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October 3, 1997

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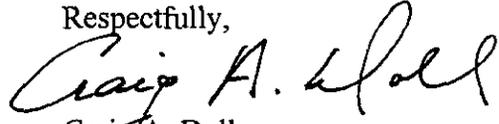
**RE: Application of PECO Energy Company for Approval of its Restructuring
Plan under Section 2806 of the Public Utility Code.
Docket No. R-00973953**

Dear Mr. McNulty:

Pursuant to the Commission's Regulations at 52 Pa. Code §5.342(d), attached is a Certificate of Service identifying the answers to interrogatories that Delmarva Power & Light Company served today 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

Certificate of Service

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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:

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OCT 3 1997

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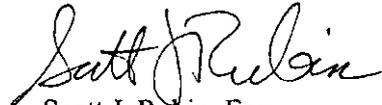
Re: Petition of the Joint Signatories To Suspend
Consideration of Certain Issues Pending a
Commission Determination of the Proper Forum
Docket No. R-00973953

Dear Mr. McNulty:

Enclosed for filing please find an original and fifteen (10) copies, as well as one diskette, of the Comments of the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus in the above-referenced proceeding.

I am also enclosing an extra copy of the Comments that I would appreciate having time-stamped and returned to me in the enclosed envelope. Thank you for your prompt attention to this matter.

Sincerely,


Scott J. Rubin, Esq.

Enclosures

cc: All electric restructuring stakeholders
Hon. John Quain
Hon. Robert Bloom
Hon. John Hanger
Hon. David Roika
Hon. Norma Mead Brownell

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

OCT 8 1997

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

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COMMENTS OF THE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS' PENNSYLVANIA UTILITY CAUCUS

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Pursuant to the terms of the Tentative Order issued by the Pennsylvania Public Utility Commission ("PUC") on October 2, 1997, the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus ("IBEW") files these Comments in response to the Tentative Order.

On October 2, 1997, the Commission issued a Tentative Order in this matter. That Tentative Order appears to require issues relating to the provision of billing, metering, and meter reading services by non-utilities to be considered in an unspecified generic proceeding, separate and apart from the electric utility restructuring cases that are currently pending before the Commission.

As is explained more fully below, IBEW respectfully submits that the Commission needs to clarify and modify certain aspects of its Tentative Order. Specifically, the Commission should make it clear that the ability of entities other than the electric distribution utility ("EDU") to provide billing, metering, and meter reading services must be fully considered in each EDU's restructuring proceeding.

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The Commission properly recognized that a restructuring plan must address “the impacts of the proposed plan on the utility’s employees.” Tentative Order at 4, citing 66 Pa. C.S. § 2806(e). *Within Pennsylvania’s EDUs, hundreds of people are employed in the billing, metering, and meter reading functions. If these services are allowed to be provided by other entities, the impact of restructuring on utility employees could be devastating.*

Moreover, such employee impacts would give rise to additional transition costs that are eligible for recovery as part of the competitive transition charge that is to be established in the restructuring cases. 66 Pa. C.S. § 2808. Indeed, the definition of “transition or stranded costs” expressly recognizes that such costs would include “costs of employee severance, retraining, early retirement, outplacement and related expenses, at reasonable levels, for employees who are affected by changes that occur as a result of the restructuring of the electric industry ...” 66 Pa. C.S. § 2803.

Simply, it is not possible for the Commission to determine either (1) the impact of a restructuring plan on the utility’s employees or (2) the appropriate level of transition or stranded costs without also determining whether entities other than the EDU will be allowed to provide billing, metering, and meter reading services.

As early as January 1997, IBEW asked the Commission to establish a generic proceeding to resolve the important legal, policy, and factual issues concerning the provision of billing, metering, and meter reading services by non-EDUs. See Comments of IBEW in *Tentative Order Re: Electric Utility Restructuring Filings Made Pursuant to 66 Pa. C.S. § 2806(e)*, Docket No. M-009608980 F. 0003, dated January 30, 1997, pages 1-5. IBEW believed that these issues were best decided before any of the utilities’

specific restructuring plans were filed. However, the Commission determined that it preferred to decide these issues on a case-by-case basis in each restructuring plan, rather than in a generic proceeding. *Order Re: Electric Utility Restructuring Filings Made Pursuant to 66 Pa. C.S. § 2806(E)*, Docket No. M-00960890 F. 0003 (Pa. PUC Feb. 13, 1997), slip op. at 8-11.

In July, IBEW again raised generic issues questioning the legality of non-utilities providing billing, metering, and meter reading services. Petition for Reconsideration, Clarification, Rescission, and Amendment of the International Brotherhood of Electric Workers' Pennsylvania Utility Caucus, *Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(E) and (F)*, Docket No. M-00960890 F. 0011, dated July 24, 1997.

In denying that Petition, just one month ago, the Commission stated very clearly that it would not consider IBEW's arguments generically. Rather, the Commission stated that it "anticipated that metering and billing issues would be addressed in each restructuring case." *Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(E) and (F)-Petition for Reconsideration, Clarification, Rescission, and Amendment of the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus*, Docket No. M-00960890 F. 0011 (Pa. PUC Aug. 21, 1997), slip op. at 3-4. The Commission went on to state:

Although we declined to open up generic proceedings on these and other issues because of the limited time period allowed for hearing and

resolution of the restructuring proceedings, we did recognize that the proceedings on the electric utility restructuring plans would examine transition issues, such as metering and billing, that involve employees of EDCs. In fact, the content of the restructuring plans required under Section 2806(d) must discuss the impacts of the proposed plan on the utility's employees. See 66 Pa. C.S. § 2806(e). We specifically noted that this issue along with other important issues would be explored in the restructuring proceedings ...

Id., slip op. at 4 (citations and footnotes omitted).

The Commission closed its August 21 Order by noting that IBEW (and other interested parties) should actively participate in the restructuring proceedings. The Commission noted its preference for developing these issues in that forum because "we will have the benefit of a full briefing schedule and an administrative law judge's initial decision before having to decide these issues." *Id.*, slip op. at 6.

IBEW has expended substantial resources in reliance on the Commission's repeated statements that it will consider billing, metering, and meter reading issues only in each utility's restructuring proceeding. IBEW has actively participated on these issues in the Pennsylvania Power and Light Company restructuring proceeding, in which briefs will be filed later this month. IBEW also has intervened, and intends to actively participate on these issues, in the Metropolitan Edison Company, Pennsylvania Electric Company, and Duquesne Light Company restructuring proceedings.

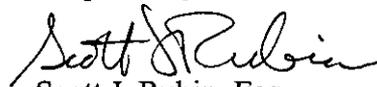
The Commission's October 2, 1997, Tentative Order in this docket does not clearly state whether the Commission intends to change its earlier orders that consistently held that billing, metering, and meter reading issues will be considered only in each utility's restructuring case. On page 4 of the Tentative Order, the Commission refers to a requirement that the restructuring cases must consider the impacts of the plan on the

utility's employees, but it does not specifically identify the billing, metering, and meter reading issues as ones that have such impacts.

IBEW respectfully requests the Commission to modify and clarify its Tentative Order to expressly state, as it did in its August 21, 1997 Order, that issues associated with the provision of billing, metering, and meter reading services by entities other than the EDU should be addressed in each utility's restructuring case. Such a clarification and modification would avoid serious prejudice to IBEW and other parties who have expended substantial resources in reliance on the Commission's earlier orders that denied requests to consider such issues outside of the context of the restructuring cases. It also would enable the Commission to perform its statutory duty to consider the impact of the utility's restructuring plan on the utility's employees and to develop an appropriate level of employee-related transition costs.

WHEREFORE, the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus respectfully requests the Pennsylvania Public Utility Commission to clarify and modify its Tentative Order to make it clear that issues relating to the provision of billing, metering, and meter reading services by entities other than the electric distribution utility should be considered in each utility's restructuring case.

Respectfully submitted,



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Counsel for:
International Brotherhood of Electrical
Workers' Pennsylvania Utility Caucus

Dated: October 6, 1997

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document via First Class Mail upon the participants, listed on the following pages, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).



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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 Secretary McNulty:

Enclosed for filing with the Commission are an original and 10 copies of PECO Energy Company's Comments To The Commission's Tentative Order On The Petition Of The Joint Signatories To Suspend Consideration Of Certain Issues Pending A Commission Determination Of Proper Forum.

Sincerely,

Paul R. Bonney

Paul R. Bonney

PRB/mtg

enclosures

cc: Service List

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA.P.U.C.
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PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

DOCKET NO. R-00973953

PECO ENERGY COMPANY

**Comments To The Commission's Tentative Order
On The Petition Of The Joint Signatories
To Suspend Consideration Of Certain Issues
Pending A Commission Determination Of Proper Forum**

Certain parties in PECO Energy Company's restructuring proceeding ("Joint Signatories"¹), filed a Joint Petition for Partial Settlement and a Petition to Suspend Consideration of Certain Issues Pending a Commission Determination of Proper Forum ("Petition to Suspend"). The Petition to Suspend requested the Commission to defer the issues not addressed in the Partial Settlement² and address them in generic, statewide proceedings.

On October 2, 1997, the Commission issued a Tentative Order on the Petition To Suspend agreeing that the "majority of the issues identified in the Petition are generic in nature, may be best resolved in actual and anticipated Commission rulemaking dockets, and need not necessarily be resolved in the PECO restructuring proceeding." (Tentative Order, p. 3). PECO supports the Commission's determination that these issues are generic in nature and are "best addressed in statewide proceedings to eliminate the possibility of inconsistent results in different restructuring proceedings."

(Tentative Order, p. 4).

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¹ The Joint Signatories that filed the Petition to Suspend include: Senator 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 Persons, the Department of the Navy, and PECO Energy Company.

² These issues include:

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

The Commission, however, did not agree that all issues should be handled on a generic statewide basis. The Commission determined that three issues need to be addressed in PECO's restructuring proceeding: (1) which ancillary services in support of transmission have been designated as being under Commission jurisdiction; (2) procedures for ensuring direct access to all licensed electric generation suppliers; and (3) the impact of the Partial Settlement on PECO's employees.

Two of these -- ancillary services and FERC jurisdiction, and the impact of the Partial Settlement on PECO employees -- will be addressed in the proceeding before the Commission to review the Partial Settlement. The schedule requires PECO Energy Company to submit testimony on October 8th and that hearings be held on October 14-17. PECO plans to submit testimony and/or brief these issues pursuant to the schedule established for the review of the Partial Settlement.

The third issue is the requirement in Chapter 28 that a utility's restructuring plan include "procedures for ensuring direct access to all licensed electric generation suppliers." 66 Pa.C.S §2806(e). This issue is currently before the Commission in its proceeding involving the retail access pilot program. PECO's plan for restructuring is to implement its supplier policies and procedures crafted for use in the pilot and amend them, as necessary, based on its experience in the pilot, the post implementation hearings before the Commission, and any changes that may occur in PJM.

In PECO's April 1st restructuring filing, Mr. Gregory Cucchi sponsored testimony outlining how PECO intended to ensure direct access to suppliers. Mr. Cucchi proposed that PECO Energy Company adopt the procedures it proposed in its original pilot program filing. (PECO Statement No. 15) Mr. David Pratzon elaborated on these procedures in PECO's rebuttal testimony. (PECO Statement No.21-R) Since that time, PECO altered its pilot program proposal, in accordance with Commission orders, and recently submitted its pilot compliance filing containing detailed and expanded policies and procedures to ensure suppliers direct access.

The Commission plans to hold post-implementation pilot hearings in January 1998 to address any operational problems that may arise in the implementation of the pilots. PECO recommends that the utility/supplier procedures necessary to ensure direct access be handled in this pilot program proceeding. PECO believes that this would be in accordance with the requirement that a utility include in its plan how it will provide suppliers with direct access.

PECO Energy also believes that, by addressing the utility/supplier procedures in the pilot proceeding, the Commission will be able to handle this issue on a statewide basis and allow for uniformity in rules, to the extent possible, as all utilities are involved in the pilot proceeding. In addition it would be an efficient use of resources to address this issue in the pilot proceeding. All interests will be represented and it would eliminate the need to litigate a single issue on the second track established by Prehearing Order No. 4 issued by Administrative Law Judges Chestnut and Rainey.

WHEREFORE, PECO Energy Company submits these comments to the Commission's Tentative Order.

Respectfully submitted,

PECO ENERGY COMPANY

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October 6, 1997

Certificate of Service

I hereby certify that I have 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.

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**DOCUMENT
FOLDER**

In re: Petition of the Joint Signatories To Suspend Consideration of Certain Issues
Pending a Commission Determination of the Proper Form
Docket No. R-00973953

Dear Secretary McNulty:

Enclosed for filing, please find an original and ten (10) copies, as well as one diskette, of the Comments of Allegheny Electric Cooperative, Inc. and Pennsylvania Rural Electric Association in the above referenced proceeding.

Due to the extremely short comment period, we reserve the right to file supplemental comments.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By 
Patricia Armstrong

Encls.

133

Petition of the Joint Signatories to :
Suspend Consideration of Certain : Docket No. R-00973953
Issues Pending a Commission :
Determination of the Proper Form :

**DOCUMENT
FOLDER**

**COMMENTS OF THE
ALLEGHENY ELECTRIC COOPERATIVE, INC.
AND
PENNSYLVANIA RURAL ELECTRIC ASSOCIATION**

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Pursuant to the terms of the Tentative Order issued by the Pennsylvania Public Utility Commission ("PUC") on October 2, 1997, Allegheny Electric Cooperative, Inc. ("AEC") and Pennsylvania Rural Electric Association ("PREA") file these Comments in response to the Tentative Order.

On October 2, 1997, the Commission issued a Tentative Order in this matter. That Tentative Order appears to propose that issues relating to generation and transmission and distribution reliability be considered in an unspecified generic proceeding, separate and apart from the electric utility restructuring cases that are currently pending before the Commission.

AEC/PREA respectfully submit that the Commission needs to clarify and modify its Tentative Order to note that while all affected parties should be able to defer this issue, the Legislature in enacting Act 138 added Chapter 28 to the Public Utility Code to create competitive markets while maintaining safety and reliability of

the electric system. Thus, reliability is an issue which is properly the subject of individual restructuring proceedings.¹

Section 2802(12) of the Public Utility Code states the following with regard to electric service reliability:

"Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system." (emphasis added)

66 Pa. C.S. §2802(12).

Section 2803 defines "reliability" as follows:

"[Reliability] includes adequacy and security. As used in this definition, 'adequacy' means the provision of sufficient generation, transmission and distribution capacity so as to supply the aggregate electric power and requirements of consumers, taking into account scheduled and unscheduled outages of system facilities, and 'security' means designing, maintaining and operating a system so that it can handle emergencies safely while continuing to operate."

66 Pa. C.S. §2803.

In response to this legislative mandate, on January 24, 1997, the Commission instituted a rulemaking proceeding at L-00970120 to develop regulations to ensure the safety, adequacy and reliability of the generation, transmission and distribution of electricity in Pennsylvania.

In its June 13, 1997 Order at L-00970120 the Commission provided:

¹Reliability issues will differ from system to system and should be able to address the unique problems and concerns in the individual proceedings.

"Several provisions of the Code address the safety and reliability of electric transmission and distribution facilities. Section 2802(20) states:

Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the Commission shall set, through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

66 Pa. C.S. §2802(20).

Section 2804(I) addresses standards for Commission assessment and approval of utility restructuring plans.

(I) The Commission shall ensure continuation of safe and reliable electric service to all consumers in the Commonwealth, including . . . (II) the installation and maintenance of transmission and distribution facilities in conformity with established industry standards and practices including the standards set forth in the National Electric [sic] Safety Code.

66 Pa. C.S. §2804(I)

Section 2805(B)(I)(III) addresses electric cooperative corporations as follows:

The reliability of the transmission service provided to electric cooperative corporations must be comparable to the reliability which the transmission supplier provides at the wholesale level."

66 Pa. C.S. §2805(B)(I)(III)

Finally, Section 2807 sets forth the duties of electric distribution companies:

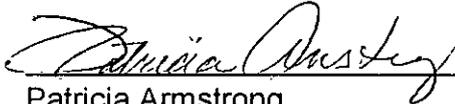
(A) General Rule. Each electric distribution company shall maintain the integrity of the distribution system at least in conformity with the National Electric [sic] Safety Code and such other standards practiced by the industry in a manner sufficient to provide safe and reliable service to all customers connected to the system consistent with this title and the Commission's regulations." (emphasis added)

Thus, we submit that this Commission has held that in restructuring proceedings that it shall ensure “reliability” and “reliable electric service to ALL consumers in the Commonwealth” and “the installation and maintenance of transmission and distribution facilities” is an issue to be addressed. Thus, concerns over reliability, unfair competition, maintenance, etc. should be permitted to be and, in fact, are entitled to be addressed in individual restructuring proceedings.

WHEREFORE, Pennsylvania Rural Electric Association and Allegheny Electric Cooperative, Inc. respectfully request the Pennsylvania Public Utility Commission to clarify and modify its Tentative Order to make it clear that issues relating to the generation and transmission and distribution reliability should be considered in each utility's restructuring case.

Respectfully submitted,

ALLEGHENY ELECTRIC COOPERATIVE, INC.
PENNSYLVANIA RURAL ELECTRIC ASSOCIATION

By  _____

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KJR

October 6, 1997

DELIVERED VIA HAND

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Pennsylvania Public Utility Commission
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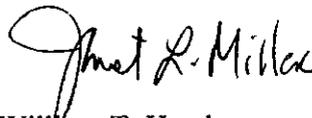
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RE: Application Of PECO Energy Company For Approval Of Its Restructuring Plan Under Section 2806 Of The Public Utility Code; Docket No. R-00973953;
COMMENTS OF MID-ATLANTIC POWER SUPPLY ASSOCIATION TO OCTOBER 2, 1997 TENTATIVE ORDER

Dear Mr. McNulty:

Enclosed are the original and ten (10) copies of the Comments of Mid-Atlantic Power Supply Association to the Tentative Order entered by the Pennsylvania Public Utility Commission in connection with the September 10, 1997 "Petition of the Joint Signatories to Suspend Consideration of Certain Issues Pending a Commission Determination of Proper Forum." A diskette of the enclosed Comments also is enclosed. 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
Enclosure

134

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company
for Approval of its Restructuring Plan Filing
Under Section 2806 of the Public Utility Code --

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

Docket No. R-00973953

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**COMMENTS OF MID-ATLANTIC POWER SUPPLY ASSOCIATION
TO OCTOBER 2, 1997 TENTATIVE ORDER
GRANTING PETITION OF THE JOINT SIGNATORIES
TO SUSPEND CONSIDERATION OF CERTAIN ISSUES
PENDING A COMMISSION DETERMINATION OF PROPER FORUM**

Mid-Atlantic Power Supply Association ("MAPSA")¹, by and through its counsel in this matter, Malatesta Hawke & McKeon LLP, hereby files its Comments in response to the Tentative Order entered by the Pennsylvania Public Utility Commission ("Commission") on October 2, 1997 in the above-captioned docket. The Tentative Order approved the "Petition of the Joint Signatories to Suspend Consideration of Certain Issues Pending a Commission Determination of Proper Forum" ("Petition"). The Petition requested that the Commission

¹ 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.

approve a procedure for evaluating and deciding issues not resolved by the Joint Petition for Partial Settlement filed by certain parties in connection with the Restructuring Plan filed by PECO Energy Company ("PECO"). The method of evaluation suggested by the Joint Signatories, and tentatively approved by the Commission, is to sever certain issues ("Generic Issues")² from litigation in connection with the PECO Restructuring Plan and to decide these issues in separate "generic" proceedings currently pending or anticipated to be established by the Commission. MAPSA believes the format suggested by the Joint Signatories is inappropriate because it is necessary to resolve at one time all issues related to (a) the transition to competition within PECO's service territory; (b) the relationship that will exist between PECO and alternative generation suppliers; and (c) the terms and conditions under which electric service will be provided to PECO's customers in the restructured environment.

MAPSA agrees that many of the issues set forth at Page 2 of the Tentative Order are "generic" in that they will need to be addressed in each utility restructuring; however, MAPSA does not believe it is appropriate to defer a decision on all of these issues. As noted by the Commission at Page 3 of the Tentative Order, Section 2806(e) of the Public Utility Code contains a list of certain elements which must be included in an electric utility's restructuring plan. By directing in the Tentative Order that the parties brief "all issues statutorily required to be considered by the Commission in approving such [restructuring] plans," the Commission has acknowledged that

² The Generic Issues cited by the Joint Signatories and the Commission's Tentative Order include: (1) Competitive Metering and Billing; (2) Standards and Code of Conduct; (3) FERC Jurisdictional Issues and Their Impact on PUC Jurisdictional Matters; (4) Generation and Transmission and Distribution Reliability; (5) Environmental Issues; and (6) Compliance with Bill Formats, Customer Service and Interaction with Supplier Issues.

issues such as the unbundling of services and prices for generation and the establishment of procedures for ensuring direct access to all alternative generation suppliers are important for the Commission's consideration of PECO's restructuring plan and that resolution of these issues cannot be deferred until a later time. In addition, MAPSA believes that it is both important and necessary to address at this time issues such as competitive metering and billing, standards and codes of conduct and issues related to the interaction between PECO and suppliers so that effective competition will be available to PECO's customers. MAPSA contends that these issues have been inadequately addressed in the Joint Petition for Partial Settlement as filed by PECO and other parties in this proceeding and that these issues should be fully litigated and decided in PECO's restructuring proceeding.

MAPSA recognizes that the decisions made with respect to the Generic Issues in the PECO restructuring proceeding may have to be modified at such time as generic proceedings conducted by the Commission ultimately are concluded. However, MAPSA believes that modification of procedures put into place for the provision of electric service and the conduct of customer/utility/supplier operations during the transition period is more preferable than having no procedures in place at all during this critical period of time. Without guidance, alternative generation suppliers and customers located within the PECO service territory will be faced with uncertainty on many issues that will directly impact the electric service they receive or provide.

