



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
November 6, 1997

IN REPLY PLEASE  
REFER TO OUR FILE

R-00973953

ROBIN L KRONGOLD PARALEGAL  
PAUL BONNEY ESQUIRE  
MARY SMITH ESQUIRE  
MARY MCFALL HOPPER ESQUIRE  
NOEL H TRASK ESQUIRE  
PECO ENERGY COMPANY  
2301 MARKET STREET  
PHILADELPHIA PA 19101-8699

Petition of the Joint Signatories To Suspend Consideration of Certain Issues Pending a  
Commission Determination of the Proper Forum

To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission  
in Public Meeting on November 6, 1997 in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

DOCKETED

NOV 19 1997

James J. McNulty  
Acting Secretary

Enclosure  
Certified Mail  
JEP

DOCUMENT  
FOLDER



PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PA 17105-3265

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

PUBLIC MEETING-  
NOVEMBER 6, 1997  
NOV-97-OSA-367\*  
R-00973953

V.

PECO ENERGY COMPANY

NOV-97-L-105\*

PECO APPLICATION FOR APPROVAL  
OF ITS RESTRUCTURING PLAN AND  
JOINT PETITION FOR PARTIAL  
SETTLEMENT

AND

PETITION OF THE JOINT  
SIGNATORIES TO SUSPEND  
CONSIDERATION OF CERTAIN  
ISSUES PENDING A COMMISSION  
DETERMINATION OF THE PROPER  
FORUM

PETITION OF ENRON ENERGY  
SERVICES POWER, INC., FOR  
APPROVAL OF AN ELECTRIC  
COMPETITION CHOICE PLAN  
AND FOR AUTHORITY PURSUANT  
TO SECTION 2807(E) (C) OF  
THE PUBLIC UTILITY CODE TO  
SERVE AS THE PROVIDER OF  
LAST RESORT IN THE SERVICE  
TERRITORY OF PECO ENERGY  
COMPANY

P-00971265

STATEMENT OF CHAIRMAN JOHN M. QUAIN

PECO Energy Company (PECO), and a number of parties to the above-captioned matters have asked this Commission to clarify and/or reconsider our Order of October 9, 1997. I would reject the OSA proposed resolution of these matters. Directly affected by our resolution of those Petitions is the Petition of the Joint Signatories to Suspend Certain Issues Pending a Commission

Determination of the Proper Forum filed September 10, 1997, and first addressed in our Tentative Order of October 2, 1997.

The core issue before us on reconsideration is the scope of the hearings to be conducted and the briefs to be filed prior to our interlocutory vote in this matter scheduled for December 11, 1997. On that date, we will consider both the proposed Joint Petition for Partial Settlement and the Enron alternative. In the event that neither proposal is adopted, without modification, a subsequent timetable for the litigation of this proceeding should also be established.

In its Petition for Reconsideration, PECO points out that the Settlement is not offered for modification. It is offered as a whole document. PECO has asked that we limit the issue on brief (prior to our December 11, 1997, Public Meeting) as to whether the Proposed Joint Petition for Partial Settlement is in the public interest; or, alternatively, that this matter be remanded to the presiding Administrative Law Judges so the parties may present their full litigation positions. The same rationale arguably applies to the Enron Petition. Several other parties join in PECO's request.

I am persuaded by the arguments raised on reconsideration. I therefore conclude there is no need for this matter to be remanded at this time to the presiding Administrative Law Judges for full litigation.

I note in support of my position that the status and record of this matter has changed since October 9, 1997. We now have the benefit of additional pleadings by the parties relative to that October 9, 1997, Order, and I have considered those pleadings. The Petitioners make a number of compelling arguments. I am persuaded by the fact that concluding full litigation prior to the certification of the record on December 2, 1997, may not allow for sufficient opportunity to conduct evidentiary hearings on the PECO Restructuring Plan. Moreover, to date, public input hearings have been limited to the Proposed Joint Settlement only.

As a result, I would modify our October 9, 1997, Order. The scope of the proceeding now due to be certified to us on December 2, 1997, should be limited to whether the PECO Partial Settlement or the Enron Provider of Last Resort Petition are in the public interest.

If, on December 11, 1997, neither the PECO Partial Settlement nor the Enron Provider of Last Resort Plan is found to be in the public interest, then these matters should be remanded to the presiding Administrative Law Judges to provide all parties with the opportunity to present their full litigation positions, including cross-examination, and the submission of briefs.

In our October 9, 1997, Order, PECO was offered the option of an extension of time until January 30, 1998, for resolution of PECO's application case and Enron's Petition. PECO has declined to accept that date but requests March 12, 1998, as a date for final Commission action. If it is necessary to remand this matter on December 11, 1997, then I would also recommend that we accept PECO's offer to extend these proceedings until March 12, 1998. This extension of time would not only permit the parties to present their litigation positions, but it will also provide sufficient time for a Recommended Decision from the presiding Judges.

11-6-97

DATE



JOHN M. QUAIN, CHAIRMAN

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PA 17105-3265

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

PUBLIC MEETING-  
NOVEMBER 6, 1997  
NOV-97-OSA-367\*  
R-00973953

v.

PECO ENERGY COMPANY

NOV-97-L-105\* ✓

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PETITION OF THE JOINT  
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11-6-97

DATE



JOHN M. QUAIN, CHAIRMAN

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held: November 6, 1997

Commissioners Present:

John M. Quain, Chairman , Dissenting - Statement attached  
Robert K. Bloom, Vice Chairman, Dissenting  
John Hanger  
David W. Rolka  
Nora Mead Brownell

Petition of the Joint Signatories To :  
Suspend Consideration of Certain Issues :  
Pending a Commission Determination of : Docket No. R-00973953  
the Proper Forum : P-00971265

DOCKETED

ORDER

NOV 19 1997

By the Commission:

On August 25, 1997 certain parties in PECO Energy Company's restructuring proceedings filed a Joint Petition for Partial Settlement (Partial Settlement). These parties included Senator Vincent J. Fumo, CEPA, et al., Lance S. Haver, the Office of Consumer Advocate (OCA), the Office of Trial Staff, the Office of Small Business Advocate, the Philadelphia Area Industrial Users Group, the American Association of Retired Persons, the Department of the Navy and PECO Energy Company (PECO).

