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(A LONDON-BASED
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October 27, 1997

BY HAND

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

Re: Pennsylvania Public Utility Commission v.
PECO Energy Company
Docket No. R-00973953

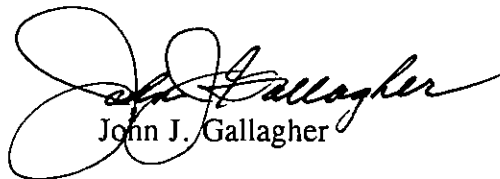
PROTHONOTARY'S OFFICE
91 OCT 27 PM 4:08

Dear Mr. McNulty:

Enclosed please find the original and three (3) copies of Enron Energy Services Power, Inc.'s Objections to PECO Energy Company's Interrogatories, Set XIV, to be filed in the above-captioned proceeding. A Certificate of Service is also enclosed.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/mas
enclosure

cc: All Parties on Certificate of Service
Daniel Clearfield, Esquire

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

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Docket No. R-00973953

OBJECTIONS OF
ENRON ENERGY SERVICES POWER, INC.
TO PECO, SET XIV

PROTHONOTARY'S OFFICE
97 OCT 27 PM 4:08

Pursuant to 52 Pa.Code § 5.432, Enron Energy Services Power, Inc. ("EESPI") hereby sets forth the following objections to the interrogatories of PECO Energy Company ("PECO") at Set XIV. EESPI also notes that the following objections were timely communicated to counsel for PECO pursuant to the procedural schedule established in Prehearing Order No. 1.

- 1. Please reference page 30, paragraph (h) of the Choice Plan. Please designate the full basis, including legal cites and opinions, for the position that Enron will not be or should not be a "public utility" under 66 Pa.C.S. § 102 if the Choice Plan is approved.

Objection. Essentially, this interrogatory seeks disclosure of the mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. The Commission's Rules and Regulations specifically prohibit disclosure of mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal

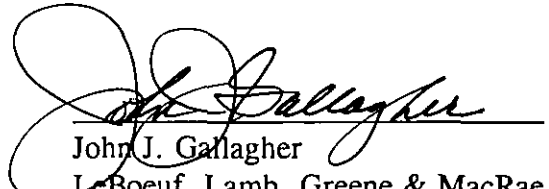
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research or legal theories. 52 Pa.Code § 5.323(a). Additionally, the information sought is protected from disclosure by the attorney client privilege.

Moreover, insofar as this interrogatory seeks the designation of "the full basis" for said position, this interrogatory still seeks counsel's conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. However, as previously noted, the Commission's Rules and Regulations specifically prohibit disclosure of mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. 52 Pa.Code § 5.323(a). Consequently, this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

Respectfully submitted,


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Attorney for Enron Energy
Services Power, Inc.

Dated: October 27, 1997

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:
:
:
:
:

Docket No. R-00973953

CERTIFICATE OF SERVICE

91 OCT 27 PM 4:08
PROTHONOTARY'S OFFICE

I hereby certify that I have on this 27th day of October, 1997, served a true copy of the foregoing Objections to PECO Energy Company's Interrogatories, Set XIV, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

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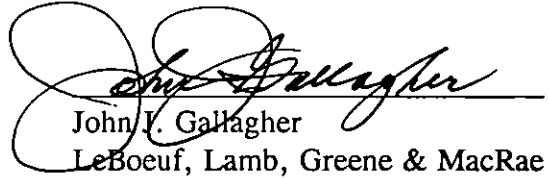
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October 27, 1997

KJR

James McNulty, Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.
PECO Energy Company
Docket No. R-00973953

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

PROTHONOTARY'S OFFICE
57 OCT 27 PM 4:07

Dear Mr. McNulty:

Enclosed please find for filing in the above-captioned proceeding, the original and three (3) copies of Enron Energy Services Power, Inc.'s Reply to the Answer of PECO Energy Company to Enron's Petition for Approval of its Electric Competition and Customer Choice Plan. A Certificate of Service is also enclosed.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,

Michael D. Klein
Michael D. Klein

MDK/mas
enclosure

cc: All Parties on Certificate of Service
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David Rolka, Commissioner
John Hanger, Commissioner
Robert Bloom, Commissioner
Nora Mead Brownell, Commissioner
Daniel Clearfield, Esquire

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45

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

DOCKET NO. R-00973953

PECO ENERGY COMPANY

PETITION OF ENRON ENERGY
SERVICES POWER, INC.

DOCKET NO. P-00971265

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PROthonary's OFFICE

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REPLY OF ENRON ENERGY SERVICES POWER, INC.
TO THE ANSWER OF
PECO ENERGY COMPANY TO
ENRON'S PETITION FOR APPROVAL
OF ITS ELECTRIC COMPETITION AND CUSTOMER CHOICE PLAN

On October 20, 1997, PECO Energy Company ("PECO") filed its answer ("Answer") to the Petition of Enron Energy Services Power, Inc. ("Enron") for approval of Enron's Electric Competition and Customer Choice Plan (the "Choice Plan"). The Commission has established a mid-November hearing schedule for consideration of the Choice Plan and Enron filed its direct case in support of such plan on October 24, 1997. Ultimately, therefore, this case will be decided upon the evidence and the merits of the Choice Plan and the Partial Settlement, respectively, and not upon the heated and unsupported rhetoric which PECO has chosen to utilize to attack the Choice Plan.

Even a casual reader of the Answer will note that, while PECO contends that the Choice Plan is not consistent with the Electric Competition and Customer Choice Act (the "Act") and that it cannot work, the Answer nowhere provides a credible supporting case

for its claims. PECO's "Answer" is actually nothing more than a continuation of its tired campaign to impugn Enron's motives and to attack Enron as an out-of-state corporation.

The extent to which PECO's public relations efforts has infected its legal papers is, perhaps, the most unfortunate aspect of PECO's Answer. Reminiscent of the "carpetbagger" vitriol directed against out-of-staters over one hundred years ago, allusions to Enron's corporate location in Texas are spread liberally, and disparagingly, throughout PECO's papers. This approach is as misguided as it is silly. Nowhere has PECO demonstrated that the General Assembly hung out a "Pennsylvania Only" sign when it passed the Act. The state legislature and Governor Ridge surely recognize, as PECO does not, that this Commonwealth only benefits when an out-of-state company, such as Enron, invests millions of dollars to seek to obtain customers and to conduct business in Pennsylvania. And, the Commission is well aware that affiliates of Enron have already spent significant amounts of money and time in an effort to ensure that the benefits of competition and lower electric rates are quickly and surely brought to Pennsylvania. Enron has made this investment because it is serious about bringing the benefits of electric competition to the residents of this Commonwealth.

Indeed, that is what the Act is all about -- namely, putting in place a statutory and regulatory regime that encourages potential energy supply competitors, both from within and outside Pennsylvania, to bring the benefits of robust competition into the formerly monopoly dominated service territories of Pennsylvania's incumbent electric utilities. Moreover, Enron contends that encouraging out-of-state companies into the Pennsylvania electric market is symbolic of Pennsylvania's overall business policy of encouraging non-Pennsylvania companies to relocate their headquarters and operating plants in Pennsylvania, as

evidenced by the frequent advertisements in *The Wall Street Journal* and other business publications featuring Governor Ridge touting Pennsylvania as a great state for companies to do business. PECO, on the other hand, has failed to demonstrate a similar commitment to permitting its customers to enjoy the benefits of competition for retail generation business, evidenced by its repeated efforts to evade the rigors of doing business under a competitive regime by painting Enron as an outsider with no connections to Pennsylvania or concern for the citizens of this Commonwealth.

PECO's blind defense of the Partial Settlement, however, has caused PECO to hurl charges at Enron that "boomerang" doubly hard at itself. PECO charges, for example, that Enron hopes to "walk away" with a "handsome profit" from a securitization arbitrage of over one billion dollars. Answer at 5. Even if that statement was accurate (and it is a simplistic overstatement), it ignores the fact that the Choice Plan will produce rates for PECO's customers which are, at least, one billion dollars lower in the aggregate than those that will result if the Partial Settlement is implemented. If Enron stands to make a handsome profit while at the same time offering customers a 20% rate reduction, let PECO explain what its projected profit will be under the Partial Settlement which proposes to provide rate reductions which are only one-half of those under the Choice Plan.

Similarly, PECO castigates Enron for proposing to securitize PECO's stranded costs at an interest rate of 9.66%, despite the fact that that rate is lower than the implicit financing cost utilized by PECO in establishing the competitive transition charges under the Partial Settlement. PECO attempts to confuse customers by alleging that Enron's financing plan provides for exorbitant interest rates that are significantly above market without ever mentioning the implicit financing cost under the Partial Settlement. The fact that PECO could

securitize its stranded costs at a lower interest rate than provided in the Choice Plan is irrelevant as far as its customers are concerned — PECO doesn't plan on giving its customers the benefit of the lower interest rate that it may be able to obtain to finance its stranded costs. PECO plans to keep that enormous hidden benefit for itself. Obviously, PECO hopes that if it can throw enough mud at Enron, everyone will forget that the Partial Settlement likely will allow PECO to overcollect the \$5.461 billion stranded costs agreed to in the Partial Settlement. PECO also apparently hopes that consumers will forget that, unlike Enron's Choice Plan which will provide refunds to consumers of any stranded cost overcollections, if PECO overcollects its stranded costs, the Partial Settlement allows PECO to keep 100% of any overcollections in its own coffers without any obligation to return a penny to its customers. In questioning whether an out-of-state company can have the interests of Pennsylvania consumers at heart, it should be remembered that PECO — a Pennsylvania company — has brought its customers the highest electric rates in this Commonwealth. Now PECO asks them to overpay for its already bloated stranded costs, and to do so while it attempts to stifle the competitive benefits which the Act strives to give them. The facts and evidence will leave no doubt that it is Enron which is seeking to advance the interests of Pennsylvania customers.

PECO's Answer also contends that the Choice Plan "cannot and will not work." Answer at 6. At it turns out, however, this transparent threat in PECO's Answer is that the Choice Plan cannot work because PECO will do everything in its power to ensure that it does not work, regardless of whether the Choice Plan would bring benefits to its customers. PECO never addresses the issue of whether the Choice Plan could work if PECO agreed to cooperate with all the parties to bring the obvious benefits of the Choice Plan to its customers. Whether PECO can make good on its threat to insure that the Choice Plan does not work is a matter for

this Commission to answer and take into account in determining PECO's eligibility for stranded cost recovery. If PECO makes good on this threat, its customers will be deprived of billions of dollars of needed rate relief and denied the benefits that competition undoubtedly can bring to markets.


The significant efforts that Enron has put forth to bring the Choice Plan to PECO's customers should demonstrate that Enron stands ready to take the necessary steps to make the Choice Plan a reality for consumers. PECO, on the other hand, has shown clearly where it stands on the issue. Even though the Choice Plan guarantees PECO full upfront recovery of its \$5.461 billion in stranded costs as determined under the Partial Settlement, PECO still adamantly opposes it. Apparently, even the "full loaf" (see Answer at 5) is not enough to satisfy PECO.

The reader must wonder why PECO's arguments are so shrill. If Enron's Choice Plan was as empty and unworkable as PECO claims, it could be rebutted in a calm and serious manner. Perhaps PECO's tone reveals its underlying fear that the consuming public, and the officials charged with their protection, will realize upon close examination that the Choice Plan presents a competitive model which offers PECO's consumers and the Pennsylvania economy benefits far in excess of those offered by the Partial Settlement.

Enron has already filed its evidence in this proceeding. PECO will shortly file its evidentiary case, followed by the submission of Enron's rebuttal case. When the smoke clears, Enron is confident that the evidence will demonstrate that the Choice Plan will save customers more than one billion dollars over the savings offered by the Partial Settlement and will bring real and meaningful competition to this Commonwealth, resulting in even further benefits to Pennsylvanians. In contrast, Enron believes that the evidence will demonstrate that

the Partial Settlement will cost customers billions of dollars in stranded cost overpayments and billions of dollars more in lost savings due to the long delay in introducing electric competition in Pennsylvania. Ultimately, this case will be about facts, not insults and radio sound bites. The issues will be joined shortly. Enron looks forward to presenting its case to the electric consumers of Pennsylvania, the Commission and other interested parties.

Respectfully submitted,



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VERIFICATION

James Steffes states that he is authorized to and does make this verification; and that the facts set forth above are true and correct to the best of his knowledge, information and belief and he expects said will be proven the same at any hearing hereof. This statement is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



Dated:

10/27/97

97 OCT 27 PM 4:07
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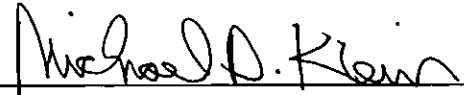
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Attorney for Enron Energy
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97 OCT 31 AM 9:38

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Jessica N. Cone
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October 27, 1997

Via Facsimile & U.S. First Class Mail

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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; Petition of Enron Energy Service Power, Inc.
P-00971265.

Dear Counsel:

Enclosed are two copies of PECO Energy Company's Interrogatories to Enron, Set XVI numbers 1 through 21. Please note that the name Enron, as used in these interrogatories, refers to Enron Corporation, Enron Power Marketing, Inc., Enron Energy Services Power, Inc., and any company or entity affiliated with any of those three companies. For each answer, please identify the person that prepared the answer and, if different, the person who will be available to testify regarding the answer.

Sincerely,

Paul Bonney/mbo

Paul R. Bonney

KJR

PRB/mbo
Enclosures

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

Certificate of Service

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

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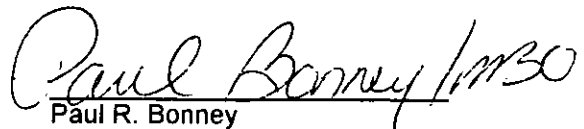
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KJR

Re: PECO Restructuring
Docket No. R-00973953

Dear Mr. McNulty:

I enclose for filing an original and three copies of the the Response of New Energy Ventures and Conectiv to PECO Energy Company's Petition for Reconsideration.

Sincerely,

Joseph A. Dworetzky

JAD:kbs

encl.

cc: Certificate of Service (w/encl.)

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OCT 28 1997

PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

PECO Energy Company's Application : R-00973953
for Approval of its Restructuring Plan :
and Joint Petition for Partial Settlement :

Petition of Enron Energy Services Power, Inc., : P-00971265
for Approval of an Electric Competition and :
Choice Plan and for Authority Pursuant to :
Section 2807(e)(c) of the Public Utility Code :
to Serve as the Provider of Last Resort in the :
Service Territory of PECO Energy Company :

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**RESPONSE OF NEW ENERGY VENTURES
AND CONECTIV TO PECO ENERGY COMPANY'S
PETITION FOR RECONSIDERATION**

**To The Honorable Chairman and Commissioners
of the Pennsylvania Public Utility Commission:**

On October 21, 1997 PECO Energy Company ("PECO") filed a Petition (the "Petition") requesting the Commission to reconsider its October 9, 1997 Order (the "October 9 Order"). The October 9 Order had two key provisions. First, the Order consolidated Enron's Petition for Approval of an Electric Competition and Customer Choice Plan (the "Enron Petition") with pending proceedings to consider the approval of a partial settlement of key parts of PECO's restructuring case (the "Proposed Settlement").

Second, the October 9 Order provided that the Commission would not only consider the Proposed Settlement and the Enron Petition at the same time, but also

required that the parties complete the record in PECO's restructuring case. The Commission was explicit in its expectation: it said that it wanted to be in a position to enter a final order that would resolve PECO's restructuring, whether or not the Proposed Settlement or the Enron Petition is approved. As the Commission put it:

We believe that it is reasonable, appropriate, and in the public interest that we be afforded a full and complete record upon which we can make an informed decision in PECO's restructuring case premised upon the totality of the evidentiary record.

In seeking reconsideration of the October 9 Order, PECO's strategy is obvious. The Proposed Settlement was proposed as a "package" deal. Notwithstanding the Commission's well recognized power to modify settlements to achieve the public interest,¹ PECO has repeatedly taken the position that if there is any modification to the Proposed Settlement, it will treat the Proposed Settlement as void and claim that its due

¹ It is beyond question that the Commission has the authority, in its discretion, to modify the Partial Settlement, and the parties cannot circumscribe that authority by their private agreement. See, e.g., Duquesne Light Co. v. Pennsylvania Public Utility Comm'n, 96 Pa. Cmwlth. 398, 507 A.2d 1274 (1986) (court upheld the Commission's approval of a stipulation submitted by the parties which modified certain aspects of the proposed market price capping methodology); Glenside Suburban Radio Cab. Inc v. Pennsylvania P.U.C., 49 Commwlth. 523, 411 A.2d 874 (1980) (the Commission "is not bound by stipulations or restrictive amendments submitted by parties before it"). The Glenside Court noted that the power to impose just and reasonable conditions in such an order implies the power to reject conditions, even if imposed by agreement of the parties, that are deemed to be unjust and unreasonable. Id. at 526, 411 A.2d at 876.

process rights entitle it to start again at square one, with the implicit threat of long and costly delays in rate relief for Pennsylvania consumers.

While PECO now apparently recognizes that its proposal will be tested against the Enron Petition, it still wants to limit the Commission's ability to choose: PECO wants to restrict the Commission's choices to the Proposed Settlement and the Enron Petition.

The choice that PECO would give the Commission is inappropriately limiting. Section 2806(F) of the Electric Generation Customer Choice and Competition Act (the "Act") is quite clear with respect to the Commission's powers:

The Commission shall review the restructuring plan filed by each electric utility and shall, after open evidentiary hearings with proper notice and an opportunity for all parties to cross-examine witnesses, issue an order accepting, modifying or rejecting such plan at the earliest date possible.

66 P.S. § 2806(F) (emphasis added). If presented with a restructuring plan,² the Commission need not accept every last provision; it may - indeed it must - make such changes as are appropriate to achieve the public interest. A party aggrieved by such modifications may, perhaps, pursue an appeal, but they are not entitled to start the process over again.³

² NEV and Conectiv believe that the Proposed Settlement is a restructuring plan within the meaning of the Act.

³ Section 2806(f) provides that if the Commission rejects the plan - as opposed to modifying it - it shall

Against this background, the wisdom of the October 9 Order is evident. Should it appear that neither the Proposed Settlement nor the Enron Petition is acceptable in toto, the Commission will have before it the entire restructuring case - and it will be, indisputably, in a position to enter a final order that will achieve the public interest. The Commission is right to preserve this flexibility. At the hearings held October 14 to 16, the members of the Pennsylvania Electric Competition Coalition, NEV, Conectiv and Enron (the "Coalition"), proved that under the Proposed Settlement PECO does not recover \$5.461 billion on account of its stranded costs as it has widely advertised; in fact, the actual present value of the payments PECO will receive is approximately \$8.2 billion. The Coalition has proposed modifications to the Proposed Settlement that would reallocate the difference - \$2.8 billion - to additional guaranteed rate decreases for customers and to creating reasonable customer credits for the consumer to use in shopping for energy (so called "generation credits"). Similar modifications were proposed by the MidAtlantic Power Supply Association ("MAPSA").

While there is no reason to debate at this time the merits and problems of the Proposed Settlement or the Enron Petition, there is every reason for the Commission

"State the specific reasons for rejection and direct the electric utility to file an alternative plan addressing these objections within 30 days of the entry date of the Commission Order rejecting the Plan. The Commission shall review the alternative plan, solicit comments from interested parties and issue a final order within 45 days of the filing of the revised Plan."

to reserve to itself sufficient flexibility to be able to enter whatever order will serve the public interest. For that reason the Commission should preserve, without modification, the October 9, 1997 schedule.

The supposed pail that the October 9 Order will cast over future settlements is nonsense. First of all, PECO never negotiated a true settlement; it negotiated a partial arrangement which resolved some of the issues with some of the parties. This is not a situation where a comprehensive settlement is frustrated by a lone recalcitrant; the Proposed Settlement was only made by excluding an entire industry from the process. If electric restructuring is a three legged stool, as some have suggested; the utility and its customers are only two legs of the stool. The third leg of the stool - competitive suppliers - has been snapped off by PECO's determination to exclude competitors from the settlement discussions. Under these circumstances, PECO cannot complain that the stool won't stand on just two legs. For this reason the Commission should not accept PECO's protests that the October 9 Order will adversely effect the settlement process. If anything, the October 9 Order will encourage parties to pursue truly "global" settlements - either in this case or otherwise.

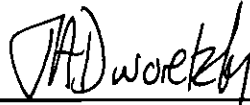
Second, PECO is disingenuous when it protests that it has a right to present the Commission with a "take it or leave it" proposal. During discovery the Coalition obtained copies of the attached "side letter" between PECO and CEPA, et al. The Agreement provides that if the Proposed Settlement is approved and becomes final,

PECO will pay \$100,000 in legal fees to Community Legal Services and make a \$3,000,000 payment to the Delaware Valley Community Reinvestment Fund. The "side letter" goes on to provide that in the event that the Commission does not approve the Partial Settlement without modification, but ultimately does approve a modified settlement, the side letter will still be valid so long as CEPA joins in the modified settlement. Thus, while PECO would have this Commission believe that the Proposed Settlement is unmodifiable, the side letter makes clear that, in at least this instance, PECO has made contingency plans based on the realization that a modification may occur.

Third, PECO has little room to criticize the Commission's October 9, 1997 Order, in light of the fact the Proposed Settlement contains a provision to the effect that every party who signed the settlement agreement became bound to "support" the Proposed Settlement and not to seek alternatives. While NEV and Conectiv believe that such a provision is contrary to public policy and unenforceable, its existence undoubtedly casts a chill over the ability of many of the other parties to the Proposed Settlement to bring to the Commission a complete analysis of the serious problems with the Proposed Settlement. If the entire restructuring case is submitted, however, the Commission will be able to see all the significant components of the litigation positions of the parties. Thus, even if PECO continues to insist that the parties are locked in to supporting the Proposed Settlement, their litigation positions will speak for them.

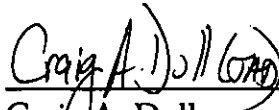
For all the foregoing reasons, NEV respectfully requests that the Commission deny the Petition.

Respectfully submitted,



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Attorneys for New Energy Ventures, Inc.



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Attorney for Conectiv Energy

Dated: October 27, 1997

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FAX 215-981-0434

SIDE LETTER TO PARTIAL SETTLEMENT AGREEMENT

This Side Letter contains an agreement between PECO Energy Company ("hereinafter "PECO") and the following group of organizations and persons which includes Consumers Education and Protective Association ("CEPA"), Tenants Action Group ("TAG"), Association of Community Organizations for Reform Now ("ACORN"), and John W. Long, Jr. (hereinafter collectively "CEPA et al."),

This agreement is based on consideration provided by the parties both in this agreement and in the Partial Settlement contained in the Joint Petition for Partial Settlement of PECO Energy's Proposed Restructuring Plan and Application for a Qualified Rate Order dated August 25, 1997 (Pa. P.U.C. Docket No. R-00973953), which is incorporated herein by reference (hereinafter "Partial Settlement").

For good consideration and intending to be legally bound, the parties agree as follows:

1. CEPA et al. through counsel shall execute the "Partial Settlement."

2. Within ten (10) days after the Pennsylvania Public Utilities Commission's Order approving the Partial Settlement without modification becomes final and non-appealable, PECO shall pay to CEPA et al.'s counsel Community Legal Services, Inc. the sum of \$100,000 for attorney's fees and costs arising from CEPA et al.'s participation in In the Matter of: Application of PECO Energy Company for Approval of its Restructuring Plan (Pa. P.U.C. Docket No R-00973953).

3. Within thirty (30) days after the Pennsylvania Public Utilities Commission's Order approving the Partial Settlement becomes final and non-appealable, PECO shall pay the Delaware Valley Community Reinvestment Fund the sum of Three Million Dollars (\$3,000,000) in three installments of One Million Dollars (\$1,000,000) each according to the following schedule:

(a) The first installment shall be due thirty (30) days after the date the Commission Order approving the Partial Settlement without modification becomes final and non-appealable;

(b) The second installment shall be due one year after the due date of the first installment;


(c) The third installment shall be due one year after the due date of the second installment.

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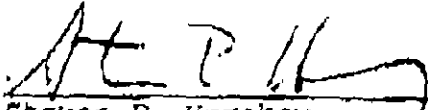
PECO LEGAL DEPT

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4. In the event that the Commission does not approve the Partial Settlement without modification, but that the Commission does ultimately approve the Partial Settlement as amended, the parties herein agree that this Side Letter shall constitute a Side Letter to the amended Partial Settlement. This Paragraph is subject to the condition that CEPA et al. join in such amended Partial Settlement.



Thomas P. Hill, Jr.
Vice-President and Controller
PECO Energy Company



Steven P. Hershey
Philip A. Bertocci
Counsel for CEPA et al.

Date: 8/25/97.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 1997, I caused a true and correct copy of New Energy Ventures and Conectiv to PECO Energy Company's Petition for Reconsideration via hand delivery and regular mail, upon the following counsel as noted. I further certify that the manner of service satisfied the requirements of 52 PA. Code §§ 5.75 and 1.54.

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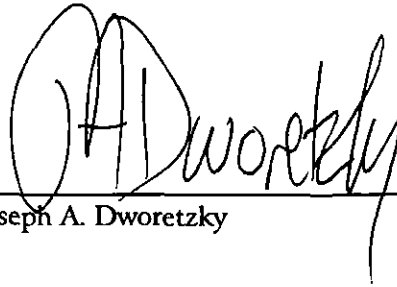
Michael L. Kessler, Esquire
Vice President, General Counsel
American Energy Solutions, Inc.
111 South Alfred Street
Alexandria, VA 22314

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

Susan M. Shanman, Esquire
212 North 3rd Street
Suite 203
Harrisburg, PA 17101-1505

Paul L. Zeigler, Esquire
Zeigler & Zimmerman, P.C.
355 North 21st Street
Camp Hill, PA 17011-3707

Richard Silkman
76 Main Street
Yarmouth, ME 04096



A handwritten signature in black ink, appearing to read "J. Dworetzky", is written over a horizontal line. The signature is stylized and cursive.

Joseph A. Dworetzky

Date: October 27, 1997

LAW OFFICES

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

204 STATE STREET

HARRISBURG, PA 17101

(717) 234-9730

FAX (717) 234-9734

WALTER W. COHEN

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OCT 28 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

October 27, 1997

Via Facsimile and U.S. First Class Mail

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

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

KJR

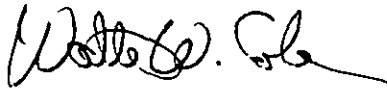
**Re: Application of PECO Energy Company for Approval of its Restructuring
Plan Under Section 2806 of the Public Utility Code
Docket No. R-00973953;
Petition of Enron Energy Service Power, Inc.
Docket No. P-00971265**

Dear Counsel:

Enclosed are two copies of Indianapolis Power and Light Company's Interrogatories to Enron. The answers provided should first restate the question asked and also identify the person(s) supplying the information, and, if different, the person who will be available to testify regarding the answer.

We would appreciate receiving these responses as quickly as possible, in accordance with the time frame being followed in preparation for the Hearings beginning on November 17, because it may be necessary to schedule depositions of the appropriate witness or witnesses before that date.

Sincerely,



Walter W. Cohen

DOCUMENT
FOLDER

WWC/dhs

Enclosures

cc: Certificate of Service (w/enclosure)

James McNulty, Acting Prothonotary (Certificate of Service Only)

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OCT 28 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of October, 1997, served a copy of the foregoing PA PUBLIC UTILITY COMMISSION PROCEEDING OFFICE

document by U.S. Mail, upon the persons addressed below:

Via Regular Mail

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

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

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

David Boonin, Esquire
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New Energy Ventures
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Noel H. Trask, Esquire
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Greensburg, PA 15601

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Allentown, PA 18101
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DuPont Power Marketing Inc.
P.O. Box 2197, CH-1038
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Pennsylvania Power & Light
1735 New York Avenue, NW
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Neil Talbot
81 Grand Street, No. 5
New York, NY 10013

EX-100

OCT 30 1997

DOCUMENT FOLDER

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Fumo)

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Camp Hill, PA 17011-3707

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(Counsel for Enron)

OBERMAYER REBMANN MAXWELL &
HIPPEL LLP



Walter W. Cohen, Esquire



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

IN REPLY PLEASE
REFER TO OUR FILE

R-00973953

014946 October 27, 1997 97 OCT 27 PM 3:38

Mr. John D. McMaster

RECEIVED
PROTHONOTARY'S OFFICE

Dear Mr. McMaster:

Thank you for your recent E-mail to Governor Tom Ridge concerning your support for the recently proposed plan of Enron to lower electric rates in the service territory of PECO Energy.

Please know that this matter is currently pending before the Commission, and I have taken the liberty of forwarding your letter to the Acting Secretary of the Commission so your comments can become a part of the official file in this proceeding.

Thank you again for your interest in this matter.