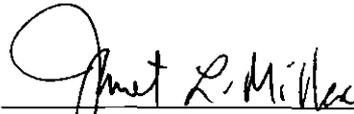
MAPSA does not believe, as is asserted by the Joint Signatories, that litigation of the Generic Issues as part of each electric utility restructuring proceeding will be a negative use of

resources. On the contrary, these issues should be litigated within the context of facts that are utility-specific, since it is those facts that will impact and decide the appropriate outcome of the issues relative to that utility's customers and operations. In addition, MAPSA points out that no other Pennsylvania electric utility has sought to sever issues such as competitive metering and billing, customer service, utility interaction with suppliers and establishment of a code of conduct from its restructuring proceeding; therefore, these issues will continue to be litigated in the restructuring cases of the other electric utilities. MAPSA also believes it is inappropriate to defer to generic proceedings issues on which parties in other electric restructuring proceedings may be able to, or already have, reached agreement.

MAPSA believes that deferring to a later time a determination on the Generic Issues will delay the effective implementation of competition in the PECO service territory because issues necessary to the conduct of business and the customer/supplier/utility relationship will remain unresolved. It is important to resolve at this time issues such as the code of conduct that will apply to PECO as the local distribution utility; the unbundling and competitive access to metering and billing functions; and the establishment of rules to govern the interaction between PECO, its

customers and the alternative generation suppliers that will be providing service in the PECO territory should be decided in this proceeding so that the parties have certainty on these issues when the transition to competition begins.

Respectfully submitted,



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Counsel for Mid-Atlantic Power
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DATED: October 6, 1997

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October 6, 1997

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PA Public Utility Commission
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**DOCUMENT
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PA PUBLIC UTILITY
COMMISSION OFFICE

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

Dear Mr. McNulty:

On behalf of Enron Power Marketing, Inc. enclosed for filing please find an original and fifteen copies of its Comments in the above-captioned matter.

Copies of the attached have been served as indicated on the attached Certificate of Service.

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

Very truly yours,



Alan Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

AK/jlg
Enclosures

cc: All Parties of Record w/enc.

DSH:10064.1

135

ORIGINAL
BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
OCT 8 1997

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

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**ENRON POWER MARKETING, INC.'S
COMMENTS TO TENTATIVE ORDER**

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Enron Power Marketing, Inc. ("Enron"), by its counsel, files these comments to the Tentative Order entered on October 2, 1997 in the above captioned docket granting the petition of the joint signatories to the Joint Petition for Partial Settlement ("Partial Settlement Petition") in PECO's restructuring proceedings. Through the Tentative Order, the Commission made a preliminary finding that issues pending in the PECO restructuring case which were not addressed in the Partial Settlement Petition should be removed from the restructuring proceedings and transferred to generic proceedings.¹ These comments are filed in opposition to the Commission rulemaking findings in its Tentative Order.

By way of background, shortly after enactment of the Electricity Generation Customer Choice and Competition Act ("Customer Choice Act"), Enron started advocating its view at the time that these types of issues could be resolved generically through the

¹ These issues include those listed on page 2 of the Tentative Order; 1) Competitive Metering and Billing; 2) Standards and Code of Conduct; 3) FERC Jurisdictional Issues and their Impact on PUC Jurisdictional Matters; 4) Generation and Transmission and Distribution Reliability; 5) Environmental Issues; and 6) Compliance with Bill Formats, Customer Service and Interaction with Supplier Issues. Furthermore, there are other issues pending in the PECO restructuring proceedings which are not addressed by the Partial Settlement Petition and which the Commission failed to mention including tariff issues and agency issues.

establishment of uniform statewide standards or regulations governing all electric distribution companies ("EDCs").² In contrast, it was the EDCs, including PECO Energy Company ("PECO"), that claimed that these issues would not be resolved generally because each utility was somehow completely unique and that these issues should be resolved in individual restructuring proceedings.

The Commission reacted by settling on what Enron views as sort of a middle ground — generic review of issues through the "working group" format combined with company specific litigation in the various restructuring proceedings. Although Enron believes the working group format has been productive, it has resulted in valuable but very time consuming discussions between Commission Staff and interested parties on a wide array of issues, including many of the issues relevant here. The time consuming nature of this activity, which as Enron understands it, was designed to reach as much consensus as possible prior to initiation of rulemaking proceedings, was acceptable for the simple reason that it appeared clear that the restructuring proceedings would establish company specific rules which would govern EDCs until such time as final regulations were promulgated.

While the combination of working groups and restructuring plan litigation was not Enron's preference, Enron has participated actively on all fronts and has dedicated large amounts of resources to both the working groups and restructuring plan proceedings. In fact, in the PECO restructuring proceeding, Enron introduced over 300 pages of testimony of eight

² Since at the time of enactment it was about two years until direct access and a year and a half until direct access transitional activity commenced, Enron believed there was ample time to promulgate uniform statewide rules.

witnesses, the large majority of which addresses issues like unbundling, competitive entry into revenue cycle services and competitive safeguards, which the Commission is now threatening to remove from the PECO proceeding even though these issues remain completely unresolved.

In one sense, Enron is pleased that PECO and the Commission now realize that PECO (nor any other EDC) is not so unique that it should not be bound by generic regulations on these types of issues. On the other hand, nine months has now passed since enactment and, to date, no rulemaking has been commenced to promulgate regulations on any of the issues which are the subject of the Commission's Tentative Order.³ It is Enron's understanding from participating actively in working groups like the Competitive Safeguards Working Group, the Metering Working Group, the Chapter 56 Working Group and the Customer Information Working Group, that the Working Groups are winding down and leading either to a proposed rulemaking order or a transfer of issues to individual restructuring proceedings.⁴ In contrast, in

³ The only possible exception is the Proposed Rulemaking Order which was entered on June 13, 1997 in Rulemaking to Amend 52 Pa. Code Chapter 57 to Ensure Electric Service Reliability, L-00970120 which initiated a rulemaking to establish service reliability regulations.

⁴ For example, the Competitive Safeguards Working Group is in the process of issuing final reports which will lead to a proposed rulemaking order. The Metering Working Group has not met or been the subject of Commission action in some time. The last Commission action was an Order entered on April 25, 1997 which requested comments on metering issues, (M-00960890 F0009). The Working Group appears to be heading towards a proposed rulemaking order. The Chapter 56 and Customer Information Working Groups, after issuing interim standards or guidelines have expressly referred the issues to individual restructuring proceedings for final resolution. See, Chapter 20 Electric Generation Customer Choice and Competition Act — Customer Information — Interim Requests, M-00960890F008 (July 11, 1997); Final Order re: Guidelines for Monitoring Customer Services at the Same Level of Quality Pursuant to 66 Pa C.S. § 2807(D), and Assuring Compliance with Chapter 56 Pursuant to 66 Pa. C.S. §§ 2809(E) and (F), M-0090890F0011 (July 11, 1997).

the Tentative Order, the Commission indicated that the given issues which are relevant here "may be best resolved in actual and anticipated Commission rulemaking dockets."⁵

Overall, Enron is concerned that even if a variety of proposed rulemaking orders (or one "Mega NOPR") were issued within the next thirty days, it is extremely unlikely that — given the likely duration of what is sure to be controversial rulemakings — final regulations would be promulgated by the summer of 1998.⁶ This would put both the Commission and market participants in the unenviable position of implementing direct access without final, or at least binding, standards in place.⁷

Accordingly, in order to avoid a chaotic conversion to direct access and widespread confusion among both market participants and consumers, the Commission should commit to one of two directions as set forth below. First, it is Enron's preference that the Commission stay its present course which combines the working group approach with the restructuring litigation and proceed to decisions in the restructuring proceedings which would

⁵ Tentative Order, p. 3.

⁶ Enron expects this rulemaking to require one to two years of rulemaking activity from initiation to finalization. The summer of 1998 is a critical time period because it represents the period in which EDCs and generation supplier will commence activity, including administrative and marketing activity, designed to gear up for direct access. Accordingly, it is crucial that final decisions and standards, or at minimum binding interim standards, be resolved by that time.

⁷ While it is clearly critical to generation suppliers to have final standards in place by the summer of 1998, it may be advantageous to EDCs, including PECO, to have issues unresolved for as long as possible. For example, until the Commission finalizes whether unbundling of and competitive entry into revenue cycle services is appropriate, EDCs will not implement unbundling nor permit competitive entry. Until the Commission determines whether agency is permitted, EDCs will attempt to preclude agency. Until a Code of Conduct for direct access is implemented, no competitive safeguards applicable to direct access will exist.

establish binding standards on the issues addressed by the Tentative Order. Of course, final regulations which are subsequently promulgated following completion of the working group process, as provisions of Pennsylvania law, would supersede company specific determinations in the restructuring proceedings on a permanent basis. Enron favors this approach for PECO in particular because it has already expended large amounts of resources to develop a record in that case in reliance upon the Commission's stated direction. To complete the record on these issues would merely require a couple of days of hearings to allow cross-examination of witnesses. Briefing and decision making could easily be completed within the statutory time frame.⁸

The second approach which is consistent with the Commission's Tentative Order is to remove issues from the restructuring proceeding and refer the issues to a rulemaking proceeding(s). However, if the Commission follows this approach, it is crucial that the Commission establish a procedure and commit to establishing binding, interim standards to govern the transition to direct access until such time as the Commission promulgates final regulations. The procedure utilized by the Commission in the past to accomplish this purpose is to adopt the proposed regulation as set forth in the Commission's proposed rulemaking orders as binding, interim rules pending completion of the rulemaking process.

The best example of the Commission's use of this procedure in the past is within the context of implementation of Chapter 30 of the Public Utility Code in which in Re: Interexchange Carrier Regulation Under Chapter 30 of the Public Utility Code, L-940099, 25 Pa. B. 1418 (Jan. 10, 1995), the Commission established binding, interim rules and proposed

⁸ Furthermore, a litigation schedule has already been established by the presiding officers specifically to address these issues.

codification of those rules through initiation of a rulemaking process. In establishing interim rules, the Commission recognized that standards under Chapter 30 governing IXCs were required prior to the time a rulemaking docket could be completed and that interim rules were required to "fill the gap" pending final promulgation.⁹ Overall, the interim IXC rules served the Commission well by establishing binding regulatory standards upon which the industry and the public could rely.

Clearly, the need for binding, interim standards and rules is equally prevalent here. While Enron has and will continue to advocate its views on unbundling, competitive entry, agency, competitive safeguards and other issues — regardless of its success — the worst scenario is for there to be no rules. Enron fears that if the Commission relies solely on the promulgation of final regulations to resolve these issues, the Commission will have no rules in the summer of 1998 when transition activity starts to occur¹⁰ and is likely to have no rules at the time of cutover to the direct access phase-in on January 1, 1999.

The bottom line is that the Commission should develop some mechanism which results in resolution of all of the issues addressed by the Tentative Order within the next six months. Since a rulemaking does not accommodate this time frame, some other mechanism must be developed. While the restructuring proceedings appeared to be a procedure to which the Commission had committed to resolve these issues and which following the Commission's

⁹ Subsequently, on April 29, 1997, the Commission entered a final rulemaking order promulgating IXC regulations. 27 Pa. B. 3217.

¹⁰ Timely implementation and finalization of at least interim rules is even more important for PECO since in the Partial Settlement it proposes to advance direct access to September 1, 1998. In such a case, interim rules should be finalized no later than the spring of 1998.

initiative Enron has dedicated its time and resources, the Commission now appears ready to switch directions — at least for PECO. While Enron opposes this change of direction, the Commission should at least accommodate the need to resolve outstanding issues for PECO and other EDCs in a timely manner. Otherwise, a transition to direct access without standards and rules is likely to occur to the ultimate detriment of the industry, the Commission and the consuming public.

WHEREFORE, for all of the foregoing reasons, Enron respectfully requests the Commission to provide the following relief:

- (1) Reverse the Commission's Tentative Order and continue with litigation of issues which are not included in the Partial Settlement Petition consistent with the existing schedule; or in the alternative,
- (2) Finalize the Tentative Order consistent with the following:
 - (a) Refer each of the issues not addressed in the Partial Settlement Petition to a specific rulemaking docket;
 - (b) Establish a schedule for issuance of proposed rulemaking orders to which an issue is referred: and
 - (c) Declare that the rules set forth in each proposed rulemaking are to be considered binding, interim rules during the pendency of each rulemaking.

Respectfully submitted,



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Dated: October 6, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing documents upon the participants, listed below, in accordance with the requirements of §

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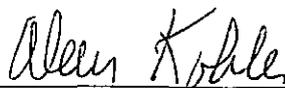
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Alan Kohler, Esquire

October 6, 1997

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October 6, 1997

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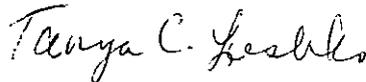
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RE: Application of PECO Energy Company for Approval
of its Restructuring Plan Under Sections 2806 of the
Public Utility Code,
Docket No. R-00973953

Dear Mr. Smith:

Enclosed please find the answers to PECO Interrogatories Set I to Pennsylvania
Electric Competition Coalition, which were faxed to you on October 6, 1997.

Sincerely,



Tanya C. Leshko

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

TCL/cln

Enclosure

cc: James McNulty, Acting Secretary
Parties of Record

DSH:10065.1

CERTIFICATE OF SERVICE

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

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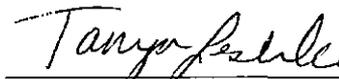
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Dated: October 7, 1997

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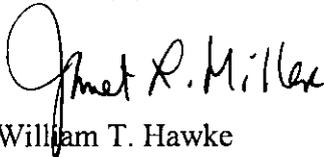
James J. McNulty, Acting Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

RE: Application Of PECO Energy Company For Approval Of Its Restructuring Plan Under Section 2806 Of The Public Utility Code; Docket No. R-00973953;
COMMENTS OF MID-ATLANTIC POWER SUPPLY ASSOCIATION TO OCTOBER 2, 1997 TENTATIVE ORDER

Dear Mr. McNulty:

Enclosed is a Certificate of Service indicating the list of parties that received a copy of the above-captioned document. 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
Enclosure

ORIGINAL

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.

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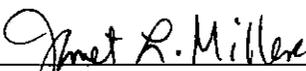
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October 6, 1997

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**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 answers to interrogatories that Delmarva Power & Light Company served today 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

KJR

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:

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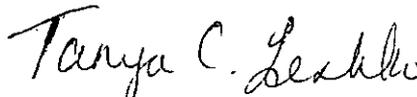
KJR

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

Dear Mr. Smith:

Pursuant to your request during Jeanine Hull's deposition, enclosed please find the testimony submitted by her before the Subcommittee on Energy and Power on February 1, 1996, which she has just obtained.

Very truly yours,



Tanya C. Leshko

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

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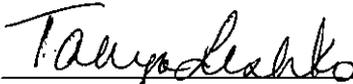
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PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and 10 copies of PECO
Energy Company's Comments To The Commission's Tentative Order On The
Petition Of The Joint Signatories To Suspend Consideration Of Certain Issues
Pending A Commission Determination Of Proper Forum.

Sincerely,

Paul R. Bonney

Paul R. Bonney

PRB/mtg

enclosures

cc: Service List

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PECO ENERGY COMPANY

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DOCKET NO. R-00973953

**Comments To The Commission's Tentative Order
On The Petition Of The Joint Signatories
To Suspend Consideration Of Certain Issues
Pending A Commission Determination Of Proper Forum**

Certain parties in PECO Energy Company's restructuring proceeding ("Joint Signatories¹"), filed a Joint Petition for Partial Settlement and a Petition to Suspend Consideration of Certain Issues Pending a Commission Determination of Proper Forum ("Petition to Suspend"). The Petition to Suspend requested the Commission to defer the issues not addressed in the Partial Settlement² and address them in generic, statewide proceedings.

On October 2, 1997, the Commission issued a Tentative Order on the Petition To Suspend agreeing that the "majority of the issues identified in the Petition are generic in nature, may be best resolved in actual and anticipated Commission rulemaking dockets, and need not necessarily be resolved in the PECO restructuring proceeding." (Tentative Order, p. 3). PECO supports the Commission's determination that these issues are generic in nature and are "best addressed in statewide proceedings to eliminate the possibility of inconsistent results in different restructuring proceedings." (Tentative Order, p. 4).

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PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

¹ The Joint Signatories that filed the Petition to Suspend include: Senator 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 Persons, the Department of the Navy, and PECO Energy Company.

² These issues include:

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

The Commission, however, did not agree that all issues should be handled on a generic statewide basis. The Commission determined that three issues need to be addressed in PECO's restructuring proceeding: (1) which ancillary services in support of transmission have been designated as being under Commission jurisdiction; (2) procedures for ensuring direct access to all licensed electric generation suppliers; and (3) the impact of the Partial Settlement on PECO's employees.

Two of these – ancillary services and FERC jurisdiction, and the impact of the Partial Settlement on PECO employees – will be addressed in the proceeding before the Commission to review the Partial Settlement. The schedule requires PECO Energy Company to submit testimony on October 8th and that hearings be held on October 14-17. PECO plans to submit testimony and/or brief these issues pursuant to the schedule established for the review of the Partial Settlement.

The third issue is the requirement in Chapter 28 that a utility's restructuring plan include "procedures for ensuring direct access to all licensed electric generation suppliers." 66 Pa.C.S §2808(e). This issue is currently before the Commission in its proceeding involving the retail access pilot program. PECO's plan for restructuring is to implement its supplier policies and procedures crafted for use in the pilot and amend them, as necessary, based on its experience in the pilot, the post implementation hearings before the Commission, and any changes that may occur in PJM.

In PECO's April 1st restructuring filing, Mr. Gregory Cucchi sponsored testimony outlining how PECO intended to ensure direct access to suppliers. Mr. Cucchi proposed that PECO Energy Company adopt the procedures it proposed in its original pilot program filing. (PECO Statement No. 15) Mr. David Pratzon elaborated on these procedures in PECO's rebuttal testimony. (PECO Statement No.21-R) Since that time, PECO altered its pilot program proposal, in accordance with Commission orders, and recently submitted its pilot compliance filing containing detailed and expanded policies and procedures to ensure suppliers direct access.

The Commission plans to hold post-implementation pilot hearings in January 1998 to address any operational problems that may arise in the implementation of the pilots. PECO recommends that the utility/supplier procedures necessary to ensure direct access be handled in this pilot program proceeding. PECO believes that this would be in accordance with the requirement that a utility include in its plan how it will provide suppliers with direct access.

PECO Energy also believes that, by-addressing the utility/supplier procedures in the pilot proceeding, the Commission will be able to handle this issue on a statewide basis and allow for uniformity in rules, to the extent possible, as all utilities are involved in the pilot proceeding. In addition it would be an efficient use of resources to address this issue in the pilot proceeding. All interests will be represented and it would eliminate the need to litigate a single issue on the second track established by Prehearing Order No. 4 issued by Administrative Law Judges Chestnut and Rainey.

WHEREFORE, PECO Energy Company submits these comments to the Commission's Tentative Order.

Respectfully submitted,

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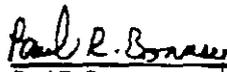
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PECO Energy
Customer Choice Pilot
Electric Generation Supplier
Policies and Procedures

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1. Introduction

These Electric Generation Supplier Policies and Procedures describe business policies and procedures that shall be followed by each Electric Generation Supplier (hereinafter, Supplier) that wishes to provide electricity to PECO Energy Company (hereinafter, PECO Energy) electric distribution customers as part of the PECO Energy Retail Access Pilot Program (hereinafter, the Pilot).

The Pilot will be conducted in compliance with the Pennsylvania Public Utility Commission's Final Opinion and Order on Pilot Program Implementation at Docket No. P-00971170 and PECO Energy's approved compliance filing thereunder. The compliance filing contains PECO Energy's Retail Access Pilot Rider, which contains the rules, terms, and conditions of the Pilot.

These Electric Generation Supplier Policies and Procedures will apply only during the Pilot, which will run from November 1, 1997 through December 31, 1998.

1.1 Pilot Overview

The Commonwealth of Pennsylvania's Retail Access Pilot Program is intended to test and demonstrate how a competitive market for generation will operate, in preparation for full retail access that will be phased in beginning on January 1, 1999. Under the Pilot, a set of PECO Energy electric distribution customers will select Electric Generation Suppliers and begin receiving electricity from those Electric Generation Suppliers on November 1, 1997. PECO Energy will continue to provide electric distribution service and metering services to these Participating Customers and will act as agent to the Electric Generation Suppliers for obtaining transmission service and ancillary services.

Because the Pennsylvania-New Jersey-Maryland Interconnection LLC (hereinafter, PJM) manages the transmission system that will be used to transport electricity from Electric Generation Suppliers to the PECO Energy distribution system, it is necessary for Electric Generation Suppliers to coordinate their operation with PJM as well as with PECO Energy.

1.2 Related Documents

The following listed documents provide additional information needed by Electric Generation Suppliers participating in the Pilot.

- PECO Energy Customer Choice Pilot Program Electric Generation Supplier Informational Appendices

These appendices provide detailed technical information and schedules that are subject to change and refinement throughout the Pilot as PECO Energy and Electric Generation Suppliers gain experience.

- PJM eScheduler User Manual

This user manual describes usage of the PJM eScheduler function. The PJM eScheduler function will be used by Supplier and PECO Energy to submit and confirm load schedules between Supplier and PECO Energy for the purpose of supplying PECO Energy electric distribution customer load requirements.

2. General Pilot Terms and Conditions

2.1 Term of the Agreement

Pilot participation is available to Electric Generation Suppliers from November 1, 1997 through December 31, 1998.

2.2 Duty to Cooperate

The successful implementation of the Pilot depends on the cooperation of Electric Generation Suppliers with PECO Energy. Supplier agrees to cooperate with PECO Energy in its management of the Pilot, and to fully adhere to any emergency directives that PECO Energy may issue to ensure and preserve system integrity.

