



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

IN REPLY PLEASE  
REFER TO OUR FILE

October 17, 1997

In Re: R-00973953,  
R-00973953C0001-  
C0007, P-00971265

KJR

(See letter dated 10/17/97)

**R-00973953,R-00973953C0001-C0007  
PECC ENERGY COMPANY**

Application for approval of a Restructuring Plan and Consumer Education Program.

**P-00971265  
Petition of ENRON Energy Services Power, Inc.**

For approval of an electric competition and customer choice plan and for authority pursuant to section 2807(E)(3) of the Public Utility Code to serve as the provider of last resort in the service territory of PECO Energy Company .

**CORRECTED NOTICE**

This is to inform you that **the Further Hearings now scheduled for Wednesday, November 12, 1997 and Thursday, November 13, 1997 at 10:00 a.m. in Philadelphia, Pennsylvania have been canceled.**

**A new schedule for the Further Hearings is as follows:**

Type: Further  
Date: Friday, November 14, 1997 - Further Hearing  
Monday, November 17-Wednesday, November 19, 1997 - Further Hearings  
Time: 10:00 a.m.

**DOCKETED**  
OCT 17 1997

DOCUMENT  
FOLDER

RECEIVED  
97 OCT 17 AM 9:46  
PUBLIC  
PROTHONOTARY'S OFFICE

Location:                   **In an available hearing room  
Philadelphia State Office Building  
Broad and Spring Garden Streets  
Philadelphia, Pennsylvania**

Presiding Officer:       **Administrative Law Judge Marlane R. Chestnut  
Administrative Law Judge Charles E. Rainey, Jr.  
1302 Philadelphia State Office Building  
Broad and Spring Garden Streets  
Philadelphia, Pennsylvania 19130  
Telephone: (215) 560-2105**

Please mark your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Judge Chestnut  
Judge Rainey  
Rosemary Chiavetta - BPL 111  
John Frazier - BPL 101  
Office of Trial Staff (2)  
Consumer Advocate  
Small Business Advocate  
Bill Barrett - FUS  
Norma Lewis  
Steve L. Springer, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File

LAW OFFICES

WOLF, BLOCK, SCHORR AND SOLIS-COHEN LLP

305 N. FRONT STREET  
SUITE 401  
HARRISBURG, PA 17101-1236  
(717) 237-7160  
FACSIMILE: (717) 237-7161

97 OCT 20 PM 12:26

RECEIVED  
PROTHONOTARY'S OFFICE

ALAN KOHLER  
DIRECT DIAL: (717) 237-7172  
E-MAIL: AKOHLER@WOLFBLOCK.COM

October 17, 1997

DOCUMENT  
FOLDER

KJR

James J. McNulty  
Acting Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RE: Application of PECO Energy Company for Approval of its  
Restructuring Plan Under Sections 2806 of the Public Utility Code,  
Docket No. R-00973953;  
Petition of Enron Energy Services Power, Inc. for Approval of  
an Electric Competition and Customer Choice Plan and for  
Authority Pursuant to Section 2807(e)(3) of the Public Utility Code  
to Serve as the Provider of Last Resort in the Service Territory of  
PECO Energy Company  
Docket No. P-00971265

Dear Mr. McNulty:

Please be informed that the law firm of LeBoeuf, Lamb, Greene & MacRae, LLP will be participating as co-counsel in the above captioned matters on behalf of Enron. In view of the forgoing, please add the following individuals to the official service list:

John Klauberg, Esquire  
Bruce Miller, Esquire  
LeBoeuf, Lamb, Greene and MacRae, LLP  
125 West 55th Street  
New York, NY 10019-5389  
(212) 424-8125; Fax (212) 424-8500

DOCKETED  
OCT 21 1997

DSH:10179.1

James J. McNulty  
October 7, 1997  
Page 2

Michael Klein, Esquire  
200 North Third Street  
Suite 300  
Harrisburg, PA 17108-2105  
(717) 232-8199; Fax (717) 232-8720

Also, through copy of this letter, Enron requests that each of the active participants in this proceeding serve all papers on the individuals referenced above.

Respectfully,



Alan Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN

AK/cln

Enclosures

cc: Hon. Marlene R. Chestnut  
Hon. Charles E. Rainey, Jr.  
All Parties of Record

Date: October 17, 1997

DOCKETED

Subj: PECO Restructuring Commissioner Interrogatories

OCT 27 1997

To: ALJs Chestnut and Rainey

Fm: CALJ Christianson *pc*

I hereby forward the attached interrogatories and instruction letter for this proceeding. Please seek to have the parties carry out the instructions. We plan to mail the letter and the interrogatories to the parties today, with advance FAX to you, to PECO and to Enron.

pc: Party list, Prothonotary

DOCUMENT  
FOLDER

PROTHONOTARY'S OFFICE  
RECEIVED  
97 OCT 21 AM 8:48

013908



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF EXECUTIVE DIRECTOR  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

Tel: (717) 783-5131

Fax: (717) 787-3417

October 17, 1997

Chief ALJ Christianson  
PA Public Utility Commission  
Room G-06, North Office Building  
Harrisburg, PA 17105-3265

Re: PECO Energy Restructuring  
R-00973953

KJR

Dear Chief Judge Christianson:

Attached is a list of Commissioner Interrogatories to the parties in the PECO Restructuring proceeding. Responses to the questions are requested to be filed in ten days and should be made part of the record with service on all parties. The parties should also seek to place the responses into evidence.

In addition, the answers to the Commissioner interrogatories should be compiled in one document. However, should the record already contain the response elsewhere, the responding party can cite to the place in the record where the response can be found.

Please forward these questions to Administrative Law Judges Marlane Chestnut and Charles Rainey for appropriate direction to the parties.

Thank you for your cooperation and attention to this matter.

Sincerely,

Veronica A. Smith

Deputy Executive Director

RECEIVED  
PROTHONOTARY'S OFFICE

Attachment 12 OCT 21 AM 97

013909

## COMMISSIONER INFORMATION REQUESTS

### PECO SPECIFIC QUESTIONS

1. Please provide a schedule that identifies and compares: (1) the proposed Distribution charges (both fixed and variable, expressed as a single cents/kwh charge) in the Joint Settlement; (2) the distribution charges in effect as of 12/31/96 (both fixed and variable, expressed as a single cents/kwh charge); and (3) the distribution charges for each tariff provided by PECO to Bureau of Fixed Utility Services Data Request PP-1 (a), (c) and (e), in Docket P-00971170 (Pilots). Provide a response for an average usage under each tariff (please specify usage assumptions) and for Rate R, an average consumer using 500 kwh/mo. and 1000 kwh/mo. Explain all differences in the three schedules
2. Please indicate how the phase-in plan in the Joint Settlement addresses potential competitive disadvantages for customers not included in each phase-in period.
3. Please reconcile the amount of regulatory assets proposed for recovery (\$2.272 billion) and the \$373 million approved for recovery on May 22, 1997 (QRO proceeding) with the Joint Settlement proposal to write-off \$2.0 billion of regulatory assets.
4. Please indicate how paragraph 11 of the Joint Settlement, indicating that the proposed CTC shall not be subject to reconciliation, complies with Section 2808(F) of the Act.
5. Please indicate how the Joint Settlement proposal complies with Section 2804(4)(I)(A) of the Act establishing a rate cap on total charges "to any customer who purchases generation from that utility." Please indicate how the Joint Settlement proposal complies with the rate caps for charges "to customers" pursuant to Sections (4)(I)(B) and (4)(II) as well.
6. Please indicate what Return-on-equity was used in the setting of transmission and distribution service charges. Please summarize the basis for the ROE suggested with specific record references.
7. Please provide the following information based on Appendix B of the Joint Settlement proposal. Provide a table (table 1) showing the following information items for each and every year of the transition period:
  - a. system generation price;
  - b. system CTC/ITC;

- c. 500 kwh/month Rate R maximum capacity and energy charge;
  - d. 500 kwh/month Rate R CTC/ITC;
  - e. 500 kwh/month Rate R distribution charges (both fixed and variable, expressed a single cents/kwh charge) ;
  - f. 500 kwh/month Rate R transmission charge;
  - g. 500 kwh/month Rate R transmission and distribution charges as of 1/1/97;
  - h. Percentage rate cuts versus 1/1/97 for each and every year of the transition period for the 500 kwh Rate R customer who pays the Rate R maximum energy and capacity charges (item c) as well as Rate R CTC/ITC charges (item d), Rate R 500 kwh distribution charges (item e) and Rate R transmission charges (item f).
  - i. Total charges and percentage rate cuts versus 1/1/97 for each and every year of the transition period for the 500 kwh Rate R customer who pays Rate R CTC/ITC charges (item c), Rate R 500 kwh distribution charges (item d), Rate R transmission charges (item e) and purchases generation in the market for 3.2 cents/kwh in 1999, with generation prices escalating at 3% per year for each and every year of the transition period.
8. Please indicate the origin of the 33,569,358 Mwh sales assumption found in the "Derivation of CTC and Market Energy/Capacity Revenue Requirements" sheet in Appendix B of the Settlement proposal. Also please indicate PECO's Mwh sales in 1996.
9. Please indicate whether the Utility Workers Union of America Lawsuit (Utility Workers Union of America Lawsuit, AFL-CIO System Local No. 102, et al. v. The Pennsylvania Public Utility Commission, and John M. Quain, Chairman, Pennsylvania Public Utility Commission; No. 0269 M.D. 1997) constitutes a "legal impediment" to the sale of securitization bonds and the rate cuts found at Table A on page 8 of the Joint Settlement proposal.
10. Please indicate what the implicit all-hours market price of energy and capacity is in the Joint Settlement proposal's determination of \$5.415 billion in stranded costs for PECO Energy. Also please indicate the discount rate used in this assumption, as well the capacity factor of

PECO's nuclear generating portfolio and the projected reserve margin for the next 5 years in PJM.

11. Please identify material changes in revenue requirements for the year ending 12/31/97 for any component of distribution services since rates were established in Docket R-891364. The response should include new expenses, eliminated expenses, and expense increases and expense decreases greater than 2.5%.
12. Please refer to Table A on page 8 of the Joint Settlement proposal. Indicate why the system CTC/ITC rises in 2001 and stays at that level until 2004.
13. Please provide an estimate of projected annual kwh sales levels for 1999-2008 and the basis for those numbers.
14. Please calculate the change in the CTC/ITC for each year if the sales projections indicated in response to question 3 are reflected in the proposed CTC/ITC for each year.
15. The Petition states that several parties to the action have stated a "non-objection." That list includes Enron, MAPSA, and IPALCO. That status may not be accurate or may have changed. Please provide, as of the date of the response, the status of each party in the proceeding vis a vis the proposed Settlement: signatory, objector, non-signatory/non-objector, evaluating.
16. The proposed Settlement indicates a decrease in the percentage rate cut in the event of a legal impediment. Please define what is meant by "legal impediment" and explain the basis for the decreased rate cut

## ENRON SPECIFIC QUESTIONS

1. Please indicate whether Utility Workers Union of America Lawsuit (Utility Workers Union of America Lawsuit, AFL-CIO System Local No. 102, et al. v. The Pennsylvania Public Utility Commission, and John M. Quain, Chairman, Pennsylvania Public Utility Commission; No. 0269 M.D. 1997) constitutes a "legal impediment" to the sale of securitization bonds and the rate cuts found at page 5 of the Enron Choice petition.
2. Please indicate what the implicit all-hours market price of energy and capacity is in the Choice Plan's proposed allowance of \$5.415 billion in stranded costs for PECO Energy. Also please indicate the discount rate used in this assumption, as well the capacity factor of PECO's nuclear generating portfolio and the projected reserve margin for the next 5 years in PJM.
3. Please provide an estimate of projected kwh sales levels for each year of the transition period and the basis for those numbers.
4. Please indicate the reason for the sharp rise in the ITC in years 2007 and 2008 of the Choice Plan.
5. If Enron purchases a bond for which the ITC is insufficient to pay annual principal and interest, indicate whether ratepayers will be responsible for an additional CTC or ITC payment to fulfill the obligations of the note.
6. Please indicate if the rate cuts indicated on page 5 of the Choice Plan petition would decrease if a legal impediment existed to the sale of securitization bonds. If the answer is yes, please indicate by how much.
7. Please indicate whether Enron would continue to support the Choice Plan if the interest rate on the securitization bonds was lowered to a AAA bond rate level.
8. Please provide a "proof of revenue" showing that the Choice Plan's ITC listed on page 23 of the petition is adequate to fund annual principal and interest on a \$5.416 billion bond with a 9.66% interest rate.
9. In the annual "proofs of revenue" contained in the Choice Plan petition, please indicate why total sales of 33,583,208 Mwh is used for each year of the transition period. Explain why each year's proof of revenue does not incorporate a kwh level that would occur due to normal growth in sales.

10. Please indicate how the Choice Plan petition complies with Section 2804(4)(I)(A) of the Act establishing a rate cap on total charges "to any customer who purchases generation from that utility." Please indicate how the Choice Plan petition complies with the rate caps for charges "to customers" pursuant to Sections (4)(I)(B) and (4)(II) as well.
11. Please indicate how the Choice Plan proposes to comply with Section 2808(F) of the Act (providing for annual reconciliation of the CTC).
12. Please indicate why the Choice Plan requires an interest rate of 9.66% on the securitization bonds, as opposed to an interest rate commensurate with a AAA rating.
13. Please indicate changes to the projected rate cuts found on page 5 of the Choice Plan if the interest rate on the securitization bonds was changed to a AAA level..
14. Please provide the following information based on the Choice Plan petition: Provide a table (table 1) showing the following information items for each and every year of the transition period:
  - a. system generation price;
  - b. system CTC/ITC;
  - c. 500 kwh/month Rate R maximum capacity and energy charge;
  - d. 500 kwh/month Rate R CTC/ITC;
  - e. 500 kwh/month Rate R distribution charges (both fixed and variable, expressed a single cents/kwh charge) ;
  - f. 500 kwh/month Rate R transmission charge;
  - g. 500 kwh/month Rate R transmission and distribution charges as of 1/1/97;
  - h. Percentage rate cuts versus 1/1/97 for each and every year of the transition period for the 500 kwh Rate R customer who pays the Rate R maximum energy and capacity charges (item c) as well as Rate R CTC/ITC charges (item d), Rate R 500 kwh distribution charges (item e) and Rate R transmission charges (item f).

- i. Total charges and percentage rate cuts versus 1/1/97 for each and every year of the transition period for the 500 kwh Rate R customer who pays Rate R CTC/ITC charges (item c), Rate R 500 kwh distribution charges (item d), Rate R transmission charges (item e) and purchases generation in the market for 3.2 cents/kwh in 1999, with generation prices escalating at 3% per year for each and every year of the transition period.



**PECO ENERGY**

**ORIGINAL**

Legal Department

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

James W. Durham  
Senior Vice President  
and General Counsel

Sandra H. Byrne  
Legal Administrator

Paul R. Bonney  
Ellen M. Cavanaugh  
Edward J. Cullen, Jr.  
Todd D. Cutler  
Vilna Waldron Gaston  
Gregory Golazeski  
John C. Halderman  
Mary McFall Hopper  
Stephen L. Huntoon  
Thomas G. Jackson  
J. Lindsay Johnston  
Conrad O. Kattner  
Stephanie Whilton Lewis  
Jeffrey J. Norton  
Mark B. Peabody  
Roslyn G. Pollack  
Christine A. Reuther  
Wendy Schermer  
Susan E. Sciamanna Foeht  
Jenny P. Shulbank  
Ward L. Smith  
Dawn Getty Sutphin  
Noel H. Trask  
Assistant General Counsel

Direct Dial: 215 841 4252

October 20, 1997

**BY HAND DELIVERY**

James McNulty, Acting Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
Harrisburg, PA 17105-3265

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;  
Petition of Enron Energy Service Power, Inc., Docket No. P-00971265.

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of  
PECO Energy Company's Answer to Enron's Petition. Please note that PECO  
will provide the original of the Verification to the enclosed Answer via separate  
cover.

Sincerely,

Paul R. Bonney

PRB/mb

cc: John M. Quain, Chairman  
David W. Rolka, Commissioner  
John Hanger, Commissioner  
Robert K. Bloom, Commissioner  
Nora Mead Brownell, Commissioner  
Administrative Law Judge Marlane R. Chestnut  
Administrative Law Judge Charles E. Rainey, Jr.  
All parties of record

RECEIVED  
97 OCT 20 PM 4:23  
LEGAL DEPARTMENT OFFICE

DOCUMENT  
FOLDER

117

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION :**

**v. :**

**DOCKET NO. R-00973953**

**PECO ENERGY COMPANY :**

**PETITION OF ENRON ENERGY  
SERVICES POWER, INC. FOR  
APPROVAL OF AN ELECTRIC  
COMPETITION AND CUSTOMER  
CHOICE PLAN AND FOR AUTHORITY  
PURSUANT TO SECTION 2807(e)(3)  
OF THE PUBLIC UTILITY CODE TO  
SERVE AS THE PROVIDER OF LAST  
RESORT IN THE SERVICE TERRITORY  
OF PECO ENERGY COMPANY :**

**DOCKET NO. P-00971265**

**RECEIVED  
97 OCT 20 PM 4:23  
F. P. I. C.  
PROTHONIACHY'S OFFICE**

**ANSWER OF PECO ENERGY COMPANY  
IN OPPOSITION TO ENRON'S PETITION**

On October 7, 1997, Enron Energy Services Power, Inc. ("Enron Energy") filed the above-captioned Petition requesting that the Commission (1) approve an alternative restructuring proposal (the "Enron Plan") in lieu of the Joint Petition for Partial Settlement previously submitted at Docket No. R-00973953 by PECO Energy Company ("PECO" or the "Company") and the representatives of various consumer groups; (2) designate it as the provider of last resort in PECO's service territory; and (3) direct PECO to issue transition bonds totaling \$5.461 billion to it at above-market interest rates (the "Enron Petition"). Even though the Commission has consolidated the Enron Petition, for consideration, with PECO's proposed restructuring plan,

**DUCKETED  
OCT 21 1997**

**DOCUMENT  
FOLDER**

PECO is submitting this Answer so that the Commission understands, at the outset, why the Enron Petition cannot be approved and, indeed, why it should be rejected.

## I. INTRODUCTION

On August 27, 1997, various parties, including PECO, Senator Vincent J. Fumo, CEPA et al., Lance Haver, the OTS, the OCA, the OSBA, PAIEUG, the AARP and the Department of the Navy filed a Joint Petition for Partial Settlement of PECO's proposed restructuring plan. As explained therein, the Partial Settlement represents the culmination of months of difficult negotiations between PECO and various consumer groups. The numerous reasons why the Partial Settlement is in the public interest are set forth in the Joint Petition itself, in the individual party statements in support attached to the Joint Petition and in testimony submitted by the Joint Petitioners on September 17, 1997.

Opposing parties were provided an opportunity to contest the Partial Settlement and, on September 29, 1997, another Enron entity -- Enron Power Marketing Inc. ("Enron Power"), cloaked under the umbrella of the belatedly-assembled "Pennsylvania Electric Competition Coalition" -- submitted testimony critical of the Joint Petitioners' proposals. Enron Power asserted, at the time, that the Partial Settlement should be rejected principally because the energy and capacity rate caps contained in the Joint Petition allegedly would preclude other potential competitors from entering the market and because PECO would purportedly overcollect the agreed-upon amount of stranded costs. Not surprisingly, these same claims are restated in the Enron Petition.

On October 8, 1997, PECO filed responsive testimony to Enron's objections. In that testimony and through cross-examination at hearings held on October 14-16, 1997, the Joint Petitioners demonstrated that (1) Enron's market price "evidence" was so contrived and sophomoric as to be of no probative value; (2) Enron's analysis of stranded cost overrecovery was critically flawed and, as a consequence, largely meaningless.

As all of this was playing out, Enron, apparently recognizing the weakness of Enron Power's litigation position at Docket No. R-00973953, filed the Enron Plan through a different vehicle, Enron Energy. The Enron Plan could have, and should have, been submitted when the opposing parties at Docket No. R-00973953, including Enron Power, submitted direct testimony on June 20, 1997 or responded to the Partial Settlement on September 29, 1997. As such, the Enron Petition is nothing more than an untimely-filed proposal designed solely to disrupt the Commission's consideration of the Partial Settlement. It should be rejected for that reason alone.

The Enron Petition, however, is also remarkable in a number of other procedural and substantive respects, two of which deserve special mention. First, Enron Energy has asked the Commission to turn over to it the fate of electric service to millions of Pennsylvanians without submitting any information regarding its corporate status, finances, operational experience or any of the other vital criteria which the Commission could reasonably expect to weigh in reviewing the Enron Plan. To the contrary, the Commission is supposed to find comfort in the following astonishing, and somewhat ominous, message: "Enron [Energy] is prepared to cooperate with

the Commission to determine the appropriate financial support needed from Enron Corp. in order to demonstrate Enron [Energy's] financial wherewithal" (p. 25).<sup>1/</sup> This is simply not acceptable.

Second, and perhaps even more inexcusably, Enron Energy proposes a wholesale restatement of PECO's rates and terms and conditions of service (see discussion, infra) and yet, to the best of the Company's knowledge, has made no attempt to formally notify customers of what it has recommended. As such, the filing is clearly deficient and its consideration would violate consumers' due process rights under the Milesburg doctrine. See Barasch v. Pa. P.U.C., 119 Pa. Cmwlth. 81, 546 A.2d 1296 (1988).

## II. SUMMARY OF ENRON'S PROPOSAL

Enron Energy's enthusiasm for the Enron Plan is understandable. Through a clever sleight of hand, Enron would assume the role of provider of last resort without taking on any real obligations to customers or committing any of its own financial resources. This is achieved through a series of proposed contracts, the terms of which would be unacceptable to any prudent utility manager, and through a securitization scheme which would produce an immediate and significant windfall for Enron.

The contracts in question -- a transmission and distribution services agreement, the MBC (metering, billing and collections) Services Agreement and the Firm Energy & Capacity

---

<sup>1/</sup> This, of course, strongly suggests that "Enron Energy" is a fiction without any existing assets or business prospects. The Commission should not have to elicit the "cooperation" of an applicant for service.

Purchase and Sale Agreement (the "Power Sales Agreement") -- would effectively have PECO performing all of the functions of the supplier of last resort as a subcontractor to Enron and in Enron's name. Although the contracts are structured as pass-through arrangements (i.e., Enron purportedly would not mark up the cost to it of PECO's services), Enron would acquire a substantial portion of PECO's customer base without having to advertise or, for that matter, bring one dime or any value whatsoever to the table. In addition, the Power Sales Agreement would give Enron a "call" on PECO's generation at prices which, particularly in the latter years of the Agreement, are well below what Enron's own witness, Mr. Mitnick, recently projected in PECO's restructuring proceeding.

Confirming that half a loaf is never enough, Enron next proposes that PECO issue transition bonds to Enron at a stated interest rate of 9.66%. This figure is approximately 300 basis points greater than the current yield on AAA-rated asset-backed securities and can only be characterized as excessive. As such, Enron undoubtedly could quickly flip (i.e. resell) the transition bonds and walk away with a very handsome profit. Indeed, PECO estimates that the spread between Enron's proposed 9.66% interest rate and prevailing market rates, when applied to the \$5.461 billion of proposed transition bonds, equates to a net present value of approximately \$1.0 billion.

As Enron lines its pockets at the expense of PECO and its customers,<sup>2/</sup> it also exposes customers to the risk that the market price of energy and capacity will exceed projected levels.

---

<sup>2/</sup> As discussed below, Enron's recommended intangible transition charges ("ITCs") would not nearly be sufficient to enable PECO to service and pay off the transition bonds.

Unlike the Partial Settlement, the Enron Plan contains no absolute protections for customers, but rather permits Enron to pass through to default customers its actual costs in the event they are greater than the "generation credits" set forth in the Enron Petition . Consequently, any savings customers might experience in the first several years under the Enron Plan could easily erode or even disappear entirely.

In short, Enron's latest salvo is nothing more than a public relations stunt designed to confuse and mislead consumers. As summarized in the next section of this Answer, and as PECO will establish in testimony and in brief, the Enron Plan cannot and will not work. Indeed, PECO will not allow an out-of-state marketer to ride herd on its customers, employees and shareholders. Accordingly, when the Commission convenes on December 11, 1997, it should find that the Joint Petition represents consumers' best (and perhaps only) chance for customer choice and significant rate relief and, on that basis, should approve the Partial Settlement set forth therein without modification.

### **III. THE ENRON PLAN CANNOT AND WILL NOT WORK**

It is a simple task to make promises one cannot keep. The Enron Plan is a prime example.

**A. Default Provider Status**

As noted previously, one of the key elements of the Enron Plan is that Enron Energy be designated the supplier of last resort in PECO's service territory. However, Section 2807(e)(1) of the Competition Act expressly provides as follows:

While an electric distribution company collects either a competitive transition charge or an intangible transition charge or until 100% of its customers have choice, whichever is longer, the electric distribution company shall have the full obligation to serve, including the connection of customers, the delivery of electric energy and the production or acquisition of electric energy for customers.

The Commission therefore is powerless to designate Enron the default provider until such time as PECO is no longer collecting CTCs or ITCs. Moreover, PECO seriously doubts that the General Assembly intended to authorize the Commission to hand over supplier of last resort responsibilities to an out-of-state marketer which has no facilities in the Commonwealth -- and, by all appearances, no assets whatsoever -- and which has expressly asked that it be absolved of all responsibilities which may flow from being a "public utility" under Pennsylvania law (Enron Petition, p. 30).

**B. Enron's Proposed Agreements**

In the Summary section of this Answer, PECO briefly identified the three principal agreements that Enron would have PECO execute under the Enron Plan. As even Enron presumably would agree (Enron Petition, p. 2, n. 4), neither this Commission, the Federal Energy Regulatory Commission ("FERC") or any other regulatory agency has the authority to force

PECO to enter into these so-called contractual arrangements. Nor would it be prudent for PECO management, given the onerous and unfair nature of those contracts, to contemplate such action. As will be fully developed as this case progresses, Enron's proposed agreements are strikingly one-sided. For example, the Power Sales Agreement would require PECO to commit a substantial portion of its generation output for sale without imposing on Enron any obligations to buy. It is preposterous to assume that PECO or any other electric generation supplier would willingly accept such terms.

### **C. Securitization**

Under the Enron Plan, PECO, as noted earlier, would be required to securitize \$5.461 billion of its stranded costs by selling transition bonds in that amount to Enron at exorbitant and arguably extortionate interest rates. Preliminarily, and as Enron is aware, the Commission does not have the authority to require PECO to issue transition bonds. See 66 Pa. C.S. § 2812(a)(1). Moreover, Enron's securitization scheme will not work because: (1) it provides an insufficiently secure revenue stream in the early years even under Enron's unrealistic sales growth assumptions; (2) the revenue stream over the lives of the transition bonds would fall short by nearly \$1.0 billion if more reasonable sales projections are used; and (3) the securitization of \$5.461 billion would severely impair PECO's financial integrity, leading to credit rating downgrades and higher financing costs.

#### **D. System Reliability/Quality Of Service**

Even though Enron Energy would “step into PECO’s shoes” under the Enron Plan (Petition, p. 7), PECO would be responsible for doing all of the walking -- generating (at Enron’s request), transmitting and delivering power and providing, or offering to provide, metering, billing and collection services. The net effect of Enron’s proposals, however, would be to paralyze PECO’s generation function and to cripple the Company financially (see discussion, supra). Under those circumstances, PECO’s ability to maintain system reliability and to provide customers the high quality service they have come to expect -- the core values of the Competition Act -- would be seriously jeopardized.

#### **E. Other Regulatory Approvals**

Enron expressly conditions the Enron Plan on the Commission’s approval of it becoming final and non-appealable by early April 1998 (Enron Petition, p. 29). The chances of that occurring are slim to none. More to the point, however, Enron fails to recognize (or at least admit publicly) that aspects of the Enron Plan would require the review of and/or approval by a whole host of regulatory authorities, including, without limitation, the FERC, the Securities and Exchange Commission, the Nuclear Regulatory Commission, the Internal Revenue Service and various antitrust and consumer protection organizations. Even if all required approvals could be obtained, which PECO doubts, the review process alone would significantly delay the rate reductions and opportunities to choose among suppliers which would be made available under the Partial Settlement.

## **F. Other Public Interest Considerations**

### **1. Miscellaneous Benefits Of The Partial Settlement**

As explained in PECO's restructuring plan proceeding at Docket No. R-00973953, there are several important benefits of the Partial Settlement which cannot be realized absent PECO's consent. They include: (1) the 10% rate reduction on September 1, 1998; (2) the acceleration of customer choice; and (3) the extension of the transmission and distribution and generation rate caps. Those benefits, as well as PECO's commitment to expand significantly its existing universal service programs and the agreement by other Joint Petitioners to withdraw certain pending appeals, would be lost if the Partial Settlement is not approved without modification.

### **2. Terms and Conditions Of Service**

In its Petition (p. 26), Enron claims that "for the most part" the changes it proposes to PECO's tariff "simply reflect the introduction of the EGS [Electric Generation Supplier] into the mix of relationships which exist in bringing electricity to the end user". Similarly, in a recent paid advertisement in The Philadelphia Inquirer, Enron advised customers that under its plan "your service won't change". This is simply not true, as a review of Exhibit 1 to the Enron Petition quickly reveals:

- Customers who qualify for two or more rate schedules would no longer be entitled to select the rate under which they are served or to request PECO's assistance in selecting the rate most advantageous to them (Rules 11.1 and 11.2).

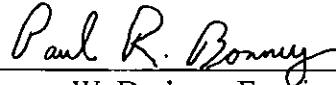
- Landlords would no longer be allowed to individually meter tenants or master meter heating/cooling systems (Rule 13.1).
- The City of Philadelphia would lose the outage allowance which it currently enjoys under Rate SL-P.
- Various rate riders and rules designed to promote competition and economic development and to protect the environment would be modified or entirely eliminated (e.g., Rule 4.6, Riders EER, Thermal Storage, Electric Vehicle Charging, Transformer Rental, Seasonal Capacity Service).
- Rate R-S (Solar Resistance Heating) customers would no longer have a metering option; the decision would be made by the EGS.
- Customers that co-generate could no longer obtain firm and interruptible back-up and maintenance power from PECO as is currently required under Federal law.
- Customers experiencing emergencies would have to call their EGS first, which would then pass the information along to PECO (Rule 22).

The foregoing are but a few examples of where Enron, in inserting itself into “PECO’s shoes”, would step on customers’ toes and deprive them of protections they currently enjoy.

#### IV. CONCLUSION

In summary, Enron has no interest in serving citizens of Southeastern Pennsylvania or providing them any tangible benefits. Instead, the Enron Plan is a thinly-veiled attempt to advance Enron's own corporate self-interest by scuttling a well-conceived settlement package that has the unanimous support of the consumer groups who will be most affected by electric utility restructuring and by eliminating PECO as a competitor. The Commission should do the right thing and, at the conclusion of this proceeding, approve the Partial Settlement.

Respectfully submitted,



---

James W. Durham, Esquire  
Senior Vice President and General Counsel  
Paul R. Bonney, Esquire  
Assistant General Counsel

PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-4252

Dated: October 20, 1997

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of Pennsylvania Public Utility Commission v. PECO Energy Company Pa. PUC Docket No. R-00973953.

Honorable Marlane R. Chestnut)  
Administrative Law Judge  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PAIEUG)

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Fumo)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
305 N. Front Street; Suite 401  
Harrisburg, PA 17101  
(Counsel for Enron)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Counsel for Delmarva Power & Light)

Walter W. Cohen, Esquire / Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Building 218, Room 200

Honorable Charles E. Rainey, Jr.  
Administrative Law Judge  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens & John Long, Jr.)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Attorney for Environmentalists)

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101  
(Counsel for AARP)

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(Counsel for Delmarva Power & Light)

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Janet Miller, Esquire  
William T. Hawke, Esquire/Todd S. Stewart, Esq.  
Malatesta Hawke & McKeon

901 M Street, S.E.  
Washington, DC 20374-5018  
(Counsel for Dept. of Navy)

Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PA Retailers' Association)

Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901 - 15<sup>th</sup> Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17<sup>th</sup> Street, NW - Suite 600  
Washington, DC 20036-3006  
(Duke Energy Trading and Marketing, Vastar, & Electric Clearinghouse)

Joseph A. Dworetzky, Esquire  
John P. Lavelle, Jr., Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19102  
(Counsel for New Energy Ventures)

Stephanie A. Sugrue, Esquire/Sheila S. Hollis, Esquire  
Mary Ann Rallis, Esquire  
Duane, Morris & Heckscher LLP  
1667 K Street, N.W. - Suite 700  
Washington, DC 20006-7800  
(Counsel for QST Energy)

Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105  
(Counsel for Enron Energy Services Power, Inc.)

100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(Counsel for Allegheny Power)

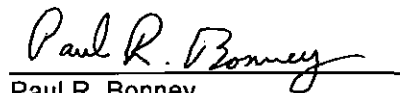
Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

Joseph J. Malatesta, Jr., Esquire  
Lillian Smith Harris, Esquire  
Malatesta Hawke & McKeon LLP  
Harrisburg Energy Center  
100 North Tenth Street - P.O. Box 1778  
Harrisburg, PA 17105  
(Municipal Group)

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
1 Columbia Place  
Albany, NY 12207  
(Counsel for Pennsylvania Petroleum Association and Pennsylvania Association of Plumbing, Heating, Cooling Contractors, Inc.)

Vickiren S. Aeshleman  
Director - Regulatory Policy  
QST Energy, Inc.  
300 Hamilton Blvd., Suite 300  
Peoria, IL 61602

John Klauberg, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55<sup>th</sup> Street  
New York, NY 10019-5389  
(Counsel for Enron Energy Services Power, Inc.)



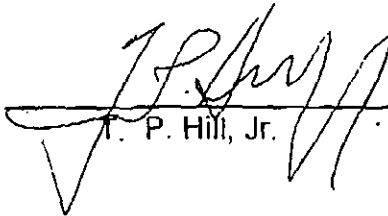
Paul R. Bonney  
Ward L. Smith  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252  
(215) 841-6863

Dated: October 20, 1997

VERIFICATION

I, T. P. Hill, Jr., hereby declare that I am Vice President and Controller of PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Answer are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: October 20, 1997

  
\_\_\_\_\_  
T. P. Hill, Jr.



# PECO ENERGY

016155

97 NOV -3 PM 2:54

Legal Department

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

James W. Durham  
Senior Vice President  
and General Counsel

Edward J. Cullen, Jr.  
Deputy General Counsel

Sandra H. Byrne  
Legal Administrator

Paul R. Bonney  
Ellen M. Cavanaugh  
Jessica N. Cone  
Todd D. Cutler  
Harvey B. Dikter  
Susan Sciamanna Foehl  
Vilna Waldron Gaston  
Gregory Golazeski  
John C. Halderman  
Mary McFall Hopper  
Conrad O. Kattner  
Stephanie Whitton Lewis  
Jeffrey J. Norton  
Mark B. Peabody  
Roslyn G. Pollack  
Wendy Schermer  
Richard S. Schlegel  
Jenny P. Shulbank  
Ward L. Smith  
Delia W. Stroud  
Dawn Getty Sutphin  
Noel H. Trask  
Ronald L. Zack  
Assistant General Counsel

RECEIVED  
PROTHONOTARY'S OFFICE

Direct Dial: 215 841 4252

October 20, 1997

## By Fax

John Gallagher, Esquire  
LeBoeuf, Lamb, Greene &  
MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
305 North Front Street, Suite 401  
Harrisburg, PA 17105

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 Counsel:

Enclosed are PECO Energy Company's Answers to Enron's Interrogatories:

KJR

Set X: 1 through 4; 7 through 10, 12 through 18; 20 through 32; 34; 39 through  
44; 49; 50; and 54 through 60.

Sincerely,

Paul Bonney

PRB/mbo  
Enclosures

cc: w/enclosures  
Certificate of Service (w/enclosure)  
James McNulty, Acting Prothonotary (Certificate of Service Only)

DOCUMENT  
FOLDER

Certificate of Service

I hereby certify that I have this date served the following Answers by facsimile, first class or overnight/express mail, upon the persons addressed below:

Enron's Interrogatories: Set X: 1 through 4; 7 through 10, 12 through 18; 20 through 32; 34; 39 through 44; 49; 50; and 54 through 60.

Kenneth L. Mickens, Senior Prosecutor  
Charles Shields, Prosecutor  
Office of Trial Staff  
P. O. Box 3256  
Harrisburg, PA 17105-3265

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PAIEUG)

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Furno)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
305 N. Front Street, Suite 401  
Harrisburg, PA 17101  
(Counsel for Enron)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Counsel for Delmarva Power & Light)

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Attorney for Environmentalists)

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

016156  
Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Karen Oil Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens & John Long, Jr.)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Linda C. Smith, Esquire  
Ditworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(Counsel for Delmarva Power & Light)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Paul E. Nordstrom, Esquire  
Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901 - 15<sup>th</sup> Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P. O. Box 1595  
Indianapolis, IN 46206-1595

97 NOV -3 PM 2:54  
RECEIVED  
PROSECUTOR'S OFFICE

LOCKETED

NOV 10 1997

DOCUMENT  
FOLDER

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Joseph A. Dworetzky, Esq.  
John P. Lavell, Jr., Esq.  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19103

Terrence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

Neil Talbot  
81 Grand Street, No. 5  
New York, NY 10013

David M. Wise  
WiseEnergy  
615 Summit Avenue  
Maplewood, NJ 07040

Mr. Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 S. Merames Avenue  
St. Louis, MO 63105

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Bldg. 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018

Peter Bradford  
P. O. Box 497  
Peru, VT 05152

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
Albany, NY 12207  
(Counsel for PPA)

Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(Counsel for PRA)

John Klauberg, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55<sup>th</sup> Street  
New York, NY 10019-5389  
(Counsel for Enron Energy Services Power, Inc.)

Barbara Alexander  
Consumer Affairs Consultant  
15 Wedgewood Drive  
Winthrop, ME 04364

Janet Miller, Esquire  
Malatesta Hawke & McKean  
100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

Richard LaCapra/Lee Smith/Doug Smith  
LaCapra Associates  
The Province Building  
333 Washington Street  
Boston, MA 02108

Thomas Catlin  
Exeter Associates, Inc.  
Suite 350  
12510 Prosperity Drive  
Silver Spring, MD 20904

Nancy Brockway, Esquire  
Suite 400  
18 Tremont Street  
Boston, MA 02108

Stephen J. Baron  
J. Kennedy and Associates  
35 Glenlake Parkway, Suite 475  
Atlanta, GA 30328

Richard Silkman  
76 Main Street  
Yarmouth, Maine 04096

Ralph Smith  
Larkin & Associates  
15728 Farmington Road  
Livonia, MI 48154

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17<sup>th</sup> Street, NW - Suite 600  
Washington, DC 20036-3006

Stephanie A. Sugrue  
Duane Morris & Heckscher LLP  
1667 K Street, N.W. - Suite 700  
Washington, DC 20006-1608

John Gallagher, Esquire  
Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105  
(Counsel for Enron Energy Services Power, Inc.)

*Paul R. Bonney / mso*

Paul R. Bonney  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252

Dated: October 30, 1997



**PECO ENERGY**

Legal Department

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

014206

97 OCT 23 AM 8:59

James W. Durham  
Senior Vice President  
and General Counsel

Edward J. Cullen, Jr.  
Deputy General Counsel

Sandra H. Byrne  
Legal Administrator

Paul R. Bonney  
Ellen M. Cavanaugh  
Jessica N. Corne  
Todd D. Cutler  
Susan S. Foehl  
Vilna Waldron Gaston  
Gregory Golazeski  
John C. Halderman  
Mary McFall Hopper  
Conrad O. Kattner  
Stephanie Whitton Lewis  
Jeffrey J. Norton  
Mark B. Peabody  
Roslyn G. Pollack  
Wendy Schermer  
Richard S. Schlegel  
Jenny P. Shulbank  
Ward L. Smith  
Delia W. Stroud  
Dawn Getty Sutphin  
Noel H. Trask  
Ronald L. Zack  
Assistant General Counsel

**DOCUMENT  
FOLDER**

RECEIVED  
PROTHONOTARY'S OFFICE Direct Dial: 215 841 4252

October 20, 1997

By Fax

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
305 North Front Street, Suite 401  
Harrisburg, PA 17105

Joseph A. Dworetzky, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19103

KJR

Craig Doll, Esquire  
214 State Street  
Harrisburg, PA 17101

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 Counsel:

Enclosed are PECO Energy Company's Answers to Pennsylvania Electric  
Competition Coalition's on the record data request:

TPH 3

MSF 1 and MSF 2.

Sincerely,

Paul Bonney

PRB/mbo  
Enclosures

cc: w/enclosures  
Certificate of Service (w/enclosure)  
James McNulty, Acting Prothonotary (Certificate of Service Only)

Certificate of Service

I hereby certify that I have this date served the following Answers by facsimile, first class or overnight/express mail, upon the persons addressed below:

Pennsylvania Electric Competition Coalition's on the record data requests: TPH 3, MSF 1 and MSF 2.

97 OCT 23 AM 8:59

RECEIVED  
PROTHONOTARY'S OFFICE

Kenneth L. Mickens, Senior Prosecutor  
Charles Shields, Prosecutor  
Office of Trial Staff  
P. O. Box 3256  
Harrisburg, PA 17105-3265

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PAIEUG)

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Fumo)

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens & John Long, Jr.)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
305 N. Front Street, Suite 401  
Harrisburg, PA 17101  
(Counsel for Enron)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Counsel for Delmarva Power & Light)

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(Counsel for Delmarva Power & Light)

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Attorney for Environmentalists)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Paul E. Nordstrom, Esquire  
Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901 - 15<sup>th</sup> Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P. O. Box 1595  
Indianapolis, IN 46206-1595

DOCUMENT  
FOLDER

DOCKETED  
OCT 24 1997

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Joseph A. Dwortetzky, Esq.  
John P. Lavell, Jr., Esq.  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19103

Terrence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

Neil Talbot  
81 Grand Street, No. 5  
New York, NY 10013

David M. Wise  
WiseEnergy  
615 Summit Avenue  
Maplewood, NJ 07040

Mr. Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 S. Merames Avenue  
St. Louis, MO 63105

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Bldg. 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018

Peter Bradford  
P. O. Box 497  
Peru, VT 05152

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
Albany, NY 12207  
(Counsel for PPA)

Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(Counsel for PRA)

John Klauberg, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55<sup>th</sup> Street  
New York, NY 10019-5389  
(Counsel for Enron Energy Services Power, Inc.)