Sincerely,

Rosemary Chiavetta, Esq.
Director of Legislative Affairs

cc: The Hon. Tom Ridge
Acting Secretary McNulty

RECEIVED

OCT 28 1997

KJR

DOCUMENT
FOLDER

Gaumer, Colleen

From: GOVEMAIL
To: gaumer
Subject: Fwd:Electricity rate plans
Date: Mon, Oct 20, 1997 10:31AM

R-00973953

--simple boundary
Content-Type: text/plain; charset = US-ASCII
Content-Transfer-Encoding: 7bit

pls respond as appropriate and return - I will send from the public address

Thanks,
Barb Costanzo - 787-5825

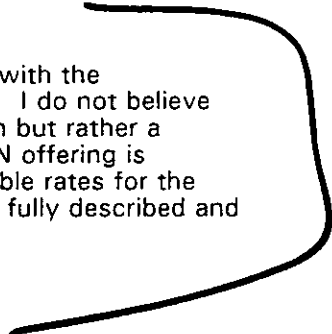
Forward Header

Subject: Electricity rate plans
Author: "John D. McMaster" <jjmcmno1@bellatlantic.net>
Date: 10/16/97 2:22 PM

Dear Sir,

Please be informed that I am not in agreement with the relatively inconsequential reduction offered by PECO. I do not believe this will lead to any substantial degree of competition but rather a controlled distribution of profits. I believe the ENRON offering is more likely to lead to fair competition and to reasonable rates for the public. I encourage you to have the ENRON position fully described and presented to the public.

I would appreciate your response. Thank you.



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Content-Disposition: attachment; filename = "RFC822.TXT"

LOCKED
OCT 28 1997

Received: from sparky.cmic.state.pa.us by smtpgate.gois.state.pa.us (ccMail Link to SMTP R6.0 RR6.0.0)
; Thu, 16 Oct 97 14:24:00 -0500
Return-Path: <jjmcmno1@bellatlantic.net>
Received: from state.pa.us by sparky.cmic.state.pa.us (SMI-8.6/SMI-SVR4)
id OAA25775; Thu, 16 Oct 1997 14:18:53 -0400
Received: from core.IConNet.NET by state.pa.us (5.x/SMI-SVR4)
id AA10584; Thu, 16 Oct 1997 14:39:06 -0400
Received: from preinstalledcom (20715980202.bellatlantic.net [207.159.80.202])
by core.IConNet.NET (IConNet Sendmail) with SMTP id OAA22984;
Thu, 16 Oct 1997 14:26:49 -0400 (EDT)
Message-Id: <34465B76.DCA@bellatlantic.net>
Date: Thu, 16 Oct 1997 14:22:46 -0400
From: "John D. McMaster" <jjmcmno1@bellatlantic.net>
X-Mailer: Mozilla 2.02E (Win95; U)
Mime-Version: 1.0
To: governor@state.pa.us
Cc: lieutenant-governor@state.pa.us, wkosoff@palegis.cmic.state.pa.us,
jhenning@palegis.cmic.state.pa.us, tplatts@palegis.cmic.state.pa.us,
ddelp@pasen.gov, garmstro@pasen.gov, hmowery@pasen.gov
Subject: Electricity rate plans

DOCUMENT
FOLDER

Senate of Pennsylvania



ORIGINAL

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

VINCENT J. FUMO
Chairman

PAUL S. DLUGOLECKI
Executive Director

DEMOCRATIC COMMITTEE ON APPROPRIATIONS

October 28, 1997

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OCT 28 1997

Via Hand Delivery

DOCUMENT
FOLDER

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

KJR

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

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

Dear Mr. McNulty:

Enclosed for filing is an original and three (3) copies of the Motion of Senator Vincent J. Fumo to dismiss Objections of Enron Corporation and to Compel Answer to Interrogatories.

Copies of the forgoing are being served on all parties of record.

Sincerely,

Christopher B. Craig
Counsel

cc: All counsel of record.

ORIGINAL RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

OCT 28 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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

+
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+
+
+

Docket No. R-00973953

DOCUMENT
FOLDER

MOTION OF SENATOR VINCENT J. FUMO TO
DISMISS OBJECTIONS OF ENRON CORPORATION
AND TO COMPEL ANSWER TO INTERROGATORIES

State Senator Vincent J. Fumo, through his undersigned counsel, hereby files this Motion to Dismiss Objections of Enron Corporation (hereinafter "Enron") and to Compel Answer to Interrogatories pursuant to 52 Pa.Code §5.342(e), and in support thereof avers as follows:

I. Factual Background

DOCKETED
NOV 03 1997

On October 22, 1997, Senator Vincent J. Fumo, in his official capacity, properly served Enron's counsel with a second set of interrogatories in response to the Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company (hereinafter "Enron Petition"). Said interrogatories included seventeen (17) separate requests for information or documents relative to specific provisions of the Enron Petition or information concerning parties who have provided testimony before this Commission concerning the Enron Petition.

On October 24, 1997, Senator Vincent J. Fumo was served with the Objections of Enron, a copy of which is attached hereto. Enron objects to approximately seven (7) different inquiries relative to the Enron Petition questioning, in part, the relevancy of the interrogatories.

II. Request for Dismissal of Enron's Objection to Question 1

Senator Fumo propounded the following interrogatory to which Enron has objected:

- 1) **Please identify all individuals who, as agents or employees of Enron, participated in either the deliberation, development or filing of the "Petition of Enron Energy Services Powers, Inc. for Approval of An Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to serve As the Provider of Last Resort in the Service Territory of PECO Energy Company" (hereinafter "the Enron Petition").**

Enron has objected to the request of Senator Fumo for Enron to identify those individuals who, as agents or employees of Enron, participated in the deliberation, development or filing of the Enron Petition. *See*, Fumo Interrogatory, Set Two, question 1. Enron's objections are based on the following claims: 1) that the interrogatory is "broad, vague, unclear and misleading;" 2) that the interrogatory seeks disclosure of "mental impressions, conclusions or opinions of a representative or a participant respecting the value or merit of a claim;" and, 3) that the interrogatory would cause an "unreasonable annoyance, oppression, burden or expense." Pursuant to section 5.361(a) of the Commission's Rules of Procedures, Enron's objections are misplaced and without merit.

Identification of those individuals who participated in the crafting of the Enron Petition is neither misleading nor unclear. The inquiry seeks disclosure of those individuals who have a detailed knowledge of the provisions of the Enron Petition and who may be able to provide additional information concerning the impact or meaning of various sections of the Enron Petition — information that is clearly within the scope of permissible discovery. 52 Pa. Code § 5.341. The question is precise in its objective — simple identification of individuals who participated in the authorship of the Enron Petition, and does not intend to "mislead." Identification of potential witnesses or those persons with certain knowledge that may assist in the interpretation or understanding of the Enron petition is a reasonable inquiry. *See, Taracon v. Lehr*, 23 D.&C.2d

500 (1961) (York County Court of Common Pleas interpreting the permissible scope of discovery under Pa.R.Civ.P. 4003.1, upon which 52 Pa. Code 5.341 was based, determined that discovery of all persons who may have knowledge of relevant facts is proper.)

Senator Fumo's inquiry into the identity of those persons who participated in crafting Enron's proposal does not seek "mental impressions" of litigation strategy, nor does it seek disclosure of attorney-work product. Again, Enron's claim is simply wrong. Enron has submitted testimony of approximately seven different witnesses who may testify on behalf of the Company in support of the Enron Petition. Despite promises, Enron has yet to even indicate if any of the witnesses participated in the development of the Enron Petition, and thus would have a familiarity that would facilitate relevant inquiry into the purpose and intent of various provisions of the Petition.

Enron's objection that this inquiry imposes "unreasonable annoyance, oppression, burden or expense" is particularly disingenuous. Enron is a large corporation with operations in several countries and throughout the United States. In this proceeding, Enron is represented by no less than two different law firms and at least six attorneys. By contrast, Senator Fumo employs only one full-time legal counsel and possesses an extremely limited budget. Enron's refusal to provide a timely response to a reasonable inquiry is not only dilatory, but prejudices the ability of Senator Fumo to conduct an adequate inquiry into the provisions of the Enron Petition and its impact on Philadelphia area ratepayers. It is not enough for Enron to simply state that the inquiry is "unreasonable," they have to aver actual facts which support their objection — Enron has not. Though Enron has indicated it would provide "the names of all witnesses who worked on the Choice Plan and the Petition," to date, Enron has failed to provide this information.

III. Request for dismissal of Enron Objections to Question 7

Senator Fumo propounded the following interrogatory to which Enron has objected:

- 7) **Please provide a detailed explanation of the meaning and consequence of paragraph 35(a) on page 28 of the Enron Petition. Please include a response to the following:**
 - a) **What is the meaning of the phrase “[s]uch terms will be incorporated into the Choice Plan?” Does this imply, directly or indirectly, that Enron, as the Provider of Last Resort if the Commission were to approve the Enron Petition, will assume all obligations otherwise assigned to PECO Energy Company in the Partial Settlement, including side letters of agreement?**

Enron has objected to the seventh interrogatory of Senator Fumo which asks if paragraph 35(a) on page 28 of the Enron Petition implies that Enron will assume all obligations otherwise assigned to PECO Energy Company, including side letters of agreement. Enron has stated an objection to the portion of the inquiry that relates to “side letters of agreement” asserting that Enron has not reviewed the impact of its Petition on the letters of agreement. Despite proffering their objection, Enron has failed to cite any recognized reason in support of their objection.

Since the week of October 6, 1997, Enron has had in its possession a copy of a side letter of agreement between Community Legal Services, CEPA and PECO Energy Company. Having ample opportunity to review the impact of the Enron Petition on existing side letters of agreement, Enron has failed to state a valid objection to this interrogatory. The inquiry is simple — does paragraph 35(a) of the Enron Petition include side letters of agreement, such as the one between Community Legal Services, CEPA and PECO Energy Company? Enron has had opportunity to consider the impact of their Petition, yet their failure to fully evaluate its effect on collateral agreements represents a serious hindrance to the ability of parties to fully evaluate the value of the Enron Petition, and its impact on the interests of the signatories to the Joint Settlement.

IV. Request for Dismissal of Enron's Objections to Questions 13 - 16

Senator Fumo propounded the following interrogatories to which Enron has objected:

- 13) Please indicate whether or not any employee of Enron or any agent acting on behalf of Enron is a member, officer, employee or associated with the organization "Consumer's Coalition for Choice?" If so, please indicate the nature of the association, and the period of time of said association.**
- 14) Please provide a detailed account of all monetary or in-kind contributions made, directly or indirectly, to the "Consumer's Coalition for Choice" by any Enron officer, employee or agent acting on behalf of Enron. Please include a list of any contributions made by any other corporation, subsidiary, affiliate, organization or group controlled or directed by Enron to the "Consumer's Coalition for Choice." Please indicate the amount of the contribution, the date the contribution was made, and its intended purpose.**
- 15) Please indicate whether or not any employee of Enron or any agent acting on behalf of Enron has provided or discussed the Enron Petition or the Enron "Choice Plan" with any person associated, directly or indirectly, with the "Consumer's Coalition for Choice." If so, please indicate the date and nature of the discussion.**
- 16) Please provide any additional information that may be in the possession of Enron concerning the "Consumer's Coalition for Choice" which is relative to the organization's function, its principle place of business, or its membership.**

Enron has objected to the series of questions propounded by Senator Fumo that seek to obtain background information concerning the organization "Consumer's Coalition for Choice" and to explore any relationship that may or may not exist between Enron and the "Consumer's Coalition for Choice." Enron has objected to these interrogatories, asserting that the information is "neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence." Enron's narrow view of relevancy is without legal support.

This Commission conducted a series of public input hearings in the PECO Energy Company service territory on October 10, 1997, during which members of the public offered sworn testimony under oath in support or opposition to the Petition for Partial Settlement submitted on behalf of several consumer advocacy organizations in Southeastern Pennsylvania. During the hearing conducted in Philadelphia, individuals claiming to be members of the "Consumer's Coalition for Choice" handed out flyers indicating support for the Enron "Choice

Plan” as being in the interest of “consumers in the Greater Philadelphia area.” *See*, Exhibit A. Said flyer was given to Commission members, individuals presenting testimony, and members of the Philadelphia media. Furthermore, official testimony was presented to the Commission asserting that members of the “Consumer’s Coalition for Choice” were paying individuals \$100 each to state their support for the Enron “Choice Plan” and requested the Commission to investigate such allegations. *See*, Public Input Hearing of October 10, 1997, page 390-91, Exhibit B. Though a few individuals did present brief testimony stating their support for the “Choice Plan” it is unknown if any of those parties received payment for their testimony or if they are associated with the “Consumer’s Coalition for Choice.”

Aside from the fact that such allegations raise serious concerns about the integrity of the public hearing process, an inquiry into the bias or credibility of witnesses testifying in support of the “Choice Plan” is directly relevant to the subject of these proceedings — the merit and value of the Enron Petition. No information has been presented to Senator Fumo that would enable him to make any inquiry directly to representatives of the “Consumer’s Coalition of Choice.” As such, a reasonable alternative was sought, requesting relevant information about “Consumer’s Coalition for Choice” to be submitted by Enron, whose “Choice Plan” was advocated by the “Consumer’s Coalition for Choice,” and exploring if there exists a relationship between Enron and the organization. If Enron does not possess any discoverable information about the “Consumer’s Coalition for Choice” or if the company does not have any direct or indirect relationship with the organization, then Enron can simply answer in the negative. However, it is particularly disconcerting that an organization with no official record in the Commonwealth of Pennsylvania, and that has not been involved in these proceedings, suddenly emerges in support of a proposal that was only made public two days prior to the hearing.

WHEREFORE, Senator Vincent J. Fumo respectfully requests that Enron be compelled by an order of the presiding officers to fully answer Fumo Interrogatories, Set 2, questions 1, 7, 13, 14, 15 and 16.

Respectfully Submitted,



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

Counsel for Senator Vincent J. Fumo

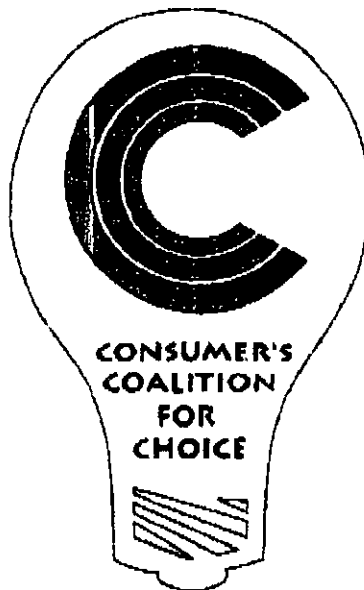
October 28, 1997

EXHIBIT -A-

20% SAVINGS

Consumer's Coalition for Choice

**To: Governor Tom Ridge
and Members of the
Pennsylvania Public
Utility Commission**



We, the citizens of the Greater Philadelphia area urge you to adopt the "Choice Plan." This plan will allow us the right to choose our electricity provider and will also provide a 20% across the board cut in our electric rates. We believe that for too long consumers in the Greater Philadelphia area have paid too much for our electricity. The time is now for greater choice and greater savings. PLEASE ACT NOW!!!

**For More Information
Call: (215) 805 - 8067**

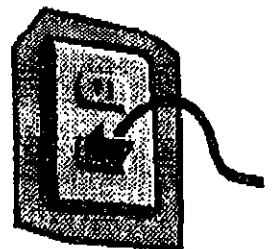


EXHIBIT -B-

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

-----x DOCKET NO.
 Pennsylvania Public Utility : R-00973953,
 Commission versus PECO Energy : R-00973953C0001-
 Company : C-0007
 :

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

Public Input Hearing. :
 -----x

Pages 256 through 408 State Office Building
 Broad & Spring Garden Streets
 Philadelphia, Pennsylvania

Friday, October 10, 1997

 The above-entitled matter met, pursuant to
 notice, at 11:05 a.m.

BEFORE: THE HONORABLE MARLANE R. CHESTNUT
 THE HONORABLE CHARLES E. RAINEY, JR.
 Administrative Law Judges

COMMISSIONER NORA MEAD BROWNELL
 COMMISSIONER JOHN HANGER

HOLBERT ASSOCIATES
 1720 BENNINGTON DRIVE
 HARRISBURG, PENNSYLVANIA 17112-8517
 (717) 540-9669

1 crying about gas bills, she's crying about electric
2 bills and, you know, I'm just tired of seeing her
3 hurt like that there, you know, so I just came to
4 speak my mind.

5 That's all. Thank you.

6 JUDGE RAINEY: Thank you, Mr. Herring.

7 Sir?

8 Raise your right hand, please.

9

10 MICHAEL MORRILL, having been duly sworn,
11 was examined and testified as follows:

12

13 MR. MORRILL: It's been a long day. I'll try
14 to keep it short.

15 My name is Michael Morrill, M-O-R-R-I-L-L.
16 I live at 249 South Melville Street in Philadelphia
17 19139. I'm here representing the Pennsylvania
18 Consumer Action Network today, and talking about
19 disclosures, we are one of the few nonprofit groups
20 here today that's testified that doesn't get any-
21 thing from any of the companies, but if you want to
22 give us money, here's our business card. I have a
23 feeling, though, that after my testimony, that
24 nobody representing the utility industry is going
25 to want to give us anything.

1 Judge Rainey, I want to thank you, first of
2 all, for asking for that kind of disclosure, and I
3 would like to ask you, due to the rumors that are
4 circulating here in the corridors, of people being
5 paid to testify today, that you do some investi-
6 gation into that.

7 There's -- if people are being paid to
8 testify, then that is not good testimony and I
9 wish, I wish that any paid testimony for people who
10 are not registered lobbyists will be stricken from
11 the testimony, stricken from the record.

12 I'd also like to say that I'm not a fan of
13 either PECO or ENRON, but one of the things that is
14 concerning me is materials like this that are being
15 circulated without any organization being listed on
16 here. Who is the Consumers Coalition for Choice?
17 There's no phone number, there's no address, there's
18 no documentation about who's providing this stuff.
19 We know for a fact that people from Houston are
20 standing downstairs passing it out, but the people
21 at the table downstairs are denying that they work
22 for ENRON, so I would like that kind of documen-
23 tation.

24 This morning's Philadelphia Inquirer quotes
25 Thomas P. Hill, Junior, PECO Vice President and

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<i>Pennsylvania Public Utility Commission</i>	:	
	:	
v.	:	Docket No. R-00973953
	:	
<i>PECO Energy Company</i>	:	

**OBJECTIONS OF
ENRON ENERGY SERVICES POWER, INC.
TO SENATOR VINCENT J. FUMO,
SET II**

Pursuant to 52 Pa.Code § 5.432, Enron Energy Services Power, Inc. ("EESPI") hereby sets forth the following objections to the interrogatories of Senator Vincent J. Fumo ("Senator Fumo") at Set II. EESPI also notes that the following objections were timely communicated to counsel for Senator Fumo pursuant to the procedural schedule established in Prehearing Order No. 1.

- 1. Please identify all individuals who, as agents or employees of Enron, participated in either the deliberation, development or filing of the "Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to serve as the Provider of Last Resort in the Service Territory of PECO Energy Company" (hereinafter "PECO Petition").**

Objection. First, the interrogatory question is broad vague, unclear and misleading. Second, The Commission's Rules and Regulations specifically prohibit disclosure of mental impressions, conclusions or opinions of a representative of a participant respecting the

value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony and the like. 52 Pa.Code § 5.323. Insofar as this interrogatory question seeks disclosure of privileged attorney-work product, the request remains outside the scope of discoverable information, pursuant to the Commission's Rules and Regulations at 52 Pa.Code § 5.321. A list of such attorneys and individuals or participants other than attorneys could not lead to the discovery of admissible evidence. Therefore, the interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

Third, the provision of information as requested for EESPI would require a special study and would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

Notwithstanding these objections, EESPI notes that it has already presented to the parties a list of witnesses it expects to present. EESPI will provide the names of all witnesses who worked on the Choice Plan and the Petition.

3. **With respect to each individual identified in the answers to questions (1) and (2), please provide the following:**
- (a) . . .
 - (b) . . .
 - (c) **any documents, including work papers, prepared or generated by said individual which, in whole or in part, contain the facts and opinions to which the person is expected to testify, for whom prepared and when, and identify further each person to whom the document or documents were given or distributed.**
 - (d) . . .

Objection in part. EESPI only objects to that portion of the question requesting that EESPI "identify further each person to whom the document or documents were given or distributed." The submission of such information would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361. Moreover, subpart (c) seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a). To the extent not specifically objected, EESPI's objection at FUMO Set 2, question 1, *supra*, is incorporated herein.

EESPI will provide responses to subparts (a), (b), (d) and to the remainder of subpart (c).

7. Please provide a detailed explanation of the meaning and consequence of paragraph 35(a) on page 28 of the Enron Petition. Please include a response to the following:

(a) What is the meaning of the phrase "[s]uch terms will be incorporated into the Choice Plan?" Does this imply, directly or indirectly, that Enron is the Provider of Last Resort if the Commission were to approve the Enron Petition, will assume all obligations otherwise assigned to PECO Energy Company in the Partial Settlement, including side letters of agreement?

(b) . . .

Objection in part. EESPI only objects to that portion of subpart 7(a) which requests the question requesting that EESPI provide the impact of its Petition or its Choice Plan on "side letters of agreement." EESPI is aware of only one such "side letter agreement." Regarding that side letter agreement, EESPI has not reviewed the impact, if any, that its Petition

or the Choice Plan will have upon that agreement at this juncture. In all other respects, EESPI will provide a response to FUMO Set 2, Question 7.

- 13. Please indicate whether or not any employee of Enron or any agent acting on behalf of Enron is a member, officer, employee or associated with the organization "Consumer's Coalition for Choice"? If so, please indicate the nature of the association, and the period of time of said association.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

- 14. Please provide a detailed account of all monetary or in-kind contributions made, directly or indirectly, to the "Consumer's Coalition for Choice" by any Enron officer, employee or agent acting on behalf of Enron. Please include a list of any contributions made by any other corporation, subsidiary, affiliate, organization or group controlled or directed by Enron to the "Consumer's Coalition for Choice". Please indicate the amount of the contribution, the date the contribution was made and its intended purpose.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

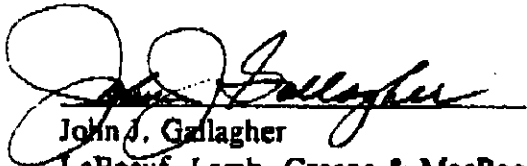
- 15. Please indicate whether or not any employee of Enron or any agent acting on behalf of Enron has provided or discussed the Enron Petition or the Enron "Choice Plan" with any person associated, directly or indirectly, with the "Consumer's Coalition for Choice". If so, please indicate the date and the nature of the discussion.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

- 16. Please provide any additional information that may be in the possession of Enron concerning the "Consumer's Coalition for Choice" which is relative to the organization's function, its principle place of business or its memberships.**

Objection. This interrogatory seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(a).

Respectfully Submitted,



John J. Gallagher

LeBoeuf, Lamb, Greene & MacRae
L.L.P.

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Attorney for Enron Energy
Services Power, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

+
+
+
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+

Docket No. R-00973953

CERTIFICATION OF SERVICE

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

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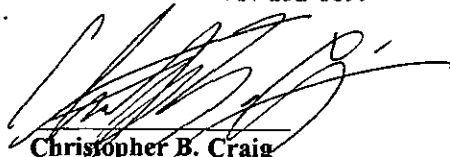
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Linda C. Smith

October 28, 1997

James McNulty, Prothonotary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

PROTHONOTARY'S OFFICE

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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

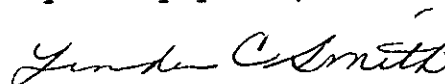
Dear Mr. McNulty:

In accordance with the Administrative Law Judges' Prehearing Order #5 dated October 17, 1997, enclosed please find an original and three copies of Dr. Mark Cooper's testimony, which was included on Appendix H of the order, for filing in the above referenced docket.

We apologize for any inconvenience filing this testimony one day past the date indicated in the Judges' order may have caused.

If there are any questions concerning this filing, please do not hesitate to contact me.

Very truly yours,



Linda C. Smith, Esquire

LCS:sdc
Enclosures

cc: The Honorable Marlane R. Chestnut
The Honorable Charles E. Rainey, Jr.

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32

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

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DIRECT TESTIMONY

OF

DR. MARK N. COOPER

ON BEHALF OF

THE AMERICAN ASSOCIATION OF RETIRED PERSONS

RECEIVED
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I. BACKGROUND AND OVERVIEW

A. QUALIFICATIONS

Q. PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.

A. Dr. Mark N. Cooper, President, Citizens Research, 504 Highgate Terrace, Silver Spring Maryland 20904. I am also Director of Research of the Consumer Federation of America (CFA). My testimony reflects my personal views and not those of CFA.

Q. PLEASE BRIEFLY SUMMARIZE YOUR RELEVANT EMPLOYMENT EXPERIENCE AND RESEARCH INTERESTS.

A. Prior to founding Citizens Research, a consulting firm specializing in economic, regulatory and policy analysis, I spent four years as Director of Research at the Consumer Energy Council of America. Prior to that I was an Assistant Professor at Northeastern University teaching courses in Business and Society in the College of Arts and Sciences and the School of Business. I have also been a Lecturer at the Washington College of Law of the American University co-teaching a course in Public Utility Regulation.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE PUBLIC UTILITY COMMISSIONS?

A. I have testified on various aspects of telephone and electricity rate making

1 before the Public Service Commissions of Arkansas, California, Colorado,
2 Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii,
3 Illinois, Indiana, Iowa, Kentucky, Manitoba, Maryland, Missouri, New Jersey,
4 New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina,
5 Tennessee, Texas, Vermont, Virginia, and Washington, as well as the Federal
6 Communications Commission (FCC), the Canadian Radio-Television, Telephone
7 Commission (CRTC) and a number of state legislatures.

8 For a decade and a half I have specialized in analyzing regulatory reform
9 and market structure issues in a variety of industries including railroads, airlines,
10 natural gas, electricity, medical services and cable television, in addition to
11 telecommunications. This includes approximately 125 pieces of testimony split
12 fairly evenly among state regulatory bodies, federal legislative bodies, and federal
13 administrative bodies.

14

15 Q. HAVE YOU TESTIFIED ON UNIVERSAL SERVICE ISSUES?

16 A. With respect to universal service and lifeline issues, I have presented
17 testimony in Connecticut, Florida, Hawaii, Illinois, Manitoba, Mississippi, New
18 York, North Carolina, Ohio, Oklahoma, South Carolina and Texas as well as
19 before the FCC and CRTC.

20 I have conducted several major studies of universal services including
21 Universal Service: An Historical Perspective and Policies for the 21st Century
22 (The Benton Foundation and the Consumer Federation of America, 1996),

1 Protecting the Public Interest in the Transition to Competition in Network
2 Industries in (The Electric Utility Industry in Transition (Public Utilities Reports
3 and the New York State Energy Research Development Authority, 1994),
4 Consumers with Disabilities in the Information Age: Public Policy for a Dynamic
5 Market (The Dole Foundation, 1993), Utility Lifeline Programs: Prevalence and
6 Performance (American Association of Retired Persons and the Consumer
7 Federation of America, 1991), Expanding the Information Age for the 1990s: A
8 Pragmatic Consumer Analysis (American Association of Retired Persons and the
9 Consumer Federation of America, 1990), The Telecommunications Needs of
10 Older, Low Income and General Consumers in the Post-Divestiture Era,
11 (American Association of Retired Persons and the Consumer Federation of
12 America, 1987), Low Income Households in the Post-Divestiture Era: A Study of
13 Telephone Subscribership and Use in Michigan (Michigan Divestiture Research
14 Fund, 1986), and Energy and Equity: Rising Energy Prices and the Living
15 Standards of Lower Income Americans (Westview, 1982).

16

17 Q. HAVE YOU TESTIFIED ON CONSUMER PROTECTION ISSUES?

18 A. I have served as an expert witness on consumer protection and done
19 research on a number of industries.

20 In telecommunications, I was the expert witness for the People's Counsel
21 in cases involving fraudulent marketing of local exchange service in Pennsylvania
22 and Florida. While those cases were settled through stipulations, testimony

1 developed in them was filed in the Department of Justice case dealing with the
2 divestiture of AT&T. On behalf of the Consumer Federation of America I filed
3 comments on consumer protection on in the transition to competition in California.
4 On behalf of the Public Interest Advocacy Center, I have filed testimony on
5 quality control standards before the CRTC. I conducted research for the National
6 Association of Attorneys General regarding consumer protection in the sale of
7 800 and 900 number services.

8 In electricity I have testified before the Public Service Commission of
9 Texas and the New York State Energy Research and Development Authority on
10 restructuring.

11

12 Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

13 A. On behalf of the American Association of Retired Persons, I have reviewed
14 the Commission orders dealing with restructuring and the Application of PECO
15 Energy Company for Approval of Its Restructuring Plan Under Section 2806 of
16 the Public Utility Code.

17

18 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

19 A. In my testimony I present a comprehensive approach to universal service
20 and consumer protection policies that I believe are necessary to protect the
21 interests of residential ratepayers as the electric utility industry transitions to a
22 more competitive model. I then evaluate the company's proposal in terms of this

1 proposal.

2 Restructuring represents a major change in an industry that is vital to
3 consumers and the public health and welfare. There are hard questions
4 confronting policy makers which cannot be assumed away and the answers
5 provided to date are inadequate. Residential ratepayers must insist on realistic,
6 detailed solutions to these problems. For the average consumer to benefit from
7 deregulation of electricity, policy makers must have a clear set of goals and be
8 guided by specific principles.