2.3 Limitations on Liability

- PECO Energy shall not be liable for any loss, cost, damage, or expense, whether direct or consequential, caused by PECO Energy's calculation of customer load forecasts required for scheduling purposes.
- PECO Energy shall have no liability with respect to any electric energy before it is delivered by Supplier to a point of delivery on the PJM System or after its delivery to Participating Customers.
- PECO Energy shall have no liability for any increase in reconciliation dollar amounts owed by Supplier under Section 8.2.2 caused by outages.
- PECO Energy shall have no liability to Supplier in connection with any switch of a Participating Customer's service made in accordance with the Retail Access Pilot Rider.
- PECO Energy shall have no liability or duty to Supplier arising out of an agreement or relationship between Supplier and a Participating Customer, between Suppliers, or between Supplier and any other organization.

2.4 Use of PECO Energy Information

Supplier agrees that all information made available to Supplier by PECO Energy in connection with the administration of the Pilot, including, but not limited to, load curve data, policies and procedures, and information regarding PECO Energy computational and communication systems, will not be used for purposes other than to enable Supplier to comply with these policies and procedures and to perform those tasks necessary to supply the loads of their Participating Customers.

2.5 Dispute Resolution Procedure

Supplier's point of contact for all information, operations, questions, and problems regarding the Pilot shall be the PECO Energy Supplier Administration Group and the Supplier Choice Energy Scheduling System (SUCCESS) web-site that the PECO Energy Supplier Administration Group has set up to facilitate the ongoing business processes with Suppliers. Contact information, such as telephone numbers, mailing addresses, and Internet addresses, is provided in the Electric Generation Supplier Informational Appendices.

In cases where a dispute cannot be resolved between Supplier and the PECO Energy Supplier Administration Group, Supplier and PECO Energy shall continue to operate according to these Policies and Procedures, and the matter shall be resolved by mediation or arbitration as follows:

- All claims, disputes, and other matters concerning the interpretation and enforcement of these Policies and Procedures ("Disputes") that PECO Energy and Supplier cannot resolve, first shall be submitted by either PECO Energy or Supplier to private, non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association (AAA). If the Disputes are not resolved by mediation, within sixty (60) days of the initiation of such procedure or, if either PECO Energy or Supplier fails to participate, Disputes shall be submitted to binding arbitration.
- If the total of all disclosed claims or counterclaims, exclusive of interest and arbitration costs, does not equal or exceed \$1,000,000, the arbitration shall be heard by one neutral arbitrator under the AAA's Commercial Arbitration Rules. If the total of all such claims or counterclaims equals or exceeds \$1,000,000, then the arbitration shall be heard by three (3) neutral arbitrators under the AAA's Supplementary Procedures then in effect for Large Complex Disputes.
- The arbitration process shall be concluded not later than six (6) months after the date that it is initiated and the award of the arbitrator(s) shall be accompanied by a reasoned opinion if requested by either PECO Energy or Supplier. The arbitrator(s) shall have no authority to award punitive or treble damages. The arbitration shall be conducted as a common law arbitration and the decision of the arbitrator(s) rendered in such a proceeding shall be final. Judgment may be entered upon it in any court having jurisdiction.

3. Supplier Participation

3.1 Supplier Requirements for Participation

3.1.1 Licensing

In order to participate in the Pilot, Supplier must be licensed by the Pennsylvania Public Utility Commission to be an Electric Generation Supplier.

3.1.2 Electric Generation Supplier Agreement

In order to participate in the Pilot, Supplier shall execute an Electric Generation Supplier Agreement with PECO Energy, which obligates Supplier to comply with and adhere to these Electric Generation Supplier Policies and Procedures.

3.1.3 Retail Transmission Service Agency Agreement and Installed Capacity Obligation Allocation Agreement

As per Section IV of the Retail Access Pilot Rider, Supplier must execute a Retail Transmission Agency Agreement, as approved by FERC, to enable PECO Energy to obtain the required network transmission service and secure or arrange for the necessary ancillary services to serve the loads of Supplier's Participating Customers. In addition, Supplier must execute an Installed Capacity Obligation Allocation Agreement through which it will assume responsibility for the PJM installed capacity obligation attributable to its Pilot load. That agreement will also be subject to FERC review and approval.

3.1.4 Participation in PJM

Unless Supplier chooses to participate solely as a Coordinated Supplier as defined in Section 3.3, Supplier shall be a member of the PJM Interconnection LLC by executing the PJM Operating Agreement with the ability to: (1) enter load schedules with PJM, (2) exchange grid accounting payments with PJM, and (3) obtain Energy Imbalance Service through interchange.

3.1.5 Supplier Communications Requirements

In order to participate in the Pilot, Supplier must be equipped with the following communications capabilities:

- Internet electronic mail (e-mail), including the capability to receive ASCII file attachments

- Internet browser (Netscape 4.0 or better) for access to SUCCESS web-site and file uploads and downloads.

3.2 Applying for Participation

Supplier must apply to participate in the Pilot by submitting to PECO Energy, via certified mail to the PECO Energy Supplier Administration group at the address shown in the Electric Generation Supplier Informational Appendices, the executed Electric Generation Supplier Agreement Form, the executed Retail Transmission Agency Agreement, and a completed Electric Generation Supplier Information Form as provided in the Electric Generation Supplier Informational Appendices.

Within three business days following receipt of Supplier's executed Electric Generation Supplier Agreement Form and Supplier Information Form, PECO Energy will execute the Electric Generation Supplier Agreement Form and Retail Transmission Agency Agreement and return them to Supplier via certified mail, assuming successful confirmation that Supplier is licensed by the Pennsylvania Public Utility Commission to be an Electric Generation Supplier. At this time, PECO Energy will also assign to Supplier a supplier identification number to be used in subsequent electronic information exchange between Supplier and PECO Energy.

PJM requires that PECO Energy and Supplier be assigned a PJM contract identification number in order to submit and confirm load schedules through the PJM eScheduler function for the supply of PECO Energy electric distribution customers. PECO Energy will arrange with PJM to obtain the contract identification number. PECO Energy will make this contract identification number available to Supplier via e-mail within one business day of the number being assigned and will confirm this contract identification number to Supplier via certified mail.

3.3 Participation Through a Scheduling Coordinator

If Supplier chooses not to interact directly with PJM for scheduling purposes or cannot schedule directly with PJM because its schedules do not meet the "whole megawatt" requirements set by PJM for scheduling, Supplier may become a Coordinated Supplier by entering into a business arrangement with another Electric Generation Supplier that will act as a Scheduling Coordinator. The Scheduling Coordinator's load forecasting, installed capacity obligation, import capability, scheduling, and reconciliation rights and responsibilities shall include its Participating Customers and the Participating Customers of its Coordinated Suppliers.

Supplier may have either zero or one Scheduling Coordinator at any time. To designate a Scheduling Coordinator, change Scheduling Coordinators, or cease

using a Scheduling Coordinator, Supplier and the affected Scheduling Coordinator(s) shall submit written notification to PECO Energy including the month in which the change should be effective. The effective day of the change shall be the first day of the month indicated in the notification letters unless a necessary notification is received by PECO Energy less than ten business days before the first day of that month, in which case the effective day of the change shall be the first day of the subsequent month.

In cases where Supplier ceases using a Scheduling Coordinator, Supplier shall become subject to the requirements for PJM participation and contract identification number defined in Section 3.1.3 and Section 3.2.

3.4 Resigning from Participation

Supplier may notify PECO Energy of Supplier's intent to resign from participation in the Pilot by submitting to PECO Energy via certified mail a letter substantially similar to the following:

"Supplier Name hereby provides notice of intent to resign from the PECO Energy Customer Choice Pilot Program."

and signed by an officer of Supplier company.

Following notice of intent to resign, Supplier shall follow the customer drop process (refer to Section 4.5, Notification to PECO Energy of Dropped Customer) for all of Supplier's Participating Customers. Such drops shall be subject to the requirements of Section 4.2, Customer Choice Notification Cycle. All of Supplier's rights and obligations shall continue until 11:59 p.m. of the day on which the last of Supplier's Participating Customers are dropped, at which time Supplier's resignation shall become effective.

Supplier shall provide a minimum of 30 days advance notice to all of its Participating Customers that Supplier intends to resign from the Pilot before notifying PECO Energy of Supplier's intent to resign.

4. Customer Choice

4.1 Identification of Eligible Customers

4.1.1 Initial Notification to Suppliers

An electronic disk containing an ASCII file listing of the Eligible Customers will be provided to all licensed Suppliers not later than October 5, 1997. This Eligible Customers file will include customer information including 1996 summary usage information. Detailed historical usage and demand files, which will be sent to Suppliers as soon as practical after October 5, 1997, will include more detailed usage information consisting of 12 monthly usage values for Supplier's monthly metered customers and 17520 half-hourly usage values for Supplier's hourly metered customers (customers with meters that supply half-hourly readings of kW and power factor via remote communications). Refer to the Electric Generation Supplier Informational Appendices for the format of the Eligible Customers file and the detailed historical usage and demand files.

Suppliers may begin submitting files to PECO Energy on October 6, 1997 to identify Eligible Customers that have selected Supplier, using the process defined in Section 4.3, Customer Change Notification Process.

At or before the time that the Eligible Customers file is sent to Suppliers, typical load curves for all rate class/strata combinations (refer to Section 5 and the Electric Generation Supplier Informational Appendices) will also be provided to all licensed Electric Generation Suppliers. Refer to the Electric Generation Supplier Informational Appendices for the format of the Load Curves file.

If a sufficient number of PECO Energy customers do not volunteer in response to the initial solicitation, PECO Energy will open the Pilot for an extended enrollment period within specific rate classes that have not met the Pilot's participation goals. During this period, PECO Energy will send supplementary Eligible Customer files and Eligible Customer Usage files to all licensed Electric Generation Suppliers on a weekly basis.

4.1.2 Updates

Periodically during the Pilot, PECO Energy will review the total of average customer load in each rate class. If necessary, PECO Energy will make provision to add customers to the master eligible customers list if necessary to keep the total enrollment at or near the 5 percent target participation levels. All Electric Generation Suppliers will be informed of these additional Eligible Customers at as close to the same time as practical.

4.2 Customer Choice Notification Cycle

PECO Energy customers are assigned to one of 21 billing routes, which define the monthly meter reading schedules for monthly metered customers and the monthly billing cycle for all customers. Notification of customer sign-up with Supplier, Participating Customer switching to Supplier from another Electric Generation Supplier, and the dropping of Participating Customers by Supplier on an individual basis or due to resignation of Supplier will be validated and processed on a calendar month basis and become effective for each customer based on the customer billing cycle according to the following notification cycle rules:

1. Notification may be submitted by Supplier to PECO Energy at any time.
2. PECO Energy will process the notification within five business days of receipt and will notify Supplier of acceptance or rejection of the notification.
3. Changes that are accepted not later than five business days before the end of a month (switching deadline) will be effective beginning on the customer's meter reading date in the following calendar month unless the change has been superseded by a subsequent valid change received from Supplier or another Electric Generation Supplier by the switching deadline. "Effective" means that:
 - If the change resulted in the customer becoming a Participating Customer of Supplier, the customer is accounted for in customer load forecasting, installed capacity obligation, import capability, load scheduling, and reconciliation for Supplier. If PECO Energy is performing customer billing for Supplier, Supplier portion is included in the bill created at the conclusion of the first full billing period after the change becomes effective.
 - If the change resulted in the Participating Customer no longer being served by Supplier (including the case where the Participating Customer was dropped because Supplier has notified PECO Energy of Supplier's intent to resign from the Pilot), the Participating Customer is no longer accounted for in customer load forecasting, installed capacity obligation, import capability, load scheduling, and reconciliation for Supplier.

Refer to the Electric Generation Supplier Informational Appendices for the Monthly Meter Reading Schedule covering the Pilot period.

4.3 Customer Change Notification Process

Customer sign-up with Supplier, Participating Customer switching to Supplier from another Electric Generation Supplier, and the dropping of Participating

Customers by Supplier are subject to the general rules of Section 4.2, Customer Choice Notification Cycle, and will use the following process.

- Customer Change Notification files shall be submitted by Supplier to PECO Energy
- PECO Energy will process the Customer Change Notification and will provide a Customer Change Validation file to Supplier via e-mail (prior to November 1, 1997) or on the SUCCESS web-site (on or after November 1, 1997) after processing. The Customer Change Validation file will contain a list of the customer account numbers that passed the validation checks and a list of the customer account numbers that failed the validation checks.
- Supplier resubmission of corrected Customer Change Notification file entries will be treated as a new notification and will be subject to the rules of Section 4.2, Customer Choice Notification Cycle.
- Refer to the Electric Generation Supplier Informational Appendices for the required format and contents of the Customer Change Notification file and the format and contents of the Customer Change Validation file.

4.4 Notification to PECO Energy of Customer Sign-up

Customer sign-up associates an Eligible Customer to an Electric Generation Supplier. The customer sign-up process is the same for initial sign-up of new customers (customers that do not have an electric generation supplier at the time that sign-up occurs) and for switching a Participating Customer to a new Electric Generation Supplier.

Supplier shall notify PECO Energy of a customer sign-up by means of a Customer Change Notification data file. Beginning on November 1, 1997, these files should be transferred to the PECO Energy SUCCESS web-site. Before that date, these files should be sent to the PECO Energy Supplier Administration e-mail address given in the Electric Generation Supplier Informational Appendices. Customer Change Notification files will be processed in the order in which they are received at the PECO Energy Supplier Administration e-mail address or the SUCCESS web-site.

An Eligible Customer will be associated with Supplier upon successful completion of the following checks by PECO Energy:

- Eligible Customer account number is found in the PECO Energy list of eligible customers.

- Supplier has entered into agreement with PECO Energy to participate in the Pilot.
- Supplier is not delinquent on installed capacity obligation charges owed to PECO Energy.

Refer to the Electric Generation Supplier Informational Appendices for the required format of the Customer Change Notification file and for the format of the Customer Change Notification Validation file.

4.5 Notification to PECO Energy of Dropped Customer

Supplier shall notify PECO Energy by means of a Customer Change Notification file when a Supplier intends to drop a Participating Customer for any reason.

Supplier shall provide a minimum of 30 days advance notice to any Participating Customer that Supplier intends to drop.

4.6 Notification to Supplier of Changes to Customer Status

Two types of changes to customer status will be communicated to Supplier by means of the customer status files:

- Customer add - A customer add is initiated only by successful validation of the customer in a Customer Change Notification file received from a Supplier.
- Customer delete - A customer delete may be due to any of the following reasons:
 - Customer was dropped by Supplier
 - Customer has switched to another Supplier
 - Customer has moved
 - Customer has been terminated.

The reason for the customer delete will not be reported in the customer status file.

Before November 1, 1997, the customer status files for Supplier will be transferred via e-mail to Supplier once each day that the file contains entries. After November 1, 1997, the customer status files for Supplier will be available for download from the SUCCESS Web-site by Supplier each day.

Refer to the Electric Generation Supplier Informational Appendices for the format of the customer status files.

4.7 Consequences of Participating Customer Change of Address

If a Participating Customer moves to another location in PECO Energy's service territory, the Participating Customer will not automatically retain its then current Electric Generation Supplier. Instead, the Participating Customer will receive a new PECO Energy account number and will receive electric supply at the new location from PECO Energy. The Participating Customer, however, will revert to Eligible Customer status and be able to select any Electric Generation Supplier participating in the Pilot (including the Electric Generation Supplier serving the Participating Customer before the move) according to the sign-up process and timetable described in Section 4.3, Customer Change Notification Process.

4.8 Supplier Contractual Arrangements

Supplier is responsible for retaining whatever documentation or other records it will require evidencing or memorializing its agreement with an Eligible Customer for supply. (See Retail Access Pilot Rider, Pilot Rule 1.4). At PECO Energy's request, Supplier shall promptly furnish copies of such documentation or other records, which PECO Energy anticipates it will only do to resolve disputes regarding competing claims by Electric Generation Suppliers to an Eligible Customer (See Retail Access Pilot Rider, Pilot Rule 1.3).

5. Customer Load Forecasting

The customer load forecasting process shall provide an estimate of Supplier's anticipated aggregate hourly customer load. The aggregate hourly load forecast shall define the hourly energy values for Supplier's wholesale energy deliveries to PECO Energy via PJM wholesale power scheduling policies and procedures.

5.1 Forecasting Methodology

5.1.1 Monthly Metered Customer Forecasts

PECO Energy will provide hourly load forecasts for Participating Customers with monthly metering equipment. PECO Energy has developed and will maintain, based on load survey data, load forecast categories corresponding to PECO Energy's current rate classes and strata within the rate classes. The weather-sensitive load curves of these rate classes/usage strata will be the mechanism for preparing the forecasts for the aggregate of Supplier's monthly metered Participating Customers in each rate class/usage strata, using hourly weather forecast data developed by an independent weather service.

Refer to the Electric Generation Supplier Informational Appendices for a description of the rate class and strata definitions.

5.1.2 Hourly Metered Customer Forecasts

Supplier shall provide hourly load forecasts for their Participating Customers with hourly or subhourly metering equipment. For purposes of these Policies and Procedures, "hourly or subhourly metering equipment" shall mean metering equipment that supplies half-hourly readings of kW and power factor via remote communications, and not metering equipment from which half-hourly or hourly demand readings may be obtained through on-site querying of the metering equipment.

5.1.3 Typical Load Curve Data

PECO Energy will make available to Suppliers the typical load curves (including weather sensitivity) that will be used for the Daily Forecasting Process. This information will be available on an ongoing basis for Supplier download from the SUCCESS web-site and will permit Supplier to develop forecasts for any future period using the same methodology as PECO Energy will use. Refer to the Electric Generation Supplier Informational Appendices for the format of the Load Curves file.

5.2 Daily Forecasting Process

5.2.1 Business Days and Scheduling Window

The daily forecasting process shall be performed on each business day. A business day is a weekday excepting PECO holidays. Refer to the Electric Generation Supplier Informational Appendices for a list of PECO holidays. The daily forecasting process shall be performed on each business day for a scheduling window consisting of all following days through the next business day.

For example, the daily forecasting process shall be performed Monday through Thursday (except holidays) for a scheduling window that covers the following day (midnight to midnight). If the following day is a holiday, then the scheduling window shall include the holiday and be extended to include the first business day following the holiday.

Similarly, the daily forecasting process shall be performed on Friday for a scheduling window consisting of the following Saturday, Sunday, and Monday. If the Monday is a holiday, then the scheduling window shall include the holiday and extend through the first business day following the holiday.

5.2.2 Process Description

The following process shall be followed on each business day:

Step 1:

PECO Energy will calculate the Supplier load forecast for each monthly metered rate class and strata by multiplying the weather-adjusted load curve for the appropriate day type by the number of Supplier's Participating Customers (including Participating Customers of any Coordinated Suppliers that have designated Supplier as their Scheduling Coordinator) in that rate class and strata and adjusting the hourly values upward by an amount necessary to cover line losses based on standard line loss percentages for the customer class to which each Participating Customer belongs. Refer to the Electric Generation Supplier Informational Appendices for the loss factors for each rate class. PECO Energy will post these load forecast values on the SUCCESS web-site by 7:00 a.m. of each scheduling day.

Step 2:

By 10:00 a.m. of the business day Supplier shall enter, via the SUCCESS web-site, the load forecast covering the scheduling window for each of Supplier's hourly metered Participating Customers and for each hourly

metered Participating Customer of any Coordinated Suppliers that have designated Supplier as their Scheduling Coordinator. Forecasts for hourly metered Participating Customers should include estimated losses based on PECO Energy-furnished loss factors for each rate class. Refer to the Electric Generation Supplier Informational Appendices for the loss factors for each rate class.

If Supplier fails to enter a load forecast for any of required hourly metered Participating Customers by 10:00 a.m., PECO Energy will use Supplier's previously entered values for the most recent day of the same day type. If no previous values exist for the appropriate similar day for an hourly metered Participating Customer, the load forecast for that Participating Customer will be set to zero.

Step 3:

PECO Energy will accept or reject the Supplier load forecast via the SUCCESS web-site by 11:00 a.m. If PECO Energy Supplier Administration personnel determine that a forecast is going to be rejected and conditions permit, then a PECO Energy Supplier Administration staff member will attempt to contact Supplier to explain the reason for rejection and resolve forecast problems. If the reason for rejecting Supplier load forecast values or changes cannot be resolved by 12:00 noon, the scheduling process will continue using the PECO Energy forecast values.

5.3 Real-Time Load Following

To the extent Supplier has installed and pays for the necessary metering and telecommunications equipment for actual load following, Supplier may follow such Participating Customers' load. To the extent that Supplier's total supply is for such Participating Customers, Supplier shall be obligated to follow such Participating Customers' loads on a real-time basis.

For real-time load following, Supplier will have special obligations with respect to both PECO Energy and PJM that must be dealt with on a case-by-case basis to ensure operational integrity. Supplier shall work cooperatively with PECO Energy to address the technical and operational issues posed by real-time load following as the need arises.

5.4 Adequacy of Forecast

Supplier agrees that PECO Energy's forecast for monthly metered Participating Customers will be used for scheduling and will be adequate for this purpose. Supplier's remedies for any claimed deficiency in PECO Energy's forecast for monthly metered Participating Customers shall be either to:

1. Arrange for PECO Energy to install hourly metering equipment at Participating Customer's premises at Supplier's expense in order that the Participating Customer can subsequently be forecasted and reconciled as an hourly Participating Customer, or
2. Enter into a joint load study with PECO Energy at Supplier's expense to develop new load curves.

6. Load Scheduling

The net load schedule for Supplier shall be equal to the aggregate forecast value for all of the monthly metered and hourly metered Participating Customers of Supplier and any Coordinated Suppliers that have designated Supplier as their Scheduling Coordinator. In accordance with PJM requirements, which require the scheduling and delivery of power only in whole MW, PECO Energy will round the aggregate forecast value for each hour to a whole MW value for load scheduling purposes according to the following rules:

- If the aggregate forecast value for an hour is less than 1.0 MW, the value will be rounded to 1 MW
- If the aggregate forecast value for an hour is greater than 1.0 MW, the value will be rounded downward to the nearest whole MW if the decimal portion is less than 0.5.
- If the aggregate forecast value for an hour is greater than 1.0 MW, the value will be rounded upward to the nearest whole MW if the decimal portion is greater than or equal to 0.5.