DOCUMENT  
FOLDER

On September 10, 1997, the majority of the parties to the Partial Settlement (the Joint Signatories) filed the above-captioned petition<sup>1</sup>. In the Petition, the Joint Signatories requested that the Commission approve a procedure for evaluating issues in the restructuring proceeding that were not addressed in the Partial Settlement (Petition).<sup>2</sup> These issues included:

1. Competitive Metering and Billing;
2. Standards and Code of Conduct ;
3. FERC Jurisdictional Issues and Their Impact on PUC Jurisdictional Matters;
4. Generation and Transmission and Distribution Reliability;
5. Environmental Issues; and
6. Compliance with Bill Formats, Customer Service and Interaction with Supplier Issues.

Answers to the petition were filed by Allegheny Power and Mid-Atlantic Power Supply Association (MAPSA) filed answers to the petition.

On October 2, 1997, the Commission entered a tentative order granting the petition in part, but directing parties to brief the state and federal jurisdictional issue, and, citing to Pa. C.S. §2806(e) (relating to the content of restructuring plans), any other issue that is statutorily required to be considered by the Commission in resolving PECO's Restructuring Plan. The Tentative Order established a comment

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<sup>1</sup> Although OCA signed the Partial Settlement, OCA did not sign the petition.

<sup>2</sup> According to the Joint Signatories, those issues which were addressed in the Partial Settlement include: stranded investment recovery and securitization; CTC/ITC recovery method/recovery from self-generators and reconciliation; rate unbundling, cost of service and treatment of special contracts; universal service, cost recovery for universal service, and supplier of last resort obligation; impact on community and economic development; and consumer education.

period ending October 6, 1997 and was served on all parties to the PECO restructuring proceeding, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office Of Trial Staff, and the Electric Competition Stakeholders Group.

### DISCUSSION

Comments to the Tentative Order were filed by the International Brotherhood of Electrical Workers (IBEW), ENRON Power Marketing, Inc. (ENRON), MAPSA, and PECO, and jointly by Allegheny Electric Cooperative, Inc. and Pennsylvania Rural Electric Association (collectively, PREA). Although all comments will not be discussed in detail, all the comments filed have been considered by the Commission.<sup>3</sup>

#### Metering and Customer Billing

In its comments, IBEW raised the need for consideration in PECO's restructuring proceeding of the question of legality of non-utilities providing

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<sup>3</sup> This order deals exclusively with the issues which are to be deferred to other generic proceedings. It does not address the general timeframe of the proceeding which is addressed in another Commission order. PECO Application for Approval of its Restructuring Plan and Joint Petition for Partial Settlement, R-00973953, and Petition of ENRON Energy Services Power, Inc. For Approval of an Electric Competition and Choice Plan and for Authority Pursuant to Section 2807(e) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, P-00971265.

billing, metering and meter reading services. IBEW contends that allowing this issue to be considered in this context would "enable the Commission to perform its statutory duty to consider the impact of the utility's restructuring plan on the utility's employees and to develop an appropriate level of employee-related transition costs". IBEW, p. 5. Accordingly, IBEW requests that the Commission modify and clarify its tentative order to expressly state that issues associated with the provision of billing, metering and meter reading services by entities other than the EDU should be addressed in each utility's restructuring case.

In our Tentative Order, the Commission directed that the impact of PECO's plan on its employees be considered in this proceeding. Tentative Order, p. 4. In its comments, PECO indicated that it would present testimony regarding this issue in the October 14-October 17, 1997 hearings scheduled on the Partial Settlement. Because IBEW will have had the opportunity to cross examine PECO witnesses regarding the impact of PECO's plan on IBEW's membership and to present its own case in responsive testimony, its chief concerns in regard to this matter has been satisfied.

As to IBEW's specific request that the Commission direct that the issue of the legality of other non-utility entities providing metering and billing services be addressed by the parties in this proceeding, the Commission believes that such a specific direction is unnecessary. Parties may raise and present argument on any

legal issue that they deem to be relevant in any proceeding. Other parties who hold different opinions on the legal issue raised, or the relevancy of that issue to a proceeding, may respond to such arguments. A party who chooses not to respond to an issue raised does so at his own peril.

The specific issue to be addressed in the instant proceeding-- whether an entity other than a utility can perform metering and billing services -- involves an interpretation of the meaning of the statute by the rules of statutory construction, and legislative intent. Record evidence need not be presented on this issue making additional hearing time unnecessary.

#### Codes of Conduct and Customer Access to Suppliers

In its comments, MAPSA suggests that, besides exploring issues such as the unbundling of services and prices for generation and the establishment of procedures for ensuring direct access to all alternative suppliers, it is necessary to address codes of conduct regarding PECO's interactions with affiliates, and issues related to the interaction between PECO and suppliers so that effective competition will be available to PECO's customers. MAPSA contends that these issues have been inadequately addressed in the Joint Petition for Partial Settlement and that these issues should be fully litigated.

As to the issue of insuring customer access to alternative suppliers, PECO in its comments indicates that this issue is currently before the Commission in its proceeding involving the retail access pilot program. PECO's plan for restructuring is to implement the same supplier policies and procedures that were used in its pilot, amending them as necessary as a result of the January post implementation hearings before the Commission and any changes that might occur in the PJM power pool. PECO recommends that the Commission adopt its pilot program's procedures for customer access to alternative suppliers.

The Commission believes that the Code of Conduct governing interactions between utilities and their affiliates is a generic issue and is best left to a rulemaking proceeding. The Commission anticipates that a rulemaking on competitive safeguards, that will address "code of conduct" issues will be initiated before the end of the year. However, we believe that the specific structural and operational relationship between PECO and its affiliates must be examined on the record in this proceeding so that the full impact of PECO's restructuring on the future competitive energy market can be fully understood.

We also agree with MAPSA that the issue of PECO's interaction with suppliers must be decided within the framework of PECO's restructuring plan as this interaction will ultimately affect customer access to other licensed suppliers, a matter that by statute must be considered in the context of PECO's restructuring

plan. 66 Pa. C.S. § 2806(e). We therefore direct that the parties enter into the record during the scheduled November hearings, evidence as is necessary to support their positions on these issues.

### Reliability

In its comments, PREA, citing 66 Pa. C.S. §2802 (12), claims that reliability is an issue which is properly the subject of individual restructuring proceedings. Specifically, it contends that reliability varies greatly between utility systems and that reliability issues should be examined in each restructuring plan.

