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September 16, 1997

KJR

VIA FEDERAL EXPRESS

James J. McNulty
Acting Prothonotary
Pennsylvania Public Utility Commission
North Office Building
North Street and Commonwealth Avenue
Harrisburg, PA 17105-3265

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SEP 16 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: Application of PECO Energy Company for Approval of
its Restructuring Plan Under Section 2806 of the
Public Utility Code, Docket No. R-00973953

Dear Mr. McNulty:

Enclosed please find the original and three copies of the revised "Comments of Allegheny Power to Partial Settlement" for filing in the captioned proceeding. These revised comments contain the Attachment A which was inadvertently omitted from the original version of the comments, dated September 15, 1997. The comments otherwise are unchanged. We apologize for any inconvenience we may have caused.

Also enclosed are two additional copies, which we ask that you stamp and return in the enclosed, self-addressed stamped envelope.

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James J. McNulty
September 16, 1997
Page 2

Copies of this filing are being served on all parties to the captioned proceeding.
We also are serving the Commissioners individually.

Sincerely,



Paul E. Nordstrom
Attorney for Allegheny Power

Enclosure

cc: Via Fax:
John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
John Hanger, Commissioner
David W. Rolka, Commissioner
Nora Mead Brownell, Commissioner
Attached Service List

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SEP 16 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application Of PECO Energy Company)
For Approval Of Its Restructuring)
Plan Under Section 2806 Of The)
Public Utility Code)

Docket No. R-00973953

**COMMENTS OF ALLEGHENY POWER
TO PARTIAL SETTLEMENT**

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SEP 16 1997

To: The Honorable Marlane R. Chestnut and Charles E. Rainey, Jr., PA, PUBLIC UTILITY COMMISSION
Presiding Administrative Law Judges PROTHONOTARY'S OFFICE

Pursuant to 52 Pa. Code Sec. 5.61, Allegheny Power hereby submits its
comments to the Partial Settlement of August 27, 1997, filed by PECO Energy
Company ("PECO") on behalf of itself and other signatories to the Partial Settlement.

Allegheny Power states as follows:

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DISCUSSION

DOCKETED
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Overview of Position

The filing of the Partial Settlement presents the Commission with its first
opportunity to rule upon the transition plan of a Pennsylvania utility filed under the
Electricity Generation Customer Choice and Competition Act ("Competition Act"). It
thus represents a critical milestone in the transition of Pennsylvania's electricity industry
to one that will feature the deregulation of generation at the retail level and customer
choice of generation suppliers.

The Commission should carefully consider the direct impact that the Partial
Settlement may have on the electricity market in and around PECO's service territory,

as well as the possible precedent-setting effect its approval of the Partial Settlement may have on the transition plans of the other Pennsylvania utilities. Allegheny Power's position with respect to the Partial Settlement arises from both of these concerns.

First, Allegheny Power believes that the award to PECO of \$5.5 billion of stranded cost recovery, coupled with the right to securitize \$4.0 billion of its stranded costs, will confer on PECO significant competitive advantages vis a vis Allegheny Power's West Penn Power Co. ("West Penn") and other Pennsylvania utilities. As a means of moderating these advantages, Allegheny Power proposes that the Commission restrict PECO's use of securitization proceeds in the same manner as set forth in the Settlement Agreement between PECO and Allegheny Power (see Attachment A hereto), which the Commission approved in PECO's securitization proceeding.^{1/} Allegheny Power also urges the Commission to keep in mind the advantages conferred to PECO when it rules upon West Penn's transition plan and the transition plans of the other utilities, so as to maintain an equitable competitive balance among the state's utilities.

Second, Allegheny Power believes that there will be considerable pressure for the Commission to apply the individual terms of the Partial Settlement to the transition plans of the other Pennsylvania utilities. For the reasons discussed below, application of those terms to the other utilities may not be appropriate. Allegheny Power requests that the Commission make clear that its approval of the Partial Settlement will have no precedential impact on the other utilities' transition plans.

^{1/} Application of PECO Energy Company for Issuance of a Qualified Rate Order Under Sections 2808 and 2812 of the Public Utility Code, Opinion and Qualified Rate Order, Docket No. R-00973877, p. 5 (May 22, 1997).

PECO Competitive Advantage

Allegheny Power welcomes the advent of customer choice in Pennsylvania. Consistent with its traditional obligation to serve and in anticipation of customer choice, Allegheny Power has conducted its operations in an efficient and low cost manner. Indeed, West Penn has been and continues to be the lowest cost utility supplier in Pennsylvania. Given these circumstances, Allegheny Power should be well positioned to compete in the new competitive Pennsylvania electric markets if competition is allowed to proceed in a fair and equitable manner.

The Partial Settlement, however, raises serious concerns as to whether the ground rules for competition will be fair and equitable. The Partial Settlement confers significant competitive advantages on PECO vis a vis West Penn and the other Pennsylvania utilities. Under the Partial Settlement, PECO would recover \$5.5 billion of stranded costs. PECO would be permitted to securitize \$4.0 billion of this amount. PECO also would be permitted to recover its stranded costs in a competitive transition charge ("CTC") that will be in effect through the end of the year 2008.

The competitive, or anticompetitive, implications of the Partial Settlement include the following:

- Securitization. The Partial Settlement provides that PECO may securitize \$4.0 billion of its stranded costs. Thus, upon completion of the sale of its transition property, PECO would receive a staggering amount of cash as proceeds of the sale, thereby guaranteeing PECO recovery of a huge portion of its fixed costs and providing PECO with substantial flexibility to compete in deregulated electricity markets. Absent the restrictions on the proceeds requested below,

PECO could employ this cash to expand into the markets of West Penn and the other Pennsylvania utilities. West Penn and the other utilities, which have not sought approval to securitize stranded costs of this magnitude, will have less ability to expand into PECO's market or to protect their own markets.

- CTC/Generation Charge Relationship. The Partial Settlement would permit PECO to charge customers its full CTC regardless of the level of actual market prices. Under the settlement, PECO's CTC is fixed; thus, PECO's generation charge (i.e., the customer's avoided cost) is determined as the residual between its generation rate cap and the fixed CTC. Whenever the difference between PECO's generation rate cap and its CTC is less than the market price, PECO would continue to charge its full CTC, but would charge *below market generation rates* in order to avoid exceeding the cap. Based on the testimony of PECO's witnesses, such a situation may occur frequently through the year 2005. The following table highlights (in bold type) the projected annual market prices provided by PECO's witnesses which exceed the residual "energy and capacity cap" of the Partial Settlement:

PECO Generation Market Price

\$/MWh					
	Projections of PECO Witnesses ^{1/}			Average Projection	Settlement Energy & Capacity Cap ^{2/}
	EDS	PHB	ICF		
1999	28.4	24.5	28.1	27.0	28.0
2000	31.5	27.8	31.3	30.2	28.0
2001	36.6	32.2	35.0	34.6	32.0
2002	38.2	33.9	36.4	36.2	35.0
2003	39.9	35.7	37.5	37.7	37.0
2004	41.7	37.6	38.9	39.4	39.7
2005	43.4	39.3	41.4	41.4	40.7
2006	44.8	41.1	43.3	43.2	47.7
2007	46.6	43.0	45.0	44.9	53.7
2008	48.2	44.9	47.0	46.7	55.7

^{1/} Source: Exhibit JFB-1 (Bustard).