6.1 Daily Load Scheduling Process

Refer to Section 5.2.1 for a description of the business days on which load scheduling shall be performed and the time window for scheduling.

PECO Energy will upload the load schedule for the scheduling window to PJM by 12:00 noon on each business day. Supplier is responsible for confirming the load schedule using the PJM eScheduler system.

6.2 Load Schedule Changes

Supplier may initiate changes to the load schedule using the PJM eScheduler function. It is the responsibility of Supplier to make any necessary changes and notify PECO Energy via telephone that changes have been made and the reason for the changes. PECO Energy will make reasonable efforts to review and, if the reason for the changes are determined by PECO Energy to be operationally valid, confirm the load schedule changes using the PJM eScheduler function within one hour of the time that Supplier notifies PECO Energy of the change. In the absence of confirmation by PECO Energy, the prior load schedule value will remain in effect.

Because PJM has imposed a cut-off time for accepting load schedule changes, Supplier is encouraged to initiate any necessary changes and notify PECO

Energy well before the cut-off time to increase the likelihood that the changes will be accepted.

6.3 Load Scheduling through a Scheduling Coordinator

Load schedules will not be submitted to PJM independently for Coordinated Suppliers. The load schedules submitted to PJM by a Supplier serving as a Scheduling Coordinator shall satisfy the load requirements for the Supplier and any of its Coordinated Suppliers. Changes to such load schedules may be initiated only by the Supplier serving as the Scheduling Coordinator.

7. Other Scheduling

7.1 *Installed Capacity Obligation*

7.1.1 *Installed Capacity Concepts*

As a member of the PJM Power Pool, PECO Energy is obliged to provide capacity reserves to maintain pool reliability. These reserves are intended to cover factors such as load forecast uncertainty, random unit forced outages and planned unit maintenance. The obligated reserves are a fixed percent above the PECO Energy system weather-normalized summer peak load after adjustment for intra-pool load diversity. PECO Energy must meet this megawatt obligation every day of the year.

PECO Energy's PJM capacity obligation has been fixed through May 31, 1999. This obligation is based on all the load within the current PECO Energy electric distribution company (EDC) service territory. By assuming responsibility for serving part of that load, Supplier shall also assume the portion of PECO Energy's capacity obligation that is associated with the transferred load. To accomplish this purpose, all Electric Generation Suppliers must enter into Installed Capacity Obligation Allocation Agreement with PECO Energy.

7.1.2 *General Approach to Supplier Capacity Obligation*

A portion of PECO Energy's capacity obligation shall be shifted to Supplier based on the aggregate contribution of Supplier's Participating Customers to the PECO Energy EDC weather-normalized annual peak load. On a monthly basis, PECO Energy will inform Supplier of its megawatt capacity obligation for each day of the upcoming month. This obligation can change daily, but is determined by PECO Energy once a month because, after the switching deadline, the number and the type of Participating Customers Supplier has for each day of the following month will be known. Supplier shall nominate capacity to meet the average monthly obligation and the PJM Office of the Interconnection (PJM OI) will determine whether the nominated capacity qualifies for PJM capacity credit. If it qualifies, PECO Energy will include that capacity in its resources to meet the obligation of the aggregate EDC territorial load. If Supplier fails to procure sufficient capacity that qualifies for PJM credit to meet its obligation, PECO Energy will charge Supplier for the deficiency at the prevailing PJM capacity deficiency rate. PECO Energy may also charge Supplier for unavailability of qualified capacity resources.

7.1.3 *Procedure*

1. PECO shall specify typical summer peak day weather conditions.

2. PECO shall classify the retail customers in its service territory into a number of customer classes on the basis of load, and for each such class shall develop a 24-hour load curve which is representative of the usage, adjusted for losses, of a typical customer in such class under typical summer peak day weather conditions.
3. Based on the 24-hour load curves, PECO shall determine the kilowatt load of a typical customer in each class at the time of the PECO service territory summer peak. If individual customer load data is available and appropriate for certain Retail access customers, that data will be used in place of typical load curves
4. The Retail access customers to be served by Supplier can change from day to day. Prior to the start of each month, PECO shall ascertain for each day of the month the number of Retail access customers in each class that Supplier is committed to serve. Using the data developed in Step 3, PECO shall separately calculate for each day of the month the aggregate load at the time of the PECO summer peak of the entire group of Retail access customers which Supplier is committed to serve on that day.
5. PECO shall determine the average for the month of the individual daily results from Step 4.
6. PECO shall multiply the result from Step 5 by (1+ PECO reserve requirement) to determine the kilowatt capacity obligation of Supplier which shall apply for each day of the month.
 - a) Between 1 November 1997 and 31 May 1998, the factor (1+PECO reserve requirement) = 1.2039
 - b) Between 1 June 1998 and 31 December 1998, the factor (1+PECO reserve requirement) = 1.2054.
7. By 5:00 p.m. on the third business day before the start of the month, PECO shall inform Supplier of its daily kW capacity obligation for the month as determined in Step 6.
8. To meet its capacity obligation, Supplier shall nominate capacity resources which it owns or to which it has appropriate contractual rights, in whole megawatt increments, by direct communication to PECO no later than 10:00 am of the day on which it desires the capacity credit of the resource to become effective, or if the desired effective date is a holiday or weekend, by no later than 10:00 am of the last regular work day prior thereto. Supplier may change its nominations from time to time in the same manner. Consistent with reporting procedures promulgated by the PJM OI, Supplier shall also provide PECO with all necessary information in accordance with

PJM capacity rules and guidelines, both initially and on a continuing basis. This information includes, but is not limited to, the following:

For specific unit resources located outside the PJM Control Area

- Unit historical performance data
- Daily unit availability
- Demonstration of firm transmission service rights to deliver capacity to PJM border

For system resources located outside the PJM Control Area

- System average historical performance data
- Demonstration of firm transmission service rights to deliver capacity to PJM border

For specific unit resources located within the PJM Control Area

- Daily unit availability

For system resources located within the PJM Control Area (resources such as "slice-of-system installed capacity credits", which are covered by specific unit resources of the system owner which are already receiving installed capacity credit in PJM accounting, and for which the system owner retains all responsibility for unit operation and unavailability)

- MW rating of resources and identity of system owner

9. PECO shall communicate Supplier's capacity resource nominations to the PJM OI. Supplier shall be responsible for resolving any discrepancies between its nominations of resources and the corresponding reports submitted to the PJM OI by the sellers of such resources.
10. Pursuant to the LLC Agreement and its procedures thereunder, the PJM OI assesses the deliverability of nominated resources and determines whether, and to what extent, they qualify as installed capacity for PJM accounting. The PJM OI credits PECO's installed capacity account for all resources that qualify.
11. PECO shall notify Supplier of the capacity value determined for Supplier's nominated resources by the PJM OI.
12. For purposes of this Agreement, PECO shall reduce the capacity value of Supplier's capacity resources from the value determined by the PJM OI

based on the daily availability of Supplier's individual capacity resources. The capacity value of a specific resource determined by the PJM OI shall be reduced by 50% for accounting purposes on any weekday (excluding holidays as prescribed by the PJM OI) when the resource is unavailable at the time of the PJM peak, except that the capacity value of a specific resource shall be zero for accounting purposes on any day (including weekends and holidays) when the resource is on a planned or maintenance outage during a Peak Season as defined pursuant to the LLC Agreement. These capacity reductions will be measured in kilowatts.

13. On every day that the Supplier's capacity value determined in Step 12 is less than its capacity obligation determined in Step 6, PECO shall charge Supplier an amount equal to the difference between its capacity and obligation in kW multiplied by \$0.16 per kW.
14. PECO shall bill Supplier monthly for the sum of the charges in Step 13.
15. Supplier agrees to adhere to and abide by all applicable policies, rules and guidelines contained in the LLC Agreement or promulgated thereunder which relate to the nomination of installed capacity, the determination of capacity value of nominated resources for installed capacity accounting purposes, the operation of resources which are accorded capacity credit, and the reporting of status and other information regarding such resources. Such policies, rules and guidelines include, but are not limited to, those pertaining to:
 - Peak Period Maintenance Penalty
 - Discounting of capacity credit for sources outside of the PJM Control Area
 - Advance reporting of installed capacity changes (60 days or such shorter time period prior to the effective date and consistent with the ability of the PJM OI to evaluate requests for Network Transmission Service or designation of Network Resources)
 - Daily submission of price offers to the PJM OI for scheduling and dispatch of capacity resources
16. Supplier agrees to provide PECO upon request a copy of any contract pursuant to which Supplier claims the right to nominate capacity. Such copies may have price terms redacted.

The installed capacity obligation calculated for a Supplier serving as a Scheduling Coordinator will be based on the load requirements of Supplier and all of its Coordinated Suppliers. The firm capacity resources submitted by a Supplier serving as a Scheduling Coordinator shall include the resources required to cover the installed capacity obligation corresponding to the Participating Customer load requirements of Supplier and all of its Coordinated

Suppliers. PECO Energy will charge the Scheduling Coordinator for any failure to meet the total capacity obligations of the Scheduling Coordinator and all of its Coordinated Suppliers.

The actual terms and conditions governing the respective rights and responsibilities of PECO Energy and Supplier with respect to installed capacity are in the Installed Capacity Obligation Allocation Agreement.

7.2 PJM Import Capability

PJM operates the regional transmission system and sets the Available Transfer Capability (ATC) and Total Transfer Capability (TTC) for interchange transactions into and out of PJM. The portion of TTC allocated to PJM members as network transmission service on the PJM jointly-owned transmission network is called Net Import Capability. PJM allocates the Net Import Capability among load-serving entities on a load ratio share basis and posts each company's allocated percentage on the PJM OASIS.

PECO Energy will sub-allocate its Net Import Capability to Supplier in proportion to the ratio of Supplier's forecast peak load to the total PECO Energy EDC forecast peak load on each business day for the scheduling window (refer to Section 6). Supplier shall be eligible to schedule imports into PJM up to its Net Import Sub-Allocation.

Supplier may apply directly to PJM through the PJM Open Access Same-Time Information System (OASIS) for additional non-firm point-to-point transmission service to support imports if needed by Supplier. PJM shall continue to be the final arbiter of whether or not such service is available at any time.

The Net Import Sub-Allocation calculated for a Supplier serving as a Scheduling Coordinator will be based on the forecast load requirements of Supplier and all of its Coordinated Suppliers.

8. Reconciliation

8.1 General Reconciliation Concepts

The reconciliation process shall account for mismatches between the load obligation that was scheduled for a Supplier's Participating Customers and the energy that was actually used by those Participating Customers. Calculation of reconciliation mismatch values will be performed after-the-fact by PECO Energy for all Suppliers (except Coordinated Suppliers) with Participating Customers in the PECO Energy service territory.

Under the terms of the Pilot, PECO Energy and Suppliers recover their costs for the mismatch energy at the prevailing PJM Wholesale Hourly Market Clearing Price (MCP). PJM will perform calculations to determine the monetary value of reconciliation mismatch values and will bill for the monetary value through the PJM grid accounting system.

Reconciliation is distinguished from energy imbalance service, a related process that will be managed and accounted for by PJM. Energy imbalance service results in the development of charges or credits for which Electric Generation Suppliers will be responsible within the PJM grid accounting system due to the difference between an Electric Generation Supplier's scheduled energy obligation and that Electric Generation Supplier's scheduled supply. Energy imbalance service will be provided in real-time and accounted for after-the-fact by PJM for all Electric Generation Suppliers (except Coordinated Suppliers) in the Pilot.

8.2 Reconciliation Process

The reconciliation process is driven by existing PECO Energy retail customer meter data collection processes. Meter data for customers with monthly meters is collected in subsets corresponding to customer billing cycles (billing routes), which close on different days of the month. To reconcile energy mismatches on an hourly basis, monthly-metered usage must be converted to equivalent hourly usage. Rate class/strata load curves adjusted for actual weather values will be applied to metered usage to derive an estimate for the hour-by-hour usage. Calculations to determine usage for customers with hourly meters are also performed monthly on a billing route basis. Thus, it requires at least one month to collect data from all of the meters that measured the energy consumed by all customers in a particular day. In general, on each day that new metered-usage data is posted, one or more days in the previous month will become "fully metered."

8.2.1 Daily Reconciliation

Each business day that new fully metered days are available, PECO Energy will determine hourly reconciliation mismatch values for that portion of the previous month's usage corresponding to new fully metered days. This information will be posted on the SUCCESS web-site to enable Suppliers and PECO Energy to track the day-by-day buildup toward the monthly reconciliation billing that will be performed by PJM.

The following calculations will be used to determine the reconciliation mismatch amounts:

Step 1:

Monthly-metered Participating Customers' actual usage (the billing usage reported by PECO Energy) will be spread over each hour in the usage period based on each customer's weather-adjusted hourly usage curve using actual hourly weather data for the usage period. The monthly-metered customer's weather-adjusted usage by hour will be multiplied by the loss factor determined by Participating Customer rate class to determine the Participating Customer's gross usage by hour.

Each hourly-metered Participating Customer's hourly usage will be multiplied by a loss factor determined by Participating Customer rate class to determine the Participating Customer's gross usage by hour.

Step 2:

The gross hourly usage amount for each Participating Customer will be aggregated by Supplier to arrive at a total gross customer usage amount by hour by Supplier. This aggregation will account for usage of Coordinated Suppliers' Participating Customers.

Step 3:

The hourly reconciliation mismatch value for each hour will be calculated by subtracting the Supplier hourly total gross customer usage amount from the hourly load schedule submitted to PJM for that Supplier, including the effect of any confirmed changes to the load schedule entered before the PJM accounting deadline.

Step 4:

The hourly reconciliation mismatch values will be posted on the SUCCESS web-site. Refer to the Electric Generation Supplier Informational Appendices for the contents and format of the Daily Reconciliation Data file.

8.2.2 Monthly Reconciliation

By the third business day after a calendar month becomes fully metered, PECO Energy will compute and post the complete hourly reconciliation mismatch data for the entire month to the SUCCESS web-site. Refer to the Electric Generation Supplier Informational Appendices for the contents and format of the Monthly Reconciliation Data file.

By the third business day after a calendar month becomes fully metered, PECO Energy will also transfer the monthly reconciliation mismatch data to PJM. PJM will multiply the Supplier hourly reconciliation energy amount by the corresponding hourly Market Clearing Price (MCP) to calculate the Supplier reconciliation dollar amounts for each hour. PJM will include the Supplier reconciliation dollar amounts in the monthly PJM bills to Supplier.

9. Customer Billing

9.1 General Customer Billing Concepts

9.1.1 Customer Billing by PECO Energy

If requested by Supplier, PECO Energy will act as agent for Supplier to perform customer billing for the energy charges of all of a Supplier's Participating Customers. This billing service is limited to energy charges only and excludes all other types of billing services, including, but not limited to, collection of deposits for Supplier, crediting Supplier rebates of any kind, or administering and billing Supplier payment agreements.

If Supplier chooses to have PECO Energy act as agent for Supplier to perform customer billing, Supplier may subsequently elect to cease having PECO Energy perform customer billing by following the notification process described in Section 9.2. If Supplier ceases to have PECO Energy perform customer billing, PECO Energy will not subsequently resume performing customer billing for Supplier during the Pilot.

If Supplier does not initially choose to have PECO Energy act as agent for Supplier to perform customer billing, Supplier may subsequently elect to have PECO Energy perform customer billing for the remainder of the Pilot by following the notification process described in Section 9.2.

9.1.2 Participating Customer Billing by Supplier

If Supplier does not request PECO Energy to perform customer billing for the energy charges of Supplier's Participating Customers within PECO Energy's service territory, Supplier may perform or arrange to have performed customer billing for the energy charges of all of its Participating Customers within PECO Energy's service territory.

Supplier shall not be entitled to undertake the obligation to bill Participating Customers for PECO Energy's charges for distribution and transmission service and for transition or stranded costs, or any other PECO Energy charges.

9.1.3 Meter Data Provided by PECO Energy to Supplier

Regardless of whether PECO Energy or Supplier performs customer billing for Supplier's energy charges, PECO Energy will make available to Supplier, via the SUCCESS web-site, daily files containing meter readings, usage, registered demand (where applicable), and reading type information (i.e., actual or estimated) about each of Supplier's Participating Customers.

Refer to the Electric Generation Supplier Informational Appendices for the format of the Customer Usage/Read Data file.

9.2 Customer Billing by PECO Energy

In order for PECO Energy to perform customer billing for a Supplier's customers, Supplier shall request this service from PECO Energy via certified mail. The notification shall specify that PECO Energy is authorized to perform customer billing for Supplier and shall be accompanied by a complete Customer Billing Parameters file. Billing will begin for Participating Customers according to the conditions of Section 9.2.2, Billing Notification Cycle and Process.

In order for PECO Energy to cease performing billing for a Supplier's Participating Customers, Supplier shall request this from PECO Energy via certified mail. The notification shall request that PECO Energy cease performing customer billing for Supplier. Billing will end according to the conditions of Section 9.2.2, Billing Notification Cycle and Process.

9.2.1 Billing Formats

Standard billing formats that PECO Energy offers to Suppliers are as follows:

1. Dollars per kWh
2. Dollars per kWh
Dollars per kW
3. Fixed dollars per month per rate class.

Fixed dollars per month is a new billing format introduced for the Pilot. Supplier assignment of the remaining billing formats to rate classes shall be consistent with PECO Energy's current billing restrictions as filed in PECO Energy's current tariffs.

Supplier may specify a different billing format for use in billing for its Participating Customers in each rate class.

9.2.2 Billing Notification Cycle and Process

In order for PECO Energy to perform customer billing for Supplier, Supplier shall request this service from PECO Energy and shall submit billing formats and prices via the Customer Billing Parameters file as defined in the Electric Generation Supplier Informational Appendices. Billing formats and prices are required for all rate classes, even if Supplier does not have Participating Customers in all rate classes.

PECO Energy customers are assigned to one of 21 billing routes, which define the monthly meter reading schedules for monthly metered customers and the monthly billing cycle for all customers. Notification of changes to customer billing service or parameters will be validated and processed on a calendar month basis and become effective for each customer based on the customer billing cycle according to the following notification cycle rules:

1. Notification may be submitted by Supplier to PECO Energy at any time.
2. PECO Energy will process the notification within five business days of receipt and will notify Supplier of acceptance or rejection of the notification.
3. Changes that are accepted before the switching deadline will be effective beginning on the customer's meter reading date in the later of either the following calendar month or the calendar month specified in the notification. "Effective" means that:
 - If PECO Energy is performing customer billing for Supplier and the notification is for changes to billing format or price, the billing format or price apply to subsequent energy usage for the Participating Customer.
 - If PECO Energy was previously not performing customer billing for Supplier and the notification is a request for PECO Energy to begin performing customer billing for Supplier, the billing will account for subsequent energy usage by the Participating Customer.
 - If PECO Energy was previously performing customer billing for Supplier and the notification is a request for PECO Energy to cease performing customer billing for Supplier, subsequent energy usage by the Participating Customer will not be billed by PECO Energy for Supplier.

Refer to the Electric Generation Supplier Informational Appendices for the Monthly Meter Reading Schedule covering the Pilot period.

Notification by Supplier of changes to customer billing service or parameters will use the following process:

1. Customer Billing Parameters files may be submitted by Supplier to PECO Energy at any time.
2. PECO Energy will process the Customer Billing Parameters file and will post a Customer Billing Parameters Validation file on the SUCCESS Web-Site following processing. The Customer Billing Parameters Validation file will include the submitted data and the status of the submitted data (accepted or rejected).

Supplier resubmission of corrected Customer Billing Parameters files is treated as a new notification. Only one valid Customer Billing Parameters file will be accepted during any period between the switching deadline of a month and the switching deadline of the following month.

PECO Energy shall not be responsible for billing errors resulting from incorrect price information received from Supplier.

Refer to the Electric Generation Supplier Informational Appendices for the required format and contents of the Customer Billing Parameters file and the format and contents of the Customer Billing Parameters Validation file.

9.2.3 Monthly Customer Billing Process

If PECO Energy is providing billing for Supplier, then on the day that PECO Energy normally prepares its bill for a Participating Customer, PECO Energy will include the following billing line items for Supplier on the Participating Customer's bill:

- Generation Energy Charge (\$)
- Generation Demand Charge (\$) (if billing format 2 is selected by Supplier)

State sales tax for Supplier's new charges will also be calculated and included in the total state sales tax line item of the Participating Customer bill. State sales tax will be collected by PECO Energy as agent for Supplier and remitted directly to the Commonwealth of Pennsylvania.

9.2.4 Collections and Remittances to Supplier When PECO Energy is Providing Supplier Billing

If payment made by a Participating Customer for whom PECO Energy is providing billing for the Participating Customer's Supplier is less than the total owed, PECO Energy will follow the order of payment prescribed in Pilot Rule 5 of PECO Energy's Retail Access Pilot Rider.

If a Participating Customer switches to a new Electric Generation Supplier, PECO Energy will, subject to the order of applying payments described in Pilot Rule 5 of PECO Energy's Retail Access Pilot Rider, apply subsequent remittances from Participating Customer to the previous Electric Generation Supplier until the balance due to the previous Electric Generation Supplier is satisfied, or until 60 days have elapsed from the due date of the last bill that included new charges due to the previous Electric Generation Supplier, whichever occurs first.

PECO Energy assumes no responsibility for assessing late payment charges for Supplier's charges or for collection from Participating Customers who are delinquent in their obligations to Supplier. PECO Energy shall have no liability for uncollected Supplier charges.

All payments from PECO Energy to Supplier will be via electronic funds transfer.

9.2.5 Customer Financial Adjustment Data

Once per business day, PECO Energy will prepare a Customer Financial Adjustment Data file for Supplier to summarize amounts billed and posted on Supplier's behalf for Suppliers' Participating Customers. Refer to the Electric Generation Supplier Informational Appendices for the format of the Customer Financial Adjustment Data file.