Because of the interdependence of the state and regional electricity grids, reliability cannot be adequately examined in relation to a single utility's system. As recognized by PREA, itself, the Commission has initiated a rulemaking at Docket No. L-00970120 to develop regulations to ensure the safety, adequacy and reliability of generation, transmission and distribution of electricity in Pennsylvania. We therefore believe that it is unnecessary to consider the reliability issue separately in this proceeding. If PREA, or any member cooperative is experiencing difficulty receiving reliable transmission or distribution service from PECO or any other utility, it is its responsibility to file a complaint with the appropriate agency, be it FERC or the Commission, prove the allegations

contained in the complaint and propose a reasonable solution to correct the problem.

Rulemakings with the Adoption of Binding Interim Standards

In its comments, ENRON expresses the concern that if the Commission relies solely on rulemakings which can take up to two years to complete that there will be no binding rules at the time of the cut-over from regulation to direct access phase in 1999. ENRON indicates that this was the procedure that was used in implementing telephone restructuring under Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§3001, et seq. As alternative relief to the Commission's reversing the tentative order and directing full litigation of the restructuring plan, ENRON requests that the Commission refer certain issues to a specific rulemaking docket; establish a schedule for issuance of proposed rulemaking orders to which an issue is referred; and declare the rules set forth in each proposed rulemaking to be binding, interim rules during the pendency of the rulemaking.

While our disposition of the comments to our October 2, 1997 tentative order makes it unnecessary for us to rule on ENRON's proposed alternative relief, the proposal has merit and we will take the proposal under advisement.

## CONCLUSION

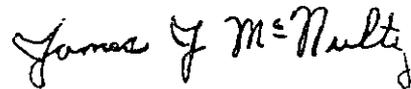
By this order, the Commission clarifies and finalizes its October 2, 1997 tentative order. The Commission remains adamant that the record in this proceeding be adequate to allow for the evaluation of PECO's restructuring plan, as filed, in the event that both the Partial Settlement and ENRON's alternate proposal, the ENRON Choice plan, filed October 7, 1997 at Docket No. P-00973953, are found to be wanting. To insure the adequacy of the record, the Commission reiterates that the parties must enter into this proceeding's record evidence in support of all matters required by statute to be considered in evaluating PECO's restructuring plan; THEREFORE,

IT IS ORDERED:

1. That the Commission's October 2, 1997 order as modified is adopted as final.

2. That a copy of this order be served upon all parties to the PECO restructuring proceeding, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office Of Trial Staff, and the Electric Competition Stakeholders Group.

BY THE COMMISSION,



James J. McNulty  
Acting Secretary

ORDER ADOPTED: November 6, 1997

ORDER ENTERED: NOV 6 1997

ROBIN L KRONGOLD PARALEGAL  
PAUL BONNEY ESQUIRE  
WARD SMITH ESQUIRE  
MARY MCFALL HOPPER ESQUIRE  
NOEL H TRASK ESQUIRE  
PECO ENERGY COMPANY  
2301 MARKET STREET  
PHILADELPHIA PA 19101-8699

CHRISTOPHER B CRAIG ESQ  
SENATE DEMOCRATIC  
APPROPRIATIONS COMMITTEE  
ROOM 545 MAIN CAPITOL BLDG  
HARRISBURG PA 17120  
MESSENGER

KENNETH L MICHENS ESQUIRE  
CHARLES DANIEL SHIELDS ESQ  
OFFICE OF TRIAL STAFF  
P O BOX 3265  
HARRISBURG PA 17105-3265

TANYA J MCCLOSKEY  
STEVEN K STEINMETZ  
OFFICE OF CONSUMER  
ADVOCATE  
1425 STRAWBERRY SQUARE  
HARRISBURG PA 17120

WALTER W COHEN ESQUIRE  
ANDREW J GIORGIONE ESQUIRE  
OBERMAYER REBMANN MAXWELL  
& HIPPEL  
204 STATE STREET  
HARRISBURG PA 17102

ALAN J BARAK ESQUIRE  
KATHLEEN O'REILLY ESQUIRE  
ROGER CLARK ESQUIRE  
ENVIRONMENTALISTS  
1417 BLUE MOUNTAIN PARKWAY  
HARRISBURG PA 17112

CRAIG A DOLL ESQUIRE  
214 STATE STREET  
HARRISBURG PA 17101

RANDALL V GRIFFIN ESQUIRE  
DELMARVA POWER & LIGHT CO  
800 KING STREET  
WILMINGTON DE 19899

DANIEL CLEARFIELD ESQUIRE  
ALAN KOHLER ESQUIRE  
ROBERT LONGWELL ESQUIRE  
305 NORTH FRONT STREET  
SUITE 401  
HARRISBURG PA 17101

STEVEN P HERSHEY ESQUIRE  
PHILIP A BERTOCCI ESQUIRE  
1425 CHESTNUT STREET  
PHILADELPHIA PA 19102-2502

DERRICK WILLIAMSON ESQUIRE  
DAVID KLEPPINGER ESQUIRE  
MCNEES WALLACE & NURICK  
100 PINE STREET  
P O BOX 1166  
HARRISBURG PA 17108-1166

KAREN OILL MOURY ESQUIRE  
OFFICE OF SMALL BUSINESS  
ADVOCATE  
300 N SECOND STREET  
SUITE 1102  
HARRISBURG PA 17101

SAM DEFRAWI DIR NAVY RATE  
INTERVENTION  
DEPARTMENT OF NAVY  
WASHINGTON NAVY YARD  
BLDG 212 CODE 00RI  
901 M STREET NE  
WASHINGTON DC 20374-5018

WILLIAM T HAWKE ESQUIRE  
JANET L MILLER ESQUIRE  
TODD S STEWART ESQUIRE  
MALATESTA HAWKE & MCKEON  
P O BOX 1778  
HARRISBURG PA 17105-1778