^{2/} Source: Partial Settlement, p. 8, Col. 4.

In contrast, in its transition filing West Penn has proposed that its CTC be adjusted annually as the residual between its generation rate cap and the actually-determined market price. In addition, other Pennsylvania utilities have indicated that when market prices rise above projections, they will continue to charge market generation rates, but will reduce their CTC charges in order to stay within their caps. The competitive advantage that PECO uniquely would enjoy as a result of its fixed CTC is obvious: alternative suppliers would be forced to compete with PECO's below market generation rates for sales to PECO's customers -- rates which PECO is able to charge because they are subsidized by PECO's huge CTC.

- CTC Extension. The Partial Settlement permits PECO to extend the period of CTC collection through the end of 2008. Extension would increase the likelihood of PECO recovering the full amount of stranded costs permitted by the Partial Settlement and guarantee recovery of some level of profit through 2008.

The Competition Act was passed to bring about competitive retail generation markets in Pennsylvania. In order for such markets to function properly and bring to Pennsylvania consumers the full benefits of competition, the rules of the market must not arbitrarily confer favor or advantage to one player over another. The Commission must be especially vigilant to avoid unfair advantage in the area of stranded cost recovery. Nothing in the Competition Act suggests that stranded cost recovery should be used by utilities or applied by the Commission so as to confer to certain utilities a competitive advantage over the others. Nor does anything in the Act suggest that the *natural and proper* advantages of utilities that have over the years invested wisely, operated efficiently and provided low cost service to consumers should be washed away by the new wave of regulation which now implements stranded cost recovery.

As a minimum safeguard to protect against some of the competitive advantages that PECO would receive upon approval of the Partial Settlement, Allegheny Power requests that the Commission impose upon PECO's use of the proceeds from the sale of securitized transition property the same restrictions as were agreed to between PECO and Allegheny Power for such funds in the PECO securitization case. See Attachment A. Specifically, PECO agreed that it would use the proceeds from the sale of transition property for the following purposes only:

(1) to pay expenses related to the issuance of the Transition Bonds and the costs associated with using the proceeds; (2) to apply to its deferred fuel accounts; (3) to retire existing debt through calls, open market purchases, tender offers and/or defeasance; (4) to retire existing preferred stock through redemption and/or tender offers; and (5) for stock buy backs or dividends related to PECO Energy's common equity.

Attachment A at 2. The same considerations that led to the Settlement Agreement and the Commission's approval of that agreement in Docket No. R-00973877 compel Commission imposition of these restrictions in the instant proceeding. Those proceeds should be used to pay down company liabilities associated with stranded costs and other transition costs; they should not be used to subsidize PECO's expansion into other utilities' regions.

Further, Allegheny Power respectfully requests that the Commission remain cognizant of the competitive advantages received by PECO when the Commission considers the merits of West Penn's restructuring application. West Penn should not be placed at a competitive disadvantage because it has fewer, rather than more, stranded costs than PECO.

Possible Precedential Impact

While typically settlements do not create binding precedent, the Commission should be mindful that in approving the Partial Settlement it will be setting in place the "rules of the road" for a portion of the Pennsylvania retail electricity market. Pressure to apply the same rules to the remaining portions of the Pennsylvania markets likely will arise as the Commission reviews the transition plans of the other Pennsylvania utilities. Indeed, one participant in the Pennsylvania electric restructuring is already proclaiming

the temporary 10 percent PECO rate reduction in the Partial Settlement to be a benchmark for consumer support of the other utilities' restructuring proposals. See "PECO, Opponents Find Common Ground, Announce Settlement," Energy Daily, August 28, 1997, pp. 1-2 (quoted remarks of Sen. Vincent Fumo (D-Philadelphia)).

The Commission should be careful to ensure that its ruling with respect to the PECO settlement is limited to the PECO service territory and will not be binding on the other Pennsylvania utilities and the transactions that will occur within their territories. A "one size fits all" approach was not contemplated by the Legislature when it required the filing of individual implementation plans. And clearly, given the varying circumstances facing the respective Pennsylvania utilities -- including great differences in success in controlling costs, varying customer demographics, and even location in separate and distinct electricity markets -- the rules of the road will have to be tailored for each utility and its territory. The Commission's ruling on the Partial Settlement should ensure such flexibility.

A prime example of the need to tailor the specific elements of restructuring to each utility's circumstances is raised by the suggestion, cited above, that a temporary 10 percent rate reduction become a benchmark. The strikingly different circumstances by which West Penn and PECO enter the transition to competition refute this suggestion. West Penn, through years of prudent and efficient management, provides residential service at rates 47 percent below PECO's. If PECO's rate levels are to be considered a benchmark for West Penn, logic would dictate that West Penn's rates should be significantly increased, not decreased. Other considerations also bode against imposing a decrease in West Penn's rates. PECO currently is earning more

than its authorized rate of return and, thus, has a substantial "cushion" with which it may offer such a rate concession. West Penn is earning less than its authorized rate of return,^{2/} and simply has no comparable cushion with which to offer such a concession. Imposition of such a concession could have a devastating impact on West Penn's financial condition. The Commission should resist attempts to selectively and arbitrarily apply certain aspects of the Partial Settlement, which were negotiated in light of the many circumstances surrounding PECO, to the transition plans of the other Pennsylvania utilities.

CONCLUSION

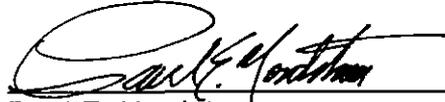
For the reasons discussed above, Allegheny Power respectfully requests that the Commission:

- (1) impose restrictions on PECO's use of proceeds from the sale of transition property as described above;
- (2) craft its order with respect to the Partial Settlement so as not to be binding on West Penn's transition filing; and

^{2/} See Direct Testimony of Michael P. Morrell, West Penn Power Company, Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00973981, p. 15.

(3) grant such other relief as is necessary and appropriate.

Respectfully submitted,



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Attorneys for Allegheny Power

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FEB 27 1997

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

PECO ENERGY COMPANY

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DOCKET NO. R-00973877

PUBLIC UTILITY COMMISSION
NOTARIAL OFFICE

**SETTLEMENT AGREEMENT BETWEEN
ALLEGHENY POWER AND PECO ENERGY COMPANY**

1. West Penn Power Company, *via* Allegheny Power ("Allegheny"), and PECO Energy Company ("PECO Energy") are parties to the above proceeding. This Settlement Agreement settles all issues in dispute in this docket between Allegheny and PECO Energy.