Supplier Billing

1 Supplier Billing for Obligations to PECO Energy

Once per month PECO Energy will prepare and submit a billing statement to Supplier for any installed capacity deficiency. The PECO Energy Supplier Administration Group will issue all Supplier billing statements by the end of the third business day of each month unless data are missing or other problems prevent such issuance. In such circumstances, PECO Energy will notify the Supplier via e-mail and PECO Energy will issue the billing statement as soon as possible.

2 Payment Terms

The standard payment and credit terms applicable to Rate HT Customers, as set forth in Rules 5 and 17 of PECO Energy's Tariff Electric PA.P.U.C. No. 2, shall apply to Supplier.

3 Remittance Method

All remittances from Supplier to PECO Energy shall be by electronic funds transfer to the account listed in the Electric Generation Supplier Informational Appendices

4 Billing for Supplier Obligations to Other Parties

PECO Energy will assume no responsibility for billing between Supplier and PJM, Supplier and any energy source, or a Scheduling Coordinator and any Scheduling Coordinators.

POOR ORIGINAL



PECO ENERGY

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October 6, 1997

By FAX

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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 Ms. Miller:

Enclosed are PECO Energy Company's Answers to Mid Atlantic Power Supply
Association's Interrogatories:

Set I: MAPSA-RAC-1 through 5; MAPSA-WFS-1 and 2; MAPSA-WFS- 4
through 6; MAPSA-AAM- 1 through 5 and 8; MAPSA-TPH-3 through 6.

If you have any questions, please call me at (215) 841-4252.

Sincerely,

Paul Bonney

PRB/mbo
Enclosures

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

01/1828

97 OCT -9 AM 9:18
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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:

Mid Atlantic Power Supply Association's Interrogatories:

Set I: MAPSA-RAC-1 through 5; MAPSA-WFS-1 and 2; MAPSA-WFS- 4 through 6; MAPSA-AAM- 1 through 5 and 8; MAPSA-TPH-3 through 6.

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Dated: October 6, 1997

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October 7, 1997

VIA TELECOPY AND FIRST CLASS MAIL

Ward Smith, Esquire
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DOCKETED
OCT 16 1997

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. Smith:

Enclosed please find Mr. Mitnick's answers to Sets III and IV Interrogatories propounded by PECO upon Pennsylvania Electric Competition Coalition, which were faxed on October 6, 1997. Answers to Set III, No. 2 and Set IV, No. 17 will follow as soon as available. Answers to Set I were faxed on October 6. The information requested in Set II was provided in the deposition of Ms. Hull which took place on October 4, 1997. Workpapers were provided in response to these interrogatories via fax on October 3, 1997.

Very truly yours,



Tanya C. Leshko

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

TCL/cln
Enclosure

cc: James McNulty (cert. of service only)
All Parties of Record

DSH:10072.1

CERTIFICATE OF SERVICE

See LETTER

I hereby certify that I have this day served a true copy of the following documents: ~~Petition of Enron Energy Services Power, Inc. for Approval 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; Motion to Consolidate the Enron Petition with the PECO Restructuring Proceeding and two Motions for Admission Pro Hac Vice, upon the~~ participants listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):

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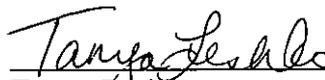
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Tanya Leshko

Dated: October 7, 1997



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Direct Dial: 215 841 4252

October 7, 1997

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 Ms. Miller:

KJR

Enclosed are PECO Energy Company's Answers to Mid Atlantic Power Supply
Association's Interrogatories:

Set I: **MAPSA-WFS-7 Revised**; and MAPSA-WFS-8 - 10.

If you have any questions, please call me at (215) 841-4252.

Sincerely,

Paul Bonney

PRB/mbo
Enclosures

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

012087

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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:

Mid Atlantic Power Supply Association's Interrogatories: Set I: MAPSA-WFS-7 Revised; and MAPSA-WFS-8 - 10..

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October 8, 1997

Honorable Marlane R. Chestnut
Honorable Charles E. Rainey, Jr.
Administrative Law Judges
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

VIA FEDERAL EXPRESS

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

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Dear Judges Chestnut and Rainey:

Consistent with the procedural schedule in the above-referenced proceeding, enclosed please find copies of written supplemental surrebuttal testimony prepared on behalf of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") as follows:

- (1) PAIEUG Statement No. 1SS (the supplemental surrebuttal testimony of Stephen J. Baron).

Copies are also being served upon all parties of record as evidenced by the attached Certificate of Service.

PAIEUG respectfully reserves its right to submit additional surrebuttal testimony in the event that the Joint Petition for Partial Settlement in the above-captioned proceeding is not

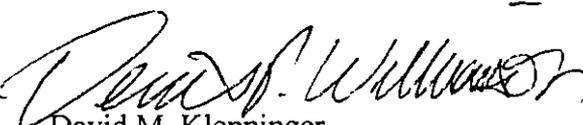
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Honorable Marlane R. Chestnut
Honorable Charles E. Rainey, Jr.
October 8, 1997
Page 2

granted by the Commission. The original filing date for that surrebuttal testimony was Friday, August 1, 1997. This date was postponed pending the settlement discussions and ultimate disposition of the Joint Petition for Partial Settlement

Very truly yours,

McNEES, WALLACE & NURICK

By: 
David M. Kleppinger
Derrick P. Williamson

Counsel to the Philadelphia Area
Industrial Energy Users Group

DMK/dt

Enclosures

c: Certificate of Service

James J. McNulty, Prothonotary (transmittal letter and Certificate of Service only)

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the supplemental surrebuttal testimony of the Philadelphia Area Industrial Energy Users Group upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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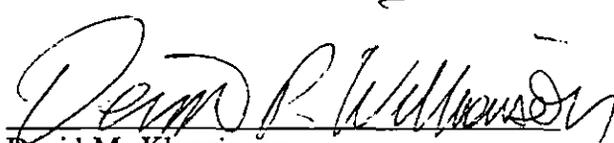
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Dated this 8th day of October, 1997, in Harrisburg, Pennsylvania.



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PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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

Dear Judge Chestnut and Judge Rainey:

Attached is PECO Energy's Rejoinder Testimony in Support of the Joint Petition for
Partial Settlement:

NO ↓ PECO Exh. TPH-32

Thomas P. Hill, Jr.	PECO St. No. 1-RJ
Alan B. Cohn	PECO St. No. 3-RJ
William H. Hieronymus	PECO St. No. 6-RJ
Robert A. Clemmer	PECO St. No. 12-RJ
James I. Warren	PECO St. No. 9-RJ
Michael S. Freeman	PECO St. No. 26-RJ

The Joint Petitioners are engaged in active settlement discussions with the Environmentalists and expect to conclude those discussions shortly. The Environmentalists have agreed that, if settlement is not reached, the Joint Petitioners may file testimony in response to the testimony submitted by Environmentalist witnesses Shoengold and Biewald in hand on Monday, October 13th. PECO in turn will make its witnesses available for cross-examination by the Environmentalists on Wednesday, October 15th and Thursday, October 16th (i.e., at least two days after the responsive testimony is filed next Monday).

Sincerely,

Paul Bonney
PRB/mbo
Attachments

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cc: Certificate of Service
Jim McNulty, Acting Secretary (cover ltr. only)

Certificate of Service

I hereby certify that I have this date served the following Rejoinder Testimony In Support of the Joint Petition for Partial Settlement, Docket No. R-00973953 by facsimile, first class or overnight/express mail, upon the persons addressed below:

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Dated: October 8, 1997

R-973953

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

DOCKETED
OCT 14 1997

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REJOINDER TESTIMONY
OF
ALAN B. COHN

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PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Responding To PECC Witness Steven A. Mitnick
Concerning PECO's Recovery Of Stranded Costs
Under The Proposed Partial Settlement

October 8, 1997

1 **REJOINDER TESTIMONY OF ALAN B. COHN**
2
3

4 **Q. Please state your full name and business address?**

5 A. My name is Alan B. Cohn. My business address is 2301 Market Street, Philadelphia, PA
6 19103.

7 **Q. Have you previously submitted testimony in this proceeding?**

8 A. Yes. I submitted direct testimony (PECO Statement No. 3) and various supporting
9 exhibits (Exh. ABC-1 and ABC-2) with PECO's April 1, 1997 filing. I also submitted
10 rebuttal testimony (PECO St. No. 3-R) and accompanying exhibits (Exh. ABC-3 through
11 ABC-10) on July 18, 1997. A statement of my qualifications is contained in my direct
12 testimony.

13 **Q. What is the purpose of your rejoinder testimony?**

14 A. The purpose of my rejoinder testimony is two-fold. First, I will identify the numerous
15 fundamental errors in Mr. Mitnick's calculations of how much PECO would recover under
16 the Partial Settlement. Second, I will provide the Company's estimate of the value of the
17 Partial Settlement which, unlike Mr. Mitnick's flawed analysis, takes into account all
18 elements of the Partial Settlement. My analysis clearly shows that the Partial Settlement
19 will not result in PECO recovering more than the value of stranded costs stated in the
20 Joint Petition.

21

Errors In Mr. Mitnick's Calculations

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Q. Please summarize the errors in Mr. Mitnick's calculations that you will address.

A. As I will explain below, there are six fundamental errors in Mr. Mitnick's calculations, which result in his vastly overstating the value of the Partial Settlement to PECO:

- (1) Mr. Mitnick tries to measure the value of the Partial Settlement to PECO by erroneously comparing the present value of the CTC revenue stream to the book value of PECO's stranded costs. The CTC revenue stream must be compared to the revenue requirement imposed by the recoverable stranded costs over the recovery period.
- (2) He erroneously ascribes tax benefits to a book write-off, which does not produce a tax deduction.
- (3) He miscalculates the effect of securitization and totally misconstrues the effect of tax deductibility of Transition Bond interest payments.
- (4) He uses an outdated sales forecast that cannot be supported by objective evidence of PECO's sales levels.
- (5) He errs in calculating the present value of the CTC revenue stream because he improperly discounts the revenue stream to January 1, 1999, rather than September 1, 1998, when the Partial Settlement will become effective and rate reductions will begin.

1 (6) He fails to take into account all elements of the Partial Settlement, which include
2 elements that offset the value of CTC recovery.

3 **Q. Please address Mr. Mitnick's error in comparing the present value of the CTC**
4 **revenue stream to the book value of stranded costs.**

5 **A.** The stranded costs recoverable under the Partial Settlement consist largely of assets upon
6 which PECO is entitled to earn a return. Under the Partial Settlement, these costs will be
7 recovered over a 10-year period and, therefore, the revenue requirement imposed by the
8 stranded cost recovery includes the pre-tax return on the unrecovered balance. The
9 present value of this revenue requirement is greater than the book value of the stranded
10 costs to which it relates. Accordingly, the only proper measure of the value of the Partial
11 Settlement is a comparison of the present value of the CTC revenue stream to the present
12 value of the revenue requirement associated with the 10-year recovery of stranded costs.
13 Mr. Mitnick's error of comparing revenue to book value produces \$600 million of the
14 alleged "overrecovery" in his calculations.

15 **Q. Mr. Mitnick also contends that there is a "tax benefit" associated with PECO's**
16 **proposed \$2.0 billion write-off and that the alleged "tax benefit" is a source of cash**
17 **flow that could be used to "mitigate" PECO's stranded costs. Do you agree with**
18 **Mr. Mitnick's contention?**

19 **A.** Absolutely not. As explained in the Rejoinder Testimony of James I. Warren (PECO St.
20 9-RJ), PECO's agreement to forego recovery of \$2.0 billion of regulatory assets does not,

1 and could not, generate a tax deduction. Mr. Warren also demonstrated that there is no
2 tax benefit generated. Consequently, there is no cash benefit to PECO.

3 Additionally, even if one were to assume -- contrary to law -- that a current tax
4 benefit might be produced, the tax effect should remain with shareholders because they
5 would absorb the costs that would generate any deduction. This has always been the case
6 under regulation. For example, if a utility's expense claim is disallowed, the tax effect of
7 the utility's payment of the expense is not passed through to customers in the ratemaking
8 process. Similarly, if a capital asset is excluded from rate base, the tax depreciation
9 deductions associated with the asset are likewise excluded in setting rates. Simply stated,
10 the tax effect should not be separated and allocated to customers while the cost is assigned
11 to shareholders. The illogical consequences that flow from Mr. Mitnick's position are best
12 illustrated in the example where PECO would forego recovery of all stranded costs.

13 Under Mr. Mitnick's view, the Company, in that event, would owe customers
14 approximately \$3 billion, i.e., total stranded costs multiplied by the composite tax rate.

15 **Q. Regarding securitization, Mr. Mitnick assumed a 1% rate reduction for each \$1**
16 **billion of assets securitized. Do you agree with this estimate?**

17 **A.** Not for the purposes of specific calculations applicable to PECO, other than it was a
18 "rough" rule of thumb used to estimate securitizations impacts absent specific data. Mr.
19 Mitnick has not provided any support for that estimate. In fact, the Company's
20 securitization filing showed a 2.9% rate decrease for \$3.6 billion of assets securitized, or
21 approximately 0.8% per \$1.0 billion. However, even that figure overstates the benefits of

1 securitization in the context of the Partial Settlement because it does not take into account
2 the proposed \$2.0 billion write-off. The write-off will result in a substantial decline in the
3 Company's equity ratio. Therefore, in order to maintain its current capitalization ratios,
4 the Company would have to use the first \$1.2 billion of securitization to retire currently
5 outstanding debt. Using Transition Bonds to retire debt has a far smaller benefit than
6 using the proceeds of the Bonds to displace equity capital. Therefore, even in Mr.
7 Mitnick's scenario, the maximum benefit would be only 2.8%, even if all \$4.0 billion could
8 be securitized ($[\$4.0 \text{ billion} - \$1.2 \text{ billion with no value}] \times 1\% \text{ per billion}$).

9 **Q. Mr. Mitnick also states that there are "tax savings" produced by the deductibility of**
10 **interest on securitization bonds, which should be used to mitigate stranded costs.**

11 **Do you agree?**

12 **A.** Absolutely not. While he is correct that the interest is deductible for tax purposes, he
13 leaves out a very important point. The revenue PECO would receive to pay the interest is
14 fully taxable. As such, there is no net tax benefit from the deductibility of the interest. For
15 example, if one were to collect \$10 in revenue to pay \$10 in interest cost, the tax liability
16 is the same as if one collected no revenue and incurred no interest expense, i.e., \$0.
17 Moreover, because one's interest payment obligation is \$10, \$10 in revenue must be
18 collected in order to have sufficient funds to pay that obligation.

19 **Q. What is the impact of Mr. Mitnick's erroneous adjustment for alleged tax "savings"**
20 **associated with the interest on securitization bonds?**

1 A. This one error alone results in Mr. Mitnick overstating PECO's recovery by \$500 million.

2 Q. **Mr. Mitnick proposes using the sales estimate implicit in the Company's 1997**
3 **Annual Resource Planning Report ("ARPR") to quantify CTC recovery under the**
4 **Partial Settlement. Do you agree with the use of those data?**

5 A. No. First, I would note that the ARPR forecast he relied upon is from the 1996 ARPR.
6 This forecast was developed in 1995 and is over two years old. The Company is currently
7 in the process of developing a new sales forecast, which I expect will be markedly
8 different as a result of changes in sales levels since 1995.

9 Second, I have reviewed a history of retail sales for the 10-year period from
10 January 1, 1988 to August 31, 1997. As shown in Exhibit ABC-11, sales have been flat
11 over this period of time. This is in spite of a strong economy and a decline in the real
12 price of electricity. In fact, actual sales for the 12 months ended August 1997 are
13 approximately equal to the 10-year average. Even so, I have used the proforma 1996
14 sales level (33,569 MMWH), which is about 2% higher than actual 1996 sales, as a
15 reasonable projection. Use of the ARPR sales projection, as Mr. Mitnick proposes, would
16 overstate PECO's likely revenue recovery by about \$400 million.

17 Q. **Did Mr. Mitnick err in calculating the present value of the CTC revenue stream?**

18 A. Yes, he discounted the revenue stream to January 1, 1999, rather than September 1, 1998,
19 which is the date when rate reductions under the Partial Settlement would begin. As a
20 result, Mr. Mitnick has overstated the present value of the CTC revenue recovery by \$175

1 million.

2 **Q. You previously noted that Mr. Mitnick has failed to take into account components**
3 **of the Partial Settlement which impose additional costs on PECO. Please explain.**

4 **A.** Mr. Mitnick has not taken into account the Partial Settlement's provisions that require
5 PECO to put in place a 10% discount four months earlier than the start of electric
6 competition, expand its Customer Assistance Program, extend the cap on transmission and
7 distribution rates ("T&D rate cap") and eliminate certain EER and LILR-related charges.
8 These obligations significantly reduce the value to PECO of the CTC revenue recovery
9 provided for under the Partial Settlement.

10 **Q. What is the impact of the early rate reduction being offered as part of the Partial**
11 **Settlement?**

12 **A.** The early rate reduction reduces PECO's revenue by approximately \$110 million during
13 the period from September 1 to December 31, 1998. By excluding this from his analysis,
14 Mr. Mitnick overstates PECO's recovery by the same amount.

15 **Q. Mr. Mitnick states that it is unlikely that the transmission and distribution**
16 **("T&D") charges will increase above 2.63¢/kWh over the next ten years. Do you**
17 **agree?**

18 **A.** No. First, the 2.63¢/kWh figure, which is Mr. Reising's estimate, is incorrect. The proper
19 level for T&D costs is 3.11¢/kWh, as noted in Schedule A of the Partial Settlement and
20 supported in Mr. Clemmer's rebuttal and rejoinder testimony. Second, a comparison of

1 the T&D costs included in the Company's initial pilot filing in February 1997 with the
2 current restructuring estimate will provide a guide for expected growth in T&D costs. As
3 shown in Exhibit ABC-12, the T&D cost in the February 1997 filing was 2.60¢/kWh
4 based upon a 1990 test year. This compares to the 3.11¢/kWh in the restructuring filing
5 based upon a 1996 test year. This is an increase of 20% during a period when PECO was
6 significantly reducing costs. It is reasonable to expect continued growth will occur at such
7 a rate, at a minimum, because capital expenditures for replacement of facilities and
8 improvement of reliability exceed depreciation.

9 **PECO's Estimate Of Recovery Under The Partial Settlement**

10 **Q. Have you performed an analysis of the amount of stranded costs PECO would be**
11 **provided the opportunity to recover under the Partial Settlement?**

12 **A.** Yes. My analysis shows that the Company will recover approximately \$6.02 billion in
13 present value revenues, which is virtually the same as the revenue requirement associated
14 with the \$5.461 billion in stranded costs mentioned in the Joint Petition. However, as I
15 explain later, PECO's ability to recover as much as \$6.02 billion is contingent upon its
16 securitizing a substantial portion of its recoverable stranded costs and experiencing some
17 sales growth.

18 **Q. Why is the present value of the revenue recovery greater than the book value of the**
19 **recoverable stranded costs?**

20 **A.** As I explained previously, a proper comparison must relate revenues to the revenue

1 requirement of stranded costs, not revenues to the \$5.461 billion book value of stranded
2 costs. The revenue requirement associated with a 10-year recovery of \$5.461 billion in
3 stranded costs is approximately \$6.02 billion. The primary reason that it is higher is that
4 revenue requirement includes a return on investment (i.e., the unamortized balance of
5 stranded costs) at a pre-tax level (i.e., what has to be collected to recover return and
6 associated income taxes). However, for present value analysis, an after-tax cost of capital
7 is used for discounting. Consequently, there would be no overcollection by PECO under
8 the Partial Settlement.

9 **Q. Please describe the analysis you have performed.**

10 A. As shown in Exhibit ABC-13, in order to determine the nominal revenue recovery under
11 the CTC, I multiplied annual sales by the CTC for each year of the recovery period. I
12 used proforma 1996 sales as a reasonable estimate of annual sales levels for that period.
13 The revenue was then reduced by 4.4% for the gross receipts tax and discounted to
14 present value at September 1, 1998. Next, the impact of the four-month rate reduction
15 beginning September 1, 1998 was calculated. This was then deducted from the present
16 value of the CTC revenue to get a recovered amount prior to other elements of the Partial
17 Settlement. As shown, this results in present value revenue recovery of \$5.787 billion, or
18 approximately \$0.237 billion less than the revenue requirement of the stranded costs
19 recoverable under the Partial Settlement.

20 I then evaluated the other elements including: (1) expansion of the CAP rate for
21 universal service; (2) elimination of certain EER and LILR-related charges; (3) the cost of

1 the additional two and one-half years of the T&D rate cap; (4) potential sales growth; and
2 (5) the potential securitization benefits. As I previously explained, expansion of the CAP
3 rate, elimination of EER and LILR-related charges and extension of the T&D rate cap
4 impose substantial additional costs and, therefore, increase the level of underrecovery.
5 The aspects of the Partial Settlement that might provide an opportunity to make up the
6 total shortfall are the potential securitization benefits and growth in sales, if any. As
7 shown in Exhibit ABC-13, the Company has to obtain \$237 million in value from the net
8 effect of all other factors to augment the CTC revenue recovery. At this level, the total
9 value of the Partial Settlement is approximately \$6.02 billion, or approximately equal to
10 the stranded cost revenue requirement. In order to achieve such value, PECO will have to
11 be able to securitize a substantial amount of stranded cost and achieve some sales growth.

12 **Q. In summary, Mr. Cohn, based upon your analysis, is the Company likely to**
13 **overrecover the level of stranded costs stated in the Partial Settlement?**

14 **A.** No. My analysis shows that, given reasonable assumptions, there would be no
15 overcollection and a potential for underrecovery, which is a risk borne by the Company
16 under the terms of the Partial Settlement.

17 **Q. Mr. Cohn, does this conclude your rejoinder statement?**

18 **A.** Yes, it does.