LANCE HAVER  
6803 LAWNTON AVENUE  
PHILADELPHIA PA 19126

THE MCFARREN GROUP  
200 N THIRD STREET  
SUITE 1100  
HARRISBURG PA 17101

DAVID M BOONIN ESQUIRE  
NEW ENERGY VENTURES INC  
200 S BROAD STREET  
SUITE 800  
PHILADELPHIA PA 19102

DONALD A KAPLAN ESQUIRE  
PRESTON GATES & ELLIS  
1735 NEW YORK AVENUE  
WASHINGTON DC 20006

BRUCE A CONNELL ESQUIRE  
DUPONE POWER MARKETING INC  
600 N DAIRY ASHFORD ML-1034  
HOUSTON TX 77079

JOHN L MUNSCHE ESQUIRE  
WPP COMPANY ALLEGHENY POW  
800 CABIN HILL DRIVE  
GREENSBURG PA 15601-1689

DEBORAH SWANSTROM ESQUIRE  
JOEL D NEWTON ESQUIRE  
PAUL E NORDSTROM ESQUIRE  
VERNER LIIPFERT BERNHARD  
MCPHERSON HAND  
901 15TH STREET N W  
WASHINGTON DC 20005-2301

TERRANCE FITZPATRICK ESQ  
DAVID DESALLE ESQUIRE  
RYAN RUSSELL OGDEN &  
SELTZER  
800 N THIRD STREET STE 101  
HARRISBURG PA 17102

PAUL RUSSELL  
PP&L  
TWO NORTH NINTH STREET  
ALLENTOWN, PA 18101

H ALLAN KNOPP DIRECTOR  
REGULATORY AFFAIRS  
DUPONT POWER MARKETING  
P O BOX 2197 CH-1038  
HOUSTON TX 77252

PAUL L ZEIGLER ESQUIRE  
ZEIGLER & ZIMMERMAN  
355 N 21ST STREET STE 304  
P O BOX 1080  
CAMP HILL PA 17011-3707

LINDA C SMITH ESQUIRE  
FREDERICK D OCHSENSHIRT  
DILWORTH PAZSON KALISH &  
KAUFFMAN LLP  
305 N FRONT STREET STE 403  
HARRISBURG PA 17101-1236

MICHAEL L KESSLER  
AMERICAN ENERGY SOLUTIONS  
INC  
111 SOUTH ALFRED STREET  
ALEXANDRIA VA 22314

GARY A JEFFRIES ESQ  
CNG ENERGY SERVICES  
ONE PARK RIDGE CENTER  
PO BOX 15746  
PITTSBURGH PA 15244-0746

RUFUS L MILEY  
22 LEOPARD RUN  
GLEN MILLS PA 19342

JOHN P LAVELLE JR  
JOSEPH A DWORETZKY  
HANGLEY ARONCHICK SEGAL &  
PUDIN  
ONE LOGAN SQUARE 12TH FLOOR  
PHILADLEPHIA PA 19103

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

JOHN P ZINKAND EXEC V P  
PA PETROLEUM ASSN  
SUITE 121 BLDG 2  
2001 N FRONT STREET  
HARRISBURG PA 17102

ETHAN GIDDINGS  
217 RODMAN AVENUE  
JENKINTOWN PA 19046

SUSAN SHANAMAN  
212 N. THIRD STREET  
SUITE 203  
HARRISBURG, PA 17101

JAMES H NORRIS ESQUIRE  
ECKERT SEAMANS CHERIN &  
MELLOTT  
600 GRANT STREET 42ND FL  
PITTSBURGH PA 15219

JOELLE OGG  
GORDON J SMITH ESQUIRE  
JOHN & HENGERER  
1200 17TH STREET NW SUITE  
600  
WASHINGTON DC 20036

GERALD GORNISH ESQUIRE  
12TH FLOOR PACKARD BLDG  
111 S 15TH STREET  
PHILADELPHIA PA 19102-2678

JOHN R ORR ESQUIRE  
ONE WESTCHASE CENTER  
10777 WESTHEIMER  
SUITE 650  
HOUSTON TX 77042

ROBERT A MILLS COUNSEL  
ROBERT WEISHOAR JR ESQ  
PA RETAILERS ASSN  
100 PINE STREET BOX 1166  
HARRISBURG PA 17108-1166

BRIAN A RIDER PRES  
PA RETAILERS ASSN  
224 PINE STREET  
HARRISBURG PA 17101-1325

KEITH SAPPENFIELD II  
DIRECTOR OF MARKETING SUPPORT  
P O BOX 2628  
HOUSTON TX 77252-2628

NORMA ROSNER ESQUIRE  
VASTAR POWER MARKETING INC  
200 WESTLAKE PARK BLVD  
HOUSTON TX 77079

DAVID CRUTHIRDS  
ELECTRIC CLEARINGHOUSE INC  
1000 LOUISIANA  
SUITE 5800  
HOUSTON TX 77002-5050

CRAIG G GOODMAN ESQUIRE  
3333 K STREET NW  
SUITE 425  
WASHINGTON DC 20007

JOHN HAUCKE EXEC V P  
PA ASSN PLUMB HEAT COOL  
CONTRACTORS  
4015 JONESTOWN ROAD  
HARRISBURG PA 17109-9109

ALBERT M BENINCASA DIR  
REGULATORY AFFAIRS  
SLIPPING STONE  
46 9TH AVENUE  
SEA CLIFF NY 11579

VICKIREN S AESCHLEMAN  
DIRECTOR  
QST ENERGY INC  
300 HAMILTON BLVD STE 330  
PEORIA IL 61601

SHEILA S HOLLIS ESQ  
MARY ANN RALLS ESQS &  
STEPHANIE A SUGRUE ESQ  
1667 K STREET N W SUITE 700  
WASHINGTON PA 20006-1608

HONORABLE STEWART J  
GREENLEAF  
SENATE BOX 203012  
HARRISBURG PA 17120-3012

MICHAEL BANTA ESQUIRE  
DANIEL W MCGILL ESQUIRE  
INDIANAPOLIS POWER & LIGHT  
ONE MINNIT CIRCLE  
INDIANAPOLIS IN 46051

EDWARD B CANNON PRESIDENT  
BLDG OWNERS & MANAGERS ASSN  
SUITE 1560 CENTER CITY  
TOWER  
650 SMITHFIELD STREET  
PITTSBURGH PA 15222

HONORABLE CONNIE WILLIAMS  
110 SOUTH OFFICE  
HOUSE BOX 202020  
HARRISBURG PA 17120-2020

ROBERT I FREEMAN RPA PRES  
BLDG OWNERS & MANAGERS  
ASSN  
TWO PENN CENTER PLAZA  
SUITE 310  
PHILADELPHIA PA 19102

SCOTT J. RUBIN  
PUBLIC UTILITY  
CONSULTING  
3 LOST CREEK DRIVE  
SELINSGROVE, PA 17870

PATRICIA ARMSTRONG ESQUIRE  
REGINA L MATZ ESQUIRE  
JOHN A ALZAMAORA ESQUIRE  
ROBERT F YOUNG ESQUIRE  
212 LOCUST ST P O BOX 9500  
HARRISBURG PA 17108-9500