2. This proceeding involves PECO Energy's request, pursuant to Section 2808 and 2812 of the Public Utility Code (66 Pa.C.S. §§ 2808 and 2812), to securitize approximately one-half of its stranded costs and thereby achieve a rate discount for its customers. The nature of PECO Energy's request is set forth in detail in its Application filed with the Commission on January 22, 1997.

3. Allegheny has been granted Intervenor status in this proceeding by Order of Administrative Law Judge Weisman dated February 14, 1997.

4. As part of its discovery in this proceeding, Allegheny has filed deposition notices for several PECO Energy employees and consultants.

5. Allegheny entered an appearance in this proceeding primarily with regard to PECO Energy's use of proceeds from sale of Intangible Transition Property that will

be created by the Qualified Rate Order in this proceeding.

6. Allegheny has reviewed PECO Energy's Application and testimony and determined that the information provided therein, coupled with the additional commitments made by PECO Energy in this Settlement Agreement, satisfy its concerns regarding use of proceeds.

7. Specifically, in PECO Energy's Application and testimony, PECO Energy states that it will use the proceeds only for the following purposes: (1) to pay expenses related to the issuance of the Transition Bonds and costs associated with using the proceeds; (2) to apply to its deferred fuel accounts; (3) to retire existing debt through calls, open market purchases, tender offers and/or defeasance; (4) to retire existing preferred stock through redemption and/or tender offers; and (5) for stock buybacks or dividends related to PECO Energy's common equity. Through this Settlement Agreement, PECO Energy further commits that, in this docket, it will only advocate to the Commission that it be allowed to use the proceeds for these purposes or otherwise to reduce its transition or stranded costs and related capitalization, and for no other purpose. PECO Energy further commits that, unless otherwise ordered by the PUC, it shall only use such proceeds for these purposes.

8. In this proceeding, PECO Energy has (a) filed its Qualified Rate Order Application prior to the filing of its restructuring plan filing pursuant to Pa.C.S. § 2806; (b) requested permission to issue Transition Bonds for only a portion of its transition or stranded costs; and (c) requested expedited review of that Application pursuant to 66 Pa.C.S. § 2812(B)(1)(I). That Section of the Pennsylvania Public Utility Code states that, when such a filing is made, "The Commission shall consider only the portion of the

transition or stranded costs for which the utility requests approval to issue Transition Bonds. Consideration of all remaining amounts and amounts not resolved by the Commission shall be deferred for consideration in the electric utility's restructuring plan proceeding under Section 2806."

9. It is the understanding of Allegheny and PECO Energy that this section of the Public Utility Code and other applicable law create a right to contest, in a utility's restructuring plan proceeding, the transition or stranded costs that have been deferred for consideration until a utility's restructuring plan proceeding pursuant to Section 2806, and at the same time create a bar to contesting the transition or stranded costs that are approved by the Commission in this proceeding.

10. PECO Energy is currently scheduled to make its restructuring plan filing pursuant to Section 2806 on April 1, 1997.

11. It is the intention of Allegheny and PECO Energy that Allegheny's intervention and participation in the instant proceeding, or the terms of this Settlement Agreement, shall not be used to bar any rights that Allegheny would otherwise have had, under Section 66 Pa.C.S. § 2812(B)(1)(i) or other applicable law, to contest PECO Energy's deferred transition or stranded costs during PECO Energy's restructuring plan proceeding pursuant to Section 2806 or any other proceeding in which PECO Energy seek recovery of its transition or stranded costs. It is the further intent of Allegheny and PECO Energy that Allegheny's intervention and participation in the instant proceeding, or the terms of this Settlement Agreement, shall not give Allegheny any additional rights beyond those that Allegheny would otherwise have had under Section 66 Pa.C.S. § 2812(B)(1)(i) or other applicable law, to contest PECO

Energy's deferred transition or stranded costs during PECO Energy's restructuring plan proceeding pursuant to Section 2806 or any other proceeding in which PECO Energy seek recovery of its transition or stranded costs.

12. PECO Energy commits that it will not argue that Allegheny's intervention and participation in the instant proceeding collaterally estops Allegheny or otherwise alters any rights that Allegheny would otherwise have had, under Section 66 Pa.C.S. § 2812(B)(1)(I) or other applicable law, to contest PECO Energy's deferred transition or stranded costs during PECO Energy's restructuring plan proceeding pursuant to Section 2806 or any other proceeding in which PECO Energy seek recovery of its transition or stranded costs. Allegheny commits that it will not argue that Allegheny's intervention and participation in the instant proceeding, or this Settlement Agreement, gives it additional rights or otherwise alters any rights that Allegheny would otherwise have had, under Section 66 Pa.C.S. § 2812(B)(1)(I) or other applicable law, to contest PECO Energy's deferred transition or stranded costs during PECO Energy's restructuring plan proceeding pursuant to Section 2806 or any other proceeding in which PECO Energy seek recovery of its transition or stranded costs.

13. Allegheny commits that in this proceeding it will not request deferred consideration of the transition or stranded costs for which PECO Energy has requested approval in its Application. Allegheny further commits that it will not challenge, in this docket, any appeals therefrom, or any future proceeding, the Qualified Transition Expenses which the Commission approves in this docket, including the portion of PECO Energy's transition or stranded costs which are approved as Qualified Transition Expenses in this proceeding.

14. Allegheny further commits to withdraw its notices of deposition in this proceeding for all PECO Energy employees and consultants.

15. This Settlement Agreement is submitted for the purpose of settlement only. All issues in this docket shall be considered resolved between Allegheny and PECO Energy only for purposes of this proceeding and any appeals arising from it and, subject to the commitments made by Allegheny and PECO Energy in this Settlement Agreement, shall establish no principle or precedent with respect to any issues raised in this docket.

16. This Settlement Agreement shall be binding upon Allegheny and PECO Energy and upon their respective successors and assigns.

17. This document may be executed in several counterparts and all such executed counterparts shall form a part of and become integrated with this document. The execution of counterparts hereof shall not affect the validity of this Settlement Agreement.

DATED this 27TH day of February, 1997.

ALLEGHENY POWER

By: Thomas H. Anderson

Title: V.P., Legal

PECO ENERGY COMPANY

By: Marion V. Smith

Title: Deputy General Counsel & Corporate Secretary

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application Of PECO Energy Company)
For Approval Of Its Restructuring) **Docket No. R-00973953**
Plan Under Section 2806 Of The)
Public Utility Code)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the enclosed document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Director - Regulatory Policy
QST Energy, Inc.
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Peoria, IL 61602

Dated this 16th day of September, 1997.



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Attorney for Allegheny Power



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IN REPLY REFER TO:

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James J. McNulty
 Acting Prothonotary
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PA PUBLIC UTILITY COMMISSION
 PROTHONOTARY'S OFFICE

Re: Application of PECO Energy Company for Approval of its
 Restructuring Plan Under Section 2806 of the Public
 Utility Code, Docket No. R-00973953

Dear Mr. McNulty:

Enclosed please find the original and three copies of the
 "Department of the Navy Statement in Support of Joint Petition
 for Partial Settlement" for filing in the captioned proceeding.