Barbara Alexander  
Consumer Affairs Consultant  
15 Wedgewood Drive  
Winthrop, ME 04364

Janet Miller, Esquire  
Malatesta Hawke & McKean  
100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

Richard LaCapra/Lee Smith/Doug Smith  
LaCapra Associates  
The Province Building  
333 Washington Street  
Boston, MA 02108

Thomas Callin  
Exeter Associates, Inc.  
Suite 350  
12510 Prosperity Drive  
Silver Spring, MD 20904

Nancy Brockway, Esquire  
Suite 400  
18 Tremont Street  
Boston, MA 02108

Stephen J. Baron  
J. Kennedy and Associates  
35 Glenlake Parkway, Suite 475  
Atlanta, GA 30328


Richard Silkman  
76 Main Street  
Yarmouth, Maine 04096

Ralph Smith  
Larkin & Associates  
15728 Farmington Road  
Livonia, MI 48154

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17<sup>th</sup> Street, NW - Suite 600  
Washington, DC 20036-3006

Stephanie A. Sugrue  
Duane Morris & Heckscher LLP  
1667 K Street, N.W. - Suite 700  
Washington, DC 20006-1608

Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105  
(Counsel for Enron Energy Services Power, Inc.)

  
Paul R. Bonney  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252

Dated: October 21, 1997



# PECO ENERGY

Legal Department

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

014275

97 OCT 23 AM 9:41

James W. Durham  
Senior Vice President  
and General Counsel

Edward J. Cullen, Jr.  
Deputy General Counsel

Sandra H. Byrne  
Legal Administrator

Paul R. Bonney  
Ellen M. Cavanaugh  
Jessica N. Cone  
Todd D. Cutler  
Susan S. Foehl  
Vilna Waldron Gaston  
Gregory Golazeski  
John C. Halderman  
Mary McFall Hopper  
Conrad O. Kattner  
Stephanie Whitton Lewis  
Jeffrey J. Norton  
Mark B. Peabody  
Roslyn G. Pollack  
Wendy Schermer  
Richard S. Schlegel  
Jenny P. Shulbank  
Ward L. Smith  
Delia W. Stroud  
Dawn Getty Sutphin  
Noel H. Trask  
Ronald L. Zack  
Assistant General Counsel

RECEIVED  
PROTHONOTARY'S OFFICE Direct Dial: 215 841 4252

## DOCUMENT FOLDER

October 20, 1997

By Fax

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
305 North Front Street, Suite 401  
Harrisburg, PA 17105

Joseph A. Dworetzky, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19103

Craig Doll, Esquire  
214 State Street  
Harrisburg, PA 17101

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 Counsel:

Enclosed are PECO Energy Company's Answers to Pennsylvania Electric  
Competition Coalition's on the record data request:

TPH 1 and TPH 2

ABC 1 and ABC 2.

Sincerely,

Paul Bonney

PRB/mbo  
Enclosures

cc: w/enclosures  
Certificate of Service (w/enclosure)  
James McNulty, Acting Prothonotary (Certificate of Service Only)

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Joseph A. Dwortetzky, Esq.  
John P. Lavell, Jr., Esq.  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19103

Terrence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

Neil Talbot  
81 Grand Street, No. 5  
New York, NY 10013

David M. Wise  
WiseEnergy  
615 Summit Avenue  
Maplewood, NJ 07040

Mr. Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 S. Merames Avenue  
St. Louis, MO 63105

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Bldg. 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018

Peter Bradford  
P. O. Box 497  
Peru, VT 05152

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
Albany, NY 12207  
(Counsel for PPA)

Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(Counsel for PRA)

John Klauberg, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55<sup>th</sup> Street  
New York, NY 10019-5389  
(Counsel for Enron Energy Services Power, Inc.)

Barbara Alexander  
Consumer Affairs Consultant  
15 Wedgewood Drive  
Winthrop, ME 04364

Janet Miller, Esquire  
Malatesta Hawke & McKean  
100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

Richard LaCapra/Lee Smith/Doug Smith  
LaCapra Associates  
The Province Building  
333 Washington Street  
Boston, MA 02108

Thomas Callin  
Exeter Associates, Inc.  
Suite 350  
12510 Prosperity Drive  
Silver Spring, MD 20904

Nancy Brockway, Esquire  
Suite 400  
18 Tremont Street  
Boston, MA 02108

Stephen J. Baron  
J. Kennedy and Associates  
35 Glenlake Parkway, Suite 475  
Atlanta, GA 30328

Richard Silkman  
76 Main Street  
Yarmouth, Maine 04096

Ralph Smith  
Larkin & Associates  
15728 Farmington Road  
Livonia, MI 48154

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17<sup>th</sup> Street, NW - Suite 600  
Washington, DC 20036-3006

Stephanie A. Sugrue  
Duane Morris & Heckscher LLP  
1667 K Street, N.W. - Suite 700  
Washington, DC 20006-1608

Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105  
(Counsel for Enron Energy Services Power, Inc.)

014276

97 OCT 23 AM 9:41

RECEIVED  
PROTHONOTARY'S OFFICE

DOCUMENT  
FOLDER

DOCKETED  
OCT 24 1997

*Paul Bonney / mco*

Paul R. Bonney  
Assistant General counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252

Dated: October 20, 1997

Certificate of Service

I hereby certify that I have this date served the following Answers by facsimile, first class or overnight/express mail, upon the persons addressed below:

Pennsylvania Electric Competition Coalition's on the record data requests: TPH 1 and TPH 2; ABC 1 and ABC 2.

Kenneth L. Mickens, Senior Prosecutor  
Charles Shields, Prosecutor  
Office of Trial Staff  
P. O. Box 3256  
Harrisburg, PA 17105-3265

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PAIEUG)

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Fumo)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
305 N. Front Street, Suite 401  
Harrisburg, PA 17101  
(Counsel for Enron)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Counsel for Delmarva Power & Light)

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Attorney for Environmentalists)

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens & John Long, Jr.)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(Counsel for Delmarva Power & Light)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Paul E. Nordstrom, Esquire  
Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901 - 15<sup>th</sup> Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P. O. Box 1595  
Indianapolis, IN 46206-1595

One Park Ridge Center  
P.O. Box 15746  
Pittsburgh, PA 15244-0746  
(412) 787-4268  
(412) 787-4464 Fax  
E-Mail: Gary\_A.\_Jeffries@ESC.CNG.COM

GARY A. JEFFRIES  
Senior Attorney

1 DOCKET  
FOLDER

RECEIVED

October 20, 1997

OCT 20 1997

**BY OVERNIGHT MAIL**

PA PUBLIC UTILITY COMMISSION  
PROTHONOTARY'S OFFICE

James J. McNulty, Prothonotary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
Harrisburg, PA 17120

KJR

**Re: PECO Application for Approval of its Restructuring Plan and Joint Petition for Partial Settlement; Docket No. R-00973953**

**Petition of Enron Energy Services Power, Inc.; Docket No. P-00971265**


**ANSWER OF CNG ENERGY SERVICES CORPORATION**

Dear Mr. McNulty:

Enclosed for filing please find the original and fifteen copies of the above-referenced document. Please date stamp the enclosed additional copy and return to me in the enclosed envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Gary A. Jeffries  
Senior Attorney

Enclosures

ORIGINAL RECEIVED

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

OCT 20 1997

PECO Application for Approval of its Restructuring	)	R-00973953
Plan and Joint Petition for Partial Settlement	)	
	)	
Petition of Enron Energy Services Power, Inc.	)	P-00971265

PA PUBLIC UTILITY COMMISSION  
PROTHONOTARY'S OFFICE

DOCKETED

OCT 22 1997

Answer of CNG Energy Services Corporation

In accordance with the Commission's Order in these consolidated proceedings issued on October 9, 1997, CNG Energy Services Corporation (CNG) hereby submits its answer in partial support of the petition filed by Enron Energy Services.

On October 7, Enron Energy Services Power, Inc. ("Enron") proposed its Electric Competition and Customer Choice Plan ("Enron Plan") for the service territory of Peco Energy Company ("PECO"). Enron sought authorization to "step into PECO's shoes" in many respects, relating not only to the provision of electric service to customers, but also to the financing of PECO's stranded costs, pursuant to the Electricity Generation Customer Choice and Competition Act ("the Act").

While we disagree with several of Enron's suggestions and implications, CNG certainly does agree with Enron's stated objective, which is to facilitate a fair, competitive market for electricity services. We share Enron's concern that the Proposed Settlement would make it difficult for new competitors to enter the marketplace, and believe that the more levelized Generation Credit schedule proposed by Enron (which resembles the Counter Offer of MAPSA, of which CNG is a member) would be a significant improvement over PECO's plan. Furthermore, CNG believes that Enron adopted a creative approach when it offered its Plan as an alternative to PECO's proposed Partial Settlement, instead of simply stating a series of criticisms. By stepping back from the narrow confines of that Partial Settlement, and refocusing on the bigger picture, Enron has done a service for Pennsylvania and for all the parties engaged in activities related to implementation of the Act.

The Pennsylvania Public Utility Commission ("the Commission") is faced with a daunting task, as it breaks new ground and establishes the specific policies and procedures that will lead to genuine competition. CNG urges the Commission to be as flexible as possible, and to continue Pennsylvania's leadership role in the electric restructuring process by finding ways to take into account the lessons of the Commonwealth's electric pilots, as well as the experiences of new entrants and others in the rapidly evolving marketplace.

More specifically, CNG asks the Commission to seriously consider the issues raised by Enron, and perhaps then go even further, to explore solutions that would do more than simply place Enron in PECO's shoes. In particular, we urge the Commission to break the proposed link between the financing of stranded costs and the provision of retail services, and to consider

DOCUMENT  
FOLDER

whether to establish a new, open process by which the Commission will designate the Default Service Provider authorized to offer Provider of Last Resort service in each electric utility service territory.

CNG respectfully submits the following responses to Enron's proposal for the Commission's consideration:

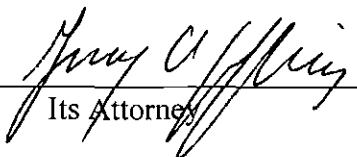
1. **Stranded Cost Overrecovery**: CNG agrees with Enron's assertion that, under the PECO settlement proposal, there is a distinct probability that PECO, through load growth or otherwise, will overrecover its stranded costs. CNG also agrees, consistent with Enron's and MAPSA's positions in this proceeding, that any such overrecoveries should be returned to consumers. Accordingly, should the Commission reject Enron's proposals, it should, at a minimum condition the PECO settlement on a true-up at the end of the settlement period.
2. **Transfer of Generation Assets**: Again, CNG agrees with Enron's position that PECO should not be permitted to transfer its generation to an affiliate at a price significantly less than book value without first exploring on the record market power issues presented by such a transfer. The fact that the transfer price proposed by PECO is so dramatically below book raises the likely possibility that Commission's approval of same will place PECO's affiliate in a "supercompetitive" position to the detriment of consumers and competitors alike. Indeed, it would appear that the Competition Act requires the Commission to analyze market power issues before approving **any** settlement in these consolidated proceedings. (66 Pa.C.S. Sec. 2811)
3. **Unbundling**: Like Enron, CNG has argued in the PECO restructuring proceeding essentially that all functions, including metering and billing, that are not natural monopolies should be unbundled, and the Competition Act appears to encourage same as a matter of Commonwealth policy, if not to require such a result. (66 Pa.C.S. Sec. 2802(14))
4. **Generation Credit**: CNG, again through MAPSA, has argued in PECO's restructuring proceeding for a generation credit that reflects the price of energy marketed and sold at retail. Enron appears to have adhered to that principal in its counteroffer. (Note: The "generation credit" is properly defined in footnote 8 at page 5 of Enron's petition.) In contrast, the parties to the PECO settlement proposal have proposed a generation credit which is limited to the estimated future cost of wholesale energy without allowance for any wholesale or retail marketing or administrative costs. CNG submits that this latter approach is in conflict with the provisions of the Competition Act that would appear to require the exclusion of generation-related marketing, administrative and other costs from regulated rates and inclusion in the generation default rate against which all other suppliers are required to compete, i.e. to be unbundled. (66 Pa.C.S. Sec. 2804)

5. **Provider of Last Resort:** CNG submits that, consistent with the clear public interest in maximizing competition and customer choice as expressed by the Commonwealth in the Competition Act, the Commission should not permit either PECO or Enron to be the exclusive supplier of last resort. As one alternative the Commission could modify the PECO proposal to require that default service be provided through an electronic competitive bid process in which an eligible, licensed suppliers could participate.
  
6. **Goodwill:** The use of PECO's name or logo by an affiliate does not give an inherent marketing advantage to the affiliates over its competitors. In its Choice Plan, Enron purports that the use of PECO's name or logo by an unregulated affiliate of PECO implies that its affiliation with the utility distribution company gives it preferential access to service and puts competitive suppliers at an unfair disadvantage. Enron further proposes in its Choice Plan that various competitive safeguards would be set forth in a Distribution Tariff, to be entered into by PECO and Enron, that would address PECO's relationship with EGSs in order to eliminate any preferential treatment of affiliates. While CNG agrees that competitive safeguards need to be in place to address the sharing of information, employees and other assets between PECO and its affiliates that could disadvantage other suppliers offering choice to consumers in Pennsylvania, the use of a utility's logo, service marks, trademarks, trade names and other general goodwill are not "ratepayer assets" that merit or require such protection but rather are the property of stockholders.

In summary, CNG urges the Commission not to approve any settlement in these consolidated proceedings that is inconsistent with the principals set forth above and further to direct the ALJ to specifically require that such issues be addressed specifically in the hearings to be held in these consolidated proceedings.

Respectfully submitted,

CNG Energy Services Corporation

By:   
Its Attorneys

Dated October 20, 1997

CERTIFICATE OF SERVICE

I hereby certify that I am serving a true and correct copy of the foregoing document by first class mail upon the following persons:

The Honorable Charles E. Rainey, Jr.  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, Pennsylvania 19130  
(215) 560-2105

Paul R. Bonney, Esquire  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, Pennsylvania 19101-8699  
(215) 841-4252

Steven P. Hershey, Esquire  
Philip A. Bertocci, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, Pennsylvania 19102  
(215) 981-3777

David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, Pennsylvania 17108-1166  
(717) 232-8000

The Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, Pennsylvania 19130  
(215) 560-2105

Tanya J. McCloskey, Esquire  
Assistant Consumer Advocate  
Pennsylvania Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, Pennsylvania 17120  
(717) 783-5048

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Pennsylvania Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North 2<sup>nd</sup> Street  
Harrisburg, Pennsylvania 17101  
(717) 783-2525

Alan J. Barak, Esquire  
Alan J. Barak, P.C.  
1417 Blue Mountain Parkway  
Harrisburg, Pennsylvania 17112  
(717) 540-5166

Kenneth Mickens, Esquire  
Senior Prosecutor, Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265, Pitmick Building  
Harrisburg, Pennsylvania 17105-3265  
(717) 787-1976

Walter W. Cohen, Esquire  
Obermayer, Rebmann, Maxwell & Hippel, LLP  
204 State Street  
Harrisburg, Pennsylvania 17102  
(717) 234-9730

Bruce A. Connell, Esquire  
Dupont Power Marketing, Inc.  
600 N. Dairy Ashford, ML-1034  
Houston, Texas 77079  
(281) 293-1736

Joseph J. Malatesta, Jr., Esquire  
Janet L. Miller, Esquire  
Malatesta, Hawke & McKeon, LLP  
100 North 10<sup>th</sup> Street  
Harrisburg, Pennsylvania 17101  
(717) 236-1300

Paul E. Russell, Esquire  
Associate General Counsel  
Pennsylvania Power & Light  
2 North 9<sup>th</sup> Street  
Allentown, Pennsylvania 18101-1179  
(601) 774-4254

Lance Haver  
6048 Ogontz Avenue  
Philadelphia, Pennsylvania 19141  
(215) 424-1441

David Boonon, Esquire  
New Energy Ventures  
200 South Broad Street, Suite 800  
Philadelphia, Pennsylvania 19107  
(215)

Gary A. Jeffries, Esquire  
Senior Attorney, CNG Energy Services Corporation  
1 Park Ridge Center  
P.O. Box 15746  
Pittsburgh, Pennsylvania 15244-0746  
(412) 787-4268

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, Pennsylvania 17101  
(717) 230-9555

Daniel Clearfield, Esquire  
Wolf, Block, Shorr & Solis-Cohen  
305 North Front Street, Suite 401  
Harrisburg, Pennsylvania 17101-1236  
(717) 237-7172

Terence Fitzpatrick, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102  
(717) 236-7714

Michael G. Banta, Esquire  
Vice President, Assistant General Counsel  
Indianapolis Power & Light Company  
1 Monument Circle  
Indianapolis, Indiana 46206-1595  
(317) 261-8449

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, Pennsylvania 15601-1689  
(412) 838-6210

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, Pennsylvania 17101  
(717) 236-4812

Michael L. Kessler, Esquire  
Vice President, General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, Virginia 22314  
(703) 684-1006

Sam DeFrawi, Esquire  
United States Navy Rate Intervention  
Washington Navy Yard, Building 212, Code 00RI  
901 M Street, South East  
Washington, D.C. 20374-5018  
(202)

Usher Fogel, Esquire  
Roland, Fogel, Koblents & Carr, LLP  
1 Columbia Place  
Albany, New York 12207  
(518) 434-8112

Susan M. Shanaman, Esquire  
212 North 3<sup>rd</sup> Street  
Suite 203  
Harrisburg, Pennsylvania 17101-1505  
(717) 236-2055

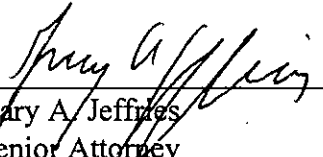
Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Post Office Box 1166  
Harrisburg, Pennsylvania 17108-1166

Joseph A. Dworetzky, Esquire  
Hangley, Aronchick, Segal & Pudlin  
1 Logan Square, 12<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19103-6933  
(215) 496-7014

Paul L. Zeigler, Esquire  
Zeigler & Zimmerman, P.C.  
355 North 21<sup>st</sup> Street  
Camp Hill, Pennsylvania 17011-3707  
(717) 731-1484

Gordon Smith, Esquire  
Electric Clearinghouse, Inc.  
John & Hengerer  
1200 17<sup>th</sup> Street, N.W., Suite 600  
Washington, D.C. 20036-3006

Respectfully Submitted

  
\_\_\_\_\_  
Gary A. Jeffries  
Senior Attorney  
CNG Energy Services Corporation  
One Park Ridge Center  
P.O. Box 15746  
Pittsburgh, PA 15244-0746  
Phone: (412) 787-4268

Dated: Oct 20, 1997



**PECO ENERGY**

**ORIGINAL  
RECEIVED**

Legal Department

KJR

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

OCT 20 1997

PA PUBLIC UTILITY COMMISSION  
PROTHONOTARY'S OFFICE

Direct Dial: 215 841 4252

October 20, 1997

James W. Durham  
Senior Vice President  
and General Counsel  
  
Edward J. Cullen, Jr.  
Deputy General Counsel

Sandra H. Byrne  
Legal Administrator

Paul R. Bonney  
Ellen M. Cavanaugh  
Jessica N. Cone  
Todd D. Cutler  
Susan S. Foehl  
Vilna Waldron Gaston  
Gregory Golazeski  
John C. Halderman  
Mary McFall Hopper  
Conrad O. Kattner  
Stephanie Whitton Lewis  
Jeffrey J. Norton  
Mark B. Peabody  
Roslyn G. Pollack  
Wendy Schermer  
Richard S. Schlegel  
Jenny P. Shulbank  
Ward L. Smith  
Delia W. Stroud  
Dawn Getty Sutphin  
Noel H. Trask  
Ronald L. Zack  
Assistant General Counsel

**FEDEX**

James McNulty, Acting Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
Harrisburg, PA 17105-3265

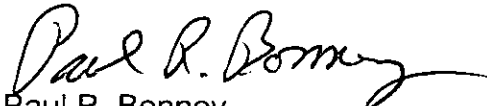
**DOCUMENT  
FOLDER**

Re: Application Of PECO Energy Company For Approval Of Its Restructuring  
Plan Under Section 2806 Of The Public Utility Code,  
Docket No. R-00973953  
Petition of Enron Energy Service Power, Inc. Docket No. P-00971265.

Dear Secretary McNulty:

Enclosed please find the original executed Verification of Thomas P. Hill Jr., of  
PECO's Answer to the Enron Petition. Please attach this original Verification to  
the original filed Answer.

Sincerely,

  
Paul R. Bonney

PRB/mbo

ORIGINAL

RECEIVED

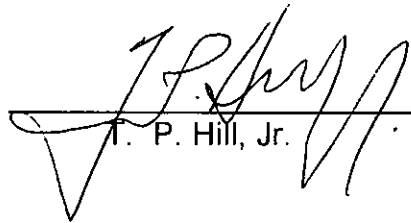
OCT 20 1997

PA PUBLIC UTILITY COMMISSION  
PROTHONOTARY'S OFFICE

VERIFICATION

I, T. P. Hill, Jr., hereby declare that I am Vice President and Controller of PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Answer are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: October 20, 1997

  
\_\_\_\_\_  
T. P. Hill, Jr.

DOCUMENT  
FOLDER

DOCKETED  
OCT 22 1997



ORIGINAL

VINCENT J. FUMO  
Chairman

PAUL S. DLUGOLECKI  
Executive Director

Senate Post Office  
The State Capitol  
Harrisburg, PA 17120-0030  
Telephone: (717) 787-5662  
Fax: (717) 783-5210

DEMOCRATIC COMMITTEE ON APPROPRIATIONS

October 20, 1997

PROTHONOTARY'S OFFICE  
97 OCT 20 PM 3:21  
RECORDED

KJR

James J. McNulty, Acting Prothonotary  
Pennsylvania Public Utility Commission  
Room 206, North Office Building  
Harrisburg, Pennsylvania 17105-3265

**Re: In re the Matter or the Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Pennsylvania Public Utility Code - PUC Docket No. R-00973953.**

Dear Mr. McNulty:

Enclosed for filing is an original and three (3) copies of the Answer of Senator Vincent J. Fumo in opposition to the Petition of Enron Energy Services Power, Inc. for Approval of An Electric Competition and Customer Choice Plan and for Authority to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company.

Copies of the forgoing are being served on all parties of record. Please do not hesitate to call if I may provide any additional information.

DOCUMENT  
FOLDER

Sincerely,

  
Christopher B. Craig  
Counsel

cc: All counsel of record.

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re the Application of PECO Energy  
Company for Approval of its Restructuring  
Plan Under Section 2806 of the Pennsylvania  
Public Utility Code

+  
+  
+

Docket No. R-00973953

**DOCUMENT  
FOLDER**

**DOCKETED**

**OCT 22 1997**

---

**ANSWER OF SENATOR VINCENT J. FUMO TO THE  
PETITION OF ENRON ENERGY SERVICES POWER, INC. FOR  
APPROVAL OF AN ELECTRIC COMPETITION AND CUSTOMER  
CHOICE PLAN AND FOR AUTHORITY TO SERVE AS THE  
PROVIDER OF LAST RESORT IN THE SERVICE TERRITORY  
OF PECO ENERGY COMPANY**

---

PROTHONOTARY'S OFFICE

97 OCT 20 PM 3:21

00973953

State Senator Vincent J. Fumo, through his undersigned counsel, hereby opposes the Petition of Enron Energy Services Power, Inc. For Approval Of An Electric Competition And Customer Choice Plan And For Authority To Serve As The Provider Of Last Resort In Service Territory Of PECO Energy Company (hereinafter "the Enron Petition") and files this answer as follows:

1. It is ADMITTED only that portions of sections 2802 and 2807 have been accurately quoted from the Pennsylvania Public Utility Code.
2. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
3. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.

4. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
  
5. It is ADMITTED only that a portion of section 2802 of the Pennsylvania Public Utility Code has been accurately quoted. The remaining portion of this averment is a conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
  
6. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
  
7. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
  
8. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
  
9. ADMITTED.
  
10. It is ADMITTED; however, by way of a more complete response, the Joint Petition for Settlement was signed by PECO Energy Company, Senator Vincent J. Fumo, Lance Haver, the Consumers Education and Protective Association, Tenant Action Group, ACORN, the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, the Pennsylvania Public Utility Commission - Office of Trial Staff, the American Association of Retired Persons, the United States Department of Navy, and the Philadelphia Area Industrial Energy Users Group. Furthermore, statements

of support for the Joint Petition for Settlement have been submitted by Philadelphia City Councilmen James F. Kenney and Thatcher Longstreth, as well as Pennsylvania State Senator Christine M. Tartagilone and numerous PECO ratepayers.

11. It is DENIED that the terms and provisions of the Joint Petition for Settlement have been completely or accurately cited. It is further DENIED that all of the terms of the settlement are conditioned on the issuance of an irrevocable order.
12. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED that the Joint Settlement provides for neither customer choice nor competition. To the contrary, it has been established by sufficient evidence that the consumer crafted Joint Settlement permits the emergence of a competitive marketplace for the generation of electricity and at the same time providing important and necessary consumer benefits and safeguards.
13. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
14. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
15. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
16. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.

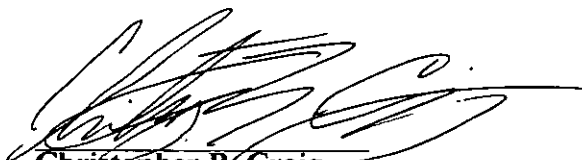
17. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
18. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
19. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
20. It is DENIED that Enron recognizes the substantial efforts of the signatories to the Joint Settlement. To the contrary, Enron, through an expensive and multi facet media and advertising campaign, has aggressively opposed the efforts of consumer groups to craft a Settlement that provides substantial benefits and safeguards to ratepayers. To the extent a further response is required, it is DENIED.
21. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED that Enron's Petition is anything other than an attempt to prevent timely Commission consideration and approval of the consumer crafted Joint Settlement.
22. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED that Enron's Petition is anything other than an attempt to prevent timely Commission consideration and approval of the consumer crafted Joint Settlement.
23. A conclusion of law or proposal for implementation to which no response is required. To the extent a response is required, it is DENIED that Enron's Petition is either just and reasonable or in the public interest.

24. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED that Enron's Petition provides larger rate reductions or that Enron is even able to provide the rate reductions described in its Petition. By way of further answer, it is DENIED that it is just and reasonable or in the public interest for Enron to replace PECO Energy Company as the "Provider of Last Resort."
25. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
26. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED, Senator Fumo is without sufficient knowledge or information to form an opinion as to the beliefs or intentions of Enron.
27. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED, Senator Fumo is without sufficient knowledge or information to form an opinion as to the ability of a Texas energy marketer, without any corporate presence in Southeastern Pennsylvania, to adequately fulfill the obligations of a "Provider of Last Resort."
28. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED, Senator Fumo is without sufficient knowledge or information to form an opinion as to the beliefs or intentions of Enron.
29. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED, Senator Fumo is without sufficient knowledge or information to form an opinion as to the beliefs or intentions of Enron.

30. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
31. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
32. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED, to the contrary, it has been established by sufficient evidence that the consumer crafted Joint Settlement permits the emergence of a competitive marketplace for the generation of electricity and at the same time providing important and necessary consumer benefits and safeguards.
33. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
34. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
35. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
36. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.
37. A conclusion of law to which no response is required. To the extent a response is required, it is DENIED.

WHEREFORE, Senator Vincent J. Fumo respectfully requests that this Commission reject the Petition of Enron.

Respectfully Submitted,



**Christopher B. Craig**  
Attorney No. 65203  
Counsel, Senate Democratic Appropriations Committee  
Room 545, Main Capitol Building  
Harrisburg, Pennsylvania 17120  
(717) 787-5662

*Counsel for Senator Vincent J. Fumo*

October 20, 1997

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In re the Application of PECO Energy  
Company for Approval of its Restructuring  
Plan Under Section 2806 of the Pennsylvania  
Public Utility Code**

+  
+  
+  
+  
+  
+

**Docket No. R-00973953**

**CERTIFICATION OF SERVICE**

I Christopher B. Craig, attorney for Senator Vincent J. Fumo, hereby certify that a copy of the foregoing document has been served in person or by first class mail at the addresses indicated below. I further certify that the manner of service satisfied the requirements of 52 PA. Code §§ 5.75 and 1.54.

The Honorable Charles E. Rainey, Jr.  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, PA 19130  
215-560-2105

The Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, PA 19130  
215-560-2105

Paul R. Bonney, Esquire  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215-841-4252

Tanya J. McCloskey, Esquire  
Assistant Consumer Advocate  
Pennsylvania Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
717-783-5048

Steven P. Hershey, Esquire  
Philip A. Bertocci, Esquire  
Community Legal Services  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-3777

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Pennsylvania Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North 2<sup>nd</sup> Street  
Harrisburg, PA 17101  
717-783-2525

David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
717-232-8000

Alan J. Barak, Esquire  
Alan J. Barak, P.C.  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
717-540-5166

Kenneth Mickens, Esquire  
Senior Prosecutor, Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265, Pitnick Building  
Harrisburg, PA 17105-3265  
717-787-1976

Walter W. Cohen, Esquire  
Obermayer, Rebmann, Maxwell & Hippel, LLP  
204 State Street  
Harrisburg, PA 17101-1236  
717-234-9730

Bruce A. Connell, Esquire  
Dupont Power Marketing, Inc.  
600 N. Dairy Ashford, ML-1034  
Houston, Texas 77079  
281-293-1736

Joseph J. Malatesta, Jr., Esquire  
Janet L. Miller, Esquire  
Malatesta, Hawke & McKeon, LLP  
100 N. 10<sup>th</sup> Street  
Harrisburg, PA 17101  
717-236-1300

Paul E. Russell, Esquire  
Associate General counsel  
Pennsylvania Power & Light  
2 North 9th Street  
Allentown, PA 18101-1179  
601-774-4254

Lance Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141  
215-424-1441

David Boonon, Esquire  
New Energy Ventures  
200 South Broad Street, Suite 800  
Philadelphia, PA 19107  
215-

Gary A. Jefferies, Esquire  
Senior Attorney, CNG Energy Services Corporation  
1 Park Ridge Center  
P.O. Box 15746  
Pittsburgh, PA 15244-0746  
412-787-4268

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
717-230-9555

Daniel Clearfield, Esquire  
Wolf, Block, Shorr & Solis-Cohen  
305 North Front Street, Suite 401  
Harrisburg, PA 17101-1236  
717-237-7172

Terence Fitzpatrick, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third, Suite 101  
Harrisburg, PA 17102  
717-236-7714

Michael G. Banta, Esquire  
Vice President, Assistant General Counsel  
Indianapolis Power & Light Company  
1 Monument Circle  
Indianapolis, Indiana 46206-1595  
317-261-8449

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
412-838-6210

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
304 North Front Street, Suite 403  
Harrisburg, PA 17101  
717-236-4812

Michael L. Kessler, Esquire  
Vice President, General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, Virginia 22314  
703-684-1006

Sam DeFrawi, Esquire  
United States Navy Rate Intervention  
Washington Navy Yard, Bldg. 212, Code 00RI  
901 M Street, South East  
Washington, D.C. 20374-5018  
202-

Usher Fogel, Esquire  
Roland, Fogel, Koblents & Carr, LLP  
1 Columbia Place  
Albany, New York 12207  
518-434-8112

Susan M. Shanman, Esquire  
212 North 3<sup>rd</sup> Street  
Suite 203  
Harrisburg, PA 17101-1505  
717-236-2055

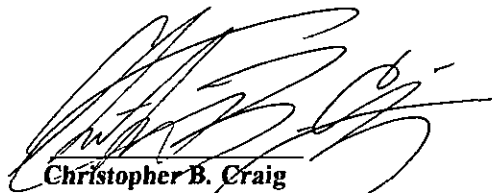
Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
717-237-5368

Stephanie A. Sugrue, Esquire  
Duane, Morris & Heckscher  
1667 K Street North West  
Suite 700  
Washington, D.C. 20006-1608  
202 776-7800

Joseph A. Dworetzky, Esquire  
Hangley, Aronchick, Segal & Pudlin  
1 Logan Square, 12<sup>th</sup> Floor  
Philadelphia, PA 19103-6933  
215-496-7014

Paul L. Zeigler, Esquire  
Zeigler & Zimmerman, P.C.  
355 North 21<sup>st</sup> Street  
Camp Hill, PA 17011-3707  
717-731-1484

Gordon Smith, Esquire  
Electric Clearinghouse, Inc.  
John & Hengerer  
1200 17<sup>th</sup> Street, N.W., Suite 600  
Washington, D.C. 20036-3006



**Christopher B. Craig**

Counsel, Senate Democratic Appropriations Committee  
Room 545, Main Capitol Building  
Harrisburg, Pennsylvania 17120  
717-787-5662

*Counsel for Senator Vincent J. Fumo*

PROTHONOTARY'S OFFICE

97 OCT 20 PM 3:21

RECEIVED

Senate of Pennsylvania



ORIGINAL

VINCENT J. FUMO  
Chairman

PAUL S. DLUGOLECKI  
Executive Director

Senate Post Office  
The State Capitol  
Harrisburg, PA 17120-0030  
Telephone: (717) 787-5662  
Fax: (717) 783-5210

DEMOCRATIC COMMITTEE ON APPROPRIATIONS

October 20, 1997

DOCUMENT  
FOLDER

PROTHONOTARY'S OFFICE

97 OCT 20 PM 3:32

James J. McNulty, Acting Prothonotary  
Pennsylvania Public Utility Commission  
Room 206, North Office Building  
Harrisburg, Pennsylvania 17105-3265

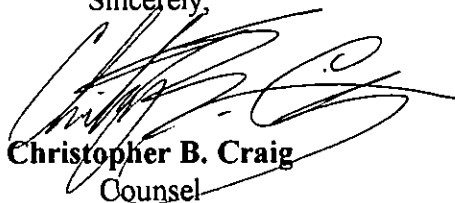
**Re: In re the Matter or the Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Pennsylvania Public Utility Code - PUC Docket No. R-00973953.**

Dear Mr. McNulty:

Enclosed for filing is an original and three (3) copies of the Statement of Senator Vincent J. Fumo filed in support of the Petition of the Joint signatories to the Partial Settlement for Reconsideration of Commission Order of October 9, 1997 which has been seperately filed on this date.

Copies of the forgoing are being served on all parties of record. Please do not hesitate to call if I may provide any additional information.

Sincerely,

  
Christopher B. Craig  
Counsel

cc: All counsel of record.

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re the Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Pennsylvania Public Utility Code

+  
+  
+  
+  
+

Docket No. R-00973953

DOCKETED

OCT 22 1997

DOCUMENT FOLDER

STATEMENT OF SENATOR VINCENT J. FUMO

PROthonotary's Office  
97 OCT 20 PM 3:22

I, Senator Vincent J. Fumo, without waiving any constitutional privilege under the Speech or Debate Clause of the Pennsylvania Constitution, Article II, section 14 that may apply hereto, do hereby state as follows:


- 1. As both a PECO Energy Company (hereinafter "PECO") ratepayer and an elected member of the Pennsylvania Senate, who considered and deliberated the provisions of the Electricity Generation Customer Choice and Competition Act (hereinafter the "Deregulation Act") and who represents many of the ratepayers within the PECO service territory, I have been an active litigant in the Company's restructuring application before this Commission.
2. It has remained my central objective to ensure that the provisions of the Deregulation Act are executed by this Commission in accordance with the intent of the General Assembly, and that a final resolution of the PECO restructuring application proceeding is completed in a manner that provides substantial and equitable benefit to area ratepayers.

3. Based upon repeated public statements by certain Public Utility Commission members encouraging a resolution of this matter through settlement, a settlement was pursued in good faith among the various consumer advocacy organizations and PECO. A Partial Settlement was achieved among all of the various Commonwealth agencies, the consumer advocacy organizations and the Company. Said settlement was submitted for Commission consideration and approval on August 27, 1997.
  
4. Without prior notice or opportunity to submit comment, this Commission issued an order which has been interpreted by the presiding Administrative Law Judges to compel all signatories to the Joint Settlement to submit argument and evidence in support of both the Joint Settlement and the signatories' original litigation positions. *See*, Order for Consolidation, October 9, 1997.
  
5. The immediate effect of the present application of said Order is to place a significant burden on the limited resources of the Senate Democratic Appropriations Committee. A significant factor which weighed in favor of pursuing a resolution of this matter through settlement was the desire to conserve limited resources, effort and time that would otherwise be expended if compelled to fully litigate the outcome of this case. Unfortunately, the present interpretation of this Commission's order is to eliminate a significant benefit of the Settlement — the conservation of the financial resources of the Senate Democratic Appropriations Committee. The Senate Democratic Appropriations Committee is without the necessary financial and staff resources to advance both a case in support of the Joint Settlement and the original litigation positions of the parties. The Senate Democratic Appropriations Committee has already expended close to \$100,000 in witness fees, litigation costs and transcript charges, exclusive of staff resources, in an effort to pursue a settlement that provides benefits and safeguards to consumers. The

Committee only employs a single full-time attorney and one part-time law clerk who are presently involved in five (5) different and separate litigation proceedings. The Commission's sudden decision to change past practice of encouraging and favoring settlements and compelling this office to present both litigation position and settlement position in this matter would place an unreasonable burden on the Committee's resources.

6. An additional effect of the present application of the Commission's Order is to compel both parties and their witnesses to advance contradictory public policy positions. It is both misleading and confusing to the general public for elected policy makers to publicly advocate contradictory positions concerning such important policy concerns as utility stranded cost recovery. The present application of the Commission's Order places state elected officials in an untenable position that fails to serve the public interest.
  
7. In an effort to encourage Commission consideration of the Joint Settlement, I and several consumer advocacy organizations agreed to generally continue the constitutional challenge to the Deregulation Act. *See, Fumo et al. v. Pennsylvania Public Utility Commission*, 269 M.D. 1997 (Cmwlth. Ct.). The *Fumo* matter has already been fully briefed and presented to the Court for oral argument. However, the present application of this Commission's Order to compel consideration of the Settlement after fully litigating the restructuring case effectively removes any incentive to defer Commonwealth Court consideration of the constitutional challenge, and may require immediate judicial consideration of the merits of the constitutional challenge in an effort to preserve the full litigation positions of both myself and various consumer advocacy organizations.

8. The repeated public statements by Commission members to encouraged settlement were relied upon in good faith by many of the parties in this proceeding. However, presentment of a Settlement in conjunction with full litigation arguments and evidence is prejudicial to proponents of the settlement and effectively punishes and discourages their efforts. It would be in the public interest for the Commission to first consider the propriety of the Joint Settlement, and only if it were to reject the Settlement should the parties be compelled to advance their original litigation positions.



VINCENT J. FUMO  
State Senator

SWORN AND SUBSCRIBED  
BEFORE ME THIS 20<sup>TH</sup> DAY  
OF OCTOBER 1997

S E A	<b>SUBSCRIBED AND SWORN TO BEFORE ME</b>	
	Month <u>Oct</u>	Day <u>20</u> Year <u>1997</u>
	<u>Charles J. Sholders</u> Signature of Person Administering Oath	
	Municipality	<b>NOTARIAL SEAL</b> County <b>Charles J. Sholders, Notary Public</b> Harrisburg, Dauphin County, PA My Commission Expires April 14, 2001

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In re the Application of PECO Energy  
Company for Approval of its Restructuring  
Plan Under Section 2806 of the Pennsylvania  
Public Utility Code**

+  
+  
+  
+  
+

**Docket No. R-00973953**

**CERTIFICATION OF SERVICE**

I Christopher B. Craig, attorney for Senator Vincent J. Fumo, hereby certify that a copy of the foregoing document has been served in person or by first class mail at the addresses indicated below. I further certify that the manner of service satisfied the requirements of 52 PA.Code §§ 5.75 and 1.54.

*The Honorable Charles E. Rainey, Jr.*  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, PA 19130  
215-560-2105

*The Honorable Marlane R. Chestnut*  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, PA 19130  
215-560-2105

Paul R. Bonney, Esquire  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215-841-4252

Tanya J. McCloskey, Esquire  
Assistant Consumer Advocate  
Pennsylvania Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
717-783-5048

Steven P. Hershey, Esquire  
Philip A. Bertocci, Esquire  
Community Legal Services  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-3777

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Pennsylvania Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North 2<sup>nd</sup> Street  
Harrisburg, PA 17101  
717-783-2525

David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
717-232-8000

Alan J. Barak, Esquire  
Alan J. Barak, P.C.  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
717-540-5166

Kenneth Mickens, Esquire  
Senior Prosecutor, Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265, Pitnick Building  
Harrisburg, PA 17105-3265  
717-787-1976

Walter W. Cohen, Esquire  
Obermayer, Rebmann, Maxwell & Hippel, LLP  
204 State Street  
Harrisburg, PA 17101-1236  
717-234-9730

Bruce A. Connell, Esquire  
Dupont Power Marketing, Inc.  
600 N. Dairy Ashford, ML-1034  
Houston, Texas 77079  
281-293-1736

Joseph J. Malatesta, Jr., Esquire  
Janet L. Miller, Esquire  
Malatesta, Hawke & McKeon, LLP  
100 N. 10<sup>th</sup> Street  
Harrisburg, PA 17101  
717-236-1300

Paul E. Russell, Esquire  
Associate General counsel  
Pennsylvania Power & Light  
2 North 9th Street  
Allentown, PA 18101-1179  
601-774-4254

Lance Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141  
215-424-1441

David Boonon, Esquire  
New Energy Ventures  
200 South Broad Street, Suite 800  
Philadelphia, PA 19107  
215-

Gary A. Jefferies, Esquire  
Senior Attorney, CNG Energy Services Corporation  
1 Park Ridge Center  
P.O. Box 15746  
Pittsburgh, PA 15244-0746  
412-787-4268

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
717-230-9555

Daniel Clearfield, Esquire  
Wolf, Block, Shorr & Solis-Cohen  
305 North Front Street, Suite 401  
Harrisburg, PA 17101-1236  
717-237-7172

Terence Fitzpatrick, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third, Suite 101  
Harrisburg, PA 17102  
717-236-7714

Michael G. Banta, Esquire  
Vice President, Assistant General Counsel  
Indianapolis Power & Light Company  
1 Monument Circle  
Indianapolis, Indiana 46206-1595  
317-261-8449

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
412-838-6210

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
304 North Front Street, Suite 403  
Harrisburg, PA 17101  
717-236-4812

Michael L. Kessler, Esquire  
Vice President, General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, Virginia 22314  
703-684-1006

Sam DeFrawi, Esquire  
United States Navy Rate Intervention  
Washington Navy Yard, Bldg. 212, Code 00RI  
901 M Street, South East  
Washington, D.C. 20374-5018  
202-

Usher Fogel, Esquire  
Roland, Fogel, Koblents & Carr, LLP  
1 Columbia Place  
Albany, New York 12207  
518-434-8112

Susan M. Shanman, Esquire  
212 North 3<sup>rd</sup> Street  
Suite 203  
Harrisburg, PA 17101-1505  
717-236-2055

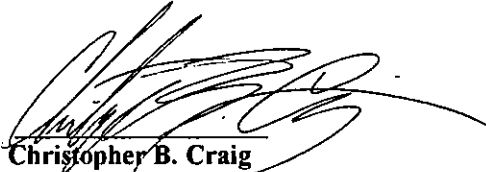
Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
717-237-5368

Stephanie A. Sugrue, Esquire  
Duane, Morris & Heckscher  
1667 K Street North West  
Suite 700  
Washington, D.C. 20006-1608  
202 776-7800

Joseph A. Dworetzky, Esquire  
Hangley, Aronchick, Segal & Pudlin  
1 Logan Square, 12<sup>th</sup> Floor  
Philadelphia, PA 19103-6933  
215-496-7014

Paul L. Zeigler, Esquire  
Zeigler & Zimmerman, P.C.  
355 North 21<sup>st</sup> Street  
Camp Hill, PA 17011-3707  
717-731-1484

Gordon Smith, Esquire  
Electric Clearinghouse, Inc.  
John & Hengerer  
1200 17<sup>th</sup> Street, N.W., Suite 600  
Washington, D.C. 20036-3006



**Christopher B. Craig**  
Counsel, Senate Democratic Appropriations Committee  
Room 545, Main Capitol Building  
Harrisburg, Pennsylvania 17120  
717-787-5662  
*Counsel for Senator Vincent J. Fumo*

PROTHONOTARY'S OFFICE

97 OCT 20 PM 3:32

RECEIVED

**ORIGINAL**

**DOCUMENT  
FOLDER**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RE: APPLICATION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
RESTRUCTURING PLAN UNDER : Docket No. R-00973953  
SECTIONS 2806 OF THE :  
PUBLIC UTILITY CODE :

RECEIVED  
97 OCT 20 PM 3:20  
PROTODIARY'S OFFICE

**DOCKETED  
OCT 22 1997**

ANSWER OF CEPA, ET AL. TO THE PETITION OF  
ENRON ENERGY SERVICES POWER, INC. FOR APPROVAL OF  
AN ELECTRIC COMPETITION AND CUSTOMER CHOICE PLAN  
AND FOR AUTHORITY TO SERVE AS THE PROVIDER OF  
LAST RESORT IN THE PECO SERVICE TERRITORY

CEPA, Tenant Action Group (TAG), Association of Community Organizations for Reform Now (ACORN), and John W. Long, Jr. hereby answer the Petition of Enron Energy Services Power, Inc. For Approval of n Electric Competition and Customer Choice Plan and for Authority to Serve as the Provider of Last Resort in the PECO Service Territory as follows:

The Introduction does not require a response.