9 In my testimony I offer a comprehensive approach to universal service and
10 consumer protection. In many respects my proposals go beyond the guidelines
11 offered by the Commission, but I believe that they are consistent with the
12 Consumer Choice Act. To the extent that my recommendations go beyond the
13 guidelines, I urge the Commission to amend its tentative conclusions and
14 guidelines.

15 Even without a change on the part of the Commission, however, the
16 companies should adopt my proposals. Every company is free to propose more
17 extensive programs to promote universal service and more vigorous consumer
18 protections.

19

20 Q. HOW IS YOUR TESTIMONY ORGANIZED?

21 A. In Chapter II, I analyze the nature of electricity services, the historical
22 pattern of their delivery and the implications of electricity restructuring for two key

1 public policy areas -- universal service and consumer protection. Attachment
2 MNC-1 presents a summary of the factors I cite which create a need for vigorous
3 policies to promote universal service and ensure adequate consumer protection. I
4 then recommend a new paradigm for consumer protection. Attachment MNC-2
5 summarizes the elements of this paradigm.

6 In Chapter III, I discuss policies to ensure universal service.

7 In Chapter IV, I discuss the consumer protection policies that are necessary
8 to ensure consumers are not abused in the new market for electricity. Attachment
9 MNC-3 identifies all of the major policy elements discussed in my testimony.

10 In Chapter V, I review the recent law and initial guidelines published by the
11 Commission. I demonstrate the consistency between my recommendations and
12 broad policy goals recently enacted in Pennsylvania.

13 In Chapter VI I evaluate the Company's proposal. The proposals before
14 the Commission have barely begun to address the hard questions. Therefore, the
15 bulk of my testimony outlines the fundamental principles that should be adopted by
16 the companies and the Commission.

1 **II. THE NEED FOR MORE VIGOROUS POLICIES**
2 **TO PROMOTE UNIVERSAL SERVICE AND**
3 **CONSUMER PROTECTION IN THE**
4 **TRANSITION TO COMPETITION**
5
6

7 **A. PUBLIC POLICY FOR UTILITY NECESSITY SERVICES**

8
9 **Q. WHAT ARE THE PRIMARY PUBLIC POLICY ISSUES IN THE AREA**
10 **OF UNIVERSAL SERVICE.?**

11 **A. The primary purpose of public policy in the area of utilities, such as**
12 **telephone, electricity and natural gas service, is to ensure that all consumers are**
13 **able to purchase reliable supplies of these necessities in adequate quantities to**
14 **meet their basic needs at affordable rates. These services are considered**
15 **necessities and have been delivered as regulated utilities for almost a century.**
16 **Although public policy is moving away from monopoly delivery of these services,**
17 **the services are still necessities and the fundamental commitment to universal**
18 **service remains.**

19
20 **Q. HAS REGULATION DEALT WITH CONSUMER PROTECTION**
21 **BEYOND THE ISSUE OF THE SETTING OF RATES?**

22 **A. Although price has been the focal point of regulation, it must be recognized**
23 **that public utility commissions have traditionally gone well beyond simply setting**
24 **rates in the regulation of the sale of these services. There were behavioral**

1 consequences of monopoly control over a necessity service that required the
2 regulation of the terms and conditions of service.

3 Without this second layer of oversight, monopolists would exploit their
4 market power in ways other than excessive earnings. Revenues would be
5 maximized from those services which were the most basic monopoly services -- i.e.
6 had the lowest elasticity of demand. The franchise value would be maximized by
7 extending the monopolistic reach as far as possible into kindred and related
8 services. Thus, regulation of how specific services are offered to individual classes
9 of customers and at what prices has always been a part of regulation.

10 Regulation went farther, into the transaction between the company and its
11 most captive customers. The monopoly transaction itself allows a unique
12 opportunity to interact with customers. For this reason, regulation has always
13 included qualitative measures of franchise performances -- such as speed of
14 response, presentation of information, billing detail, etc.

15

16 Q. WHY IS INCREASED CONSUMER PROTECTION SO IMPORTANT
17 IN THE TRANSITION TO COMPETITION?

18 A. The transformation of a utility service with no substitutes into a commodity
19 is a major change for consumers. They have never shopped for this service. The
20 introduction of competition changes the nature of this service and opens a range of
21 questions.

22 Markets do not necessarily produce socially acceptable outcomes with

1 respect to the ubiquitous availability of service. How will universal service be
2 ensured?

3 Because these services have been provided as a utility, quality, features and
4 functionalities were regulated and controlled. Should uneven service quality be
5 tolerated in the market? Can consumers learn to evaluate these commodities?

6 In many states because these services were regulated as utilities, their
7 status under consumer protection statutes may be unclear. In the transition to
8 competition policy makers must ensure that these services are fully covered, not
9 only by general consumer protection statutes, but also by additional consumer
10 protections.

11 To the extent that the transformation to competition is partial, the
12 remaining areas of monopoly or market power are a source of concern in the
13 transition. To the extent that the legacy of monopoly creates points of leverage
14 and vulnerability, they should be addressed by public policy.

15 For a significant transition period, the terms and conditions of such
16 purchases must be closely scrutinized and controlled.

- 17 o Consumers must be assured the same wide
18 availability of services at affordable prices.
19
- 20 o They must be ensured that the reliability of the
21 services they receive is at least as high as it is today.
22
- 23 o They must be assured that as they are forced to
24 make purchase decisions about electricity, they are
25 provided at least the same level of protection from
26 fraud and abuse as they have today.
27

1 The National Association of Regulatory Utility Commissioners (NARUC)
2 has recently adopted a policy statement with respect to universal service in the
3 electricity industry:

4 Because electricity service is vital for health, safety, and economic
5 opportunity, universal service is a cornerstone of the public interest.
6 Customers are entitled to access to reasonably priced power and to
7 a forum for dispute resolution.

8
9 Electric service is a basic need. Therefore, preserving and
10 *protecting the public interest in a restructured electric industry*
11 should include assuring that consumers have access to an adequate
12 supply of electricity to satisfy their basic needs at a reasonable
13 price. Policy-makers should continue to address the needs of low-
14 income customers. The health and safety of all consumers is
15 paramount.

16
17 NARUC went on to define the issue of consumer protection
18
19 during restructuring broadly.

20
21 Consumers should be protected from anti-competitive behavior,
22 undue discrimination, poor service, and unfair billing and
23 disconnection practices. In a restructured industry, certain
24 consumer protections should be preserved, particularly those that
25 *guard against undue discrimination, failure to meet minimum*
26 service quality and safety requirements and other unfair business
27 practices. In a competitive environment, other consumer abuses
28 such as deceptive marketing practices should also be prevented.
29 Associated with these issues are questions of service quality,
30 providers of last resort and the obligations of distribution
31 companies.

32

33 **B. THE COMMODITY AND THE TRANSACTION**

34

35 Q. WHAT SPECIFIC FACTORS CREATE THE NEED FOR GREATER

1 CONSUMER PROTECTION?

2 A. The fundamental need for heightened consumer protection stems from the
3 nature of the service provided and the historical context of its delivery (see
4 Attachment MNC-1). Consumers are unprepared for the commodification of these
5 utility services. Three sets of factors make the sale of these services problematic --
6 the consumer, the transaction and the seller.

7

8 Q. PLEASE DESCRIBE THE PURCHASE OF SERVICES IN AN
9 EMERGING COMPETITIVE ENVIRONMENT.

10 A. Electricity remains a necessity. It has a low elasticity of demand. There
11 are no close substitutes. This suggests that consumers have little bargaining power
12 in the transaction.

13 One of the reasons society cares so much about the price and quality of
14 utility services is that we cannot do without them. Use of utilities is a basic
15 determinant of the quality of life at the end of the twentieth century and must be
16 universally available. It is not enough for the wires to pass by people's homes, if
17 they cannot afford to actually consume what they need. It is not good enough
18 that people continue to purchase these utilities, but at a cost that puts a strain on
19 their household budget. We mean a decent level of consumption on a reliable
20 basis, without suffering deprivation because of how much it costs.

21 Once this fundamental commitment is embraced as the central tenet of
22 public policy toward utilities, concern moves on to the secondary aspects of public

1 policy -- like economic efficiency in production, customer choice in consumption,
2 and optimization of output. The goal of providing universal, reliable, affordable
3 service should be accomplished in the most efficient manner possible, but no
4 amount of economic efficiency gain is worth cutting people off and leaving them
5 alone in the dark to freeze.

6

7 Q. ARE THE CONDITIONS OF PURCHASE OF THESE SERVICE
8 UNIQUE?

9 A. Yes. Consumers frequently purchase these commodities under
10 considerable time constraints. Frequently, the need to get service is urgent.
11 People change service only when they have to because they have moved their place
12 of residence. Therefore, they are under internal pressures to make sure that they
13 get connected. Where one is seeking to reconnect utility service because of a
14 move, the customer is likely to be highly motivated and focused. The customer
15 needs to make a purchase (rather than the seller needing to make a sale). This
16 reverses the typical roles and makes the customer vulnerable to exploitation. The
17 customer is likely to be highly receptive to a sales pitch.

18 Traditionally, consumers have not been presented with an array of choices
19 for the underlying basic service. Moreover, many of the bells and whistles that will
20 be sold as part of a package have not been bundled before or were easily separable.
21 Now the consumer is faced with packages that are difficult to sort out.

22 Consumers have not been subject to marketing pressures at the point-of-

1 sale in the past. As utility services they were not heavily sold and the incumbents
2 did not do a great deal of promotion or selling.

3

4 Q. WHAT CHARACTERISTICS OF THE TRANSACTION MAKE THE
5 CONSUMER VULNERABLE TO ERROR OR ABUSE?

6 A. Since the transaction is conducted over the phone, electronically, there is
7 little opportunity for point-of-sale information gathering. No immediate record of
8 the transaction exists.

9 The billing pattern for these services is also problematic. There is a
10 disconnection between the purchase and the bill. Many weeks may elapse between
11 the purchase and the bill. Further, the bill may make it difficult to identify exactly
12 what costs how much.

13 The cost itself is a monthly charge, which may appear small on a recurring
14 basis, but over the course of the year adds up. The smallness of the monthly
15 charge and the difficulty of sorting the bill out renders pre-purchase information
16 gathering and post-purchase follow up less likely.

17

18 Q. WHAT CHARACTERISTICS OF THE SELLER MAKE THE
19 SITUATION DIFFICULT FOR CONSUMERS?

20 A. Sellers can definitely exploit a situation of less than effective competition
21 for these services. For many services being offered to consumers, not only have
22 there not been alternatives available in the past, but the alternatives available in the

1 future may be hard to find, and difficult to evaluate. Exploitation of incumbency
2 and the legacy of having provided a franchise service provides a point of leverage
3 over the transaction. Consumers may have difficulty separating the basic services
4 that they must purchase from the bells and whistles that are optional. Marketers
5 will make this more difficult. Sellers will also exploit their position of authority
6 and expertise.

7

8 **C. POLICY IMPLICATIONS**

9 Q. WHAT DO YOU CONCLUDE ABOUT THE TRANSACTION?

10 A. Urgency, time pressure, a lack of alternatives, a small expenditure spread
11 out over time all lead to less effective consumer decision making, make consumers
12 vulnerable to pressure tactics, and make post-purchase complaints less likely.

13 As a result, I believe that we need a new paradigm for consumer
14 protection. The new paradigm for consumer protection must actively cover the
15 three aspects of a sale I have discussed above which are typically recognized as
16 important in consumer decision making and market performance. These include:

- 17 o Pre-purchase facilitation
- 18 o Point-of-sale protections
- 19 o Post purchase remedies

20 The new paradigm should also cover activities that affect both the
21 consumer and the seller as they conduct the transaction. By addressing each of the
22 stages of a purchase decision and both parties to the transaction, I identify six

1 specific areas for public policy action (see Attachment MNC-2).

2 There are several major areas that are in need of special attention. For the
3 long term we must bring forward the fundamental universal service commitments
4 and utility protections that have long been associated with these necessity services.
5 Because they are so important, I will discuss the general universal service policies
6 as a separate area in the next chapter. These are a core set of public policies. In
7 addition, we have developed a set of transaction protections to ensure access to
8 these services. These must be preserved.

9 For the long term, we must also ensure that former utility services are
10 subject to the full array of consumer protections generally available in the state.
11 There must be no possibility that because these services were once or are now
12 partially regulated by the Commission they can be exempted from routine
13 consumer protections.

14 In the short term, we must also have a transition plan. These are utilities
15 and necessities. We must be sure that the marketplace can work effectively to
16 provide them to consumers. A vigorously competitive marketplace does not exist
17 today. There is some question about how vigorous it can ever be. There is also
18 some question about how effective consumer decision making will be. Until we
19 can conclude that the marketplace is vigorously competitive and consumers can
20 make informed choices among a wide array of services, additional specific
21 consumer protections are necessary. Educational efforts will be particularly
22 important.

1 Q. HOW SHOULD CONSUMER PROTECTION POLICY BE
2 DEVELOPED?

3 A. I believe that the approach to consumer protection must be pro-active, as
4 well as reactive, which is the traditional approach to consumer protection.
5 Moreover, because this is an emerging area, I believe that ongoing input from
6 advisory boards or task forces should be formed to recommend specific steps to
7 accomplish consumer protection.

8 The advisory bodies should include representatives of the major agencies
9 engaged in consumer protection and the delivery of utility services, service
10 providers, and all classes and categories of customers.

11 They should provide both advisory and monitoring functions. These
12 functions should include advice on universal service for people and institutions. It
13 should include definitions of services to be made available, expansion of the
14 services included over time, cost models and recommendations for discounts. It
15 should provide advice on how to reach targeted populations and it should monitor
16 changes in universal service and issue periodic reports.

17 It should also play a role in consumer protection, helping to develop the
18 form and content for information dissemination and educational campaigns. It
19 should also have the task of compiling data on the status of consumer purchases
20 and competition in the market.

1

III. UNIVERSAL SERVICE

2

3 **A. AFFORDABLE SERVICE FOR ALL**4 **Q. HOW DO YOU DEFINE AFFORDABLE SERVICE?**

5 **A.** *Affordability and service must be specified more carefully if the goal of*
6 *universal service is to be properly articulated and achieved. Because electricity is a*
7 *necessity, the goal of universal service policy is to ensure a reasonable quality of*
8 *life, not bare survival. Therefore, a basic level of service to meet daily needs must*
9 *be included in the concept of what is affordable.*

10 *Because electricity is a necessity, people will pay more for it than other*
11 *commodities. Compared to non-necessities, the elasticity of demand is low. The*
12 *mere fact that people continue to pay for service does not mean it is affordable.*
13 *Therefore, affordable means at rates that do not strain the household budget. In*
14 *fact, the primary dictionary definition of afford invokes this very concept of the*
15 *relative burden -- "to manage to bear without serious detriment."*

16 *Because electricity is a necessity and has been delivered under conditions*
17 *of monopoly, the potential to charge customers a great deal, and thereby generate*
18 *very high profits, exists. Just because rates are affordable does not mean they are*
19 *reasonable and exploitation of market power in an unregulated market must be*
20 *prevented.*

21 *Thus, universal service should be defined as*
22 *the availability to all Americans of a reasonable level of electricity*

1 service at prices that do not strain household budgets or result in
2 excess profits for electricity suppliers, or result in subsidies for large
3 consumers

4
5 The concept of universal service has traditionally rested upon a
6 *commitment by a single provider to ensure that service will be available. Service*
7 *was made available on a non-discriminatory basis to all at rates that were deemed*
8 *fair and reasonable. This obligation to serve commitment in the franchise*
9 *monopoly environment must be transformed into an effective and equitable*
10 *provider of last resort arrangement in a competitive environment.*

11

12 Q. WHAT GENERAL POLICIES SHOULD BE ADOPTED TO PROMOTE
13 UNIVERSAL SERVICE?

14 A. The accomplishment of universal service has always been primarily the
15 result of policies to ensure affordability for all Americans. With increases in
16 income, the general affordability of service has improved over the years. As a
17 result, greater attention has focussed on specific groups who have difficulty
18 affording services. These targeted programs have received greater attention in
19 recent years, particularly in telecommunications.

20 It is absolutely critical not to lose sight of the underlying commitment to
21 universal service for all consumers as the electricity market transitions to
22 competition. Affordability of service is not simply a low income problem. There
23 may well be areas in the state in which "cost-based" rates would be unacceptably
24 high for households well above "low income" levels. Rates could be lowered for

1 all consumers in such "high cost" areas, not just the low income residents of such
2 areas.

3 Electricity is almost universally available in our society because costs have
4 been shared by all customer classes of a utility. Restructuring threatens this
5 outcome by forcing and allowing customers to purchase their own power. A clear
6 public policy to ensure affordability must be put in place. Policies must also ensure
7 that people who are low income or who live in high cost areas are able to afford
8 service. We must create an integrated program to ensure service to all people. We
9 must not lose sight of the need to provide reasonably priced service to all people,
10 even as we pay particular attention to low income consumers with prevention of
11 service cut-offs, discounts for households in need, and low income weatherization.

12

13 Q. HAVE SIMILAR UNIVERSAL SERVICE POLICIES BEEN ADOPTED
14 FOR OTHER UTILITY SERVICES?

15 A. Yes. This is a well established practice in the telecommunications industry.

16 Affordability for the general population has been maintained by policies
17 which recover a larger share of joint and common costs from customer classes
18 with the ability to spread costs over products sold to the public at large or on
19 services which are not considered basic services. This is the cornerstone of
20 consumer protection which was recently enacted in the Telecommunications Act of
21 1996. Section 254 (k) contains the following language.

22 The Commission, with respect to interstate services, and the States,

1 with respect to intrastate services, shall establish any necessary cost
2 allocation rules, accounting safeguards, and guidelines to ensure
3 that services included in the definition of universal service bear no
4 more than a reasonable share of the joint and common costs of
5 facilities used to provide those services.

6
7 The Conference Report adopts Senate report language which went even
8 farther --

9 The Commission and the states are required to establish any
10 necessary cost allocation rules, accounting safeguards, and other
11 guidelines to ensure that universal service bears no more than a
12 reasonable share (and may bear less than a reasonable share) of the
13 joint and common facilities used to provide both competitive and
14 noncompetitive services (Conference Report, p. 129).

15
16 A similar concept is directly applicable in electricity. Indeed, such a strong
17 commitment to affordability is even more appropriate for electricity since there are
18 no close substitutes for this necessity.

19 Substantial joint and common costs in the electricity industry could well be
20 allocated away from basic service. Requiring higher mark-ups on services which
21 are considered non-basic does not mean subsidies are involved. As long as a
22 service covers its incremental costs and makes some contribution to joint and
23 common costs, it is neither the source, nor the recipient of a subsidy.

24 Joint and common costs are costs which are incurred in the provision of
25 more than one service or for the purposes of providing services to more than one
26 customer. They are shared by services, customers or customer classes. The
27 principle is that any cost which is shared between customers, classes of customers
28 or services are to be considered joint and common costs. These would include

1 costs associated with facilities, general overhead, services (such as planning) and
2 functionalities (such as coordination).

3 Stranded costs, to the extent that they are deemed recoverable, can also be
4 considered shared, since the basis on which uneconomic costs are recoverable is a
5 purported "social obligation" which is certainly shared among all ratepayers. My
6 view of stranded costs, without making any conclusion that recovery of such costs
7 has any legitimacy, is that if they exist they must be "shared" costs. Claims to
8 recovery of stranded costs are typically based on a claim about a so-called "social
9 compact" between ratepayers and utilities.

10 Therefore, to further universal service policy, recovery of stranded costs
11 could be structured in such a way as to recover larger shares of such costs from
12 non-basic services. This could be accomplished by recovering a larger share of
13 such costs from non-residential customer classes and by recovering a larger share
14 from non-basic services within customer classes.

15

16 Q. IN YOUR PREVIOUS ANSWER YOU ARGUED FOR TREATING
17 STRANDED COSTS AS COMMON COSTS "WITHOUT MAKING ANY
18 CONCLUSION THAT THE RECOVERY OF SUCH COSTS HAS ANY
19 LEGITIMACY." WHAT POSITION HAS AARP TAKEN ON STRANDED
20 COST RECOVERY?

21 A. In several recent proceedings at the federal and state levels AARP has
22 developed a comprehensive analysis of stranded costs and made recommendations

1 for the treatment of stranded costs in the transition to competition. That position
2 can be briefly summarized as follows.

3 There is no guaranteed return of or on capital implicit or explicit in the
4 current rates payed by consumers. Claims that a 'regulatory compact" or
5 constitutional protections bind ratepayers to make utilities whole for every penny
6 of investment they have made or every obligation they have incurred have no
7 economic or legal basis. Utilities are obligated to provide economic service. They
8 are required to be efficient and have no claim to recover inefficient costs.
9 *Efficiency would be the outcome of a competitive market and that is the outcome*
10 *which regulation strives to achieve.*

11 Management exercises substantial discretion in the decision to make
12 investments and incur contractual obligations. Management must bear the
13 responsibility for its own actions. The burden of strategic actions or mistakes
14 should be borne by stockholders, not ratepayers.

15 Even where management decisions are found to be prudent, that is no
16 guarantee of a return on or of capital. Every Commission that has allowed an
17 investment to be included in rate base has also assigned that investment a rate of
18 return far above the risk free level in our society (the T-Bond rate). The
19 assignment of a return which includes a substantial risk premium clearly indicates
20 that there were no guarantees being offered. If a return of or on capital were
21 guaranteed, the Commission would have assigned a return without a risk premium.

22 Utilities have also been compensated with a virtual guarantee against

1 bankruptcy.

2 Virtually every utility in the country has, in fact, enjoyed a return far in
3 excess of a risk-free level and has, therefore, been compensated for risks.

4 Unanticipated outcomes on the demand-side (reductions in demand due to
5 recessions or changes in behavior patterns) or the supply-side (changes in fuel
6 prices or technology) are part of the risk for which utilities have been
7 compensated.

8 New revenue opportunities must be taken into account in determining
9 responsibility for investments, such as sales outside of the service territory which
10 will be opened up.

11 Given this view of the relationship between ratepayers and stockholders,
12 AARP recommends a case-by-case analysis of stranded costs. Management
13 responsibility must be presumed, unless specific legislative mandates over precise
14 terms and conditions of investment or purchase commitments was exercised. To
15 the extent that unanticipated factors have caused the stranding of costs, AARP
16 recommends that ratepayers and stockholders share stranded costs. Ratepayers
17 should be responsible for no more than 50 percent of stranded costs and,
18 depending on an evaluation of management responsibility, legal requirements and
19 financial factors, could be held responsible for less than 50 percent.

20 After stranded costs are reasonably estimated and responsibility
21 ascertained, utilities can be the beneficiaries of opportunities to mitigate stranded
22 costs or incentives to improve operating efficiencies. Ratepayers should be the

1 beneficiaries of any reductions in the share of stranded costs allocated to them
2 through securitization.

3

4 **B. TARGETED PROGRAMS**

5 **Q. WHAT SPECIFIC PROGRAMS SHOULD BE ADOPTED TO ENSURE**
6 **THE AFFORDABILITY OF SERVICE FOR LOW INCOME HOUSEHOLDS?**

7 **A.** Without losing sight of the affordability of service for all, it is appropriate
8 to devote more detailed attention to targeted programs.

9 The Telecommunications Act of 1996 established a Federal State Joint
10 Board to consider how to promote universal service. It recommended a very
11 aggressive policy. It has proposed a major expansion of the lifeline and link up
12 programs. The discount rate for low income households proposed by the Joint
13 Board amounts to over 50 percent of the national average rate for basic service.

14 Similar programs to ensure the availability of service for specific groups
15 should also receive significant attention in electricity. The preferred approach to
16 low income programs is a percentage of income program (PIP) that targets an
17 affordable limit that low income households should pay. These programs have
18 proved difficult to implement, however. Instead, deep discounts for eligible
19 households should be offered.

20 I believe that there must be a standard or basic service package developed
21 which is covered by a PIP or deep discount program and made available to all who
22 qualify. This standard package should provide for a reasonable level of

1 consumption and should not be "punitively" restrictive.

2 It is not possible to state a specific level of consumption for every
3 household in the service territory. This would vary by the size of the household.
4 It might also vary according to the status of the household. Households with older
5 or disabled members might require higher levels of energy consumption to
6 preserve their health. As a general frame of reference for determining the needs of
7 typical households, we can start from the amount of electricity consumed by
8 median income households of various types.

9 Defining the strain on the household budget can best be done with respect
10 to expenditures. This leads to the percentage of income standard as the basis for
11 determining affordability. The percentage of income devoted to a necessity by
12 middle income households is a good starting point for determining what is
13 affordable. Lower income households should not be required to spend more than
14 that percentage of income.

15 The basic service package should be available to all consumers at a
16 reasonable cost. The low income program involves a discount off of generally
17 affordable rates, to reflect the fact that low income households are unable to afford
18 services that non-low income households are able to afford. A discount program
19 should strive to ensure that low income households devote no more of their
20 income to electricity than average households.

21 Eligibility should follow the eligibility for the telecommunications lifeline
22 program. The automatic enrollment approach which has been applied to

1 telecommunications in some states should be applied to the low income
2 weatherization program. Any household enrolled for public assistance in the state
3 should be automatically enrolled. Both the basic service package and the
4 weatherization program should be included.

5

6 **C. PROVIDER OF LAST RESORT OBLIGATIONS**

7 **Q. WHAT SPECIFIC POLICIES SHOULD BE ADOPTED TO PROMOTE**
8 **UNIVERSAL SERVICE?**

9 **A.** The obligation to serve has been a cornerstone of utility service and should
10 remain so. Every consumer should have a provider who has the ultimate obligation
11 to provide the basic necessity service. This would include the responsibility to
12 maintain the facilities necessary to deliver electricity, as well as the actual purchase
13 and delivery of electric service.

14 By default, the monopoly utility was the provider of last resort but the price
15 paid may have been too high because of inefficient investment and preclusion of
16 competition. Monopoly utilities have shielded inefficiencies and excess profits behind
17 internal transfers made in the name of universal service and provider of last resort
18 obligations.

19 The commitment to universal service should be maintained, but the approach
20 to achieving it can change. Monopoly utilities have decided the cost of universal
21 service through their internal investment decisions, but the line between what was
22 done in the name of universal service and what was done in response to corporate

1 investment preferences was difficult to draw.

2

3 Q. WHAT POLICIES DO YOU RECOMMEND TO ENSURE THAT
4 ELECTRIC SERVICE REMAINS UNIVERSAL?

5 A. There must be a provider of last resort designated for each area of the state.
6 Public policy will simply not allow electricity service to be unavailable in an area.

7 The provider of last resort could be an incumbent utility (or part of it) or a
8 new entrant. Whether or not distribution and transmission services become
9 competitive, there must be an entity responsible for the maintenance of the facilities
10 necessary to provide electricity service. At the outset, the incumbent utility will be
11 responsible for distribution, transmission and generation. The incumbent may shed
12 the obligation to ensure generation for every customer served by its transmission and
13 distribution system, if the Commission certifies a new entity to be the provider of last
14 resort. For the foreseeable future, it appears that distribution and transmission will
15 remain monopoly services of a single entity.

16 The provider of last resort obligation may result in costs that are deemed
17 unaffordable for specific customers or in specific areas of the state. The commission
18 may designate such areas as "high cost" and eligible for support from a universal
19 service fund. The provider of last resort would be allowed to receive support to
20 cover the difference between the cost of service and the rates charged. To the extent
21 that an area is a "high cost" area, there should be only one service provider allowed
22 to draw funds from a subsidy pool to support service. It makes no sense from a

1 public policy or efficiency point of view to subsidize the existence of more than one
2 supplier in a high cost area who is drawing a subsidy.

3

4 Q. HOW MUCH SHOULD THE PROVIDER OF LAST RESORT BE
5 ALLOWED TO RECOVER FROM THE HIGH COST FUND?

6 A. The amount to be recovered from the fund to meet provider of last resort
7 obligations should be no larger than the lesser of the difference between the
8 benchmark costs and rates in effect in the area or any documented revenue shortfall
9 in the aggregate. If the company is earning its authorized rate of return in the
10 aggregate, it is not suffering any loss due to the obligation to serve that it bears. If
11 the company is earning its allowed rate of return through the rates it charges the
12 public and then the Commission allows it to draw additional funds from the universal
13 service fund, for its provider of last resort obligations, the company will immediately
14 be in a situation of excess earnings.

15 The provider of last resort must demonstrate the prudence of investments
16 which it claims have been made to meet its provider of last resort obligations. The
17 costs it claims to need subsidies must be prudently used and useful. The provider of
18 last resort should not be allowed to earn a return on capital that is no longer used and
19 useful.

20 All revenues associated with investments must be included in any calculation
21 of specific revenue shortfalls. The eligible area must be defined to include reasonably
22 contiguous or immediately adjacent areas with lower cost or higher revenues.

1 On a going forward basis, providers of last resort must not be allowed to
2 enjoy a risk free investment that earns a risk premium. Being paid for costs from a
3 "social obligation pool" removes those revenue streams from market risk. Rate of
4 return earned on high cost fund investment should be lower than company wide rate
5 of return.