PECO Energy Company
Pennsylvania Retail Electric Sales
1988-1997

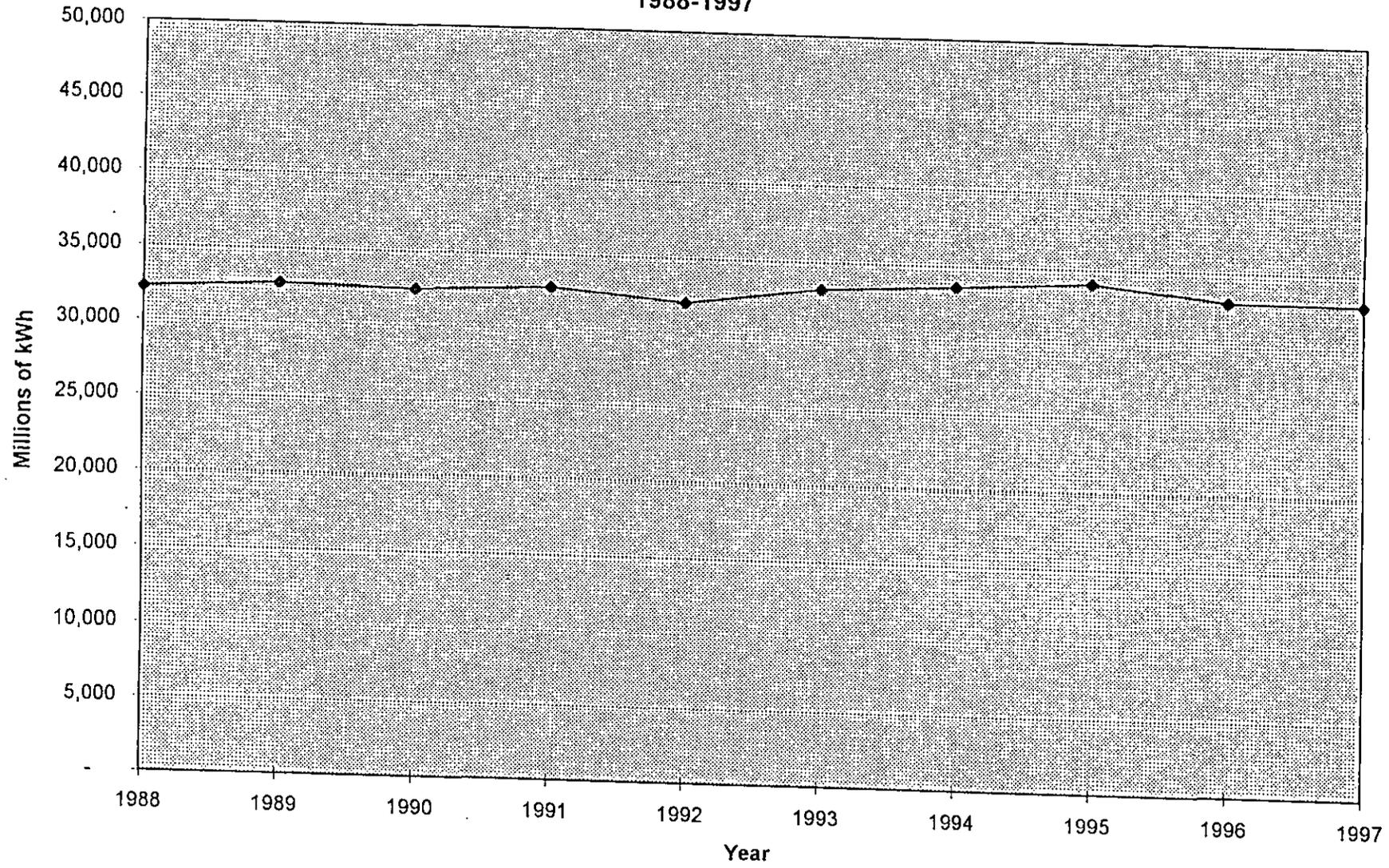
	Millions of kWh	(a)
1988	32,239	
1989	32,675	
1990	32,445	
1991	32,801	
1992	31,993	
1993	33,136	
1994	33,563	
1995	33,994	
1996	32,945	
1997	<u>32,865</u>	(b)
AVG	32,866	

NOTES:

(a) From PECO Energy Annual Report, Years 1988-1996

(b) 12 months ended 8/31/97

**PECO Energy Company
Retail Electric Sales
1988-1997**



PECO Energy Company
Transmission and Distribution Charges
From Pilot Filing-Docket No. P-00971170

Rate	T&D (a) Rev. Req. (\$1,000)	Sales From Docket No. R-891364 MWh
R	\$ 429,029	6,876,529
RH	\$ 86,252	2,423,750
GS	\$ 124,392	4,825,601
PD	\$ 24,630	1,546,238
HT	\$ 119,332	14,082,847
EP	\$ 10,575	740,000
Total	\$ 794,210	30,494,965

Rate = 2.60 cents/kwh

Transmission and Distribution (Partial Settlement
Docket No. R-00973953)

Rate = 3.11 cents/kwh

Increase in Cost
Percent Increase

0.51 cents/kwh
19.6%

(a) Appendix B-Attachment 2 of Pilot Filing

PECO Energy Company
Estimate of Stranded Cost Recovered From Settlement
(1000)

CTC Recovery

Year Col. 1	CTC Col. 2	1996 Sales(MMWH) Col. 3	CTC Revenue Col.4=Col 3*2	CTC Rev (excl GRT) Col.5=Col. 4*.956
1999	3.04	33,569	\$1,020,498	\$975,596
2000	3.04	33,569	\$1,020,498	\$975,596
2001	3.14	33,569	\$1,054,067	\$1,007,688
2002	3.14	33,569	\$1,054,067	\$1,007,688
2003	3.14	33,569	\$1,054,067	\$1,007,688
2004	2.87	33,569	\$963,430	\$921,039
2005	2.77	33,569	\$929,861	\$888,947
2006	2.57	33,569	\$862,723	\$824,763
2007	2.47	33,569	\$829,154	\$792,672
2008	2.27	33,569	\$762,016	\$728,488
NPV@8.71% 9/1/98				\$5,892,542
1998 Rate Reduction			(\$111,500)	(\$104,995)
Sub-Total				\$5,787,546
Other Components (a)				\$237,000
Total Recovery				\$6,024,546
Revenue Requirement on \$5.461 Billion				\$6,024,800

(a) includes extension of T&D rate cap, expansion of universal service, LILR/EER changes
potential securitization benefits, potential sales growth

R-973953

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

REJOINDER TESTIMONY

DOCKETED
OCT 14 1997

OF

WILLIAM H. HIERONYMUS

RECEIVED

OCT 08 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Regarding the Energy & Capacity Cap
and Competition Under the Partial
Settlement of PECO Energy Company's
Proposed Restructuring Plan

**DOCUMENT
FOLDER**

1 REJOINDER TESTIMONY OF WILLIAM H. HIERONYMUS

2

3 Q. Please state your name and business address.

4 A. My name is William H. Hieronymus. My business address is Putnam, Hayes &
5 Bartlett, Inc., One Memorial Drive, Cambridge, MA 02142.

6 Q. Have you submitted testimony previously in this proceeding?

7 A. Yes. I submitted PECO Statement No. 6 and accompanying Exhibits No. WHH-
8 1 through WHH-5, and PECO Statement No. 6-R and accompanying Exhibits
9 No. WHH-6 through WHH-8.

10 Q. What is the purpose of your rejoinder testimony in this proceeding?

11 A. I am responding to assertions made by PECC witnesses Steven A. Mitnick and
12 Jeanine Hull and MAPSA witness Donald E. Johnstone concerning the Partial
13 Settlement. The main focus of my testimony is on the alleged inadequacy of
14 the Energy and Capacity Cap (ECC). I also will address (1) the consequences
15 should it turn out that the ECC is below the delivered cost of the generation
16 component of electricity, and (2) the assertion that the ECC should be raised to
17 allow for the marketing costs of competitive marketers.

18 I will not respond to assertions by some of these same witnesses that the Partial
19 Settlement allows PECO to overrecover the intended amount of stranded cost.
20 This is the subject of other PECO witnesses' testimony and, for purposes of my
21 testimony, I will assume that the CTC/ITC recovery in the Partial Settlement is at
22 the appropriate level, given the other elements of the Settlement. I will,
23 however, address briefly the assertion that production-related administrative

1 and general expenses (A&G) and uncollectable accounts expense should be
2 removed from charges for the transmission and distribution function and used to
3 increase the ECC. Lastly, I will address briefly Mr. Mitnick's statements
4 concerning "predatory pricing" by PECO.

5 **Q. Your earlier testimony in this proceeding sponsored the PHB market price**
6 **forecast. Do you continue to believe that your forecast is the most**
7 **reasonable forecast for establishing PECO's stranded costs?**

8 **A.** Yes. Moreover, as I noted in PECO Statement No. 6-R, this forecast was based
9 on the most recent fuels price forecast made by DRI. The principal alternative
10 forecast available, the US Department of Energy's EIA forecast preferred by
11 some of the intervenors in the proceeding results in a materially lower forecast
12 of electricity prices and a higher forecast of stranded cost. I conclude from this
13 that, if anything, the forecast that I sponsored is conservative relative to the
14 energy price forecast information that is available.

15 **Q. Before proceeding to your more specific comments on intervenor**
16 **testimony, do you have a general characterization of the issue that they**
17 **raise?**

18 **A.** Yes. These witnesses accept, for the purpose of their testimonies, the
19 appropriateness of recovery of \$5.461 billion in stranded cost via the CTC/ITC
20 mechanism. Additionally, they agree that the 10 percent rate cut should be
21 retained and that the overall price cap is appropriate. Within the confines of this
22 agreement, they seek a basis for reconfiguring the three components of the
23 overall cap, decreasing T&D and CTC/ITC charges and increasing the ECC.

1 It is axiomatic in economics that there is no such thing as a free lunch. In
2 negotiating the settlement, there clearly had to be a tradeoff between the level
3 of the overall cap, CTC recovery, the ECC and, to a lesser extent, the payment
4 for regulated electric distribution company (EDC) services. Intervenors' main
5 complaint seems to be that this tradeoff resulted in an ECC that is too low and
6 allege that it can be increased without raising the overall cap. However, it is
7 also clear that they believe that the Partial Settlement should not have given as
8 much emphasis as it did to the overall cap and the resulting level of customer
9 savings. At page 20 of his testimony, Mr. Mitnick outlines the way in which he
10 believes the overall cap should have been calculated: First, determine all costs
11 directly rated to T&D. Second, set the CTC/ITC to recover the Commission-
12 determined allowed stranded costs. Third, set an ECC sufficient to meet the
13 needs of competing suppliers. "Last, any residual should go to the customer in
14 the form of rate decreases..."

15 **Q. You stated that intervenor witnesses have accepted, for the purpose of**
16 **their testimonies, the appropriateness of recovery of \$5.461 billion for**
17 **stranded cost. Doesn't PECC witness Hull provide an alternative market**
18 **price forecast in her Table 1?**

19 **A.** This appears to be the case. However, it is not clear that her market price
20 forecast should be taken to be anything other an illustrative example for
21 purposes of discussing the alleged problems of suppliers seeking to sign long
22 term contracts. If it is intended to be an actual forecast it lacks sophistication in
23 that her presentation assumes that prices change by the rate of inflation only.

1 Indeed, Ms. Hull simply begins with a 1999 price of \$34/MWh and escalates it at
2 \$1/MWh per year.

3 **Q. Intervenor witnesses adjust the market prices you have forecasted for line
4 losses and gross receipts taxes (GRT) in comparing them to the generation
5 price cap for purposes of determining whether retail competitors will be
6 able to compete with PECO's standard offer. Do you agree that these
7 adjustments are appropriate?**

8 A. Yes. PECO and its competitors will have to include line losses and GRT in their
9 retail prices. It is not yet certain whether it is necessary to gross up the capacity
10 (as opposed to energy) component for line losses. This depends on evolving
11 Pennsylvania-New Jersey-Maryland (PJM) Interconnection rules. If the capacity
12 requirement, which all witnesses accept to be 118 percent of load, is applied to
13 load without a gross-up for losses, then this adjustment is inappropriate.
14 However, for purposes of my testimony, I will assume that the line loss
15 adjustment is appropriate for both energy and capacity.

16 **Q. Both Mr. Mitnick and Mr. Johnstone adjust energy prices to reflect
17 differences between the all-hours price that PECO derived from your
18 market energy price analysis and an energy price reflective of customers'
19 load profiles. Do you agree with this adjustment?**

20 A. In concept, yes. However, these witnesses employ very different estimates. Mr.
21 Johnstone increases the all-hours price by 0.26 percent. This is based on his
22 acceptance of PECO witness Sundermeir's calculation of a 0.26 percent
23 adjustment for the residential class. This class should be broadly representative

1 of the effect of load shape on wholesale electric energy prices for PECO as a
2 whole.

3 Mr. Mitnick uses a much higher adjustment, 8.8 percent. Based on the relative
4 flatness of the prices in my market rate analysis, an 8.8 percent adjustment,
5 more than 30 times Mr. Johnstone's adjustment, is implausible.

6 **Q. Taking into account line losses and GRT and the energy cost adjustment**
7 **you have been discussing, is it the case that the ECC is sufficient to**
8 **recover the busbar purchase costs of competing generators?**

9 **A.** Generally, yes. Exhibit WHH-9 shows the relationship between the ECC and
10 the cost of energy and capacity using the market prices that I derived based on
11 both the DRI and EIA fuels forecasts. As Mr. Hill explains, the system average
12 ECC has been adjusted to eliminate the 32 LILR and EER customers. Because
13 these customers are currently on either non-standard discounted or interruptible
14 rates, their ECC is uniquely low and biases the overall ECC downward. This
15 adjustment increases the ECC by between 0.1 cents and 0.35 cents over the
16 period of the analysis.

17 Market prices of energy and capacity are shown for aggregations of customers
18 with load factors ranging from 60 to 100 percent. All calculations assume a 7
19 percent loss factor for both energy and capacity and include a 4.4 percent GRT.
20 Energy prices are increased relative to the all-hours price by 0.26 percent for
21 the 60 percent load factor customers, trending down to zero for 100 percent
22 load factor customers. Capacity costs included in the calculation include losses,
23 GRT and the 18 percent reserve requirement and differ according to the load
24 factor of the customer.

1 For both price forecasts and for all load factors, the average ECC exceeds the
2 average market cost of energy over the period on both a simple average and
3 present value basis. For 100 percent load factor aggregations, the ECC is
4 above the market price in all years. For 80 percent load factor aggregations,
5 the ECC equals or exceeds the market price in all years in the EIA-based
6 forecast; for the DRI-based forecast, the market price is .01 cents and .04 cents
7 higher than the ECC in 2000 and 2001 respectively. For 70 percent load factor
8 aggregations, the EIA-based price is 0.05 and 0.12 cents above the ECC in
9 these same two years; in the DRI-based forecast it is 0.08 and 0.17 cents
10 above. For the 60 percent load factor aggregations, the market price exceeds
11 the ECC in 2000-2003 in amounts ranging from 0.02 to 0.29 cents in the EIA
12 case and by 0.13 to 0.33 cents in the DRI case. The market price also exceeds
13 the ECC by 0.07 cents in 2005 in the DRI case. In all other years the market
14 price is lower than the ECC.

15 **Q. Why have you focused on load factors ranging from 60 percent up to 100**
16 **percent?**

17 **A.** One of the competitive tactics that competing retailers can expect to use is to
18 assemble aggregations of customers with high load factors, "cherry-picking"
19 within rate classes those customers who can be served at lower costs. PECO
20 informs me that its overall load factor is about 65 percent. The comparison I
21 have made is intended to portray the range of aggregations that they may be
22 able to achieve.

1 Q. Do you agree that there will be little if any headroom between market
2 generation costs and the ECC during the first several years of the
3 transition to competition?

4 A. Yes, but this is necessary if the overall cap is to fulfill its functions of assuring
5 rate decreases and recovering the appropriate level of stranded costs.

6 Q. Why is a tight cap necessary to protect customers from over-recovery of
7 the allowed CTC/ITC?

8 A. A tight cap ensures that the CTC is not overrecovered even if busbar electricity
9 prices are higher than the level that was forecasted when the CTC was agreed.
10 This is best understood by illustrating what happens if the market price of
11 generation is above or below the forecasted level. First, assume that the price
12 is higher. PECO's generation will receive higher than forecasted revenues.
13 Based on this alone, it would over-recover the agreed amount of stranded cost
14 since the CTC/ITC payment is based on a forecast of market revenues that
15 turned out to be too low. However, if the price cap is tight, it will be too low to
16 allow PECO's regulated customer service (EDC) activity to recover its
17 purchased generation costs. That is, if the generation price is \$1 per MWh
18 higher than the forecast, generation will receive \$1 per MWh more for every
19 MWh produced but the regulated EDC activity will have to pay an
20 uncompensated \$1 per MWh for every MWh sold. Under these circumstances,
21 generation's gain will be approximately offset by the EDC's loss.

22 Now assume that the market price of generation is below the forecasted level.
23 Clearly, the value of PECO's generation is less than was anticipated. This
24 means that PECO is taking a greater than loss on its generation than was

1 intended. Unlike the case with higher than anticipated prices, there is no
2 assurance that higher than forecast prices from the EDC will offset the
3 generation loss. The EDC can purchase wholesale energy at less than the
4 expected price. If it still can charge the price cap, the higher profits of this
5 activity will approximately offset the revenue shortfall of PECO's generation.
6 However, the Partial Settlement requires that customers electing service under
7 the price cap be charged a market price for electricity, notwithstanding the cap.
8 Even if this provision did not exist, PECO would be unlikely to be able to pass
9 through an above market price, since competition would erode the base of
10 customers electing service under the price cap were it to attempt to do so.
11 Conversely, if the cap is not tight, then customers are not protected from market
12 prices that are higher than were forecasted, since the higher price can be
13 passed through without violating the cap. If market prices are below the ECC,
14 PECO likely would not be able to charge the full ECC amount, since competition
15 would undercut the attempt. Hence, an ECC that is above the cost of wholesale
16 electricity will neither protect consumers from overrecovery nor allow the
17 company to recover any CTC amounts that have been shifted to the ECC.

18 **Q. A main theme of the intervenor witnesses is their belief that the ECC must**
19 **be high enough to allow competing generators to recover their marketing**
20 **and administrative costs. Can you please summarize the nature of their**
21 **argument?**

22 **A.** There are three themes. The first is Mr. Mitnick's argument that customer
23 service costs should be unbundled from T&D and offered separately to
24 competing retailers who could use them or self-provide them. The second

1 relates to the need for an ECC sufficient to pay for competing retailers'
2 marketing and other costs as well as a profit on the retailing activity. The third,
3 raised by PECC witness Hull, is the need for the ECC to be high enough that
4 competitors can profitably undercut PECO's price capped offer.

5 **Q. Regarding the first theme, is the issue of unbundling appropriate in**
6 **considering the Partial Settlement?**

7 A. No. Unbundling is a reserved issue that is not a subject of the Partial
8 Settlement. This will be taken up by the Commission either in a later phase of
9 this proceeding or in a separate generic proceeding. If at that time the
10 Commission determines that unbundling some customer service functions is
11 appropriate it can make the necessary modifications.

12 **Q. Regarding the second theme, is it appropriate to increase the ECC to cover**
13 **retail competitors' selling, general and administrative (SGA) costs and**
14 **profits?**

15 A. No. Assuming that the Partial Settlement in fact contains appropriate
16 allowances for CTC/ITC and T&D, increasing the bid cap to fund retail
17 competitors SGA and profit would not be in customers' interest.

18 I find it most remarkable that the proponents of retail access contend that
19 customers should pay higher prices as a result of the introduction of retail
20 competition. The purpose of introducing competition is to reduce customer
21 costs and improve product quality, not to add an additional cost of service to be
22 recovered on a cost-plus basis. If retail, as distinct from wholesale, competition
23 has merit, it is because the newly competing retailers can provide a better
24 product to consumers than the former franchise monopoly or provide the same

1 product at a lower cost. If entrant retailers (including PECO affiliates) cannot
2 add value to customers, then it is entirely appropriate for customers to elect to
3 stay with the EDC supply.

4 **Q. Do you agree with the assertion that entrants cannot compete successfully**
5 **without an ECC that pays for their SGA and profit?**

6 A. There is too little evidence to know how successful entrants will be. However,
7 there is reason to believe that entrants will succeed without such allowance.
8 The newly emerging retailers have numerous ideas for how to provide a better
9 product at lower prices. These include bundling various utility and non-utility
10 services together, "customer side of the meter" services, pricing innovations
11 such as "weather-proof" bills and branding strategies that increase the
12 perceived quality of the product.

13 Power marketers also have shown considerable creativity in making money
14 through arbitrage despite that they are both buying and selling at wholesale
15 market prices. Enron is the most successful power marketer in the country. Yet
16 according to the type of calculations proffered by these witnesses, it should be
17 making a loss since the market price at which it buys and the market price at
18 which it sells make no explicit allowance for SGA expense.

19 **Q. Mr. Johnstone asserts on page 7 of his testimony that "retail business**
20 **costs" are likely to be in the range of 4.8 mills per kWh. Do you have any**
21 **information that puts that estimate in perspective?**

22 A. Yes. Remember that entrants can choose which customers they will serve.
23 Whatever may be the ECC, they will choose to serve only those customers that
24 are profitable. The evidence in California, which is planning full retail access by

1 January of 1998, is that the large customers and multi-site customers are the
2 main focus of entrants. Other marketers, including members of PECC, are
3 going after national and regional accounts -- for example, seeking to be the
4 energy provider for a chain of department stores or fast food restaurants.

5 The cost per kWh of retail marketing and services to large and self-aggregating
6 customers is very much less than the cost of accessing smaller customers. One
7 benchmark is from the United Kingdom. When the UK electricity industry was
8 restructured and privatized, there were price caps placed on the retailing
9 activities of the incumbent distribution utilities. These typically were about 3
10 mills for the small customers (who did not have retail access) and 0.3 mills for
11 large (peak load of 1 MW or more) customers that had retail access. Three
12 years later, the regulator studied the results of competition for accessible
13 customers and found that the cap was unnecessary since competition was
14 constraining the gross margin (covering SGA, customer service and profit) to
15 below the 0.3 mill per kWh cap. While the data the UK regulator relied on is not
16 publicly available, this conclusion means that the competitive margin was less
17 than 0.3 mills, an order of magnitude below Mr. Johnstone's estimate.