1. Admitted.
- 2 - 8. These allegations are conclusions of law to which no response is required.
9. Admitted.
10. Admitted.
11. Denied. It is denied that the terms of the Partial Settlement listed here are the only paragraphs relevant to the Choice Plan. It is further denied (as alleged in sub paragraph (g)) that all terms of the Partial Settlement are conditioned on the issuance of an irrevocable order. On the

contrary, only a portion of the the rate reductions are conditioned on the issuance of such an order. All other allegations are admitted.

12. Denied. On the contrary, the Partial Settlement provides both choice and competition as set forth in the testimony of, among other witnesses, Richard Silkman.

13-14. Denied for the reasons set forth in 12.

15. Denied. After reasonable investigation, CEPA et al. have inadequate information upon which to base an opinion concerning these allegations and proof is demanded.

16-17. Denied for the reasons set forth in 12.

18. Denied for the reasons set forth in 12 and as a conclusion of law.

19. Denied for the reasons set forth in 12.

20-21. Denied for the reasons set forth in 12 and as a conclusion of law.

22-23. Denied. After reasonable investigation, CEPA et al. have inadequate information upon which to base an opinion concerning these allegations and proof is demanded.

24. These allegations are conclusions of law to which no response is required

25. Admitted in part, denied in part. With regard to the allegation that the issue of provider of last resort should be considered in this proceeding, this allegation is a conclusion of law which may be inconsistent with provisions of the Electric Competition and Customer Choice Act and therefore no answer is required.

26-30. Denied. After reasonable investigation, CEPA et al. have inadequate information upon which to base an opinion concerning these allegations and proof is demanded

31. Denied. After reasonable investigation, CEPA et al. have inadequate information upon which to base an opinion concerning these allegations and proof is demanded as to the

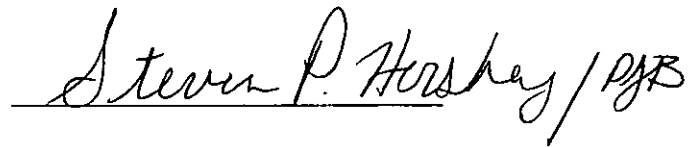
factual allegations. No response is required for conclusions of law.

32-34. Denied. After reasonable investigation, CEPA et al. have inadequate information upon which to base an opinion concerning these allegations and proof is demanded as to the factual allegations. No response is required for conclusions of law.

35. Denied. After reasonable investigation, CEPA et al. have inadequate information upon which to base an opinion concerning these allegations and proof is demanded as to the factual allegations.

36-37. Denied. After reasonable investigation, CEPA et al. have inadequate information upon which to base an opinion concerning these allegations and proof is demanded as to the factual allegations.

October 20, 1997



STEVEN P. HERSHEY  
PHILIP A. BERTOCCI

COMMUNITY LEGAL SERVICES, INC.

Attorneys for CEPA, TAG, ACORN  
And John W. Long, Jr.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In re the Application of PECO Energy  
Company for Approval of its Restructuring  
Plan Under Section 2806 of the Pennsylvania  
Public Utility Code**

+  
+  
+  
+  
+  
+

**Docket No. R-00973953**

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the foregoing document has been served in person or by first class mail at the addresses indicated below. I further certify that the manner of service satisfied the requirements of 52 PA.Code §§ 5.75 and 1.54.

The Honorable Charles E. Rainey, Jr.  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, PA 19130  
215-560-2105

The Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, PA 19130  
215-560-2105

Paul R. Bonney, Esquire  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215-841-4252

Tanya J. McCloskey, Esquire  
Assistant Consumer Advocate  
Pennsylvania Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
717-783-5048

Steven P. Hershey, Esquire  
Philip A. Bertocci, Esquire  
Community Legal Services  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-3777

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Pennsylvania Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North 2<sup>nd</sup> Street  
Harrisburg, PA 17101  
717-783-2525

David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
717-232-8000

Alan J. Barak, Esquire  
Alan J. Barak, P.C.  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
717-540-5166

Kenneth Mickens, Esquire  
Senior Prosecutor, Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265, Pitnick Building  
Harrisburg, PA 17105-3265  
717-787-1976

Walter W. Cohen, Esquire  
Obermayer, Rebmann, Maxwell & Hippel, LLP  
204 State Street  
Harrisburg, PA 17101-1236  
717-234-9730

Bruce A. Connell, Esquire  
Dupont Power Marketing, Inc.  
600 N. Dairy Ashford, ML-1034  
Houston, Texas 77079  
281-293-1736

Joseph J. Malatesta, Jr., Esquire  
Janet L. Miller, Esquire  
Malatesta, Hawke & McKeon, LLP  
100 N. 10<sup>th</sup> Street  
Harrisburg, PA 17101  
717-236-1300

Paul E. Russell, Esquire  
Associate General counsel  
Pennsylvania Power & Light  
2 North 9th Street  
Allentown, PA 18101-1179  
601-774-4254

Lance Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141  
215-424-1441

David Boonon, Esquire  
New Energy Ventures  
200 South Broad Street, Suite 800  
Philadelphia, PA 19107  
215-

Gary A. Jefferies, Esquire  
Senior Attorney, CNG Energy Services Corporation  
1 Park Ridge Center  
P.O. Box 15746  
Pittsburgh, PA 15244-0746  
412-787-4268

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
717-230-9555

Daniel Clearfield, Esquire  
Wolf, Block, Shorr & Solis-Cohen  
305 North Front Street, Suite 401  
Harrisburg, PA 17101-1236  
717-237-7172

Terence Fitzpatrick, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third, Suite 101  
Harrisburg, PA 17102  
717-236-7714

Michael G. Banta, Esquire  
Vice President, Assistant General Counsel  
Indianapolis Power & Light Company  
1 Monument Circle  
Indianapolis, Indiana 46206-1595  
317-261-8449

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
412-838-6210

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
304 North Front Street, Suite 403  
Harrisburg, PA 17101  
717-236-4812

Michael L. Kessler, Esquire  
Vice President, General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, Virginia 22314  
703-684-1006

Sam DeFrawi, Esquire  
United States Navy Rate Intervention  
Washington Navy Yard, Bldg. 212, Code 00RI  
901 M Street, South East  
Washington, D.C. 20374-5018  
202-

Usher Fogel, Esquire  
Roland, Fogel, Koblents & Carr, LLP  
1 Columbia Place  
Albany, New York 12207  
518-434-8112

Susan M. Shanman, Esquire  
212 North 3<sup>rd</sup> Street  
Suite 203  
Harrisburg, PA 17101-1505  
717-236-2055

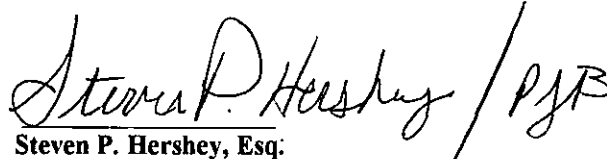
Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
717-237-5368

Stephanie A. Sugrue, Esquire  
Duane, Morris & Heckscher  
1667 K Street North West  
Suite 700  
Washington, D.C. 20006-1608  
202 776-7800

Joseph A. Dworetzky, Esquire  
Hangley, Aronchick, Segal & Pudlin  
1 Logan Square, 12<sup>th</sup> Floor  
Philadelphia, PA 19103-6933  
215-496-7014

Paul L. Zeigler, Esquire  
Zeigler & Zimmerman, P.C.  
355 North 21<sup>st</sup> Street  
Camp Hill, PA 17011-3707  
717-731-1484

Gordon Smith, Esquire  
Electric Clearinghouse, Inc.  
John & Hengerer  
1200 17<sup>th</sup> Street, N.W., Suite 600  
Washington, D.C. 20036-3006

  
**Steven P. Hershey, Esq.**  
*Counsel for CEPA et al.*

PROTHONOTARY'S OFFICE

97 OCT 20 P.1 3:25

RECORDED



ORIGINAL

OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

Bernard A. Ryan, Jr.  
Small Business Advocate

October 20, 1997

(717) 783-2525  
(717) 783-2831(FAX)

HAND\_DELIVERED

DOCUMENT  
FOLDER

KJR

Office of the Prothonotary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
P. O. Box 3265  
Harrisburg, PA 17105-3265

PROTHONOTARY'S OFFICE

97 OCT 20 PM 4:11

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

Petition of Enron Energy Services Power, Inc.  
For Approval of an Electric Competition and  
Choice Plan and for Authority Pursuant to  
Section 2807(e)(3) of the Public Utility Code  
To Serve as the Provider of Last Resort in the  
Service Territory of PECO Energy Company  
Docket No. ~~R-00974265~~

Dear Prothonotary:

I am delivering for filing today the original plus three copies of the Answer of the Office of Small Business Advocate to the Petition of Enron Energy Services Power, Inc.

A copy has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

Bernard A. Ryan, Jr.  
Small Business Advocate

Enclosures

- cc: Hon. Marlane R. Chestnut
- Hon. Charles E. Rainey, Jr.
- Parties of Record
- Mr. Brian Kalcic

DOCKETED

OCT 22 1997

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Petition of Enron Energy Services Power, :  
Inc. For Approval of an Electric :  
Competition and Choice Plan and for :  
Authority Pursuant to Section 2807(e) (3) : Docket No. P-00971265  
of the Public Utility Code to Serve as :  
the Provider of Last Resort in the :  
Service Territory of PECO Energy Company :

PROTHONO LARRY'S OFFICE

97 OCT 29 PM 4:11

1-000000000

DOCUMENT  
FOLDER

ANSWER OF THE OFFICE OF SMALL BUSINESS ADVOCATE  
TO THE PETITION OF ENRON ENERGY SERVICES POWER, INC.

The Office of Small Business Advocate ("OSBA") hereby submits this Answer to the Petition filed by Enron Energy Services Power, Inc. ("Enron Energy") on October 7, 1997 requesting that the Commission approve its Electric Competition and Customer Choice Plan, in place of the Restructuring Plan that would be implemented pursuant to the Joint Petition for Partial Settlement submitted by various parties in the Restructuring proceeding. In addition, Enron Energy seeks approval to be designated as the provider of last resort in PECO's service territory.

While the OSBA defers to other parties in the Restructuring Proceeding, including PECO Energy Company and the Philadelphia Area Industrial Energy Users Group, for a comprehensive response to the Enron Energy Petition, we wish to highlight two particular concerns that we have about the Enron Energy Petition. Initially, the OSBA submits that Enron Energy inappropriately attempts to compare the provisions of its proposal with those set forth in the Joint Petition for Partial Settlement. In particular, since both scenarios would require PECO to fulfill obligations that go well beyond the requirements of the Electricity

Generation and Customer Choice and Competition Act, 66 Pa.C.S. §2801 et seq., implementation can occur only if PECO is amenable to all aspects of the Restructuring Plan. With PECO as a signatory to the Joint Partial Settlement Petition, but opposing the Enron Energy proposal, only the Joint Partial Settlement Petition actually represents a viable alternative to the full litigation of PECO's Restructuring Plan.

Further, compared to the Joint Partial Settlement Petition, which involved the balancing of various divergent interests to arrive at the resolution of many complex issues raised by the transition to a competitive generation supply in Pennsylvania, the Enron Energy Petition represents nothing more than a late-filed self-serving proposal of one alternative supplier of generation. Through its Petition, Enron Energy merely seeks to disrupt the Commission's consideration of the Joint Partial Settlement Petition in a manner that goes far beyond the procedural process that has been established to consider opposition to the Joint Partial Settlement Petition.

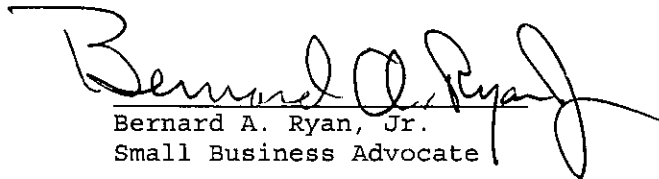
The second matter that is of particular concern to the OSBA is Enron Energy's proposal to become the provider of last resort in PECO's service territory without providing any information to the Commission about its corporate status, finances, or operational experience. This deficiency alone should cause the Commission to question the realistic viability of the Enron proposal.

While the OSBA does not question the Commission's obligation and authority to review proposed settlements for the purpose of determining whether they are in the public interest, the OSBA respectfully urges the Commission to remain focused on the question of whether the comprehensive package presented by the Joint Partial Settlement Petition is in the public interest. That review should include a determination of the overall acceptability of the various provisions of the Joint Partial Settlement Petition, including the level of stranded cost recovery that would be permitted, the immediate and substantial rate reductions

that would be guaranteed for all consumers, the extensions of generation and distribution rate caps beyond the periods established by the statute, and the acceleration of the opportunity for all customers to have access to a competitive generation supply. That inquiry should not include the consideration of a unilateral settlement offer that cannot realistically be fulfilled.

Simply stated, the Commission should not allow the Enron Energy Petition to derail the efforts of the signatory parties to achieve a resolution of many complex issues presented by this Restructuring proceeding in a manner that balances a variety of diverse interests and ensures that electric utility consumers, including small businesses, will be treated fairly during the transition to a competitive generation market in Pennsylvania.

Respectfully submitted,

  
Bernard A. Ryan, Jr.  
Small Business Advocate

Date: October 20, 1997

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Answer on behalf of the Office of Small Business Advocate by first class mail (unless otherwise indicated) upon the persons addressed below:

Hon. Marlane R. Chestnut  
Administrative Law Judge  
Pa. Public Utility Commission  
1302 Philadelphia State Office Bldg.  
Broad and Spring Garden Streets  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 - Fax

Hon. Charles E. Rainey, Jr.  
Administrative Law Judge  
Pa. Public Utility Commission  
1302 Philadelphia State Office Bldg.  
Broad and Spring Garden Streets  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 - Fax

Paul Bonney, Esquire  
Ward Smith, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-5544  
(215) 568-3389 (fax)

David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(PAIEUG)  
(717) 232-8000  
(717) 237-5300 (fax)

Kenneth L. Mickens, Esquire  
Charles Daniel Shields, Esq.  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17101  
(Office of Trial Staff)  
(717) 787-1976  
(717) 772-2677

Tanya J. McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(Office of Consumer Advocate)  
(717) 783-5048  
(717) 783-7152 (fax)

Alan J. Barak, Esquire  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Environmentalists)  
(717) 540-5106  
(717) 541-1970 (fax)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
Suite 401  
305 North Front Street  
Harrisburg, PA 17101  
(Enron Corp.)  
(717) 237-7160  
(717) 237-7161 (fax)

Roger E. Clark, Esquire  
905 Denston Drive  
Ambler, PA 19002-3901  
(Environmentalists)  
(215) 643-2364  
(215) 628-2630 (fax)

Walter W. Cohen, Esquire  
Obermayer Rebmann Maxwell &  
Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Indianapolis Power & Light)  
(717) 234-9730

John L. Munsch, Esquire  
West Penn Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15601  
(Allegheny Power)  
(412) 837-3000  
(412) 838-6177 (fax)

William T. Hawke, Esquire  
Janet L. Miller, Esquire  
Todd S. Stewart, Esquire  
Malatesta, Hawke & McKeon  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105  
(MAPSA)  
(717) 236-1300  
(717) 236-4841 (fax)

Clinton A. Vince, Esquire  
Paul E. Nordstrom, Esquire  
Deborah A. Swanstrom, Esquire  
Joel D. Newton, Esquire  
Verner, Liipfert, Bernhard,  
McPherson & Hand  
901 15th Street, N.W.  
Washington, DC 20005-2301  
(Allegheny Power)  
(202) 371-6000  
(202) 371-6279 (fax)

Donald A. Kaplan, Esquire  
Preston Gates Ellis &  
Rouvelas Meeds  
Suite 500  
1735 New York Avenue, N.W.  
Washington, DC 20006-4759  
(202) 628-1700  
(202) 331-1024 (fax)

Mr. Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Christopher B. Craig, Esquire  
Counsel to Senator Fumo  
Room 545, Main Capitol Bldg.  
Harrisburg, PA 17120  
(717) 787-5662

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Delmarva Power & Light Co.)  
(717) 230-9555  
(717) 230-9750 (fax)

Mr. Richard LaCapra  
LaCapra Associates  
The Providence Building  
333 Washington Street  
Boston, MA 02108  
(Witness for OCA)  
(617) 367-6500

Paul Russell, Esquire  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101-1179  
(PP&L)  
(610) 774-4254  
(610) 774-6726 (fax)

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, et al)  
(215) 981-3777  
(215) 981-0434 (fax)

Michael G. Banta, Esquire  
Vice-President and Assistant General  
Counsel  
Indianapolis Power & Light Co.  
One Monument Circle  
P.O. Box 1595  
Indianapolis IN 46206-1595  
(317) 261-8449

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(302) 429-3320  
(302) 429-3801 (fax)

Bruce A. Connell, Esquire  
DuPont Power Marketing, Inc.  
Legal Department  
600 N. Dairy Ashford, ML-1034  
Houston, TX 77079  
(281) 293-1736  
(281) 293-3826 (fax)

Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street  
Suite 101  
Harrisburg, PA 17102-2025  
(GPU Energy)  
(717) 236-7714  
(717) 236-7816 (fax)

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish &  
Kauffman  
305 North Front Street  
Suite 403  
Harrisburg, PA 17101  
(AARP)  
(717) 236-4812  
(717) 236-7811 (fax)

Michael L. Kessler, Esquire  
Vice President/General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, VA 22314  
(703) 684-1006  
(703) 683-3256 (fax)

Joseph J. Malatesta, Jr., Esq.  
Malatesta, Hawke & McKeon  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105  
(Municipal Intervenor Group)  
(717) 236-1300  
(717) 236-4841 (fax)

Usher Fogel, Esquire  
Roland, Fogel, Koblenz  
& Carr, LLP  
1 Columbia Place  
Albany, NY 12207  
(Pa. Petroleum Assoc.)  
(Plumbing, Heating, Cooling  
Contractors, Inc.)  
(518) 434-8112  
(518) 434-3232 (fax)

Mr. David Boonin  
New Energy Ventures  
1845 Walnut Street, Suite 2525  
Philadelphia, PA 19103  
(215) 563-9290  
(215) 563-9292 (fax)

Mr. Stephen J. Baron  
J. Kennedy and Associates, Inc.  
35 Glenlake Parkway, Suite 475  
Atlanta, GA 30328

Audrey Van Dyke, Esquire  
Naval Facilities Engineering Command  
- Litigation Headquarters 09L  
Washington Navy Yard Bldg. 218  
901 M Street SE  
Washington, DC 20374-5018  
(202) 685-1931

Mr. Peter Bradford  
Bradford Road, Route 11  
P.O. Box 497  
Peru, Vermont 05152  
(witness for CEPA)  
(802) 824-4296

Mr. Richard Silkman  
163 Main Street  
Yarmouth, Maine 04096  
(witness for CEPA)  
(207) 846-0539

Joseph A. Dworetzky, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square  
Twelfth Floor  
Philadelphia, PA 19103-6933  
(215) 496-7014  
(215) 568-0300 (fax)

Ms. Sharon Johnson  
Putnam, Hayes & Bartlett  
1776 Eye Street, NW  
Washington, DC 20006

Susan M. Shanaman, Esquire  
212 North Third Street  
Suite 203  
Harrisburg, PA 17101-1505  
(Center for Energy/Econ Dev)  
(717) 236-2055  
(717) 236-2070 (fax)

Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(Pa. Retailers' Assoc.)  
(717) 237-5216  
(717) 237-5300 (fax)

Craig G. Goodman, Esquire  
ERI, Incorporated  
3333 K. Street, N.W.  
Suite 425  
Washington, DC 20007  
(Equitable Resources)  
(202) 333-3288  
(202) 333-3266 (fax)

Stephanie A. Sugrue, Esquire  
Duane, Morris & Heckscher  
1667 K Street, N.W., Suite 700  
Washington, DC 20006-1608  
(QST Energy, Inc.)  
(202) 776-7800  
(202) 776-7801 (fax)

John J. Gallagher, Esquire  
Zsuzsanna E. Benedek, Esquire  
Michael Klein, Esquire  
Leboeuf, Lamb, Greene & MacRae  
200 N. Third Street, Suite 300  
P.O. Box 12105  
Harrisburg, PA 17108-2105  
(717) 232-8199  
(717) 232-8720

Gordon Smith, Esquire  
John & Hengerer  
1200 17th Street, N.W.  
Suite 600  
Washington, DC 20036-3006  
(Duke Energy Trading/Marketing)  
(Electric Clearinghouse, Inc.)  
(Vastar Power Marketing, Inc.)  
(NorAm Energy Management, Inc.)  
(202) 429-8809  
(202) 429-8805 (fax)

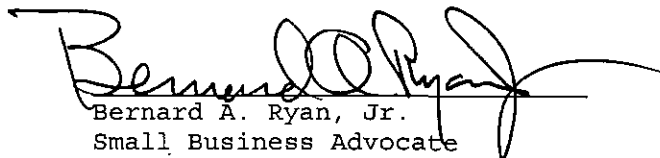
Brian A. Rider, President  
Pennsylvania Retailers' Assoc.  
224 Pine Street  
Harrisburg, PA 17101-1325  
(717) 233-7976

Judah L. Rose  
ICF Resources, Inc.  
9300 Lee Highway  
Fairfax, VA 22031  
(703) 934-3342  
(703) 934-3349 (fax)

Mr. William F. Sundermeir  
2504 West Avenue  
Ocean City, NJ 08226

John Klauberg, Esquire  
Bruce Miller, Esquire  
LeBoeuf, Lamb, Greene and MacRae, LLP  
125 West 55th Street  
New York, NY 10019-5389  
(212) 424-8125  
(212) 424-8500 (fax)

97 OCT 20 PM 4: 11  
FAY, JEN  
PROTHONOTARY'S OFFICE

  
Bernard A. Ryan, Jr.  
Small Business Advocate

Date: October 20, 1997

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY )  
COMMISSION )  
v. )  
PECO ENERGY COMPANY )

Docket No. R-00973953

KJR

PETITION OF ENRON ENERGY SERVICES )  
POWER, INC. FOR APPROVAL OF AN )  
ELECTRIC COMPETITION AND )  
CUSTOMER 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 )

Docket No. P-00971265  
(consolidated)

PROthonotary's OFFICE  
97 OCT 20 PM 2:55  
RECORDED

COMMENTS OF NORAM ENERGY MANAGEMENT, INC. AND DUKE ENERGY  
TRADING AND MARKETING, L.L.C. ON PETITION OF ENRON ENERGY  
SERVICES POWER, INC.

These Comments are filed by NorAm Energy Management, Inc. ("NorAm") and Duke Energy Trading and Marketing, L.L.C. ("DETM") (collectively the "Marketers Group") in response to the Petition filed by Enron Energy Services Power, Inc. ("Enron") on October 7, 1997 in Docket No. P-00971265, and the Commission's Order of October 9, 1997 consolidating that proceeding with the PECO Energy Company ("PECO") restructuring proceeding pending in Docket No. R-00973953. The Commission has established October 20, 1997 as the deadline for initial comments on Enron's filing.

DOCKETED  
OCT 22 1997

DOCUMENT  
FOLDER

## I.

NorAm and DETM are each intervenors in Docket No. R-0073953, and, like Enron, are each power marketers interested in actively participating in the retail electricity market unfolding in Pennsylvania. They have closely followed developments relating to the Partial Settlement filed by PECO and others on August 27, 1997 in these proceedings. On September 9, 1997, they, along with Vastar Power Marketing, Inc. and Electric Clearinghouse, Inc., jointly submitted a Prehearing Memorandum in which they set forth their respective positions on that settlement offer. They monitored directly the technical hearings held last week (October 14-17, 1997) in Philadelphia on the settlement, and expect to file briefs in accordance with the schedule established for that purpose.

## II.

The Marketers Group have not, at this juncture, formed an opinion about whether they will, at the end of the day, support or oppose the Enron initiative--known as the "Customer Choice Plan"--filed here. Based on their preliminary review of that filing, however, they have identified a number of issues introduced or illuminated by that filing which merit comment.

First and foremost are the issues related to Enron's assertion that, by substituting its stranded cost recovery plan for that articulated in the PECO settlement, additional customer savings can be achieved during the effective stranded cost recovery period. These savings would be manifested in several ways. Obviously, they would be reflected in the lower per kwh stranded cost recovery charges for the formative period through 2002 as shown in the schedule on page 23 of Enron's Petition. Additional savings would be made available through the natural forces at work in a competitive market. By revising the mechanisms associated with

stranded costs recovery, and inversely raising the ceiling on the generation market credit, Enron's proposal provides greater opportunity and inducement for these suppliers to enter and compete for the retail market, and, in turn, to fashion customized service packages to suit the needs of that market.

If Enron's plan for financing PECO's stranded costs recovery is supported on the record, an obvious concern from the standpoint of all customers and alternative suppliers must be why the PECO settlement as filed did not itself afford savings commensurate with those published herein by Enron. PECO, it would seem, could, like Enron, make greater use of ITC's, and have access to interest rates comparable to those available to Enron. Hence, whether or not Enron's proposal is ultimately deemed acceptable by the Commission in its entirety,<sup>1</sup> the *prima facie* case made therein for incremental stranded cost relief suggests compellingly that PECO's proposal may be misguided.

Second, the Marketers Group is mindful of the fact that the scope of the Customer Choice Plan proposed by Enron is broader than that of the Partial Settlement filed by PECO, et al. on September 9, 1997, with which it is obviously competing. For instance, whereas the PECO settlement would reserve decision regarding customer service matters such as competitive billing and metering to a future phase of the case or to generic rulemaking, Enron includes in its filing a pro forma Electric Service Delivery Tariff which establishes how these matters will be handled. In recognition of this, the Commission has, in its October 9, 1997 order, attempted to bring the PECO and Enron offerings into phase by instructing the OAL to

---

<sup>1</sup> Enron, at p.7 n. 11 of its filing, indicates that its Choice Plan must be accepted as a whole in order for Enron to be bound to it.

make provision for hearings on the reserved issues in Docket No. R-00973953<sup>2</sup>, and by inviting PECO to extend the deadline for resolution of its overall restructuring case. To the latter, PECO, by letter of October 14, 1997, has refused.

This state of affairs is perplexing. Generally speaking, the members of the Marketers Group support the concept of uniform service standards across utilities, including with respect to metering, billing, information exchange between the utility and marketers, creditworthiness standards, and codes of conduct. They believe that these standards should be promulgated by rulemaking. They are therefore troubled by the prospect of having to rush to precedential judgement on these matters in the context of an individual adjudicatory proceeding. If, nevertheless, it is unavoidable that these matters be tried here, then, in view of the seminal significance which will attach to resolution of these issues, it is imperative that all interested parties be provided adequate opportunity to have input into this part of the proceedings. In its October 14, 1997 letter, PECO agrees under these circumstances that a Final Order on its restructuring may be put off to March 12, 1998, consistent with the original litigation schedule adopted by the Administrative Law Judges. The Marketers Group would support this. The Marketers Group notes, however that, at page 29 of its Petition, Enron establishes a 90-day for Commission approval of its Choice Plan (i.e. by early January 1998). It appears that, in order to facilitate temporal resolution of all aspects of these two proceedings, that date may have to be relaxed.

\*\*\*\*\*

---

<sup>2</sup> In the prehearing conference on October 14, 1997, a hearing date was set for issues not resolved in the Partial Settlement.

The Marketers Group is continuing its review of Enron's Petition and attachments, and reserves the right to raise additional points of concern at the hearing to be convened to consider that filing and/or on brief.

Respectfully submitted,

*Douglas F. John* {KPA}

Douglas F. John, Esq.  
Gordon J. Smith, Esq.  
John & Hengerer  
1200 17<sup>th</sup> Street, NW  
Suite 600  
Washington, D.C. 20036

Counsel for  
NorAm Energy Management, Inc.  
Duke Energy Trading and Marketing, L.L.C.

I hereby certify that I have this day served a true copy of the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Washington D.C.: October 20, 1997

F:\WORD\391\PLEADING\R00973953.IC2

97 OCT 20 PM 2:55  
PROTHONOTARY'S OFFICE

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY )  
COMMISSION )

v. )

PECO ENERGY COMPANY )

Docket No. R-00973953

PETITION OF ENRON ENERGY SERVICES )  
POWER, INC. FOR APPROVAL OF AN )  
ELECTRIC COMPETITION AND )  
CUSTOMER 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 )

DOCUMENT  
FOLDER

Docket No. P-00971265  
(consolidated)

PROthonotary's OFFICE  
97 OCT 20 PM 2:56  
KJR

DOCKETED

OCT 22 1997

COMMENTS OF ELECTRIC CLEARINGHOUSE, INC. ON PETITION  
OF ENRON ENERGY SERVICES POWER, INC.

These Comments are filed by Electric Clearinghouse, Inc. ("ECI") in response to the Petition filed by Enron Energy Services Power, Inc. ("Enron") on October 7, 1997 in Docket No. P-00971265, and the Commission's Order of October 9, 1997 consolidating that proceeding with the PECO Energy Company ("PECO") restructuring proceeding pending in Docket No. R-00973953. The Commission has established October 20, 1997 as the deadline for initial comments on Enron's filing.

I.

ECI intervened in Docket No. R-0073953 and is interested in actively participating in the retail electricity market unfolding in Pennsylvania. ECI has closely followed developments relating to the Partial Settlement filed by PECO and others on August 27, 1997 in these

proceedings. On September 9, 1997, ECI, along with Vastar Power Marketing, Inc., Duke Energy Trading and Marketing, L.L.C., and NorAm Energy Management, Inc., submitted a Prehearing Memorandum in which it set forth its respective positions on that settlement offer. ECI monitored directly the technical hearings held last week (October 14-17, 1997) in Philadelphia on the settlement, and expects to file a brief in accordance with the schedule established for that purpose.

## II.

ECI has not, at this juncture, formed an opinion about whether it will, at the end of the day, support or oppose the Enron initiative--known as the "Customer Choice Plan"--filed here. Based on a preliminary review of that filing, however, ECI has identified a number of issues introduced or illuminated by that filing which merit comment.

First and foremost are the issues related to Enron's assertion that, by substituting its stranded cost recovery plan for that articulated in the PECO settlement, additional customer savings can be achieved during the effective stranded cost recovery period. These savings would be manifested in several ways. Most transparently, they would be reflected in the lower per kwh stranded cost recovery charges for the formative period through 2002 as shown in the schedule on page 23 of Enron's Petition. Additional savings would be made available through the natural forces at work in a competitive market. By easing the burden associated with stranded costs recovery, and inversely raising the ceiling on the generation market credit, Enron's proposal provides greater opportunity and inducement for these suppliers to enter and compete for the retail market, and, in turn, to fashion customized service packages to suit the needs of that market.

If Enron's plan for financing PECO's stranded costs recovery is supported on the record, an obvious concern from the standpoint of all customers and alternative suppliers must be why the PECO settlement as filed did not itself afford savings commensurate with those published herein by Enron. PECO, it would seem, could, like Enron, make greater use of ITC's, and have access to interest rates comparable to those available to Enron. Hence, whether or not Enron's proposal is ultimately deemed acceptable by the Commission in its entirety,<sup>1</sup> the *prima facie* case made therein for incremental stranded cost relief suggests compellingly that PECO's proposal may be misguided.

Second, ECI is intrigued by Enron's proposal to assume Provider of Last Resort (PLR) status in PECO's service area. Certainly, ECI is aware of no reason why Enron would be any less capable of performing in this capacity than PECO, and in that regard support Enron in concept. However, even though the arrangement envisioned by Enron does not appear designed to create opportunity for Enron as a margin-taker,<sup>2</sup> at least during the term of Choice Plan, ECI is nevertheless hesitant to endorse any plan which necessarily installs a single entity in the all-important role of default supplier. An enlightened monopolist is still a monopolist.

Arguably, in a fully competitive market, all consumers should be encouraged to make affirmative choices as to who their retail electricity supplier will be; incumbency should have

---

<sup>1</sup> Enron, at p.7 n. 11 of its filing, indicates that its Choice Plan must be accepted as a whole in order for Enron to be bound to it.

<sup>2</sup> Enron's plan calls for Enron to enter into a Power Purchase Agreement with PECO under which Enron would pay PECO a price equal to the generation credit for the capacity and energy necessary to meet its PLR responsibilities. Enron would then flow these charges through to its PLR customers without markup. See Petition at pp. 8, 21.

no inherent value. At the same time, ECI recognizes that not all elements of the market are equally attractive to suppliers, and there may well be a need to assign service responsibility for certain loads. One way of balancing these considerations would be to designate not one, but several, service area-specific "default suppliers, depending on the number of volunteers."<sup>3</sup> This approach has the appeal of fostering competition among suppliers for the right to serve these markets. Only if it is established that others are not interested in undertaking these responsibilities would there be merit in permitting a single entity to do it. In the alternative to a specific default provider or voluntary default providers, a risk pool arrangement could be used which would divide the responsibility among the suppliers. If a customer does not choose a supplier or is considered undesirable<sup>4</sup>, that customer would be placed in a pool.

Third, ECI is mindful of the fact that the scope of the Customer Choice Plan proposed by Enron is broader than that of the Partial Settlement filed by PECO, et al. on September 9, 1997, with which it is obviously competing. For instance, whereas the PECO settlement would reserve decision regarding customer service matters such as competitive billing and metering to a future phase of the case or to generic rulemaking, Enron includes in its filing a pro forma Electric Service Delivery Tariff which establishes how these matters will be handled. In recognition of this, the Commission has, in its October 9, 1997 order, attempted to bring the PECO and Enron offerings into phase by instructing the OAL to make provision

---

<sup>3</sup> ECI is aware of nothing in the text of the Electricity Generation Customer Choice and Competition Act to suggest that PLR responsibility must reside with a single, systemwide supplier. See 66 Pa.C.S. §2801 *et seq.* Discretion in this respect is given to the Commission. 66 Pa.C.S. §§2802(16), 2807(e)(3).

<sup>4</sup> All customers could pay a surcharge, a risk differential for unwanted customers.

for hearings on the reserved issues in Docket No. R-00973953<sup>5</sup>, and by inviting PECO to extend the deadline for resolution of its overall restructuring case. To the latter, PECO, by letter of October 14, 1997, has refused.

This state of affairs is perplexing. Generally speaking, ECI supports the concept of uniform service standards across utilities, including with respect to metering, billing, information exchange between the utility and marketers, creditworthiness standards, and codes of conduct. ECI believes that these standards should be promulgated by rulemaking. ECI is therefore troubled by the prospect of having to rush to precedential judgement on these matters in the context of an individual adjudicatory proceeding. If, nevertheless, it is unavoidable that these matters be tried here, then, in view of the seminal significance which will attach to resolution of these issues, it is imperative that all interested parties be provided adequate opportunity to have input into this part of the proceedings. In its October 14, 1997 letter, PECO agrees under these circumstances that a Final Order on its restructuring may be put off to March 12, 1998, consistent with the original litigation schedule adopted by the Administrative Law Judges. ECI would support this. ECI notes, however that, at page 29 of its Petition, Enron establishes a 90-day for Commission approval of its Choice Plan (i.e. by early January 1998). It appears that, in order to facilitate temporal resolution of all aspects of these two proceedings, that date may have to be relaxed.

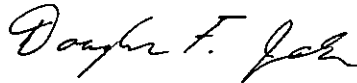
\*\*\*\*\*

---

<sup>5</sup> In the prehearing conference on October 14, 1997, a hearing date was set for issues not resolved in the Partial Settlement.

ECI is continuing its review of Enron's Petition and attachments, and reserves the right to raise additional points of concern at the hearing to be convened to consider that filing and/or on brief.

Respectfully submitted,



Douglas F. John, Esq.  
Gordon J. Smith, Esq.  
John & Hengerer  
1200 17<sup>th</sup> Street, NW  
Suite 600  
Washington, D.C. 20036

Counsel for  
Electric Clearinghouse, Inc.

I hereby certify that I have this day served a true copy of the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Washington D.C.: October 20, 1997

F:\WORD\391\PLEADING\R00973953.IC

RECEIVED  
97 OCT 20 PM 2:58  
FEDERAL JUDGE  
PROTHONOTARY'S OFFICE



ORIGINAL

DOCUMENT  
FOLDER

OFFICE OF CONSUMER ADVOCATE  
1425 Strawberry Square  
Harrisburg, Pennsylvania 17120

KJR

IRWIN A. POPOWSKY  
Consumer Advocate

October 20, 1997

(717) 783-5048

James J. McNulty, Prothonotary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
P. O. Box 3265  
Harrisburg, PA 17105-3265

R-973953

Re: Petition of Enron Energy Services Power, Inc.,  
for Approval of an Electric Competition  
and 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  
Docket No. P-00971265

Dear Prothonotary McNulty:

Enclosed please find for filing an original and three copies of the Office of Consumer Advocate's Response to Enron in the above-captioned proceeding.

Copies have been served upon all parties of record this date as evidenced by the attached Certificate of Service.

Sincerely,

Steven K. Steinmetz  
Assistant Consumer Advocate

PROTHONOTARY'S OFFICE  
97 OCT 20 PM 4:01  
RECEIVED

Enclosures

cc: All parties of record  
Hon. Marlane R. Chestnut  
Hon. Charles E. Rainey, Jr.

41431

141

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF ENRON ENERGY SERVICES :  
POWER, INC. FOR APPROVAL OF AN :  
ELECTRIC COMPETITION AND :  
CUSTOMER CHOICE PLAN AND FOR :  
AUTHORITY PURSUANT TO SECTION :  
2807(E)(3) OF THE PUBLIC UTILITY CODE :  
TO SERVE AS THE PROVIDER OF LAST :  
RESORT IN THE SERVICE TERRITORY :  
OF PECO ENERGY COMPANY :

R-973953

Docket No. P-00971265

**DOCKETED**

**DOCUMENT  
FOLDER**

PROTHONOTARY'S OFFICE  
91 OCT 20 PM 4:01

OCT 22 1997

---

RESPONSE OF THE  
OFFICE OF CONSUMER ADVOCATE

---

The Office of Consumer Advocate (OCA) has received and preliminarily reviewed the Petition of Enron Energy Services Power, Inc. (Enron Services) For Approval Of An Electric Competition And Customer 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 (Enron Petition). It is the OCA's understanding that, among other things, Enron Services seeks to have its "Choice Plan" approved by the Commission rather than the Joint Petition for Partial Settlement submitted at Docket No. R-00973953 in PECO's Restructuring proceeding. The Partial Settlement is currently being considered by the Commission at Docket No. R-00973953, and it is the OCA's understanding that the Commission wishes to consider the Enron Petition simultaneously with its consideration of the Partial Settlement. The OCA hereby provides a preliminary Response to the Enron Petition, but the OCA will present its substantive position

regarding the Enron Petition in the consolidated proceeding after having had an opportunity to fully explore all aspects of the Enron Petition.

At the outset, the OCA would note its continued support of the Partial Settlement. The OCA submits that the Partial Settlement provides, among other things, significant assured benefits and savings to ratepayers as well as substantial consumer protections, including specific protections for low income customers. The OCA has set forth its reasons for supporting the Joint Petition for Partial Settlement in its Statement in Support filed with the Commission. The OCA anticipates that it will further discuss its position in the Briefs scheduled to be filed with the Commission on these matters.

The OCA, however, has initiated its review of the Enron Petition and identified certain legal and substantive questions regarding the proposal that should be fully explored in the upcoming hearings in this matter. Of initial concern to the OCA are issues concerning the certainty of the proposed rates and rate reductions contained in the Enron Petition; the adequacy of the consumer protections contained in the Enron Petition; the Commission's ability to regulate Enron Services to ensure compliance with all aspects of the Public Utility Code if Enron Services is approved as the provider of last resort since Enron Services has expressly conditioned its Petition on receiving a declaration from the Commission that it is not a public utility under 66 Pa.C.S. §102; the proposed terms and conditions for service for customers, particularly those receiving provider of last resort service; the reasonableness of Enron Services' proposal to obtain all electric energy and capacity through one Power Sales Agreement with PECO; and the effect of the proposed market prices and CTC charges on all customers, particularly if those charges are insufficient to meet the obligations assumed under the Enron Petition.