Copies of this filing are being served on all parties.

Sincerely,

Audrey R. Van Dyke for
 Audrey Van Dyke
 Associate Counsel (Litigation)

Enclosure

cc: Attached Service List

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION)

DOCKET NO.)
R-00973953)

RECEIVED

v.)

PECO ENERGY COMPANY)

DOCKETED

SEP 16 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

SEP 18 1997

**DOCUMENT
FOLDER**

DEPARTMENT OF THE NAVY STATEMENT: IN
SUPPORT OF JOINT PETITION FOR PARTIAL SETTLEMENT

The Department of the Navy ("Navy") is a signatory to the Joint Petition for Partial Settlement in this docket.

The Partial Settlement provides for a guaranteed 10% across-the-board rate reduction effective September 1, 1998 and additional annual reductions in the competitive transition charge starting on January 1, 1999 and extending through December 31, 2008. Additionally, PECO has agreed to write off at least \$2.0 billion of its claimed stranded assets and costs. The Navy's Statement No. 1 at pages 5-6 and 38-39 discussed the fact that PECO's present rates may be too high and that the CTC collection for PECO should commence from a starting point of lower rates for PECO electric service. This testimony also discussed how some of PECO's "mitigation" efforts, to date, have essentially come at ratepayer expense, as opposed to representing a contribution by PECO's stockholders. Because the Navy believes that the partial settlement provides for a reasonable rate reduction, and that PECO's write off of \$2.0 billion of its claim for stranded assets

and costs represents an appropriate mitigation effort by its stockholders, the Navy agreed to the terms of the settlement.

The Navy, however, must point out that some specific issues covered in Navy Statement No. 1 are not covered in the Partial Settlement agreement and may be the subject of additional settlement discussions and/or contested hearings.

Concerning nuclear decommissioning, Navy Statement No. 1 addressed the cost and rate recovery issues at pages 19-25. While Paragraph 20 of the settlement provides for a higher annual nuclear decommissioning cost than the Navy recommended, the Navy can accept this given the \$2.0 billion total write-off agreed to by PECO. Navy Statement 1, at pages 20-25, also addresses the issue of how PECO's filing contained a Company-proposed treatment for nuclear decommissioning expense that would likely have produced a very undesirable result--the loss of the tax deductibility for the nuclear decommissioning funding contributions. The settlement provides that the mechanism for PECO's collection of nuclear decommissioning cost will remain a component of PECO's regulated rates (Settlement, p.19), which should result in the preservation of tax-deductibility for the funding contributions. The Navy's testimony described problems with PECO's calculation method. While the settlement uses PECO's calculation method, it does not tie any party into, or infer any agreement with, that calculation method for purposes of future proceedings. The settlement clearly provides (p.18) that PECO's method is not binding in future cases, stating that:

The acceptance of the Company's method of calculating decommissioning costs and funding requirements in this Partial Settlement shall not be binding or precedential upon any party in any future case under this paragraph.

Overall, the Navy believes that the settlement of the nuclear decommissioning issues is reasonable.

Concerning fossil decommissioning, Navy Statement No. 1, at pages 25-28, opposed the inclusion in CTC as being inconsistent with traditional ratemaking practice in Pennsylvania. The settlement, at paragraph 21, page 20, provides that "[f]ossil decommissioning costs accruing on and after January 1, 1999 will be recovered through market sales of generation." Moreover, there will not be a reconciliation for increases or decreases. The Navy accepts this provision because it requires PECO's collection of this cost to come prospectively from the competitive market, as opposed to being included in a CTC charge. In considering the resolution of this issue, the Navy is also mindful of the \$2.0 billion overall write-off agreed to by PECO.

The settlement provides (§ 10) for securitization of up to \$4.0 billion of PECO's stranded assets and costs. Navy Statement No. 1, at page 6, states that "[t]o the extent that PECO's securitized debt issuances actually reduce CTC and do not cause existing rates to remain at unnecessarily high levels, I would view this (securitization) as a mitigation step on the Company's part that actually helps ratepayers." The Navy thus contends that the provisions in Paragraph 10 of the Settlement Agreement concerning securitization are reasonable.

Further, the Navy agrees with the public interest considerations articulated at paragraphs 44-52 (pages 31-33) of the settlement document.

Finally, the Navy also presented testimony on the CTC/ITC allocation and recovery method, rate unbundling, and cost of service issues and believes that the partial settlement adequately satisfies its concerns. The issues of comparative metering and billing remain unresolved at this time.

In conclusion, the Navy believes that the settlement agreement is a fair and reasonable resolution of the covered issues.

Respectfully submitted,


Audrey Van Dyke
Associate Counsel (Litigation)

Certificate of Service

I hereby certify that I this day served the foregoing document on the following in the matter of PECO Energy Company, Statement in Support of Partial Settlement.

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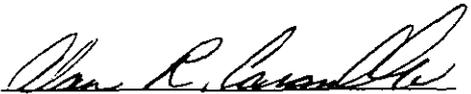
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Dated: September 16, 1997



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September 16, 1997

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SEP 16 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: Application of PECO Energy Company For Approval Of Its Restructuring Plan
Under Section 2806 Of The Public Utility Code - Docket No. R-00973953
Joint Petition For Partial Settlement

Dear Secretary McNulty:

Pursuant to 52 Pa. C.S. §5.232(a), enclosed for filing with the Commission are three copies of PECO Energy Company's Joint Petition For Partial Settlement. This Joint Petition was originally served on the Administrative Law Judges, the parties to the proceedings, and the Commissioners on August 27, 1997, but we inadvertently failed to serve three copies on the Office of Prothonotary.

As proof of filing, please date-stamp and return the extra copy of this letter in the enclosed envelope. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Ward L. Smith

WLS/mtg

cc: Service List

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Honorable Charles E. Rainey, Jr.
Administrative Law Judges
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VIA FEDERAL EXPRESS

KJR

Re: Pennsylvania Public Utility Commission v. PECO Energy Company - Application of PECO Energy Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code; Docket No. R-00973953

Dear Judge Chestnut and Judge Rainey:

The Philadelphia Area Industrial Energy Users Group ("PAIEUG"), a Joint Petitioner for Partial Settlement in the above-referenced proceeding, does not intend to prepare or serve testimony specifically in support of the Partial Settlement; however, PAIEUG designates its previously served direct and rebuttal testimony as general support for the Partial Settlement. In addition, PAIEUG reserves the right to prepare testimony (or other appropriate pleadings/documents) responsive to testimony (or other pleadings) in opposition to the Partial Settlement; PAIEUG reserves its right to otherwise file its surrebuttal testimony, as well.