18 **Q. Ms. Hull states that entrants will have a difficult time competing unless they**
19 **can sell power at a price at least 5 percent below PECO. Assuming that**
20 **this is true, should this concern the Commission?**

21 **A.** Not significantly. The importance of competition is not that competitors
22 succeed, but that their presence disciplines market prices and offerings. Indeed,
23 Ms. Hull admits that entrants will achieve at least some market penetration.
24 Further, assuming that Ms. Hull is right and that the Commission decides to give

1 an artificial price incentive to switch suppliers, where is the money to come
2 from? Intervenors' acceptance that the overall price cap should not be raised
3 leaves only one source: PECO's shareholders. I can think of no public policy
4 purpose served by requiring that PECO subsidize its competitors.

5 **Q. Mr. Mitnick claims that the continued dominance of AT&T in the long**
6 **distance market demonstrates the power of incumbency and the need for**
7 **the Commission to take action to assure competitive entry. Do you agree?**

8 **A.** No. It is evident that competition in the long distance market has flourished
9 even without artificial subsidies to entrants. Further, AT&T's retention of the
10 largest share of the market is not evidence of the need for artificial competitive
11 stimulus. Indeed, the FCC has chosen to deregulate AT&T's prices, precisely
12 because competition had achieved the desired effect of disciplining prices
13 notwithstanding that AT&T had retained about half of the market.

14 **Q. The main source that intervenors use for higher ECCs is a reduction in the**
15 **allowance for T&D. What are the main adjustments that they propose be**
16 **made?**

17 **A.** The main adjustments are the removal of what is alleged to be generation-
18 related overheads and uncollectable account expense.

19 **Q. Beginning with the production-related overheads, is it appropriate to**
20 **remove any such overheads that are included in T&D and transfer them to**
21 **the ECC?**

22 **A.** No. As a factual matter, I note that PECO witness Clemmer shows that
23 overheads are allocated properly. Even if, as intervenors allege, overheads are

1 underallocated to generation, and if the Commission were to decide to correct
2 this alleged defect, the appropriate place to put them would be in an increased
3 CTC.

4 The market value of PECO's generation is the difference between market prices
5 and generation costs. If such costs are increased by changing the allocation of
6 overheads used in the stranded cost analysis, then stranded costs (and hence
7 the need for CTC coverage) increases on a dollar for dollar basis. This was
8 made clear by the difference between PECO's direct and rebuttal calculations.

9 Mr. Johnstone appears to recognize this obvious fact. Mr. Mitnick and Mr.
10 Reising do not. Indeed, Mr. Mitnick proposes to increase the ECC for all
11 generation A&G, including that which has been included in the stranded cost
12 analysis.

13 Mr. Mitnick recognizes that the costs of running a generating unit includes
14 overhead costs. He also states that efficient producers must earn enough over
15 time to cover their overhead costs if they are to survive. I agree with both of
16 these statements. However, he errs in concluding on that basis that the ECC
17 should be increased by the amount of PECO's generation A&G. He cannot
18 have it both ways, assigning production A&G to PECO's generation function
19 and to the ECC. If production-related overheads are indeed an avoidable cost
20 of generation and should be charged to PECO's generation function, then they,
21 along with fuel and other avoidable costs such as O&M expense, must be
22 subtracted from PECO's generation revenues in arriving at the contribution to
23 capital costs that is the basis for determining the value of its generation. Dollar

1 for dollar, an increase in allocated overheads reduces that contribution, thereby
2 increasing stranded costs.

3 Conversely, consider the market cost of generation, to which Messrs. Mitnick
4 and Reising seek to add these costs in arriving at the ECC amount. The market
5 price of wholesale electricity is the short run marginal cost of generation plus the
6 market cost of capacity. Overheads are not included in the short run marginal
7 cost of energy. This is "econ 1" and was not disputed by any of the market price
8 witnesses in this proceeding.

9 Overheads do play a role in setting the capacity price. In all of the market price
10 studies, the capacity price was, by early in the next decade, determined by the
11 cost (net of energy market profits) of an efficient entrant. In some analyses, this
12 was a new combined cycle unit. In others, including mine, it was the cost of a
13 new combustion turbine. It is the overheads (A&G) of that efficient new unit, not
14 the overheads of PECO's existing units, that is factored into that calculation.

15 Again, this method was used by all of the market price witnesses and was not,
16 and cannot validly be, disputed.

17 **Q. Intervenor witnesses also single out uncollectable account expense for
18 removal from the T&D element of the rate cap and transfer it to the ECC.**

19 **Do you agree that this is appropriate?**

20 **A.** No. Shifting uncollectables to the ECC could be appropriate if all retailers were
21 likely to bear the same expense for uncollectable accounts. In that case, PECO
22 would avoid incurring uncollectable expense pro rata as it lost load to
23 competitors. However, this is very unlikely to be true factually. PECO is the
24 supplier of last resort, responsible for maintaining universal service at existing

1 levels. Its competitors have no such obligation and will seek to avoid serving
2 customers that are credit risks.

3 **Q. Ms. Hull cites as evidence that your forecast of prices is too low the fact**
4 **that the prices are not high enough to support construction of an efficient**
5 **new combined cycle unit. Please comment.**

6 A. Ms. Hull is simply citing a result of my analysis, which was that, based on the
7 forecast costs that I used, a combustion turbine was a marginally more cost-
8 effective new plant addition in PJM than was a combined cycle unit. Had I
9 forecast slightly different relative economics for these two technologies, I would
10 have reached a different result and built mostly combined cycle units. There
11 would have been little if any change in my forecast of market prices.

12 In any event, Ms. Hull is incorrect in relating this issue to the size of the ECC.
13 The choice of what technology is most cost effective is determined by the prices
14 in the wholesale electricity market. It is not causally linked to competition in
15 retailing, and hence is not related to any purported effects of the ECC.

16 **Q. Ms. Hull also testifies that competitors will have difficulty making long-term**
17 **retail sales that are competitive with the ECC. Please comment.**

18 A. I expect that competitors will have difficulty making long-term retail sales under
19 any reasonable circumstances. Certainly the experience with the competitive
20 long distance communications market is that customers elect terms of service
21 that allow them to switch suppliers with little cost or notice. Cellular phone
22 service tends to be on a one year contract basis, despite the fact that the up-
23 front cost of a heavily subsidized cellular phone must be amortized by the

1 supplier. In the UK nearly all competitive retail electricity contracts are for one
2 year.

3 **Q. What do you conclude from this?**

4 A. The inability of suppliers to sign up customers to long contracts is not due to any
5 deficiency in the ECC. It also is of little practical significance to the development
6 of competition.

7 **Q. At pages 28 to 30, Mr. Mitnick makes various assertions about PECO**
8 **engaging in predatory pricing and seeks to relate such actions to the**
9 **proposed Partial Settlement. Please comment.**

10 A. While meaning no disrespect to Mr. Mitnick, I find his whole discussion
11 incomprehensible and disjointed. However, I will attempt to respond.

12 Predatory pricing occurs when a firm sells below its variable costs in order to
13 drive out a competitor, permitting it to then raise prices and recover its
14 temporary losses. Mr. Mitnick makes no showing that PECO will be selling
15 generation at below its variable cost. He cannot, since the market rate
16 forecasts show clearly that PECO's variable costs are below the market prices
17 that he is comparing to the ECC. Nor can he show that its retail offerings are
18 below variable costs. The CTC recovery is not a variable cost. Most of T&D is
19 non-variable. Hence, the bundled price cap also is well above variable cost and
20 non-predatory.

21 Mr. Mitnick then discusses the value of a hypothetical option to exclude
22 competitors. I simply cannot fathom what he is talking about. In any event, the
23 value of maintaining market share to PECO is limited, precisely because the

1 CTC is intended to protect its recovery of strandable costs even when it loses
2 market share.

3 Mr. Mitnick then discusses the ECC and the use of securitization receipts to
4 discourage investment in generation. The former is irrelevant for the reasons I
5 have explained in the context of Ms. Hull's testimony: that the decision to build
6 generation relates to competitive conditions in the bulk power market, not the
7 retail market. The latter also is irrelevant, unless one assumes that PECO will
8 invest its capital in building uneconomic generation in order to preempt entry.
9 This would not be a sound business strategy. In any event, PECO's use of
10 securitization proceeds are heavily circumscribed by the proposed QRO
11 attached to the Partial Settlement.

12 Lastly, Mr. Mitnick muses about the possible exercise of market power, with no
13 analysis whatsoever to show that PECO has market power or could gain it by
14 making further investments in generation.

15 To summarize on this point, the Partial Settlement will not cause PECO to
16 engage in predatory pricing. There is no reason why securitization should
17 cause PECO to make uneconomic generation investments even if funds could
18 be used in that manner. There is no evidence whatsoever that PECO can
19 preempt other firms from making economic investments in new capacity. Nor is
20 there any evidence of potential market power. The whole anti-competitive
21 argument made in this section of Mr. Mitnick's testimony is unsupported
22 speculation.

23 **Q. Does this conclude your testimony?**

1 A. Yes.

**Comparison of System Average Generation Rate Cap
to Retail Energy & Capacity Costs
¢/kWh**

Year	Settlement Energy & Capacity Cap	Settlement Cap Adj To Eliminate LILR & EER Customers	PHB Wholesale Price All Hours	PHB-DRI				PHB-EIA			
				Wholesale Prices Adj To Average Retail				Wholesale Prices Adj To Average Retail			
				60% LF	70% LF	80% LF	100% LF	60% LF	70% LF	80% LF	100% LF
1999	2.80	2.90	2.20	2.68	2.62	2.58	2.51	2.69	2.63	2.59	2.53
2000	2.80	2.90	2.44	3.08	2.98	2.91	2.80	3.05	2.95	2.88	2.77
2001	3.20	3.33	2.75	3.66	3.50	3.37	3.20	3.62	3.45	3.33	3.15
2002	3.50	3.66	2.88	3.83	3.66	3.53	3.35	3.75	3.58	3.45	3.27
2003	3.70	3.87	3.02	4.00	3.82	3.69	3.51	3.89	3.71	3.58	3.39
2004	3.97	4.17	3.16	4.17	3.99	3.86	3.66	4.03	3.85	3.71	3.52
2005	4.07	4.28	3.30	4.35	4.16	4.02	3.83	4.19	4.01	3.87	3.67
2006	4.77	5.04	3.44	4.53	4.34	4.19	3.99	4.36	4.17	4.02	3.82
2007	5.37	5.70	3.58	4.72	4.51	4.36	4.15	4.55	4.35	4.20	3.98
2008	5.57	5.92	3.73	4.91	4.70	4.55	4.33	4.74	4.53	4.38	4.16

PECO STATEMENT NO. 9-RJ

R-973953

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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OCT 08 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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

REJOINDER TESTIMONY OF

JAMES I. WARREN

INDEXED
OCT 14 1997

DOCUMENT
FOLDER

Responding to Testimony in Opposition to
the Joint Petition for Partial Settlement

October 8, 1997

1 **Q. How would you characterize Mr. Mitnick's proposal regarding the alleged benefits**
2
3 **to PECO of the proposed \$2.0 billion write-off?**

4
5 **A.** In my opinion, Mr. Mitnick's proposal lacks any basis whatsoever in logic and is
6 completely fallacious in its assumptions regarding applicable tax law rules.

7
8 **Q. How does the partial settlement agreement deal with the \$2.0 billion in disallowed**
9 **stranded costs?**

10
11
12 **A.** PECO has agreed to forego the collection of approximately \$2.0 billion of regulatory
13 assets.

14
15 **Q. What does Mr. Mitnick propose in connection with this proposal?**

16
17 **A.** Mr. Mitnick claims that the elimination of the regulatory assets should enable PECO to
18 further reduce its recovery of other stranded costs by the tax effect of that foregone
19 receivable.

20
21 **Q. Is this a logical proposition?**

22 **A.** Absolutely not, as can be readily illustrated by applying Mr. Mitnick's principle in a more
23 conventional and simplistic context. Assume that an individual, Jane, is an employee of
24 Company X. Jane has an annual salary of \$50,000. In June, Jane is awarded a \$10,000
25 bonus payable on December 31. However, by the time it comes to December, Company
26 X is experiencing financial problems. Jane agrees to forego her bonus. Company X not
27 only doesn't pay Jane her bonus, it immediately docks Jane's \$50,000 salary by the tax

1 effect of the bonus, since, by not receiving it, Jane is relieved of the tax obligation
2 associated with its receipt. This seems to me (and would certainly seem to Jane) illogical
3 and inequitable. It is no less so in PECO's case than in Jane's.

4
5 **Q. What does this example make apparent regarding the consequences of Mr.**
6
7 **Mitnick's proposal?**

8
9 A. In the illustration above, Jane would be worse off than if she hadn't earned the bonus at
10 all. So it is that the application of Mr. Mitnick's approach would render PECO worse off
11 than if it had never been the beneficiary of the regulatory commitments. In Mr. Mitnick's
12 view, the more PECO gives, the more it can afford to give. This is perverse logic that,
13 aside from being counter-intuitive, affirmatively discourages compromise. It should be
14 rejected.

15
16 **Q. Mr. Mitnick also implies that the tax benefit associated with PECO's surrender of**
17
18 **\$2.0 billion of regulatory assets will produce a cash infusion. Is that correct?**

19
20 A. No it is not. This is due to the status of regulatory assets under the tax law, which is best
21 understood by comparing it with the tax status of customer receivables. Customer
22 receivables arising from the provision of services are included in taxable income as the
23 service is provided. Because they have been included in taxable income, these
24 receivables have tax basis. As a result, when a customer receivable is forgiven or
25 otherwise compromised, it produces a tax deduction, *i.e.*, its tax basis is "written off" for
26 tax purposes. By contrast, regulatory assets are, from a tax perspective, mere promises

1 from the regulators that the Company will receive taxable revenue in the amount of the
2 revenue requirement on those assets at some time in the future. Unlike customer
3 receivables, regulatory receivables are not includable in taxable income until they are
4 converted into customer receivables, *i.e.*, when future services are provided under
5 authorized rates that provide for recovery of regulatory receivables. They therefore have
6 no tax basis. Their surrender, consequently, can produce no tax deduction and, hence, no
7 cash benefit -- now or ever.

8
9 **Q. What, then, can be stated with regard to PECO'S willingness to forego recovery of**
10 **\$2.0 billion of its regulatory assets?**

11
12
13 **A.** The surrender of \$2.0 billion or any quantum at all, of PECO's regulatory assets will
14 produce not a scintilla of a cash tax benefit.

15
16 **Q. In light of the above, do you perceive any economic or logical justification**
17 **whatsoever for Mr. Mitnick's proposal?**

18
19
20 **A.** As I stated at the beginning of this testimony, I find the proposal without support in logic,
21 equity, economics or the tax law.

22
23 **Q. Do you have any further comment regarding Mr. Mitnick's testimony?**

24 **A.** Yes, Mr. Mitnick's states that the deductibility of interest paid with respect to
25 securitization bonds should somehow reduce the Company's stranded cost recovery
26 amount (Mitnick, Supplemental, pg. 33, ln. 7-9).

1 **Q. What is the effect of the deductibility of this interest?**

2 A. Because the interest is deductible, PECO needs to collect only \$1 from its customers to
3 fund \$1 of interest. The collection of the \$1 of revenue necessary to fund the interest cost
4 is a taxable event, subject to a 35% federal tax. Without an offsetting deduction ,
5 therefore, the Company would not fund its \$1 interest requirement. However, the
6 allowable \$1 interest deduction offsets entirely the taxable income associated with the
7 receipt of the revenue and allows the Company to meet its debt service obligation. The
8 customer receives the benefit of the deduction by only having to fund the interest cost
9 “dollar for dollar.” As such, it would be totally inappropriate to take a tax offset against
10 PECO’s stranded costs as Mr. Mitnick proposes.

11

12 **Q. Does this conclude your testimony?**

13 A. Yes.

14

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OCT 08 1997

PECO STATEMENT NO. 12-RJ

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

R-973953

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

REJOINDER TESTIMONY

OF

ROBERT A. CLEMMER

Regarding Cost Allocation

DOCUMENT
FOLDER

DOCKETED
OCT 14 1997

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1 • PECO's assignments of A&G, common plant, sales, and customer-related
2 costs will result in cross-subsidization; and

3 • PECO's proposed rate design is inconsistent with its cost allocation.
4

5 I will explain why every one of these contentions is without merit.
6

7 **II. ADMINISTRATIVE AND GENERAL (A&G)**
8 **AND COMMON PLANT ASSIGNMENTS**
9
10

11 **Q. What is the principal criticism of Messrs. Reising, Mitnick and Johnstone**
12 **with regard to your assignments and allocations of A&G and common plant**
13 **costs?**

14 A. They renew the claim that PECO improperly allocated generation-related A&G
15 and common plant costs to the transmission or distribution functions.
16

17 **Q. Has either Mr. Reising or Mr. Johnstone provided a valid reason to question**
18 **PECO's administrative and general and common plant cost allocations?**

19 A. No. Both continue to argue that allocations based on labor or other costs are
20 superior to direct assignments based on functional analysis. With respect to certain
21 costs, Mr. Johnstone proposes a "50/50" allocation between distribution and
22 generation without providing any back-up that such an allocation bears any
23 relationship whatsoever to cost causation. It is a truism of ratemaking that where
24 direct assignments can be made, they are preferable to allocations. The objective

1 of cost allocation has traditionally been to assign costs to classes of service in a
2 way that reflects as closely as possible each class' actual cost responsibility. When
3 that objective can be achieved through direct assignment, allocation is unnecessary,
4 and indeed imprudent. Now that unbundling is required, it also true that where
5 direct assignments to the various functions (transmission, distribution, and
6 generation) can be made, they are preferable to allocations that will necessarily
7 bear a far looser relationship to actual cost causation.

8
9 As I explained at length in my rebuttal testimony, in response to the original claims
10 of intervenors my colleagues and I reviewed in detail PECO's A&G and common
11 plant accounts to determine whether PECO had inappropriately included
12 generation-related costs in transmission and distribution costs. My purpose was to
13 identify those costs that the transmission and distribution company would continue
14 to incur, and which should therefore be recovered through regulated rates. When
15 we found errors in our original assignments, we made appropriate adjustments.
16 The result was a decrease in the distribution revenue requirement from \$954.7
17 million to \$877.1 million and the transmission revenue requirement from \$165.5
18 million to \$155.8 million. Any further reallocation of costs, particularly along the
19 lines suggested by the opposing parties, would be inappropriate.

1 **III. TREATMENT OF UNCOLLECTIBLES,**
2 **CUSTOMER ACCOUNTS, AND SALES EXPENSE**
3
4

5 **Q. Mr. Reising continues to maintain that the production portion of**
6 **uncollectible accounts expense should be removed from PECO's distribution**
7 **charges. Do you agree?**

8 A. No. My rebuttal testimony clearly shows that the recovery of all uncollectible
9 accounts expense in distribution charges is justified. I would like to add that the
10 level of uncollectible expense used is a pro forma amount of \$65.4 million, which
11 is approximately \$22 million less than the actual 1996 test year expense of \$87.5
12 million.

13
14 **Q. Do you have any further comments regarding Mr. Reising's claims with**
15 **respect to uncollectibles expense?**

16 A. Yes. Not only does Mr. Reising improperly exclude a portion of these expenses
17 from T&D revenue requirements, he compounds the error by allocating to these
18 amounts additional overheads, which would further reduce T&D revenue
19 requirements. This is completely inappropriate. Uncollectibles are unpaid bills,
20 and nothing more.

21
22 **Q. Messrs. Reising and Johnstone also seek to remove all or a portion of sales**
23 **expense and customer service and information expense from distribution**
24 **charges. Do you agree?**

1 A. No. PECO, as the electric distribution company, would likely continue to incur
2 these expenses. These are not costs incurred to carry out the “marketing”
3 functions that will accompany generation competition, as Mr. Reising suggests.
4 Rather, the costs in question are expenses incurred in 1996 almost entirely before
5 Governor Ridge even signed the Electric Competition Act, and almost a year
6 before the start of Pilot programs in the Commonwealth. Indeed, these costs
7 include expenses associated with demand-side management and energy efficiency
8 and audit programs, and the cost of processing high bill complaints and otherwise
9 complying with Chapter 56 of the Commission’s regulations.

10
11
12
13
14

IV. CLAIMS REGARDING CROSS-SUBSIDIZATION

15 **Q. Please explain Enron’s allegations regarding cross-subsidization.**

16 A. Mr. Reising claims that as a result of what he believes are misallocations of
17 generation-related A&G, common plant, sales and customer-related costs to
18 transmission and distribution, PECO’s competitive generation affiliates or divisions
19 will be cross-subsidized and therefore able to sell energy at prices below market
20 rates. Mr. Reising also suggests that, as a result of these alleged misallocations,
21 PECO’s affiliates will have an “unfair advantage” in the competitive marketplace.
22 Mr. Mitnick reiterates Mr. Reising’s claims regarding alleged cross-subsidization,
23 but takes them one step further, suggesting that the alleged misallocations are
24 intentional and designed to enable PECO’s competitive affiliates and divisions to
25 predatorily price and inhibit competition.

1 **Q. Do you agree with these allegations?**

2 A. No, for two reasons. First, there can be no cross-subsidization of PECO's
3 competitive generation operations because PECO has not overstated transmission
4 and distribution costs for the reasons I have explained above. Therefore, there will
5 be no excess transmission and distribution revenues that could be used to subsidize
6 PECO's competitive generation operations. Second, the fundamental premise that
7 PECO's affiliates would intentionally sell below marginal cost is false and illogical.

8

9 **Q. Do you have any concluding comments regarding Enron's claims of cross-**
10 **subsidization?**

11 A. Yes. The Commission has the power to scrutinize the costs incurred by PECO and
12 PECO's competitive affiliates and divisions to ensure that PECO's affiliates are not
13 cross-subsidized by PECO's distribution service customers. There is therefore no
14 danger that cross-subsidization will develop in the future.