The OCA would note that there are some provisions of the Enron Petition that are not inconsistent with the Partial Settlement and that may well be considered in the further litigation of this proceeding or through a future generic proceeding, whether or not the Partial Settlement is adopted. These items may include such matters as the further unbundling of non-wire distribution services, competitive safeguards, and customer/supplier/EDC interface issues generally described in Paragraph 33 of the Enron Petition.

Other issues raised in the Enron Petition may be premature for decision at this time. For example, Enron Services seeks to become the "Provider of Last Resort" for PECO's service territory. In Paragraph 24, Enron Services states that "Section 2807(e)(3) of the Act authorizes this Commission to designate other entities to serve as the PLR (provider of last resort)." The OCA agrees with this interpretation of the Act, but notes that the terms of Section 2807(e)(3) do not appear to be triggered until "the end of the phase-in period," as set forth in Section 2807(e)(2). Prior to, and during the phase-in -- which will last until January 1, 2001 under the Act, but is completed by January 2, 2000, under the Partial Settlement--it appears that the Act contemplated that the electric distribution utility would retain the full obligation to serve all those customers who did not or could not exercise an option to choose. See Section 2807(e)(1). The OCA acknowledges that this provision is not entirely clear, but this interpretation would seem to make some sense in light of the nature of the phase-in process during which either one-third or two-thirds of all customers will literally have no choice but to remain where they are.

Moreover, under the Act, the Commission is obligated to establish regulations to define the electric distribution company's obligation to connect, deliver and acquire energy for customers who do not choose an alternative generation provider or whose supplier fails to deliver

electric energy, i.e. the provider of last resort service. 66 Pa.C.S. §2807(e)(2) and (3). The OCA anticipates that the process for approving a provider of last resort, as well as the terms and conditions of such service, will be established in that rulemaking proceeding. Indeed, the OCA anticipates that the Commission, in that proceeding, may wish to explore such mechanisms as competitively determined standard offers for such service, or even auctions or competitive bids for the right to provide such service. The Partial Settlement specifically allowed for such possibilities in Paragraph 33, where it states that:

PECO agrees that unless the Commission designates an alternative provider of last resort under Section 2807(e)(3) of the Electric Competition Act, it will serve through December 31, 2008 as the provider of last resort for all retail electric customers in its service territory that do not choose or cannot choose to purchase power from alternative suppliers.

Partial Settlement, ¶33 (emphasis added).

Yet another class of issues raised by the Enron Petition are those in which the question arises as to whether the requested relief is permitted under the Act, without the consent of the electric distribution company, in this case, PECO. For example, a critical financial underpinning of the Enron Petition at Paragraph 23(m) appears to be the issuance by the Commission of a Qualified Rate Order (“QRO”) under which PECO would issue transition bonds in the amount of \$5.461 billion. According to the Enron Petition: “The QRO would state that PECO must sell (or cause to be sold) the transition bonds to Enron (or its designee) at par at a stated interest rate of 9.66%.” The rights of electric distribution companies, however, may be somewhat broader under the Act than the Enron Petition would envision. Specifically Section 2812(a)(1) states that:

A qualified rate order may be adopted by the commission only upon the application of an electric utility and shall become effective in

accordance with its terms. After the issuance of a qualified rate order, the electric utility retains sole discretion regarding whether to assign, sell or otherwise transfer intangible transition property or to cause the transition bonds to be issued, including the right to defer or postpone such assignment, sale, transfer or issuance.

66 Pa.C.S. §2812(a)(1).

While PECO certainly could exercise its “sole discretion” to assign or sell transition bonds to Enron, PECO’s public pronouncements to date have suggested that such a voluntary transfer is not likely to occur. The question, then, at this point is not only whether a sale or assignment of transition bonds as proposed by Enron is a good idea, but also whether the Commission has the authority to order such an issuance and assignment over the explicit objections of the electric utility.

Similarly, the Enron Petition would have PECO enter into a series of agreements to provide an array of services, including the provision of all the generation supplies necessary for Enron to serve as the provider of last resort for PECO’s service territory customers. Again the question is not simply whether this is a good idea, nor is it whether Enron and PECO could enter into such agreements as part of the settlement of this case or through separate arms’ length negotiations. Rather, the question that must be resolved is whether the Commission could order PECO to enter into these contracts.

Enron suggests that the failure of PECO to voluntarily agree to enter into these contracts, or to issue the transition bonds in accordance with its proposal, could be grounds for a Commission disallowance of stranded costs, see Enron Petition at page 2, fn. 4, but that is still not the same as determining whether the Commission has authority to order an electric utility to enter into these types of agreements over its express objection.

With respect to the substantive questions raised by the Enron Petition, the OCA notes that the critical issue is the stream of market prices and CTC charges provided for under the Petition. The OCA is well aware that the Enron Petition would increase the early year rate reductions for ratepayers, but questions remain concerning the certainty of the proposed benefits in the later years as the CTC proposed by Enron continues to increase. Moreover, in the early years, the ratepayer savings may be wholly contingent on factors beyond the Parties' control. Specifically, at page 29, Paragraph 35(g), of the Enron Petition, it appears that all of the proposed savings contained in the Enron proposal are dependent upon there being no legal impediment to securitization. As the Commission is aware, legal challenges to stranded cost recovery, securitization, and the Act itself are currently pending before the Pennsylvania Courts. While the rate reductions in the Partial Settlement are partially contingent on the lack of legal obstacles to securitization, it is not clear from the Enron Petition whether ratepayers will receive any rate reduction if these legal challenges remain unresolved, or present a legal impediment to securitization at that time.

In addition, as noted above, the Enron Petition is dependent upon PECO Energy entering into contractual agreements with Enron Services for the provision of certain specified services, including the provision of energy and capacity, at certain specified prices determined by Enron Services. The OCA is concerned that ratepayers may be placed at risk for PECO's failure to perform under these prices, particularly under the Power Sales Agreement. The Enron Petition provides:

If PECO fails to perform under the terms of the Power Purchase Agreement, Enron will be entitled to obtain alternative electric energy supplies at market prices and to collect the cost of such supplies from Default customers under the Distribution Tariff for the duration of PECO's non-performance (subject to subsequent credit, rebate or

other true-up to reflect the recovery of any cover or other damages from PECO).

Enron Petition, page 21, ¶23(j). The OCA submits that the potential impacts of this provision must be fully explored.

Finally, the OCA submits that the effect on consumers, and competition, in the last five years of the Enron Plan (2004-2008) must be examined. In those years, the CTC in the Enron Petition is actually higher than the CTC called for in the Partial Settlement, while the market generation price is lower than that provided for in the Partial Settlement.

WHEREFORE, the OCA requests that the Commission consider the issues set forth above in its deliberation on this Petition.

Respectfully submitted,



---

Tanya J. McCloskey  
Steven K. Steinmetz  
Assistant Consumer Advocates

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(717) 783-5048

Dated: October 20, 1997  
44323

CERTIFICATE OF SERVICE

Re: Petition of Enron Energy Services Power, Inc.,  
for Approval of an Electric Competition  
and 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  
Docket No. P-00971265

I hereby certify that I have this day served a true copy of the foregoing document,  
OCA's Response to Enron, upon parties of record in this proceeding in accordance with the  
requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the  
persons listed below:

Dated this 20th day of October, 1997.

SERVICE IN PERSON

Kenneth L. Mickens, Esq.  
Office of Trial Staff  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pa 17105-3265

Daniel Clearfield, Esq.  
Alan Kohler, Esq.  
Robert Longwell, Esq.  
Wolf, Block, Schorr and  
Solis-Cohen  
305 North Front Street, Suite 401  
Harrisburg, PA 17101

97 OCT 20 PM 4: 01  
PROTHONOTARY'S OFFICE

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Karen Oill Moury, Esq.  
Small Business Advocate  
Suite 1102 Commerce Bldg.  
300 North Second St.  
Harrisburg, PA 17101

Paul Bonney, Esq.  
Ward Smith, Esq.  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, Pa 19101-8699

David Kleppinger, Esq.  
Derrick P. Williamson, Esq.  
Robert A. Weishaar, Jr.  
McNees Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Craig A. Doll, Esq.  
Delmarva Power & Light Co.  
214 State St.  
Harrisburg, PA 17101

Terrance J. Fitzpatrick  
David M. DeSalle  
Ryan, Russell, Ogden & Seltzer, LLP  
800 North Third Street  
Suite 101  
Harrisburg, PA 17102-2025

Walter W. Cohen, Esq.  
Obermayer Rebmann Maxwell &  
Hippel LLP  
204 State Street  
Harrisburg, PA 17101

Christopher B. Craig, Esq.  
Senate Democratic Appropriations  
Committee  
Room 545 Main Capitol Bldg.  
Harrisburg, PA 17120

Joseph J. Malatesta, Esq.  
Janet L. Miller, Esq.  
Malatesta Hawke & Mckeon, LLP  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17101

Linda C. Smith, Esq.  
Dilworth, Paxson, Kalish & Kauffman LLP  
305 N. Front Street, Suite 403  
Harrisburg, PA 17101-7811

John P. Zinkand, Esq.  
Executive Vice Pres.  
Pennsylvania Petroleum Assn.  
Suite 121, Bldg. 2  
2001 N. Front St.  
Harrisburg, PA 17102

Gary A. Jeffries, Esq.  
CNG Energy Services Corporation  
One Park Ridge Center  
P.O. Box 15746  
Pittsburgh, PA 15244-0746

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

Steven P. Hershey, Esq.  
Community Legal Services, Inc.  
1424 Chestnut St.  
Philadelphia, PA 19102

Roger Clark, Esq.  
Environmentalists  
905 Denston Drive  
Ambler, PA 19002-3901

Joseph A. Dworetzky, Esq.  
New Energy Ventures  
Hangley Aronchick Segal & Pudlin  
One Logan Square, 12th Floor  
Philadelphia, PA 19103.

Donald A. Kaplan, Esq.  
Lisa M. Helpert, Esq.  
Preston Gates Ellis & Rouvelas Meeds  
Suite 500  
1735 New York Avenue, N.W.  
Washington, D.C. 20006-4759

Audrey Van Dyke, Esq.  
Navy Facilities Command  
Washington Navy Yard  
Building 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018

Usher Fogel  
Roland, Fogel, Koblenz & Carr, LLP  
Pennsylvania Petroleum Association  
1 Columbia Place  
Albany, NY 12207

Liz Robinson  
ECA  
1924 Arch St.  
Philadelphia, PA 19103

Gordon J. Smith, Esq.  
John & Hengerer  
1200 17th St., N.W.  
Suite 600  
Washington, DC 20036-3006

Vickiren S. Aeschleman  
Director-Regulatory Policy  
QST Energy Inc.  
300 Hamilton Blvd., Suite 300  
Peoria, IL 61602

Sheila S. Hollis, Esq.  
Mary Ann Ralls, Esq.  
Stephanie A. Sugrue, Esq.  
Duane, Morris & Heckscher LLP  
1667 K Street, N.W., Suite 700  
Washington, DC 20006-1608



---

Steven K. Steinmetz  
Tanya J. McCloskey  
Assistant Consumer Advocates

Counsel For  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(717) 783-5048  
41726

ORIGINAL

MCNEES, WALLACE & NURICK  
ATTORNEYS AT LAW

100 PINE STREET  
P. O. BOX 1166  
HARRISBURG, PA 17108-1166  
TELEPHONE (717) 232-8000 Fax (717) 237-5300

1200 G STREET N.W.  
SUITE 800  
WASHINGTON, D.C. 20005  
TELEPHONE (202) 434-8991 Fax (202) 434-8707

<http://www.mwn.com>

OF COUNSEL  
ROBERT H. GRISWOLD  
FRANCIS B. HAAS, JR.  
RICHARD R. LEFEVER  
SAMUEL A. SCHRECKENGAUST, JR.

Direct Dial: (717) 237-5214  
e-mail: [dkleppin@mwn.com](mailto:dkleppin@mwn.com)

October 20, 1997

BRUCE D. BAGLEY  
ALAN R. BOYNTON, JR.  
ERIC L. BROSSMAN  
ROBERT M. CHERRY  
LOUIS A. DEJOIE  
DAVID B. DISNEY  
MICHAEL A. DOCTROW  
ELIZABETH A. DOUGHERTY  
HARVEY FREEDENBERG  
JAMES L. FRITZ  
W. JEFFRY JAMOUNEAU  
MICHAEL G. JARMAN  
DONALD B. KAUFMAN  
STEPHEN R. KERN  
DAVID M. KLEPPINGER  
BERNARD A. LABUSKES, JR.  
DELANO M. LANTZ

DAVID E. LEHMAN  
FRANKLIN A. MILES, JR.  
ROBERT A. MILLS  
STEPHEN A. MOORE  
JOHN S. OYLER  
GARY A. RITTER  
DANA STEVENS SCADUTO  
RICHARD W. STEVENSON  
DIANE M. TOKARSKY  
CATHERINE E. WALTERS  
DAVID M. WATTS, JR.  
STEVEN J. WEINGARTEN  
NEAL S. WEST  
NORMAN I. WHITE  
LAWRENCE R. WIEDER  
WILLIAM M. YOUNG, JR.

JENNIFER LAPORTA BAKER  
JEFFREY F. CHAMPAGNE  
JAMES P. DEANGELO  
JAMES P. DOUGHERTY  
KATHLEEN A. DUNST  
DEBRA P. FOURLAS  
HELEN L. GEMMILL  
ROBERT J. GODUTO  
SCOTT A. GOULD  
RANDOLPH B. HOUSTON, JR.  
BRIAN F. JACKSON  
BRIAN E. KAMOIE  
MICHAEL R. KELLEY  
PETER F. KRIETE  
JAMES W. KUTZ  
MARCUS J. LEMON  
ANDREW L. LEVY

LOUISE HUTCHINSON MARA  
F. STEPHENSON MATTHES  
JON R. MOONEY  
SHARON R. PAXTON  
CHAD F. PHIPPS  
PAMELA C. POLACEK  
JONATHAN H. RUDD  
R. RANDALL SCHMIDT  
BRUCE R. SPICER  
CAROL A. STEINOUR  
SUSAN V. STEWART  
ROBERT F. TEPLITZ  
ROBERT A. WEISHAAR, JR.  
DERRICK P. WILLIAMSON  
JOHN A. WITHEROW, JR.  
KATHLEEN A. WOLOWSKI  
WILLIAM D. WRIGHT  
SAMUEL S. YUN

DOCUMENT  
FOLDER

KJR

PROTHONOTARY'S OFFICE

97 OCT 20 PM 2:15

VIA HAND DELIVERY

James McNulty, Acting Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
Harrisburg, PA 17105-3265

**Re: Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, Docket No. P-00971265**

**Application of PECO Energy Company For approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00973953**

Dear Secretary McNulty:

Enclosed for filing please find the original and three copies of the Answer of the Philadelphia Area Industrial Energy Users Group in Opposition to the Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan.


137

James McNulty, Acting Secretary  
October 20, 1997  
Page 2

Per the attached Certificate of Service, copies of this document are being served upon all parties of record to this proceeding. Please date stamp a copy of this transmittal letter and kindly for filing purposes.

Very truly yours,

McNEES, WALLACE & NURICK

By   
David M. Kleppinger

DMK/dt

Enclosures

cc: Administrative Law Judge Marlane R. Chestnut  
Administrative Law Judge Charles E. Rainey, Jr.  
John Quain, Chairman  
Nora Mead Brownell, Commissioner  
John Hanger, Commissioner  
David Rolka, Commissioner  
Robert Bloom, Commissioner  
Service List

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

PETITION OF ENRON ENERGY SERVICES :  
POWER, INC. FOR APPROVAL OF AN :  
ELECTRIC COMPETITION AND CUSTOMER :  
CHOICE PLAN AND FOR AUTHORITY :  
PURSUANT TO SECTION 2807(e)(3) OF THE :  
PUBLIC UTILITY CODE TO SERVE AS THE :  
PROVIDER OF LAST RESORT IN THE :  
SERVICE TERRITORY OF PECO ENERGY :  
COMPANY :

Docket No. P-00971265

DOCKETED

OCT 22 1997

APPLICATION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
RESTRUCTURING PLAN UNDER :  
SECTION 2806 OF THE :  
PUBLIC UTILITY CODE :

Docket No. R-00973953

PHILADELPHIA  
PUBLIC UTILITY  
COMMISSION  
OFFICE

97 OCT 20 PM 2:36

RECEIVED

DOCUMENT  
FOLDER

---

**ANSWER OF THE PHILADELPHIA AREA INDUSTRIAL  
ENERGY USERS GROUP IN OPPOSITION TO THE PETITION  
OF ENRON ENERGY SERVICES POWER, INC., FOR APPROVAL  
OF AN ELECTRIC COMPETITION AND CUSTOMER CHOICE PLAN**

---

Pursuant to 52 Pa. Code § 5.61, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") hereby files this Answer in opposition to the Petition of Enron Energy Services Power, Inc., for Approval of an Electric Competition and Customer Choice Plan and for the Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company filed on October 7, 1997, at Docket No. P-00971265 ("Enron Petition"). In support thereof, PAIEUG states as follows:<sup>1</sup>

---

<sup>1</sup> PAIEUG will attempt to address the relevant issues in a format similar to the one used in the Enron Petition; *i.e.*, PAIEUG will first detail the contours of its opposition to the relief requested by Enron in a section titled "Introduction" followed by specific responses to the

(continued...)

## I. INTRODUCTION

Enron characterizes its Petition as an attempt to save the PECO customers from the anti-competitive conditions that would occur if the Joint Petition for Partial Settlement at Docket No. R-00973953 is approved by the Pennsylvania Public Utility Commission ("PUC" or "Commission"). In reality, the Enron Petition would effectively derail the substantial efforts of the other parties in the PECO restructuring proceeding to bring consumer benefits and workable and expeditious direct access to retail customers in the PECO service territory. The Enron plan demonstrates a lack of understanding of the needs of PECO's retail customers and the steps necessary to bring viable, long-term competition to the consumers in Pennsylvania. Furthermore, the purported "benefits" to customers are illusory and cannot be properly assessed because the Enron plan is incomplete on many key points. The only clear benefits to be achieved under the Enron plan will accrue to Enron.

In addition, the Enron Petition is devoid of legal support and constitutes an abuse of process. Enron has no authority under the Act to request that it be anointed as the provider of last resort for the PECO territory. As detailed below, many of the actions that Enron believes are integral parts of its plan are not authorized by the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, *et seq.* ("Act"). Accordingly, assuming that the Enron Petition is intended as more than just a public relations ploy, the Enron Petition is but an extra-procedural attempt to bootstrap a litigation position into the PECO restructuring case at the eleventh hour that should have been presented in Enron's direct testimony filed months ago!

---

<sup>1</sup> (...continued)  
numbered paragraphs contained on pages 8 through 30 of the Enron Petition.

Enron's Petition and its Motion to Consolidate that Petition into the PECO restructuring case have created a procedural opéra bouffe.

\* \* \*

As set forth below, Enron's Petition is faulty and must be rejected for numerous reasons.

**First**, there is no basis in the Act for an alternate supplier to petition the Commission to be the provider of last resort ("PLR") as Enron claims. See Enron Petition, ¶¶ 8 and 23(h). The Act contains a series of statements explaining how customers that do not choose an alternate electric supplier will be assured continued service. 66 Pa. C.S. § 2807(e). The Act first states that while an electric distribution company ("EDC") collects a competitive transition charge ("CTC") or an intangible transition charge ("ITC") from customers, the EDC will continue to have the full obligation to serve all customers in its present service territory. Id. at 2807(e)(1). This obligation to serve is specifically defined to include the provision of electricity for the default customers.<sup>2</sup> Id. In other words, during the transition period (the period in which the EDC collects an ITC or CTC) the Act mandates that the EDC act as the PLR.<sup>3</sup> At the end of the

---

<sup>2</sup> For purposes of this Answer, PAIEUG will use the term "default customer" as it is defined in the Enron Petition; *i.e.*, "customers who do not choose an electric generation supplier other than the PLR or who return, for whatever reason, voluntarily or otherwise, to the electric service of the PLR." Enron Petition, p. 6. PAIEUG would note, however that Enron would not include large customers that entered into LILR, EER, and Rule 4.6 contracts with PECO under its tariff as default customers. Consequently, Enron would incur no duty to honor the contracts that PECO entered into with these customers as part of PECO's PLR role. PAIEUG opposes the exclusion of special contract customers from the category of default customers.

<sup>3</sup> It is possible that the EDC may be permitted prior to the end of the transition period to transfer this obligation to another entity with the Commission's consent through an abandonment proceeding. However, because PECO does not consent to relinquishing its role as PLR, the  
(continued...)

transition period, the Commission must establish regulations defining the obligations of the PLR to serve customers that do not choose an alternative supplier. Id. at 2807(e)(2). The Act contemplates that, after the transition period has ended, the PLR role could be provided by an entity other than the EDC. Id. at 2807(e)(3). To construe Section 2807(e)(3) as authorizing the Commission to anoint an alternate PLR during the transition period, as Enron construes the Act, however, would make the Act's explanation of the EDC's obligation to supply electricity as part of its obligation to serve during the transition period contained in Section 2807(e)(1) redundant. Such an interpretation would be contrary to the rules of statutory construction, which militate against interpretations of statutes that render a provision mere surplusage. 1 Pa.C.S.A. § 1921. The only reasonable manner in which to construe the clear mandate in the Act is for the possibility of an alternate PLR to be approved by the Commission as arising only after the transition period or with the consent of the EDC.

In addition, the Act is silent on how Commission approval of the alternative supplier must be initiated. The provisions of the Act should not be read in a vacuum; rather, the Act should be construed in harmony with existing Commission precedent. To change the PLR under the Act is analogous to forcing a utility to permit another utility to serve customers in its service area. Such changes can be accomplished through application to become a utility and, subsequently, a boundary change. This Commission has a long established practice that unless the utility consents to the boundary change, the Commission will generally not force a utility to give up customers that it otherwise has a right to serve. See e.g., Hart v. General Telephone Co. of Pennsylvania, 64

---

<sup>3</sup> (...continued)  
Commission need not address the issue.

Pa. PUC 468 (1987); Shea v. Freeport Telephone & Telegraph Co., 61 Pa. PUC 251 (1986).

This doctrine is based on regulatory and constitutional grounds. The reasonable interpretation of the Act is that the reference to the possibility of an alternate PLR being approved after the transition period must be construed to conform with the existing law regarding application to become a certified utility and boundary changes; *i.e.*, that the Commission can approve an alternate PLR after the transition period only upon proper application and the request (or at least consent) of the existing utility, which in this case is the EDC. The Commission can only approve Enron as the PLR if PECO consents. Moreover, to force PECO to unwillingly give up the role as the PLR based on a strained interpretation of the Act will almost certainly lead to extensive appellate litigation, which will delay the phase-in of direct access to the detriment of all parties involved.

**Second**, the Commission has no authority to effectuate the Enron request with respect to the issuance of a Qualified Rate Order ("QRO"). Enron requests that the Commission issue to PECO an irrevocable QRO authorizing PECO to issue transition bonds for \$5.461 billion. Enron Petition, ¶ 23(l). The Act specifically states, however, that a QRO "may be adopted by the commission **only upon the application of an electric utility.**" 66 Pa. C.S. § 2812(a)(1) (emphasis added). The Act reiterates the concept that a QRO must originate with the electric utility in Section 2806(e), wherein it states "a utility may apply to the commission for a qualified rate order under section 2812 for some or all of its transition or stranded costs." *Id.* at 2808(e). The Commission can not sua sponte issue a QRO for PECO, nor can it accede to such a request from the alternative supplier on the utility's behalf; PECO, the electric utility, must request such a QRO. In addition, the Commission does not have any authority to order that PECO request a

QRO. The Act places the option of securitization solely with the utility. See Id. at 2812(a)(1) and 2808(e). As evidenced in the above-quoted passages, a QRO is an option that the utility **may** pursue, not a mandate that the utility must pursue. The statute simply does not permit Enron's request to be effectuated; the PUC is without the authority under the Act to provide the relief Enron requests.

Even assuming that the PUC could issue a QRO to PECO at the behest of some entity other than PECO (and it cannot), the Commission has no authority to order PECO to sell the transition bonds securitized as a result of the QRO to Enron at a mandated interest rate of 9.66% as Enron requests. Enron Petition, ¶23(m). The Act specifically states as follows:

After the issuance of a qualified rate order, the electric utility retains sole discretion regarding whether to assign, sell or otherwise transfer intangible transition property or to cause the transition bonds to be issued, including the right to defer or postpone such assignment, sale, transfer or issuance.

66 Pa. C.S. § 2812(a)(1). Such an explicit legislative statement cannot be ignored by this Commission, even in pursuit of any alleged "purpose" of the Act. 1 Pa. C.S.A. § 1921(b). Enron construes every decision that this Commission must make regarding restructuring as necessarily turning on and being resolved according to the result that will best benefit alternate suppliers (and specifically Enron). Enron's Petition requires that all decisions be made in accordance with what Enron **wants**, while ignoring the more important consideration of what other parties **need** and of what the statute permits. The Petition completely ignores the balancing of interests that was necessary in the Act in order for Pennsylvania consumers to have access to lower electricity rates.

**Third**, the Commission has no authority to order PECO to enter into the contractual arrangements that would be necessary to ensure that Enron can "fulfill" its obligations as the PLR

as Enron requests, assuming Enron could be the PLR (which they cannot). Enron Petition, ¶ 23(j) and (k). In addition to seeking the QRO and selling the transition bonds to Enron, if the Commission approves the Enron plan PECO would further be required to enter into a Power Purchase Agreement ("PPA") and a Metering Billing and Collection Services Agreement with Enron. Enron Petition, ¶ 23(i), (j) and (k), ¶ 27, ¶ 28, and ¶ 29. Both of these documents are attached as Exhibits to the Enron Petition. See Enron Petition, Exhibits 2 and 3. These proposed contracts were not the result of negotiations between Enron and PECO; rather, the contracts are unilateral dictations of the terms of service under which PECO would be required to perform. Enron cites no authority for the Commission to order PECO to enter into these agreements. The reason for the lack of citation is simple — none exists. Forcing PECO to enter into these contracts cannot be tied to PECO's continued regulation by the PUC as a distribution utility because the services involved (generation supply and revenue cycle services) are unbundled and offered on a competitive basis under the Enron proposal. Furthermore, because under the Enron proposal PECO would no longer be the PLR, PECO has no obligation to serve customers with respect to competitive services (as opposed to its continued obligation to serve customers with respect to its regulated transmission and distribution services).

In addition, the terms of these proposed agreements impose on PECO the obligation to provide the same services that PECO would be required to provide if it retained its role as the PLR. Under the Enron proposal, PECO would be forced by the Commission to enter into agreements that place upon PECO the obligations of the PLR in order for Enron to "fulfill" its role as the nominal PLR. Enron Petition, ¶¶ 27-30. The only benefit of this situation accrues to Enron, who can eliminate a potential competitor in the service territory by forcing PECO to supply

the full-requirements of the Default Customers at a dictated price or pay the market price for the replacement of that electricity. PECO would apparently continue to be the entity that must anticipate and plan generation resources to meet the needs of the Default Customers, while Enron's obligations remain unclear.

In fact, it is spurious to term the designation that Enron requests as being as the "provider of last resort." Enron seeks the designation in name only and seeks through the predicate parts of its Petition to avoid the actual obligations that accompany that designation. As aforementioned, Enron requests that the Commission order PECO to enter into contracts with Enron in order to assure that Enron will fulfill its obligations as the PLR. Under the Enron plan, Enron does not need to anticipate and plan for future Default Customer load because the proposed PPA requires PECO to supply all the necessary electricity for Default Customers or to pay a penalty equal to the market price at which Enron obtains alternate supplies. The revenue cycle services will still be provided by PECO (pursuant to another forced contractual arrangement) and PECO will be saddled with the attendant obligations under Chapter 56 in the performance of those services. The only thing that Enron is obligating itself to do is to collect the stream of CTC revenues from all of the PECO customers. Enron is the PLR in name; PECO is the PLR in actions.<sup>4</sup>

---

<sup>4</sup> Another example of the inequity of the Enron plan is the proposal to not classify special contract customers as Default Customers. By not designating special contract customers as Default Customers, Enron undertakes no obligation to serve special contracts, which are typically low-margin arrangements. Apparently, Enron is willing to incur an "obligation to serve" only the high-margin residential and commercial customers upon which it can turn a larger profit.

Moreover, the prices in the PPA are presumably based on the Enron plan's market prices.<sup>5</sup> While PECO may be willing to commit to a similar long-term full-requirements relationship with some entity based on market prices that it anticipates will occur, it cannot and should not be forced to do so based on market prices dictated by Enron. Enron has plugged market prices into its proposal for which it bears no risk of the ultimate accuracy, because regardless of the actual market price, Enron will be able to obtain low cost electricity from PECO pursuant to the full-requirements of the PPA. Enron requests that the Commission and the other parties rely on the validity of market price projections in its plan, but Enron itself will be held harmless if its projections are wrong. This obviously represents an unreasonable request by Enron.

**Fourth**, Enron's Petition should be recognized for what it is — an eleventh hour attempt to bootstrap a litigation position into a proceeding that started over six months prior to the filing of the petition and that was within days of commencing hearings on a partial settlement proposal. In addition, the Enron Petition was filed nearly six weeks after the Joint Petition for Partial Settlement was filed. Whereas the Partial Settlement is based primarily on issues and positions raised by parties in pre-filed written testimony in the PECO restructuring proceeding and largely represents a compromise of competing litigation positions, the Enron Petition bears little resemblance to any direct testimony supplied by Enron. For example, although two rounds of testimony were exchanged among the parties in the PECO restructuring proceeding, Enron has not once even impliedly addressed the need for the proposed tariff changes discussed later in PAIEUG's response to paragraph 33 and contained in the tariff supplied with the Enron Petition.

---

<sup>5</sup> PAIEUG has insufficient information to confirm the accuracy and correlation between the prices in the petition and the prices contained in the PPA.

If, as Enron now asserts, the issues in the tariff were of such importance that they will inhibit the development of a competitive market, then those issues should have been raised by Enron in testimony concerning the restructuring filing and the partial settlement. Moreover, if Enron contemplated becoming the PLR for the PECO service territory, it should have raised the issue in testimony. Not raising these issues before now is an affront to the hours expended in the preparation of testimony and participation in settlement negotiations by the parties. At a point in the proceeding where parties should be seeking to clarify and define the relevant issues to enable the Commission to make a reasoned decision, Enron has interjected new issues that have no substantive basis in the Act and only serve to muddy the waters to obscure the real and substantial benefits of the Partial Settlement. The Commission is under a statutory obligation to render a decision on the PECO restructuring filing within nine months of the filing date (i.e., before January 1, 1998). 66 Pa. C.S. § 2806(f). Enron's actions at this late stage in the game are tantamount to sandbagging and are of benefit to only one party — Enron.

**Fifth**, Enron seems to base the Commission's authority to force PECO to enter into the actions and contracts necessary to effectuate the Enron plan on the concept that PECO is not *entitled to stranded cost recovery* unless a requisite amount of actual competition is realized in the PECO service territory. See Enron Petition, ¶ 21. Enron, of course, places the threshold of competition at a high level. There is no basis in the Act for this claimed necessity of actual competition before stranded cost recovery is permitted by the electric utility. The Act recognizes that there may be some transition period prior to the realization of a fully competitive market for electric generation supply. The acknowledgment of the need for a transition period is the reason for, among other things, the inclusion of the rate cap provisions of the Act. 66 Pa.C.S. § 2804(4).

Actual competition is not required on day one and will be given time to develop. Although competition likely will develop quickly, competition at the level Enron desires is not required. In fact, the Act does not guarantee the right of competition; rather, it guarantees consumers the **right of direct access to the competitive market that will develop to meet their needs.** See id. at 2806(a) & (b). Direct access is:

the right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies' own use of the system to transport electricity from any generator of electricity to any end-use customer.

Id. at 2803. In other words, the Act is based on the premise that if a distribution system is established with nondiscriminatory direct access for all, then the market forces will attract competitors willing and able to meet the consumers' demands. Stranded costs are the expected losses of the utility because of being forced to transition to a deregulated environment and being forced to permit direct access to its transmission and distribution system. Id. Although parties can argue over whether the Partial Settlement or any other proposed restructuring plan meets the other requirements detailed by the legislature and the Commission (such as the prohibition against cost shifting), there can be no argument that actual competition at the level proposed by Enron is not a condition precedent to the utility recovering stranded costs.

**Sixth**, the Enron plan will not benefit customers.<sup>6</sup> The benefit of offering twice the proposed rate reductions as the Partial Settlement is more than offset by the disastrous effects that

---

<sup>6</sup> As aforementioned, because of the scant information provided by Enron in support of its plan and the obvious incompleteness of the proposal, PAIEUG cannot offer in this Answer a full assessment of the Enron plan. PAIEUG can only highlight the obvious areas of deficiency.

the plan will have on the competitive alternatives available to all customers. As further explained in the PAIEUG response to paragraph 33, the Enron plan limits the availability of flexibly priced services through changes to tariff riders in violation of the mandate in the Act that flexibly priced alternatives continue to be available. 66 Pa. C.S. § 2806(h).

In addition, the market prices proposed in the Enron plan are unreasonable in several respects and have no support in testimony submitted in the PECO restructuring proceeding up until this point. The beginning market price for 1999 and the prices for 2000 through 2003 are overstated in the Enron plan. The only possible motivation for this overstated market price is to allow the competitive Enron affiliate to garner market share early in the transition while still profiting handsomely from a generous margin on the sale. The market prices for the later half of the transition period (2005 through 2008) proposed by Enron are drastically understated. Enron has not allowed for any reasonable escalation in the market prices. The effect of this understatement will be to force customers to return to Default Customer status in the last half of the transition period because customers will not be able to procure electricity at less than the price in the Enron plan, particularly when the CTC component is rising in those years. This is exactly opposite to the manner in which the transition to full competition should occur — customers should be incented to take advantage of the market in the later stages of the transition while still protected by the rate cap. Moreover, Enron bears no risk in its role as provider of last resort if the market prices in the plan do not materialize — it is PECO under the forced PPA that is required to provide the electricity for the returning customers. Enron will be able to procure electricity for Default Customers based on prices constructed from the inaccurate assumptions in the Enron plan,

regardless of the true market price.<sup>7</sup> In addition, by tying up the PECO generation resources, a potential competitor for Enron is eliminated.

Furthermore, the CTC design contained in the Enron plan, which has an increasing CTC through the transition period with the CTC remaining over \$.03/kWh after 2003, will further discourage customers from pursuing competitive alternatives. Once again, this the opposite operation from what the transition period should do — customers should be transitioned to being able to make decisions without a CTC as will occur in 2009.

**In summary**, the Enron Petition is an incomplete, extra-legal, extra-procedural, ill-timed public relations ploy designed, at best, to thrust Enron into the public eye and, at worst, as a deliberate effort to derail the transition to a competitive market. The petition will serve only to confuse and obscure the real issue that should be addressed at this point in PECO's restructuring proceeding; *i.e.*, the real benefits that can be obtained through approval of the Partial Settlement. The Commission's lack of authority is obvious to everyone and should have been obvious to Enron.

## **II. RESPONSES TO NUMBERED PARAGRAPHS**

The following are the responses of PAIEUG to the numbered paragraphs contained on pages 8 through 30 of the Enron Petition. To the extent that any assertions in those paragraphs are not addressed, they should be considered to be denied.

1. It is ADMITTED that the Act became law on December 3, 1996. It is ADMITTED

---

<sup>7</sup> Moreover, under the Enron plan, Enron would be able to require a 12-month contract commitment from customers that shop and then wish to return to default service or, in the alternative, to charge an indexed price presumably equal to market price even though Enron is guaranteed supply by PECO at the prices proposed in the Enron Petition.

that the quoted clauses represent portions of 2 of the 21 statements contained in the General Assembly's Declaration of Policy set forth at Section 2802 of the Public Utility Code, 66 Pa. C.S. § 2802. However, the Declaration of Policy contains multiple and possibly conflicting goals that are to be pursued during restructuring of the electric industry, to include that "[i]n moving toward greater competition in the electricity generation market, the Commonwealth must resolve certain transitional issues in a manner that is fair to customers, electric utilities, investors, the employees of electric utilities, local communities, non-utility generators of electricity and other affected parties." Id. at 2802(7)(8). It is ADMITTED that the Act establishes January 1, 1999, as the date of the first phase of direct access.

2. It is ADMITTED that the Act gives the Commission the ability to monitor the market for anti-competitive or discriminatory conduct. However, the Commission can only "take steps as set forth in this section to prevent anti-competitive or discriminatory conduct or and the unlawful exercise of market power." 66 Pa. C.S. § 2811(a). The only steps set forth in the relevant section are to initiate an investigation (upon complaint or the Commission's own motion for good cause shown) or to examine the issue concurrently with the exercise of authority that the Commission may otherwise have to approve a proposed merger, consolidation, acquisition, or disposition of assets. Id. at 2811(b) and (e). The Commission's decision regarding approval of the Joint Petition for Partial Settlement involves neither of the situations that would give rise to the Commission's monitoring duties under Section 2811.

3. It is ADMITTED that the passage of the Act did not automatically create a competitive market for generation supply and that the Act directs the Commission to take appropriate steps to ensure that retail customers have direct access to a competitive market for

electric generation supply. However, the retail market envisioned by the General Assembly is unknowable and may not necessarily coincide with the market formed by the "environment conducive to fair and vigorous competition." Some of the promised benefits of competition, such as rate reductions, can be achieved without the development of the competitive market as advocated and envisioned by Enron.

4. It is ADMITTED that each Pennsylvania electric utility is required to file a restructuring plan with the Commission. The second sentence is ADMITTED in part and DENIED in part. It is ADMITTED that Section 2804 sets forth standards for approval of restructuring plans, oversight of the transition process, and regulation of the restructured electric utility industry. It is DENIED that these are the only standards that must govern the Commission's review. The Commission's actions with respect to reviewing restructuring plans, oversight of the transition process and regulation of the restructured electric utility industry must be performed in accordance with all of the provisions of Chapter 28 (66 Pa. C.S. § 2801, et seq), the entire Public Utility Code (66 Pa. C.S. § 101, et seq), and all Commission Regulations and Orders. The third sentence is ADMITTED in part and DENIED in part. It is ADMITTED that the cited standards are contained in Section 2804. As aforementioned, it is DENIED that the cited standards are the only ones that must govern the Commission's determination.

5. It is ADMITTED that the quoted passage appears in the Act. However, the redacted portion of the quoted passage discusses the fact that the public utilities' existing obligations to serve customers within their defined service territories were the motivation for entering into the long-term investments in generation. 66 Pa. C.S. § 2802(15). Furthermore, the quoted passage is not the only reference in the Act to stranded costs and other references include

a specific definition of stranded costs contained in Section 2803, 66 Pa. C.S. § 2803. It is DENIED that stranded costs exist solely because of the transition from a regulated marketplace to a competitive market. Stranded costs were also caused by the public utility's past obligation to serve, traditional regulatory cost recovery systems, bad management decision-making, and past public policy goals that influenced rate making.

6. The first sentence is ADMITTED in part and DENIED in part. It is ADMITTED that the Commission should establish a procedure for the annual review of a CTC. It is DENIED that the Commission must approve a CTC if the Commission determines that a utility has lawfully incurred stranded costs. Only a just and reasonable amount of any known and measurable stranded generation costs can be recovered from ratepayers through the CTC. 66 Pa. C.S. §§ 2804(13) and 2802(15). It is possible that the Commission could determine that it is just and reasonable to recover no portion of a utility's known and measurable stranded generation costs from ratepayers through the CTC.

7. The first sentence is ADMITTED. However, a QRO can only be issued by the Commission under the Act upon the application of an electric utility and the Commission cannot unilaterally force an electric utility to apply for a QRO. 66 Pa. C.S. §§ 2812(a) and 2808(e). It is ADMITTED that the Commission has discretion to direct that the QRO be irrevocable.

8. The first sentence is ADMITTED. The second sentence is ADMITTED. However, under the Act and existing Commission precedent, the Commission cannot unilaterally and without consent of the utility choose another alternative supplier as the PLR during the transition.

9. The first, second, and third sentences are ADMITTED. However, the bulk of the proposals in the Enron Petition were not raised in the various pieces of testimony submitted by

Enron Power Marketing, Inc., with respect to the proposed PECO restructuring plan. The Act establishes strict time limits for the consideration of restructuring plans. 66 Pa.C.S. § 2806(f). Because the plan had to be filed, litigated, briefed and decided by the Commission within nine months, it was extremely important for the parties to abide by the Commission's procedural rules. Commission regulations require participants to establish their positions on issues as part of their case-in-chief and adhere to those positions. 52 Pa.Code § 5.243(e). In addition, information or positions that should have been included in a participant's case-in-chief are not permitted to be introduced during the rebuttal stage. *Id.* Enron's proposal directly relates to the issues in the PECO restructuring proceeding and should have been advanced in that proceeding; however, because the new scheme is a substantial deviation from Enron's case-in-chief, Enron would not have been allowed to do so. The Commission should not permit Enron to use an extra-procedural vehicle such as the instant petition to thwart the proper application of Commission regulations. Moreover, by introducing such a substantial deviation when only two months remain before the deadline for consideration of the case to which Enron requested that consideration of the Enron Petition be joined, Enron has left insufficient time for the parties and the Commission to thoroughly flesh out the incomplete portions of the Enron Petition and make a reasoned decision.

10. ADMITTED.

11. Except with respect to the terms discussed below, the accuracy of the summary of the terms of the Partial Settlement is ADMITTED. However, the terms contained in the summary do not constitute the only terms relevant to the Enron plan because, as will be discussed in the responses to paragraphs 23 and 33, Enron's plan deviates from the Partial Settlement in many other highly important respects. Furthermore, because of the incompleteness of the Enron plan as

proposed, insufficient information is available to determine other relevant comparisons with the provisions of the Partial Settlement. PAIEUG DENIES that the summary contained in subparagraph (h) is an accurate explanation of the terms of the Partial Settlement. For example, the Partial Settlement specifies that current and prospective customers will have the Economic Efficiency Rider ("EER") and Rule 4.6 contract options available to them. It is also DENIED that the Partial Settlement permits PECO to transfer generation assets to an affiliate without review and approval by the Commission. To the contrary, paragraph 16 of the Partial Settlement specifically acknowledges that PUC approval must be sought.

12. With the exception of the following assertions, all the sentences in this paragraph are DENIED and specific proof thereof is demanded from Enron: it is ADMITTED that the Partial Settlement provides for an average energy and capacity cap of \$.0280/kWh in 1999 and 2000 and that this is the maximum rate that PECO will charge PLR customers; and, it is ADMITTED that the Commission recently established an average credit for generation in the PECO pilot program of \$.0300/kWh. However, the Partial Settlement provides for both customer choice and competition with reasonable market price estimates and importantly a relatively flat CTC. Furthermore, as evidenced by the PAIEUG market price estimates submitted in the PECO restructuring proceeding, the market prices contained in the Partial Settlement represent an accurate prediction of the market prices that PECO and alternate suppliers will face during the transition period. In addition, under the Partial Settlement all consumers in the PECO service territory will see a real reduction in electricity rates, which is one of the goals of the Act. Because the Partial Settlement is based on a realistic forecast of market conditions during the transition period, it fulfills many of the conflicting purposes of the Act and will allow a competitive

generation market to develop according to correct market-based signals instead of through contrived, self-interested market price estimates.

