUIRE  
COUNSEL FOR XENERGY INC  
LAW OFFICES PHILIP MARSTON  
THIRD FLOOR N LEE STREET  
ALEXANDRIA VA 22314

BRUIN ENERGY INC  
ATTN SCOTT R MCCORRY VICE  
PRESIDENT  
P O BOX 623  
BERWYN PA 19312

CRAIG A DOLL ESQUIRE  
214 STATE STREET  
HARRISBURG PA 17101-1132

HENRY E REICH JR ESQUIRE  
ELLIOT GILL ESQUIRE  
EQUITABLE POWER SERVICES  
COMPANY  
420 BOULEVARD OF THE ALLIES  
PITTSBURGH PA 15219

STEPHEN L FELD ATTORNEY  
FIRST ENERGY CORP  
76 SOUTH MAIN STREET  
AKRON OH 44308-1890

JAMES P MELIA ESQUIRE  
KIRKPATRICK & LOCKHART LLP  
PAYNE-SHOEMAKER BUILDING  
240 N 3RD STREET  
HARRISBURG PA 17101-1507

HUGH M DAVENPORT ESQUIRE  
TROUTMAN SNADERS LLP  
600 PEACHTREE STREET NE  
SUITE 5200  
ATLANTA GA 30308-2216

CHRISTINE PALLENIK ATTY  
PANENERGY TRADING & MARKET  
SERVICES  
10777 WESTHEIMER SUITE 650  
HOUSTON TX 77077

CHRISTIAN A FARMAKIS ATTY  
BABST CALLAND CLEMENTS &  
ZOMNIR PC  
TWO GATEWAY CENTER  
PITTSBURGH PA 15222

ROBERT J CASSANDRO  
ESQUIRE  
LORI SPENCE ESQUIRE  
WHEELED ELECTRIC POWER CO  
50 CHARLES LINDBERGH BLVD  
SUITE 207  
UNIONDALE NY 11553

PAUL R BONNEY ASST GENERAL  
COUNSEL  
PECO ENERGY COMPANY  
2301 MARKET STREET S23-1  
PHILADELPHIA PA 19103

SHAWN P LEYDEN VP  
ENERGIS RESOURCES INC  
499 THORNALL STREET  
FIFTH FLOOR  
EDISON NJ 08837

MICHAEL A DANDREA V P  
PATRICIA J CLARK ESQUIRE  
ALLEGHENY ENERGY  
SOLUTIONS  
1 NORTH SHORE CENTER  
12 FEDERAL STREET  
PITTSBURGH PA 15212

GEORGE M GALLOWAY ATTY  
STOEL RIVES LLP  
SUITE 2300  
900 SW FIFTH AVE  
PORTLAND OR 97204-1268

JOHN L MUNSCH ATTY  
WEST PENN POWER COMPANY  
800 CABIN HILL DRIVE  
GREENSBURG PA 15601

JAMES R POPE ESQUIRE  
1000 EAST MAIN STREET  
PLAINFIELD IN 46168

BRENDAN P BOVAIRD ESQUIRE  
MARK C MORROW ESQUIRE  
KENT D MURPHY ESQUIRE  
UGI ENERGY SERVICES INC  
460 NORTH GULPH ROAD  
KING OF PRUSSIA PA 19406

MR RAY STURDY ATTY  
DETROIT EDISON  
2000 SECOND AVENUE  
688 WCB  
DETROIT MI 48226

PAULINE DOOHAN ATTY  
MCN ENERGY GROUP INC  
500 GRISWOLD STREET  
DETROIT MI 48226

MICHAEL L KESSLER VP  
111 SOUTH ALFRED STREET  
ALEXANDRIA VA 22314

DENNIS S DOCKINS ESQUIRE  
ZEIGLER COAL HOLDING CO  
50 JEROME LANE  
FAIRVIEW HEIGHTS IL 62208

DAVID A MIKELONIS ATTY  
212 WEST MICHIGAN AVENUE  
JACKSON MI 49201

JAMES J SEELEY ESQUIRE  
163 WEST COMMERCE STREET  
BRIDGETON NJ 08302

DOUGLAS A OGLESBY VP  
345 CALIFORNIA STREET  
32ND FLOOR  
SAN FRANCISCO CA 94104

HAROLD T JUDD  
CHIEF COUNSEL  
ONE CAPITOL STREET  
CONCORD NH 03301

SHAWN HUEY  
REGIONAL DIRECTOR  
230 SOUTH TYRON STREET  
CHARLOTTE NC 28202

SHAWN HUEY REGIONAL  
DIRECTOR  
DUKESOLUTIONS  
230 S TRYON STREET STE 400  
CHARLOTTE NC 28202

JAMES CAWLEY ESQUIRE  
JAN PADEN ESQUIRE  
RHOADS & SINON  
DAUPHIN BANK BLDG 12TH FL  
ONE S MARKET SQUARE  
HARRISBURG PA 17108-1146