PA. RURAL ELECTRIC  
ASSOCIATION  
212 LOCUST STREET  
P.O. BOX 1266  
HARRISBURG, PA 17108-1266

AUDREY VAN DYKE ASSOC COUNSEL  
DEPT OF NAVY  
WASHINGTON NAVY YARD BLDG 218  
ROOM 200  
901 M STREET SE  
WASHINGTON DC 20374-5018

STEVEN P HERSHEY ESQUIRE  
PHILIP A BERTOCCI ESQUIRE  
COMMUNITY LEGAL SERVICES  
1424 CHESTNUT STREET  
PHILADELPHIA PA 19102

DEPT OF NAVY  
NAVAL FACILITIES ENGINEER  
COMMAND NAVY RATE  
INTERVENTION  
901 M STREET SE BLDG 212  
WASHINGTON DC 20374-5018

ANGELO P TERRANA  
STATE ANALYSIS CORPORATION  
7700 LEESBURG PIKE STE 425  
FALLS CHURCH VA 22043

JOHN KLAUBERG ESQUIRE  
BRUCE MILLER ESQUIRE  
LEBOEUF LAMB GREEN & MCRAE  
125 W 55TH STREET  
NEW YORK NY 10019-5389

EDWARD G RENDELL MAYOR  
CITY OF PHILADELPHIA  
ROOM 215 CITY HALL  
PHILADELPHIA PA 19107-3295

VERONICA A SMITH DEPUTY  
EXECUTIVE DIRECTOR  
PA PUC  
P O BOX 3265  
HARRISBURG PA 17105-3265

JOHN GALLAGHER ESQUIRE  
MICHAEL KLEIN ESQUIRE  
LEBOEUF LAMB GREENE & MCRAE  
200 N THIRD STREET STE 300  
P O BOX 12105  
HARRISBURG PA 17108-2105

E.C. Stakeholders

James M. Cunningham, President  
Pennsylvania Electric Association  
301 APC Building  
800 N. Third Street  
Harrisburg, PA 17102

David O. Epple, Director  
Pennsylvania Electric Association  
301 APC Building  
800 N. Third Street  
Harrisburg, PA 17102

Frank Nadolny  
Duquesne Light Company  
P. O. Box 1930  
Pittsburgh, PA 15230-1930

Lawrence P. Godlasky  
GPU Energy  
100 APC Building  
800 North Third Street  
Harrisburg, PA 17102

David Langer  
Beverage & Diamond  
477 Madison Avenue  
New York, NY 10022

Paul Russell  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101

Steve Feld  
Pennsylvania Power Company  
P. O. Box 891  
New Castle, PA 16103-0891

Alfred Miller  
PECO Energy Corporation  
2301 Market Street (S21-1)  
Philadelphia, PA 19101

Jan H. Freeman, Director of  
Public Policy  
Philadelphia Electric Company  
2301 Market Street (S26-1)  
Philadelphia, PA 19101

John P. Litz  
UGI Utilities, Inc.  
400 Stewart Road  
PO Box 3200  
Wilkes-Barre, PA 18773-3200

Manager  
Regulatory Affairs  
Eastern Energy Mktg., Inc.  
2900 Eisenhower Avenue  
Suite 300  
Alexandria, VA 22314

The Hon. Samuel McCullough  
Secretary  
Department of Community and  
Economic Development  
433 Forum Building  
Harrisburg, PA 17120

Stanley L. Laskowski  
Acting Regional Administrator  
EPA  
841 Chestnut Building  
Philadelphia, PA 19107

Jamie Winebrake  
U.S. DOE  
1880 JFK Blvd., Suite 501  
Philadelphia, PA 19103

Frank Betley, Vice President  
PA Rural Electric Association  
P. O. Box 1266  
Harrisburg, PA 17108-1266

Irwin Popowsky  
Office of Consumer Advocate  
14th Floor, Strawberry Square  
Harrisburg, PA 17120

Bernard A. Ryan  
Small Business Advocate  
Department of Commerce  
Suite 1102 Commerce  
300 N. 2nd Street  
Harrisburg, PA 17101

David Kleppinger, Esquire  
McNees, Wallace & Nurick  
P. O. Box 1166  
Harrisburg, PA 17108-1166

Billie Ramsey  
Executive Director  
ARIPPA  
1300 Market Street  
Lemoyne, PA 17043

Daniel Tunnell, President  
Pennsylvania Gas Association  
800 N. 3rd Street, 2nd Floor  
Harrisburg, PA 17102

Judith L. Mondre  
City of Philadelphia  
Municipal Energy Office  
1401 JFK Boulevard  
Philadelphia, PA 19102-1665

Alan J. Barrak, Attorney for  
Mid-Atlantic Energy Project  
Widener University Law School  
3700 Vartan Way  
Harrisburg, PA 17110

Wick J. Havens  
DEP  
Div. of Air Resource Mgmt.  
400 Market St. - 12th Floor  
P. O. Box 8468  
Harrisburg, PA 17105-8468

Mike Welsh, Secretary/Treasurer  
Utility Workers/Pennsylvania  
Utility Caucus  
408-412 Broad Street  
Johnstown, PA 15906

Richard H. Counihan, VP  
Government Affairs  
Edison Source  
13191 Crossroads Parkway North  
City of Industry, CA 91746

Mr. George Emmons  
17 N. Lancaster Lane  
Newtown, PA 18940

Phillip D. McFarren  
The McFarren Group  
200 N. 3rd Street, Suite 1100  
Harrisburg, PA 17101

Thomas P. Brogan  
Klett Lieber Rooney & Schorling  
A Professional Corporation  
240 North Third Street - Ste. 600  
Harrisburg, PA 17101-1503

Edward A. Essl, Coordinator  
Capital City Task Force  
AARP  
225 Market Street, Suite 502  
Harrisburg, PA 17101

Rodney Raphael Akers  
City of Pittsburgh  
313 City-County Building  
414 Grant Street  
Pittsburgh, PA 15219-2453