6

7 **D. FUNDING UNIVERSAL SERVICE**

8

9 Q. HOW DO YOU RECOMMEND PAYING FOR UNIVERSAL SERVICE?

10

11 A. There should be one fund from which all of the programs which are intended
12 to achieve universal service should draw. In addition, to the extent that there are
13 costs associated with the transition to competition which would create impediments
14 to achieving the goal of competition, these too should be paid for from this fund.

15 From the point of view of universal service, the fund would be the source of
16 revenues for the following:

- 17 o High cost areas
18
19 o Life line for individuals
20
21 o Any other programs that the Commission decides are
22 necessary to ensure that all the citizens have access to
23 electric service.
24
25 o Unique costs resulting from the implementation of
26 competition.
27

1

2 Q. HOW WOULD THE UNIVERSAL SERVICE FUND BE COLLECTED?

3 A. *The accomplishment of universal service is a social goal that serves all*
4 *members of society, producers and consumers, therefore all should contribute.*

5 *The lives of consumers are enhanced as a result of electricity consumption.*
6 *Businesses in the state benefit too, since they are able to sell more goods and services,*
7 *their employees are better off, and their productivity is higher as a result of the*
8 *accomplishment of this goal.*

9 *The producers of electricity also benefit from universal service, since it*
10 *expands their market. This is especially true of new sources of electricity outside of*
11 *the state, which are seeking new business opportunities as a result of the opening of*
12 *the state market to competition. Therefore, all sources of electricity should contribute*
13 *to universal service.*

14 *All electricity produced in the state, delivered to the state or consumed within*
15 *the state should contribute to the universal service fund on a competitively neutral*
16 *basis. The most likely entity to collect and manage the fund would be an independent*
17 *system operator (ISO). This entity is likely to be set up to maintain reliability and*
18 *competitively neutral functioning of the network. With an independent system*
19 *operator in place, it would be most efficient and effective for the ISO to assess all*
20 *electricity suppliers at a uniform rate. Since the ISO has account of every KWH sold*
21 *and is likely to have knowledge of all self-generation (as part of its obligation to*
22 *ensure reliability), this would eliminate any possibility that anyone would escape the*

1 charge.

2 Assessing suppliers also allows them to decide how to recover the universal
3 service costs. Some might pass it through in the form of usage charges. Some might
4 pass it through in the form of customer charges. Still others might not pass it through
5 in an effort to gain market share. The above approach is the one that is emerging
6 for telecommunications. By federal law, all telecommunications providers must
7 contribute in a competitively neutral manner to the universal service fund. Neutral
8 third parties are being established at the federal and state levels to administer the
9 funds. All sources of revenue (intra and interstate) are being included in the
10 calculation of the fund. A broad range of services are being supported by the fund.

11

12 Q. DO YOU THINK COGENERATORS SHOULD BE REQUIRED TO
13 CONTRIBUTE TO UNIVERSAL SERVICE?

14 A. Yes, as a matter of principle, they should. They benefit from the achievement
15 of universal service just as all others. Their needs are likely to be taken into account
16 when the ISO plans for and seeks to maintain reliable operation of the system. Failing
17 to impose an equal universal service obligation on this source of electricity will give
18 it a competitive advantage.

19

20 Q. PLEASE SUMMARIZE YOUR PROPOSALS ON AFFORDABLE
21 SERVICE AND THE ALLOCATION OF JOINT AND COMMON COSTS TO
22 PROMOTE UNIVERSAL SERVICE.

- 1 A. The analysis embodied in the above statement goes through a series of steps
2 which can be generally summarized as follows (see Table 4).
- 3 1. It starts from the economic cost of production.
 - 4 2. Joint and common costs are calculated.
 - 5 3. Joint and common costs are allocated to non-residential classes based on
6 economic and public policy considerations.
 - 7 4. The residual is allocated to the residential class.
 - 8 5. Recovery of these costs within the residential class is determined on the
9 basis of economic and public policy considerations.
 - 10 6. Stranded costs are calculated.
 - 11 7. A determination about the recoverability of stranded costs is made.
 - 12 8. If stranded cost recovery is allowed, stranded costs should first be
13 apportioned between stockholders and ratepayers.
 - 14 9. The ratepayer share of stranded costs should then be allocated between
15 customer classes. We recommend total consumption as the starting point for this
16 allocation. Total consumption can be justified on both economic and public policy
17 grounds. The overwhelming majority of stranded assets are generation assets, which
18 are directly related to consumption. Allocating stranded costs on the basis of
19 consumption would also tend to allocate a lighter share to the residential class. Using
20 consumption also enables policy makers to recover part of the burden of stranded
21 costs from self-generators. Self generators should contribute to promoting affordable
22 service for economic and public policy reasons. Their historic demand was one cause

1 of stranded costs. They are no less responsible than other customers. They benefit
2 from the provision of universal service, as do all member of society. Cost causative
3 analysis should be undertaken to establish the baseline for allocation. However, a
4 higher proportion could be allocated to non-residential classes by multiplying non-
5 residential consumption by a social policy factor.

6 10. The remaining stranded costs apportioned to ratepayers would be
7 allocated to residential customers.

8 11. To minimize the recovery of these costs on basic service they could be
9 recovered in an inverted fashion (recovering larger shares from residential customers
10 with higher levels of consumption).

11 12. To further promote universal service, low income customers could be
12 excused from the recovery of stranded costs.

1 **IV. A NEW APPROACH TO CONSUMER PROTECTION**

2

3 Q. WHAT IS THE PURPOSE OF THIS CHAPTER?

4 A. This Chapter describes the consumer protections policies, in addition to
5 universal service, which are necessary to ensure a smooth transition to a competitive
6 market.

7

8 **A. CONSUMER-ORIENTED POLICIES**

9

10 Q. PLEASE DISCUSS THE NEEDS FOR CONSUMER EDUCATION.

11 A. We must develop price and quality information that is understandable by and
12 useful to residential ratepayers. We cannot expect the marketplace to do this for us.
13 In telecommunications we have had over a decade of "so-called" competition and we
14 still do not get good information from industry members. Instead, we have fairly
15 elaborate and entirely inadequate "public interest" efforts to develop information. The
16 Commission should require, as a matter of public policy, that such information be
17 made available. One of the jobs of the advisory bodies should be to help develop the
18 guidelines. Both the format and the content of the presentation of information should
19 be subject to oversight.

20 I believe that there are four steps to conducting a successful consumer education
21 campaign.

22 First, the Commission must encourage the development of materials to enable

1 consumers to make effective choices. Initially, consumers should be alerted to the
2 fact that competition is coming. They must be made aware that new decisions are
3 coming. Consumers must be provided information on price, quality and features that
4 facilitate comparisons across providers.

5 Second, outreach efforts should be conducted. These should rely on general
6 advertising as well as community-based efforts.

7 Third, the Commission should monitor the effects of education efforts.
8 Surveys to assess the extent of consumer knowledge and the best means to improve
9 areas of weakness should be conducted. Audits of company efforts should also be
10 carried out.

11 Fourth, each provider should be required to prepare a plan for consumer
12 education. The plan should cover materials, outreach and monitoring.

13

14 Q. WHAT UTILITY ASSURANCES DO YOU RECOMMEND?

15 A. Delivering electricity services under a competitive model on the supply-side
16 does not change its fundamental demand-side characteristics. It is still a basic
17 necessity, for which there are no substitutes. Electricity is still subject to strong public
18 policy mandates for universal service. Therefore, the broad range of protections for
19 utility services must be preserved. In addition to the programs discussed earlier with
20 respect to ensuring affordability of service, utility protections essentially ensure the
21 availability of service to all. We regulate the transaction between service providers
22 and customers to ensure that they are not denied services, except for very good cause

1 and even then, not at times when the service is particularly vital. Specific policies in
2 this area include

3 Application

4 Credit

5 Deposit

6 Disconnection

7 Collection

8 Dispute resolution

9 Partial payment

10

11 Q. PLEASE DESCRIBE THE NEED FOR POLICIES TO ENSURE FAIR
12 MARKETING.

13 A. Marketing fairness involves protection against abuse of consumers and
14 provision of reasonable opportunities to benefit from the introduction of competition
15 into the industry. If the marketplace becomes fully competitive, these protections
16 may no longer be necessary.

17 Giving customers the opportunity to make choices is only part of the problem.
18 Because these utility services are complex commodities for which consumers have not
19 had to actively shop for a century or more, their ability to make informed choices is
20 limited. Structures and institutions must be created to protect them in the transition
21 to a competitive market and to ensure they have adequate information to make
22 informed choices, once they gain the skills to do so.

1 **Privacy Protection:** Information about billing, payment history and
2 consumption patterns must be under the control of the customer. To the extent that
3 exchange of such information is necessary for efficient billing, it should be made
4 available to the parties with whom the customer has contracted for service.

5 **Sales Practices:** Customers must be protected against abusive marketing
6 practices. Regulations should explicitly outlaw slamming (changing service providers
7 without the written permission of the customer) and other fraudulent or abusive
8 marketing practices (unauthorized upgrade of services, pressure tactics, bait and
9 switch tactics, negative options, etc.) Rules should be enacted on notification and
10 language requirements. Standards for information included in marketing should be
11 set. A cooling off period should be specified. There are a range of marketing
12 practices which must be precluded.

13 Slamming
14 False billing
15 Fraud in advertising or labeling
16 Unfair collection practices
17 Pressure tactics
18 Redlining

19 **Billing Practices:** Delivery of bills and billing information should be
20 stipulated. This should include frequency of billing and notice, information and billing
21 detail, format and language requirements

22 Policies to promote fair marketing and prevent fraud should be both reactive

1 and proactive. With the advice of the Task Force, the Board should develop
2 guidelines for marketing and advertising at the point of sale. It should conduct studies
3 to ascertain the state of marketing and sales practices. For example, an aggressive
4 anti-slamming program should be conducted. This would include implementing
5 procedures for preventing slamming (such as third party verification). At the same
6 time, consumer protection agencies in the state should have the authority and
7 resources to periodically obtain lists of customers from service providers and
8 randomly sample those customers to ascertain whether they have the services and the
9 service providers that they expected to have.

10

11 Q. PLEASE DISCUSS THE PRINCIPLE OF NON-DISCRIMINATION IN
12 THE TRANSITION TO COMPETITION.

13 A. A fundamental principle that must be preserved as the electric utility industry
14 is restructured is that all classes of customers should benefit from improvements due
15 to structural changes in the industry. Electric industry restructuring should be done
16 in a way that benefits all customer classes fairly and does not unduly disadvantage any
17 customer class nor preserve any undue cross-class subsidy.

18 To ensure that all classes of customers benefit from restructuring, the
19 Commission should ensure:

- 20 1) Relative fairness between customer classes. Large disparities in the
21 quality or cost of service must be resisted.
22
23 2) Non-discrimination within customer classes. Similarly situated
24 customers must be treated similarly.

1 3) User pays principle. Entities or customer classes who cause costs to
2 be incurred (who use facilities) and obtain the associated benefits
3 should bear the corresponding cost burden.

4
5 4) Fair treatment of investors. Investors must be given an opportunity
6 to earn a return which is commensurate with the risk that they face.

7
8 NARUC addressed this issue in its policy statement.

9
10 All customer classes should have access to electricity suppliers and
11 applicable laws and rules should require all electricity suppliers to
12 compete fairly. Non-discriminatory availability of service, including
13 ancillary services, back-up power and interconnection services, should
14 be assured for all firm service customer classes.

15
16
17 Q. HOW DO YOU PROPOSE TO BALANCE THE INTERESTS OF
18 RATEPAYERS AND STOCKHOLDERS IN THE TREATMENT OF STRANDED
19 COSTS?

20 A. I have described this in the discussion of *universal service*.

21

22 Q. PLEASE DISCUSS THE FACILITATION AND RESOLUTION OF
23 DISPUTES?

24 A. I have pointed out a number of factors which may reduce the willingness and
25 ability of consumers to pursue disputes with telecommunications service providers,
26 even though they have been wronged. Without effective dispute registering
27 procedures, abusive practices are likely to persist because of the difficulty of pursuing
28 post-purchase remedies. Therefore, it is important to provide support for the
29 registering of complaints.

1 There are four steps in the complaint process -- intake, investigation,
2 resolution, and redress.

3 Companies should be required to provide 800 number services and notification
4 of dispute procedures. The lead state consumer protection agency should also have
5 a centralized dispute handling service.

6 Policies to protect consumers from unfair or rapid loss of service during the
7 adjudication process must be in place.

8

9 **B. SELLER-ORIENTED POLICIES**

10

11 Q. PLEASE DISCUSS THE PRE-PURCHASE POLICIES THAT YOU
12 RECOMMEND FOR SELLERS.

13 A. In the transition to competition, it is important to require all sellers to be
14 certified and licensed. This will ensure that they are subject to the consumer
15 protection policies. It is a central step in ensuring that they adhere to reliability
16 policies and consumer protection policies.

17 Licensing and certification should cover several broad areas. All companies
18 should be required to demonstrate their technical, financial and managerial capabilities
19 to provide the services for which they seek certification. Histories of prior complaints
20 and problems should be made available. Bondings should be required to cover
21 penalties for failure to meet reliability and marketing standards. Penalties should be
22 known in advance.

1

2 Q. WHAT ARE THE ISSUES IN RELIABILITY?

3 A. For most Americans, electricity is reasonably priced and quite reliable. Over
4 98 percent of all residences in America have electricity and their service is interrupted
5 for significant periods of time less than once every year. One of the cornerstones of
6 regulated utility services has been a policy to promote reliability. Public policy has
7 sought to regulate service up to what is generally considered a high level of quality
8 and residential and small commercial consumers have not been allowed to pay less for
9 less reliable service. Interruptions or deteriorations of service are major events that
10 trigger both public outcry and frequently regulatory review.

11 The introduction of competition into utility industries invariably raises quality
12 concerns. Is the level of service mandated by the regulated monopoly situation simply
13 too high (too expensive) to prevail in a competitive marketplace? Will consumers
14 understand that they are paying less (more) for a lower (higher) quality of service?
15 Will companies driven by profit maximizing behavior cut corners?

16 NARUC's recently adopted language on reliability and safety captures the
17 fundamental public policy position.

18 The safety, reliability, quality, and sustainability of electric service
19 should be maintained or improved in a restructured electric industry...
20 Public policy should ensure the integrity of the electric grid and
21 encourage prudent long-term resource planning, acquisition, and
22 utilization.

23

24 Q. WHAT IS THE BEST WAY TO ENSURE A HIGH LEVEL OF

1 RELIABILITY?

2 A. There are at least two crucial aspects to implement this policy.

3 First, minimum standards should be established and imposed on the
4 marketplace. No one should be allowed to contract for or sell electricity without
5 meeting these standards. The network is too integrated and too vulnerable to allow
6 substandard transactions to take place.

7 Second, penalties for failing to meet quality standards should be severe.

8 Given the direction that most discussions of "restructuring" take, there will
9 almost certainly be an independent system operator with the responsibility of
10 maintaining the reliability of the electricity grid in a specific area. Current reliability
11 functions of the local utility will be transferred to and/or split between several
12 entities. An independent entity (an independent system operator or ISO) may run
13 the regional and/or statewide network. Responsibility for the reliability of local
14 distribution will reside in another entity.

15 Regardless of how responsibility is structured, each entity should have full
16 legal authority to ensure that quality standards are met. Binding contracts that are
17 fully secured (bonded) should be required. The independent system operator should
18 be required to bind both parties (seller and purchaser) to any private transactions that
19 use the public grid.

20 The simple notion of transferring responsibility for reliability to a new entity
21 or asserting that the PSC will exercise its continuing authority over service quality in
22 a complex deregulated market requires more careful consideration. What

1 functionalities will be subject to standards? How will the standards be set? How will
2 they be enforced?

3 Even if private actions (complaints and lawsuits) are to be the primary
4 mechanism for imposing quality performance on the network, customers will have to
5 know to whom they should complain. We should have mechanisms to resolve
6 problems before we end up in court. Service providers and the courts will have to
7 know what the expectations are.

8 To the extent that there is a central entity vested with the responsibility of
9 ensuring minimum standards of quality, that entity should have adequate authority,
10 power and resources to accomplish its goal. It should articulate specific standards to
11 be met and establish substantial penalties for failure before the fact. Therefore, public
12 policy should clearly outline at least the following steps in ensuring the oversight over
13 reliability:

14 The Commission should institute a process for making recommendations for
15 standards. It should include input from all consumer and producer segments that
16 would be affected by the standards.

17 The Commission should preserve the authority to license service
18 providers.

19
20 It should codify its policy on imposing penalties, so that all service
21 providers are on notice about the consequences of failure to adhere to
22 standards.

23
24 The Commission must have adequate resources to conduct
25 investigations.

26
27 System performance for former utility services should cover at least

1 three major areas,

2

3 Normal operating performance -- Technical operating
4 standards

5

6 Outage and repair -- catastrophic breakdown and
7 recovery standards

8

9 Business office performance (objective and
10 subjective).

11

12

13 Q. WHAT ACTIVE POLICIES TO ENSURE A COMPETITIVE MARKET

14 SHOULD BE IMPLEMENTED?

15 A. There are two areas where the Commission and other state agencies must be

16 active -- the creation and monitoring of competition.

17 The cornerstone of consumer protection is consumer sovereignty. The ability

18 of consumers to exercise informed choices in the marketplace is considered essential

19 to the efficient functioning of a market.

20 NARUC has offered the following observation on consumer

21

22 sovereignty.

23

24 Customers should have the opportunity to make informed choices
25 among electricity providers and services... The potential for
26 competition to improve economic efficiency rests on having multiple
27 service providers as well as informed consumers. Market
28 development should be guided in a way that increases the role of
29 competition among energy service providers and the role of choice for
30 customers. Customers acting in their own self-interest, when
31 presented with a variety of market choices, will tend to arrange their
32 consumption to maximize their welfare, save costs and enhance their
33 satisfaction.

34

35 Large industrial customers are vigorous advocates of bilateral transactions --

1 individuals buying from other individuals by themselves. They have the resources to
2 readily become informed consumers. There is serious question whether individual
3 residential ratepayers will be able to purchase power on their own, or whether
4 suppliers would be interested in selling to them because of the unappealing load
5 characteristics of residential consumers and the high transaction costs of dealing with
6 them. The Commission must actively promote competition for residential ratepayers.
7 There is serious doubt about whether we can really create a level playing field for
8 large industrial and small residential consumers, so that residential consumers have a
9 realistic chance of getting the benefits of competition. In a restructured market, can
10 individual consumers actually purchase power without being saddled with high costs
11 of metering and expensive middlemen?

12 There must be institutions and mechanisms in place to ensure that residential
13 ratepayers can purchase low cost power. The role of aggregators has been given
14 considerable attention. Residential customers are the least likely to benefit from
15 competition. They need a head start or large corporations and institutional users will
16 gobble up the lower priced power. It will not be easy for a century old monopoly,
17 with tight regional transmission markets and a tendency to be dominated by large
18 firms, to become rapidly competitive to achieve the benefits of restructuring. There
19 must be clear conditions to promote competition and to preserve regulation where
20 competition does not become effective. Strict enforcement of anti-trust laws, non-
21 discriminatory access to bottleneck facilities, and specific definitions of what
22 constitutes competition must be put in place before deregulation takes place.

1 The Commission and other state agencies (perhaps the Attorney General) will
2 inevitably have the task of ascertaining how competitive the marketplace is.
3 Therefore, it should undertake an aggressive program of market monitoring. The
4 areas covered should include prices, profits, quality, product development, market
5 shares, entry and exit. Subject to the necessary proprietary guarantees, all market
6 participants should be required to report these factors to the board so that it can
7 develop a complete and current picture of the status of competition. A summary
8 report should be prepared on an annual basis. Relevant market segments should be
9 identified such as residential/small business basic and enhanced, large business basic
10 and enhanced, etc.

11

12 Q. HOW DO YOU PROPOSE TO PROMOTE COMPETITION FOR
13 RESIDENTIAL RATEPAYERS?

14 A. Each utility should run a year long pilot in which a variety of aggregation
15 approaches for residential ratepayers should be actively promoted and assessed to
16 ascertain whether residential ratepayers can have effective access to the competitive
17 market in electricity. At the end of the trial, the Commission should determine if the
18 approaches were in fact effective in achieving access to competitive providers of
19 electricity for residential ratepayers.

20

21 Q. WHAT ROLE SHOULD ENFORCEMENT PLAY?

22 A. Each of the five policy areas outlined is intended to prevent or discipline

1 abusive practices without enforcement. This has not proven adequate in the
2 telecommunications industry since divestiture. Enforcement has been continual in
3 both the local and long distance markets. One of the problems is that penalties are not
4 adequate. I would urge the Commission and the Task Force, to establish severe
5 penalties for abusive practices. Losing a court case must result in more than a slap
6 on the wrist, or abuses will persist.

7

8

9

10

11

1 **V. UNIVERSAL SERVICE AND CONSUMER PROTECTION**

2 **IN CHAPTER 28**

3

4 Q. WHAT IS THE PURPOSE OF THIS CHAPTER?

5 A. In this chapter I review AARP's recommendations in terms of the recently
6 enacted changes in Chapter 28. Where the Commission has issued initial guidelines
7 to implement the new law, I also consider how these relate to AARP
8 recommendations.

9

10 Q. DO YOU BELIEVE THAT YOUR AGGRESSIVE PROGRAM TO
11 ENSURE UNIVERSAL SERVICE AND PROVIDE CONSUMER PROTECTION
12 IS CONSISTENT WITH THE RECENTLY ENACTED RESTRUCTURING
13 LEGISLATION?

14 A. Yes. Both the general thrust of the legislation and the specific policies
15 adopted in each of the areas I review is consistent with my proposal for more
16 vigorous policy. I would encourage the Commission to support this policy, even
17 though its tentative guidelines do not go far enough in a number of areas. Companies
18 certainly have the right, under the law, to propose a specific restructuring plan like the
19 one I recommend and the Commission could certainly approve such a plan. I believe
20 that the spirit and letter of the law is more consistent with the aggressive program I
21 have proposed than the one that has been put on the table by the company. The
22 Commission's guidelines are just that, guidelines, and more aggressive approaches can

1 be proposed by the Companies.

2

3 A. GENERAL POLICY

4

5 Q. PLEASE EXPLAIN WHY THE GENERAL POLICY IN THE RECENTLY
6 ENACTED LEGISLATION IS CONSISTENT WITH YOUR
7 RECOMMENDATIONS.

8 A. I would point to four repeated themes in the law. First, the law reiterates and
9 repeats its commitment to reliable, affordable service available on reasonable terms.

10 As long as safe and affordable transmission and distribution service is
11 available at level of reliability that are currently enjoyed by the citizens
12 and businesses of this commonwealth -- s.2802 (3).

13

14 Electric service is essential to the health and well-being of residents,
15 to public safety and to orderly economic development; and electric
16 service should be available to all customers on reasonable terms and
17 conditions -- s.2802(9).

18

19 Second, while the traditional concepts of reasonable, reliable service at
20 affordable rates provides the minimum standard that must not be violated as change
21 is implemented, the goal is to improve the situation --

22 Rates for electricity in this commonwealth are on average higher than
23 the national average, and significant differences exist among the rates
24 of Pennsylvania electric utilities.

25 Competitive market forces are more effective than economic
26 regulation in controlling the cost of generating electricity.

27 The cost of electricity is an important factor in decisions made by
28 businesses concerning locating, expanding and retaining facilities in
29 this Commonwealth.

30 This Commonwealth must begin the transition from regulation to
31 greater competition in the electricity generation market to benefit all

1 classes of customers and to protect this Commonwealth's ability to
2 compete in the national and international marketplace for industry and
3 jobs (s.2802 (7)).
4 Things are supposed to get better.

5 Third, the universal service policy enacted by the legislature establishes the
6 current policies in the state as only a minimum.

7 The Commonwealth must, at a minimum, continue the protections,
8 polices and services that now assist customers who are low income to
9 afford electric service -- s.2802(10).
10

11 The Commission and the companies could certainly propose more vigorous
12 programs than the minimum. I suggest that the minimum is not sufficient to
13 accomplish the purposes of the new law. When legislators state that this is the
14 minimum that should be done, they clearly contemplate the fact that the regulators
15 would find that more is necessary. The floor should not be assumed to also be the
16 ceiling.

17 Fourth, the new law uses exactly the same language with respect to customer
18 service and consumer protection.

19 Consumer Protections and Customer Service . -- The electric
20 distribution company shall continue to provide customer service
21 functions consistent with the regulations of the commission, including
22 meter reading, complaint resolution and collections. Customer service
23 shall, at a minimum, be maintained at the same level of quality under
24 retail competition -- s.2807(d).
25

26 Thus the purpose is to take the current situation and improve upon it,
27 preserving all of the fundamental utility, universal service, and consumer protection
28 principles that have been put in place in the past as a minimum. The benefits of
29 restructuring are not only to be achieved in terms of price (since the law puts a cap

1 on current rates) but also in the quality of service including transactions in the market
2 place. This becomes even more apparent when we review the policy adopted in each
3 of the twelve specific areas I have identified for vigorous public policy.

4

5 **B. CONSUMER**

6 **1. UNIVERSAL SERVICE**

7 Q. PLEASE DESCRIBE THE NEW LAW'S UNIVERSAL SERVICE
8 POLICY.

9 A. Although the law identifies low income households as a focal point of public
10 policy ("at a minimum" preserving current policies), there is a broad commitment to
11 affordability for all (as noted above) and availability for all.

12 Electric distribution companies should continue to be the provider of
13 last resort in order to ensure the availability of universal electric
14 service in this Commonwealth unless another provider of last resort
15 is approved by the Commission -- s.2802(16)

16

17 The total charges of an electric distribution utility for services to any
18 customer who purchases generation from that utility shall not exceed
19 the total charges that have been approved by the Commission for such
20 service as of the effective date of this chapter -- s.2804(4).

21

22 These two fundamental policy protections apply to all consumers. It is crucial
23 in implementing policy not to allow the floor to become a ceiling or the ceiling to
24 become a floor. I suggest that the ceiling the legislature placed on rates should not
25 be considered a floor. The rate ceiling is the minimal protection against doing harm,
26 but there is every hope and intention that the law would do good. Rates cannot go
27 above current levels, they should come down.

1 The universal service policies identified in the law to be targeted at low
2 income households are broad in scope, as is my proposal.

3 The purpose is to be promoted by continuing universal service and
4 energy conservation policies, protections and services; and full
5 recovery of such costs is to be permitted through a non-bypassable
6 rate mechanism -- s.2802(17).

7
8 “Universal Service and Energy Conservation.” Policies, protections
9 and services that help low-income customers to maintain electric
10 service. The term includes customer assistance programs; termination
11 of service protection and policies and service that help low-income
12 customers to reduce or manage energy consumption in a cost effective
13 manner, such as the low income usage reduction programs,
14 application of renewable resources and consumer education -- s.2803.

15
16

17 Q. HOW DO YOU EVALUATE THE COMMISSION'S TENTATIVE
18 ORDER ON UNIVERSAL SERVICE AND ENERGY CONSERVATION IN
19 LIGHT OF YOUR READING OF THE LAW AND YOUR
20 RECOMMENDATIONS?

21 A. The tentative order essentially brings forward current policies as a minimum
22 and seeks to make sure they are consistent with the new law (Pennsylvania Public
23 Utility Commission, Tentative Order Re: Guidelines for Universal Service and Energy
24 Conservation Programs Made Pursuant to 66 Pa. C.S. s.2803, s.2802(17), s.2804(8)
25 and s.2804(9), Docket No. M-00960890 f 0010, April 25, 1997 (hereafter, Universal
26 Service Tentative Order). It does not preclude moving beyond that minimum, as I
27 believe the law contemplates and encourages. There are a few important points I
28 would stress in recommending that companies propose, and the Commission approve,

1 more than the minimum.

2 Universal service policies should be a permanent feature of regulatory
3 structure, not simply "multi-year." (Universal Service, Tentative Order, II. A.)

4 Clearly the structure of programs outlined by the Commission dealing with
5 rates, provides a bedrock of support which is a "minimum" as outlined in II.C.1.
6 There is a fundamental step that I recommend utilities take, which the Commission
7 has not required, but certainly has not precluded. Eligibility criteria should be based
8 only on income (Universal Service Tentative Order, II. B.). That is, each of the rate
9 relief programs proposed by the company includes in its eligibility criteria a "special"
10 circumstance beyond limited household income. The household must be payment
11 troubled or have a special need. I propose a program, similar to that recently adopted
12 for telecommunications at the federal level, which relies solely on income as a criteria.

13 I believe that a distressed payment program should stand side-by-side with the
14 general discounts for low income households, not be superseded by it.

15 As required by the new law, funding should be provided in a competitively
16 neutral way. As pointed out in my proposal, the benefits of universal service accrue
17 to all citizens in Pennsylvania. Therefore, I believe that my recommended per kwh
18 approach is consistent with the law and the Commission's order (Universal Service
19 Tentative Order, II. F.).