13. The assertions in this paragraph are DENIED. The generation cap contained in the Partial Settlement represents a reasonable estimate of the anticipated market price during the transition period. Further, the CTC contained in the Partial Settlement correctly imposes a relatively level but declining recovery of stranded costs from ratepayers through the CTC, which will encourage more customers to exercise competitive options throughout the transition period when compared to the increasing CTC in the Enron proposal.

14. It is ADMITTED that the Pennsylvania Electric Competition Coalition submitted testimony in the PECO restructuring proceeding. However, that testimony is part of an ongoing litigation matter and has not been authoritatively addressed by an administrative law judge or the Commission. Furthermore, that testimony was substantially discredited by cross-examination and the testimony of other witnesses at evidentiary hearings conducted October 14-16, 1997.

15. The assertions in this paragraph are DENIED. The generation credit established in the Partial Settlement closely approximates the anticipated market rates for power throughout the transition period, especially when compared to the market prices in the Enron proposal, which start at an inflated level and unreasonably show little growth through the transition period. Furthermore, the CTC recommended by Enron, although reduced in the beginning years of the transition period, exceeds the CTC in the Partial Settlement from 2004 through the end of collection and should not by implication be categorized in this paragraph as "reduced." There is no anticipation of a market power problem being created by the Partial Settlement.

16. The assertions in this paragraph are DENIED. The market rate established in the Partial Settlement of \$.028/kWh is not an unreasonable approximation of the market price for electricity in the first years of the transition.

17. The assertions in this paragraph are DENIED. The tariff provided with the Partial Settlement reflects a properly crafted pro-competitive tariff adequate to meet the needs of a competitive retail market.

18. The assertions in this paragraph are ADMITTED. However, the voluntary waiver of rights to contest a transfer of assets constitutes a choice on behalf of the signatories that will have no effect on the opportunity for the Commission, upon complaint by a party or its own motion with good cause shown, to investigate a transfer of assets. 66 Pa. C.S. § 2811.

19. The assertion in paragraph 19 is DENIED and specific proof thereof is demanded.

20. The assertions in this paragraph are DENIED. The benefits envisioned by consumers to be gained through the deregulation of electric generation supply are gained and furthered by the Partial Settlement. In addition, the Partial Settlement complies with the letter and spirit of the Act, and in some respects, the Partial Settlement provides benefit beyond those required by the Act.

21. All assertions in this paragraph are DENIED and specific proof thereof is demanded. Indeed, even the potential for "actual competition" will not be brought to the PECO service territory if this Commission approves the extra-legal requests embodied in the Enron Plan. Approval of the Enron plan would lead to extensive appellate litigation and the implementation of direct access could be stayed pending the outcome of that litigation. At a minimum, insufficient information has been provided to determine whether the Enron plan will provide a greater level

of benefits to PECO's customers than will arise from the Partial Settlement. However, the plan presented by Enron in this petition is incomplete and could not be implemented as it is presently constituted (notwithstanding its inherent legal infirmity).

22. The first sentence is ADMITTED. PAIEUG has insufficient information to admit or deny the assertion in the second sentence. However, the competitive service credits contained in the Enron plan are not consistent with the projected retail market prices in PECO's service territory because the Enron market price is set above the expected market price for 1999. Furthermore, the market prices embodied in the Enron plan do not exhibit a reasonable level of growth throughout the transition period. The third sentence is DENIED. The competitive service credits and corresponding CTCs in the Enron plan will inhibit the development of a competitive market because, as aforementioned, the market prices are unrealistic throughout the transition period and because the CTC recovery rises substantially throughout the transition period and continues to be at a level in excess of \$.03/kWh in all but one year from 2004 through 2008. The fourth sentence is ADMITTED. However, these additional rate reductions at the beginning of the transition period are more than offset by increased recovery during the latter part of the transition period.

23. PAIEUG responds to the subparagraphs that constitute paragraph 23 as follows:

a. Rate Savings to Customers: This paragraph is a statement of the Enron proposal to which no response is necessary. The Enron plan, however, is based on unrealistic assumptions regarding future market prices that, if endorsed by this Commission, will inhibit the future competitive choices of all customers that do not continue to take bundled sales service from Enron. The increase in CTC levels that occurs

throughout the transition period under the Enron plan, and specifically, the CTC level of \$.03/kWh that will be charged in almost every year from 2004 through the end of the transition period will constitute a significant burden to consumers pursuing competitive options in those years. The PECO consumers would only enter into competitive contracts in those years if they could beat the market price contained in the Enron plan, which is substantially depressed. The combination of the high CTC and the unrealistically low market prices in the latter years of the transition period will undermine, if not destroy, any competitive market that could form in the beginning years of the transition period because customers will return to being Default Customers when they cannot obtain electricity in the market at less than the Enron plan market price plus the high CTC.

b. Pro-Competitive Structure: It is ADMITTED that in the unlikely event that the Enron plan is endorsed by the Commission, PECO, as the electric distribution company, could be required to file a distribution tariff setting forth the rates, terms and conditions for distribution services, a CTC/ITC, and energy and capacity credits for Default Service. PAIEUG has insufficient information to admit or deny that the distribution tariff attached to the Enron Petition contains non-discriminatory pricing. Specifically, Enron has provided insufficient information with respect to the effect of the proposed changes on industrial users. It is DENIED that the distribution tariff attached to the Enron Petition reflects a proper unbundling of PECO's current rates. Significant changes have been made in the Enron distribution tariff that could reflect cost shifting and other violations of the rate cap provisions of the Act.

c. This is a statement of the Enron proposal to which no response is necessary.

d. This paragraph is a statement of the Enron proposal to which no response is necessary. However, all of the proposed terms in this paragraph except for the ability to pay a lump sum CTC are material changes from the Partial Settlement and PAIEUG opposes all of the proposed changes. The first sentence constitutes a material change from the Partial Settlement wherein EER and Rule 4.6 will be available to prospective customers and PAIEUG opposes the change. The change constitutes an effort by Enron to inhibit PECO's ability to offer flexible pricing arrangements, which is guaranteed by the Act. The second sentence constitutes a material change from the Partial Settlement wherein contract sanctity was guaranteed. It is unreasonable to void contracts that were entered into between PECO and customers that were, or should have been, cognizant of the potential deregulation. The third sentence excludes special contract customers from Enron's obligations as the PLR, whereas the Partial Settlement would continue PECO's duties with respect to special contracts. This constitutes an effort by Enron to avoid servicing lower margin accounts upon which it could not make as much profit while still being able to service the higher margin residential and commercial accounts.

e. This is a statement of the Enron proposal to which no response by PAIEUG is necessary.

f. This is a statement of the Enron proposal to which no response by PAIEUG is necessary.

g. It is ADMITTED that the rates attributed by Enron to the Partial Settlement are the ones contained therein. The remainder of this paragraph is a statement of the Enron proposal to which no response is necessary. However, the generation credits in the

Enron plan do not correlate with any market prices supported and validated by witnesses in the PECO restructuring proceeding. Moreover, PAIEUG has insufficient information to confirm the validity and reasonableness of the projections. Notwithstanding, the market prices contained in the Enron plan beginning in 1999 through the first half of the transition period are clearly set at an excessive level. Further, the market prices in the Enron plan unreasonably show no realistic measure of growth throughout the transition period. The market prices in the Enron plan are also unreasonably depressed from what should be expected in the latter stages of the transition period and that adoption of those prices will substantially hamper the development of the competitive market.

h. Default Service Provider (PLR): This is a statement of the Enron proposal to which no response is necessary. However, the Commission lacks the authority under the Act and established precedent to designate Enron as the PLR without obtaining PECO's consent during the transition period.

i. This is a statement of the Enron proposal to which no response by PAIEUG is necessary. However, it is unreasonable for a customer who has chosen to shop and then return to Default Service to be forced to commit to a twelve-month contract or else to purchase Default Service at an "indexed price" which is supposed to represent a "fully compensatory price." This statement can only mean that if the customer will not commit to the twelve-month contract, then the customer will be forced to pay actual market price instead of the market prices projected in the Enron plan. As aforementioned, the market prices in the Enron plan are unreasonable and unreasonably depressed in the latter stages of the transition period. Further, Enron will be permitted through its PPA to require that

PECO supply the full requirements of returning customers at the price set forth in that agreement, which purportedly correlates to the default market price for default customers in the Enron plan.

j. This paragraph is a statement of the Enron proposal to which no response is necessary. However, the PPA, which contains prices based on the Enron market price projections, substantially shifts the burden that the price projections will not come to fruition onto PECO because PECO will be forced to supply Enron at the PPA price regardless of actual market price. It is unreasonable for this Commission to force PECO to bear the risk of market price projections that it did not present and presumably will not endorse.

k. This paragraph is a statement of the Enron proposal to which no response is necessary. However, the Commission does not have the authority to force PECO to enter into the contractual arrangement.

l. Financing of PECO's Stranded Costs: This paragraph is a statement of the Enron proposal to which no response is necessary. However, the Commission lacks authority under the Act to issue a QRO except upon application by PECO. Further, the Commission lacks authority under the Act to force PECO to submit an application for a QRO.

m. This paragraph is a statement of the Enron proposal to which no response is necessary. However, the Commission lacks authority under the Act to mandate that PECO sell any transition bonds to Enron. Furthermore, the proposed interest rate of 9.66% is in excess of the rates submitted during the PECO securitization proceeding and

in excess of the probable rate at which Enron will be able to finance its payment to PECO. For example, in the proceedings regarding the PECO Application for the issuance of a Qualified Rate Order (Application of PECO Energy Company for Issuance of a Qualified Rate Order Under Sections 2802 and 2812 of the Public Utility Code, Docket No. R-00973877, filed on January 22, 1997) PECO's analyzes assumed that the transition bonds could be issued at an interest rate of 7.42%. See Direct Testimony of Alan B. Cohn, Docket No. R-00973877, Exhibit No. ABC-10. The parties in that proceeding were in general agreement that 7.42% represented a reasonable estimation of the interest rate at which the transition bonds for PECO would be issued. See Direct Testimony of Steven J. Baron, Docket No. R-00973877, pp. 18 and 29; Direct Testimony of Richard LaCapra, Docket Not. R-00973877, pp, 50-51. PAIEUG has insufficient information to determine Enron's proposed disposition of the interest savings that will be achieved by the financing of its payment to PECO at a lower interest rate. PAIEUG has insufficient information to admit or deny the assertions in subparagraphs (i) and (ii) and specific proof of the validity of the figures is hereby demanded.

n. It is ADMITTED that the CTC charges attributed to the Partial Settlement are correct. The remainder of the information in this paragraph is a statement of the Enron proposal to which no response is necessary. However, the CTC/ITC charges contained in the Enron plan are unreasonable and should be rejected by the Commission. The use of a CTC that increases substantially throughout the transition period is contrary to the intent of the Act and will constitute a significant barrier to the development of competitive market in the later years of the transition period.

o. This paragraph is a statement of the Enron proposal to which no response by PAIEUG is necessary.

24. The first sentence is DENIED. The Partial Settlement contains no anti-competitive aspects that may need to be addressed. Furthermore, the Enron plan itself contains many aspects antithetical to competitive choices by customers. The second sentence is a statement of the Enron proposal to which no response is required. PAIEUG acknowledges that Section 2807(e)(3) contemplates the possibility of an entity other than the EDC serving as PLR after the transition period.

25. It is ADMITTED that the Commission has deferred consideration of the PLR issue. However, that the Commission lacks the authority to designate an alternate PLR except with the consent of the EDC during the transition period.

26. All assertions in this paragraph are DENIED. PECO has no more incentive than any other existing utility to retain its customers on default service during the transition period. The Partial Settlement will not "effectively prevent [customers] from choosing an EGS." The Partial Settlement will encourage the long-term development of and transition to a competitive market. PAIEUG has insufficient information to assess the long-term effect of the Enron plan; however, it appears that the Enron plan will not encourage the long-term development of and transition to a competitive market because of proposed tariff provisions, the unreasonable market prices and the increasing CTC contained therein. Regardless, there is absolutely no connection between designating Enron as the PLR and bringing competition to the PECO service territory, because the PLR serves the customers that, by definition, choose not to participate in the competitive market.

27. All assertions in this paragraph are DENIED. PAIEUG has insufficient information to assess Enron's ability to fulfill the PLR role. However, because of the forced contractual arrangements that are an integral part of the Enron plan, PECO will continue to bear the real burden and risk of supplying the Default Customers.

28. The first sentence is ADMITTED. The second sentence is a statement of the Enron proposal to which no response is necessary. However, it is noted that the Commission lacks the authority under the Act to force PECO to enter into a full-requirements PPA at the forecasted market prices dictated by Enron and into which PECO had no input in negotiating. Further, Enron is undertaking absolutely no obligation in its requested PLR role if the Commission forces PECO to continue to supply the electricity for the Default Customers by forcing PECO to enter into the PPA. It is preposterous for the Commission to endorse the concept that Enron will be able to "fulfill" its obligation to procure generation for Default Customers by placing upon PECO the obligation to supply electricity at the Enron dictated prices in the proposed PPA.

29. This paragraph is a statement of the Enron proposal to which no response is necessary. However, it is noted that the Commission lacks the authority under the Act to force PECO to enter into the MBC Services Agreement. PAIEUG has insufficient information to determine whether the rates in the agreement are commensurate with the costs in existing distribution tariffs.

30. The first sentence is a statement of the Enron proposal to which no response is necessary. Regardless, because the Commission lacks the authority under the Act to force PECO into such arrangements, the Commission should dismiss consideration of the Enron Petition on its face. The second sentence is DENIED and specific proof thereof is demanded. Further, there

is no support in the Act for the assertion that there is some "necessary predicate of competition that is legally required for stranded cost recovery."

31. It is ADMITTED that Section 2811 empowers the Commission to monitor the market. It is DENIED that all transfers by PECO require Commission approval.

32. The first sentence is DENIED. Because the plan presented in the Enron Petition is too incomplete to be implemented, PAIEUG has insufficient information to detect and assess all possible changes to the tariff. The Partial Settlement does contain, however, a revised tariff reflecting proper operations in a competitive market environment. Furthermore, the Partial Settlement will expedite direct access and competition in the PECO service territory.

The second sentence is ADMITTED in part and DENIED in part. It is ADMITTED that a tariff is attached to the Enron Petition as Exhibit 1; it is DENIED that the tariff attached as Exhibit 1 reflects how business would be conducted under the retail competition contemplated by the Act.

33. The first sentence is DENIED. The proposed tariff in the Partial Settlement also includes the EGS in the mix of relationships. Furthermore, there are many changes made in the Enron proposed tariff in addition to the purported introduction of the EGS and these changes constitute violations of the cost-shifting and rate cap provisions of the Act. The remainder of the paragraph constitutes a summary of the Enron proposal to which no response is required. However, the following issues require state-wide approach in a generic proceeding and that the Enron plan should be rejected on the same issues: unbundling of revenue cycle services; access to distribution facilities; EDC-Affiliated EGS interaction; EDC-EGS interaction; Enrollment and Solicitations by EGS; and, competitive safeguards. Enron's inclusion in the PLR Petition of its

slanted view of the proper resolution of these issues undermines the ongoing efforts of the Commission and collaborative groups to resolve the issues. Enron's proposal constitutes an attempt to do an end-run around parties that have committed tremendous efforts to attempt to arrive at consensus on these issues. Furthermore, Enron's proposed tariff makes the following objectionable changes from both the current tariff and the tariff in the Partial Settlement:

- Restatement of the Auxiliary Service Rider as applying only to transmission and distribution capacity;
- Elimination of the Cooling Thermal Storage HT Rider;
- Elimination of references to generation services in the Curtailment HT Rider;
- Repricing of credits in Curtailment *HT Rider* to reflect "cost-based" value of relieving delivery constraints on the PECO electric system;
- Modification of the discounts in the Employment and Economic Recovery Rider to apply only to transmission and distribution components of service;
- Unbundling of the Night Service GS and Night Service HT Riders to create "cost-based, off-peak delivery service."
- Elimination of references to generation service in the Large Interruptible Load Rider (LILR) and repricing credits to reflect the "cost-based" value of relieving delivery constraints on the PECO electric system;
- Elimination of the Economic Efficiency Rider;
- Elimination of the Capacity Reservation Rider; and,
- Elimination of references to generation in Interruptible Rider 1 and repricing of credits to reflect "cost-based" value of relieving delivery constraints.

The motivation for these changes clearly is to minimize the discretion that PECO has to negotiate with customers through the solutions represented in these riders, in violation of the Act's

explicit mandate that flexibly priced services be permitted in the restructured environment. 66 Pa. C.S. § 2806(h). Furthermore, these Enron-proposed changes constitute violations of the Act's rate cap and cost shifting provisions. Specifically, the repricing of credits (in the Curtailment HT Rider, the LILR Rider, and the Interruptible 1 Rider) and the elimination of certain riders (Cooling Thermal Storage HT Rider, Economic Efficiency Rider, and Capacity Reservation Rider) violate the Act and cannot be endorsed by this Commission.

34. DENIED. The tariff contained in the Partial Settlement will allow the retail electric market to function properly. Conversely, adoption of the Enron proposed tariff will stifle the development of a competitive market.

35-37. These paragraphs constitute a summary of the Enron proposal to which no response is necessary. However, the Enron Petition is incomplete as to the full explanation of elements necessary for implementation and insufficient information is available to assess the total impact of the Enron plan.

**WHEREFORE**, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Commission:

- (A) Reject the Enron Petition because the Commission has no authority to provide the relief requested;
- (B) Reject the Enron Petition because it is an attempt to thwart Commission regulations with respect to the proper procedures for producing evidence in a proceeding;
- (C) Reject the Enron Petition because it is inferior to the Joint Petition for Partial Settlement and because it will not bring about the promised benefits;
- (D) Reject the Enron Petition because it violates the rate cap and anti-cost shifting provisions of the Act;

- (E) Approve the Joint Petition for Partial Settlement in the PECO restructuring proceeding at Docket No. R-00973953; and,
- (F) Take such other actions as the Commission deems necessary.

Respectfully submitted,

McNEES, WALLACE & NURICK

By David M. Kleppinger  
David M. Kleppinger, Esq.  
Derrick P. Williamson, Esq.  
Pamela C. Polacek, Esq.  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 237-5214  
(717) 237-5300 (fax)

Counsel to the Philadelphia Area Industrial  
Energy Users Group

Dated: October 20, 1997

K:\172\08115\ANSWER.PET

RECEIVED

97 OCT 20 PM 2:36

CERTIFICATE OF SERVICE

PA.P.U.C.  
REGISTRAR'S OFFICE

I hereby certify that I am this day serving a true copy of the foregoing Answer of the Philadelphia Area Industrial Energy Users Group upon the participants listed below by U.S. Mail, Harrisburg parties via hand delivery, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Tanya J. McCloskey, Esq.  
Steven K. Steinmetz, Esq.  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Karen Oill Moury, Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

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

Christopher B. Craig, Esq.  
Office of Senator Vincent J. Fumo  
Room 545, Main Capitol Building  
Harrisburg, PA 17120

Alan J. Barak, Esq.  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112

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

Linda C. Smith, Esq.  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101

Terrance J. Fitzpatrick, Esq.  
David M. DeSalle, Esq.  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102

Janet Miller, Esq.  
Malatesta, Hawke & McKeon  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105-1778

Walter W. Cohen, Esq.  
Andrew J. Giorgione, Esq.  
Obermayer, Rebmann, Maxwell & Hippel  
204 State Street  
Harrisburg, PA 17101

Kenneth L. Mickens, Esq.  
Office of Trial Staff  
PA Public Utility Commission  
Pitnick Building, Third Floor  
901 North 7th Street, Rear  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**CERTIFICATE OF SERVICE**

**Page 2**

Joseph J. Malatesta, Jr., Esq.  
Lillian Smith Harris, Esq.  
Malatesta, Hawke & McKeon  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105-1778

Robert A. Mills, Esq.  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Susan Shanaman, Esq.  
Center for Energy and Econ. Dev.  
212 North Third Street, Suite 203  
Harrisburg, PA 17101-1505

Paul R. Bonney, Esq.  
Ward L. Smith, Esq.  
PECO Energy Company  
2301 Market Street  
Philadelphia, PA 19103

Sharon Johnson  
Putnam, Hayes & Bartlett  
1776 Eye Street, NW  
Washington, DC 20006

Judah L. Rose  
ICF Resources, Inc.  
9300 Lee Highway  
Fairfax, VA 22031

Thomas S. LaGuardia  
TLG Services, Inc.  
148 New Milford Road East  
Bridgewater, CT 06752

James I. Warren  
Reid & Priest  
40 West 57th Street  
New York, NY 10019

J. Gregory Sidak  
American Enterprise Institute  
1150 17th Street, NW  
Washington, DC 20036

Joseph F. Brennan  
AUS Consultants  
155 Gaither Drive  
Mt. Laurel, NJ 08054

William F. Sundermeir  
2504 West Avenue  
Ocean City, NJ 08226

Randall V. Griffin, Esq.  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899

Steven P. Hershey, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102

Paul E. Russell, Esq.  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101

Donald A. Kaplan, Esq.  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759

**CERTIFICATE OF SERVICE**

**Page 3**

Roger Clark, Esq.  
Environmentalists  
NESIP 905 Denston Drive  
Ambler, PA 19002-3901

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

Bruce A. Connell, Esq.  
DuPont Power Marketing, Inc.  
Legal Department  
600 North Dairy Ashford, ML-1034  
Houston, TX 77079

Mr. Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 South Meramec Avenue  
St. Louis, MO 63105

Michael L. Kessler  
Vice President and General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, VA 22314

Joel D. Newton, Esq.  
Verner, Liipfert, Bernhard,  
McPherson & Hand  
901 - 15th Street, NW  
Washington, DC 20005-2301

Michael G. Banta, Esq.  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

John L. Munsch, Esq.  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Mr. Sam DeFrawi  
Director, Navy Rate Intervention  
Washington Navy Yard, Building 212  
Code 00RI  
901 M Street, SE  
Washington, DC 20374-5018

Audrey Van Dyke, Esq.  
Naval Facilities Engineering Command  
Washington Navy Yard, Building 218  
Room 200  
901 M Street, SE  
Washington, DC 20374-5018

Joseph A. Dworetzky, Esq.  
John P. Lavelle, Jr., Esq.  
Hangley, Aronchick, Segal & Pudlin  
One Logan Square, Twelfth Floor  
Philadelphia, PA 19103

Gary A. Jeffries, Esq.  
CNG Energy Services Corporation  
One Park Ridge Center  
P.O. Box 15746  
Pittsburgh, PA 15244-0746

Mr. Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Usher Fogel, Esq.  
Roland, Fogel, Koblenz & Carr, LLP  
1 Columbia Place  
Albany, NY 12207

**CERTIFICATE OF SERVICE**

**Page 4**

Paul L. Ziegler, Esq.  
Ziegler & Zimmerman, PC  
355 North 21st Street, Suite 304  
P.O. Box 1080  
Camp Hill, PA 17011

John Haucke, Executive V.P.  
Pennsylvania Association of Plumbing,  
Heating, Cooling Contractors, Inc.  
4015 Jonestown Road  
Harrisburg, PA 17109-9109

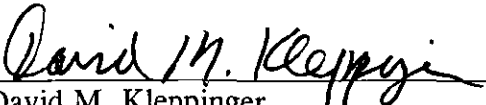
Gordon Smith, Esq.  
John & Hengerer  
1200 17th Street, NW, Suite 600  
Washington, DC 20036-3006

Mr. Richard Silkman  
163 Main Street  
Yarmouth, ME 04096

Ethan Giddings  
217 Rodman Avenue  
Jenkintown, PA 19046

Mr. Peter Bradford  
Bradford Road, Route 11  
P.O. Box 497  
Peru, VT 05152

Mr. Jerry Mendl  
MSB Energy Associates  
7507 Hubbard Avenue, Suite 200  
Middleton, WI 53562

  
\_\_\_\_\_  
David M. Kleppinger

Dated this 20th day of October, 1997, in Harrisburg, Pennsylvania.

ORIGINAL

THE LAW FIRM OF

MALATESTA HAWKE & McKEON LLP

JOSEPH J. MALATESTA, JR.  
WILLIAM T. HAWKE  
KEVIN J. McKEON  
LOUISE A. KNIGHT  
THOMAS J. SNISCAK  
NORMAN JAMES KENNARD  
LILLIAN SMITH HARRIS  
SCOTT T. WYLAND  
JANET L. MILLER  
SUSAN J. SMITH  
TODD S. STEWART  
PETER W. KOCIOLEK, JR.

HARRISBURG ENERGY CENTER  
100 NORTH TENTH STREET  
HARRISBURG, PENNSYLVANIA 17101  
(717) 236-1300  
FAX (717) 236-4841

MAILING ADDRESS:  
P.O. BOX 1778  
HARRISBURG, PA 17105

<http://www.MHM-LAW.com>

October 20, 1997

DOCUMENT  
FOLDER

PROSECUTOR'S OFFICE  
97 OCT 20 PM 4:17

James J. McNulty, Acting Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

RE: Application Of PECO Energy Company For Approval Of Its Restructuring Plan Under Section 2806 Of The Public Utility Code; Docket No. R-00973953; **ANSWER OF MID-ATLANTIC POWER SUPPLY ASSOCIATION TO "CHOICE PLAN" FILED BY ENRON ENERGY SERVICES POWER, INC.**

Dear Mr. McNulty:

Enclosed are the original and three (3) copies of the Answer of Mid-Atlantic Power Supply Association to the Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company. A copy of MAPSA's Answer has been served in accordance with the attached Certificate of Service. If you have any questions, please feel free to call.

Very truly yours,  
*Janet L. Miller*  
William T. Hawke  
Janet L. Miller  
Todd S. Stewart

Counsel for Mid-Atlantic Power  
Supply Association

JLM/kmg  
Enclosures

115

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company )  
Company for Approval of its Restructuring )  
Plan Under Section 2806 of the Public )  
Utility Code )

Docket No. P-00973953

Petition of Enron Energy Services Power, )  
Inc. for Approval of an Electric )  
Competition and Customer Choice Plan )  
and for Authority Pursuant to Section )  
2807(e)(3) of the Public Utility Code to )  
Serve as the Provider of Last Resort in )  
the Service Territory of PECO Energy )  
Company )

Docket No. P-00971265

**DOCUMENT  
FOLDER**

PROthonotary's OFFICE  
97 OCT 20 PM 4:17

**DOCKETED**  
OCT 23 1997

**ANSWER OF THE  
MID-ATLANTIC POWER SUPPLY ASSOCIATION  
TO THE PETITION OF  
ENRON ENERGY SERVICES POWER, INC.  
FOR APPROVAL OF AN ELECTRIC COMPETITION  
AND CUSTOMER CHOICE PLAN**

In accordance with the rules and procedures of the Pennsylvania Public Utility Commission ("Commission"), and pursuant to the terms of the Opinion and Order issued by the Commission on October 9, 1997, the Mid-Atlantic Power Supply Association ("MAPSA")<sup>1</sup>

<sup>1</sup> The Board of Directors of the "Mid-Atlantic Independent Power Producers" has elected to adopt the name of "Mid-Atlantic Power Supply Association" for the purpose of pursuing the interests of the association's members in the Mid-Atlantic region. MAPSA's Board of Directors believes that the new name better reflects the emerging nature of the competitive power industry and of its own evolving membership. Currently, MAPSA's Board of Directors includes representatives of Air Products and Chemicals, Inc.; Atlantic Generation, Inc.; CNG Energy Services Corporation; Cogen Technologies, Inc.; Destec Energy, Inc.; DuPont Power Marketing, Inc.; The Eastern Group; Energy Investment Advisors; Enron Capital & Trade Resources; Edison Source; Odyssey Strategies, Inc.; and U.S. Generating Company. The comments contained in this filing represent the position of MAPSA as an organization, but not necessarily the view of any particular member with respect to any specific issue.

hereby submits its Answer to the Petition filed on October 7, 1997 by Enron Energy Services Power, Inc. ("Enron") for Commission approval of an Electric Competition and Customer Choice Plan ("Choice Plan") and for authority, pursuant to Section 2807(e)(3) of the Public Utility Code, to serve as the Provider of Last Resort in the service territory of PECO Energy Company ("PECO").

MAPSA is an association of power suppliers with an interest in the emerging electric power supply market within the Commonwealth of Pennsylvania and the Mid-Atlantic region. MAPSA's members include power marketers, independent power producers and a broad range of companies who support the electric services industry. MAPSA members currently intend to participate in the competitive electric market that will exist within the Commonwealth of Pennsylvania once Commission proceedings on restructuring have been concluded. As such, MAPSA has a unique and material interest in the Enron Choice Plan and in the outcome of the PECO Restructuring Plan proceeding.

Enron's Choice Plan was submitted to the Commission as an alternative to the Joint Petition for Partial Settlement ("Partial Settlement") executed and filed by various parties in resolution of some of the issues raised in connection with PECO's Restructuring Plan proceeding<sup>2</sup>. The Partial Settlement was opposed by several power marketers, including MAPSA.

---

<sup>2</sup> The signatories to the Joint Petition for Partial Settlement include Senator Vincent J. Fumo; CEPA, et al.; Lance S. Haver; the Office of Trial Staff; the Office of Small Business Advocate; the Philadelphia Area Industrial

PECO's Restructuring Plan and the Partial Settlement envision that PECO will be the "Default Service Provider" in PECO's service territory. In contrast, Enron's October 7, 1997 Petition asks the Commission to designate Enron, not PECO, as the Default Service Provider in PECO's service territory. Enron proposes to purchase from PECO the capacity and energy needed to serve the default load, at a price equal to the generation credit that Enron will charge the customers. Enron would retain PECO to do metering, billing and collections for the default service. Under Enron's Choice Plan, competitive suppliers also would be able to offer services such as metering and single billing to customers.

The stated objectives of the Enron Choice Plan are very similar to those for which MAPSA has been fighting -- creation of a fair, competitive market for electricity services. In August, in response to the filing of the Joint Petition, MAPSA proffered a counter offer to PECO. MAPSA's counter offer preserves the rate reductions and rate caps negotiated between PECO and the customer groups signing the Joint Petition. In addition, MAPSA's counter offer provides PECO with sufficient CTC revenues to recover its claimed \$5.5 billion of stranded costs. MAPSA's counter offer also would allow customers to have choices as to how they will be metered and billed, including metering and complete billing by the competitive supplier. Finally, MAPSA's counter offer would require PECO to follow a code of conduct in its transactions with its marketing affiliates that is stricter than the code of conduct previously proposed by PECO. MAPSA's counter offer was introduced into evidence as part of MAPSA's

---

Energy Users Group; the American Association of Retired People; the Department of the Navy; and PECO Energy Company.

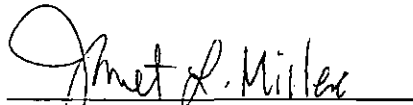
testimony in the PECO Restructuring Plan proceedings, and was defended in hearings before the Commission on October 14-16, 1997.

MAPSA believes that the Enron Choice Plan raises issues and options that MAPSA has long advocated. The Choice Plan affirms that there is a market for services such as metering and billing, customized to the customer's needs, which are precluded by proposals made by PECO in its Restructuring Plan and in the Joint Petition, but which are a centerpiece of the MAPSA counter offer and the Enron Choice Plan. Competition in the market to provide these and other services should be encouraged by the Commission as consumers stand to reap the benefits of this competition in the form of lower prices.

MAPSA believes that Enron's Choice Plan not only exposes the inadequacy of the terms and conditions of service which PECO has offered its customers, but also opens further the debate on the value of those services which PECO, Enron and others will bring to the competitive market. MAPSA also believes that the options proposed in Enron's Choice Plan move closer to the development of a robust competitive electric market in Pennsylvania which MAPSA has been advocating in this and other proceedings.

For the reasons stated above, MAPSA believes it is appropriate and beneficial that the Commission has indicated its intention to consider, in conjunction with PECO's Restructuring Plan proceeding, all aspects of the restructuring of electric services in PECO's service territory, including the proposals set forth in Enron's Choice Plan.

Respectfully submitted,



William T. Hawke  
Janet L. Miller  
Todd S. Stewart  
Malatesta Hawke & McKeon LLP  
Harrisburg Energy Center  
P. O. Box 1778  
Harrisburg, PA 17105-1778  
(717) 236-1300

Counsel for Mid-Atlantic Power  
Supply Association

DATED: October 20, 1997

RECEIVED  
97 OCT 20 PM 4:17  
PROTHONOTARY'S OFFICE

THE LAW FIRM OF

MALATESTA HAWKE & McKEON LLP

JOSEPH J. MALATESTA, JR.  
WILLIAM T. HAWKE  
KEVIN J. McKEON  
LOUISE A. KNIGHT  
THOMAS J. SNISCAK  
NORMAN JAMES KENNARD  
LILLIAN SMITH HARRIS  
SCOTT T. WYLAND  
JANET L. MILLER  
SUSAN J. SMITH  
TODD S. STEWART  
PETER W. KOCIOLEK, JR.

HARRISBURG ENERGY CENTER  
100 NORTH TENTH STREET  
HARRISBURG, PENNSYLVANIA 17101  
(717) 236-1300  
FAX (717) 236-4841

http://www.MHM-LAW.com

MAILING ADDRESS:  
P.O. BOX 1778  
HARRISBURG, PA 17105

October 20, 1997

James J. McNulty, Acting Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

KJR

PROthonotary's OFFICE

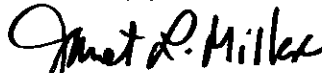
97 OCT 21 PM 4:04

RE: Application Of PECO Energy Company For Approval Of Its Restructuring Plan Under Section 2806 Of The Public Utility Code; Docket Nos. R-00973953 and P-00971265; **CERTIFICATE OF SERVICE - ANSWER OF MID-ATLANTIC POWER SUPPLY ASSOCIATION TO "CHOICE PLAN" FILED BY ENRON ENERGY SERVICES POWER, INC.**

Dear Mr. McNulty:

Enclosed is a Certificate of Service indicating the list of parties that received a copy of the Answer of Mid-Atlantic Power Supply Association to the Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company. If you have any questions, please feel free to call.

Very truly yours,



William T. Hawke  
Janet L. Miller

Counsel for Mid-Atlantic Power  
Supply Association

DOCUMENT  
FOLDER

JLM/kmg  
Enclosure

cc: Honorable Marlane R. Chestnut (w/enclosure)  
Honorable Charles E. Rainey, Jr. (w/enclosure)

**CERTIFICATE OF SERVICE**  
**(Docket No. R-973953)**

I hereby certify that I am this day serving a copy of the foregoing document upon the persons and in the manner indicated.

**VIA FIRST CLASS MAIL**

Paul R. Bonney, Esquire  
Noel H. Trask, Esquire  
Michael A. Carvin, Esquire  
PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215-568-3389

John L. Munsch, Esquire  
Allegheny Power Corporation  
800 Cabin Hill Drive  
Greensburg, PA 15601  
412-838-6177

Paul E. Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
610-774-6726

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-0434

Roger Clark, Esquire  
Environmentalists  
905 Denston Drive  
Ambler, PA 19002-3901  
215-628-2630

Donald A. Kaplan, Esquire  
Pennsylvania Power & Light Company  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
202-331-1024

Joseph A. Dworetzky, Esquire  
New Energy Ventures  
Hangley Aronchick Segal & Pudlin  
One Logan Square, 12<sup>th</sup> Floor  
Philadelphia, PA 19103

Audrey Van Dyke, Esquire  
Naval Facilities Engineering Command  
Washington Navy Yard  
Building 218, Room 200  
901 M Street, SE  
Washington, DC 20374-5018  
202-433-2591

Usher Fogel, Esquire  
Pennsylvania Petroleum Association  
Roland Fogel Koblenz & Carr LLP  
1 Columbia Place  
Albany, NY 1227  
518-434-3232

Gordon Smith, Esquire  
Duke Energy Trading & Marketing LLC  
Electric Clearinghouse, Inc.  
Vastar Power Marketing, Esquire  
NorAm Energy Management, Inc.  
John & Hengerer  
1200 17<sup>th</sup> Street, NW, Suite 600  
Washington, DC 20036-3006  
202-429-8805

H. Allan Knopp  
Director, Regulatory Affairs  
P.O. Box 2197, CH-1038  
Houston, TX 77252

Vickiren S. Aeshleman  
Director- Regulatory Policy  
QST Energy Inc.  
300 Hamilton Blvd. Suite 300  
Peoria, IL 61602

Shelia S. Hollis, Esquire  
Mary Ann Ralls, Esquire  
Stephanie A. Sugrue, Esquire  
Duane, Morris & Heckscher LLP  
1667 K Street, N.W. Suite 700  
Washington, DC 20006-1608

FEDERAL JUDICIAL  
PROTHONOTARY'S OFFICE

97 OCT 21 PM 4:04

**DOCKETED**  
OCT 23 1997

**DOCUMENT  
FOLDER**

Kenneth Mickens, Esquire  
Charles Daniel Shields, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
717-787-2677

Tanya J. McCloskey, Esquire  
Steven Steinmetz, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
717-783-7152

Bernard A. Ryan, Jr., Esquire  
Karen Oill Moury, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101  
717-783-2831

David M. Kleppinger, Esquire  
Derrick P. Williamson, Esquire  
PAIEUG  
McNees Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
717-237-5300

Terrance Fitzpatrick, Esquire  
David DeSalle, Esquire  
GPU Energy  
Ryan Russell Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
717-233-5287

Christopher B. Craig, Esquire  
Senator Vincent Fumo  
Room 545 Main Capital Building  
Harrisburg, PA 17120  
717-783-5210

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Indianapolis Power & Light Company  
204 State Street  
Harrisburg, PA 17101  
717-234-9734

Daniel Clearfield, Esquire  
Enron Corp.  
Wolf Block Schorr & Solis-Cohen  
401 North Front Street  
Harrisburg, PA 17101  
717-237-7161

Craig A. Doll, Esquire  
Delmarva Power & Light Company  
214 State Street  
Harrisburg, PA 17101  
717-230-9750

Linda C. Smith, Esquire  
AARP  
Dilworth Paxson Kalish & Kauffman  
305 North Front Street  
Suite 403  
Harrisburg, PA 17101  
717-783-5210

Lillian S. Harris, Esquire  
Municipal Intervenors Group  
Malatesta Hawke & McKeon LLP  
PO Box 1778  
Harrisburg, PA 17105  
717-236-1300

Robert A. Mills, Esquire  
Pennsylvania Retailers' Association  
McNees Wallace & Nurick  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166  
717-237-5300

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899

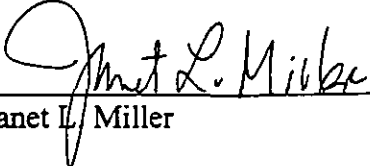
Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Joel D. Newton, Esquire  
Verner Liipfert Bernhard McPherson & Hand  
901 - 15th Street NW  
Washington DC 20005-2301

Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street-Suite 300  
Harrisburg, PA 17106-2105

John Klauberg, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55th Street  
New York, NY 10019-5389

  
\_\_\_\_\_  
Janet L. Miller

DATED: October 20, 1997



**PECO ENERGY**

**ORIGINAL**

Legal Department

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

Direct Dial: 215 841 4252

October 21, 1997

James W. Durham  
Senior Vice President  
and General Counsel  
  
Edward J. Cullen, Jr.  
Deputy General Counsel  
  
Sandra H. Byrne  
Legal Administrator

Paul R. Bonney  
Ellen M. Cavanaugh  
Jessica N. Cone  
Todd O. Cutler  
Susan S. Foehl  
Vilna Waldron Gaston  
Gregory Golozeski  
John C. Halderman  
Mary McFall Hopper  
Conrad O. Kattner  
Stephanie Whitton Lewis  
Jeffrey J. Norton  
Mark B. Peubody  
Roslyn G. Pollack  
Wendy Schermer  
Richard S. Schlugel  
Jenny P. Shulbank  
Ward L. Smith  
Delia W. Stroud  
Dawn Getty Sutphin  
Noel H. Trask  
Ronald L. Zack  
Assistant General Counsel

**BY HAND DELIVERY**

James McNulty, Acting Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
Harrisburg, PA 17105-3265

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;  
Petition of Enron Energy Service Power, Inc. Docket No. P-00971265.

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of the  
Petition of PECO Energy Company for Clarification/Reconsideration of Order  
Entered October 9, 1997.

Sincerely,

Paul R. Bonney

PRB/mbo

cc: John M. Quain, Chairman  
David W. Rolka, Commissioner  
John Hanger, Commissioner  
Robert K. Bloom, Commissioner  
Nora Mead Brownell, Commissioner  
Administrative Law Judge Marlane R. Chestnut  
Administrative Law Judge Charles E. Rainey, Jr.  
Certificate of Service

PROTHONOTARY'S OFFICE

97 OCT 21 PM 4:13

RECEIVED

100290v02

DOCUMENT  
FOLDER

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**ORIGINAL**

PENNSYLVANIA PUBLIC  
UTILITY COMMISSION

v.

PECO ENERGY COMPANY

DOCKET NO. R-00973953

PETITION OF ENRON ENERGY  
SERVICES POWER, INC. FOR  
APPROVAL OF AN ELECTRIC  
COMPETITION AND CUSTOMER  
CHOICE PLAN AND FOR AUTHORITY  
PURSUANT TO SECTION 2807(e)(3)  
OF THE PUBLIC UTILITY CODE TO  
SERVE AS THE PROVIDER OF LAST  
RESORT IN THE SERVICE TERRITORY  
OF PECO ENERGY COMPANY

DOCKET NO. P-00971265

PROCEEDINGS OFFICE  
97 OCT 21 PM 4:13  
11/01/1997

PETITION OF PECO ENERGY COMPANY  
FOR CLARIFICATION/RECONSIDERATION  
OF ORDER ENTERED OCTOBER 9, 1997

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION:

By Order entered October 9, 1997, the Pennsylvania Public Utility Commission ("Commission") granted a Motion filed by Enron Energy Services Power, Inc. ("Enron") to consolidate its Petition for Approval of an Electric Competition and Customer Choice Plan ("Enron Petition") with PECO Energy Company's ("PECO") restructuring proceeding at Docket No. R-00973953. The Order directs that hearings and briefing on the consolidated matters be concluded in time for the Commission to render a final decision on December 11, 1997. PECO hereby seeks clarification or, if needed, reconsideration of such Order insofar as the Order may

**DOCKETED**

OCT 22 1997

**DOCUMENT  
FOLDER**

be interpreted to require the parties to PECO's restructuring proceeding to present and brief their entire litigation position prior to the Commission's review of the Joint Petition for Partial Settlement of PECO Energy Company's Proposed Restructuring Plan (the "Partial Settlement") that was filed at Docket No. R-00973953 on August 27, 1997.