Bill McCue  
Merck & Co., Inc.  
Sumneytown Pike  
P.O. Box 4, WP2-1  
West Point, PA 19486-0004

Eugene M. Trisko  
Attorney for UMWA  
P. O. Box 596  
Berkeley Springs, WV 25411

Bill Shane, Esquire  
440 School Street  
Indiana, PA 15701

Mr. Phil Patitsas  
Air Products & Chemicals  
Windsor 2  
7201 Hamilton Blvd.  
Allentown, PA 18195-1501

Charles Estes  
Appalachian Pacific  
1331 Pennsylvania Ave., NW  
Suite 730  
Washington, D.C. 20004

James A. Brodt  
Smith Barney, Inc.  
390 Greenwich Street  
Fifth Floor  
New York, NY 10013

James Royal  
President & C.O.O  
Noble Group Corporation  
3121 Norris Street  
Philadelphia, PA 19121

Elliot M. Loyless, P.E.  
Energy Cost Management  
1901 Camp Florida Road  
Brandon, FL 33510

Michael Walker  
Bradford Stern  
Buchanan Ingersoll-College Centre  
500 College Road East  
Princeton, NJ 08540

Dan Rosenblum  
Mid-Atlantic Energy Project  
203 W. 22nd St., Apt. 3  
New York, NY 10011-2748

Mr. George Ellis  
Pennsylvania Coal Association  
212 N. 3rd St., Suite 102  
Harrisburg, PA 17101

James Steffes, Director  
Governmental Affairs  
Enron Capital & Trade Resources  
1400 Smith Street - EB#2408  
Houston, TX 77002

William T. Hawke  
Malatesta Hawke & McKeon  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17101

Edward Permar  
University of Pittsburgh  
3400 Forbes Avenue  
Pittsburgh, PA 15260

Timothy McNulty  
Dept. of Economic and  
Community Development  
471 Forum Building  
Harrisburg, PA 17120

David Magnus Boonin, Pres.  
New Energy Ventures-Mid-Atlantic  
1845 Walnut Street, Suite 2525  
Philadelphia, PA 19103

Doug Beimfohr  
Carey B. Drangula  
Buchanan Ingersoll-College Centre  
500 College Road East  
Princeton, NJ 08540

Peter J. Thompson  
Andrews & Kurth, LLP  
1701 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Scott J. Rubin  
Public Utility Consulting  
3 Lost Creek Drive  
Selinsgrove, PA 17870

Susan Shanaman  
212 N. Third Street  
Suite 203  
Harrisburg, PA 17101

John E. Molinda  
Strategic Energy, Ltd.  
Two Gateway Center  
Pittsburgh, PA 15222

Dan Delaney  
Kirkpatrick & Lockhart  
240 N. Third Street  
Harrisburg, PA 17101

Deborah Schachter  
163 Silk Farm Road  
Concord, NH 03301

Timothy W. Merrill, Jr.  
Enserch Energy Services, Inc.  
Penn Center West, Bldg. 4,  
Suite 200  
Pittsburgh, PA 15276

Brian A. Rider, President  
Pa. Retailers' Association  
224 Pine Street  
Harrisburg, PA 17101

Byron Williamson  
Engelhard Power Marketing, Inc.  
101 Wood Avenue  
Iselin, NJ 08830-0770

Harry S. Geller, Esq.  
Penna. Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101-1414

Michael D. Klein  
LeBoeuf, Lamb, Greene & MacRae  
200 North Third Street - Suite 300  
P.O. Box 12105  
Harrisburg, PA 17108-2105

Patricia Armstrong  
Thomas, Thomas, Armstrong &  
Niesen  
212 Locust Street - Ste 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Charles Ault  
Allegheny Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15601

Erik Hansen  
Delmarva Power  
800 King Street  
Wilmington, DE 19899

Frank K. Gates  
Greenlee Associates  
P.O. Box 291  
Harrisburg, PA 17108

Ralph L. Lentz, Registrar  
Chm., Political Education Comm.  
I.B.E.W. Local Union 777  
740 Anna May Street  
York, PA 17404-1366

Brian J. Hickey  
Mid American Natural Resources  
2005 West 8th St.  
Suite 201  
Erie, PA 16505

Glenn Winter, P.E.  
1847 Radnor Road  
York, PA 17402

Anthony Lisanti  
Consolidated Edison Co.  
511 Theodore Fremd Avenue  
Room 112  
Rye, NY 10580

Michael Karp  
31 Appaloosa Road  
Bellingham, WA 98226

Amy Leader  
Legislative Director  
Dechert Price & Rhoads  
30 N. 3rd Street  
Harrisburg, PA 17101

Travis Peyton, PE  
Ballinger  
2005 Market St., Ste. 1500  
Philadelphia, PA 19103-7088

John V. Kulik, VP  
Government Relations  
Pa. Food Merchants Assn.  
1029 Mumma Road  
P.O. Box 870  
Camp Hill, PA 17011

Richard W. Bain  
Centerior Energy  
5761 West Avenue  
Edinboro, PA 16412-1342

Denis E. George, VP  
Stand Energy Corporation  
1077 Celestial Street  
Rookwood Bldg., Suite 110  
Cincinnati, OH 45202

Ginny Kreitler  
Kreitler Consulting  
1004 Hampstead Road  
Wynnewood, PA 19096

Frank E. Sparrow  
Equitable Gas  
423 Walnut Street  
Suite 220  
Harrisburg, PA 17101

John Earwood  
Pa. Department of Aging  
400 Market Street  
Harrisburg, PA 17101

Gary R. Stockbridge, VP  
Stephen L. Huntoon, Gen. Counsel  
Horizon Energy Company  
2301 Market Street, S20-1  
Philadelphia, PA 19103

Eric Levis  
Pa. Rural Electric Association  
212 Locust Street  
P.O. Box 1266  
Harrisburg, PA 17108-1266

Dr. John O'Brien  
President  
Wheeled Electric Power Company  
50 Lindbergh Boulevard  
Suite 400  
Uniondale, NY 11553

Susan Weinstock  
AARP  
601 E Street, NW  
Washington, DC 20049

Steve R. Corwell  
QST Energy, Inc.  
300 Hamilton Blvd.  
Suite 330  
Peoria, IL 61602

Neal K. Cody  
MAPSA  
Energy Investment Advisors  
7004 Clifton Forest Drive  
Clifton, VA 20124