20

21 Q. HOW WILL YOUR UNIVERSAL SERVICE PROGRAM FIT UNDER
22 THE PRICE CAP?

1 A. If the funding is financed on a kwh basis, the cost will be relatively small. If
2 the Commission adopts my recommendation on the sharing of the responsibility for
3 stranded costs, there will be no problem with the price cap. Indeed, if the
4 Commission requires the utility to bear even a small share of the responsibility of
5 stranded costs, there would be more than adequate room under the price cap to fund
6 the program.

7

8 2. EDUCATION

9 Q. WHAT ARE THE POLICIES ON CONSUMER EDUCATION IN THE
10 STATUTE?

11 A. There is no clearer indication that the law recognized the need for proactive
12 policies to help the public benefit from restructuring in the electric utility industry than
13 the education policy it enacted.

14 Prior to the implementation of any restructuring plan under section
15 2806, each electric distribution company, in conjunction with the
16 Commission, shall implement a consumer education program
17 informing customers of the changes in the electric utility industry. The
18 program shall provide consumers with information necessary to help
19 them make appropriate choices as to their electric service. The
20 education program shall be subject to approval by the Commission --
21 s.2807(d)(3).

22

23 I have outlined the aggressive program that I believe is necessary to
24 accomplish this goal of the new law.

25

26 Q. WHAT HAS THE COMMISSION PROPOSED ON EDUCATION

1 EFFORTS?

2 A. The Commission has outlined the program for education in two areas. Very
3 general observations about the full range of consumer protection issues I have
4 identified are covered in Pennsylvania Public Utility Commission, Tentative Order Re:
5 Guidelines for Maintaining Customer Service at the Same Level of Quality Pursuant
6 to 66 Pa. C.S. s.2807, and Assuring Conformance with 52 Pa. Code Chapter 56
7 Pursuant to 66 Pa. C.S. s.2809(E) and (F), Docket No. M-00960890 f 0011
8 (hereafter, Consumer Protection Tentative Order). The Commission has certainly
9 identified all of the areas in which policy is necessary. It has not specified the content
10 of policy in most of these areas. Therefore, the proof is in the proposals that the
11 companies put forward.

12 The Commission has also identified certain additional educational steps which
13 should be taken with respect to low income households associated with their
14 participation in lifeline programs Universal Service Tentative Order, II. C. 4). It
15 covers both general questions (such as how to exercise choice) and specific low
16 income issues (eligibility, etc.). *It outlines some brief steps to help ensure effective*
17 *functioning (outreach, etc.).*

18

19 3. UTILITY ASSURANCES

20 Q. WHAT IS THE POLICY ON UTILITY ASSURANCES?

21 A. As previously noted, the law identifies the full range of utility protections
22 currently in place as the minimum that should be done. The funding mechanism is

1 also generally specified.

2 The Commonwealth must, at a minimum, continue the protections,
3 polices and services that now assist customers who are low income to
4 afford electric service -- s.2802(10).

5
6 The purpose is to be promoted by continuing universal service and
7 energy conservation policies, protections and services; and full
8 recovery of such costs is to be permitted through a non-bypassable
9 rate mechanism -- s.2802(17).

10

11

12

13 Q. HOW HAS THE COMMISSION DEALT WITH THIS ISSUE?

14 A. It has brought forward current practices. It does not recommend changes in
15 these policies at present. However, a fundamental problem will be to assure that these
16 policies can continue to effectively be implemented with multiple suppliers of services
17 (Consumer Protection Tentative Order, paras. 11-14).

18

19 4. FAIR MARKETING

20 Q. WHAT IS THE POLICY ON MARKETING?

21 A. The law calls for general consumer protections and identifies some of the
22 specific areas that I mention.

23 Customer Billing. -- Subject to the right of an end-use customer to
24 choose to receive separate bills from its electric generation supplier,
25 the electric distribution company may be responsible for billing
26 customers for all electric services consistent with the regulation of the
27 Commission, regardless of the identity of the provider of those
28 services -- s.2807(c).

29

30 (1) The Commission shall establish regulations to ensure that an
31 electric distribution company does not change a customer's electricity
32 supplier without direct oral confirmation from the customer of record

1 or written evidence of the customer's consent to a change of supplier.
2
3 (2) The Commission shall establish regulations to require each electric
4 distribution company, electricity supplier, marketer, aggregator and
5 broker to provide adequate and accurate customer information to
6 enable customers to make informed choices regarding the purchase of
7 all electricity services offered by that provider. Information shall be
8 provided to consumers in an understandable format that enables
9 consumers to compare prices and services on a uniform basis --
10 s.2807(d).

11
12 Q. WHAT IS THE COMMISSION POLICY IN THIS AREA?

13 A. As I noted, the Commission has identified a number of areas of concern. It
14 has not generally selected specific approaches to these consumer protection issues in
15 (Consumer Protection Tentative Order, III.C. 3-8).

16

17 5. NON-DISCRIMINATION

18 Q. WHAT IS THE POLICY ON NON-DISCRIMINATION?

19 A. As previously noted, the law requires non-discrimination in the benefits
20 provided across customer classes. It also prohibits discrimination, by fording negative
21 results that unfairly burden one customer class.

22 The Commission shall require that restructuring of the electric utility
23 industry be implemented in a manner that does not unreasonably
24 discriminate against one customer class to the benefit of another --
25 s.2804(7).

26

27 6. DISPUTE HANDLING

28 Q. WHAT IS THE POLICY ON DISPUTE HANDLING?

29 A. The law does not specifically deal with this issue. It falls under the general
30 policy of preserving current consumer protections.

1 Q. WHAT POLICY HAS THE COMMISSION ADOPTED?

2 A. The Commission has outlined a dispute resolution process that generally is
3 consistent with my recommendation -- requiring notification, exchange of information,
4 etc. (Consumer Protection Tentative Order, III. C. 9).

5

6 C. SELLER

7 7. STRANDED COSTS

8 Q. WHAT IS THE POLICY ON STRANDED COSTS?

9 A. The law has essentially brought forward existing legal treatment of stranded
10 costs.

11 The Commission is empowered under this chapter to determine the
12 level of transition or stranded costs for each electric utility and to
13 provide a mechanism, the competitive recovery charge, for recovery
14 of an appropriate amount of such costs in accordance with the
15 standards established in this chapter -- s.2802(15).

16

17 "Transition or stranded costs." An electric utility's known and
18 measurable net electric generation-related costs, determined on a net
19 present value basis over the life of the asset or liability as part of its
20 restructuring plan, which traditionally would be recoverable under a
21 regulated environment but which may not be recoverable in a
22 competitive electric generation market and which the Commission
23 determines will remain following mitigation by the electric utility --
24 s.2803.

25

26 Consistent with s.2808 (relating to competitive transition charge), the
27 Commission has the power and duty to approve a competitive
28 transition charge for the recovery of transition or stranded costs it
29 determines to be just and reasonable to recover from ratepayers --
30 s.2804(13).

31

32 The key policies here are to invoke traditional treatment of costs with specific

1 reference to just and reasonable. The traditional concept in Pennsylvania is a used and
2 useful standard.

3 In dealing with the unique situation of evaluating stranded costs during a
4 transition, the Commission is given leeway in dealing with mitigation efforts.

5 The Commission shall consider the extent to which the electric utility
6 has undertaken efforts to mitigate generation-related transition or
7 stranded costs by appropriate means in a manner that is reasonable
8 under all of the circumstances, including consideration of whether
9 mitigation has been commensurate with the magnitude of the electric
10 utility's generation related transition or stranded costs. During the
11 transition period, electric utilities shall have the duty to mitigate
12 generation related transition or stranded costs to the extent practicable
13 -- s.2808(c)(4)

14
15

16 Q. WHAT POSITION HAS THE COMMISSION TAKEN?

17 A. The Commission has not issued any specific decisions with respect to stranded
18 costs. In the securitization proceeding it did not grant over two-thirds of PECO's
19 request.

20

21 8. LICENSING/CERTIFICATION

22 Q. WHAT IS THE POLICY ON LICENSING AND CERTIFICATION?

23 A. The Commission is granted broad authority on certification which is consistent
24 with my recommendations.

25 Electric generation suppliers will be required to obtain licenses,
26 demonstrate financial responsibility and comply with such
27 requirements concerning service as the commission deems necessary
28 for the protection of the public -- s.2802(14) (see also s.2806(3)).

29
30

1

2 **9. RELIABILITY**

3 Q. WHAT IS THE POLICY ON RELIABILITY?

4 A. As previously noted, the law requires the current level of reliability to at least
5 be maintained. The reliability language is repeated several times in great detail.

6 Reliable electric service is of the utmost importance to the health,
7 safety and welfare of the citizens of the Commonwealth. Electric
8 industry restructuring should ensure the reliability of the
9 interconnected electric system by maintaining the efficiency of the
10 transmission and distribution system -- s.2802(12).

11

12 [T]he independent system operator or its functional equivalent should
13 set, and the Commission shall set, through regulations, inspection,
14 maintenance, repair and replacement standards and enforce those
15 standards -- s.2802(20).

16

17 "Reliability." Includes adequacy and security. As used in this
18 definition, "adequacy" means the provision of sufficient generation,
19 transmission and distribution capacity so as to supply the aggregate
20 electric power and energy requirements of consumers, taking into
21 account scheduled and unscheduled outages of system facilities; and
22 "security" means designing maintaining and operating a system so that
23 it can handle emergencies safely while continuing to function --
24 s.2803.

25

26

27 **11. COMPETITIVENESS**28 **a. Customer Choice**

29 Q. WHAT IS THE POLICY ON CUSTOMER CHOICE?

30 A. My particular focus is on residential customers. My recommendation to
31 ensure that the pilot demonstrates that retail access for residential ratepayers will
32 work is consistent with the authority given to the Commission.

1 Retail access pilot programs. -- As of the effective date of this
2 chapter, the Commission has authority to order electric utilities to
3 submit proposals for retail access pilot programs to begin April 1,
4 1997. The Commission shall provide guidelines for retail access pilot
5 programs by order.
6

7 (1) In order to determine whether all customer classes can benefit
8 from competitive markets, utilities shall tailor proposed retail access
9 pilot programs to accommodate the specific geographic, demographic
10 and socioeconomic characteristics of their customer base. Retail
11 access pilot programs must include an equal opportunity for the
12 broadest practical direct access by all customer classes to electric
13 generation suppliers -- s.2806(G)
14

15 At the extreme, under the law one can argue that until the Commission finds,
16 as a result of the pilot, that retail access "benefits all classes of customers," it cannot
17 allow the process to go forward. It can reject the restructuring plan and require
18 another one be written. While I do not necessarily anticipate that the Commission will
19 be forced to this extreme, I phrase it this way to underscore the importance of
20 demonstrating the efficacy of the model to residential consumers.
21

22 b. Market Monitoring

23 Q. WHAT IS THE POLICY ON MONITORING THE MARKET?

24 A. The law contains a vigorous program on market monitoring.

25 Monitoring Competitive Conditions. -- The Commission shall monitor
26 the market for the supply and distribution of electricity to retail
27 customers and take steps as set forth in this section to prevent anti-
28 competitive or discriminatory conduct and the unlawful exercise of
29 market power. s.2811(A)
30
31

32 12. ENFORCEMENT

1 Q. WHAT IS THE POLICY ON ENFORCEMENT?

2 A. The law outlines a vigorous and coordinated enforcement strategy.

3 Referrals and Intervention -- If as a result of an investigation
4 conducted under this section, the Commission has reason to believe
5 that anti-competitive or discriminatory conduct, including the unlawful
6 exercise of market power is preventing the retail electricity customers
7 of this Commonwealth from obtaining the benefits of a properly
8 functioning and workable competitive retail electricity market, the
9 Commission, pursuant to its regulations, shall:

10
11 (1) refer its findings to the Attorney General, the United States
12 Department of Justice, the Securities and Exchange Commission or
13 the Federal Energy Regulatory Commission -- s.2811(D).

1 **VI. EVALUATION OF THE PECO RESTRUCTURING PROPOSAL**

2

3 Q. WHAT IS THE PURPOSE OF THIS CHAPTER?

4 A. In this chapter I review the PECO restructuring proposal in light of AARP's
5 recommendations for sound public policy in restructuring and the recently enacted
6 statute.

7

8 Q. WHAT IS YOUR CONCLUSION ABOUT THE PECO PROPOSAL?

9 A. The PECO proposal is severely deficient in a number of major areas. I will
10 focus on three broad areas. The first is stranded costs, which has a tremendous
11 impact on the affordability for all customers and the fundamental benefits that the
12 Consumer Choice Act sought to deliver to all ratepayers. The second is the low
13 income proposal. The third involves several aspects of the consumer protection
14 proposal.

15

16 **A. STRANDED COSTS**

17

18 Q. PLEASE DESCRIBE THE IMPORTANCE OF STRANDED COSTS IN
19 THE PECO PROPOSAL.

20 A. The most fundamental flaw in the PECO proposal is its treatment of stranded
21 costs. PECO has taken the rate cap in the law and assumed that it is a rate floor
22 which can be used to guarantee full recovery of utility costs. In so doing, it robs

1 ratepayers of any benefits of the new Act. PECO has taken no responsibility for its
2 massively above market, uneconomic costs. It has structured its rate proposal to
3 virtually ensure that competitors will not be able to enter the market because the price
4 it would allow to be paid for generation is extremely low. As a result, it destroys the
5 fundamental goal of the legislation, which is to deliver benefits to all classes of
6 ratepayers. Residential ratepayers cannot possibly benefit under PECO's proposal
7 and will almost certainly suffer because a competitive market will never get going.

8 The most fundamental problem is the proposal to absolve utility management
9 and stockholders from all responsibility for above market costs. Essentially, PECO
10 has assumed that every penny of capital cost and expense for its uneconomic assets
11 must be recovered first. After the utility is made whole, it then allows the market to
12 start to operate.

13 The price that PECO's approach will allow for competitive generation is lower
14 than the market clearing price it has assumed for the estimation of stranded costs. As
15 a result, only competitors who can beat the most efficient price by 25 percent or
16 more, could ever sell any electricity. At the same time, PECO, which is producing
17 electricity at more than 100 percent above the economic cost of production, is
18 recovering every penny of its uneconomic costs. This is a gross perversion of the
19 spirit and letter of the law.

20

21 Q. ISN'T IT TRUE THAT IF PECO ASSUMES A HIGHER PRICE FOR
22 GENERATION AND FILLS IN WITH STRANDED COSTS, YOU END UP IN

1 THE SAME PLACE?

2 A. Yes and no.

3 Yes, if you assume that PECO should be allowed to just price up to the cap
4 to make itself whole. But that is the wrong assumption.

5 No. Because if PECO assumes a higher price for generation, which is not
6 guaranteed to it, and a lower charge for stranded costs, at least consumers have a
7 realistic chance of finding a supplier who can beat the assumed cost of generation.

8 If the Commission is going to let the rate cap be used to shield the utility
9 income against any market impacts, it should at least give consumers a fighting chance
10 of realizing market benefits. The least it could do is choose the highest market
11 clearing price it can to calculate stranded costs and to insist that price be used in the
12 rate cap calculation. This would give the market a chance to develop and the
13 consumer a chance to benefit from it. However, I do not believe the "make-whole"
14 approach chosen by PECO should be allowed in any event.

15

16 Q. WHY DO YOU REJECT PECO'S INTERPRETATION OF THE
17 OBLIGATION OF THE COMMISSION TO ALLOW MAKE-WHOLE
18 STRANDED COST RECOVERY?

19 A. PECO's main witness on stranded costs, Mr. Sidak, has totally misinterpreted
20 the nature of stranded costs and the implication of the statute for stranded cost
21 recovery. Mr. Sidak asserts and assumes, incorrectly, that the stranding of costs is
22 the result of a change in regulatory mechanisms. That simply is not the case.

1 The utility has traditionally and continuously been under the obligation to
2 deliver electricity service that is economic. That obligation existed prior to any
3 change in approach to regulation and continues to exist. Under the traditional
4 obligation, PECO was failing miserably to deliver economically priced service. The
5 considerations introduced by restructuring only make the uneconomic nature of
6 PECO's delivery of electricity obvious and palpable, they do not create the
7 fundamental failure on PECO's part.

8 Uneconomic costs were never recoverable under traditional regulation. They
9 were always subject to disallowance. The fact that PECO has been recovering some
10 of those costs for a period of time has never meant that all of those costs were
11 recoverable forever. The fact that the Commission approved some rates over half a
12 decade ago does not mean that those rates were not reviewable. The fact that the
13 Commission (and the legislature) invokes competition as a more precise regulatory
14 mechanism for determining what is economic, does not change or create the
15 requirement that the utility provide economic service -- that obligation has always
16 been at the heart of traditional regulation. The law notes that competition is just
17 another mechanism for controlling costs (s.2802 (5)).

18 By improperly blaming current uneconomic costs on a "regulatory switch" Mr.
19 Sidak has misrepresented the nature of traditional regulation. Regulation never
20 indemnified utilities against the changes brought on by technological progress.
21 Regulation never protected utilities from either supply-side or demand-side
22 competition. A showing of prudence, even if there had been one, never guaranteed

1 recovery of costs. Just like companies in a competitive marketplace, a utility is
2 required to continually review the efficiencies of its operation compared to those
3 around it and in light of new and emerging technologies. Even utility witnesses
4 recognize this fact.

5 In planning its existing generation, PECO's objective was to provide
6 safe, reliable and economic service to its customers. (Testimony of
7 Gregory A. Gucchi, p. 38).
8
9

10 Q. WHY HAS PECO FAILED TO REDUCE COSTS TO ECONOMIC
11 LEVELS?

12 A. The flaw in most utility analyses, and the flaw in Mr. Sidak's analysis, has been
13 to assume that utilities had to be paid first. Utilities have asked the question, "after
14 I am paid, how can I lower the cost of service?" The proper question that regulation
15 imposes on utilities -- the question that the competitive marketplace imposes on all
16 producers -- is simply "how can I lower the cost of service -- period?"

17 PECO should have been aggressively finding ways to reduce its costs,
18 including the retirement and write-down of existing facilities which embodied
19 inefficient technologies. For decades there have been off-the-shelf technologies with
20 much lower costs than PECO management chose to incur. PECO cannot justify
21 uneconomic costs with a claim that social obligations are the cause, when other
22 approaches to accomplishing the same goal at a much lower price were available.
23 PECO cannot claim that "the regulator made me do it." Regulation only required
24 PECO to serve customers. It did not require PECO to do so at extremely high costs.

1 Quite the contrary, it required PECO to do so in the least cost fashion possible.
2 Analysis of other entities shows that others were able to accomplish this goal at much
3 lower costs.

4
5 Q. HOW SHOULD PECO'S CLAIMS TO COST RECOVERY BE
6 EVALUATED?

7 A. Having established the fact that PECO only has a claim to recover the efficient
8 costs of production and that the Commission has never been required to allow the
9 recovery of uneconomic costs, we turn to the question of how to measure the
10 economic costs of production. There are two relevant standards that should be
11 considered.

12 One standard is the "most efficient producer standard." Under routine
13 assumptions about competitive market behavior, this would be the market clearing
14 price. In essence, we ask "at what price would competitive supply clear the market."
15 This is a relevant consideration because competition would force producers to
16 continuously evaluate and choose the most efficient technology. In a competitive
17 market, if you get stuck with an inefficient technology, you suffer inadequate returns
18 or losses until you lower your costs.

19 A second standard is the "most efficient utility standard." This standard
20 recognizes that certain obligations were placed on utilities. While they might have
21 been able to choose the most efficient plant for any specific decision about a specific
22 increment of supply, they may also have been required to make decisions that were

1 not strictly least costs in the aggregate for policy reasons. For example, they might
2 be required do things a competitive profit maximizer might not do, such as to have
3 a larger reserve margin, a different resource mix, or a higher level of reliability.
4 However, it is crucial not to confuse the fact that a utility was required to have more
5 capacity with the fact that it paid too much for that capacity. The former is a policy
6 obligation, the latter is a management mistake.

7 The divergence between the "most efficient producer standard" and the "most
8 efficient utility standard," if there is any, will vary depending on policy and the nature
9 of decision making. Both should be examined by the Commission to determine which
10 costs to allow. Any divergence should be carefully analyzed by the Commission.

11

12 Q. HOW DOES PECO FARE BY THESE STANDARDS?

13 A. Poorly by either standard. Both the "most efficient producer" or "most
14 efficient utility" standard indicate that PECO is producing electricity at grossly
15 uneconomic costs. These would not be recovered from ratepayers under traditional
16 forms of rate making and they should not be recovered in the transition to
17 restructuring.

18 PECO's production costs, excluding regulatory assets, are over twice as high
19 as the market clearing price.

20 Nearby utilities have achieved must lower production costs. For example, 100
21 miles away, Baltimore Gas and Electric and Potomac Electric Power Company serve
22 large metropolitan areas. PECO's generation costs are about 50 percent higher than

1 these company's costs. PECO's production costs are about 50 percent above the
2 lowest cost producer in Pennsylvania. PECO's production costs are about 50 percent
3 above the national average. PECO's production costs are about one-third higher than
4 the state-wide average production cost for Pennsylvania, excluding PECO.

5 By any standard, PECO fails the test of providing economic service.

6

7 Q. HAS PECO BEEN BEARING THE CONSEQUENCES OF ITS
8 INEFFICIENCIES?

9 A. Not a great deal. Although PECO has clearly failed to provide economic
10 service, it has been earning almost full recovery of its capital and a healthy return on
11 its capital. Since 1990, when the last base rate case was completed, PECO has
12 enjoyed a return of and on capital of close to \$6 billion. If the current above market
13 costs are any indication, consumers have been charged uneconomic costs of almost
14 that magnitude.

15

16 Q. WASN'T PECO REQUIRED TO WRITE OFF PART OF ITS
17 INVESTMENT?

18 A. Yes, but not nearly enough. Competitive sector companies frequently write
19 off assets to bring their costs into line with efficient production. PECO's write-off
20 was very small, less than five percent of its total assets and not nearly enough to bring
21 costs down to efficient levels.

22

1 Q. WHAT IS THE MAGNITUDE OF UNECONOMIC COSTS SUBJECT TO
2 DISALLOWANCE?

3 A. To estimate these uneconomic costs, in the current context we must separate
4 out two categories. Given the legislative language on the recovery of regulatory
5 assets and certain transition costs, these must be treated separately. PECO separates
6 them out as I do below.

7 Attachment MNC-5 gives order of magnitude estimates of the potential
8 disallowances (Appendix A provides supporting detail). In this analysis, I assume
9 non-utility producers have no regulatory assets and add PECO's estimate to the
10 market price of production. I assume other utilities have regulatory assets equal to
11 PECO's.

12 Using any of the most efficient producer or utility standards, the disallowance
13 would equal the entirety of PECO's claimed stranded generation costs. PECO
14 claimed \$3.8 billion of stranded generation costs, the most efficient producer analysis
15 indicates just about all of this is uneconomic compared to utilities. Even the non-
16 PECO statewide average would indicate uneconomic costs of approximately two-
17 thirds of the claimed stranded generation costs. PECO has simply not provided
18 economic service compared to its fellow utilities.

19 It is interesting to note that even using a broad national standard -- the
20 national average -- PECO's claimed stranded costs would all be uneconomic.

21 It is interesting to analyze the sources of these uneconomic costs. It is
22 important to note that the market value that PECO has estimated for the output of its

1 facilities equals roughly the operating costs of those facilities. In competitive markets
2 where producers are under stress (e.g. during a recession or a period of changing
3 technology) operating costs become the floor below which they will not go. As long
4 as output covers the variable costs of production and makes at least some
5 contribution to fixed costs, it pays to keep producing. PECO's operating costs are
6 actually close to the operating costs of other utilities.

7 Its capital charges are much higher. Return of and on capital contribute about
8 equally to its uneconomic costs.

9

10 Q. IN YOUR ANALYSIS YOU ADD REGULATORY COSTS DIRECTLY
11 INTO THE ESTIMATE OF THE COST OF PRODUCTION. DOES THAT MEAN
12 YOU ACCEPT PECO'S ESTIMATE?

13 A. I have only accepted PECO's estimate of regulatory costs for purposes of the
14 discussion and to simplify the discussion of generation costs. I am not agreeing or
15 disagreeing with PECO's claims. I have not analyzed these in detail in this case.

16 However, there is one principle I believe the Commission should apply in
17 evaluating PECO's claims, which seems to be in conflict with its approach. To the
18 extent that regulatory assets involve interest free loans, all of the benefits of those
19 loans should be returned to ratepayers. If the regulatory asset involves taxes or other
20 charges that were collected from ratepayers, under the pretext that they would be paid
21 to the government but they were not, it is the ratepayers who lost the use of those
22 moneys in the first place. The utility should not be made worse off as a result of the

1 accounting treatment, but it should not profit from the use of ratepayer money.

2 I believe that the Commission should scrutinize PECO's claims for recovery
3 of regulatory assets in this vein.

4

5 Q. WHAT DO YOU RECOMMEND?

6 A. AARP has taken the position that ratepayers should be held responsible for,
7 at most, 50 percent of stranded costs. As discussed throughout my testimony,
8 management must be responsible for their share of stranded costs where management
9 discretion was exercised. This is consistent with the Pennsylvania law's decision to
10 hold ratepayers responsible for regulatory assets (over which management had no
11 discretion), as long as the Commission applies the principle I mentioned earlier.
12 AARP also recognizes that certain financial obligations are binding on utilities in
13 terms of their debt. The Commission should take this into account as well.

14 In this case, a disallowance of the full value of stranded generation assets, as
15 supported by the most efficient utility or producer analysis (\$3.8 billion or \$380
16 million per year), would lower PECO's interest coverage to about 1.8. This is in the
17 range where bond covenants begin to restrain the utility's ability to float new debt.
18 Over time, however, the constraint would ease.

19 If the state-wide average is used, a disallowance of \$2.04 billion (\$204 million
20 per year, would result in an interest coverage in the range of 2.3.

21 I believe that regulatory assets should be recovered, after they are scrutinized
22 and that at least \$2 billion should be disallowed.

1 Q. HOW SHOULD STRANDED COSTS TO BE RECOVERED FROM
2 RATEPAYERS BE ALLOCATED?

3 A. I have a concern that the method used to allocate stranded costs will place an
4 unjustified burden on residential ratepayers. As my previous analysis shows, the
5 problem arises because the stranded costs are associated with a specific type of asset
6 and category of costs -- capital costs associated with base load generation facilities.
7 The cost methodology allocates these costs to customer classes on the basis of
8 contribution to peak load. In the case of PECO, it over allocates capital costs to the
9 peak. Since the residential class consumes a much higher percentage of energy at the
10 peak, they bear a disproportionate burden of capital costs.

11 Residential ratepayers will be placed at a disadvantage in the transition to
12 competition. Residential ratepayers will be in the market for peak load power, while
13 they bear a significant share of costs for base load power. They must pay the higher
14 operating costs of peak load power, while they pay the capital costs of stranded
15 generation plant.

16 Given the language of the law, I am not certain that the Commission can
17 address this problem, but it should recognize the burden that has been placed on
18 residential ratepayers. Because the recovery of stranded costs assigns these
19 uneconomic costs disproportionately and permanently to the residential class, while
20 the market opportunities to lower costs are likely to be better for base load power in
21 the future, this methodology may have the effect of shifting costs onto the residential
22 class. This is certainly something that the Commission should monitor as the

1 competitive market develops. If the combination of the allocation methodology and
2 the development of market forces shifts costs onto residential ratepayers, the intent
3 of the law would be frustrated.

4
5 **B. LIFELINE PROGRAMS**

6
7 Q. HOW DO YOU EVALUATE PECO'S LIFELINE PROGRAM?

8 A. I believe that it is inadequate in two areas -- eligibility for benefits and the
9 funding mechanism.

10

11 Q. WHAT IS THE PROBLEM WITH ELIGIBILITY?

12 A. While PECO does the minimum required by the law, as previously noted, I
13 believe that it should drop the requirement for bill payment problems for participation.
14 All low income households should receive the discounts presently made available, if
15 they are certified as eligible by the criteria I outlined.

16 Providing broad based eligibility will certainly reduce the burden on low
17 income households. PECO's current benefit structure reflects ability to pay, so
18 expanding the program will target benefits to those who need it most.

19 The analysis of lifeline programs in Pennsylvania shows that the discounted
20 rates cover the variable cost of service and make a contribution to fixed costs. Thus,
21 for the social and economic reasons I outlined earlier, I believe that eligibility should
22 be broadened.

1 Q. WHAT IS THE PROBLEM WITH THE FUNDING MECHANISM?

2 A. PECO's proposal to raise universal service funds only from residential
3 ratepayers is inconsistent with the law and the Commission's recommendation. As
4 I have pointed out, all customer classes benefit from universal service. All should pay.
5 I believe that consumption should be used as the base for raising funds.

6

7 C. CONSUMER PROTECTION

8

9 Q. WHAT IS THE PROBLEM WITH PECO'S CONSUMER PROTECTION
10 PROPOSALS?

11 A. Basically they are undefined. PECO says it will do what the Commission
12 orders in its final decision. It could have outlined a program of its own. Moreover,
13 where it did offer some specifics, as with the "Code of Conduct," there is very little
14 substance offered. In addition to my earlier recommendations, there are two areas
15 of the PECO proposal that cause me concern -- supply-side safeguards and allocation
16 of competitive opportunities.