## I. INTRODUCTION

On August 27, 1997, PECO and various consumer groups (the "Joint Signatories") filed with the Commission the Partial Settlement. Among the provisions of the Partial Settlement was an expectation that the Joint Signatories would not present evidence or argument in opposition to the terms of the Partial Settlement prior to the Commission's ruling on the Partial Settlement. In addition, the parties expressly reserved their rights to reassert their litigation positions if the Commission did not accept the Partial Settlement:

In reliance upon the foregoing, surrebuttal testimony has not been filed by the Joint Signatories with respect to the issues resolved by the Partial Settlement. Moreover, in recognition of their agreement not to oppose the settlement terms, the Joint Signatories had not intended to offer into evidence at this time all of their previously-filed testimony, but only such testimony as was necessary to support the reasonableness of the Partial Settlement and the specific issues which the Commission directed the parties to address in its October 2, 1997 Tentative Order (e.g., employee impacts, ancillary services). Indeed, it was the Joint Signatories' understanding and expectation that if the Partial Settlement were not approved, the matter would be remanded to the presiding Administrative Law Judges (the "ALJs") for additional hearings and briefing.

PECO does not believe that the Commission's Order entered October 9, 1997, consolidating Enron's Petition, was intended to alter the foregoing procedures. However, that Order could be interpreted to require the parties both to submit their evidence and argument with respect to the reasonableness of the Partial Settlement and to submit their evidence and argument in support of their litigation positions, all in time for consideration at the Commission's December 11, 1997 public meeting. Such a process would seriously undermine this Commission's stated goal of encouraging settlements. Because of the obvious implications of such an interpretation, PECO respectfully requests the Commission to clarify/reconsider its October 9, 1997 Order.

**II. THE COMMISSION SHOULD FIRST REVIEW THE PARTIAL SETTLEMENT AND ONLY DIRECT THAT ADDITIONAL HEARINGS BE HELD ON THE SETTLED ISSUES IN THE EVENT THAT THE PARTIAL SETTLEMENT IS REJECTED**

Due process and Pennsylvania's Administrative Agency Law require that parties to an administrative proceeding have a full opportunity to cross-examine witnesses, to submit evidence in their behalf and to present argument in support of their positions. See Commonwealth v. Sanders, 85 Pa. Commonwealth Ct. 549, 483 A.2d 1018 (1984); Pennsylvania State Athletic Commission v. Bratton, 177 Pa. Superior Ct. 598, 112 A.2d 422 (1955). Consistent with those principles, hearings have been held on the Partial Settlement, additional hearings have been scheduled on Enron's Petition and a briefing date has been set.

At its December 11, 1997 public meeting, the Commission therefore will have a sufficient record to determine whether or not the Partial Settlement is in the public interest. In

addition, if the Commission believes there is value in reviewing Enron's proposals in making that evaluation, the necessary evidence and legal argument will be available to it. Should the Commission decide, however, that the Partial Settlement cannot be accepted without modification, then the appropriate course would be to remand the matter to the presiding ALJs.

Other jurisdictions, with more formalized procedures for reviewing settlements, provide that settlements are to be ruled upon before forcing parties to present their arguments on the merits, and that the proper course is to remand if a settlement is rejected. In Re: Atlantic Seaboard Corporation, 25 F.P.C. 133, 1961 FPC LEXIS 411, pp. 10-11, (1961) the Federal Power Commission rejected a party's contention that a full record and decision on the merits be rendered where a settlement had been submitted. Instead, the FPC established a schedule which, as here, allowed the objecting party to challenge the settlement on the record. The Commission stated:

Thereafter the record will be certified to the Commission for a decision whether the Settlement Agreement should be approved. If the Settlement Agreement is not approved, hearing shall be set in these dockets, as if no agreement had ever been proposed therein. . . .

Similarly, the California and New York Commissions have adopted settlement procedures which provide for the submission of a settlement, and a remand for hearings on the parties' litigation positions if the settlement is rejected. See, e.g., Order Instituting Investigation, 1992 Cal. PUC LEXIS 848, p. 7, 139 P.U.R. 4th 540 (1992); Proceeding on Motion of the Commission Concerning its Procedures for Settlement, 1992 N.Y. PUC LEXIS 5, pp. 28-29, 32 NY PSC 71 (1992).

PECO would note further that, by letter dated October 14, 1997, it advised the Commission that, if the Partial Settlement is rejected, PECO agrees to extend to March 12, 1998 the date for final Commission action on its restructuring plan. As such, there will be sufficient time to fully litigate the parties' original positions.

### **III. REQUIRING PARTIES TO SUPPORT THEIR LITIGATION POSITIONS PRIOR TO A RULING ON A PROPOSED SETTLEMENT AGREEMENT WOULD BE DETRIMENTAL TO THE SETTLEMENT PROCESS**

One of the principal benefits of settlement is that it avoids litigation. If parties are required nonetheless to absorb the cost and burden that litigation entails, they will have little incentive to settle. See Re: Application of Pacific Gas and Electric Company, 1990 Cal. PUC LEXIS 295, at p. 36 PUC 2d 342 (1990) (“[W]e are not going to make a decision on the merits of these claims. Such a decision would require us to, in effect, eliminate one of the substantial benefits of a settlement, the alleviation of the need to litigate a dispute.”).

An adverse interpretation of the Commission's October 9, 1997 Order would unquestionably discourage settlements. As with Enron's proposal and in the future, any party, including those with their own limited agenda, could effectively hold other parties desiring settlement hostage, forcing them to full litigation if they refuse to give in to non-settling parties' demands. This is not merely an academic concern; there are real consequences and costs. See Re: Application for Merger of Carnegie Gas Company and Apollo Gas Company, 1995 Pa. PUC LEXIS 155, p. 65 (1995) (“Settlements have many benefits including the avoidance of the time, effort and expense associated with litigation.”)

Although there is always the risk that the Commission will reject a settlement and remand the matter for litigation, the potential for savings is a driving factor in favor of settlements. Fewer settlements will be considered, particularly early in the litigation process, where parties can save no litigation costs if any one party objects. This concern, it should be noted, is immediately relevant to the pending restructuring proceedings of other Pennsylvania electric utilities. The same parties that are objecting to the Partial Settlement in the PECO proceeding can force full litigation in every other restructuring case, simply by refusing to join a settlement unless they receive everything they want. This will likely bring to a halt any meaningful efforts toward compromise.

To avoid these detrimental effects to the settlement process, PECO respectfully requests that the Commission, after reviewing the briefs to be filed by all parties on December 2, 1997, first rule on whether to adopt the Partial Settlement. If the Partial Settlement is rejected, the matter could then be remanded for full litigation, thereby preserving all parties' ability to zealously argue their litigation position.

#### **IV. REQUIRING THE CONCURRENT PRESENTATION OF SETTLEMENT AND LITIGATION POSITIONS WOULD BE UNTENABLE**

If the Joint Signatories were required to argue that the Partial Settlement is reasonable and, at the same time, advocate a different outcome, they would be placed in an untenable position. If they argued their litigation positions forcefully, they might convince the Commission to resolve the case on its merits, to the detriment of their Partial Settlement position. If, however, they focused their arguments in favor of the Partial Settlement only to have it later

rejected, they would be deprived of a fair opportunity to convince the Commission to adopt their respective litigation positions.<sup>1/</sup> This is not a fair position in which to place the advocates, and should be avoided.

WHEREFORE, for the foregoing reasons, PECO respectfully requests that the Pennsylvania Public Utility Commission clarify its October 9, 1997 Order to provide: (1) that the only issue to be briefed and presented to the Commission at this time is whether the Partial Settlement is in the public interest and (2) that, if the Partial Settlement is not approved without modification, the proceedings will be remanded to the presiding Administrative Law Judges to provide all parties with the opportunity to present their full litigation positions, including full rights of cross-examination and briefing.

Respectfully submitted,



Paul R. Bonney, Esquire  
Assistant General Counsel

PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-4252

Dated: October 21, 1997

---

<sup>1/</sup> In addition, several significant provisions of the Partial Settlement (e.g., the early rate reduction, the extension of the rate caps, the agreements of Senator Fumo, CEPA and the OCA to withdraw their challenges to the Commission's securitization order) cannot be achieved through litigation.

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of Pennsylvania Public Utility Commission v. PECO Energy Company Pa. PUC Docket No. R-00973953.

Honorable Marlane R. Chestnut)  
Administrative Law Judge  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PAIEUG)

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Fumo)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
305 N. Front Street; Suite 401  
Harrisburg, PA 17101  
(Counsel for Enron)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Counsel for Delmarva Power & Light)

Walter W. Cohen, Esquire / Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Building 218, Room 200

Honorable Charles E. Rainey, Jr.  
Administrative Law Judge  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens & John Long, Jr.)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Attorney for Environmentalists)

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101  
(Counsel for AARP)

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(Counsel for Delmarva Power & Light)

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Janet Miller, Esquire  
William T. Hawke, Esquire/Todd S. Stewart, Esq.  
Malatesta Hawke & McKeon

901 M Street, S.E.  
Washington, DC 20374-5018  
(Counsel for Dept. of Navy)

Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PA Retailers' Association)

Joel D. Newton, Esquire  
Verner Liipfert Bernhard McPherson & Hand  
901 - 15<sup>th</sup> Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17<sup>th</sup> Street, NW - Suite 600  
Washington, DC 20036-3006  
(Duke Energy Trading and Marketing, Vastar, & Electric Clearinghouse)

Joseph A. Dworetzky, Esquire  
John P. Lavelle, Jr., Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19102  
(Counsel for New Energy Ventures)

Stephanie A. Sugrue, Esquire/Sheila S. Hollis, Esquire  
Mary Ann Rallis, Esquire  
Duane, Morris & Heckscher LLP  
1667 K Street, N.W. - Suite 700  
Washington, DC 20006-7800  
(Counsel for QST Energy)

Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105  
(Counsel for Enron Energy Services Power, Inc.)

100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(Counsel for Allegheny Power)

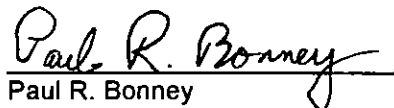
Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

Joseph J. Malatesta, Jr., Esquire  
Lillian Smith Harris, Esquire  
Malatesta Hawke & McKeon LLP  
Harrisburg Energy Center  
100 North Tenth Street - P.O. Box 1778  
Harrisburg, PA 17105  
(Municipal Group)

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
1 Columbia Place  
Albany, NY 12207  
(Counsel for Pennsylvania Petroleum Association and Pennsylvania Association of Plumbing, Heating, Cooling Contractors, Inc.)

Vickiren S. Aeshleman  
Director - Regulatory Policy  
QST Energy, Inc.  
300 Hamilton Blvd.; Suite 300  
Peoria, IL 61602

John Klauberg, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55<sup>th</sup> Street  
New York, NY 10019-5389  
(Counsel for Enron Energy Services Power, Inc.)



Paul R. Bonney  
Ward L. Smith  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252  
(215) 841-6863

Dated: October 21, 1997

COMMONWEALTH OF PENNSYLVANIA



ORIGINAL

OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

Bernard A. Ryan, Jr.  
Small Business Advocate

October 21, 1997

(717) 783-2525  
(717) 783-2831(FAX)

**HAND DELIVERED**

Office of the Prothonotary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
P. O. Box 3265  
Harrisburg, PA 17105-3265

PROTHONOTARY'S OFFICE

97 OCT 21 PM 2:53

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

Petition of Enron Energy Services Power, Inc.  
Docket No. P-00971265

Dear Prothonotary:

I am delivering for filing today the original plus three copies of the Joint Petition for Reconsideration or Clarification on behalf of Several Signatories to the Partial Settlement of PECO Energy's Proposed Restructuring Plan. This Joint Petition seeks reconsideration or clarification of the Commission's Opinion and Order entered on October 9, 1997 in the above-captioned consolidated proceedings.

A copy of the Petition is being served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

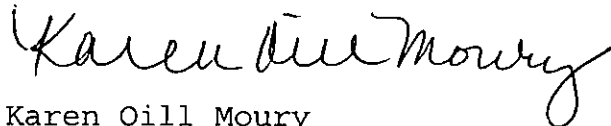
DOCUMENT  
FOLDER

25

Office of the Prothonotary  
October 21, 1997  
Page Two

Please call me if you have any questions. Thank you for your attention to this matter.

Sincerely,



Karen Oill Moury  
Deputy Small Business Advocate

Enclosures

cc: John M. Quain, Chairman  
David W. Rolka, Commissioner  
John Hanger, Commissioner  
Robert K. Bloom, Commissioner  
Nora Mead Brownell, Commissioner  
Hon. Marlane R. Chestnut  
Hon. Charles E. Rainey, Jr.  
Parties of Record

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Petition of Enron Energy Services Power, :  
Inc. For Approval of an Electric :  
Competition and Choice Plan and for :  
Authority Pursuant to Section 2807(e)(3) : Docket No. P-00971265  
of the Public Utility Code to Serve as :  
the Provider of Last Resort in the :  
Service Territory of PECO Energy Company :

JOINT PETITION OF SEVERAL SIGNATORIES TO THE  
PARTIAL SETTLEMENT OF PECO ENERGY COMPANY'S  
PROPOSED RESTRUCTURING PLAN  
FOR RECONSIDERATION OR CLARIFICATION  
OF THE COMMISSION'S ORDER ENTERED ON OCTOBER 9, 1997

PROTHONOTARY'S OFFICE

97 OCT 21 PM 2:53

This Joint Petition for Reconsideration or Clarification is filed by the Office of Trial Staff, the Office of Consumer Advocate, the Philadelphia Area Industrial Energy Users Group, the Honorable Vincent J. Fumo, CEPA, et al. (which includes CEPA, Tenant Action Group, ACORN and John W. Long, Jr.), the American Association of Retired Persons, Lance Haver and the Office of Small Business Advocate ("Joint Petitioners") relating to the Opinion and Order entered by the Commission on October 9, 1997 in the above-captioned proceedings. By that Opinion and Order, the Commission consolidated the Petitions filed by Enron Energy Services Power, Inc. ("Enron") on October 7, 1997 for approval of an electric competition and choice plan and for authority to serve as the provider of last resort in the service territory of PECO Energy Company ("PECO") with PECO's pending Restructuring proceeding.

The purpose of this Joint Petition for Reconsideration or Clarification is to request that the Commission reconsider or clarify its Opinion and Order entered on October 9, 1997 with respect to the need for the development and

DOCKETED  
OCT 22 1997

DOCUMENT  
FOLDER

certification of a complete record on PECO's Restructuring Plan, prior to ruling on the Joint Petition for Partial Settlement ("Joint Partial Settlement Petition") that has been filed in the Restructuring proceeding. In particular, the Joint Petitioners refer to page 5 of the Opinion and Order where the Commission states that "[a]dditional hearings must, however, be conducted with regard to those issues in PECO's Restructuring case that have not yet been addressed in the record so as to provide an adequate record for adjudication of PECO's Restructuring plan if neither the Joint Partial Settlement Petition or another settlement is approved."

This language in the Opinion and Order could be interpreted as conveying the Commission's desire to have the signatory parties to the Joint Partial Settlement Petition fully litigate the various issues presented by PECO's proposed Restructuring Plan while at the same time explaining why the proposed Joint Partial Settlement Petition is in the public interest. If this was not the Commission's intention, the Joint Petitioners request that the Commission clarify the Opinion and Order to provide that the only record that needs to be developed prior to the December 11, 1997 public meeting is that portion pertaining to whether the Joint Partial Settlement Petition is in the public interest. If, however, the language in the Commission's Opinion and Order is intended to be consistent with the interpretation suggested above, the Joint Petitioners request that the Commission reconsider its ruling in this regard. The bases for this requested relief are set forth below.

Shortly after PECO's Restructuring Plan was filed on April 1, 1997, a prehearing conference was held, at which time the parties developed and the Administrative Law Judges ("ALJs") approved a procedural schedule. In accordance with that schedule, numerous parties, including the Joint Petitioners, filed Direct Testimony on June 20, 1997 and Rebuttal Testimony on July 18, 1997. Just before Surrebuttal Testimony was to be served on August 1, 1997, PECO, the Joint

Petitioners and other parties informed the ALJs that settlement negotiations were ongoing and that a suspension/extension of the schedule would facilitate those discussions. As a result, the ALJs agreed to suspend the schedule so that Surrebuttal Testimony would not be filed on August 1, 1997 and that the fifteen days of evidentiary hearings scheduled for August 4, 1997 through August 22, 1997 would be postponed. Likewise, the public input hearings on PECO's Restructuring Plan, scheduled to be in August and September, were canceled.

After extensive negotiations, the Joint Petition for Partial Settlement was filed with the Commission on August 27, 1997. That Joint Partial Settlement Petition was executed by PECO, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, the Philadelphia Area Industrial Energy Users Group, Senator Fumo, CEPA, et al., Lance Haver, the American Association of Retired Persons, and the Department of Navy.

Since the Joint Partial Settlement Petition was opposed by some parties, and also since it did not resolve all of the issues raised by parties in the Restructuring proceeding, a post-settlement prehearing conference was held on September 10, 1997 to develop a procedural schedule for addressing those two situations. At that time, dates were established for the filing of testimony in support of or in opposition to the Joint Partial Settlement Petition, along with hearings and briefs on those issues resolved by the Joint Partial Settlement Petition. Similarly, dates were agreed upon by the parties for the continued litigation of the issues that were not resolved by the Joint Partial Settlement Petition.

After the time for filing testimony in opposition to the Joint Partial Settlement Petition, and before the commencement of evidentiary hearings on that Joint Petition, Enron filed its proposed Plan and Petition. The Joint Petitioners recognize the Commission's interest in affording Enron an opportunity to develop an evidentiary record in support of its proposals. To that end, the

Joint Petitioners have cooperated in the establishment of a schedule to provide for that process. The Joint Petitioners strongly disagree, however, with any effort to have the entire record for PECO's proposed Restructuring Plan developed simultaneously with hearings and briefs on the Joint Partial Settlement Petition and the Enron proposals.

Assuming that the Commission wishes to review Enron's proposals in the context of determining whether the Joint Partial Settlement Petition is in the public interest, the Joint Petitioners submit that such a review can occur on the basis of the evidentiary record that has already been developed in the Restructuring proceeding, in conjunction with the hearings and testimony relating to the Joint Partial Settlement Petition and to the Enron pleadings. If the Commission determines that this record does not establish that the Joint Partial Settlement Petition is in the public interest, it is free to reject the proposed Joint Petition.

At that time, however, due process would require that the signatory parties to the Joint Partial Settlement Petition be given the opportunity to resume the litigation of PECO's Restructuring Plan at the point where the proceedings were suspended to facilitate settlement discussions. In particular, the signatory parties should then be permitted to file the Surrebuttal Testimony that was due on August 1, 1997 (on issues resolved by the Joint Petition). When the proceedings were suspended just before that date to permit settlement negotiations to take place, the signatory parties had simply not completed the process of presenting written testimony on the numerous complex issues raised during the Restructuring proceeding. Indeed, the Surrebuttal Testimony that would have been served on August 1, 1997 would have included updates, refinements and clarifications to the Joint Petitioners' litigation positions, and would have specifically addressed positions advanced by PECO and other parties during the rebuttal phase of the proceeding.

Further, before issuing a decision on PECO's proposed Restructuring Plan, it is essential for the Commission to provide the signatory parties with an opportunity to conduct cross-examination, as necessary, during a series of evidentiary hearings that would replace those hearings that were previously scheduled for August 4-22, 1997. It should be noted that evidentiary hearings on the overall Restructuring plan would not only involve disputes between PECO and the intervening parties, but would also address disagreements among the intervening parties, including the Joint Petitioners, on specific issues that had been resolved for purposes of settlement.

Moreover, in the interests of affording due process to all consumers, the Joint Petitioners would expect that the Commission might wish to re-schedule the public input hearings on PECO's Restructuring Plan that were supposed to be held in August and September. As of this time, the only public input hearings that have been held pertained to the Joint Partial Settlement Petition.

Finally, to provide the signatory parties with a meaningful opportunity to be heard on the proposed Restructuring Plan, it would be necessary to allow for the filing of briefs, which would set forth complete litigation positions on all issues, including those matters that had been previously resolved by settlement. In fact, although the issuance of a Recommended Decision had been excluded from the process that was developed to review the Joint Partial Settlement Petition, the Joint Petitioners submit that a review of the entire proposed Restructuring Plan might be better served through retaining this critical element of the traditional adjudication process.

We note that PECO's willingness to extend the time for reviewing its Restructuring Plan, under this scenario, would accommodate the implementation of these procedural steps. In particular, PECO has agreed to extend the Commission's final decision date until March 12, 1998 to permit all parties an opportunity to pursue their full litigation positions, in the event that the

Commission rejects the Joint Partial Settlement Petition.

In addition to the due process concerns raised by the Commission's Opinion and Order, the imposition of a requirement that the signatory parties to the Joint Partial Settlement Petition now resume litigation of the Restructuring proceeding, while the Joint Petition is pending before the Commission for disposition, would be contrary to the Commission's well-stated policy of encouraging settlements. Obviously, a major incentive for the Joint Petitioners to enter into settlement negotiations is the potential for the conservation of substantial resources that would otherwise need to be expended to fully litigate a case. If the signatory parties to the Joint Partial Settlement Petition are required to expend these resources prior to receiving a decision from the Commission which disposes of the Joint Petition, no resources will be conserved and in fact, there is a potential for the needless expenditure of substantial resources.

Another important reason for the Joint Petitioners' general preference for settlement over litigation is the opportunity to tailor the outcome in a way that is advantageous to their respective customer groups, perhaps including concessions that may otherwise not be possible or likely through litigation efforts. Specifically, in this proceeding, the Joint Partial Settlement Petition affords certain protections and benefits to consumers that simply could not be achieved through litigation. In presenting litigation positions, the Joint Petitioners would need to forego those aspects of the Joint Partial Settlement Petition at a time when the Commission has not yet ruled upon that Joint Petition.

The Joint Petitioners also submit that if they are required to pursue their litigation positions and to support the Joint Partial Settlement Petition at the same time, many of the arguments would be inconsistent. The ultimate result of requiring the Joint Petitioners to proceed along these dueling tracks is likely

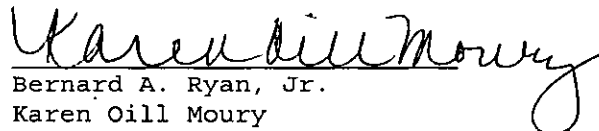
to be a less effective presentation of both their settlement and litigation positions. This untenable situation presents a particular dilemma for the expert witnesses who have provided testimony on behalf of the Joint Petitioners. These witnesses could very easily find themselves in the position of undermining or even contradicting their own testimony that was previously submitted in a litigation posture if they attempt to support the resolution of those issues along the lines proposed by the Joint Partial Settlement Petition. Obviously, any negotiation process involves compromise, and the overall results of the outcome cannot necessarily be reconciled on an issue-by-issue basis.

Thus, if parties who reach full or partial settlement of most of the contested issues are forced into a situation of simultaneously presenting conflicting litigation and settlement positions in order to have a settlement proposal disposed of by the Commission, it is less likely that parties will engage in the time-consuming efforts that are required to amicably resolve difficult issues. Rather, it is possible that the parties will opt to simply litigate all issues so as to preserve the opportunity to fully present and argue their positions on the record, without the need to split their time and resources between advocating for approval of a settlement position and adoption of a litigation position on each issue.

In summary, the Joint Petitioners fully acknowledge and appreciate the Commission's obligation and authority to reject a proposed settlement if it is not satisfied that such settlement is in the public interest. The Joint Petitioners respectfully urge the Commission, however, to reconsider or clarify its October 9, 1997 Opinion and Order to clearly provide the signatory parties to the Joint Partial Settlement Petition with the opportunity to resume the litigation of PECO's proposed Restructuring Plan if that Joint Petition is rejected. This opportunity to be heard would include the ability to submit Surrebuttal Testimony on issues that were resolved by the Joint Partial

Settlement Petition, the scheduling of evidentiary hearings on the proposed Restructuring Plan for purposes of enabling the cross-examination of witnesses on the various issues that were addressed by the Joint Partial Settlement Petition, and the right to file briefs on these issues.

Respectfully submitted,



Bernard A. Ryan, Jr.  
Karen Oill Moury  
For the Office of Small Business Advocate

---

Kenneth L. Mickens  
Charles Daniel Shields  
For the Office of Trial Staff

---

Irwin A. Popowsky  
Tanya J. McCloskey  
Steven K. Steinmetz  
For the Office of Consumer Advocate

---

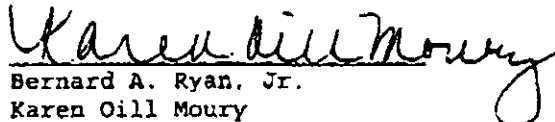
David M. Kleppinger  
Derrick P. Williamson  
For the Philadelphia Area Industrial  
Energy Users Group

---

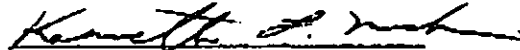
Steven P. Hershey  
Philip A. Bertocci  
For CEPA, et al.

Settlement Petition, the scheduling of evidentiary hearings on the proposed Restructuring Plan for purposes of enabling the cross-examination of witnesses on the various issues that were addressed by the Joint Partial Settlement Petition, and the right to file briefs on these issues.

Respectfully submitted,



Bernard A. Ryan, Jr.  
Karen Oill Moury  
For the Office of Small Business Advocate



Kenneth L. Mickens  
Charles Daniel Shields  
For the Office of Trial Staff

---

Irwin A. Popowsky  
Tanya J. McCloskey  
Steven K. Steinmetz  
For the Office of Consumer Advocate

---

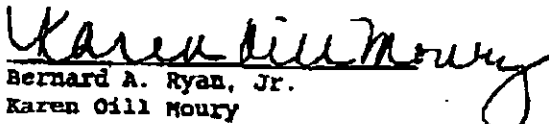
David M. Kleppinger  
Derrick P. Williamson  
For the Philadelphia Area Industrial  
Energy Users Group

---

Steven P. Hershey  
Philip A. Bertocci  
For CEPA, et al.

Settlement Petition, the scheduling of evidentiary hearings on the proposed Restructuring Plan for purposes of enabling the cross-examination of witnesses on the various issues that were addressed by the Joint Partial Settlement Petition, and the right to file briefs on these issues.

Respectfully submitted,



Bernard A. Ryan, Jr.  
Karen Oill Moury  
For the Office of Small Business Advocate

---

Kenneth L. Mickens  
Charles Daniel Shields  
For the Office of Trial Staff



---

Irwin A. Popowsky  
Tanya J. McCloskey  
Steven K. Steinmetz  
For the Office of Consumer Advocate

---

David M. Kleppinger  
Derrick P. Williamson  
For the Philadelphia Area Industrial  
Energy Users Group

---

Steven D. Hershey  
Philip A. Bertocci  
For CRPA, et al.

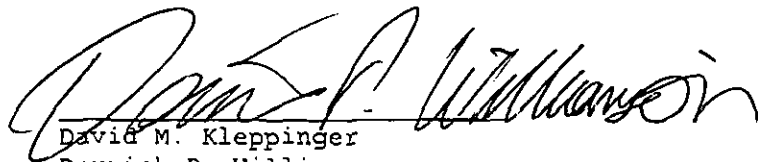
Settlement Petition, the scheduling of evidentiary hearings on the proposed Restructuring Plan for purposes of enabling the cross-examination of witnesses on the various issues that were addressed by the Joint Partial Settlement Petition, and the right to file briefs on these issues.

Respectfully submitted,

\_\_\_\_\_  
Bernard A. Ryan, Jr.  
Karen Oill Moury  
For the Office of Small Business Advocate

\_\_\_\_\_  
Kenneth L. Mickens  
Charles Daniel Shields  
For the Office of Trial Staff

\_\_\_\_\_  
Irwin A. Popowsky  
Tanya J. McCloskey  
Steven K. Steinmetz  
For the Office of Consumer Advocate

  
\_\_\_\_\_  
David M. Kleppinger  
Derrick P. Williamson  
For the Philadelphia Area Industrial  
Energy Users Group

\_\_\_\_\_  
Steven P. Hershey  
Philip A. Bertocci  
For CEPA, et al.

Settlement Petition, the scheduling of evidentiary hearings on the proposed Restructuring Plan for purposes of enabling the cross-examination of witnesses on the various issues that were addressed by the Joint Partial Settlement Petition, and the right to file briefs on these issues.

Respectfully submitted.

---

Bernard A. Ryan, Jr.  
Karen Oill Moury  
For the Office of Small Business Advocate

---

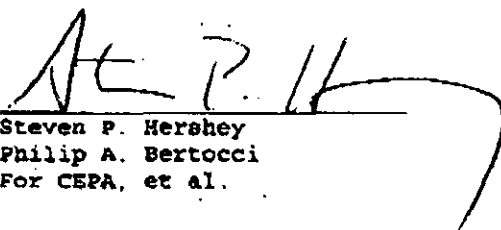
Kenneth L. Mickens  
Charles Daniel Shields  
For the Office of Trial Staff

---

Irwin A. Popowsky  
Tanya J. McCloskey  
Steven K. Steinmetz  
For the Office of Consumer Advocate

---

David M. Kleppinger  
Derrick P. Williamson  
For the Philadelphia Area Industrial  
Energy Users Group



---

Steven P. Hershey  
Philip A. Bertocci  
For CEPA, et al.

*Frederick D. Ochsenhirt*

Linda C. Smith

Frederick D. Ochsenhirt

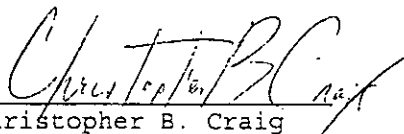
For the American Association of Retired Persons

Christopher H. Craig

For The Honorable Vincent J. Fumo

---

Linda C. Smith  
Frederick D. Ochsenhirt  
For the American Association of Retired Persons



---

Christopher B. Craig  
For The Honorable Vincent J. Fumo

---

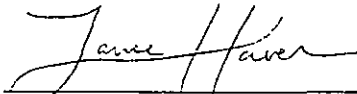
Lance Haver

---

Linda C. Smith  
Frederick D. Ochsenhirt  
For the American Association of Retired Persons

---

Christopher B. Craig  
For The Honorable Vincent J. Fumo



---

Lance Haver

Date: October 21, 1997

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
Petition of Enron Energy Services Power, Inc.	:	
	:	Docket No. P-00971265

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Joint Petition for Reconsideration or Clarification on behalf of Several Signatories to the Partial Settlement of PECO Energy Company's Proposed Restructuring Plan by first class mail (unless otherwise indicated) upon the persons addressed below:

Hon. Marlane R. Chestnut  
Administrative Law Judge  
Pa. Public Utility Commission  
1302 Philadelphia State Office Bldg.  
Broad and Spring Garden Streets  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 - Fax

Hon. Charles E. Rainey, Jr.  
Administrative Law Judge  
Pa. Public Utility Commission  
1302 Philadelphia State Office Bldg.  
Broad and Spring Garden Streets  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 - Fax

Paul Bonney, Esquire  
Ward Smith, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-5544  
(215) 568-3389 (fax)

David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(PAIEUG)  
(717) 232-8000  
(717) 237-5300 (fax)

Kenneth L. Mickens, Esquire  
Charles Daniel Shields, Esq.  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17101  
(Office of Trial Staff)  
(717) 787-1976  
(717) 772-2677

Tanya J. McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(Office of Consumer Advocate)  
(717) 783-5048  
(717) 783-7152 (fax)

Alan J. Barak, Esquire  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Environmentalists)  
(717) 540-5106  
(717) 541-1970 (fax)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
Suite 401  
305 North Front Street  
Harrisburg, PA 17101  
(Enron Corp.)  
(717) 237-7160  
(717) 237-7161 (fax)

Roger E. Clark, Esquire  
905 Denston Drive  
Ambler, PA 19002-3901  
(Environmentalists)  
(215) 643-2364  
(215) 628-2630 (fax)

Walter W. Cohen, Esquire  
Obermayer Rebmann Maxwell &  
Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Indianapolis Power & Light)  
(717) 234-9730

John L. Munsch, Esquire  
West Penn Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15601  
(Allegheny Power)  
(412) 837-3000  
(412) 838-6177 (fax)

William T. Hawke, Esquire  
Janet L. Miller, Esquire  
Todd S. Stewart, Esquire  
Malatesta, Hawke & McKeon  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105  
(MAPSA)  
(717) 236-1300  
(717) 236-4841 (fax)

Clinton A. Vince, Esquire  
Paul E. Nordstrom, Esquire  
Deborah A. Swanstrom, Esquire  
Joel D. Newton, Esquire  
Verner, Liipfert, Bernhard,  
McPherson & Hand  
901 15th Street, N.W.  
Washington, DC 20005-2301  
(Allegheny Power)  
(202) 371-6000  
(202) 371-6279 (fax)

Donald A. Kaplan, Esquire  
Preston Gates Ellis &  
Rouvelas Meeds  
Suite 500  
1735 New York Avenue, N.W.  
Washington, DC 20006-4759  
(202) 628-1700  
(202) 331-1024 (fax)

Christopher B. Craig, Esquire  
Counsel to Senator Fumo  
Room 545, Main Capitol Bldg.  
Harrisburg, PA 17120  
(717) 787-5662

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Delmarva Power & Light Co.)  
(717) 230-9555  
(717) 230-9750 (fax)

Mr. Richard LaCapra  
LaCapra Associates  
The Providence Building  
333 Washington Street  
Boston, MA 02108  
(Witness for OCA)  
(617) 367-6500

Paul Russell, Esquire  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101-1179  
(PP&L)  
(610) 774-4254  
(610) 774-6726 (fax)

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, et al)  
(215) 981-3777  
(215) 981-0434 (fax)

Michael G. Banta, Esquire  
Vice-President and Assistant General  
Counsel  
Indianapolis Power & Light Co.  
One Monument Circle  
P.O. Box 1595  
Indianapolis IN 46206-1595  
(317) 261-8449

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(302) 429-3320  
(302) 429-3801 (fax)

Mr. Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Bruce A. Connell, Esquire  
DuPont Power Marketing, Inc.  
Legal Department  
600 N. Dairy Ashford, ML-1034  
Houston, TX 77079  
(281) 293-1736  
(281) 293-3826 (fax)

Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street  
Suite 101  
Harrisburg, PA 17102-2025  
(GPU Energy)  
(717) 236-7714  
(717) 236-7816 (fax)

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish &  
Kauffman  
305 North Front Street  
Suite 403  
Harrisburg, PA 17101  
(AARP)  
(717) 236-4812  
(717) 236-7811 (fax)

Michael L. Kessler, Esquire  
Vice President/General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, VA 22314  
(703) 684-1006  
(703) 683-3256 (fax)

Joseph J. Malatesta, Jr., Esq.  
Malatesta, Hawke & McKeon  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105  
(Municipal Intervenor Group)  
(717) 236-1300  
(717) 236-4841 (fax)

Mr. David Boonin  
New Energy Ventures  
1845 Walnut Street, Suite 2525  
Philadelphia, PA 19103  
(215) 563-9290  
(215) 563-9292 (fax)

Mr. Stephen J. Baron  
J. Kennedy and Associates, Inc.  
35 Glenlake Parkway, Suite 475  
Atlanta, GA 30328

Audrey Van Dyke, Esquire  
Naval Facilities Engineering Command  
- Litigation Headquarters 09L  
Washington Navy Yard Bldg. 218  
901 M Street SE  
Washington, DC 20374-5018  
(202) 685-1931

Mr. Peter Bradford  
Bradford Road, Route 11  
P.O. Box 497  
Peru, Vermont 05152  
(witness for CEPA)  
(802) 824-4296

Mr. Richard Silkman  
163 Main Street  
Yarmouth, Maine 04096  
(witness for CEPA)  
(207) 846-0539

Joseph A. Dworetzky, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square  
Twelfth Floor  
Philadelphia, PA 19103-6933  
(215) 496-7014  
(215) 568-0300 (fax)

Ms. Sharon Johnson  
Putnam, Hayes & Bartlett  
1776 Eye Street, NW  
Washington, DC 20006

Usher Fogel, Esquire  
Roland, Fogel, Koblenz  
& Carr, LLP  
1 Columbia Place  
Albany, NY 12207  
(Pa. Petroleum Assoc.)  
(Plumbing, Heating, Cooling  
Contractors, Inc.)  
(518) 434-8112  
(518) 434-3232 (fax)

Susan M. Shanaman, Esquire  
212 North Third Street  
Suite 203  
Harrisburg, PA 17101-1505  
(Center for Energy/Econ Dev)  
(717) 236-2055  
(717) 236-2070 (fax)

Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(Pa. Retailers' Assoc.)  
(717) 237-5216  
(717) 237-5300 (fax)

Craig G. Goodman, Esquire  
ERI, Incorporated  
3333 K. Street, N.W.  
Suite 425  
Washington, DC 20007  
(Equitable Resources)  
(202) 333-3288  
(202) 333-3266 (fax)

Stephanie A. Sugrue, Esquire  
Duane, Morris & Heckscher  
1667 K Street, N.W., Suite 700  
Washington, DC 20006-1608  
(QST Energy, Inc.)  
(202) 776-7800  
(202) 776-7801 (fax)

Gordon Smith, Esquire  
John & Hengerer  
1200 17th Street, N.W.  
Suite 600  
Washington, DC 20036-3006  
(Duke Energy Trading/Marketing)  
(Electric Clearinghouse, Inc.)  
(Vastar Power Marketing, Inc.)  
(NorAm Energy Management, Inc.)  
(202) 429-8809  
(202) 429-8805 (fax)

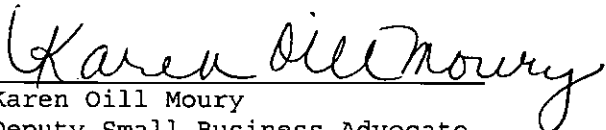
Brian A. Rider, President  
Pennsylvania Retailers' Assoc.  
224 Pine Street  
Harrisburg, PA 17101-1325  
(717) 233-7976

Judah L. Rose  
ICF Resources, Inc.  
9300 Lee Highway  
Fairfax, VA 22031  
(703) 934-3342  
(703) 934-3349 (fax)

Mr. William F. Sundermeir  
2504 West Avenue  
Ocean City, NJ 08226

John Klauberg, Esquire  
Bruce Miller, Esquire  
LeBoeuf, Lamb, Greene and MacRae, LLP  
125 West 55th Street  
New York, NY 10019-5389  
(212) 424-8125  
(212) 424-8500 (fax)

John J. Gallagher, Esquire  
Zsuzsanna E. Benedek, Esquire  
Michael Klein, Esquire  
Leboeuf, Lamb, Greene & MacRae  
200 N. Third Street, Suite 300  
P.O. Box 12105  
Harrisburg, PA 17108-2105  
(717) 232-8199  
(717) 232-8720

  
Karen Oill Moury  
Deputy Small Business Advocate

Date: October 21, 1997



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PHILADELPHIA STATE OFFICE BUILDING  
1400 SPRING GARDEN STREET  
PHILADELPHIA, PENNSYLVANIA 19130

(215) 560-2105  
October 21, 1997

IN REPLY PLEASE  
REFER TO OUR FILE

James J. McNulty  
Acting Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

KJR

Re: Pennsylvania Public Utility Commission v. PECO Energy Company, R-00973953

Dear Mr. McNulty:

Attached is a letter dated October 16, 1997, which I received from Ernest E. Jones, Executive Director for the Greater Philadelphia Urban Affairs Coalition. The letter augments the testimony given by Mr. Jones at the public input hearing held on October 10, 1997, in that it discloses his organization's affiliation with PECO Energy Company. Please include Mr. Jones' letter in the record in this case.

Sincerely,

CHARLES E. RAINEY, JR.  
Administrative Law Judge

Attachment

cc: All Parties of Record w/attachment  
Mr. Ernest E. Jones

INDEXED  
OCT 28 1997  
DOCUMENT  
FOLDER

PROTHONOTARY'S OFFICE  
97 OCT 27 AM 9:59

**ORIGINAL**

**LEBOEUF, LAMB, GREENE & MACRAE  
L.L.P.**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK  
WASHINGTON  
ALBANY  
BOSTON  
DENVER  
HARRISBURG  
HARTFORD  
JACKSONVILLE

200 NORTH THIRD STREET  
SUITE 300  
P.O. Box 12105  
HARRISBURG, PA 17108-2105  
(717) 232-8199  
FACSIMILE: (717) 232-8720

LOS ANGELES  
NEWARK  
PITTSBURGH  
PORTLAND, OR  
SALT LAKE CITY  
SAN FRANCISCO  
BRUSSELS  
MOSCOW  
ALMATY  
LONDON  
(A LONDON-BASED  
MULTINATIONAL PARTNERSHIP)

October 22, 1997

**BY HAND**

James McNulty, Prothonotary  
Pennsylvania Public Utility Commission  
North Office Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.  
PECO Energy Company  
Docket No. R-00973953

PROTHONOTARY'S OFFICE

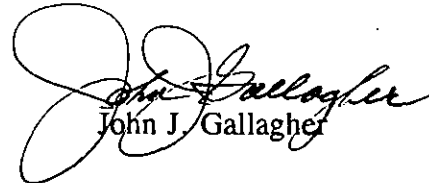
97 OCT 22 PM 4:02

Dear Mr. McNulty:

Enclosed please find the original and three (3) copies of Enron Energy Services Power, Inc.'s Objections to PECO Energy Company's Interrogatories, Set X to be filed in the above-captioned proceeding. A Certificate of Service is also enclosed.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,

  
John J. Gallagher

JJG/mas  
enclosure

cc: All Parties on Certificate of Service  
Daniel Clearfield, Esquire

**DOCUMENT  
FOLDER**

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:  
:  
:  
:  
:

Docket No. R-00973953

OBJECTIONS OF  
ENRON ENERGY SERVICES POWER, INC.  
TO PECO SET X

PROthonotary's OFFICE  
97 OCT 22 PM 4:02

Pursuant to 52 Pa.Code § 5.432, Enron Energy Services Power, Inc. ("EESPI") hereby sets forth the following objections to the interrogatories of PECO Energy Company ("PECO") at Set X. EESPI also notes that the following objections were timely communicated to counsel for PECO pursuant the procedural schedule established in Prehearing Order No. 1.