Christopher Zettlemoyer  
Reed Smith Shaw & McClay  
213 Market Street  
P.O. Box 11844  
Harrisburg, PA 17108

Scott Helm  
EA&C  
516 Kenhorst Boulevard  
Reading, PA 19611

Tamasin Sterner  
Pure Energy  
531 W. Frederick Street  
Lancaster, PA 17603

Diane S. Meyer  
VP - Rates & Regulatory Affairs  
Peoples Gas  
625 Liberty Avenue  
Pittsburgh, PA 15222-3197

Joseph Goldberg  
Chief Deputy Attorney General  
Dir., Bur. of Consumer Protection  
14th Floor- Strawberry Square  
Harrisburg, PA 17120

Anthony Mirabile  
United Regional Energy  
3200 Mellon Bank Center  
1735 Market Street  
Philadelphia, PA 19103

Rich Heidorn, Jr.  
The Philadelphia Inquirer  
P.O. Box 8263  
Philadelphia, PA 19101

Trond Grenager, Pres./CEO  
Lebanon Methane Recovery, Inc.  
920 Rosstown Road  
Lewisberry, PA 17339

Donna Gehlhaart  
Regulatory Pub. Affrs. Mgr.  
International Paper  
320 W. Market St., Suite 600  
Harrisburg, PA 17101

Louis J. Carter, Esq.  
7300 City Line Avenue  
Philadelphia, PA 19151

Daniel Desmond  
Sustainable Systems Research  
1303 Wheatland Avenue  
Lancaster, PA 17603

Joel Blau  
Regulatory Counsel  
Wheeled Electric Power Co.  
32 Windsor Court  
Delmar, NY 12054

David Hughes  
4037 Ludwick Street  
Pittsburgh, PA 15217

Norman H. Stark  
MacDonald, Illig, Jones & Britton  
Suite 700  
100 State Street  
Erie, PA 16507

Dennis Kalbarczyk  
Utility Rates Resources  
910 Picketown Road  
Harrisburg, PA 17112

Rocco Pugliese  
Pugliese Associates  
208 N. 3rd Street  
Suite 410  
Harrisburg, PA 17101

Joe Dudick  
PA Rural Development Council  
506 Finance Building  
Harrisburg, PA 17120

Dan Kennedy  
Governor's Action Team  
439 Forum Building  
Harrisburg, PA 17120

Mary Layshock  
Downes Associates, Inc.  
2129 Northwood Drive  
Salisbury, MD 21801

Andrew Altman  
Clean Air Council  
135 S. 19th Street  
Suite 300  
Philadelphia, PA 19103

Scott Helm  
Expense Audit & Consulting  
516 Kenhorst Blvd.  
Reading, PA 19610

Terry Holt  
Hills Department Stores  
3010 Greengarden Road  
Aliquippa, PA 15001

Joseph Wydra  
Shumaker Williams Governance  
Resource Group  
P.O. Box 88  
Harrisburg, PA 17108

Craig A. Doll, Esq.  
214 State Street  
Harrisburg, PA 17101-1132

Elisa J. Grammer  
Monique Penn-Jenkins  
Grammer Kissel Robins  
Skancke & Edwards  
1225 Eye St., NW, Ste. 1225  
Washington, D.C. 20005

Roger Odisio  
170 Drake Road  
Bethel Park, PA 15102

James H. Cawley  
Rhoads & Sinon, LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146

Elizabeth R. Benson, President  
Energy Associates  
7303 Timber Lane  
Falls Church, VA 22046-2735

Paul Barber  
Citizens Lehman Power, LLC  
530 Atlantic Avenue  
Boston, MA 02210

Elizabeth R. Benson, President  
Energy Associates  
7303 Timber Lane  
Falls Church, VA 22046-2735

Jay Layman  
Capital Associates, Inc.  
200 North 3rd Street, Suite 1402  
P.O. Box 1085  
Harrisburg, PA 17108-1085

Jack Johnson  
Geophonics  
332 Springfield Avenue  
Summit, NJ 07901

William Kahoc  
NORSTAR Energy  
26 Tolchester Lane  
Bel Aire, MD 21014

Steven B. Loux, Research Associate  
The Commonwealth Foundation  
3544 North Progress Avenue  
Suite 101  
Harrisburg, PA 17110

Glenn Berger  
1440 New York Avenue, NW  
Sixth Floor  
Washington, D.C. 20005

Tom Scott  
Killian & Gephart  
218 Pine Street  
P.O. Box 886  
Harrisburg, PA 17108

Robert E. Stewart  
PA Govt. News & Advisory Service  
100 South 21st Street  
Harrisburg, PA 17104

Ralph J. Weed, CPA  
311 Edinburgh Road  
Chadds Ford, PA 19317

Dennis Bloom  
IBEW Local 272  
1099 Marshall Road  
Monaca, PA 15061

Eric Woychik  
SI  
9901 Caloden Lane  
Oakland, CA 94605

Todd Glass  
Heller, Ehrman, White & McAuliffe  
200 Southwest Market Street  
Suite 1750  
Portland, OR 97201

Marylou Barton, Assistant Counsel  
Bureau of Regulatory Counsel  
RCSOB  
400 Market Street, 9th Floor  
P.O. Box 8464  
Harrisburg, PA 17105-8464

Steve Hastie  
Resource Management, Inc.  
111 Presidential Blvd.  
Suite 127  
Bala Cynwyd, PA 19004

Ed Panavich  
Westinghouse Electric Corp.  
11 Stanwix Street  
Pittsburgh, PA 15222-1384

Siegfried Doerr  
Xenergy, Inc.  
3 Burlington Woods  
Burlington, MA 01803

Walter Hans  
TRD  
PO Box 2820  
Cherry Hill, NJ 08034-0246

Edward Wyland  
UWUA Local 102  
338 West Maiden Street  
Washington, PA 15301

Rich Luczko  
Legislative Coordinator  
IBEW  
5144 Caste Drive  
Pittsburgh, PA 15236

Lisa Yoho  
Columbia Gas Transmission Corp.  
1700 MacCorkle Avenue, S.E.  
P.O. Box 1273  
Charleston, WV 25325-1273

Edward Gallagher  
Dairylea Cooperative, Inc.  
5001 Brittonfield Parkway  
P.O. Box 4844  
Syracuse, NY 13221-4844