17

18 Q. PLEASE EXPLAIN WHAT YOU MEAN BY SUPPLY-SIDE
19 SAFEGUARDS?

20 A. By supply-side safeguards, I mean the rules and regulations which will govern
21 the interaction between suppliers in the mixed competitive/monopoly environment.
22 My earlier comments focused on the interaction between consumers and suppliers, but

1 I believe PECO's proposal organizing the supply-side of the market is inadequate.

2 I believe that the only way to prevent abuse of bottleneck facilities -- i.e. the
3 remaining monopolies in transmission and distribution -- is to achieve divestiture. To
4 the extent that this is not required or accomplished through voluntary means, I believe
5 a substantial regulatory apparatus must be put in place. This apparatus must set the
6 terms and conditions and oversee two sets of transactions, those

7 (1) between the incumbent monopoly subsidiaries and competitors

8 (2) between the incumbent monopoly subsidiaries and its generation affiliate.

9 Attachment MNC-6, which draws from the recently enacted
10 telecommunications model, identifies the key elements in this regulatory apparatus.

11 I urge the Commission to insist that these protections be in place before competition
12 opens.

13

14 Q. PLEASE DESCRIBE WHAT YOU MEAN BY THE ALLOCATION OF
15 COMPETITIVE OPPORTUNITIES.

16 A. I am also concerned about the proposal to randomly assign residential
17 customers for retail access. I believe that this will make it more difficult for marketers
18 to attract residential business. They will not be able to advertise widely, since many
19 consumers will not be able to choose them. The natural selection process, in which
20 those who are most likely to want to try a new supplier will be short circuited. Many
21 early adopters will be ineligible for choice since they would not be randomly selected.

22

1 PECO suggests that a random selection process is necessary to ensure
2 fairness, predicated on the assumption that choice will be oversubscribed and it is not
3 fair to allow those who are better-informed and more willing to act to get the benefits
4 at the expense of the less informed and less willing. I fear the opposite with random
5 assignment. Residential competition will be impeded.

6 Discrimination is a potential problem, but it should not be solved by
7 undermining competition. The Commission should establish public policy requiring
8 the offer of service to all potential subscribers in an area on non-discriminatory rates,
9 terms and conditions and let consumers self-select into the market.

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12 A. Yes.

ATTACHMENT MNC- 1

FACTORS CREATING THE NEED FOR
ADDITIONAL CONSUMER PROTECTION IN THE
TRANSITION FROM UTILITY TO COMMODITY

PRE-PURCHASE

LOW ELASTICITY OF DEMAND
UTILITY HISTORY
HOMOGENEITY OF PRODUCT
ABSENCE OF MARKETING
LACK OF INCENTIVE TO SHOP
MONTHLY BILL
TIME CONSTRAINT
INCUMBENCY ADVERTISING & ADVANTAGE

POINT-OF SALE

ELECTRONIC BILLED
TIME CONSTRAINT
LACK OF SUBSTITUTES
LIMITED PRESENTATION OF INFORMATION
BUNDLING OF FEATURES

POST-PURCHASE

LACK OF INCENTIVE TO COMPLAIN
MONTHLY BILL
LACK OF TRANSACTION RECORD
UNCERTAINTY ABOUT REDRESS
MULTIPLE RESPONSIBILITIES FOR SERVICE

ATTACHMENT MNC-2

AREAS OF CONSUMER PROTECTION IN THE TRANSITION
FROM UTILITY TO COMMODITY

	<u>CONSUMER</u>	<u>SELLER</u>
<u>PRE- PURCHASE</u>	UNIVERSAL SVC EDUCATION	STRANDED COSTS LICENSING/CERTIFICATION RELIABILITY
<u>POINT- OF-SALE</u>	UTILITY SERVICE FAIR MARKETING NON-DISCRIMINATION	COMPETITIVENESS CUSTOMER CHOICE MARKET MONITORING
<u>POST- PURCHASE</u>	DISPUTE HANDLING	ENFORCEMENT

ATTACHMENT MNC-3
PUBLIC POLICIES TO PROMOTE UNIVERSAL SERVICE
AND PROVIDE CONSUMER PROTECTION
IN THE TRANSITION FROM UTILITY TO COMMODITY

BUYER: PRE-PURCHASE

UNIVERSAL SERVICE

GENERAL POPULATION
PRINCIPLES FOR ALLOCATION
OF JOINT AND COMMON COSTS
LOW INCOME
DISCOUNT PROGRAMS
STANDARD OFFER SERVICE
UTILITY ASSURANCES
PROVIDER OF LAST RESORT/HIGH COST AREAS
DESIGNATION
HIGH COST FUNDS
PARTICIPATION
SUBSIDY CALCULATION
UNIVERSAL SERVICE FUND
COLLECTION
DISTRIBUTION

EDUCATION

MATERIALS
DECISION MAKING
COMPARISONS
PRICE
QUALITY
FEATURES

PLANNING
OUTREACH
MONITORING

BUYER: POINT OF SALE

UTILITY CONSUMER PROTECTIONS

APPLICATION FOR SERVICE

CREDIT

DEPOSIT

DISCONNECTION

COLLECTION

DISPUTE RESOLUTION

PARTIAL PAYMENT

MARKETING PROTECTIONS

FAIR MARKETING

ABUSIVE MARKETING PRACTICES.

SLAMMING

UNAUTHORIZED UPGRADE OF SERVICES

PRESSURE TACTICS

BAIT AND SWITCH TACTICS

NEGATIVE OPTIONS

BILLING PRACTICES

DELIVERY OF BILLS

BILLING INFORMATION

BILL FORMATS

LANGUAGE REQUIREMENTS

NON-DISCRIMINATION

PRIVACY

BILLING

PAYMENT HISTORY

USAGE

BUYER: POST-PURCHASE

DISPUTE HANDLING

INTAKE

INVESTIGATION

RESOLUTION

REDRESS

SELLER: PRE-PURCHASE

STRANDED COST RECOVERY

LICENSING AND CERTIFICATION

TECHNICAL, FINANCIAL AND MANAGERIAL CAPABILITIES

HISTORIES OF PRIOR COMPLAINTS AND PROBLEMS

BONDING FOR RELIABILITY AND MARKETING

PENALTIES KNOWN IN ADVANCE

RELIABILITY

STANDARDS

NORMAL OPERATIONS

OUTAGE

BUSINESS OFFICE

PENALTIES

REVIEW OF PERFORMANCE

ENFORCEMENT PROGRAM

SPECIFICATION OF PENALTIES

SELLER: POINT-OF-SALE

MARKET STRUCTURE

VERTICAL MARKET POWER

HORIZONTAL MARKET POWER

COMPETITIVE OPPORTUNITIES

PREFERENCE

AGGREGATION

MARKET MONITORING

DEFINE MARKETS

GEOGRAPHIC

PRODUCT

MEASURE MARKET COMPETITIVENESS

STRUCTURE

MARKET SHARES

ENTRY AND EXIT

CONDUCT

COMPLAINTS, DISPUTES

DISCRIMINATION, REDLINING

PERFORMANCE

PRICES
PROFITS
QUALITY
PRODUCT DEVELOPMENT

SELLER: POST-PURCHASE

ENFORCEMENT
ADEQUATE RESOURCES
MEANINGFUL PENALTIES

ATTACHMENT MNC-4

**USING UNIVERSAL SERVICE POLICY TO DETERMINE THE
RECOVERY OF JOINT AND COMMON AND STRANDED COSTS
AND PRESERVE AFFORDABILITY**

1. Calculate Economic Costs of Production

JOINT AND COMMON COSTS ALLOCATION

2. Estimate Joint and Common Costs
3. Allocate Stranded Costs to Non-residential
--> $(Kwh + ?)/Kwh$ to Non-residential
4. Allocate Residual to Residential
--> $(Kwh - ?)/Kwh$ to Residential
5. Recover joint and common costs from residential ratepayers

STRANDED COST ALLOCATION

6. Estimate Stranded Costs
7. Decide on Recoverability of Stranded Cost
8. Apportionment Between Stockholders and Ratepayers
--> 50 % to Stockholders
--> 50 % to Ratepayers
9. Allocate Stranded Costs to Non-residential
--> $(Baseload\ Kwh + ?)/Baseload\ Kwh$ to Non-residential
10. Allocate Residual to Residential
--> $(Baseload\ Kwh - ?)/Baseload\ Kwh$ to Residential
11. Minimize Impact on Basic Service to Assure Affordability
--> Inverted Charges
12. Promote Universal Service for Targeted Groups
--> Exempt Low Income from Stranded Cost Recovery

ATTACHMENT MNC-5
ESTIMATES OF PECO'S UNECONOMIC GENERATION COSTS

^{a/}
 (STRANDED COSTS EXCLUDING REGULATORY ASSETS)

STANDARD	^{b/} COST (in \$/kwh)	^{c/} TOTAL (in million \$)	ANNUALIZED (in million \$)
MOST EFFICIENT PRODUCER	.028	4071	407
MOST EFFICIENT UTILITY			
IN STATE	.023	3342	334
NEIGHBORING STATE	.024	3488	349
AVERAGES			
NATIONAL	.023	3342	334
STATE-WIDE	.014	2035	204

^{a/} Assumes that (1) the market clearing price calculated by PECO does not include regulatory assets (since non-utilities do not have such assets) and (2) utilities have equal amounts of regulatory assets. Per PECO's analysis, regulatory assets are assumed to be equal to \$2.98 billion or \$0.0188/kwh levelized over 10 years.

^{b/} Costs for 1995 derived from Appendix A.

^{c/} Uses PECO's estimate of total stranded costs (\$6.8 billion or \$0.0468 per kwh) levelized as the base.

ATTACHMENT MNC-6

CONDITIONS FOR INTERCOMPANY TRANSACTIONS

ASSURING NON-DISCRIMINATORY DEALINGS WITH COMPETITORS

RATES, TERMS, AND CONDITIONS
TARRIFS IN PLACE
COST-BASED RATES

PERFORMANCE STANDARDS
EQUAL FOR ALL
EXCLUSIONS

FULLY LOADED FUNCTIONING
TESTS/PILOTS
INTERNAL
INTER-COMPANY
AUTOMATED INTERFACES
EFFECTIVE FUNCTIONING
TIMING FOR
ORDER
PROVISION
MAINTENANCE
QUALITY/RELIABILITY

AFFILIATE SAFEGUARDS

STRUCTURAL SEPARATION
1) INDEPENDENT COMPANY
2) ACCOUNTS
3) OFFICERS, ETC.
4) NON-RECOURSE IN FINANCE
5) ARMS LENGTH TRANSACTIONS

NON-DISCRIMINATION
1) PROCUREMENT OR PROVISION OF
GOODS, SERVICES, FACILITIES,
AND INFORMATION
2) ACCOUNTING PRINCIPLES
3) COST ALLOCATION

PROHIBITION ON JOINT MARKETING

1) RULES FOR PRESENTATION OF ALTERNATIVES

COMMISSION AUTHORITIES AND INSTITUTIONS

MONITORING

ENFORCEMENT

APPENDIX A

The data used for the comparison between utilities was taken from the Department of Energy statistics because a uniform set of numbers across utilities was desired. The first column reports the number from the DOE publication. The second column converts these numbers to a per kwh number by dividing by the total number of kwh sold. No allocation to customer classes was undertaken.

The third column for each utility allocates the capital charges plus net income to the major categories of production cost -- steam, nuclear, other transmission, and distribution (including customer). Capital costs are allocated in proportion to the plant listed at the bottom of the table. The fourth column converts these total costs to kwh costs by dividing by the total number of kwh sold.

The same methodology is applied to each of the utilities.

The Table shows the calculation for each of the comparisons contained within the text. It also shows the methodology applied to PECO's 1996 cost study. The results are quite close. The key point of methodological significance is the allocation of capital costs between generation and other functions. Based upon the plant investment, I have allocated 76 percent of capital costs (depreciation, amortization, taxes and net income) to generation. This is identical to the allocation of depreciation in the 1996 cost study.

COMPARISON OF PECO TO PENNSYLVANIA UTILITIES

PECO				WEST PENN				PA NON-PECO			
SALES 33611				17511				88332			
COSTS	LINE ITEM	BY SOURCE OR FUNCTION		LINE ITEM	BY SOURCE OR FUNCTION		LINE ITEM	BY SOURCE OR FUNCTION			
		INCLUDES CAPITAL			INCLUDES CAPITAL			INCLUDES CAPITAL			
	IN \$	PER KWH	IN \$ PER KWH		IN \$	PER KWH		IN \$	PER KWH		
steam											
prod	259	.0077	513.9 .0153	259	.0148	499.9 .0285	1227	.0139	2387. .0270		
maint	58	.0017		66	.0038		236	.0027			
nuc											
prod	389	.0116	1813. .0540	0	0	0 0	439	.0050	1513. .0171		
maint	135	.0040		0	0		117	.0013			
other	280	.0083	314.5 .0094	298	.0170	477.9 .0273	1083	.0123	1812. .0205		
avg cost		.0334	.0786		.0356	.0558		.0351	.0647		
trans											
prod	16	.0005	149.8 .0045	9	.0005	46.83 .0027	36	.0004	295.1 .0033		
maint	16	.0005		5	.0003		20	.0002			
dist											
prod	60	.0018	636.3 .0189	19	.0011	188.3 .0108	113	.0013	1530. .0173		
maint	70	.0021		42	.0024		160	.0018			
cust											
prod	135	.0040		30	.0017		221	.0025			
admin	330	.0098	330 .0098	60	.0034	60 .0034	449	.0051	449 .0051		
OPERAT	1748			788			4101				
dep	395	.0118		112	.0064		819	.0093			
amort	33	.0010		1	.0001		28	.0003			
taxes											
gen	281	.0084		90	.0051		527	.0060			
income	203	.0060		59	.0034		523	.0059			
def	170	.0051		54	.0031		662	.0075			
CAP	1082	.0322		316	.0180		2559	.0290			
net in	928	.0276		169	.0097		919	.0150			
TOTAL	3758	.1118	3758 .1118	1273	.0727	1273 .0727	7579	.0904	7986 .0904		
plant	IN \$	ALLOCATOR		IN \$	ALLOCATOR		IN \$	ALLOCATOR			
steam	1341	.0980		1609	.3607		6142	.2379			
nuc	8782	.6415		0	0		6359	.2463			
other	235	.0172		1655	.3710		4846	.1877			
trans	802	.0586		302	.0677		1589	.0615			
dist	2529	.1847		895	.2006		6883	.2666			
	13689	1		4461	1		25819	1			

SOURCE: Energy Information Administration, FINANCIAL STATISTICS OF MAJOR U.S. INVESTOR-OWNED ELECTRIC UTILITIES; 1995 (U.S. Department of Energy, December, 1996), Tables 37, 39, 40 41 42.

MARYLAND UTILITIES

PEPCO				BGE				US AVERAGE			
SALES 23445				28191				2.3e6			
COSTS LINE ITEM		BY SOURCE OR FUNCTION		LINE ITEM		BY SOURCE OR FUNCTION		LINE ITEM		BY SOURCE OR FUNCTION	
IN \$	PER KWH	IN \$	PER KWH	IN \$	PER KWH	IN \$	PER KWH	IN \$	PER KWH	IN \$	PER KWH
steam											
prod	377 .0161	685.6	.0292	321 .0114	758.7	.0269	28653	.0125	55305	.0242	
maint	52 .0022			45 .0016			4118	.0018			
nuc											
prod	0 0	0	0	156 .0055	483.6	.0172	8530	.0037	35525	.0155	
maint	0 0			63 .0022			2928	.0013			
other	590 .0252	647.9	.0276	256 .0091	287.2	.0102	32155	.0141	36106	.0158	
avg cost	.0435	.0569		.0298	.0543		.0334	.0555			
trans											
prod	7 .0003	96.24	.0041	8 .0003	103.9	.0037	1425	.0006	12647	.0055	
maint	6 .0003			4 .0001			704	.0003			
dist											
prod	23 .0010	510.3	.0218	62 .0022	504.6	.0179	2560	.0011	33922	.0148	
maint	116 .0049			35 .0012			3314	.0014			
cust											
prod	41 .0017			49 .0017			2270	.0010			
admin	106 .0045	106 .0045		190 .0067	190 .0067		13373	.0058	13373	.0058	
OPERAT	1318			1189			1.0e5				
dep	170 .0073			221 .0078			18503	.0081			
amort	2 .0001			37 .0013			1381	.0006			
taxes											
gen	203 .0087			173 .0061			13519	.0059			
income	74 .0032			108 .0038			11500	.0050			
def	164 .0070			134 .0048			7300	.0032			
CAP	613 .0261			673 .0239			52203	.0228			
net in	115 .0049			466 .0165			34646	.0151			
TOTAL	2046 .0873	2046 .0873		2328 .0826	2328 .0826		1.9e5	.0817	1.9e5	.0817	
plant	IN \$	ALLOCATOR		IN \$	ALLOCATOR		IN \$	ALLOCATOR			
steam	1942	.3525		2142	.3448		1.4e5	.2595			
nuc	0	0		1443	.2323		1.5e5	.2771			
other	438	.0795		170	.0274		23835	.0455			
trans	630	.1143		501	.0807		63454	.1211			
dist	2500	.4537		1956	.3149		1.6e5	.2968			
	5510	1		6212	1		5.2e5	1			

OTHER PA UTILITIES

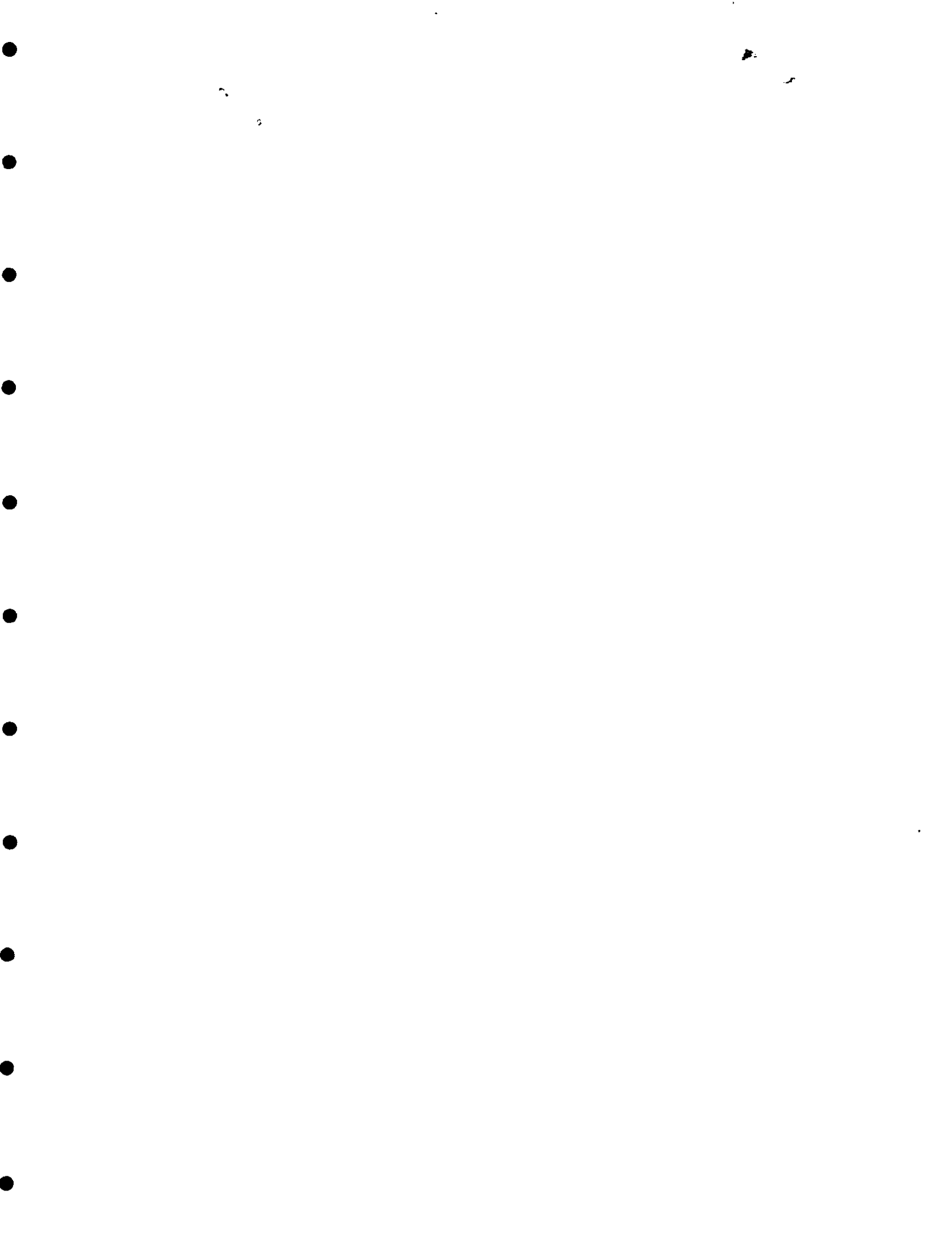
PP&L		DOQ				MET			
SALES 31507		12415				11009			
COSTS	LINE ITEM	BY SOURCE OR FUNCTION		LINE ITEM	BY SOURCE OR FUNCTION		LINE ITEM	BY SOURCE OR FUNCTION	
IN \$	PER KWH	IN \$	PER KWH	IN \$	PER KWH	IN \$	PER KWH	IN \$	PER KWH
steam									
prod	454 .0144	908.3	.0288	196 .0158	340.7	.0274	80 .0073	160.9	.0146
maint	88 .0028			31 .0025			19 .0017		
nuc									
prod	187 .0059	965.3	.0306	128 .0103	298.5	.0240	62 .0056	135.1	.0123
maint	61 .0019			25 .0020			14 .0013		
other	306 .0097	330.8	.0105	32 .0026	293.2	.0236	224 .0203	352.9	.0321
avg cost	.0348	.0700		.0332	.0751		.0362	.0589	
trans									
prod	4 .0001	76.32	.0024	8 .0006	47.97	.0039	6 .0005	41.70	.0038
maint	6 .0002			3 .0002			2 .0002		
dist									
prod	36 .0011	643.3	.0204	18 .0014	214.6	.0173	14 .0013	181.4	.0165
maint	52 .0017			18 .0014			15 .0014		
cust									
prod	85 .0027			36 .0029			26 .0024		
admin	127 .0040	127 .0040		96 .0077	96 .0077		65 .0059	65 .0059	
OPERAT	1406			591			527		
dep	348 .0110			150 .0121			95 .0086		
amort	1 3e-5			25 .0020			0 0		
taxes									
gen	201 .0064			86 .0069			55 .0050		
income	259 .0082			130 .0105			22 .0020		
def	263 .0083			65 .0052			107 .0097		
CAP	1072 .0340			456 .0367			279 .0253		
net in	573 .0182			244 .0197			131 .0119		
TOTAL	3051 .0968	3051 .0968		1291 .1040	1291 .1040		937 .0851	937 .0851	
plant	IN \$ ALLOCATOR			IN \$ ALLOCATOR			IN \$ ALLOCATOR		
steam	2066 .2227			907 .1624			441 .1510		
nuc	4045 .4360			1161 .2079			421 .1442		
other	140 .0151			2084 .3731			918 .3144		
trans	374 .0403			295 .0528			240 .0822		
dist	2652 .2859			1138 .2038			900 .3082		
	9277 1			5585 1			2920 1		

APPENDIX A
PAGE 4 OF 5

OTHER PA UTILITIES

PENELEC				PENPOW			
SALES 12193				3697			
COSTS	LINE	ITEM	BY SOURCE OR FUNCTION	LINE	ITEM	BY SOURCE OR FUNCTION	
IN \$	PER	IN \$	PER	IN \$	PER	IN \$	PER
	KWH		KWH		KWH		KWH
steam							
prod	191 .0157	380.9 .0312		47 .0127	94.35 .0255		
maint	24 .0020			8 .0022			
nuc							
prod	32 .0026	79.52 .0065		30 .0081	120.4 .0326		
maint	7 .0006			10 .0027			
other	211 .0173	219.6 .0180		12 .0032	12.62 .0034		
avg cost	.0381	.0558		.0289	.0615		
trans							
prod	6 .0005	57.55 .0047		3 .0008	23.52 .0064		
maint	2 .0002			2 .0005			
dist							
prod	22 .0018	293.3 .0241		4 .0011	51.10 .0138		
maint	26 .0021			7 .0019			
cust							
prod	36 .0030			8 .0022			
admin	77 .0063	77 .0063		24 .0065	24 .0065		
OPERAT	634			155			
dep	83 .0068			31 .0084			
amort	0 0			1 .0003			
taxes							
gen	67 .0055			28 .0076			
income	27 .0022			26 .0070			
def	155 .0127			18 .0049			
CAP	332 .0272			104 .0281			
net in	142 .0116			67 .0181			
TOTAL	1108 .0909	1108 .0909		326 .0882	326 .0882		
plant	IN \$	ALLOCATOR		IN \$	ALLOCATOR		
steam	864 .3501			255 .2301			
nuc	211 .0855			521 .4702			
other	45 .0182			4 .0036			
trans	258 .1045			120 .1083			
dist	1090 .4417			208 .1877			
	2468 1			1108 1			

SOURCE: Energy Information Administration, FINANCIAL





PECO ENERGY

015580

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Legal Department

PECO Energy Company
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Fax 215 568 3389

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Direct Dial: 215 841 4252

October 28, 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; Petition of Enron Energy Service Power, Inc.
P-00971265.

Dear Counsel:

Enclosed are two copies of PECO Energy Company's Interrogatories to Enron, Set XVII numbers 1 through 20. Please note that the name Enron, as used in these interrogatories, refers to Enron Corporation, Enron Power Marketing, Inc., Enron Energy Services Power, Inc., and any company or entity affiliated with any of those three companies. For each answer, please identify the person that prepared the answer and, if different, the person who will be available to testify regarding the answer.

Sincerely,

Paul R. Bonney

KJR

PRB/mbo
Enclosures

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

Certificate of Service

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

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Dated: October 28, 1997

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

6

IN REPLY PLEASE
REFER TO OUR FILE

October 28, 1997
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KJR

R-973953

Mr. David Hendricks
119 North 28 Street
Camp Hill, PA 17011

Dear Mr. Hendricks:

Office of Prothonotary
Public Utility Commission

Thank you for your recent letter of October 15, 1997, to Chairman John Quain of the Public Utility Commission expressing your support for the settlement agreement reached by certain parties in PECO Energy's restructuring filing. Since this matter is currently pending before the Commission, Chairman Quain asked me to respond to your letter.

Please know that I have taken the liberty of forwarding your correspondence to the Acting Secretary of the Commission for inclusion in the official file of this proceeding.

Thank you again for the benefit of your thinking on this very important issue.

Sincerely,

Rosemary Chiavetta, Esq.
Director of Legislative Affairs

- cc: Chairman John Quain
- Vice Chairman Robert Bloom
- Commissioner John Hanger
- Commissioner David Rolka
- Commissioner Nora Mead Brownell
- Acting Secretary James McNulty
- Greg Brynes, PECO Energy Co.

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October 15, 1997

Honorable John M. Quain
Chairman
Pennsylvania Public Utility Commission
P. O. Box 3265
North Office Building
Harrisburg PA 17105-3265

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CHAIRMAN QUAIN'S
OFFICE

Dear Chairman Quain:

As an economic development professional, having served in this capacity for Bell Atlantic-PA since the mid 1980's, I have had the opportunity to partner with PECO Energy in numerous initiatives. I am pleased to communicate that the S.E. Pennsylvania region and the state has benefited via their commitment.

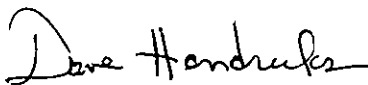
Their programs have stimulated business and job growth in S. E. Pennsylvania. PECO was the corporate leader in bringing the IDRC Annual Congress Convention to Philadelphia in 1996, benefits of which are still being reaped today. Their contribution and leadership among our regional organizations like Strategy 21, GPF and others has been instrumental in improving this region's economic vitality. Their support in implementing the region's Team PA strategy will be invaluable in positioning the Philadelphia region as a world-class metropolitan center.

Their proposed settlement, which will accelerate customer choice and provide for a 10% rate reduction for all customers, will only enhance the positioning of the Philadelphia region as a world-class competitive center, offering our businesses and the general public lower energy costs. The continued growth of this region will act as a catalyst to attract more businesses and energy competition.

PECO has demonstrated their commitment to this region and has significantly contributed to this region's economy. With lower PECO Energy costs combined with their continued commitment to economic development, the Philadelphia region should realize even a healthier economy into the 21st Century.

I encourage the timely approval of this settlement so that the benefits can be enjoyed as soon as possible by all Pennsylvanians.