A GILLIS ALLEN II  
ALLEN AND ASSOCIATES  
CHARTERED  
P O BOX 990 207 DOWNTOWN  
PLAZA  
SALISBURY MD 21803-0990

KARYL LAWSON ,  
READ W COMSTOCK  
ROBERT E ADRIAN V P SALES &  
MARKETING  
MIDCON GAS SERVICES CORP  
3200 SOUTHWEST FREEWAY  
HOUSTON TX 77027

EMMITT C HOUSE  
READ W COMSTOCK  
SHARON M HILLMAN SR V P  
MC SQUARED INC  
701 EAST 22ND STREET  
LOMBARD IL 60148

NORMAN JAMES KENNARD ESQ  
TODD STEWART ESQUIRE  
MALATESTA HAWKE & MCKEON  
P O BOX 1778  
HARRISBURG PA 17105

ANDREW TUBBS ESQUIRE  
212 LOCUST STREET  
P O BOX 1266  
HARRISBURG PA 17108-1266

DANIEL CLEARFIELD ESQUIRE  
ALAN KOHLER ESQUIRE  
WOLF BLOCK SCHORR SOLIS-  
COHEN  
212 LOCUST STREET STE 300  
HARRISBURG PA 17101

FRANK A SCHILLER ESQUIRE  
VIRGINIA ELECTRIC & POWER  
COMPANY  
701 EAST CARY STREET  
RICHMOND VA 23219

JOSEPH DWORETZKY ESQUIRE  
HANGLEY ARONCHIGK SEGAL &  
PUDLIN  
ONE LOGAN SQUARE 12TH FL  
PHILADELPHIA PA 19103-6933

DAVID M BOONIN ESQUIRE  
1845 WALNUT STREET  
SUITE 2525  
PHILADELPHIA PA 19103

NORMAN H STARK ESQUIRE  
MACDONALD ILLIG JONES &  
BRITTON  
100 STATE STREET  
ERIE PA 16507-1498

LAURETO A FARINAS SR ATTY  
SYDNEY M AVENT SR VP &  
GENERAL COUNSEL  
PHILADELPHIA GAS WORKS  
800 WEST MONTGOMERY AVENUE  
PHILADELPHIA PA 19122

JOHN HERBERT ATTORNEY  
DOUG MACLEAN ATTORNEY  
ELECTRIC CLEARINGHOUSE  
INC  
1000 LOUISIANA SUITE  
5800  
HOUSTON TX 77002

RICHARD GREENE ESQUIRE  
REID & PRIEST LLP  
40 WEST 57TH STREET  
NEW YORK NY 10012

KATHLEEN C JONES ESQUIRE  
DAVID L PERLMAN ESQUIRE  
111 MARKET PLACE  
SUITE 510  
BALTIMORE MD 21201

WILLIAM J LAVELLE ESQUIRE  
2301 GRANT BUILDING  
PITTSBURGH PA 15219-2383

BRIAN M STERN ESQUIRE  
BRIAN INGERSOLL  
500 COLLEGE ROAD EAST  
PRINCETON NJ 08540

DENBY LEE TARIFF ADMINISTRATOR  
COLUMBIA ENERGY POWER MARKETING  
CORPORATION  
6905 OAKLAND MILLS ROAD SUITE B  
COLUMBIA MD 21045

JON SILVA  
EDISON SOURCE  
13191 CROSSROADS PARKWAY  
NORTH SUITE 405  
CITY OF INDUSTRY CA 91746

JEFFREY T SIMPSON  
ENERGY SALES COORDINATOR  
SHIPLEY OIL COMPANY INC  
550 EAST KING STREET  
P O BOX 946  
YORK PA 17405

USHER FOGEL ESQUIRE  
ROLAND FOGEL KOBLENZ &  
PETROCCIONE LLP  
1 COLUMBIA PLACE  
ALBANY NY 12207

STEVEN FISCHER ESQUIRE  
STEIKER AND FISCHER  
7318 GERMANTOWN AVENUE  
PHILADELPHIA PA 19119

GARY A MORGANS ESQUIRE  
THOMAS BARLETTA ESQUIRE  
STEPTOE & JOHNSON  
1330 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036-1795

GREGG ROBERTSON VICE PRESIDENT  
PCI SERVICES INC  
417 WALNUT STREET  
HARRISBURG PA 17101-1902

SCOTT SPIEWAK VICE PRESIDENT &  
GENERAL COUNSEL  
METROMEDIA ENERGY INC  
3 FAIRWAY LANE  
OLD TAPPAN NJ 07675

MICHAEL T BAKAS MANAGER  
ENERGY SERVICE  
NORTHEAST ENERGY SERVICES INC  
NORESCO POINT WEST PLACE  
111 SPEEN STREET SUITE 500  
FRAMINGHAM MA 01701

STEVEN A BRAV DIRECTOR OF  
REGULATORY PLANNING  
COM/ENERGY MARKETING INC  
ONE MAIN STREET P O BOX 425-  
088  
CAMBRIDGE MA 02142-0003