Tim Moran  
System Council U10, IBEW  
986 Greentree Road  
Pittsburgh, PA 15220

James P. McCormick  
Utility Operations Consultant  
1940 Robert Road  
Meadowbrook, PA 19046

Glenn D. Clowney  
Delmarva Power  
Christiana Building  
252 Chapman Road  
P.O. Box 6066  
Newark, DE 19714-6066

Robert N. Grant  
Principal for Mgmt. Consulting  
Delta Development Group, Inc.  
207 House Avenue, Suite 103  
Camp Hill, PA 17011

James Kirkpatrick, Program Mgr.  
Electric Unit  
PennDOT  
District 6-0  
St. Davids, PA 19003

Jane Drenan  
1216 - 16th Street, NW  
Washington, DC 20036

Tim McCorry, President  
Mack Services Group  
45 Branch Avenue  
Berwyn, PA 19312

Barry Goodstadt, Ph.D.  
Vice President  
Itron, Inc.  
P.O. Box 1160  
Columbia, MD 21044

Jeff Simpson  
Shipley Oil Company  
550 E. King Street  
York, PA 17403

Bernie McNamee, General Manager  
Compass Management and Leasing  
Mellon Independence Center  
701 Market Street, Suite 2384  
Philadelphia, PA 19106

Arlen K. Bolstad  
Robert A. Omberg  
Div. of Legislative Services  
General Assembly Bldg. - 2nd Floor  
910 Capitol Street  
Richmond, VA 23219

J. John Fluharty  
Chesapeake Enterprises  
1800 K Street, NW  
Suite 629  
Washington, D.C. 20006

Daniel Moncino  
Schlumberger Industries  
3155-B Northwoods Parkway  
Norcross, GA 30071

Joe Fisher, Assoc. Editor  
Natural Gas Intelligence  
211 Regency Square Blvd.  
Suite 221  
Houston, TX 77036

Valerie Smith  
Rural Utilities  
1400 Independence Ave., S.W.  
Mail Stop 1516  
Rm. 4027 South Building  
Washington, DC 20250

Pete Langbein  
GPU - Advanced Resources  
2675 Morgantown Road  
Suite GH2-3300  
Reading, PA 19607

Albert Thomas  
Techneglas  
60 Old Boston Road  
Pittston, PA 18640

Jan Jarrett  
1740 Main Street, Lisburn  
Mechanicsburg, PA 17055

John R. Java, RPA  
Building Owners and Managers  
Suite 1560 Center City Tower  
650 Smithfield Street  
Pittsburgh, PA 15222

Barry Blackwell  
Cinergy Corp.  
1000 E. Main Street  
Plainfield, IN 46168

Russell N. Henn  
LG&E Power Marketing  
12500 Fair Lakes Circle, Suite 350  
Fairfax, VA 22033-3804

John E. Horton  
Emmit C. House  
mc<sup>2</sup>  
701 East 22nd Street  
Lombard, IL 60148-5072

Robert Spaulding  
Spaulding Group  
5127 Walnut Ridge Drive  
Erie, PA 16506

Paul Edmundson  
Plum Street Energy Marketing  
507 Plum Street  
Syracuse, NY 13204

Frank A. Felder  
Senior Consultant  
The Economics Resource Group  
One Mifflin Place  
Cambridge, MA 02138

Al Benincasa, Dir.  
Regulatory Affairs  
Slipping Stone  
46 - 9th Avenue  
Sea Cliff, NY 11579

Robert W. O'Donnell, Esq.  
Suite 1300  
1515 Market Street  
Philadelphia, PA 19102

William P. Edwards, Jr.  
PacifiCorp  
1500 Market Street  
Centre Square  
East Tower - 12th Floor  
Philadelphia, PA 19102

Alan C. Kohler, Esq.  
Wolf, Block, Schorr and  
Solis-Cohen  
305 N. Front Street - Suite 401  
Harrisburg, PA 17101

James Kimball  
Onlocation, Inc.  
8100 Oak Street  
Suite 300  
Dunn Loring, VA 22027

John Happ  
Noram Energy  
1600 Smith Street  
Suite 1161  
Houston, TX 77002-7345

William Campbell  
Seasoned Energy Development, Ltd.  
P.O. Box 7955  
Philadelphia, PA 19101-7955

June Perry  
Room 19 Capitol Annex  
Harrisburg, PA 17120

Alexandra Matthews-Ritter  
Senator Bell's Office  
20 East Wing Capitol  
Harrisburg, PA 17120

Senator Roy C. Afflerbach  
184 Main Capitol  
Harrisburg, PA 17120

Rep. Frank Tulli, Jr.  
155A East Wing Capitol  
Harrisburg, PA 17120

Rep. William Lloyd, Jr.  
Chairman  
House Cons. Affairs Comm.  
128 South Office Building  
Harrisburg, PA 17120

Kim Shawkey  
Sen. Brightbill's Office  
337 Main Capitol  
Harrisburg, PA 17120

Senator Joseph M. Uliana  
459 Main Capitol  
Harrisburg, PA 17120

Nan McLaughlin  
Governor's Office  
238 Main Capitol  
Harrisburg, PA 17120

Glen Thomas  
Governor's Office  
506 Finance Building  
Harrisburg, PA 17120

Cynthia Datig  
Dollar Energy Fund  
P.O. Box 42329  
Pittsburgh, PA 15203

Brooks Mountcastle  
Clean Air Council  
3700 Vartan Way  
Harrisburg, PA 17110

Liz Robinson  
ECA  
1924 Arch Street  
Philadelphia, PA 19103

Vincent Rossi  
Senator Fumo's Office  
545 Main Capitol  
Harrisburg, PA 17120

Rep. Keith McCall  
House of Representatives  
313 South Office Building  
Harrisburg, PA 17120

Rep. Chris Wogan  
House of Representatives  
5 East Wing  
Harrisburg, PA 17120

Senator Clarence D. Bell  
Room 20 East Wing  
Harrisburg, PA 17120

Holly B. James, Paralegal  
Duane Morris & Heckscher  
1667 K Street, N.W.  
Suite 700  
Washington, DC 20006

Al Benincasa Dir.  
Regulatory Affairs  
Slipping Stone  
46 - 9th Avenue  
Sea Cliff, NY 11579

Robert F. Young  
McQuaide Blasko  
811 University Drive  
State College, PA 16801