Sincerely,



David R. Hendricks
119 N. 28th Street
Camp Hill PA 17011

cc: Honorable Robert K. Bloom, Vice Chairman
Honorable Nora Mead Brownell, Commissioner
Honorable John Hanger, Commissioner
Honorable David W. Rolka, Commissioner
Greg Brynes, PECO Energy Company



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

IN REPLY PLEASE
REFER TO OUR FILE

October 28, 1997

RECEIVED
OCT 29 1997

Mr. Rob Harmars
1105 Foss Avenue
Drexel Hill, PA 19026-1902

Office of Prothonotary
Public Utility Commission

Dear Mr. Harmars:

Thank you for your recent letter to Governor Tom Ridge expressing your support for the Enron choice plan which is currently being considered by the Pennsylvania Public Utility Commission in the context of the PECO Energy Company's restructuring filing proceeding under the Pennsylvania Electric Generation Customer Choice and Competition Act.

Please know that I have taken the liberty of forwarding your correspondence to the Acting Secretary of the Commission for inclusion into the official file of this proceeding.

Thank you again for the benefit of your thinking on this very important matter.

Sincerely,

Rosemary Chiavetta, Esq.
Director of Legislative Affairs

cc: The Hon. Tom Ridge
Chairman John Quain
Acting Secretary James McNulty ✓

Rob Hix - Hermanns
1105 FOSS AVE
DEXTER HILL
PA 19026-1902

Wed 10/15/97

610-789-4255

Dear Gov. Ridge:

I am extremely interested in the ENRON
Choice Plan. Thank You for support. As
a consumer I am exceedingly tired
of PECO's treatment of the consumer
and having to pay for their mis-
management. They have started an ad
campaign on behalf of their stockholders.

Please SUPPORT US, Not them.

Thank You Rob Hix





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

IN REPLY PLEASE
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October 28, 1997

RECEIVED
OCT 29 1997

Mr. Michael Morrill
249 South Melville Street
Philadelphia, PA 19139

Dear Mr. Morrill:

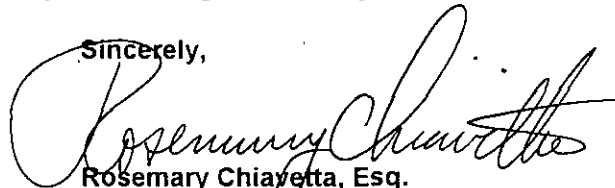
Office of Prothonotary
Public Utility Commission

Thank you for your recent electronic communication to Governor Tom Ridge concerning the PECO settlement and the Enron proposal, both of which are currently being considered by the Pennsylvania Public Utility Commission.

Please know that I have taken the liberty of forwarding your communication to the Acting Secretary of the Commission so your comments can become part of the official file in this proceeding.

Thank you again for the benefit of your thinking on this very important issue.

Sincerely,


Rosemary Chiavetta, Esq.
Director of Legislative Affairs.

cc: The Hon. Tom Ridge
Chairman John Quain
Acting Secretary James McNulty ✓

PUC

Date: 10/13/97
Sender: <MWMorrill@aol.com>
To: governor@state.pa.us
bcc: GOVEMAIL
Priority: Normal
Subject: PECO/Enron

So now we have competing plans to rip us off. Please tell the PUC to stop the ripoffs. Peco, Enron and all the utility companies should get no money to bail out their bad business decisions.

Sincerely,
Michael Morrill
249 South Melville Street
Philadelphia, PA 19139



RFC82.TXT



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

IN REPLY PLEASE
REFER TO OUR FILE

October 28, 1997

RECEIVED
OCT 29 1997

Mr. Jim McBryan
199 W. Ring Street
Unit 1-1
Malvern, PA 19355

Dear Mr. McBryan:

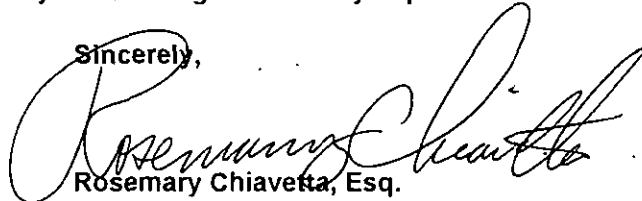
Office of Prothonotary
Public Utility Commission

Thank you for your recent letter to Governor Tom Ridge expressing your support for the Enron choice plan which is currently being considered by the Pennsylvania Public Utility Commission in the context of the PECO Energy Company's restructuring filing proceeding under the Pennsylvania Electric Generation Customer Choice and Competition Act.

Please know that I have taken the liberty of forwarding your correspondence to the Acting Secretary of the Commission for inclusion into the official file of this proceeding.

Thank you again for the benefit of your thinking on this very important matter.

Sincerely,


Rosemary Chiavetta, Esq.
Director of Legislative Affairs

cc: The Hon. Tom Ridge
Chairman John Quain
Acting Secretary James McNulty ✓

Dear Governor Ridge

10/10/97

I am writing this letter to you to show support for ENRON and their utility plan for PA. Thanking you in advance

Sincerely

Jim McByan

199 W. King St.
Unit 1-1
MALVERN, PA 19355



Gov. Tom Ridge
225 Main Capital
Harrisburg, PA. 17120

17120/0001





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

IN REPLY PLEASE
REFER TO OUR FILE

October 28, 1997

RECEIVED
OCT 28 1997

Office of Prothonotary
Public Utility Commission

Mr. Collin F. McNeil
President
The Penjerdel Council
One Penn Square West
Suite 700
Philadelphia, PA 19102-4826

Dear Mr. McNeil:

Thank you for your recent letter of October 9, 1997, to Chairman John Quain of the Pennsylvania Public Utility Commission in support of the proposed settlement with the PECO Energy Company that is currently under consideration by the Commission. Due to the fact that the PECO settlement is pending before this Commission, Chairman Quain is unable to respond to your request personally and, therefore, he has referred your letter to me for a response.

Please know that I have taken the liberty of forwarding your letter to the Acting Secretary of the Commission for inclusion into the official file addressing this proceeding.

We greatly appreciate your enthusiastic interest in this matter.

Sincerely,

Rosemary Chiaetta, Esq.
Director of Legislative Affairs

cc: Chairman Quain
Acting Secretary McNulty ✓

October 9, 1997

RECEIVED

OCT 16 1997

The Honorable John M. Quain
Chairman
Pennsylvania Public Utility Commission
P.O. Box 3265
North Office Building
Harrisburg, PA 17105-3265

CHAIRMAN QUAIN'S
OFFICE

Dear Chairman Quain:

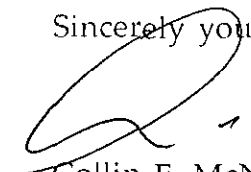
I am writing on behalf of The PENJERDEL Council in support of the proposed settlement with PECO Energy company that is currently under consideration by the Commission. This settlement would not only provide an immediate 10% rate reduction for PECO customers, but it would also speed the transition to a competitive market place.

The PENJERDEL Council represents a number of businesses that would benefit from both the rate reduction and from competition. In addition, every citizen of the Delaware Valley stands to benefit from a swift resolution of this issue. As the area's regional business association, PENJERDEL believes that this settlement could improve the quality of life for the region's citizens and the business climate for small and large firms alike.

PECO Energy has been one of the region's most prominent and reliable corporate citizens for several decades and is one of the founding members of PENJERDEL. PECO has always taken its commitment to the community it serves very seriously and has consistently contributed to the vitality of the city and the suburbs.

Finally, I would urge you and the PUC to accept this agreement in order to expedite the transition to and the benefits from competition.

Sincerely yours


Collin F. McNeil
President



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

IN REPLY PLEASE
REFER TO OUR FILE

R-973953
October 28, 1997

Mr. Charles Pizzi
President
Greater Philadelphia Chamber
of Commerce
200 South Broad Street
Suite 700
Philadelphia, PA 19102-3896

RECEIVED
OCT 29 1997

Office of Prothonotary
Public Utility Commission

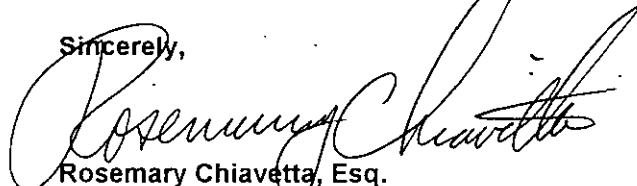
Dear Mr. Pizzi:

Thank you for your recent letter of October 6, 1997, to Chairman John Quain of the Pennsylvania Public Utility Commission regarding the settlement recently reached between PECO Energy and many consumer groups in southeastern Pennsylvania.

Since this matter is currently pending before the Commission, and Chairman Quain is prohibited from commenting on the merits of the settlement, he referred your letter to me for a response. Please know that I have taken the liberty of sending your letter to the Acting Secretary of the Commission so your comments on this matter will become an official part of the record in the PECO proceeding.

We greatly appreciate the benefit of your thinking on this very important issue.

Sincerely,


Rosemary Chiavetta, Esq.
Director of Legislative Affairs

cc: Chairman Quain
Acting Secretary McNulty



GREATER PHILADELPHIA
CHAMBER OF COMMERCE

The Region's Business Partner

200 South Broad Street, Suite 700 Philadelphia, PA 19102-3896

Phone: 215-790-3697 Fax: 215-790-3736 <http://www.gpcc.com>

CHARLES P. PIZZI
PRESIDENT

October 6, 1997

Honorable John Quain
Chairman
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17120-3265

RECEIVED
97 OCT 14 AM 10:53
CHAIRMAN QUAIN'S OFFICE

Dear Chairman Quain:

I am writing in regards to the settlement recently reached between PECO Energy and many consumer groups to advance electric competition in Pennsylvania.

Electric Deregulation was an issue which was heavily supported by the Greater Philadelphia Chamber of Commerce as we believed that it would serve to make us more competitive as a state and would lead to increased job growth and retention. We were pleased that in our efforts, we were joined by PECO Energy in the drive for deregulation.

PECO Energy has been a vital corporate citizen of Southeastern Pennsylvania for as long as I can remember. They have always partnered with the community in the economic development arena as well as leading the charge on many issues such as the Philadelphia Plan.

The proposed settlement is a clear example of their continued leadership in our region. This settlement will accelerate the customer choice timetable while allowing PECO Energy to remain a viable corporate entity. Clearly this settlement is a win for both Pennsylvania consumers and the business interest here in the southeast.

The Greater Philadelphia Chamber of Commerce supports the timely approval of this settlement and urges your favorable consideration.

Sincerely,



PECO ENERGY

DOCUMENT 5584
FOLDER

Legal Department

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

97 OCT 31 AM 9:21

RECEIVED
PROTHONOTARY'S OFFICE
Direct Dial: 215 841 4252

James W. Durham
Senior Vice President
and General Counsel

Edward J. Cullen, Jr.
Deputy General Counsel

Sandra H. Byrne
Legal Administrator

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

October 29, 1997

Via Facsimile & U.S. First Class Mail

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

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


Re: Application of PECO Energy Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code Docket No. R-00973953; Petition of Enron Energy Service Power, Inc. P-00971265.

Dear Counsel:

KJR

Enclosed are two copies of PECO Energy Company's Interrogatories to Enron, Set XVIII numbers 1 through 8. Please note that the name Enron, as used in these interrogatories, refers to Enron Corporation, Enron Power Marketing, Inc., Enron Energy Services Power, Inc., and any company or entity affiliated with any of those three companies. For each answer, please identify the person that prepared the answer and, if different, the person who will be available to testify regarding the answer.

Sincerely,


Paul R. Bonney

PRB/mbo
Enclosures

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

Certificate of Service

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

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

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

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

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

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

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

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

DOCKETED
NOV 03 10:20

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

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

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

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

DOCUMENT
FOLDER

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

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

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

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

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

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

Janet Miller, Esquire
William T. Hawke, Esquire/Todd S. Stewart, Esq.
Malatesta Hawke & McKeon
100 N. Tenth Street
Harrisburg, PA 17105

015565

97 OCT 31 AM 9:38

RECEIVED
PROTHONOTARY'S OFFICE

(Counsel for Dept. of Navy)

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

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

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

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

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

Lance S. Haver
6048 Ogontz Avenue
Philadelphia, PA 19141

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

Dated: October 29, 1997

(Counsel for Mid-Atlantic Power Supply Association)

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

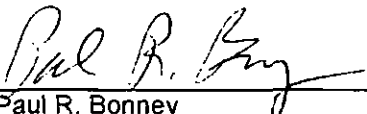
Terence Fitzpatrick, Esquire
David Desalle, Esquire
Ryan, Russell, Ogden & Seltzer
800 North Third Street, Suite 101
Harrisburg, PA 17102
(Counsel for GPU)

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

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

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

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


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



HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

RECEIVED
OCT 30 1997

October 29, 1997

CHAIRMAN QUAIN'S
OFFICE

Mr. John M. Quain
Chairman
Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265





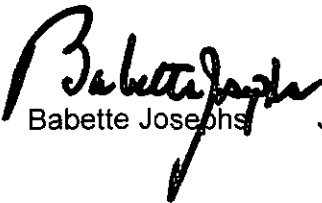
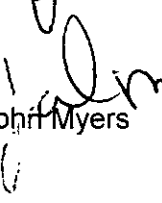

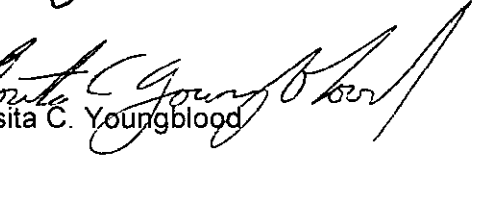
Dear Chairman Quain:

In recent weeks you have held hearings and considered proposals which will affect the electricity consumers of the Delaware Valley.

It is good government and good public policy to listen to all alternative proposals and determine what is best for the ratepayers. Since electric competition was enacted, the consumer has been the last group considered. They should be the first group considered.

As such, we believe that the PUC must be very deliberate in its consideration. There has been enough rush to conclusion. The goal of electric deregulation should be to reduce costs, not make quick deals. Let PECO, Enron, and whoever else has one to make their arguments before the PUC. Let them face the scrutiny all such proposals deserve. And again, let the consumers be the prime beneficiaries of the decision.

Sincerely,

			
Andrew J. Carn	Dwight Evans	Mike Horsey	Harold James
			
Babette Josephs	John Myers	Benjamin Ramos	Rosita C. Youngblood

cc: PUC Commissioners
Philadelphia House Delegation

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

KJR

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
JACKSONVILLE

200 NORTH THIRD STREET
SUITE 300
P.O. Box 12105
HARRISBURG, PA 17108-2105
(717) 232-8199
FACSIMILE: (717) 232-8720

LOS ANGELES
NEWARK
PITTSBURGH
PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

October 29, 1997

BY HAND

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

PROTHONOTARY'S OFFICE
97 OCT 29 PM 3:50

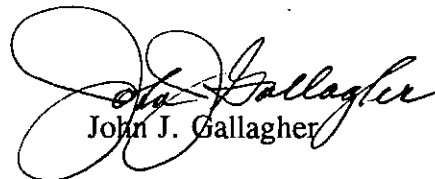
Re: Pennsylvania Public Utility Commission v.
PECO Energy Company
Docket No. R-00973953

Dear Mr. McNulty:

Enclosed please find for filing the original and three (3) copies of a Certificate of Service evidencing service of Enron Energy Services Power, Inc.'s Responses to PECO Energy Company's Interrogatories, Set X.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/mas
enclosure

cc: All Parties on Certificate of Service
Daniel Clearfield, Esquire

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:
:
:
:
:

Docket No. R-00973953

CERTIFICATE OF SERVICE

I hereby certify that I have on this 29th day of October, 1997, served a true copy of the foregoing Responses to PECO Energy Company's Interrogatories, Set X, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

Paul R. Bonney, Esquire
Noel H. Trask, Esquire
Ward L. Smith, Esquire
Assistant General Counsel
PECO Energy Company
2301 Market Street, P.O. Box 8699
Philadelphia, PA 19101-8699
(PECO Energy Company)

Paul E. Russell, Esquire
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, PA 18101
(Pennsylvania Power & Light Company)

Senator Vincent J. Fumo
Christopher B. Craig, Esquire
Senate Democratic Appropriations
Committee
Main Capitol Building, Room 545
Harrisburg, PA 17120
(Senator Vincent J. Fumo)

Donald A. Kaplan, Esquire
Lisa M. Helpert, Esquire
Preston Gates Ellis & Rouvelas Meeds
1735 New York Avenue, N.W., Suite 500
Washington, DC 20006
(Pennsylvania Power & Light Company)

PROthonotary's OFFICE
OCT 29 PM 3:50

DOCKETED
NOV 04 1997

DOCUMENT
FOLDER

Steven P. Hershey, Esquire
Philip A. Bertocci, Esquire
Community Legal Services
1424 Chestnut Street, 4th Floor
Philadelphia, PA 19102
(*Community Legal Services*)

Roger Clark, Esquire
Environmentalists
905 Denston Drive
Ambler, PA 19002-3901
(*The Environmentalists*)

Craig A. Doll, Esquire
214 State Street
Harrisburg, PA 17101
(*Delmarva Power & Light Company, d/b/a
Conectiv Energy*)

Gordon J. Smith, Esquire
John & Hengerer
1200 17th Street, N.W.
Suite 600
Washington, DC 20036
(*Self*), (*Duke Energy Trading & Marketing,
LLC*), (*Noram Energy Management, Inc.*), (*Electric
Clearinghouse, Inc.*)

Walter W. Cohen, Esquire
Andrew J. Giorgione, Esquire
Obermayer Rebmann Maxwell & Hippel,
L.L.P.
204 State Street
Harrisburg, PA 17101
(*Indianapolis Power & Light Company*)

Joseph A. Dworetzky, Esquire
John Lavelle, Jr., Esquire
Hangley, Anonchick, Segal and Pudlin
One Logan Square, 12th Floor
Philadelphia, PA 19103
(*New Energy Ventures, Inc.*)

John L. Munsch, Esquire
Allegheny Power
800 Cabin Hill Drive
Greensburg, PA 15601
(*Allegheny Power*)

Stephanie Sugrue, Esquire
Mary Ann Ralls, Esquire
Duane, Morris & Heckscher
L.L.P.
1667 K Street, N.W.
Suite 700
Washington, DC 20006
(*QST Energy, Inc.*)

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

Bernard Ryan, Esquire
Karen Oill Moury, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(*OSBA*)

Tanya McCloskey, Esquire
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(PA Retailers' Association)

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(GPU)

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Janet Miller, Esquire
Todd Stewart, Esquire
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100 North Tenth Street
Harrisburg, PA 17105-1778
(Mid-Atlantic Power Supply Association)

Usher Fogel, Esquire
Roland, Fogel, Koblenz & Carr, L.L.P.
1 Columbia Place
Albany, NY 12207
(Pennsylvania Petroleum Association), (PA
Association Plumbing, Heating and Cooling
Contractors)

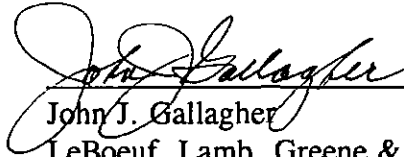
David Kleppinger, Esquire
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Charles D. Shields, Prosecutor
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P.O. Box 12105
Harrisburg, PA 17108-2105
(717) 232-8199

Attorney for Enron Energy
Services Power, Inc.

97 OCT 29 PM 3:50
PROTHONOTARY'S OFFICE

ORIGINAL

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
JACKSONVILLE

200 NORTH THIRD STREET
SUITE 300
P.O. Box 12105
HARRISBURG, PA 17108-2105
(717) 232-8199
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LOS ANGELES
NEWARK
PITTSBURGH
PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

October 29, 1997

BY HAND

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

Re: Pennsylvania Public Utility Commission v.
PECO Energy Company
Docket No. R-00973953

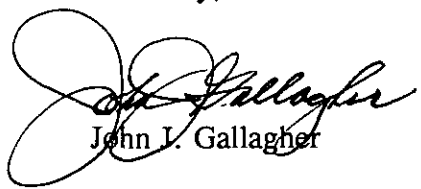
FROM THE OFFICE
OCT 29 PM 3:50

Dear Mr. McNulty:

Enclosed please find the original and three (3) copies of Enron Energy Services Power, Inc.'s Objections to Senator Vincent J. Fumo's Interrogatories, Set III, to be filed in the above-captioned proceeding. A Certificate of Service is also enclosed.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,


John I. Gallagher

JJG/mas
enclosure

cc: All Parties on Certificate of Service
Daniel Clearfield, Esquire

DOCUMENT
FOLDER

63

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:
:
:
:
:

Docket No. R-00973953

OBJECTIONS OF
ENRON ENERGY SERVICES POWER, INC.
TO SENATOR VINCENT J. FUMO,
SET III

PROTHONOTARY'S OFFICE
97 OCT 29 P11 3:50

Pursuant to 52 Pa.Code § 5.432, Enron Energy Services Power, Inc. ("EESPI") hereby sets forth the following objections to the interrogatories of Senator Vincent J. Fumo ("Senator Fumo") at Set III. EESPI also notes that the following objections were timely communicated to counsel for Senator Fumo pursuant to the procedural schedule established in Prehearing Order No. 1.

1. **Please provide a detailed explanation of the meaning and consequence of the first paragraph of Exhibit 1 of the Enron Petition. Please include the following:**
 - a) **Please refer to applicable Pennsylvania statutory, regulatory or case law which provides the legal authority of the Pennsylvania Utility Commission to require a state utility company to enter into a "Firm Energy & Capacity Purchase and Sale Agreement" as provided as follows - "[t]his Agreement is entered into pursuant to the Order of the Pennsylvania Public Utility Commission approving EESP's Choice Plan dated _____ 1997."**

b) ...

DOCKETED
NOV. 04 1997

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Objection. EESPI objects to Fumo Set III, Question 1(a) insofar as subpart (a) of this question seeks mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research, and/or legal theories and analyses concerning the "meaning and consequence" of certain provisions contain in Enron's Petition. 52 Pa. Code § 5.323. To the extent that this interrogatory seeks a reference to legal authorities, this interrogatory question also seeks counsel's conclusions, opinions, memoranda, notes, summaries, legal research and/or legal theories and analyses. Accordingly, the information sought in subpart (a) of Fumo Set III, Question 1 is:

- (1) Protected from disclosure by the attorney client privilege and, therefore, remains outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code § 5.321; and
- (2) Not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321.

2. Please provide a detailed explanation of the meaning and consequence of Article 2, Section 2.1 of Exhibit 2 of the Enron Petition. Please include the following:

- a) Please provide a detailed explanation, including reference to applicable Pennsylvania statutory, regulatory or case law, of the legal authority of the Pennsylvania Public Utility Commission to defer final implementation of one of its orders at the "sole discretion" of one of the parties as provide in section 2.1 of Article 2.**
- b) ...**

Objection. EESPI objects to Fumo Set III, Question 2(a) insofar as subpart (a) of this question seeks mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research, and/or legal theories and analyses concerning the "meaning

and consequence" of certain provisions contain in Enron's Petition. 52 Pa. Code § 5.323. To the extent that this interrogatory seeks a reference to legal authorities, this interrogatory question also seeks counsel's conclusions, opinions, memoranda, notes, summaries, legal research and/or legal theories and analyses. *Id.* Accordingly, the information sought in subpart (a) of Fumo Set III, Question 2 is:

- (1) Protected from disclosure by the attorney client privilege and, therefore, remains outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code § 5.321; and
- (2) Not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321.

5. Please provide estimates of the retail market price of energy and capacity for the period 1998 through 2008 for the PJM region that have been performed by Enron or that Enron has in its possession and which have not previously been provided by any witness or party in this proceeding.

Objection. The information requested in Fumo Set III, Question 5 is confidential, and the release of which would cause unreasonable annoyance, oppression, burden or expense. 52 Pa.Code § 5.361.

6. Please provide a detailed explanation of the meaning and consequence of the first paragraph of Exhibit 3 of the Enron Petition. Please include the following:

a) Please refer to applicable Pennsylvania statutory, regulatory or case law which provides the authority of the Pennsylvania Public Utility to require a state utility company to enter into the "MBC Services Agreement" which provides as follows, "[t]his Agreement is entered into pursuant to the Order of the Pennsylvania Public Utility Commission approving EESP's Choice Plan dated _____ 1997."

b) . . .

Objection. EESPI objects to Fumo Set III, Question 6(a) insofar as subpart (a) of this question seeks mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research, and/or legal theories and analyses concerning the "meaning and consequence" of certain provisions contain in Enron's Petition. 52 Pa. Code § 5.323. To the extent that this interrogatory seeks a reference to legal authorities, this interrogatory question also seeks counsel's conclusions, opinions, memoranda, notes, summaries, legal research and/or legal theories and analyses. Accordingly, the information sought in subpart (a) of Fumo Set III, Question 6 is:

- (1) Protected from disclosure by the attorney client privilege and, therefore, remains outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code § 5.321; and
- (2) Not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321.

- 7. Please refer to applicable Pennsylvania statutory, regulatory or case law which provides the authority for adjustments to the prices contained in Exhibit A (of Exhibit 3) to be made without prior Commission approval.**

Objection. EESPI objects to Fumo Set III, Question 7 insofar as this question seeks mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research, and/or legal theories and analyses concerning the "meaning and consequence" of certain provisions contain in Enron's Petition. 52 Pa. Code § 5.323. To the extent that this interrogatory seeks a reference to legal authorities, this interrogatory question also seeks counsel's conclusions, opinions, memoranda, notes, summaries, legal research and/or legal theories and analyses. Accordingly, the information sought in Fumo Set III, Question 7 is:

- (1) Protected from disclosure by the attorney client privilege and, therefore, remains outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code § 5.321; and
- (2) Not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321.

- 13. Please provide a detailed explanation of the consequence if generation credits are reduced as described in Exhibit 4 of the Enron Petition. In response, please address the following:**

- a) . . .
- b) **If the reduction in the generation credits does not affect the prices shown in Exhibit A (of Exhibit 2), the "Firm Energy & Capacity Purchase and Sale Agreement," please explain under what legal authority Enron could sell energy and capacity below cost to those**

customers it serves under the Enron "Choice Plan." Please include specific Pennsylvania statutory, regulatory or case law authority that supports this conclusion.

Objection. EESPI objects to Fumo Set III, Question 13(b) insofar as subpart (b) of this question seeks mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research, and/or legal theories and analyses concerning the "meaning and consequence" of certain provisions contain in Enron's Petition. 52 Pa. Code § 5.323. To the extent that this interrogatory seeks a reference to legal authorities, this interrogatory question also seeks counsel's conclusions, opinions, memoranda, notes, summaries, legal research and/or legal theories and analyses. Accordingly, the information sought in subpart (a) of Fumo Set III, Question 6 is:

- (1) Protected from disclosure by the attorney client privilege and, therefore, remains outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code § 5.321; and
- (2) Not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321.

14. Please provide a detailed outline of the Pennsylvania statutory, regulatory and case law for the Pennsylvania Public Utility Commission to compel a state utility company, specifically PECO Energy Company, to file an application for a Qualified Rate Order.

Objection. EESPI objects to Fumo Set III, Question 14 insofar as this question seeks mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research, and/or legal theories and analyses concerning the "meaning and

consequence" of certain provisions contain in Enron's Petition. 52 Pa. Code § 5.323. To the extent that this interrogatory seeks a reference to legal authorities, this interrogatory question also seeks counsel's conclusions, opinions, memoranda, notes, summaries, legal research and/or legal theories and analyses. Accordingly, the information sought in Fumo Set III, Question 14 is:

- (1) Protected from disclosure by the attorney client privilege and, therefore, remains outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code § 5.321; and
- (2) Not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321.

16. Assuming that section 23(o) of the Enron Petition is controlling, please explain how the transition bonds will be issued on terms that will not require the ITC to be increased. In your response, please respond to the following:

a) . . .

b) Has any officer, employee or agent acting on behalf of Enron discussed section 23(o) of the Enron Petition with any investment banking firm, financial consultant or rating agency? If so, please provide copies of all correspondence (including notes, electronic communications, studies, working papers or similarly construed documents) related to these discussions. If not, please indicate why such discussion have not occurred.

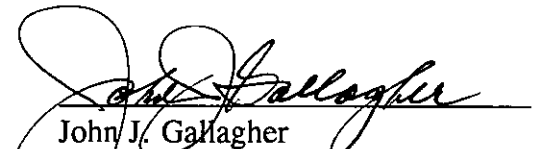
Objection. EESPI objects to subpart (b) of Fumo Set III, Question 16 because the information sought concerns the mental impressions, conclusions or opinions of a representative of a participant respecting the value or merit of a claim or defense or respecting

strategy, tactics or preliminary or draft versions of written testimony and the like. EESPI objects to the provision of such information assembled, relied upon or created by its outside consultants, bankers and attorneys in preparation of the filing of the Choice Plan. 52 Pa.Code § 5.323. Moreover, EESPI objects to subpart (b) of Fumo Set III, Question 16 insofar as this question seeks mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research, and/or legal theories and analyses. 52 Pa. Code § 5.323. Accordingly, the information sought in subpart (b) of Fumo Set III, Question 16 is:

- (1) Protected from disclosure by the attorney client privilege and, therefore, remains outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code § 5.321; and
- (2) Not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321.

Notwithstanding these objections, to the extent not protected by the attorney client privilege, and assuming that section 23(o) of the EESPI's Petition is controlling, EESPI will provide copies of correspondence (if any) relevant to its explanation of how the transition bonds could be issued on terms that will not require the ITC to be increased.