PAIEUG believes that the Partial Settlement is in the public interest, and PAIEUG notes that the Partial Settlement is a product of the compromise of competing litigation

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Honorable Marlane R. Chestnut
Honorable Charles E. Rainey, Jr.
September 16, 1997
Page 2

positions; therefore, the benefits afforded by the Partial Settlement in some instances exceed the universe of benefit that could have been achieved pursuant to any particular litigation position or the Competition Act itself. Nonetheless, PAIEUG designates the following preserved testimony as supportive of the Partial Settlement:

PAIEUG Statement 1:	the prepared direct testimony and exhibits of Stephen J. Baron
PAIEUG Statement 1R:	the prepared rebuttal testimony and exhibits of Stephen J. Baron
PAIEUG Statement 2:	the prepared direct testimony and exhibits of Randall J. Falkenberg
PAIEUG Statement 3:	the prepared direct testimony and exhibits of Lane Kollen

Of particular interest to PAIEUG, the following portions of testimony directly undergird specific provisions of the Partial Settlement that address issues affecting large industrial and institutional consumers of electricity:

- Treatment of Rate HT, Large Interruptible Load Rider ("LILR"), EER, and Rule 4.6 customers as reflected in the Partial Settlement is derived in large measure from the exposition at PAIEUG Statement 1, pp. 35-52.
- The Partial Settlement's treatment of customers with on-site generation is derived in part from the discussion in PAIEUG Statement 1, pp. 55-56, as well as PECO's direct testimony.
- The accelerated phase-in of competition contemplated by the Partial Settlement is also directly attributable to PAIEUG Statement 1, pp. 57-59.
- The resolution of universal service cost recovery reflected in the Partial Settlement is consistent with PAIEUG Statement 1R, pp. 3-9.
- To the extent that the Partial Settlement addresses the continued availability of certain interruptible load and contract options, it is consistent with PAIEUG Statement 1R, pp. 11-13.

As noted above, PAIEUG designates all of its previously served direct and rebuttal testimony as generally supportive of the Partial Settlement. Indeed, PAIEUG Statements 1, 2,

Honorable Marlane R. Chestnut
Honorable Charles E. Rainey, Jr.
September 16, 1997
Page 3

and 3 all address the appropriate identification and quantification of stranded costs and generally support the offset in PECO's stranded cost claim as embodied in the Partial Settlement. Furthermore, the Partial Settlement's unbundling and protection against inter- and intra-class cost shifting is consistent with PAIEUG Statements 1 and 1R. Finally, the specific designations set forth above provide a basis for key terms of the Partial Settlement from PAIEUG's perspective.

PAIEUG, of course, reserves the right to file responsive testimony to any testimony filed in opposition to the Partial Settlement by any other party. In addition, PAIEUG reserves the right to submit surrebuttal testimony in response to any testimony that rebuts PAIEUG's testimony as designated herein (on October 8, 1997, or October 10, 1997, as appropriate).

Please contact the undersigned if you have any questions regarding this letter.

Very truly yours,

McNEES, WALLACE & NURICK

By 

David M. Kleppinger
Derrick P. Williamson

Counsel to the Philadelphia Area
Industrial Energy Users Group

DPW/aeh
Enclosures

c: James J. McNulty, Acting Secretary (via hand delivery)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Dated this 16th day of September, 1997, in Harrisburg, Pennsylvania.

* Hand deliveries will be made on September 17, 1997.

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September 17, 1997

SEP 17 1997

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Hon. Charles E. Rainey, Jr.
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PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

KJR

RE: Application of PECO Energy Company
for Approval of its Restructuring Plan
Under Section 2806 of the Public Utility Code;
Docket No. R-00973953

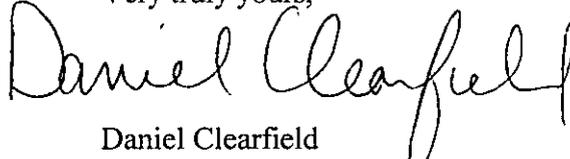
Dear Judges:

On behalf of Enron Capital & Trade Resources, enclosed for filing please find an original and three copies of its Motion to Compel Answers in the above-captioned matter.

Copies of this Motion have been served as indicated on the attached Certificate of Service. Consistent with the procedural guidelines in this case, I have discussed this Motion with counsel for PECO but we have not had an opportunity to complete our discussions. We will contact you tomorrow to indicate which, if any, portions of this motion has been resolved amicably.

Please contact me if you have any questions with respect to the enclosed.

Very truly yours,



Daniel Clearfield
For WOLF, BLOCK, SCHORR and SOLIS-COHEN

DC/lww

Enclosure

cc: All Parties of Record w/enc.

James McNulty, Acting Secretary

PHILADELPHIA, PA • BLUE BELL, PA • CAMDEN, NJ • NORRISTOWN, PA • WILMINGTON, DE

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

SEP 17 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Application of PECO Energy Company for :
Approval of its Restructuring Plan Under : Docket No. R-00973953
Section 2806 of the Public Utility Code :

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SEP 22 1997

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**MOTION OF ENRON POWER MARKETING, INC.
TO COMPEL PECO ENERGY COMPANY
TO ANSWER INTERROGATORIES FULLY**

Enron Power Marketing, Inc. ("Enron"), pursuant to 52 Pa. Code §§ 5.342(e) and 5.371(a), hereby files this Motion to Compel PECO Energy Company ("PECO") to Answer Interrogatories Fully, and in support thereof, Enron states as follows:

Background

1. On September 4, 1997, Enron served PECO with its Set VIII of Interrogatories, relating to the Joint Petition for Partial Settlement (the "Proposed Stipulation") pursuant to 52 Pa. Code § 69.401 filed by PECO and other parties with the Commission on August 27, 1997, in order for Enron to understand and to be able to present testimony in opposition to the Proposed Stipulation.
2. On September 10, 1997, PECO served its answers to those interrogatories, a copy of which is attached hereto. Copies of those answers were received via first class mail by counsel for Enron on September 12, 1997. (Although the answers were made available electronically on September 10, Enron was not able successfully to access this medium.)
3. Those answers are, in many instances, nonresponsive and insufficient, as detailed hereafter. Because of the scarce amount of time until Enron must file written testimony,

rather than seeking an order to compel PECO to amplify each and every insufficient and nonresponsive answer, Enron has asked, and PECO has agreed, to submit to an expedited deposition on September 23, 1997, so that Enron may obtain complete answers to its original and follow-up questions regarding the Proposed Stipulation that are necessary for Enron to prepare its testimony.

4. In addition, Enron seeks an Order compelling PECO to respond to and produce documents requested in certain of the Interrogatories which PECO has failed to answer.

Failure to Answer and/or Produce Documents

5. In Interrogatory VIII-1(b), Enron requested PECO to provide a calculation showing the total revenues to be recovered by PECO on an annual basis from the CTC/ITC, both on a nominal and on a net present value basis, using the level of sales used in the proposed settlement as well as the level shown in PECO's most recent sales forecast. A table was provided in order to show the format in which the requested information was to be provided. PECO responded that it has not performed such an analyses in support of the settlement, nor does it have the sales by tariff rate projected out for the period of the settlement. This analysis should be producible by PECO; moreover PECO failed to produce any analyses even for the years it does have or an analysis using average data.