- 1. **Please provide a detailed description of Enron's corporate structure, including all subsidiaries and affiliates;**

Objection in part. Enron Corp. currently consists of over 900 subsidiaries, affiliates, joint ventures, partnerships and other enterprises. Insofar as this request seeks data that does not pertain to Enron Energy Services Power, Inc. ("EESPI") or Enron Power Marketing, Inc. ("EPMI"), the interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code. § 5.321(a). Moreover, EESPI objects to providing the

INDEXED  
OCT 23 1997

DOCUMENT  
FOLDER

corporate structure for over 900 entities as the provision of such information would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

Subject to these objections, and without waiver thereof, EESPI will respond to this interrogatory question as posed and will provide the corporate structures of EESPI and EPMI as they relate to each other and to Enron Corp. Pursuant to 52 Pa.Code § 5.324, EESPI will also set forth in direct testimony a description of the relevant corporate relationships affecting the implementation of the Choice Plan .

**4. Please provide a current Balance Sheet and Capitalization for Enron Energy Services Power, Inc. and Enron Power Marketing, Inc.;**

Objection in part. Insofar as this request seeks data that pertains to Enron Power Marketing, Inc. ("EPMI"), the interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a). EPMI will have no role and no obligations whatsoever in, or with, the implementation of the Choice Plan. The submission of such information would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

Enron Energy Services Power, Inc. ("EESPI") filed the Petition proposing the Choice Plan and EESPI is implementing the Choice Plan. Subject to these objections, and without waiver thereof, EESPI will respond to this interrogatory question as posed and will provide EESPI's balance sheets and data regarding its capitalization pursuant to this interrogatory request.

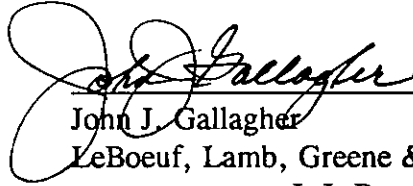
**5. Please provide documents evidencing the Pennsylvania assets of Enron Corp., Enron Energy Services Power, Inc., Enron Power Marketing, Inc., and all other Enron entities.**

Objection in part. Enron Energy Services Power, Inc. ("EESPI"), will provide information as requested regarding EESPI and its parent, Enron Corp. However, Enron Power Marketing, Inc. ("EPMI") and "all other Enron entities" will have no role and no obligations whatsoever in, or with, the implementation of the Choice Plan.

Insofar as this request seeks data pertaining to EPMI, the interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a). Moreover, the provision of such information would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

Enron Corp. currently consists of over 900 subsidiaries, affiliates, joint venture ships, partnerships and other enterprises. Insofar as this request seeks data pertaining to "all other Enron entities," the interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a). Moreover, EESPI objects to the production of asset-related information for "all other Enron entities" insofar as to the provision of such information would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

Respectfully submitted,



---

John J. Gallagher

LeBoeuf, Lamb, Greene & MacRae  
L.L.P.

200 North Third Street, Suite 300

P.O. Box 12105

Harrisburg, PA 17108-2105

(717) 232-8199

Attorney for Enron Energy  
Services Power, Inc.

Dated: October 22, 1997

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:  
:  
:  
:  
:  
:

Docket No. R-00973953

---

---

**CERTIFICATE OF SERVICE**

---

---

I hereby certify that I have on this 22nd day of October, 1997, served a true copy of the foregoing Objections to PECO Energy Company's Interrogatories, Set X, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

Paul R. Bonney, Esquire  
Noel H. Trask, Esquire  
Ward L. Smith, Esquire  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, P.O. Box 8699  
Philadelphia, PA 19101-8699  
*(PECO Energy Company)*

Paul E. Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
*(Pennsylvania Power & Light Company)*

Senator Vincent J. Fumo  
Christopher B. Craig, Esquire  
Senate Democratic Appropriations  
Committee  
Main Capitol Building, Room 545  
Harrisburg, PA 17120  
*(Senator Vincent J. Fumo)*

Donald A. Kaplan, Esquire  
Lisa M. Helpert, Esquire  
Preston Gates Ellis & Rouvelas Meeds  
1735 New York Avenue, N.W.  
Suite 500  
Washington, DC 20006  
*(Pennsylvania Power & Light Company)*

PROCTER & KENNEDY  
97 OCT 22 PM 4:02  
OFFICE

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel,  
L.L.P.  
204 State Street  
Harrisburg, PA 17101  
(*Indianapolis Power & Light Company*)

Michael Banta, Esquire  
Daniel W. McGill, Esquire  
One Minnit Circle  
Indianapolis, IN 46051  
(*Indianapolis Power and Light*)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(*Conectiv Energy*)

Kenneth L. Mickens, Senior Prosecutor  
Charles D. Shields, Prosecutor  
The Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(*OTS*)

Thomas Catlin  
Exeter Associates, Inc.  
12510 Prosperity Drive, Suite 350  
Silver Spring, MD 20904  
(*OCA Witness*)

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595  
(*Indianapolis Power & Light Company*)

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(*Delmarva Power & Light Company*)

Brenard Ryan, Esquire  
Karen Oill Moury, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(*OSBA*)

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Office of the Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(*OCA*)

Alan J. Barak, Esquire  
Kathleen O'Reilly, Esquire  
Roger Clark, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(*The Environmentalists*)

William T. Hawke, Esquire  
Janet Miller, Esquire  
Todd Stewart, Esquire  
Malatesta, Hawke & McKeon, L.L.P.  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17105-1778  
*(Mid-Atlantic Power Supply Association)*

David Kleppinger, Esquire  
Derrick P. Williamson, Esquire  
McNees, Wallace & Nurick  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
*(Philadelphia Area Industrial Energy Users Group)*

Linda C. Smith, Esquire  
Dilworth, Paxton, Kalish & Kauffman,  
L.L.P.  
305 North Front Street - Suite 403  
Harrisburg, PA 17101-1236  
*(American Association of Retired Persons)*

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Bldg 218,  
Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018  
*(Department of Navy)*

Joseph A. Dworetzky, Esquire  
John Lavelle, Jr., Esquire  
Hangley, Anonchick, Segal and Pudlin  
One Logan Square, 12th Floor  
Philadelphia, PA 19103  
*(New Energy Ventures, Inc.)*

Steven P. Hershey, Esquire  
Philip A. Bertocci, Esquire  
Community Legal Services  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102  
*(CEPA), (Tenant Action Group), (Action Alliance of Senior Citizens), (Consumer Education & Protective Association), (Association Commty Orgns Now)*

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601  
*(Allegheny Power)*

Terrance J. Fitzpatrick, Esquire  
David M. DeSalle, Esquire  
Ryan, Russell, Ogden & Seltzer, L.L.P.  
800 North Third Street, Suite 101  
Harrisburg, PA 17102-2025  
*(GPU)*

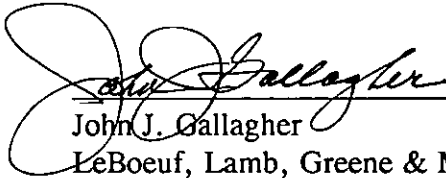
Joseph J. Malatesta, Esquire  
Lillian Smith Harris, Esquire  
Malatesta, Hawke & McKeon, L.L.P.  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17105-1778  
*(Municipal Group)*

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, L.L.P.  
1 Columbia Place  
Albany, NY 12207  
*(Pennsylvania Petroleum Association), (PA Association Plumbing, Heating and Cooling Contractors)*

Joelle Ogg, Esquire  
Gordon J. Smith, Esquire  
John & Hengerer  
1200 17th Street, N.W.  
Suite 600  
Washington, DC 20036  
*(Self), (Duke Energy Trading & Marketing, LLC), (Noram Energy Management, Inc.), (Vastar Power Marketing, Inc.), (Electric Clearinghouse, Inc.)*

Lance Haver  
6803 Lawton Avenue  
Philadelphia, PA 19126  
*(Self)*

Stephanie Sugrue, Esquire  
Mary Ann Ralls, Esquire  
Duane, Morris & Heckscher  
L.L.P.  
1667 K Street, N.W.  
Suite 700  
Washington, DC 20006  
*(QST Energy, Inc.)*

  
John J. Gallagher  
LeBoeuf, Lamb, Greene & MacRae  
L.L.P.

200 North Third Street, Suite 300  
P.O. Box 12105  
Harrisburg, PA 17108-2105  
(717) 232-8199

Attorney for Enron Energy  
Services Power, Inc.

RECEIVED  
97 OCT 22 PM 4:02  
F.A.C.U.C.  
PROTHONOTARY'S OFFICE

JOSEPH J. MALATESTA, JR.  
WILLIAM T. HAWKE  
KEVIN J. McKEON  
LOUISE A. KNIGHT  
THOMAS J. SNISCAK  
NORMAN JAMES KENNARD  
LILLIAN SMITH HARRIS  
SCOTT T. WYLAND  
JANET L. MILLER  
SUSAN J. SMITH  
TODD S. STEWART  
PETER W. KOCIOLEK, JR.

THE LAW FIRM OF  
**MALATESTA HAWKE & McKEON LLP**

HARRISBURG ENERGY CENTER  
100 NORTH TENTH STREET  
HARRISBURG, PENNSYLVANIA 17101

(717) 236-1300  
FAX (717) 236-4841  
<http://www.MHM-LAW.com>

MAILING ADDRESS:  
P.O. BOX 1778  
HARRISBURG, PA 17105

**ORIGINAL**

October 22, 1997

**HAND DELIVERED**

James J. McNulty, Acting Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

97 OCT 22 AM 10:25  
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)

Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company (Docket No. P-00971265)

**ANSWER OF MID-ATLANTIC POWER SUPPLY ASSOCIATION TO VARIOUS PETITIONS FOR RECONSIDERATION AND CLARIFICATION OF THE COMMISSION'S OCTOBER 9, 1997 ORDER**

Dear Mr. McNulty:

Enclosed are the original and three (3) copies of the Answer of Mid-Atlantic Power Supply Association to the various Petitions for Reconsideration and Clarification filed in connection with the above-captioned matters. A copy of this document has been served in accordance with the attached Certificate of Service.

**DOCUMENT  
FOLDER**

James J. McNulty, Acting Secretary  
Pennsylvania Public Utility Commission  
October 22, 1997  
Page 2

If you have any questions, please feel free to call.

Very truly yours,



William T. Hawke  
Janet L. Miller  
Todd S. Stewart

Counsel for Mid-Atlantic Power  
Supply Association

JLM/kmg  
Enclosures

cc (w/enclosure):  
Chairman John M. Quain  
Commission Robert K. Bloom  
Commissioner John Hanger  
Commissioner David W. Rolka  
Commissioner Nora Mead Brownell  
Honorable Marlane R. Chestnut  
Honorable Charles E. Rainey, Jr.  
All Parties of Record

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Petition of Enron Energy Services Power, Inc. :  
for Approval of an Electric Competition and : Docket No. P-00971265  
Choice Plan and for Authority Pursuant to :  
Section 2807(e)(3) of the Public Utility Code to :  
Serve as the Provider of Last Resort in the :  
Service Territory of PECO Energy Company :

PROthonotary's Office  
97 OCT 22 AM 10:25

**ANSWER OF MID-ATLANTIC POWER SUPPLY ASSOCIATION (MAPSA)  
TO VARIOUS PETITIONS FOR RECONSIDERATION  
AND CLARIFICATION OF ORDER**

AND NOW, this 22nd day of October, 1997, comes the Mid-Atlantic Power Supply Association ("MAPSA"),<sup>1</sup> by its counsel, and files the following Answer, not in serial fashion however, to various parties' petitions for reconsideration and clarification<sup>2</sup> of the Commission's Order entered October 9, 1997, as corrected October 10, 1997:

<sup>1</sup> The Board of Directors of the "Mid-Atlantic Independent Power Producers" has elected to adopt the name of "Mid-Atlantic Power Supply Association" for the purpose of pursuing the interests of the association's members in the Mid-Atlantic region. MAPSA's Board of Directors believes that the new name better reflects the emerging nature of the competitive power industry and of its own evolving membership. Currently, MAPSA's Board of Directors includes representatives of Air Products and Chemicals, Inc.; Atlantic Generation, Inc.; CNG Energy Services Corporation; Cogen Technologies, Inc.; Destec Energy, Inc.; DuPont Power Marketing, Inc.; The Eastern Group; Energy Investment Advisors; Enron Capital & Trade Resources; Edison Source; Odyssey Strategies, Inc.; and U.S. Generating Company. The comments contained in this filing represent the position of MAPSA as an organization, but not necessarily the view of any particular member with respect to any specific issue.

<sup>2</sup> On October 21, 1997, a Petition for Clarification/Reconsideration was filed by PECO Energy Company. In addition, a Joint Petition for Reconsideration or Clarification was filed by the Office of Trial Staff, the Office of Consumer Advocate; the Philadelphia Area Industrial Energy Users Group; the Honorable Vincent J. Fumo; CEPA et al.; the American Association of Retired Persons; Lance Mayer and the Office of Small Business Advocate.

**DELETED**  
OCT 24 1997

**DOCUMENT  
FOLDER**

1. By Order entered October 9, 1997, as corrected October 10, 1997, entered in connection with the above-captioned matters, the Commission specifically found that:

Additional hearings must, however, be conducted with regard to those issues in PECO's Restructuring case that have not yet been addressed in the record so as to provide an adequate record for adjudication of PECO's Restructuring plan if neither the Joint Partial Settlement Petition or another settlement is approved.

Corrected Order issued October 10, 1997 (Slip. Op. at 5) (emphasis added).

2. The Commission's conclusion that additional hearings must be held to provide an adequate record on which to decide the merits of (a) PECO's Restructuring Plan; (b) the Joint Petition for Partial Settlement filed by PECO and various other parties<sup>3</sup>; and (3) Enron's Petition, was elaborated upon further by Chairman Quain and Commissioner Brownell. As stated by the Chairman:

Initially, the Commission indicated its intent to grant interlocutory review to consider the Joint Settlement Petition. However, given the filing of the instant pleading by Enron, we must alter our approach. Thus, I support the proposed extension of time to consider Enron's alternative proposal and any other relevant evidence which the parties wish to submit in this docket. We will then be in a position to review the entire record, including the Joint Settlement Petition, in the context of a fully litigated proceeding.

Statement of Chairman John M. Quain, October 9, 1997 (emphasis added).

---

<sup>3</sup> The signatories to the Joint Petition for Partial Settlement include Senator Vincent J. Fumo; CEPA, et al.; Lance S. Haver; the Office of Trial Staff; the Office of Small Business Advocate; the Philadelphia Area Industrial Energy Users Group; the American Association of Retired People; the Department of the Navy; and PECO Energy Company.

And, specifically, with regard to the parties' due process rights, Commissioner Brownell stated:

Although the time frame is ambitious, it does provide for meaningful opportunities for the parties to prepare and present their positions on all facets of the restructuring plan. That aspect of the Motion is critical, as well as its direction that this proceeding move to completion with a full consideration of the entire restructuring plan.

Statement of Commissioner Nora Mead Brownell, October 9, 1997 (emphasis added).

3. Various parties to this proceeding now seek reconsideration or "clarification" of a Commission action taken on October 9, 1997 that was carefully considered, well thought-out, and very clearly enunciated. In short, there is no need for any "clarification" with regard to an Order which is perfectly clear on its face, and there is no reason whatsoever for the Commission to reconsider its "critical" decision made on October 9, 1997. On the contrary, there are at least three separate and distinct reasons why the Commission should not "clarify" or reconsider its "critical" decision; these reasons are set forth in the paragraphs which follow.

4. First, and most significant, the various parties which seek to have the Commission reconsider its clear decision to review the Joint Petition for Partial Settlement in the context of a complete record on the PECO Restructuring Plan, simply seek to "ram" the partial settlement "down-the-throats" of the Commissioners. They desire to present the Commission with a single settlement package in a "take-it-or-leave-it" fashion, and they thereby attempt to defeat the Commission's well-recognized power to review and modify settlements where the public interest so requires. Rather, the Commission should reaffirm its clear decision to have a complete record

in order to be in a better position to consider and to accept or reject individual elements of the settlement, based upon that full record and hearing.

5. Second, the various Petitions for Reconsideration and Clarification fail to suggest, let alone demonstrate any significant or substantial change in circumstances or any other reason why the Commission should reconsider its October 9, 1997 Order. The various arguments raised are not matters which were overlooked or not addressed; accordingly, the Petition must be denied. Duick v. Pennsylvania Gas & Water Co., 56 Pa. P.U.C. 553 (1982).

6. Third, the public interest clearly demands that a full record be established for the Commission to review this highly unusual settlement, which is a partial settlement, and one which does not involve significant parties to the restructuring process, namely, the new suppliers.<sup>4</sup>

7. The various Petitioners' assertions that their due process rights somehow will be violated if a full record is developed and considered by the Commission simply ignores reality. On the contrary, the Commission's October 9, 1997 Order clearly states that it intends to give all parties their due process rights. Indeed, during the Prehearing Conference held on October 14, 1997, the various petitioning parties blatantly ignored the urgings of the Commission's

---

<sup>4</sup> While the Commonwealth's utilities in general, and PECO in particular, have taken great efforts to describe the new suppliers as foreigners who desire to "destroy" Pennsylvania's Electric Competition Plan (see e.g., Harrisburg Patriot News, Wednesday, October 15, 1997, p. A-7), this suggestion is nothing short of a full-fledged falsehood. On the contrary, numerous suppliers have been significant contributors to Pennsylvania's economy for a long time. For example, an affiliate of CNG Energy Services, Inc. has provided gas distribution service in the Commonwealth for over 100 years, and an affiliate of Eastern Power currently provides the Commonwealth and the Commission with regulated steam heat service.

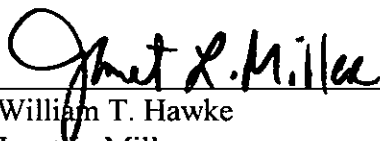
Administrative Law Judges to set a schedule which would fulfill the parties' due process opportunity to cross examine the evidence which was admitted into the record in connection with PECO's Restructuring Plan.<sup>5</sup> Rather than pursue their opportunity to set and commence a schedule for cross examination, however, the various Petitioners voluntarily have elected to seek reconsideration and clarification. This voluntary election is a waiver of the Petitioners' due process rights. Cambria Partners v. Pennsylvania Public Utility Commission, 648 A.2d 63, 81 n. 35 (Pa. Cmwlth. 1994) (a pending Petition for Rehearing does not give a party an excuse to present its case when the opportunity for a due process hearing was afforded). In any event, there will be ample time for the various parties to exercise their full due process rights after the Commission reaffirms its October 9, 1997 Order.

---

<sup>5</sup> As stated by Judge Rainey: "Let me just add that I am also concerned with regard to the schedule in this case and I don't see that it helps anyone to put it [preparing a schedule to provide for a complete record in accord with the Commission's October 9, 1997 Order] off too long and I would state that pending the filing of a petition for reconsideration and clarification, or clarification that the parties think strongly about what we have before us right now and work on some kind of schedule that gets to the Commission a full record in time for its December 11<sup>th</sup> Public Meeting." (October 14, 1997 Prehearing Conference, N.T. 437.)

WHEREFORE, for all of the foregoing reasons, the various Petitions for Reconsideration and Clarification should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Janet L. Miller", is written over a horizontal line.

William T. Hawke

Janet L. Miller

Malatesta Hawke & McKeon LLP

Harrisburg Energy Center

100 N. 10<sup>th</sup> Street

P.O. Box 1778

Harrisburg, PA 17105-1778

(717) 236-1300

Counsel Mid-Atlantic Power  
Supply Association

**CERTIFICATE OF SERVICE**  
**(Docket No. R-973953)**

I hereby certify that I am this day serving a copy of the foregoing document upon the persons and in the manner indicated.

**VIA FIRST CLASS MAIL**

Paul R. Bonney, Esquire  
Noel H. Trask, Esquire  
Michael A. Carvin, Esquire  
PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215-568-3389

John L. Munsch, Esquire  
Allegheny Power Corporation  
800 Cabin Hill Drive  
Greensburg, PA 15601  
412-838-6177

Paul E. Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
610-774-6726

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-0434

Roger Clark, Esquire  
Environmentalists  
905 Denston Drive  
Ambler, PA 19002-3901  
215-628-2630

Donald A. Kaplan, Esquire  
Pennsylvania Power & Light Company  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
202-331-1024

Joseph A. Dworetzky, Esquire  
New Energy Ventures  
Hangley Aronchick Segal & Pudlin  
One Logan Square, 12<sup>th</sup> Floor  
Philadelphia, PA 19103

Audrey Van Dyke, Esquire  
Naval Facilities Engineering Command  
Washington Navy Yard  
Building 218, Room 200  
901 M Street, SE  
Washington, DC 20374-5018  
202-433-2591

Usher Fogel, Esquire  
Pennsylvania Petroleum Association  
Roland Fogel Koblenz & Carr LLP  
1 Columbia Place  
Albany, NY 1227  
518-434-3232

Gordon Smith, Esquire  
Duke Energy Trading & Marketing LLC  
Electric Clearinghouse, Inc.  
Vastar Power Marketing, Esquire  
NorAm Energy Management, Inc.  
John & Hengerer  
1200 17<sup>th</sup> Street, NW, Suite 600  
Washington, DC 20036-3006  
202-429-8805

H. Allan Knopp  
Director, Regulatory Affairs  
P.O. Box 2197, CH-1038  
Houston, TX 77252

Vickiren S. Aeshleman  
Director- Regulatory Policy  
QST Energy Inc.  
300 Hamilton Blvd. Suite 300  
Peoria, IL 61602

Shelia S. Hollis, Esquire  
Mary Ann Ralls, Esquire  
Stephanie A. Sugrue, Esquire  
Duane, Morris & Heckscher LLP  
1667 K Street, N.W. Suite 700  
Washington, DC 20006-1608

Kenneth Mickens, Esquire  
Charles Daniel Shields, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
717-787-2677

Tanya J. McCloskey, Esquire  
Steven Steinmetz, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
717-783-7152

Bernard A. Ryan, Jr., Esquire  
Karen Oill Moury, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101  
717-783-2831

David M. Kleppinger, Esquire  
Derrick P. Williamson, Esquire  
PAIEUG  
McNees Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
717-237-5300

Terrance Fitzpatrick, Esquire  
David DeSalle, Esquire  
GPU Energy  
Ryan Russell Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
717-233-5287

Christopher B. Craig, Esquire  
Senator Vincent Fumo  
Room 545 Main Capital Building  
Harrisburg, PA 17120  
717-783-5210

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Indianapolis Power & Light Company  
204 State Street  
Harrisburg, PA 17101  
717-234-9734

Daniel Clearfield, Esquire  
Enron Corp.  
Wolf Block Schorr & Solis-Cohen  
401 North Front Street  
Harrisburg, PA 17101  
717-237-7161

Craig A. Doll, Esquire  
Delmarva Power & Light Company  
214 State Street  
Harrisburg, PA 17101  
717-230-9750

Linda C. Smith, Esquire  
AARP  
Dilworth Paxson Kalish & Kauffman  
305 North Front Street  
Suite 403  
Harrisburg, PA 17101  
717-783-5210

Lillian S. Harris, Esquire  
Municipal Intervenors Group  
Malatesta Hawke & McKeon LLP  
PO Box 1778  
Harrisburg, PA 17105  
717-236-1300

Robert A. Mills, Esquire  
Pennsylvania Retailers' Association  
McNees Wallace & Nurick  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166  
717-237-5300

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Joel D. Newton, Esquire  
Verner Liipfert Bernhard McPherson & Hand  
901 - 15th Street NW  
Washington DC 20005-2301

Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street-Suite 300  
Harrisburg, PA 17106-2105

John Klauberg, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55th Street  
New York, NY 10019-5389

  
\_\_\_\_\_  
Janet L. Miller

DATED: October 22, 1997

PROthonotary's OFFICE

97 OCT 22 AM 10:25

COMMONWEALTH OF PENNSYLVANIA

DATE: October 22, 1997

SUBJECT: R-00973953, P-00971265

TO: Office of Special Assistants

FROM: *WJB* James J. McNulty, Acting Secretary *KJR*

R-00973953 APPLICATION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS RESTRUCTURING PLAN UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

P-00971265 PETITION OF ENRON ENERGY SERVICES POWER, INC.

---

Attached is copy of the Office of Small Business Advocate and Several Signatories Joint Petition for Reconsideration/Clarification of the Commission's Opinion and Order Entered October 9, 1997 filed in connection with the above docketed proceedings.

This matter is assigned to your Office for appropriate action.

Attachment

cc: Law Bureau  
BFUS  
OALJ

wjz

RECEIVED

OCT 22 1997

DOCUMENT  
FOLDER

COMMONWEALTH OF PENNSYLVANIA

DATE: October 22, 1997

SUBJECT: R-00973953, P-00971265

TO: Office of Special Assistants

FROM: *WJZ* James J. McNulty, Acting Secretary

R-00973953 APPLICATION OF PECO ENERGY COMPANY FOR  
APPROVAL OF ITS RESTRUCTURING PLAN UNDER  
SECTION 2806 OF THE PUBLIC UTILITY CODE

P-00971265 PETITION OF ENRON ENERGY SERVICES POWER,  
INC.

*KJR*

Attached is copy of Peco Energy Company's Petition for Reconsideration/Clarification of the Commission's Opinion and Order Entered October 9, 1997 filed in connection with the above docketed proceedings.

This matter is assigned to your Office for appropriate action.

Attachment

cc: Law Bureau  
BFUS  
OALJ

**DOCKETED**  
OCT 22 1997

wjz

**DOCUMENT  
FOLDER**

**ORIGINAL**

**LEBOEUF, LAMB, GREENE & MACRAE  
L.L.P.**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK  
WASHINGTON  
ALBANY  
BOSTON  
DENVER  
HARRISBURG  
HARTFORD  
JACKSONVILLE

200 NORTH THIRD STREET  
SUITE 300  
P.O. BOX 12105  
HARRISBURG, PA 17108-2105  
(717) 232-8199  
FACSIMILE: (717) 232-8720

LOS ANGELES  
NEWARK  
PITTSBURGH  
PORTLAND, OR  
SALT LAKE CITY  
SAN FRANCISCO  
BRUSSELS  
MOSCOW  
ALMATY  
LONDON  
(A LONDON-BASED  
MULTINATIONAL PARTNERSHIP)

October 23, 1997

**BY HAND**

James McNulty, Prothonotary  
Pennsylvania Public Utility Commission  
North Office Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.  
PECO Energy Company  
Docket No. R-00973953

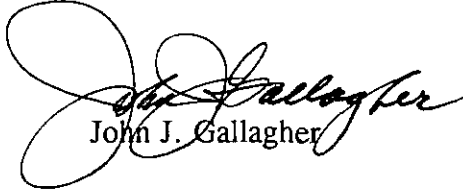
PROTHONOTARY'S OFFICE  
OCT 23 PM 1:33  
17105-3265

Dear Mr. McNulty:

Enclosed please find the original and three (3) copies of Enron Energy Services Power, Inc.'s Objections to Senator Vincent J. Fumo's Interrogatories, Set II, to be filed in the above-captioned proceeding. A Certificate of Service is also enclosed.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,

  
John J. Gallagher

JJG/mas  
enclosure

cc: All Parties on Certificate of Service  
Daniel Clearfield, Esquire

**DOCUMENT  
FOLDER**

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:  
:  
:  
:  
:

Docket No. R-00973953

---

OBJECTIONS OF  
ENRON ENERGY SERVICES POWER, INC.  
TO SENATOR VINCENT J. FUMO,  
SET II

---

PROthonotary's OFFICE

97 OCT 23 PM 1:33

RECEIVED

Pursuant to 52 Pa.Code § 5.432, Enron Energy Services Power, Inc. ("EESPI") hereby sets forth the following objections to the interrogatories of Senator Vincent J. Fumo ("Senator Fumo") at Set II. EESPI also notes that the following objections were timely communicated to counsel for Senator Fumo pursuant to the procedural schedule established in Prehearing Order No. 1.

DUCKETED  
OCT 28 1997

1. Please identify all individuals who, as agents or employees of Enron, participated in either the deliberation, development or filing of the "Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to serve as the Provider of Last Resort in the Service Territory of PECO Energy Company" (hereinafter "PECO Petition").

DOCUMENT  
FOLDER

Objection. First, the interrogatory question is broad vague, unclear and misleading. Second, The Commission's Rules and Regulations specifically prohibit disclosure of mental impressions, conclusions or opinions of a representative of a participant respecting the

value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony and the like. 52 Pa.Code § 5.323. Insofar as this interrogatory question seeks disclosure of privileged attorney-work product, the request remains outside the scope of discoverable information, pursuant to the Commission's Rules and Regulations at 52 Pa.Code § 5.321. A list of such attorneys and individuals or participants other than attorneys could not lead to the discovery of admissible evidence. Therefore, the interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

Third, the provision of information as requested for EESPI would require a special study and would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

Notwithstanding these objections, EESPI notes that it has already presented to the parties a list of witnesses it expects to present. EESPI will provide the names of all witnesses who worked on the Choice Plan and the Petition.

**3. With respect to each individual identified in the answers to questions (1) and (2), please provide the following:**

(a) . . .

(b) . . .

(c) **any documents, including work papers, prepared or generated by said individual which, in whole or in part, contain the facts and opinions to which the person is expected to testify, for whom prepared and when, and identify further each person to whom the document or documents were given or distributed.**

(d) . . .

Objection in part. EESPI only objects to that portion of the question requesting that EESPI "identify further each person to whom the document or documents were given or distributed." The submission of such information would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361. Moreover, subpart (c) seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a). To the extent not specifically objected, EESPI's objection at FUMO Set 2, question 1, supra, is incorporated herein.

EESPI will provide responses to subparts (a), (b), (d) and to the remainder of subpart (c).

**7. Please provide a detailed explanation of the meaning and consequence of paragraph 35(a) on page 28 of the Enron Petition. Please include a response to the following:**

**(a) What is the meaning of the phrase "[s]uch terms will be incorporated into the Choice Plan?" Does this imply, directly or indirectly, that Enron is the Provider of Last Resort if the Commission were to approve the Enron Petition, will assume all obligations otherwise assigned to PECO Energy Company in the Partial Settlement, including side letters of agreement?**

**(b) . . .**

Objection in part. EESPI only objects to that portion of subpart 7(a) which requests the question requesting that EESPI provide the impact of its Petition or its Choice Plan on "side letters of agreement." EESPI is aware of only one such "side letter agreement." Regarding that side letter agreement, EESPI has not reviewed the impact, if any, that its Petition

or the Choice Plan will have upon that agreement at this juncture. In all other respects, EESPI will provide a response to FUMO Set 2, Question 7.

- 13. Please indicate whether or not any employee of Enron or any agent acting on behalf of Enron is a member, officer, employees or associated with the organization "Consumer's Coalition for Choice"? If so, please indicate the nature of the association, and the period of time of said association.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

- 14. Please provide a detailed account of all monetary or in-kind contributions made, directly or indirectly, to the "Consumer's Coalition for Choice" by any Enron officer, employee or agent acting on behalf of Enron. Please include a list of any contributions made by any other corporation, subsidiary, affiliate, organization or group controlled or directed by Enron to the "Consumer's Coalition for Choice". Please indicate the amount of the contribution, the date the contribution was made and its intended purpose.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

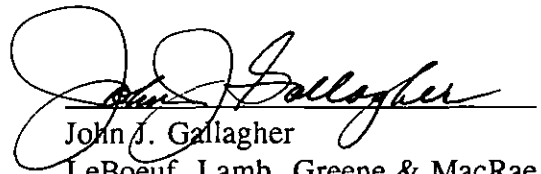
15. **Please indicate whether or not any employee of Enron or any agent acting on behalf of Enron has provided or discussed the Enron Petition or the Enron "Choice Plan" with any person associated, directly or indirectly, with the "Consumer's Coalition for Choice". If so, please indicate the date and the nature of the discussion.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

16. **Please provide any additional information that may be in the possession of Enron concerning the "Consumer's Coalition for Choice" which is relative to the organization's function, its principle place of business or its memberships.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

Respectfully Submitted,



John J. Gallagher

LeBoeuf, Lamb, Greene & MacRae  
L.L.P.

200 North Third Street, Suite 300  
P.O. Box 12105  
Harrisburg, PA 17108-2105  
(717) 232-8199

Attorney for Enron Energy  
Services Power, Inc.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:  
:  
:  
:  
:

Docket No. R-00973953

---

---

**CERTIFICATE OF SERVICE**

---

---

PROthonotary's OFFICE

97 OCT 23 PM 1:34

RECORDED

I hereby certify that I have on this 23rd day of October, 1997, served a true copy of the foregoing Objections to Senator Vincent J. Fumo's Interrogatories, Set II, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

Paul R. Bonney, Esquire  
Noel H. Trask, Esquire  
Ward L. Smith, Esquire  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, P.O. Box 8699  
Philadelphia, PA 19101-8699  
(*PECO Energy Company*)

Senator Vincent J. Fumo  
Christopher B. Craig, Esquire  
Senate Democratic Appropriations  
Committee  
Main Capitol Building, Room 545  
Harrisburg, PA 17120  
(*Senator Vincent J. Fumo*)

Paul E. Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(*Pennsylvania Power & Light Company*)

Donald A. Kaplan, Esquire  
Lisa M. Helpert, Esquire  
Preston Gates Ellis & Rouvelas Meeds  
1735 New York Avenue, N.W., Suite 500  
Washington, DC 20006  
(*Pennsylvania Power & Light Company*)

Steven P. Hershey, Esquire  
Philip A. Bertocci, Esquire  
Community Legal Services  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102  
(*Community Legal Services*)

Joseph A. Dworetzky, Esquire  
John Lavelle, Jr., Esquire  
Hangley, Anonchick, Segal and Pudlin  
One Logan Square, 12th Floor  
Philadelphia, PA 19103  
(*New Energy Ventures, Inc.*)

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601  
(*Allegheny Power*)

Stephanie Sugrue, Esquire  
Mary Ann Ralls, Esquire  
Duane, Morris & Heckscher  
L.L.P.  
1667 K Street, N.W.  
Suite 700  
Washington, DC 20006  
(*QST Energy, Inc.*)

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Bldg 218,  
Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018  
(*Department of Navy*)

Richard Silkman  
163 Main Street  
Yarmouth, ME 04096  
(*Community Legal Services*)

Roger Clark, Esquire  
Environmentalists  
905 Denston Drive  
Ambler, PA 19002-3901  
(*The Environmentalists*)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(*Delmarva Power & Light Company, d/b/a  
Conectiv Energy*)

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17th Street, N.W.  
Suite 600  
Washington, DC 20036  
(*Self*), (*Duke Energy Trading & Marketing,  
LLC*), (*Noram Energy Management, Inc.*),  
(*Vastar Power Marketing, Inc.*), (*Electric  
Clearinghouse, Inc.*)

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel,  
L.L.P.  
204 State Street  
Harrisburg, PA 17101  
(*Indianapolis Power & Light Company*)

Bernard Ryan, Esquire  
Karen Oill Moury, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(OSBA)

David Kleppinger, Esquire  
Derrick P. Williamson, Esquire  
McNees, Wallace & Nurick  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
(Philadelphia Area Industrial Energy  
Users Group)

Linda C. Smith, Esquire  
Dilworth, Paxton, Kalish & Kauffman,  
L.L.P.  
305 North Front Street - Suite 403  
Harrisburg, PA 17101-1236  
(American Association of Retired Persons)

Kenneth L Mickens, Senior Prosecutor  
Charles D. Shields, Prosecutor  
The Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(OTS)

Joseph J. Malatesta, Esquire  
Lillian Smith Harris, Esquire  
Malatesta, Hawke & McKeon, L.L.P.  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17105-1778  
(Municipal Group)

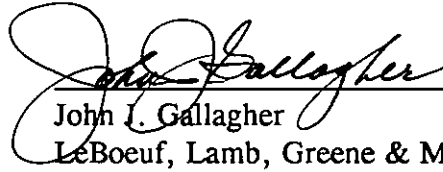
Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Office of the Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(OCA)

Robert Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
(PA Retailers' Association)

Terrance J. Fitzpatrick, Esquire  
David M. DeSalle, Esquire  
Ryan, Russell, Ogden & Seltzer, L.L.P.  
800 North Third Street, Suite 101  
Harrisburg, PA 17102-2025  
(GPU)

William T. Hawke, Esquire  
Janet Miller, Esquire  
Todd Stewart, Esquire  
Malatesta, Hawke & McKeon, L.L.P.  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17105-1778  
(Mid-Atlantic Power Supply Association)

Mr. Lance Haver  
6803 Lawton Avenue  
Philadelphia, PA 19126  
(Self)



John J. Gallagher  
LeBoeuf, Lamb, Greene & MacRae  
L.L.P.

200 North Third Street, Suite 300  
P.O. Box 12105  
Harrisburg, PA 17108-2105  
(717) 232-8199

Attorney for Enron Energy  
Services Power, Inc.

RECEIVED

97 OCT 23 PM 1:34

PROTHONOTARY'S OFFICE

**ORIGINAL**

**LEBOEUF, LAMB, GREENE & MACRAE  
L.L.P.**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK  
WASHINGTON  
ALBANY  
BOSTON  
DENVER  
HARRISBURG  
HARTFORD  
JACKSONVILLE

200 NORTH THIRD STREET  
SUITE 300  
P.O. Box 12105  
HARRISBURG, PA 17108-2105  
(717) 232-8199  
FACSIMILE: (717) 232-8720

LOS ANGELES  
NEWARK  
PITTSBURGH  
PORTLAND, OR  
SALT LAKE CITY  
SAN FRANCISCO  
BRUSSELS  
MOSCOW  
ALMATY  
LONDON  
(A LONDON-BASED  
MULTINATIONAL PARTNERSHIP)

October 23, 1997

**BY HAND**

James McNulty, Prothonotary  
Pennsylvania Public Utility Commission  
North Office Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.  
PECO Energy Company  
Docket No. R-00973953

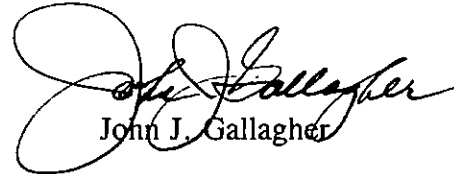
PROTHONOTARY'S OFFICE  
91 OCT 23 PM 1:32  
RECEIVED

Dear Mr. McNulty:

Enclosed please find the original and three (3) copies of Enron Energy Services Power, Inc.'s Objections to PECO Energy Company's Interrogatories, Set XI, to be filed in the above-captioned proceeding. A Certificate of Service is also enclosed.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,

  
John J. Gallagher

JJG/mas  
enclosure

cc: All Parties on Certificate of Service  
Daniel Clearfield, Esquire

DOCUMENT  
FOLDER

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:  
:  
:  
:  
:

Docket No. R-00973953

OBJECTIONS OF  
ENRON ENERGY SERVICES POWER, INC.  
TO PECO, SET XI

RECEIVED  
97 OCT 23 PM 1:33  
PENNSYLVANIA  
PROthonotary's OFFICE

Pursuant to 52 Pa.Code § 5.432, Enron Energy Services Power, Inc. ("EESPI") hereby sets forth the following objections to the interrogatories of PECO Energy Company ("PECO") at Set XI. EESPI also notes that the following objections were timely communicated to counsel for PECO pursuant to the procedural schedule established in Prehearing Order No. 1.

DOCKETED  
OCT 28 1997

**10. Describe the relationship between Enron Energy Services Power, Inc. and Enron Power Marketing, Inc.;**

Objection in part. The reference to "relationship" is not defined and is otherwise vague. Enron Power Marketing, Inc. ("EPMI") will not have a role in or have any obligation in conjunction with the Choice Plan.

DOCUMENT  
FOLDER

In response to its objections to PECO Set X, Question 1, EESPI has already indicated that it will provide the corporate structures of EESPI and EPMI as they relate to each other and to Enron Corp. Moreover, pursuant to 52 Pa.Code § 5.324, EESPI will also set

forth in direct testimony a description of the relevant corporate relationships affecting the implementation of the Choice Plan. To the extent that this particular interrogatory question requests information beyond that which was requested in PECO Set X, Question 1, a definition of the term "relationship" will be necessary in order to respond.

- 15. In his October 7, 1997, press conference announcing the filing of the Enron Petition, Enron Chairman Kenneth Lay referred to presentations regarding the Choice Plan that have been made to Enron's Board of Directors. Please provide copies of all such presentations.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a). Moreover, the provision of such information is confidential, and the release of which would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

- 16. Please identify, by name, title and address, the officers and managers of Enron and outside consultants, bankers and attorneys that participated in preparing and reviewing the Enron Choice Plan and Petition. Please indicate the portions of the Choice Plan that each person participated in preparing. Please indicate which of these individuals Enron expects to present as witnesses in this proceeding.**

Objection. First, the interrogatory question is vague, unclear and misleading. Nowhere in the instructions accompanying PECO Set XI has PECO defined its intended use of the term "Enron". Enron Corp. currently consists of over 900 subsidiaries, affiliates, joint ventures, partnerships and other enterprises. Enron Energy Services Power, Inc. ("EESPI") and

Enron Power Marketing, Inc. ("EPMI") are subsidiaries of Enron Corp. A response to the question as posed, therefore, would be unduly burdensome to produce.

Second, to the extent that this interrogatory question seeks information related to EESPI, the interrogatory question is broad. The provision of a response to the information as requested for EESPI would require a special study and would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

Third, the interrogatory questions seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code. § 5.321(a). The Commission's Rules and Regulations specifically prohibit disclosure of mental impressions, conclusions or opinions of a representative of a participant respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony and the like. 52 Pa.Code § 5.323. Therefore, lists of such representatives of participants other than attorneys will not lead to the discovery of admissible evidence.

Fourth, insofar as the interrogatory question seeks mental impressions of counsel, or information concerning the mental impressions, conclusions, opinions regarding matters, communications and documents prepared in anticipation of litigation by counsel, the question requests data that is privileged and outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code § 5.321(b).

Notwithstanding these objections, EESPI notes that it has already presented to the parties a list of witnesses it expects to call.

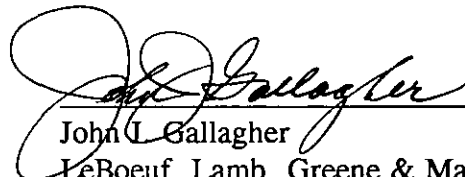
**17. Please provide a copy of every projection of market prices that Enron or its advisors and consultants relied upon in preparing the Enron Choice Plan and Petition. Please provide a copy of other projections of market prices in PECO's service territory or in PJM that are in Enron's possession.**

Objection. Insofar as, the first sentence requests information concerning the mental impressions, conclusions or opinions of a representative of a participant respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony and the like, EESPI objects to the provision of such information assembled, relied upon or created by its outside consultants, bankers and attorneys in preparation of the filing of the Choice Plan. 52 Pa.Code § 5.323. Moreover, to the extent that the information sought in this interrogatory question seeks disclosure of the mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research or legal theories, the information sought is protected from disclosure by the attorney client privilege. Id.