DOUGLAS E FRIEDMAN ESQUIRE  
AMERADA HESS CORPORATION  
1 HESS PLAZA 6TH FLOOR  
WOODBRIIDGE NJ 07095

MICHAEL F DEBERDINE III  
JEROME H RHOADS  
T/A RHOADS ENERGY CORP  
1300 LOOP ROAD  
LANCASTER PA 17601

MATTHEW J PICARDI ESQUIRE  
PLUM STREET MARKETING INC  
507 PLUM STREET  
SYRACUSE NY 13204

ANDREW S TUBBS ESQUIRE  
212 LOCUST STREET  
PO BOX 1266  
HARRISBURG PA 17108-1266

JAY MOLUNEUX ESQUIRE  
FLORIDA POWER & LIGHT  
700 UNIVERSE BLVD  
PO BOX 14000  
JUNO BEACH FL 33408-0420

MICHAEL GANG ESQUIRE  
MORGAN LEWIS & BOCKIUS  
ONE COMMERCE SQUARE  
417 WALNUT STREET  
HARRISBURG PA 17101-1904

ROBERT A LONGO ESQUIRE  
RHOADS & SINON  
15 NORTH LIME STREET  
LANCASTER PA 17602

ERIC L BROUSE PRESIDENT  
CITIZENS ELECTRIC CO OF  
LEWISBURG  
1775 INDUSTRIAL BLVD  
LEWISBURG PA 17837

SCOTT L GUIBORD LEGAL  
METROPOLITAN EDISON COMPANY  
D/B/A GPU ENERGY  
300 MADISON AVENUE  
MORRISTOWN NJ 07962

SCOTT L GUIBORD LEGAL  
PENNSYLVANIA ELECTRIC CO  
D/B/A GPU ENERGY  
300 MADISON AVENUE  
MORRISTOWN NJ 07962

WYATT F MORRISON SECRETARY AND  
TREASURER  
SAFE HARBOR WATER POWER CORP  
1 POWERHOUSE ROAD  
CONESTOGA PA 17516-9651

ROLAND PIRCE JR BORO SEC  
BOROUGH OF ST CLAIR  
39 NORTH SECOND STREET  
ST CLAIR PA 17970

ALLAN W HOLMAN JR ESQUIRE  
BOROUGH OF DUNCANNON  
16 EAST MAIN STREET  
NEW BLOOMFIELD PA 17068

JAY S PIFER PRESIDENT  
MONONGAHELA POWER COMPANY  
1310 FAIRMONT AVENUE  
FAIRMONT WV 26554

JOSEPH HRACH PRESIDENT  
PENNSYLVANIA POWER COMPANY  
ONE EAST WASHINGTON STREET  
P O BOX 891  
NEW CASTLE PA 16103

D LOUIS PEOPLES VICE CHIEF  
EXECUTIVE OFFICER  
PIKE COUNTY LIGHT & POWER CO  
ONE BLUE HILL PLAZA  
PEARL RIVER NY 10965

DOUGLAS R SATTERFIELD  
BOROUGH OF SCHUYLKILL HAVEN  
12 WEST MAIN STREET  
SCHUYLKILL HAVEN PA 17972

JAMES W DURHAM SENIOR VICE  
PRESIDENT  
SUSQUEHANNA ELECTRIC COMPANY  
2301 MARKET STREET  
PHILADELPHIA PA 19101

SCOT F BOYCE MANAGER,  
ADMINISTRATION & FINANCE  
WELLSBORO ELECTRIC COMPANY  
33 AUSTIN STREET  
WELLSBORO PA 16901-0138

VICTOR A ROQUE VICE PRESIDENT  
& GENERAL COUNSEL OF LEGAL AND  
EXTERNAL AFFAIRS  
DUQUESNE LIGHT COMPANY  
411 SEVENTH AVENUE (16-006)  
PITTSBURGH PA 15230-1930

PATRICIA C FAY SEC-TREAS  
BOROUGH OF SMETHPPORT  
412 WEST WATER STREET  
SMETHPORT PA 16749

IRWIN POPOWSKY CONSUMER ADV  
OFFICE OF CONSUMER ADVOCATE  
555 WALNUT STREET  
FORUM PLACE 5TH FLOOR  
HARRISBURG PA 17101-1921

BERNARD A RYAN JR SMALL  
BUSINESS ADVOCATE  
DEPARTMENT OF COMMERCE  
SUITE 1102 COMMERCE BLDG  
300 N SECOND STREET  
HARRISBURG PA 17101

CONSTANCE K ROBINSON  
DIRECTOR OF OPERATIONS  
US DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION  
950 PA AVENUE NW  
ROOM 3214  
WASHINGTON DC 20530

OFFICE OF THE SECRETARY  
FEDERAL ENERGY REGULATORY  
COMMISSION  
888 FIRST STREET NE  
WASHINGTON DC 20426