6. In Interrogatory VIII-9, Enron requested PECO's estimates or projections of certain rates and costs, including supporting workpapers. PECO merely stated that they would be below the cap figures on Table A of the Proposed Stipulation. This answer is clearly not responsive to the inquiry and does not furnish the estimates or projections requested.

7. In Interrogatories VIII-15 and VIII-27, Enron seeks a version of Table A of the Proposed Stipulation if the contingencies in paragraph 10 of the Proposed Stipulation occur and if the securitization is barred. PECO's answers merely refers to paragraph 10 of the Proposed Stipulation and do not provide the revised Tables.

8. Interrogatory VIII-17(a) sought documents supporting PECO's contentions that the Proposed Settlement "is intended to preserve PECO's long-term financial integrity." PECO refused to produce documents supporting that contention by claiming they are confidential and proprietary but failed to even identify the documents claimed to be proprietary.

9. Interrogatory VIII-19 seeks documents provided to all or a portion of PECO's Board of Directors concerning the Proposed Stipulation. PECO claims these are all confidential and protected but has failed to even identify the documents claimed to be confidential and/or proprietary.

10. Interrogatory VIII-23(b) requests the quantitative effect on stranded cost recovery based on PECO's sales projections, including supporting documents. Rather than answering the question PECO refers to the response to Enron 3-1(b), which is a meaningless and unclear reference.

11. In Interrogatory VIII-24, Enron seeks a comparison, by rate class, of present rates, the rates proposed by the Partial Settlement and the effective generation credit ordered in the Pilot. PECO's answers merely states that the rate structures in each instance is "different," and does not provide any actual rates or figures.

12. Interrogatory VIII-40 request's PECO's estimate of the delivered wholesale price of power (including all additional costs and charges) in each of the years covered by the settlement. Again, the "answer" simply states that the figures in the settlement were negotiated and were not based upon market price projections; the answer fails to provide any such estimates.

Need for Full and Complete Answer In Absence of Objection

13. Pursuant to Commission regulations at 52 Pa. Code §5.342, if a party has an objection to an interrogatory, it shall be prepared, filed and served in the same manner provided for an answer, and shall state the reasons for the objection in lieu of an answer, §5.342(c).

14. PECO did not state that it had an objection to any of VIII-1(b), VIII-9, VIII-15, VIII-24 VIII-27, VIII-40 VIII-41 or VIII-42 in its answers to those interrogatories.

15. Commission regulations state that each interrogatory shall be answered fully and completely unless an objection is made, 52 Pa. Code §5.342(a). Pursuant to §5.342(a), a party cannot simply refuse to or fail to give a fully responsive answer to an interrogatory without stating and filing an objection.

16. Because PECO failed to register an objection in compliance with the Commission requirements discussed above, and answered the interrogatories, albeit incompletely and insufficiently, PECO has waived its right to object to interrogatories VIII-1(b), VIII-9, VIII-15, VIII-23(b), VIII-24, VIII-27, VIII-40, VIII-41 and VIII-42, as well as to any other interrogatory which has not been objected to but for which an incomplete answer has been

provided. Pursuant to §5.342(a), PECO should be directed to give a full and complete answer to each of these interrogatories.

Claimed Confidential or Privileged Information

17. In Interrogatory VIII-41, Enron requested PECO to identify and produce or describe any and all agreements and understandings (including informal or tentative understandings) between and among PECO and any of the signatories to the Proposed Stipulation, which agreements or understandings were made in connection with or during negotiations for the Proposed Stipulation, but which were not contained in the Proposed Stipulation. PECO responded, without producing any documents, as follows:

The Company does have private agreements with some of the signatories but they are confidential and not contained in the Partial Settlement nor is the Company seeking Commission approval of them.

18. In Interrogatory VIII-42, Enron requested PECO to identify and produce or describe any and all agreements and understandings (including informal or tentative understandings) between and among PECO and any of the signatories to the Proposed Stipulation, whereby PECO agreed to provide funds or other contributions for “community development,” “economic development,” “legal fees” or for any other purpose, to any person or entity including either signatories to the Proposed Stipulation or persons or entities designated by such a signatory, which agreements or understandings were made in connection with or during negotiations for the Proposed Stipulation, but which were not contained in the Proposed Stipulation. Without producing any documents, PECO responded as follows:

The Company does have private agreements with some of the signatories but they are confidential and not contained in the

Partial Settlement nor is the Company seeking Commission approval of them.

19. While conceding its private agreements, PECO did not provide any other response to interrogatories VIII-41 and VIII-42.

20. In addition to asserting confidentiality in its answers to VIII-41 and VIII-42, PECO objected to Interrogatories VIII-17(a) and VIII-19 on the ground that they seek confidential and proprietary information.

21. PECO has failed to lodge a proper objection to interrogatories VIII-41 or 42. In addition, Enron does not believe that any of the information sought in the foregoing constitutes a trade secret or other confidential information such that the documents should be restricted in any way.

22. Commission regulations state that, upon motion by a party, and for good cause shown, the presiding officer may issue a protective order to protect a participant or person from unreasonable annoyance, embarrassment, burden or expense, 52 Pa. Code §5.362(a).

23. Where PECO has answered the question by simply asserting that the documents are confidential but without objecting (VIII-41 and 42), PECO should be directed to give a full and complete answer to each of these interrogatories pursuant to §5.342(a). In other cases where PECO has objected, if the ALJ agrees that PECO has shown that the information is proprietary, PECO should be ordered to give a full and complete answer subject to the confidentiality agreement that has been in place in this proceeding since its inception.

24. In any event, PECO should be required to describe each and every document for which it claims privilege.

WHEREFORE, based on the foregoing, Enron respectfully requests that PECO be compelled by an order of the presiding officer and produce documents in response to Enron Interrogatories VIII-1(b), VIII-9, VIII-15, VIII-17(b), VIII-19, VIII-23(b), VIII-24, VIII-27, VIII-40 VIII-41 and VIII-42.

Respectfully Submitted,



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Counsel for Enron Power Marketing, Inc.

Dated: September 17, 1997

Interrogatory Enron VIII-1

Enron VIII-1 Question:

Provide the following with respect to "Table A" of the Joint Petition for Partial Settlement:

- (a) An explanation of the basis for asserting that each column is in the public interest and consistent with the requirements of the Electricity Competition Act.
- (b) A calculation showing total revenues to be recovered by PECO on an annual basis from the CTC/ITC, on a nominal and on a present worth basis, using:
 - (1) the level of sales assumed in the "Proof of Revenues" shown in Appendix "C" to the Joint Petition; and
 - (2) PECO's most recent sales forecast covering this period previously produced in this proceeding. Provide the data for both KWH assumptions using the following table:
 - (3) See Attachment "1" for the table.
- (c) A justification, in replicable detail, of any differences between the total present value stranded cost recovery produced in response to ¶ (b) above and \$5.461 billion. An explanation of the "Energy & Capacity Cap" figures and how they were derived for each year. Specifically, identify any retail market price projections or any other data or evidence that justify these levels of generation/energy credits.
- (d) An explanation of the "Transmission" and "Distribution" figures and how they were derived for each year. Specifically, identify any data or evidence that justify these levels of transmission and/or distribution charges.
- (e) For each year of the CTC recovery, please provide the assumed value of generation (to the extent different than the energy and capacity cap), as well as the annual value of generation assumed in the market value study on which your litigation position.
- (f) Provide the workpapers and other supporting documentation in your possession or control for Table A.