Regarding the second sentence, EESPI objects to this part of the question as posed as overly broad and too burdensome to produce. In addition, the request asks that EESPI provide to PECO research and data regarding PECO's own service territory and the PJM when such information is -- or should be -- in PECO's possession or control. Accordingly, submission of such data and information would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

Notwithstanding these objections, to the extent the Choice Plan relies upon projections and market prices, the testimony of EESPI will identify projections and market prices to the extent relevant and to the extent relied upon in the Choice Plan. 52 Pa.Code § 5.324.

Respectfully submitted,

  
\_\_\_\_\_  
John L. Gallagher  
LeBoeuf, Lamb, Greene & MacRae  
L.L.P.

200 North Third Street, Suite 300  
P.O. Box 12105  
Harrisburg, PA 17108-2105  
(717) 232-8199

Attorney for Enron Energy  
Services Power, Inc.

Dated: October 23, 1997

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:  
:  
:  
:  
:

Docket No. R-00973953

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that I have on this 23rd day of October, 1997, served a true copy of the foregoing Objections to PECO Energy Company's Interrogatories, Set XI, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

Paul R. Bonney, Esquire  
Noel H. Trask, Esquire  
Ward L. Smith, Esquire  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, P.O. Box 8699  
Philadelphia, PA 19101-8699  
*(PECO Energy Company)*

Paul E. Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
*(Pennsylvania Power & Light Company)*

Senator Vincent J. Fumo  
Christopher B. Craig, Esquire  
Senate Democratic Appropriations  
Committee  
Main Capitol Building, Room 545  
Harrisburg, PA 17120  
*(Senator Vincent J. Fumo)*

Donald A. Kaplan, Esquire  
Lisa M. Helpert, Esquire  
Preston Gates Ellis & Rouvelas Meeds  
1735 New York Avenue, N.W., Suite 500  
Washington, DC 20006  
*(Pennsylvania Power & Light Company)*

PROTHONOTARY'S OFFICE  
PA.U.C.  
97 OCT 23 PM 1:37

Steven P. Hershey, Esquire  
Philip A. Bertocci, Esquire  
Community Legal Services  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102  
*(Community Legal Services)*

Joseph A. Dworetzky, Esquire  
John Lavelle, Jr., Esquire  
Hangley, Anonchick, Segal and Pudlin  
One Logan Square, 12th Floor  
Philadelphia, PA 19103  
*(New Energy Ventures, Inc.)*

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601  
*(Allegheny Power)*

Stephanie Sugrue, Esquire  
Mary Ann Ralls, Esquire  
Duane, Morris & Heckscher  
L.L.P.  
1667 K Street, N.W.  
Suite 700  
Washington, DC 20006  
*(QST Energy, Inc.)*

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Bldg 218,  
Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018  
*(Department of Navy)*

Richard Silkman  
163 Main Street  
Yarmouth, ME 04096  
*(Community Legal Services)*

Roger Clark, Esquire  
Environmentalists  
905 Denston Drive  
Ambler, PA 19002-3901  
*(The Environmentalists)*

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
*(Delmarva Power & Light Company, d/b/a  
Conectiv Energy)*

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17th Street, N.W.  
Suite 600  
Washington, DC 20036  
*(Self), (Duke Energy Trading & Marketing,  
LLC), (Noram Energy Management, Inc.),  
(Vastar Power Marketing, Inc.), (Electric  
Clearinghouse, Inc.)*

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel,  
L.L.P.  
204 State Street  
Harrisburg, PA 17101  
*(Indianapolis Power & Light Company)*

Bernard Ryan, Esquire  
Karen Oill Moury, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(OSBA)

David Kleppinger, Esquire  
Derrick P. Williamson, Esquire  
McNees, Wallace & Nurick  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
(Philadelphia Area Industrial Energy  
Users Group)

Linda C. Smith, Esquire  
Dilworth, Paxton, Kalish & Kauffman,  
L.L.P.  
305 North Front Street - Suite 403  
Harrisburg, PA 17101-1236  
(American Association of Retired Persons)

Kenneth L. Mickens, Senior Prosecutor  
Charles D. Shields, Prosecutor  
The Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(OTS)

Joseph J. Malatesta, Esquire  
Lillian Smith Harris, Esquire  
Malatesta, Hawke & McKeon, L.L.P.  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17105-1778  
(Municipal Group)

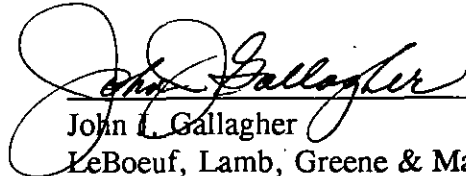
Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Office of the Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(OCA)

Robert Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
(PA Retailers' Association)

Terrance J. Fitzpatrick, Esquire  
David M. DeSalle, Esquire  
Ryan, Russell, Ogden & Seltzer, L.L.P.  
800 North Third Street, Suite 101  
Harrisburg, PA 17102-2025  
(GPU)

William T. Hawke, Esquire  
Janet Miller, Esquire  
Todd Stewart, Esquire  
Malatesta, Hawke & McKeon, L.L.P.  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17105-1778  
(Mid-Atlantic Power Supply Association)

Mr. Lance Haver  
6803 Lawton Avenue  
Philadelphia, PA 19126  
(Self)

  
John L. Gallagher  
LeBoeuf, Lamb, Greene & MacRae  
L.L.P.

200 North Third Street, Suite 300  
P.O. Box 12105  
Harrisburg, PA 17108-2105  
(717) 232-8199

Attorney for Enron Energy  
Services Power, Inc.

RECEIVED  
97 OCT 23 PM 1:33  
F.A.U.C.  
PROTHROTARY'S OFFICE

*file*

KJR

Date: October 23, 1997

Subj: PECO Restructuring - Additional Interrogatories; R-00973953

To: ALJs Chestnut and Rainey

Fm: CALJ Christianson *pc*

I hereby forward the attached two additional interrogatories for Enron, along with an instruction letter. Please seek to have the parties carry out the instructions. I have sent the letter and the two interrogatories to Enron by FAX. We plan to mail the materials to the parties tomorrow.

pc: Party list  
Prothonotary  
Chairman Quain  
Vice Chairman Bloom  
Commissioner Hanger  
Commissioner Rolka  
Commissioner Brownell  
Executive Director Bruin  
Deputy Executive Director Smith  
Director Muth, FUS  
Director Davis, OSA

RECEIVED  
97 OCT 21 AM 9:51  
PROTHONOTARY'S OFFICE

DOCUMENT  
FOLDER



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF EXECUTIVE DIRECTOR  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

Tel: (717) 783-5131

Fax: (717) 787-3417

October 23, 1997

*J. fl*

RECEIVED  
OFFICE OF C.A.L.J.  
97 OCT 23 PM 3:13

PA PUC

Chief ALJ Christianson  
PA Public Utility Commission  
Room G-06, North Office Building  
Harrisburg, PA 17105-3265

Re: PECO Energy Restructuring  
R-00973953

Dear Chief Judge Christianson:

Attached are two additional Commissioner Interrogatories to the parties in the PECO Restructuring proceeding. Responses to the questions are requested to be filed in ten days and should be made part of the record with service on all parties. The parties should also seek to place the responses into evidence.

In addition, the answers to the Commissioner interrogatories should be compiled in one document. However, should the record already contain the response elsewhere, the responding party can cite to the place in the record where the response can be found.

Please forward these questions to Administrative Law Judges Marlane Chestnut and Charles Rainey for appropriate direction to the parties.

Thank you for your cooperation and attention to this matter.

Sincerely,

Veronica A. Smith  
Deputy Executive Director

PROthonotary's OFFICE  
97 OCT 24 AM 9:51

Attachment

**DOCKETED**  
OCT 24 1997

DOCUMENT  
FOLDER

COMMISSIONER INFORMATION REQUESTS

SET NO. 2

ENRON SPECIFIC QUESTIONS

1. How are the terms of the IECPA settlement provisions handled in the Enron proposal?
2. What are Enron's present and anticipated future relationships with the PJM?

U.S. DEPARTMENT OF JUSTICE  
97 OCT 24 AM 9:51  
PROSECUTOR'S OFFICE

RECEIVED  
OFFICE OF C.A.L.J.  
97 OCT 23 PM 3:13  
PA PUC

JOSEPH A DWORETZKY ESQUIRE  
NEW ENERGY VENTURES  
HANGLEY ARONCHICK SEGAL & PUDLIN  
ONE LOGA SQUARE 12TH FLOOR  
PHILADELPHIA PA 19103

LINDA SMITH ESQUIRE  
AARP  
DILWORTH PAXSON KALISH AND  
KAUFFMAN  
305 N FRONT STREET  
SUITE 403  
HARRISBURG PA 17101-1236

MICHAEL L. KESSLER VP AND GENERAL  
COUNSEL  
AMERICAN ENERGY SOLUTIONS INC  
111 SOUTH ALFRED STREET  
ALEXANDRIA VA 22314

AUDREY VANDYKE ESQUIRE  
NAVAL FACILITIES ENGINEERING  
COMMAND  
WASHINGTON NAVY YARD  
BUILDING 218 ROOM 200  
901 M STREET SE  
WASHINGTON DC 20374-5018

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

JOSEPH J MALATESTA AND LILLIAM SMITH  
HARRIS ESQUIRES  
MUNICIPAL INTERVENORS GROUP  
MALATESTA HAWKE & MCKEON LLP  
PO BOX 1778  
HARRISBURG PA 17105

SUSAN SHANAMAN ESQUIRE  
CENTER FOR ENERGY AND ECONOMIC  
DEVELOPMENT  
212 NORTH THIRD STREET  
SUITE 203  
HARRISBURG PA 17101-1505

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

PAUL L ZIEGLER ESQUIRE  
DVSEUC  
ZIEGLER & ZIMMERMAN PC  
355 NORTH 21ST STREET SUITE 304  
PO BOX 1080  
CAMP HILL PA 17011-3707

GORDON SMITH ESQUIRE  
DUKE ENERGY TRADING/MARKETING  
LLC  
ELECTRIC CLEARING HOUSE INC  
JOHN & HENGERER  
1200 17TH ST NW SUITE 600  
WASHINGTON DC 20036-3006

ETHAN GIDDINGS  
217 RODMAN AVENUE  
JENKINTOWN PA 19046

ROBERT A MILLS ESQUIRE  
MCNEES WALLACE & NURICK  
PA RETAILERS' ASSOCIATION  
100 PINE STREET  
PO BOX 1166  
HARRISBURG PA 17108-1166

STEPHANIE A SUGRUE ESQUIRE  
QST ENERGY INC  
DUANE MORRIS & HECKSCHER LLP  
1667 K STREET NW SUITE 700  
WASHINGTON DC 20006-1608

JOHN J GALLAGHER ESQUIRE  
LEBOEUF LAMB GREENE & MCRAE LLP  
ENRON ENERGY SERVICES POWER INC  
200 NORTH THIRD ST SUITE 300  
PO BOX 12105  
HARRISBURG PA 17108-2105

DANIEL CLEARFIELD ESQUIRE  
WOLF BLOCK SCHORR AND SOLIS-COHEN  
ENRON ENERGY SERVICES POWER INC  
305 NORTH FRONT STREET  
SUITE 401  
HARRISBURG PA 17101-1236

Application for approval of a Restructuring Plan and Consumer Education Program.

**P-00971265 Petition of ENRON Energy Services Power, Inc.**

For approval of an electric competition and customer choice plan and for authority pursuant to section 2807(E)(3) of the Public Utility Code to serve as the provider of last resort in the service territory of PECO Energy Company.

KENNETH MICKENS ESQUIRE  
CHARLES D SHIELDS ESQUIRE  
PA PUC OTS  
PO BOX 3265  
HARRISBURG PA 17105-3265

PAUL R BONNEY ESQUIRE  
WARD SMITH ESQUIRE  
ROBIN L KROGOLD PARALEGAL  
PECO ENERGY COMPANY  
2301 MARKET ST PO BOX 8699  
PHILADELPHIA PA 19101-8699

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

BERNARD A RYAN ESQUIRE  
KAREN OILL MOURY ESQUIRE  
SMALL BUSINESS ADVOCATE  
300 N 2ND STREET SUITE 1102  
HARRISBURG PA 17101

DAVID KLEPPINGER ESQUIRE  
DERRICK P WILLIAMSON ESQUIRE  
PAIEUG  
MCNEES WALLACE AND NURICK  
PO BOX 1166  
HARRISBURG PA 17108-1166

JOHN L MUNSCH ESQUIRE  
ALLELGHENY POWER  
800 CABIN HILL DRIVE  
GREENSBURG PA 15601

TERRENCE FITZPATRICK ESQUIRE  
DAVID DESALLE ESQUIRE  
GPU ENERGY  
RYAN RUSSELL, OGDEN AND SELTZER  
800 NORTH THIRD ST SUITE 101  
HARRISBURG PA 17102

PAUL RUSSELL ESQUIRE  
PENNSYLVANIA POWER AND LIGHT  
COMPANY  
TWO NORTH NINTH STREEET  
ALLENTOWN PA 18101

STEVEN P HERSHEY ESQUIRE  
COMMUNITY LEGAL SERVICE INC  
1424 CHESTNUT STREET  
PHILADELPHIA PA 19102

ROGER CLARK ESQUIRE  
ENVIROMENTALISTS  
905 DENSTON DRIVE  
AMBLER PA 19002-3901

JANET MILLER ESQUIRE  
MAPSA  
MALATESTA HAWKE AND MCKEON  
100 NORTH TENTH STREET  
PO BOX 1778  
HARRISBURG PA 17105-1778

CHRISTOPHER B CRAIG ESQUIRE  
SENATOR VINCENT J FUMO  
ROOM 545 MAIN CAPITOL BUILDING  
HARRISBURG PA 17120

DONALD A KAPLAN ESQUIRE  
PENNSYLVANIA POWER AND LIGHT  
SUITE 500  
1735 NEW YORK AVENUE NW  
WASHINGTON DC 20006-4759

LANCE HAVER  
6048 OGONTZ AVENUE  
PHILADELPHIA PA 19141

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

GERALD GORNISH ESQUIRE  
ENRON CORPORATION  
WOLF BLOCK SCHOOR AND SOLIS-  
COHEN  
305 NORTH FRONT STREET  
SUITE 401  
HARRISBURG PA 17101

CRAIG A DOLL ESQUIRE  
CONECTIV ENERGY  
A DIVISION OF DELMARVA POWER &  
LIGHT COMPANY  
214 STATE STREET  
HARRISBURG PA 17101

WALTER W COHEN ESQUIRE  
ANDREW J GIORGIONE ESQUIRE  
INDIANAPOLIS POWER AND LIGHT  
COMPANY  
204 STATE STREET  
HARRISBURG PA 17102



**PECO ENERGY**

**RECEIVED**

Legal Department

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

OCT 28 1997

PA PUBLIC UTILITY COMMISSION  
PROTHONOTARY'S OFFICE

Direct Dial: 215 841 4252

October 23, 1997

James W. Durham  
Senior Vice President  
and General Counsel

Edward J. Cullen, Jr.  
Deputy General Counsel

Sandra H. Byrne  
Legal Administrator

Paul R. Bonney  
Ellen M. Cavanaugh  
Jessica N. Cone  
Todd D. Cutler  
Susan S. Foehl  
Vilna Waldron Gaston  
Gregory Goiazeski  
John C. Haideman  
Mary McFall Hopper  
Conrad O. Kattner  
Stephanie Whitton Lewis  
Jeffrey J. Norton  
Mark B. Peabody  
Roslyn G. Pollack  
Wendy Schermer  
Richard S. Schlegel  
Jenny P. Shulbank  
Ward L. Smith  
Delia W. Stroud  
Dawn Getty Sutphin  
Noel H. Trask  
Ronald L. Zack  
Assistant General Counsel

**Via Facsimile & U.S. First Class Mail**

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

John Gallagher, Esquire  
LeBoeuf, Lamb, Greene &  
MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105

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; Petition of Enron Energy Service Power, Inc.  
P-00971265.

Dear Counsel:

Enclosed are two copies of PECO Energy Company's Interrogatories to Enron, Set XV, numbers 1 through 18. Please note that the name Enron, as used in these interrogatories, refers to Enron Corporation, Enron Power Marketing, Inc., Enron Energy Services Power, Inc., and any company or entity affiliated with any of those three companies. For each answer, please identify the person that prepared the answer and, if different, the person who will be available to testify regarding the answer.

Sincerely,

Paul R. Bonney

PRB/mbo

Enclosures

cc: Certificate of Service (w/enclosure)  
James McNulty, Acting Prothonotary (Certificate of Service Only)

DOCUMENT  
FOLDER

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of Pennsylvania Public Utility Commission v. PECO Energy Company Pa. PUC Docket No. R-00973953.

Honorable Marlane R. Chestnut  
Administrative Law Judge  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

Honorable Charles E. Rainey, Jr.  
Administrative Law Judge  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PAIEUG)

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Furno)

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens & John Long, Jr.)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
305 N. Front Street; Suite 401  
Harrisburg, PA 17101  
(Counsel for Enron)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Attorney for Environmentalists)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kaufman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101  
(Counsel for AARP)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Counsel for Delmarva Power & Light)

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(Counsel for Delmarva Power & Light)

Walter W. Cohen, Esquire / Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

92922

JOINED  
OCT 30 1997

RECEIVED

OCT 28 1997

PA PUBLIC UTILITY COMMISSION  
PROTHONOTARY'S OFFICE

DOCUMENT  
FOLDER

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Building 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018  
(Counsel for Dept. of Navy)

Robert A. Mills, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PA Retailers' Association)

Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901 - 15<sup>th</sup> Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17<sup>th</sup> Street, NW - Suite 600  
Washington, DC 20036-3006  
(Duke Energy Trading and Marketing, Vastar, & Electric Clearinghouse)

Joseph A. Dworetzky, Esquire  
John P. Lavelle, Jr., Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19102  
(Counsel for New Energy Ventures)

Stephanie A. Sugrue, Esquire/Sheila S. Hollis, Esquire  
Mary Ann Rallis, Esquire  
Duane, Morris & Heckscher LLP  
1667 K Street, N.W. - Suite 700  
Washington, DC 20006-7800  
(Counsel for QST Energy)

Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

John Gallagher, Esquire  
Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105  
(Counsel for Enron Energy Services Power, Inc.)

Janet Miller, Esquire  
William T. Hawke, Esquire/Todd S. Stewart, Esq.  
Malatesta Hawke & McKeon  
100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(Counsel for Allegheny Power)

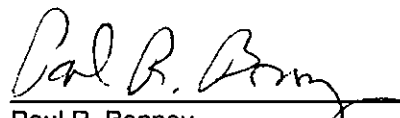
Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

Joseph J. Malatesta, Jr., Esquire  
Lillian Smith Harris, Esquire  
Malatesta Hawke & McKeon LLP  
Harrisburg Energy Center  
100 North Tenth Street - P.O. Box 1778  
Harrisburg, PA 17105  
(Municipal Group)

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
1 Columbia Place  
Albany, NY 12207  
(Counsel for Pennsylvania Petroleum Association and Pennsylvania Association of Plumbing, Heating, Cooling Contractors, Inc.)

Vickiren S. Aeshleman  
Director - Regulatory Policy  
QST Energy, Inc.  
300 Hamilton Blvd.; Suite 300  
Peoria, IL 61602

John Klauberg, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55<sup>th</sup> Street  
New York, NY 10019-5389  
(Counsel for Enron Energy Services Power, Inc.)

  
Paul R. Bonney  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252

Dated: October 23, 1997

ORIGINAL

HANGLEY ARONCHICK SEGAL & PUDLIN

ATTORNEYS AT LAW • A PROFESSIONAL CORPORATION

WILLIAM T. HANGLEY  
MARK A. ARONCHICK  
DANIEL SEGAL  
DAVID B. PUDLIN  
ALAN KLEIN  
MYRON A. BLOOM  
JOSEPH A. DWORETZKY  
RICHARD J. GOLDSTEIN  
DAVID B. GIFFORD  
BRUCE S. HAINES  
JOHN S. SUMMERS  
REGINA A. VOGEL  
PAUL McDONALD  
DAVID M. SCOLNIC  
SARA M. STAMAN  
CURTIS L. GOLKOW  
JOHN P. LAVELLE, JR.  
DAVID J. WOLFSON  
LESLIE T. BRADLEY  
JOSEPH F. RIGA  
MICHAEL LIEBERMAN  
SUSAN PACKER  
YVONNE LEE CLAYTON  
ANDREW K. FLETCHER  
KIMBERLY M. HULT  
LUKE E. DEMBOSKY  
EDMOND J. GHISU  
ALICE E. HARVEY  
KAREN E. LEONARD

ONE LOGAN SQUARE  
TWELFTH FLOOR

PHILADELPHIA, PENNSYLVANIA 19103-6933

FACSIMILE: 215-568-0300

20 BRACE ROAD  
SUITE 201  
CHERRY HILL, NEW JERSEY 08034

FACSIMILE: 609-616-2170

97 OCT 27 PM 1:16

RECEIVED  
PROTHONOTARY'S OFFICE

DOCUMENT  
FOLDER

Direct Dial:

(215) 496- 7014

E-mail Address:

jdworetzky@hangley.com

October 24, 1997

VIA REGULAR MAIL

James J. McNulty, Acting Prothonotary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

KJR

Re: PECO Restructuring  
Docket No. R-00973953

Dear Mr. McNulty:

I enclose for filing an original and three copies of the the Response of New Energy Ventures and Conective Energy to Enron's Petition for Approval of its Customer Choice Plan. I have also enclosed a Certificate of Service with respect to New Energy Venture, Inc.'s responses to PECO's discovery requests NEV-III-1 and 2.

Sincerely,



Joseph A. Dworetzky

JAD:kbs

encl.

cc: Certificate of Service (w/encl.)

**ORIGINAL**

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
014874

97 OCT 27 PM 1:16

RECEIVED  
PUBLIC UTILITY COMMISSION'S OFFICE

PECO Energy Company's Application : R-00973953  
for Approval of its Restructuring Plan :  
and Joint Petition for Partial Settlement :

Petition of Enron Energy Services Power, Inc., : P-00971265  
for Approval of an Electric Competition and :  
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 :

**DOCKETED**  
OCT 28 1997

RESPONSE OF NEW ENERGY VENTURES AND CONECTIV  
TO ENRON'S PETITION FOR APPROVAL  
OF ITS CUSTOMER CHOICE PLAN

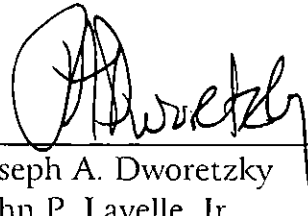
DOCUMENT  
FOLDER

New Energy Ventures ("NEV") and Conective Energy ("Conectiv"), by their counsel, hereby answer Enron's Petition for approval of its Customer Choice Plan.

Introduction

In general, NEV and Conectiv believe that the Enron proposal constitutes a significant improvement to the terms of the Proposed Settlement that PECO has been advocating. A number of provisions in the Enron proposal are vastly superior to provisions in the Settlement Agreement. NEV and Conectiv believe that the Commission should give the Enron Proposal the same careful consideration which it gives to PECO's proposed settlement.

NEV and Conectiv are continuing to study the detail of Enron's Proposal and may file testimony in connection therewith when their review of the proposal and the testimony in support thereto is completed.



---

Joseph A. Dworetzky  
John P. Lavelle, Jr.  
Luke E. Dembosky  
HANGLEY ARONCHICK SEGAL & PUDLIN  
One Logan Square  
12th Floor  
Philadelphia, PA 19103

Attorneys for New Energy Ventures, Inc.



---

Craig A. Doll  
214 State Street  
Harrisburg, PA 17101

Attorney for Conective Energy

Dated: October 24, 1997

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re the Application of PECO Energy :  
Company for Approval of its :  
Restructuring Plan Under Section 2806 : Docket No. R-00973953  
of the Pennsylvania Public Utility Code :  
 :  
 :  
 :  
Petition of Enron Energy Services Power, Inc., : P-00971265  
for Approval of an Electric Competition and :  
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 :

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 1997, I caused a true and correct copy of Response of New Energy Ventures and Conectiv to Enron's Petition for Approval of Its Customer Choice Plan via regular mail, upon the following counsel. I further certify that the manner of service satisfied the requirements of 52 PA. Code §§ 5.75 and 1.54.

The Honorable Charles E. Rainey, Jr.  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, PA 19130

Daniel Clearfield, Esquire  
Wolf, Block, Schorr and Solis-Cohen LLP  
305 N. Front Street  
Suite 401  
Harrisburg, PA 17101-1236

The Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
Philadelphia, PA 19130

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

Paul R. Bonney, Esquire  
PECO Energy Co.  
2301 Market St.,  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(via telecopy)

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120

Kenneth L. Mickens, Esquire  
Charles D. Shields, Esquire  
PA Public Utility Commission  
Office of Trial Staff  
P.O. Box 3256  
Harrisburg, PA 17105-3265

Gerald Gornish, Esquire  
Wolf, Block, Schorr and  
Solis-Cohen  
305 N. Front Street, Suite 401  
Harrisburg, PA 17101

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101

Lance Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101

Alan J. Barak, Esquire  
Attorney for Environmentalists  
Widener University Law School  
3700 Vartan Way  
Harrisburg, PA 17110

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Bernard A. Ryan, Esquire  
Karen Oill Moury, Esquire  
Small Business Advocate  
300 N. 2nd St., Suite 1102  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, N.W.  
Washington, DC 20006-4759

Linda C. Smith, Esquire  
Dilworth, Paxon, Kalish & Kauffman  
305 North Front Street  
Suite 403  
Harrisburg, PA 17101-1236

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901 15th Street, N.W.  
Washington, DC 20005-2301

Bruce A. Connell, Esquire  
DuPont Power Marketing, Inc.  
600 N. Dairy Ashford  
ML-1034  
Houston, TX 77079

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippell LLP  
204 State Street  
Harrisburg, PA 17101

Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
1100 Berkshire Boulevard  
Suite 301  
Reading, PA 19610

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard  
Bldg. 218, Room 200  
901 M. Street, S.E.  
Washington, DC 20374-5018

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Gary A. Jeffries, Senior Attorney  
CNG Energy Services Corporation  
One Park Ridge Center  
P.O. Box 15244-0746  
Pittsburgh, PA 15244-0746

Joseph J. Malatesta, Jr., Esquire  
Janet Miller, Esquire  
Lillian Smith Harris, Esquire  
Malatesta, Hawke &  
McKeon LLP  
P.O. Box 1778  
Harrisburg, PA 17105

Usher Fogel, Esquire  
Roland, Fogel, Koblenz  
& Carr, LLP  
1 Columbia Place  
Albany, NY 12207

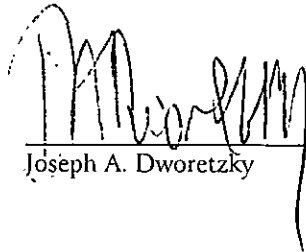
Gordon Smith, Esquire  
John & Hengerer  
1200 17th Street, N.W.  
Suite 600  
Washington, DC 20036-3006

Michael L. Kessler, Esquire  
Vice President, General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, VA 22314

Sam DeFrawi, Esquire  
United States Navy Rate Intervention  
Washington Navy Yard, Bldg. 212, Code 00RI  
901 M Street, South East  
Washington, DC 20374-5018

Susan M. Shanman, Esquire  
212 North 3rd Street  
Suite 203  
Harrisburg, PA 17101-1505

Paul L. Zeigler, Esquire  
Zeigler & Zimmerman, P.C.  
355 North 21st Street  
Camp Hill, PA 17011-3707



Joseph A. Dworetzky

Date: October 24, 1997

ORIGINAL

GRAIG A. DOLL

ATTORNEY AT LAW  
214 STATE STREET  
HARRISBURG, PENNSYLVANIA 17101

717/230-9555  
FAX 717/230-9750

October 24, 1997

James J. McNulty, Esquire  
Prothonotary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**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 nine copies of the Objections of Delmarva Power/Conectiv Energy to Interrogatory Set II - 2 propounded by PECO Energy in the above captioned proceeding. A copy of the objection has been served upon the Presiding Administrative Law Judges and all parties of record.

Please time stamp the enclosed copy and return it in the enclosed envelope. Thank you for your cooperation.

If you have any questions, please do not hesitate to call.

Respectfully,

*Craig A. Doll*  
Craig A. Doll

CAD/kmv  
Attachments

cc: Honorable Marlane R. Chestnut  
Honorable Charles E. Rainey, Jr.  
All parties of record

DOCUMENT  
FOLDER

PROTHONOTARY'S OFFICE

97 OCT 24 PM 2:19

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION :

v. :

Commission Docket  
R-00973953

PECO ENERGY COMPANY

Application of PECO Energy Company for  
Approval of its Restructuring Plan under  
Section 2806 of the Public Utility Code

97 OCT 26 PM 2:19  
PROTODIARY'S OFFICE

---

OBJECTIONS OF  
CONECTIV ENERGY TO  
INTERROGATORIES OF  
PECO ENERGY  
SET II

---

NOW COMES, Conectiv Energy, a division of Delmarva Power & Light Company (hereinafter "Conectiv"), by and through its attorney, and, pursuant to 52 Pa. Code §5.342, hereby objects to a portion of Interrogatory No. 2, Set II of PECO Energy Company (hereinafter "PECO") propounded to Conectiv. In support of this objection, Conectiv states as follows:

On or about October 16, 1997, PECO forwarded PECO Energy Company's Interrogatories to Delmarva Power & Light Company (including, but not limited to, Conectiv Energy), Set II, in reference to the Petition of Enron Energy Service Power, Inc. (hereinafter "Enron Petition"). The focus of these interrogatories is to secure all

JOCKETED  
OCT 28 1997

DOCUMENT  
FOLDER

documents which relate to the position of Delmarva Power and/or Conectiv relative to the Enron Petition. Specifically, Conectiv objects to a portion of the following interrogatory and request for documents:

2. State whether the Pennsylvania Competition Coalition supports the Choice Plan as filed. If the answer is no, state the position of the Pennsylvania Electric Competition Coalition with respect to the Choice Plan as filed. Please provide all documents that concern or otherwise relate to the subject matter of this interrogatory.

**Objection:** Conectiv objects to this interrogatory to the extent that PECO seeks the internal analyses of the Enron Petition performed by counsel or other representatives of Delmarva and/or Conectiv.

Pursuant to 52 Pa. Code §5.321(c):

... a participant may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the pending action...

Emphasis added. Further, the Commission's regulations prohibit discovery, whether through written interrogatories or deposition, of a nature which would include:

... disclosure of the mental impressions of a participant's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. With respect to the representatives of a participant other than the participant's attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

52 Pa. Code §5.323.<sup>1</sup> See also, *Sedat, Inc. v. Department of Environmental Resources*, 163 Pa. Cmwlth Ct. 29, 641 A.2d 1243 (1994) which provides in pertinent

---

<sup>1</sup> This provision applies to written interrogatories (52 Pa. Code §5.341); requests for documents (52 Pa. Code §5.349); admissions (52 Pa. Code §5.350); and on the record data requests (52 Pa. Code §5.351).

part that legal advice and an attorney's work product are subject to unqualified protection.

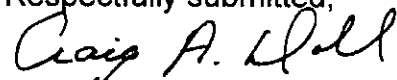
At present, counsel and representatives for Delmarva and Conectiv are in the process of analyzing the Enron Petition and the claims made therein. Conectiv submits that memoranda of counsel constitute an attorney's work product and are therefore not discoverable. *See Sedat, supra.*

Conectiv also submits that these memoranda are intended to convey the mental impressions, conclusions or opinions respecting the value or merit of a claim or defense, strategy, and tactics to the decisionmakers at Delmarva and Conectiv and are likewise not discoverable pursuant to 52 Pa. Code §5.323.

Finally, to the extent that any documents not otherwise precluded are prepared which would reveal any confidential commercial information to a competitor such as PECO, Conectiv objects to its disclosure. *See generally, Hagy v. Premier Manufacturing Corporation*, 404 Pa. 330, 172 A.2d 283 (1961).

**WHEREFORE**, Delmarva Power and Light Company and Conectiv Energy respectfully request that its objection to Interrogatory 2, Set II propounded by PECO be sustained.

Respectfully submitted,



Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101

Attorney for Conective Energy,  
a division of Delmarva Power and  
Light Company

DATED: October 24, 1997

Certificate of Service

I hereby certify that I have this date served the following Interrogatories by facsimile, first class or overnight/express mail, upon the persons addressed below:

**Objections to Interrogatories and Delmarve Responses to PECO Interrogatories Set 11**

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3256  
Harrisburg, PA 17105-3265

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17120  
(Counsel for PAIEUG)

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Fumo)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
305 N. Front Street; Suite 401  
Harrisburg, PA 17101  
(Counsel for Enron)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Paul R. Bonney  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215)841-4252

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Attorney for Environmentalists)

John L. Munsch, Esquire  
Allegheny power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(Counsel for Allegheny Power)

Bruce A. Connell, Esquire  
DuPont Power Marketing, Inc.  
Legal Department  
600 N. Dairy Ashford, ML-1034  
Houston, TX 77079  
(Counsel for DuPont Power Marketing, Inc.)

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2nd Street  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens  
& John Long, Jr.)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101  
(Counsel for AARP)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Paul E. Nordstrom, Esquire  
Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901-15th Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Mr. Lance Haver  
6803 Lawton Avenue  
Philadelphia, PA 19126

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Joseph A. Dworetzky, Esquire  
John P. Lavell, Jr., Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12th Floor  
Philadelphia, PA 19103

Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

Audrey Van Dyke, Associate Counsel  
Naval Facility Engineering Command  
Washington Navy Yard, Bldg 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018

Dated: October 24, 1997

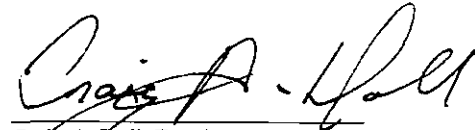
Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
Albany, NY 12207  
(Counsel for PPA)

Susan M. Shanaman, Esquire  
212 North Third Street, Suite 203  
Harrisburg, PA 17101

Janet Miller, Esquire  
Malatesta Hawke & McKeon  
100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

Richard LaCapra/Lee Smith/Doug Smith  
LaCapra Associates  
The Province Building  
333 Washington Street  
Boston, MA 02108

John J. Gallagher, Esquire  
LeBoeuf, Lang, Greene & MacRae  
Suite 300  
200 North Third Street  
P.O. Box 12105  
Harrisburg, PA 17108-2105



Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(717) 230-9555

Attorney for Conectiv Energy, a division of  
Delmarva Power & Light Company

PROTHONOTARY'S OFFICE

97 OCT 24 PM 2:19

1000000000

**CRAIG A. DOLL**  
ATTORNEY AT LAW  
214 STATE STREET  
HARRISBURG, PENNSYLVANIA 17101

**ORIGINAL**

717/230-9555  
FAX 717/230-9750

October 24, 1997

James J. McNulty, Esquire  
Prothonotary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

DOCUMENT  
FOLDER

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 Mr. McNulty:

Pursuant to the Commission's Regulations at 52 Pa. Code §5.342(d), attached is a Certificate of Service identifying the Answer to Interrogatories of Delmarva Power propounded by PECO Energy which have been served on the active parties in this proceeding.

Please time stamp the enclosed copy and return it in the enclosed envelope. Thank you for your cooperation.

If you have any questions, please do not hesitate to call.

Respectfully,

*Craig A. Doll*  
Craig A. Doll

CAD/kmv  
Attachments

cc: All parties of record

97 OCT 24 PM 2:20  
PROTHONOTARY'S OFFICE

Certificate of Service

I hereby certify that I have this date served the following Interrogatories by facsimile, first class or overnight/express mail, upon the persons addressed below:

**Objections to Interrogatories and Delmarve Responses to PECO Interrogatories Set 11**

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3256  
Harrisburg, PA 17105-3265

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17120  
(Counsel for PAIEUG)

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Fumo)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
305 N. Front Street; Suite 401  
Harrisburg, PA 17101  
(Counsel for Enron)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Paul R. Bonney  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215)841-4252

Alan J. Barak, Esquire  
Penn Energy Project  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(Attorney for Environmentalists)

John L. Munsch, Esquire  
Allegheny power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(Counsel for Allegheny Power)

Bruce A. Connell, Esquire  
DuPont Power Marketing, Inc.  
Legal Department  
600 N. Dairy Ashford, ML-1034  
Houston, TX 77079  
(Counsel for DuPont Power Marketing, Inc.)

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2nd Street  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens  
& John Long, Jr.)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101  
(Counsel for AARP)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Paul E. Nordstrom, Esquire  
Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901-15th Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Mr. Lance Haver  
6803 Lawton Avenue  
Philadelphia, PA 19126

DOCKETED

OCT 27 1997

DOCUMENT  
FOLDER

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Joseph A. Dworetzky, Esquire  
John P. Lavell, Jr., Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Squire - 12th Floor  
Philadelphia, PA 19103

Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

Audrey Van Dyke, Associate Counsel  
Naval Facility Engineering Command  
Washington Navy Yard, Bldg 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
Albany, NY 12207  
(Counsel for PPA)

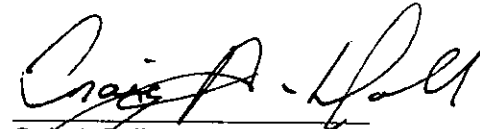
Susan M. Shanaman, Esquire  
212 North Third Street, Suite 203  
Harrisburg, PA 17101

Janet Miller, Esquire  
Malatesta Hawke & McKeon  
100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

Richard LaCapra/Lee Smith/Doug Smith  
LaCapra Associates  
The Province Building  
333 Washington Street  
Boston, MA 02108

John J. Gallagher, Esquire  
LeBoeuf, Lamg, Greene & MacRae  
Suite 300  
200 North Third Street  
P.O. Box 12105  
Harrisburg, PA 17108-2105

Dated: October 24, 1997

  
Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(717) 230-9555

Attorney for Conectiv Energy, a division of  
Delmarva Power & Light Company

97 OCT 24 PM 2:20  
PROTHONOTARY'S OFFICE



OCT 28 1997

DOCUMENT FOLDER

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

014878

97 OCT 27 PM 1:17

In re the Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Pennsylvania Public Utility Code :

RECEIVED PROTHONOTARY'S OFFICE

Docket No. R-00973953

CERTIFICATE OF SERVICE

KJR

I hereby certify that on October 24, 1997, I caused a true and correct copy of New Energy Ventures' Answers to Interrogatories of PECO Energy Company - Set III to be served via telecopy or first class mail, upon the following counsel at the addressed noted below. I further certify that the manner of service satisfied the requirements of 52 PA. Code §§ 5.75 and 1.54.

The Honorable Charles E. Rainey, Jr. Administrative Law Judge Pennsylvania Public Utility Commission 1302 Philadelphia State Office Building Philadelphia, PA 19130

Christopher B. Craig, Esquire Democratic Committee on Appropriations Room 545, Main Capitol Building Harrisburg, PA 17120 (via telecopy)

The Honorable Marlane R. Chestnut Administrative Law Judge Pennsylvania Public Utility Commission 1302 Philadelphia State Office Building Philadelphia, PA 19130

Gerald Gornish, Esquire Wolf, Block, Schorr and Solis-Cohen 305 N. Front Street, Suite 401 Harrisburg, PA 17101

Paul R. Bonney, Esquire PECO Energy Co. 2301 Market St., P.O. Box 8699 Philadelphia, PA 19101-8699 (via telecopy)

Paul Russell, Esquire Pennsylvania Power & Light Company Two North Ninth Street Allentown, PA 18101

Kenneth L. Mickens, Esquire Charles D. Shields, Esquire PA Public Utility Commission Office of Trial Staff P.O. Box 3256 Harrisburg, PA 17105-3265

Lance Haver 6048 Ogontz Avenue Philadelphia, PA 19141

Daniel Clearfield, Esquire Wolf, Block, Schorr and Solis-Cohen LLP 305 N. Front Street Suite 401 Harrisburg, PA 17101-1236

Craig A. Doll, Esquire 214 State Street Harrisburg, PA 17101

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

Alan J. Barak, Esquire Attorney for Environmentalists Widener University Law School 3700 Vartan Way Harrisburg, PA 17110

John L. Munsch, Esquire Allegheny Power 800 Cabin Hill Drive Greensburg, PA 15601-1689

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Bernard A. Ryan, Esquire  
Karen Oill Moury, Esquire  
Small Business Advocate  
300 N. 2nd St., Suite 1102  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, N.W.  
Washington, DC 20006-4759

Linda C. Smith, Esquire  
Dilworth, Paxon, Kalish & Kauffman  
305 North Front Street  
Suite 403  
Harrisburg, PA 17101-1236

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901

Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901 15th Street, N.W.  
Washington, DC 20005-2301

Bruce A. Connell, Esquire  
DuPont Power Marketing, Inc.  
600 N. Dairy Ashford  
ML-1034  
Houston, TX 77079

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippell LLP  
204 State Street  
Harrisburg, PA 17101

Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
1100 Berkshire Boulevard  
Suite 301  
Reading, PA 19610

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard  
Bldg. 218, Room 200  
901 M. Street, S.E.  
Washington, DC 20374-5018

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Gary A. Jeffries, Senior Attorney  
CNG Energy Services Corporation  
One Park Ridge Center  
P.O. Box 15244-0746  
Pittsburgh, PA 15244-0746

Joseph J. Malatesta, Jr., Esquire  
Janet Miller, Esquire  
Lillian Smith Harris, Esquire  
Malatesta, Hawke &  
McKeon LLP  
P.O. Box 1778  
Harrisburg, PA 17105

Usher Fogel, Esquire  
Roland, Fogel, Koblenz  
& Carr, LLP  
1 Columbia Place  
Albany, NY 12207

Gordon Smith, Esquire  
John & Hengerer  
1200 17th Street, N.W.  
Suite 600  
Washington, DC 20036-3006

Michael L. Kessler, Esquire  
Vice President, General Counsel  
American Energy Solutions, Inc.  
111 South Alfred Street  
Alexandria, VA 22314

Sam DeFrawi, Esquire  
United States Navy Rate Intervention  
Washington Navy Yard, Bldg. 212, Code 00RI  
901 M Street, South East  
Washington, DC 20374-5018

Susan M. Shanman, Esquire  
212 North 3rd Street  
Suite 203  
Harrisburg, PA 17101-1505

Paul L. Zeigler, Esquire  
Zeigler & Zimmerman, P.C.  
355 North 21st Street  
Camp Hill, PA 17011-3707

A handwritten signature in cursive script, appearing to read "J. Dworetzky", written over a horizontal line.

Joseph A. Dworetzky

Date: October 24, 1997