1 **V. CONSISTENCY BETWEEN COST ALLOCATION AND RATE DESIGN**

2

3 **Q. Does the difference identified by Mr. Reising between the sales shown on the**
4 **“Derivation of CTC/Market Price” sheets and those shown in the “Proof-of-**
5 **Revenue” have any bearing on the rates developed in the “Proof-of-**
6 **Revenue?”**

7

8 No. The total sales shown for each rate class in the “Proof-of-Revenue” are not
9 essential to the development of rates. It is the relative breakdown of these sales
10 between pricing blocks which is generated by the billing sample that is important.
11 Exhibit RAC-12, attached to this testimony, uses the GS rate class to demonstrate
12 that the “Proof-of-Revenue” methods used historically (i.e., deriving rates at the
13 sample level) and those used in this proceeding (i.e., deriving rates at the
14 “universe” level) will produce the same rates. Accordingly, Mr. Reising’s
15 criticisms are completely unfounded.

16

17 **VI. CONCLUSION**

18

19 **Q. Do you have any final thoughts regarding the testimony of Messrs. Mitnick,**
20 **Reising, and Johnstone?**

21 **A. The purpose of their testimony regarding A&G and common plant costs, and**
22 **customer-related, sales and uncollectibles expense, is to show that PECO’s**
23 **transmission and distribution rates are too high. I have explained already why this**

1 specific claim is incorrect. I believe, however, that it is also important for the
2 Commission to recognize that PECO's transmission and distribution company will
3 be incurring a substantial amount of increased fixed and operating costs to enable
4 competitive suppliers to serve retail load that are not included in the base costs for
5 1996 used to develop the T&D charges and caps in the Partial Settlement. These
6 costs will be completely unrecoverable for several years - - until the T&D rate cap
7 expires on January 1, 2004. For example, PECO must acquire a completely new
8 customer information and billing system to be able to properly bill customers and
9 provide suppliers with the data they will need to serve their customers. PECO
10 currently projects that its initial investment in this system will be more than \$65
11 million, yielding an annual revenue requirement that PECO will not be able to
12 recover of almost \$14 million. Adding to that amount, almost \$2.0 million in likely
13 increased annual operation and maintenance expenses associated with such systems
14 yields almost \$16 million in increased annual T&D revenue requirements that
15 PECO will not be able to recover. I note that Mr. Cohn, in his rejoinder
16 testimony, also explains why PECO's T&D costs are likely to rise during the years
17 when the T&D rates will be capped.

18
19 Accordingly, the proposed T&D rates are not only currently in line with T&D-
20 related costs but are likely to under-recover PECO's actual T&D costs for the next
21 several years.

22

1 Q. **Does that conclude your rejoinder testimony?**

2 A. Yes, it does.

SETTLEMENT PROOF OF REVENUE - Working at Sample Level

PECO Energy Company-Electric Operations
 Rate GS
 Calculation of Revenue - Supp No. 10 Bundled and Unbundled
 12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Sample	Bills and kwh from sample (1)	Supplement No. 10 Bundled Pricing (2)	Revenue (3)=(1)x(2)	Bills and kwh from sample (1)	NEW Unbundled Pricing (2)	Revenue (3)=(1)x(2)	Universe to Sample Ratio	Universe Revenue
Customer Charge:				FIXED DISTRIBUTION				
1. Single Phase Customers	687,108	\$8.67	\$5,957,226	687,108	\$8.67	\$5,957,226		
2. Poly Phase Customers	<u>244,356</u>	\$23.45	<u>\$5,730,148</u>	<u>244,356</u>	\$23.45	<u>\$5,730,148</u>		
Customer Charge Revenue	931,464		\$11,687,375	931,464		\$11,687,375		
				VARIABLE DISTRIBUTION				
3. First 80 Hours Use	633,128,269	\$0.2214	\$140,174,599	633,128,269	\$0.0387	\$24,513,009		
4. Next 80 Hours Use-Summer	221,541,763	\$0.1124	\$24,901,294	221,541,763	\$0.0183	\$4,059,219		
5. Additional Use-Except	1,215,620,125	\$0.0767	\$93,238,064	1,215,620,125	\$0.0116	\$14,152,592		
6. Over 400 Hrs & 2000 kwh	53,300,420	\$0.0425	\$2,265,268	53,300,420	\$0.0052	\$279,318		
7. Space Heating Use	<u>172,039,101</u>	\$0.0637	<u>\$10,958,891</u>	<u>172,039,101</u>	\$0.0092	<u>\$1,584,412</u>		
Energy Rate Revenue	2,295,629,678		\$271,538,115	2,295,629,678		\$44,588,548	2.68870	\$ 151,309,000
8. Total Sample Revenue			\$283,225,490					
				TRANSMISSION				
				633,128,269	\$0.0131	\$8,312,200		
				221,541,763	\$0.0062	\$1,376,502		
				1,215,620,125	\$0.0039	\$4,798,976		
				53,300,420	\$0.0018	\$94,841		
				<u>172,039,101</u>	\$0.0031	<u>\$537,435</u>		
				2,295,629,678		\$15,119,954	2.68870	\$ 40,653,000
Universe Revenue			\$ 761,508,000					
Universe to Sample Revenue Ratio			2.68870					
				CTC				
				633,128,269	\$0.0950	\$60,150,288		
				221,541,763	\$0.0450	\$9,960,209		
				1,215,620,125	\$0.0286	\$34,727,209		
				53,300,420	\$0.0129	\$685,834		
				<u>172,039,101</u>	\$0.0226	<u>\$3,887,754</u>		
				2,295,629,678		\$109,411,293	2.68870	\$ 294,174,000
				MARKET ENERGY AND CAPACITY				
				633,128,269	\$0.0500	\$31,628,153		
				221,541,763	\$0.0313	\$6,927,108		
				1,215,620,125	\$0.0251	\$30,569,654		
				53,300,420	\$0.0193	\$1,028,001		
				<u>172,039,101</u>	\$0.0229	<u>\$3,942,780</u>		
				2,295,629,678		\$74,095,696	2.68870	\$ 199,221,000
						\$254,902,866	2.68870	\$685,357,000

- 1 The ratio of universe revenue to sample revenue is calculated. NOTE: The relationship of universe sales to sample sales is never considered.
- 2 Each of the unbundled revenue requirement components (from annual summary sheets) is reduced by the universe/sample revenue ratio to convert them to "sample size."
- 3 The "sample size" revenue is spread to each block and for each block the revenue is divided by the sales to determine the rate.

SETTLEMENT PROOF OF REVENUE - Working at "Universe" Level

PECO Energy Company-Electric Operations
 Rate GS
 Calculation of Revenue - Supp No. 10 Bundled and Unbundled
 12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Sample	Bills and kwh from sample (1)	Supplement No. 10 Bundled Pricing (2)	Revenue (3)=(1)x(2)	Bills and kwh from sample (1)	NEW Unbundled Pricing (2)	Revenue (3)=(1)x(2)	Universe to Sample Ratio	Universe Revenue
Customer Charge:				FIXED DISTRIBUTION				
1. Single Phase Customers	1,847,430	\$8.67	16,017,214	1,847,430	\$8.67	16,017,214		
2. Poly Phase Customers	657,001	\$23.45	15,406,669	657,001	\$23.45	15,406,669		
Customer Charge Revenue	2,504,431		\$31,423,883	2,504,431		\$31,423,883		
				VARIABLE DISTRIBUTION				
3. First 80 Hours Use	1,702,294,084	\$0.2214	376,887,910	1,702,294,084	\$0.0387	\$65,908,306		
4. Next 80 Hours Use-Summer	595,660,075	\$0.1124	66,952,192	595,660,075	\$0.0183	\$10,913,724		
5. Additional Use-Except	3,268,441,875	\$0.0767	250,689,492	3,268,441,875	\$0.0116	\$38,051,682		
6. Over 400 Hrs & 2000 kwh	143,309,017	\$0.0425	6,090,633	143,309,017	\$0.0052	\$751,354		
7. Space Heating Use	462,562,103	\$0.0637	29,465,206	462,562,103	\$0.0092	\$4,260,050		
Energy Rate Revenue	6,172,267,154		\$730,085,433	6,172,267,154		\$119,885,116	1.00000	\$ 151,309,000
8. Total Sample Revenue			\$761,509,316					
Universe Revenue			\$ 761,508,000	TRANSMISSION				
				1,702,294,084	\$0.0131	\$22,349,483		
				595,660,075	\$0.0062	\$3,700,840		
				3,268,441,875	\$0.0039	\$12,903,312		
				143,309,017	\$0.0018	\$254,784		
				462,562,103	\$0.0031	\$1,444,582		
Universe to Sample Revenue Ratio			1.00000	6,172,267,154		\$40,653,001	1.00000	\$ 40,653,000
				CTC				
				1,702,294,084	\$0.0950	\$161,725,745		
				595,660,075	\$0.0450	\$26,780,088		
				3,268,441,875	\$0.0286	\$93,371,186		
				143,309,017	\$0.0129	\$1,843,672		
				462,562,103	\$0.0226	\$10,453,308		
				6,172,267,154		\$294,173,999	1.00000	\$ 294,174,000
				MARKET ENERGY AND CAPACITY				
				1,702,294,084	\$0.0500	\$85,039,472		
				595,660,075	\$0.0313	\$18,625,151		
				3,268,441,875	\$0.0251	\$82,192,913		
				143,309,017	\$0.0193	\$2,763,563		
				462,562,103	\$0.0229	\$10,601,285		
				6,172,267,154		\$199,222,384	1.00000	\$ 199,221,000
						\$685,358,383	1.00000	\$685,357,000

1 The universe revenue and the "universe" sales are used from the start. NOTE: The "universe" sales of 6,172,267,154 kWh do not match the pro-forma sales of 6,596,721,000 kWh but the rates calculated are identical.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

R-973953

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

RECEIVED

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DOCKETED
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REJOINDER TESTIMONY PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

OF

MICHAEL S. FREEMAN

DOCUMENT
FOLDER

Regarding Retail Market Prices

Oct. 8, 1997

REJOINDER TESTIMONY OF MICHAEL S. FREEMAN

Q. Please state your full name and business address.

A. Michael S. Freeman, 2301 Market Street, S7-3, Philadelphia, PA 19103.

Q. By whom are you employed and in what capacity?

A. I am employed by PECO Energy Company ("PECO" or "the Company") as a supply manager on PECO's National Energy Team. The National Energy Team contracts with customers who have facilities in multiple locations, offering electricity and fuel brokering, billing, metering, and demand-side management services. My job is to provide analytical support for electricity pricing offers and to make supply arrangements at the lowest cost possible. PECO's National Energy Team is active in regions where retail access has begun or is about to begin, including the PJM area, New England, and California.

Q. Please state your educational background and experience.

A. My resume is attached as Exhibit MSF-1.

Q. Have you testified previously before the Commission?

A. Yes. I testified in 1995 in a case involving PECO's Large Interruptible Load Rider (LILR). In that case, PECO obtained the Commission's approval to freeze the availability of the LILR.

Q. What is the purpose of your testimony?

A. I am testifying as to the reasonableness of the energy and capacity caps contained in the proposed Partial Settlement from both a wholesale and retail perspective. I will show that current wholesale energy and capacity transactions are in line with or below the energy and capacity caps set forth in the proposed Partial Settlement. I will then discuss retail transactions that have been proposed or executed by competitive suppliers in PECO's service territory and elsewhere. These transactions demonstrate that a competitive market with discounted prices for customers is in fact emerging.

Q. What is your understanding of the opposing parties' position relative to the energy and capacity rate caps contained in the Partial Settlement?

A. Witnesses for Enron and MAPSA contend that the actual retail market price will be above those capped rates, at least in some of the early years of the transition period.

Q. Do you agree?

A. No. First, I would note that, although such arguments were advanced by the same suppliers in PECO's Pilot Program, these suppliers have helped enroll approximately 93,000 customers in the Pilot, already have made supply offers to customers, and will be making many more offers by the sign-up deadline, which is October 25, 1997.

Second, the Electric Competition Act contemplates a phase-in of retail access, not an immediate transition. The general approach taken by competitive suppliers thus far in Pennsylvania and New England parallels this sense of the pace of retail access. In other words, my experience is that suppliers have been much more willing to use the price caps as a hedge, with any savings generated below the standard offer split between the supplier and the customer, instead of offering customers fixed or indexed rates.

Third, and most importantly, the energy and capacity rate caps in the Partial Settlement are reasonable relative to cost-based projections of energy and capacity prices, as well as market experience. All of us who are involved in the development of retail access in Pennsylvania have little to no experience in delivering competitive power to retail customers in Pennsylvania. Therefore, we rely upon cost-based market projections and experience in PJM and elsewhere, such as New England. But it is possible that the results of cost-based modeling and current experience may not tell the whole story. In the Pilot Program, for instance, PECO's wholesale marketing division, the Power Team, has provided standard products for competitive suppliers. The Power Team will charge suppliers an all-in price for energy and capacity, including line losses, reserve margin, load-following costs, and Gross Receipts Tax, exactly equal to the generation credit that is being extracted from participating customers' bills. However, the Power Team stated in its solicitation letter that it reserves the right to discount the offer. Additionally, the Power Team included a solicitation of

market-based bids to procure energy and/or capacity products “for the specific purpose of supplying retail loads won in any and all Pennsylvania Retail Pilots.” Therefore, bilateral arrangements that are made as a result of these solicitations may create savings for suppliers and their customers below the generation credit. Additionally, other generators may want to break into the PJM market, creating competitive pressure that does not exist today.

The phase-in of retail access means we are all on a ramped-up schedule – competitive suppliers as well as customers. The energy and capacity caps should not be set at a level such that competitive suppliers can experience a windfall from the outset of retail access. The pricing design that I described above – that is, shared savings if the supplier can procure energy and capacity for less than the energy and capacity cap -- represents a market outlook that places value on gaining a foothold by signing customers to low-risk contracts. As the market gains momentum and experience, the suppliers’ outlook holds that they will be able to “beat” the generation cap and generate a positive cash flow. At that point, other pricing designs likely will be offered, along with non-commodity offers of products and services such as billing, metering, and other energy services. Customers who place a value on such services may be willing to pay a little more than the energy and capacity caps.

Q. As to your third point, is the energy price projected by Dr. Hieronymus for 1999 supported by current energy prices in PJM?

A. Yes. Dr. Hieronymus projects an average price of \$20.2/MWh for 1999. Actual all-hours energy prices in PJM, as reported in the Power Market Week summary, averaged \$20.34/MWh for the period January, 1997 through October 3, 1997. The on-peak average for that same period was \$25.69/MWh, while the off-peak average was \$15.74/MWh.

Q. Has PECO entered into wholesale contracts that confirm the capacity prices projected by Dr. Hieronymus?

A. Yes. PECO has contracts for the purchase and/or sale of capacity within PJM at prices that are equal to or less than the \$16/kilowatt-year capacity price projected by Dr. Hieronymus for 1999.

Q. Based on your knowledge of the wholesale prices currently being experienced in PJM, are the wholesale prices projected by Dr. Hieronymus reasonable?

A. Yes. The PJM region already has one of the most liquid wholesale markets of any region of North America. Current prices reflect many purchases and sales of both energy and capacity. Therefore current prices accurately reflect the ability to purchase energy and capacity in the PJM region and accurately reflect the wholesale prices available to any potential competitive supplier under deregulation. Current prices confirm that the price projections of Dr. Hieronymus are reasonable.

Q. What retail offers in Southeastern Pennsylvania are you aware of?

A. I am aware that Strategic Energy Partners Limited (SEL), a marketer licensed by the PUC to supply retail service in Pennsylvania, has offered a commercial customer an arrangement under which SEL will take 10% of the difference between the delivered price and the standard offer, or 1 mill per kilowatt-hour, whichever is lower. In addition, New Energy Ventures (NEV) has given customers in PECO's territory a one-page description of what it calls a "Group Member Agreement Summary," a three-year arrangement under which NEV retains 25 percent of the "difference of the member's total bill from NEV and the bill had the member received equivalent services from its local electric utility under the appropriate tariff." The agreement also states that NEV will match any price below NEV's price, or NEV will "allow the member to make the purchase directly."

The outlook that drives all of these deals is, I believe, an optimistic view of the future marketplace. A company such as NEV can essentially use the caps as a hedge, with only the firm's transactions costs for billing and other customer services at risk. NEV obviously has an expectation that, at some point during the term of this arrangement, it can generate savings for customers and payments for itself.

I am also aware of a retail pilot offer that was made to a high load factor, industrial firm in PECO's territory that was framed as a guaranteed discount of 10 percent below the customer's PECO bill. Since the Customer Participation Credit for this customer's tariff would provide a guaranteed reduction of only 6 or 7 percent, the

supplier must discount the commodity charge by about 2 or 3 mills per kWh to achieve the total discount of 10 percent.

Q. Are you aware of retail prices being offered outside of PJM?

A. Yes. For example, NEV has been successful in the California market in signing customers to discounted supply arrangements. The standard offer in California is a rolling four-week average of the all-hours Power Exchange price, applied to the average load shape of each rate class. NEV signed a one-year deal with the Association of California Water Agencies Utility Service Agency that "will result in significant savings . . . Our members can choose either a guaranteed discount from utility retail rates or a very attractive share-the-savings arrangement," according to a statement issued by the Agency. In Rhode Island, where the standard offer in 1998 is 2.80 cents per kWh, NEV signed up Providence Metallizing, a metal finishing company that will "lower its energy costs significantly because of its contract with New Energy Ventures," according to Barbara Gates-Garnick, president of NEV-New England. "We are very confident that we can cut energy bills for New Energy Ventures clients."

Q. What prices have been offered to customers in the New England pilot programs?

A. In the summer of 1996, when New England Power Pool average energy rates were running at \$22 to \$23 per megawatt-hour, suppliers offered a variety of retail deals that were at or just above the wholesale energy prices. For example, Wheeled

Electric Power delivered retail power at 2.29 cents per kWh. Granite State Energy offered 2.5 cents per kWh for anyone who signed up for two years. Enron offered the town of Peterborough, New Hampshire a \$25,000 donation for public works projects and power at 2.29 cents per kWh to every resident. In a response to an interrogatory from State Sen. Vincent J. Fumo in this proceeding, Enron stated that it is selling retail power in New Hampshire for a weight-averaged delivered price of 2.53 cents per kWh. In short, in all of these examples, the spread between wholesale costs and retail prices was very thin, suggesting that alternative suppliers may have been willing to forego some of the "mark-up" which the opposing parties are proposing in this proceeding.

Q. Does this conclude your testimony?

A. Yes.

**Resume of
Michael S. Freeman**

Office: 215-841-6865
Office Fax: 215-841-6959
E-mail: Mfreeman@PECO-Energy.com

Professional experience:

PECO ENERGY COMPANY, January 1992 to present.

- **Supply manager**, National Energy Team. Negotiates and prices national energy agreements, as well as analyzes and obtains the most economical, efficient energy supplies for customers.
- **Senior market specialist** in Pricing group, which is part of Strategic Planning and Analysis. Responsibilities included development, design, analysis, and regulatory aspects of special contracts, primarily for large industrial customers; customer negotiation, and rate design. Participated in decisions on pricing strategy and methodologies, and on general direction of Pricing group. Initiated and worked on marginal costing studies for electric and gas businesses. Led or assisted analysis and negotiation of approximately 15 power contracts.
- Helped develop PECO Energy's **Retail Wheeling Pilot Program**, especially unbundling of retail rates.
- Provided analytical support for testimony in pilot and restructuring litigation and settlement proceedings.
- **Was Company's lead modeler for Demand Side Management Plan**, filed with Pennsylvania Public Utility Commission in March 1995. Wrote or co-wrote the Plan, with exception of evaluation section. **Lead analyst and writer** for annual filings with PaPUC of Conservation and Load Management Programs, 1993 to 1995.
- **Key contributor** to McKinsey & Company studies of PECO response to deregulation (1993) and account planning reorganization (1994).

Performance Evaluations: Achieved highest possible rating for five consecutive years.

UNIVERSITY OF PENNSYLVANIA, Department of Energy Management and Policy, January 1989 to December 1992.

- **Research assistant.** Led or co-led two major research projects:
 - “The Costs of Greenhouse Gas Emissions,” for the World Bank, 1992. Oversaw six graduate students in collection and analysis of international data related to costs and emissions of power generation sites. Wrote most of the final 300-page version.
 - “The Environmental Impacts of Power Generation,” for the United Nations, 1991. Co-led seven graduate students in researching and writing.
- **Editor,** *Quarterly for the Center for Energy and the Environment*, 1990 to 1991. Responsible for content- and technical editing of articles.
- **Other research** included alternative methods of financing the Strategic Petroleum Reserve; analysis of eminent domain awards in electromagnetic field cases; symmetry and asymmetry between wholesale and retail gasoline prices.

THE PHILADELPHIA DAILY NEWS, 1978 to 1989.

- **City editor,** April 1985 to January 1989. Responsible for all local news coverage. Managed a staff of 50. Previous positions included reporter and assistant city editor.

Education:

Master of Science, University of Pennsylvania, 1991. Energy Management and Policy. Multi-disciplinary program with emphasis on micro-economics and economic modeling. I developed a concentration in statistics and econometrics.

Bachelor of Science, Temple University, 1976. Political Science.

“Industrial Power Distribution,” 10-week course given by Electrical Association of Philadelphia, 1996.

Workshops: “Advanced Real Time Pricing,” Electric Power Research Institute, March 1996; “Electric Utility Finance,” EXNET, April 1995.

Recent Papers:

“Utilities at the Crossroads.” Presented Jan. 14, 1997, Buying Electricity II, American Metal Market and Energy User News, Orlando, Fla.

Certificate of Service

I hereby certify that I have this date served the following Rejoinder Testimony In Support of the Joint Petition for Partial Settlement, Docket No. R-00973953 by facsimile, first class or overnight/express mail, upon the persons addressed below:

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