Enron VIII-1 Answer:

- (a) Refer to Section IV of the settlement and also to the parties statements in support of the settlement.
- (b) The requested data on a nominal basis for part b(1) is provided in Appendix C of the Settlement. As no discount rate has been provided no present value analysis has been performed. In regards to part (2) the Company has not performed such analysis in support of the settlement nor does it have the sales by tariff rate projected out for the period of the settlement that are required to make such calculation. Finally it should be noted that the Company, on a weather corrected basis, has experienced no retail sales growth for the past several years.
- (c) The \$5.461 billion is the Company's \$7.461 billion total stranded cost less the \$2 billion write-off. The CTC rates are the result of negotiations as are the energy and capacity caps. Each party to the Settlement has its own price projections and analysis of the Settlement.
- (d) The transmission and distribution rates are based upon PECO's rebuttal testimony as well as other testimony and negotiations.

Interrogatory Enron VIII-9

Enron VIII-9 Question:

With respect to ¶33 of the Joint Petition:

- (a) Please provide PECO's estimate of the "standard market rate" that will apply to "do not choose or cannot choose" customers in each year from 1999 to 2008 on a basis comparable to the "Energy and Capacity" cap figures shown on Table "A". Provide the rates projected on an average basis and for Residential and Rate GS customers.
- (b) Provide PECO's projection or calculation of the total retail cost of delivering power to PECO customers in 1999, 2000 and 2001 (and for any other period available) for PECO on a per kWh basis on average and for Residential and GS customers. Please state the basis for the figure(s) and provide supporting workpapers.
- (c) What division or affiliate of PECO will provide service to "do not choose or cannot choose" customers on the terms set forth in ¶33?

Enron VIII-9 Answer:

- (a) The "standard market rate" that will apply to "do not choose or cannot choose" customers will be at or below the "Energy and Capacity" cap figures shown on Table "A".
- (b) The total retail cost to customers will be the sum of the transmission, distribution and CTC rates provided in Table A plus an Energy and Capacity rate at or below the Energy and Capacity cap figures in Table A.
- (c) This service will be provided by the electric distribution company.

Responsible Witness: T. P. Hill, Jr.

Interrogatory Enron VIII-15

Enron VIII-15 Question:

Please provide a version of Table A of the Partial Settlement reflecting:

- (a) all contingencies identified in paragraph 10 of the Partial Settlement;
- (b) each other contingency that PECO believes possible under paragraph 10.

Enron VIII-15 Answer:

Paragraph 10 of the Settlement states what happens to Table A in the event that the Company is legally precluded from securitizing assets.

Responsible Witness: T. P. Hill, Jr.

Interrogatory Enron VIII-17

Enron VIII-17 Question:

Page 6 of PECO's statement in support of the Joint Petition states that the Partial Settlement "is intended to preserve PECO's long-term financial integrity. . . ."

- (a) Please provide each document containing:
- (i) financial projections of revenue, expense and cash flow that reflect the effects of the Partial Settlement; and/or
 - (ii) any other data from which PECO concludes that its financial integrity is preserved as a result of the Partial Settlement; and/or
 - (iii) conclusions, recommendations and/or judgments regarding the effects of the Partial Settlement, or of the Commission's refusal to approve it.
- (b) Provide a copy of each document, including memos, reports, minutes, videos, brochures, booklets, and/or transcripts, which reflects communications -- including phone calls, meetings, emails, letters, memos, speeches and/or presentations or other submissions -- to each of the following concerning, in whole or in part, the Partial Settlement in general and/or its effect on PECO's financial position in particular:
- (i) rating agencies, including but not limited to Moody's, S&P, Duff & Phelps, Fitch;
 - (ii) investment analysts, bankers and/or financial consultants;
 - (iii) members or staff of regulatory bodies;
 - (iv) members or staff of the General Assembly or the Pennsylvania Executive or Judicial branches of government;
 - (v) members or staff of local government, including city, borough, and/or county government;
 - (vi) the press, including the financial and/or utility trade press;
 - (vii) contractors, agents, or representatives;
 - (viii) allied or supporting organizations;
 - (ix) PECO employees;
 - (x) the public generally, as through the media or by mail.

Enron VIII-17 Answer:

- (a) PECO objects to this sub-part of this interrogatory on the ground that it calls for confidential documents, prepared in conjunction with settlement, that are protected from disclosure by the attorney-client privilege or the attorney work product rule, and on the ground that they are proprietary and otherwise confidential in nature.
- (b) Attachment Enron VIII-17 provides the requested data.

Responsible Witness: T. P. Hill, Jr.

Interrogatory Enron VIII-19

Enron VIII-19 Question:

Please provide each document -- including memos, reports, minutes, videos, brochures, booklets, and/or transcripts -- concerning the Partial Settlement in general, and/or its effect on PECO's financial position in particular, which reflects presentations and/or other communications by PECO employees, PECO agents and/or contractors to:

- (a) all of the PECO Board of Directors;
- (b) a portion, or any member, of the PECO Board of Directors;
- (c) any committee or other group authorized by the PECO Board of Directors.

Enron VIII-19 Answer:

(a,b and c) PECO objects to this sub-part of this interrogatory on the ground that it calls for confidential documents, prepared in conjunction with settlement, that are protected from disclosure by the attorney-client privilege or the attorney work product rule, and on the ground that they are proprietary and otherwise confidential in nature. In addition, information provided to the Board of Directors is highly confidential and business proprietary and is not being provided.

Responsible Witness: T. P. Hill, Jr.

Interrogatory Enron VIII-23

Enron VIII-23 Question:

At paragraph 11 of the Partial Settlement, reconciliation of the CTC is eliminated.

- (a) Please explain how this is permitted under section 2808(F) of the Act.
- (b) What is the quantitative effect on potential stranded cost recovery, given PECO's sales projections for the relevant period? Provide the documents in PECO's possession and/or control which address this question.

Enron VIII-23 Answer:

- (a) The reconciliation is not eliminated. Any value or risk associated with reconciliation has been reflected in the settlement rate structures.
- (b) Refer to the response to Enron 3-1(b).

Responsible Witness: T. P. Hill, Jr.

Interrogatory Enron VIII-24

Enron VIII-24 Question:

Please provide a comparison for each rate class for each year between the present rates and rate modifications (both guaranteed savings and energy credits) offered in the:

- (a) pilot as PECO most recently proposed it;
- (b) pilot as approved in the Commission's August 29 order (per PUC meeting of August 21);
- (c) in the Partial Settlement.

Enron VIII-24 Answer:

(a, b and c) The rate structures proposed and the years covered in present rates, in the pilot program and during the settlement period are different. However, the energy and capacity prices used in the settlement are fully consistent with the levels contained in the Commission's pilot order.

Responsible Witness: T. P. Hill, Jr.

Interrogatory Enron VIII-27

Enron VIII-27 Question:

Please provide a replacement for Table A assuming that securitization is barred according to the provisions of paragraph 10.

Enron VIII-27 Answer:

Please refer to Enron VIII-15.

Responsible Witness: T. P. Hill, Jr.

Interrogatory Enron VIII-40

Enron VIII-40 Question:

For 1999, and for each major customer class (Rate "R," GS and HT) provide PECO's projection of the total delivered price of power, including all associated charges including but not limited to the projected wholesale cost of power, line losses, capacity charges, GRT load factor adjustments and ancillary charges. Also, provide a breakdown of each item included within the calculation of the total delivered price of power and identify the specific cost or price associated with that item.

Enron VIII-40 Answer:

The prices of retail power contained in the Settlement are negotiated figures based on the compromise agreed to by the signatories. PECO notes, also, that the "total delivered price of power" will be a function of the market.

Responsible Witness: T. P. Hill, Jr.

Enron VIII-41 Question:

Identify and then produce every document, or provide a narrative description of any agreements or understandings, including informal or tentative understandings, between or among PECO and any of the signatories to the Partial Settlement Agreement agreed to, arrived at or made in connection with the Partial Settlement Agreement or during negotiations thereof, but which agreements or understandings are not contained in the Partial Settlement Agreement.

Enron VIII-41 Answer:

The Company does have private agreements with some of the signatories but they are confidential and not contained in the Partial Settlement nor is the Company seeking Commission approval of them.

Responsible Witness: T. P. Hill, Jr.

Enron VIII-42 Question:

Identify and then produce every document, or provide a narrative description of any agreement or understanding, including any informal or tentative understanding, between or among PECO and any signatories to the Partial Settlement Agreement whereby PECO agrees to provide funds or other contributions for "community development," "economic development," "legal fees" or for any other purpose, to any person or entity, including any signatory to the Partial Settlement or any person or entity designated by such a signatory, which agreement or understanding was arrived at or made in connection with the Partial Settlement Agreement or during negotiations thereof, but which agreements or understandings are not contained in the Partial Settlement Agreement.

Enron VIII-42 Answer:

The Company does have private agreements with some of the signatories but they are confidential and not contained in the Partial Settlement nor is the Company seeking Commission approval of them.

Responsible Witness: T. P. Hill, Jr.

ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing documents upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):¹

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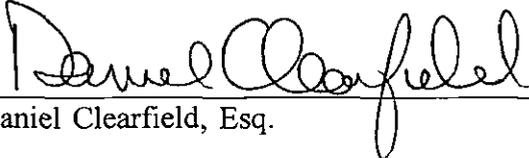
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Dated: September 17, 1997

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Re: PA PUC v. PECO Energy Company
Docket No. R-00973953

Dear Mr. McNulty:

The undersigned represent New Energy Ventures, Enron Power Marketing, Inc and Connectiv Energy, intervenors and active parties in the above proceedings. We received yesterday a copy of a Petition (the "Petition") filed by PECO Energy and various other parties requesting the Commission's expedited approval of a procedure for considering a partial settlement agreement (the "Partial Settlement") filed in PECO's restructuring case. The Petition requests the Commission to approve the elimination of a recommended decision by the Administrative Law Judges. Please accept this letter in response to the Petition.

The cover letter that accompanies the Petition states that "all active parties have been advised of the Petition and have no objection." While this statement is true with respect to the relief requested by the Petition, we do not agree with certain of the statements made within the Petition in support of that relief. We did not see a draft of the Petition before it was filed and, given the potential

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James J. McNulty, Prothonotary
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significance of the issue, we did not think that we could let the language pass without comment.

Our fundamental concern relates to Paragraph 3, where the Petition suggests, somewhat peremptorily, that the Commission's only options with respect to the Partial Settlement are to approve or disapprove the settlement. The Petition makes this suggestion because the Partial Settlement contains a provision to the effect that the parties regard the settlement as a package and, if it is not approved in whole, the Partial Settlement is of no force or effect.

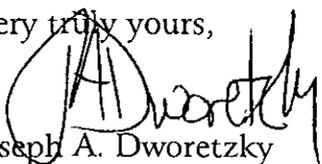
Despite the Petition's language, however, it is beyond question that the Commission has the authority, in its discretion, to modify the Partial Settlement, and the parties cannot circumscribe that authority by their private agreement. See, e.g., Duquesne Light Co. v. Pennsylvania Public Utility Comm'n, 96 Pa. Cmwlth. 398, 507 A.2d 1274 (1986) (court upheld the Commission's approval of a stipulation submitted by the parties which modified certain aspects of the proposed market price capping methodology); Glenside Suburban Radio Cab, Inc v. Pennsylvania P.U.C., 49 Commwlth. 523, 411 A.2d 874 (1980) (the Commission "is not bound by stipulations or restrictive amendments submitted by parties before it"). The Glenside Court noted that the power to impose just and reasonable conditions in such an order implies the power to reject conditions, even if imposed by agreement of the parties, that are deemed to be unjust and unreasonable. Id. at 526, 411 A.2d at 876.

We do not express any view at this time as to what options would be available to the parties in the event that the Commission determined to modify the Partial Settlement. This is clearly a much different question than the issue of the Commission's power to modify the settlement and, in our view, depends very much on the nature of the modification and the terms of the related Commission's order. (We note, for example, that in the recent Pilots proceeding, two utilities elected to withdraw from the Settlement Agreement after it was modified by the Commission. One of those parties has elected to proceed by way of appeal but has not sought to stay the implementation of the Pilot program.) We do not need to resolve that issue

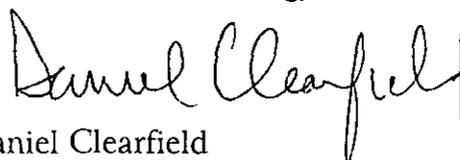
James J. McNulty, Prothonotary
September 17, 1997
Page 3

at this time, however, it is simply inaccurate to suggest, as the Petition does, that the Commission's jurisdiction is limited to approving or disapproving the settlement.

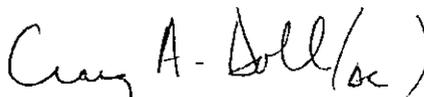
Very truly yours,



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JAD:kbs

cc: Certificate of Service
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David W. Rolka, Commissioner (Via Hand)
Nora Mead Brownell, Commissioner (Via Hand)
Marlane R. Chestnut, ALJ (Via Hand)
Charles E. Rainey, Jr., ALJ (Via Hand)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):

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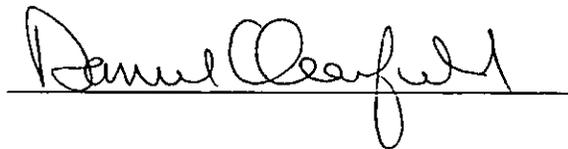
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Date: September 17, 1997

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