Respectfully Submitted,



John J. Gallagher
LeBoeuf, Lamb, Greene & MacRae
L.L.P.

200 North Third Street, Suite 300
Harrisburg, PA 17108-2105
(717) 232-8199
Attorney for Enron Energy
Services Power, Inc.

Dated: October 29, 1997

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:
:
:
:
:

Docket No. R-00973953

CERTIFICATE OF SERVICE

I hereby certify that I have on this 29th day of October, 1997, served a true copy of the foregoing Objections to Senator Vincent J. Fumo, Set III, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

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Ward L. Smith, Esquire
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(*PECO Energy Company*)

Paul E. Russell, Esquire
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Two North Ninth Street
Allentown, PA 18101
(*Pennsylvania Power & Light Company*)

Senator Vincent J. Fumo
Christopher B. Craig, Esquire
Senate Democratic Appropriations
Committee
Main Capitol Building, Room 545
Harrisburg, PA 17120
(*Senator Vincent J. Fumo*)

Donald A. Kaplan, Esquire
Lisa M. Helpert, Esquire
Preston Gates Ellis & Rouvelas Meeds
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(*Pennsylvania Power & Light Company*)

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97 OCT 29 PM 3:51

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(Vastar Power Marketing, Inc.), (Electric
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Kenneth L. Mickens, Senior Prosecutor
Charles D. Shields, Prosecutor
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P.O. Box 3265
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(OTS)

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Lillian Smith Harris, Esquire
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Harrisburg, PA 17105-1778
(Municipal Group)

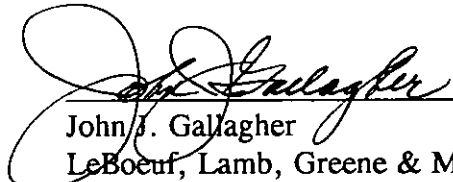
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Mr. Lance Haver
6803 Lawton Avenue
Philadelphia, PA 19126
(Self)



John J. Gallagher
LeBoeuf, Lamb, Greene & MacRae
L.L.P.

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Attorney for Enron Energy
Services Power, Inc.

97 OCT 29 PM 3:51
PROTHOROTARY'S OFFICE



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

RECEIVED
OCT 30 1997

IN REPLY PLEASE
REFER TO OUR FILE

October 29, 1997

Office of Prothonotary
Public Utility Commission

Mr. Michael Fitzpatrick
Chairman, Bucks County
Commissioners
55 E. Court Street
Administration Bldg.
Doylestown, PA 18901

Ms. Charles Martin
Bucks County
Commissioner
55 E. Court Street
Administration Bldg.
Doylestown, PA 18901

Ms. Sandra Miller
Bucks County
Commissioner
55 E. Court Street
Administration Bldg.
Doylestown, PA 18901

Dear Commissioners:

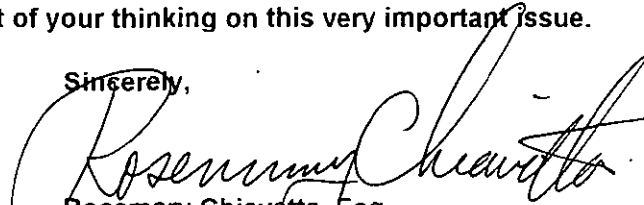
R-973953

Thank you for your recent letter of October 6, 1997, to Chairman John Quain of the Pennsylvania Public Utility Commission regarding the settlement recently reached between PECO Energy and many consumer groups in southeastern Pennsylvania.

Since this matter is currently pending before the Commission, and Chairman Quain is prohibited from commenting on the merits of the settlement, he referred your letter to me for a response. Please know that I have taken the liberty of sending your letter to the Acting Secretary of the Commission so your comments on this matter will become an official part of the record in the PECO proceeding.

We greatly appreciate the benefit of your thinking on this very important issue.

Sincerely,


Rosemary Chiavetta, Esq.
Director of Legislative Affairs

- cc: Chairman John Quain
- Vice Chairman Robert Bloom
- Commissioner John Hanger
- Commissioner David Rolka
- Commissioner Nora Mead Brownell
- Acting Secretary McNulty ✓



COUNTY OF BUCKS

OFFICE OF THE COMMISSIONERS

55 East Court Street
Administration Building, Doylestown, Pa. 18901
(215) 348-6000
FAX 348-6571

RECEIVED

OCT 17 1997

CHAIRMAN QUINN'S
OFFICE

County Commissioners

MICHAEL G. FITZPATRICK, *Chairman*
CHARLES H. MARTIN
SANDRA A. MILLER

October 6, 1997

Honorable John M. Quinn, Chairman
Pennsylvania Public Utility Commission
P.O. Box 3265/North Office Building
Harrisburg, PA 17105-3265

Dear Mr. Quinn:

We are writing to inform you of our strong advocacy of increased competition within the electric industry in the Commonwealth. This, coupled with customer choice, looms on the horizon as an indisputable benefit to all who depend on this essential commodity.

This opportunity to realize the goal of reducing costs of electrical service in Bucks County-- along with the rest of Southeastern Pennsylvania-- would become a reality with the settlement of PECO Energy's rate restructuring filing.

The guaranteed 10 percent rate reduction bodes well for the entire region. In addition to the obvious benefit to our low-income citizens, such a reduction will be extremely helpful in our Bucks County economic development efforts. As we continue to work to regain the economic vitality that was sapped when USX eliminated 9,000 jobs seven years ago and the loss of 2,600 jobs when a U.S. Navy research/development facility moved to Maryland in 1996, we have no doubt that the rate reduction guarantee will further assist us in regaining that economic vitality.

In the interest of Bucks County-- and all of Southeastern Pennsylvania-- we respectfully urge prompt Public Utility Commission approval of the rate restructuring settlement.

Sincerely,

Michael G. Fitzpatrick,
Chairman

Charles H. Martin

Sandra A. Miller

C: Honorable Robert K. Bloom, Vice Chairman
Honorable Nora Mead Brownell, Commissioner
Honorable John Hanger, Commissioner
Honorable David W. Rolka, Commissioner



PECO ENERGY

015885

Legal Department

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

97 NOV -3

RECEIVED
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Direct Dial: 215 841 4252

James W. Durham
Senior Vice President
and General Counsel

Edward J. Cullen, Jr.
Deputy General Counsel

Sandra H. Byrne
Legal Administrator

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

October 30, 1997

Via Facsimile & U.S. First Class Mail

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

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

Re: Application of PECO Energy Company for Approval of its Restructuring Plan
under Section 2806 of the Public Utility Code Docket No.
R-00973953; Petition of Enron Energy Service Power, Inc.
P-00971265.

Dear Counsel:

Interrogatory No. 4 of PECO Energy Company's Interrogatories to Enron Set XVIII,
which PECO Energy served yesterday, contained a typographical error. Accordingly, I
enclose a revised version of that interrogatory.

Please call me if you have any questions.

Sincerely,

Paul R. Bonney

PRB/mbo
Enclosures

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

KJR

DOCUMENT
FOLDER

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of Pennsylvania Public Utility Commission v. PECO Energy Company Pa. PUC Docket No. R-00973953 **015886**

97 NOV -3 AM 11:17

RECEIVED
PROTHONOTARY'S OFFICE

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Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265

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(Counsel for PAIEUG)

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(Counsel for The Honorable Vincent J. Fumo)

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1424 Chestnut Street
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(Counsel for PP&L)

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(Counsel for Enron Energy Services Power, Inc.)

Dated: October 30, 1997

(Counsel for Mid-Atlantic Power Supply Association)

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Allegheny Power
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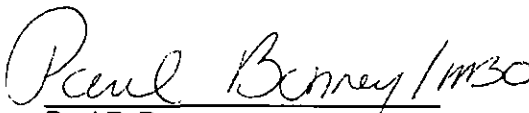
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800 North Third Street, Suite 101
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(Counsel for GPU)

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(Counsel for Pennsylvania Petroleum Association and Pennsylvania Association of Plumbing, Heating, Cooling Contractors, Inc.)

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LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

October 30, 1997

BY HAND

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

Re: Pennsylvania Public Utility Commission v.
PECO Energy Company
Docket No. R-00973953

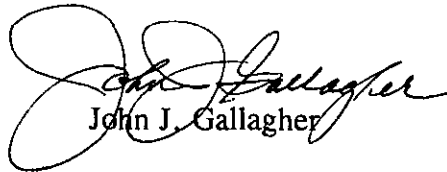
KJR
97 OCT 30 PM 4:25
PROTHONOTARY'S OFFICE

Dear Mr. McNulty:

Enclosed please find for filing three (3) copies of a Certificate of Service evidencing service of Enron Energy Services Power, Inc.'s Responses to PECO Energy Company's Interrogatories, Set XI.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/mas
enclosure

cc: All Parties on Certificate of Service
Daniel Clearfield, Esquire

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:
:
:
:
:
:

Docket No. R-00973953

97 OCT 30 PM 4:28
RECORDS OFFICE

CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of October, 1997, served a true copy of the foregoing Responses to PECO Energy Company's Interrogatories, Set XI, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

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Christopher B. Craig, Esquire
Senate Democratic Appropriations
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(Senator Vincent J. Fumo)

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(Vastar Power Marketing, Inc.), (Electric
Clearinghouse, Inc.)

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Kenneth L Mickens, Senior Prosecutor
Charles D. Shields, Prosecutor
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Lillian Smith Harris, Esquire
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Harrisburg Energy Center
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Mr. Lance Haver
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Attorney for Enron Energy
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LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

October 30, 1997

BY HAND

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

Re: Pennsylvania Public Utility Commission v.
PECO Energy Company
Docket No. R-00973953

PROTHONOTARY'S OFFICE

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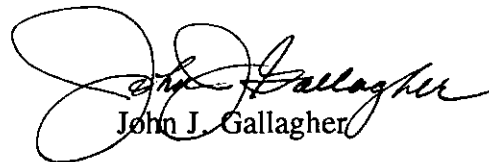
277-10000000

Dear Mr. McNulty:

Enclosed please find for filing three (3) copies of a Certificate of Service evidencing service of Enron Energy Services Power, Inc.'s Responses to PECO Energy Company's Interrogatories, Set XII.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/mas
enclosure

cc: All Parties on Certificate of Service
Daniel Clearfield, Esquire

DOCUMENT
HOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

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Docket No. R-00973953

PROthonic ARY'S OFFICE

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of October, 1997, served a true copy of the foregoing Responses to PECO Energy Company's Interrogatories, Set XII, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

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(Senator Vincent J. Fumo)

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Association Plumbing, Heating and Cooling
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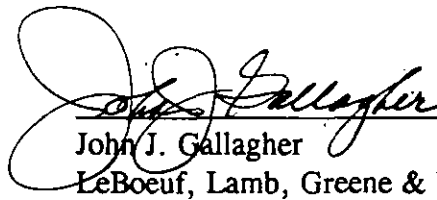
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Attorney for Enron Energy
Services Power, Inc.

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L.L.P.

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PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
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ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

October 30, 1997

BY HAND

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

KJR

PROTHONOTARY'S OFFICE

27 OCT 29 PM 4:26

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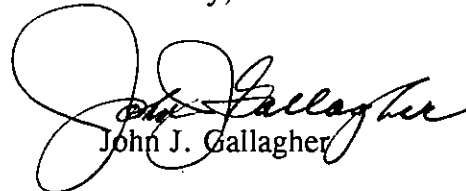
Re: Pennsylvania Public Utility Commission v.
PECO Energy Company
Docket No. R-00973953

Dear Mr. McNulty:

Enclosed please find the original and three (3) copies of Enron Energy Services Power, Inc.'s Objections to PECO Energy Company's Interrogatories, Set XV, to be filed in the above-captioned proceeding. A Certificate of Service is also enclosed.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/mas
enclosure

cc: All Parties on Certificate of Service
Daniel Clearfield, Esquire

DOCUMENT
FOLDER

97

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:
:
:
:
:

Docket No. R-00973953

OBJECTIONS OF
ENRON ENERGY SERVICES POWER, INC.
TO PECO ENERGY COMPANY,
SET XV

PROthonotary's OFFICE

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Pursuant to 52 Pa.Code § 5.432, Enron Energy Services Power, Inc. ("EESPI") hereby sets forth the following objections to the interrogatories of PECO Energy Company ("PECO"), Set XV. EESPI also notes that the following objection was timely communicated to counsel for PECO pursuant to the procedural schedule established in Prehearing Order No.

1. EESPI objects to the following:

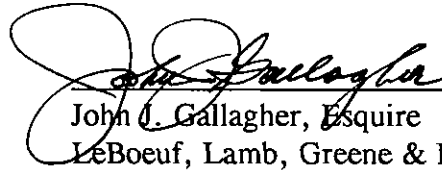
16. On page 30 Enron requests that "Enron as the PLR under the Choice Plan shall be determined by the Commission to qualify as an electric generation supplier under 66 Pa.C.S. §2809 and not as a 'public utility' under 66 Pa.C.S. §102." Provide any and all bases supporting Enron's request.

Objection. EESPI objects to PECO Set XV, Question 16 in that PECO seeks mental impressions of counsel or counsel's conclusions, opinions, memoranda, notes, summaries, legal research, and/or legal theories and analyses. 52 Pa.Code § 5.323. Accordingly, the information sought in PECO Set XV, Question 16 is:

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- (1) Protected from disclosure by the attorney client privilege and, therefore, remains outside the scope of discovery under the Commission's Rules and Regulations. 52 Pa.Code §§ 5.321(c), 5.361(a)(3); and
- (2) Not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa.Code. § 5.321(c).

Respectfully Submitted,



John J. Gallagher, Esquire
LeBoeuf, Lamb, Greene & MacRae

L.L.P.

200 North Third Street, Suite 300
Harrisburg, PA 17108-2105
(717) 232-8199

Attorney for Enron Energy
Services Power, Inc.

Dated: October 30, 1997

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:
:
:
:
:

Docket No. R-00973953

CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of October, 1997, served a true copy of the foregoing Objections to PECO Energy Company's Interrogatories, Set XV, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

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Christopher B. Craig, Esquire
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Bernard Ryan, Esquire
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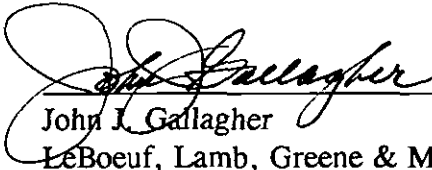
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(A LONDON-BASED
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October 30, 1997

BY HAND

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

Re: Pennsylvania Public Utility Commission v.
PECO Energy Company
Docket No. R-00973953

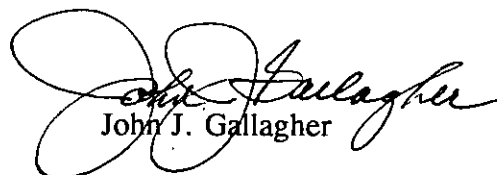
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PROTHONOTARY'S OFFICE

Dear Mr. McNulty:

Enclosed please find for filing three (3) copies of a Certificate of Service evidencing service of Enron Energy Services Power, Inc.'s Responses to Senator Vincent J. Fumo's Interrogatories, Set II.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/mas
enclosure

cc: All Parties on Certificate of Service
Daniel Clearfield, Esquire

DOCUMENT
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

:
:
:
:
:

Docket No. R-00973953

CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of October, 1997, served a true copy of the foregoing Responses to Senator Vincent J. Fumo's Interrogatories, Set II, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

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PROTODIARY'S OFFICE

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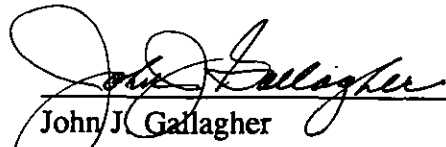
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October 30, 1997

CHAIRMAN QUAIN'S
OFFICE

The Honorable John M. Quain, Chairman
Public Utility Commission
P.O. Box 3265/North Office Building
Harrisburg, PA 17105-3265

Dear Chairman Quain:

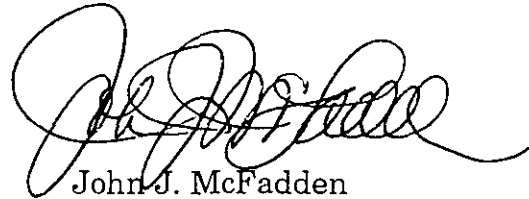
We have always supported reducing the costs of electricity through increased customer choice and competition in the electric industry in Pennsylvania. You have an opportunity to help us achieve this goal in reduced electricity costs with the settlement of PECO Energy's rate restructuring filing.

Lowering these costs will help us preserve jobs, protect low-income citizens and bolster our economic development efforts. We support this settlement with its guaranteed savings.

Prompt action by the Public Utility Commission on this restructuring settlement would be in the interest of our County and the entire region.

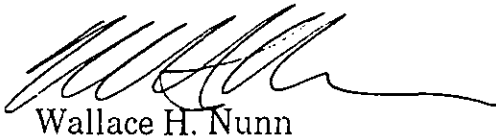
Sincerely,


Paul G. Mattus, Chairman


John J. McFadden


Thomas H. Killion, Vice Chairman


Kathrynann W. Durham


Wallace H. Nunn

ORIGINAL

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October 30, 1997

PROTHONOTARY'S OFFICE
97 OCT 30 PM 3:01
11/1/97

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

KJR

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

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

Dear Secretary McNulty:

On behalf of Enron Energy Services Power, Inc. enclosed for filing please find an original and three copies of its Answer to Petitions for Reconsideration with regard to the above referenced action.

As indicated on the attached certificate of service, copies of these documents are being served this day on the parties in the manner indicated.

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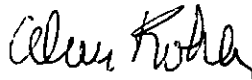
PHILADELPHIA, PA • BLUE BELL, PA • CAMDEN, NJ • NORRISTOWN, PA • WILMINGTON, DE

93

James McNulty, Acting Secretary
October 30, 1997
Page 2

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

Very truly yours,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

AK/lww

Enclosure

cc: Hon. Marlane R. Chestnut (w/enc.)
Hon. Charles E. Rainey, Jr. (w/enc.)
All Parties of Record (w/enc.)

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Petition of Enron Energy Services Power, Inc. :
for Approval of an Electric Competition and : Docket No. P-00971265
Choice Plan and for Authority Pursuant to :
Section 2007(e) of the Public Utility Code to :
Serve as the Provider of Last Resort in the :
Service Territory of PECO Energy Company :

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ENRON ENERGY SERVICES POWER INC.'S
ANSWER TO PETITIONS FOR RECONSIDERATION

I. INTRODUCTION

Enron Energy Services Power, Inc. ("Enron") submits this Answer in response to two Petitions, one filed by PECO Energy Company ("PECO") and the other filed by several other litigants in PECO's Restructuring Proceeding,¹ both of which request the Commission to reconsider the Commission's October 9, 1997 Opinion and Order consolidating and setting forth procedures for litigation of the above-captioned

¹ The litigants joining in the petition are the Honorable Vincent J. Fumo, the Office of Small Business Advocate, the Office of Trial Staff, the Office of Consumer Advocate, the Philadelphia Area Industrial Users Group, CEPA, the American Association of Retired Persons, and Lance Haver.

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matters.² Through its Opinion and Order, the Commission determined that the Partial Settlement submitted by PECO and other joint signatories on August 27, 1997, Enron's above-captioned Petition ("Choice Plan Petition") and other issues in PECO's Restructuring Proceeding should be subject to "contemporaneous consideration" at the Commission's December 11, 1997 Public Meeting.³

Through the reconsideration petitions, the Petitioners request that the Commission isolate the Partial Settlement from the Choice Plan for decision making purposes by having the Commission declare that the only possible final outcome which can result from the Commission December 11, 1997 consideration is approval of the Partial Settlement. Petitioners claim that any other outcome which adopts Enron's Choice Plan or rejects or modifies the Partial Settlement requires a remand to the Office of Administrative Law Judge ("OALJ") for the submission of additional evidence and additional briefs.

Petitioners' request for relief "flies in the face" of the Commission's directives in its August 9, 1997 Opinion and Order and should be denied. The

² Although both pleadings are captioned as petitions for clarification or reconsideration, it is clear from the arguments set forth in the pleadings that the petitions are requesting the Commission to reconsider and, for practical purposes, vacate its October 9, 1997 Opinion and Order.

³ The Commission's Opinion and Order did consider an alternative under which the consolidated matters would be considered at the Commission's January 30, 1998 Public Meeting if PECO agreed to extend the statutory deadline governing Commission review of PECO's restructuring plan. However, to date, PECO has refused to extend the statutory deadline for consideration of the consolidated docket.

Commission has made it abundantly clear that it wants the PECO case finally decided in consolidated fashion on December 11, 1997 — no exceptions.⁴ The Commission has set forth expedited procedures which allow all parties to introduce evidence and cross-examine witnesses on all issues relevant to the Partial Settlement, the Choice Plan or any other pending issues in the restructuring proceedings. All parties' rights have been protected as each litigant is being provided a complete opportunity to make its case. Accordingly, the only restrictions on the Commission's decision making authority at its December 11, 1997 Public Meeting is that the outcome it adopts is supported by evidence of record and is consistent with statutory and constitutional provisions. No further remands or other delays are appropriate or necessary.⁵

Finally, the implications contained in PECO's Petition that Enron should be penalized for not participating in the settlement process leading to the Partial Settlement ignores the fact that PECO emphatically refused to permit Enron and other generation suppliers to participate in the negotiations leading to the partial settlement. Enron has not

⁴ The only exception is PECO's opportunity to extend the statutory deadline to allow further time to litigate and consider the consolidated docket.

⁵ All signatures to the Partial Settlement were aware of or should have been aware that because all parties of record did not join in the Partial Settlement that litigation in the proceedings would have to continue. See, Mobil Oil Corp. v. Federal Power Commission, 417 U.S. 283 (1974); LaFarge Corp. v. Pennsylvania Insurance Department, 690 A.2d 526 (Pa. Cmwlth. 1997). Furthermore, most of the Petitioners were parties in the Commissions' Pilot Program Proceedings and were put on notice that following completion of a record in a case involving a partial settlement, the Commission could order a final outcome significantly different from the partial settlement as long as that outcome was supported by the evidentiary record.

impeded the settlement process, it has been and continues to be intentionally excluded from the settlement process.⁶ Although, Enron is prepared and plans to litigate and support its Choice Plan Petition until a final Commission determination and is ready, willing and able to carry out every single provision included in the Plan, it is also willing to engage in negotiations with PECO and other litigants in order to attempt to reach agreement on the issues pending in PECO's Restructuring Proceeding or for that matter any other proceeding.

II. THE REQUESTS FOR RELIEF "FLIES IN THE FACE" OF THE COMMISSION'S OPINION AND ORDER.

In its October 9, 1997 Opinion and Order, the Commission clearly and unanimously set forth its directives and expectations for deciding all issues pending in the PECO Restructuring Proceeding, once and for all, following the close of the consolidated record. After noting that the Choice Plan Petition and the Partial Settlement raised common factual, legal and policy concerns and were "intertwined with PECO's Restructuring Case," the Commission determined that "Under said circumstances, it could be extraordinarily difficult for this Commission to make an informed decision concerning

⁶ PECO's adamant refusal to seriously negotiate with Enron both prior to and since the submission of the Partial Settlement is best exemplified by the statements of PECO Chairman Corbin A. McNeil, Jr. in the attached press release issued in response to the filing of Enron's Choice Plan and the Commission's express call for the parties to discuss settlement in which Mr. McNeil emphatically stated, "There will be no deal with Enron. There is no chance of a deal."

one petition without contemporaneous consideration of the other or without reference to the overall restructuring proceeding."⁷

The Commission was also clear that the consolidated record would be utilized to reach a final decision without further delay or remand:

Consolidation of the PLR Petition and PECO's Restructuring case mandates that necessary hearings be provided to permit the parties to address both Enron's PLR Petition and, to the extent necessary, the balance of PECO's Restructuring case.

Opinion and Order, p. 4.

And again, later in the decision, the Commission stated:

Additional hearings must, however, be conducted with regard to those issues in PECO's Restructuring case that have not been addressed in the record so as to provide an adequate record for adjudication of PECO's Restructuring plan if neither the Joint Partial Settlement or another settlement is approved.

Opinion and Order at 5.⁸

Finally, just in case there was any doubt the Commission added:

We hasten to add that whether or not a settlement is proffered in these consolidated proceedings, it is anticipated that the

⁷ Opinion and Order p. 4.

⁸ The Commission's reference to an "adequate record for adjudication" clearly references its intended adjudication on December 11, 1997 unless the statutory deadline is extended by PECO. By letter dated October 14, 1997, PECO advised the Commission that it would be willing to extend the statutory deadline to March 12, 1998 but only if the Commission first rejected the Partial Settlement. However, PECO gives no reason why it is unwilling to extend the statutory deadline, as requested by the Commission, to develop and consider a consolidated record. The most likely explanation is that PECO is making every attempt to obstruct the Commission's decision to consolidate.

parties herein will present and address all issues arising out of these proceedings.

Opinion and Order, p. 5.⁹

Overall, the Commission's intent is clear. It has ordered consolidation and development of a record on the Choice Plan, the Partial Settlement and all other issues in PECO's Restructuring Plan. Given the fact that PECO has refused to provide an extension of the statutory deadline to consider the consolidated record, the Commission will decide the entire case at its December 11, 1997 Public Meeting.

Despite the clarity of the Commission's Opinion and Order, the Petitioners claim to be confused by the Commissioner's directions.¹⁰ Enron asserts that any confusion is self imposed and further clarification is unnecessary.

⁹ The Commission's clear intention to develop a consolidated record and decide this entire case once and for all is also reflected in the Statements of individual Commissioners. As Commissioner Brownell concluded:

Although the time frame is ambitious, it does provide for meaningful opportunities for the parties to prepare and present their positions on all facets of the restructuring plan. That aspect of the Motion is critical, as well as its direction that this proceeding move to completion with a full consideration of the entire restructuring plan.

Again, the reference to "full consideration" references review of the consolidated record by the Commission at its December 11, 1997 Public Meeting. (Chairman Quain's Statement contains similar sentiments.)

¹⁰ PECO, for example, claims that it believes the Commission's Opinion and Order envisioned a remand if the Partial Settlement is not approved even though the Opinion and Order contain no reference to any remand or additional proceedings. PECO's reading of the Opinion and Order is not reasonably possible .

III. THE PETITIONERS DUE PROCESS RIGHTS ARE FULLY PROTECTED.

To date, over a thousand pages of written testimony and over a thousand pages of transcribed cross-examination have been introduced into the record of this proceeding. More written testimony will be submitted in the near future, and additional comprehensive hearings will follow. Overall, an extensive and well-developed consolidated record will be compiled prior to Commission consideration. No party has been limited in its submission of evidence and procedures have been established to address issues including issues that were deferred by the Partial Settlement.¹¹

All parties have or will be provided ample opportunity to be heard. Accordingly, following the close of the consolidated record in this proceeding, it is completely appropriate for the Commission to move forward to deliberate over a final decision in PECO's Restructuring Proceeding. No outcome is mandated by law as long as the Commission's decision is supported by evidence of record and is consistent with underlying statutory and constitutional provisions.

Petitioners, as a group, claim that they will be adversely affected by consolidated proceedings because they desire to focus their attention on supporting the Partial Settlement instead of their original litigation positions. However, the Petitioners preference (for unconsolidated proceedings in which they would get to support the Partial Settlement first and then revert to their litigation position on remand if the Partial

¹¹ See Prehearing Order #5, p. 2.

Settlement is rejected) must be distinguished from due process considerations. The Commission has provided the Petitioners with a full **opportunity** to be heard.¹² The fact that an unconsolidated proceeding might be strategically advantageous to Petitioners has nothing to do with due process requirements and should be disregarded by the Commission.

The fact of the matter is that bifurcated Partial Settlement and remand proceedings as proposed by Petitioners are prejudicial to Enron. Instead of being permitted to support and advocate a superior alternative to the Partial Settlement and win or lose the case on that record, Enron would be required to "win twice" by defeating the Partial Settlement in the context of an isolated decision by the Commission and then litigate another proceeding in order to have its Choice Plan adopted.¹³ The Commission's Opinion and Order places all litigants on an "even playing field" to develop a record and pursue argument in support of their respective positions. No modifications are necessary or justified.

¹² Nothing precludes the Petitioners from supporting their respective litigation positions. In fact, the Commission's Opinion and Order presumes that parties will support litigation positions in addition to partial settlement positions.

¹³ Such procedures apparently are designed to "bootstrap" the Commission into accepting the Partial Settlement or nothing at all. The Commission has stated its clear intention to move forward with a final decision on the entire PECO Restructuring on the basis of one record. The Commission's determination is not only legal but is consistent with notions of fairness and reasonableness and should be maintained.

IV. ENRON WAS EXCLUDED FROM NEGOTIATIONS LEADING TO THE PARTIAL SETTLEMENT.

The notion that Enron attempted to or is impeding the settlement process in this proceeding misrepresents the background pertaining to negotiations of the Partial Settlement and the submission of Enron's Choice Plan. Despite numerous attempts to insert itself into the settlement process leading up to the Partial Settlement, Enron was emphatically denied the opportunity to participate. While Enron is precluded by proprietary agreement from going into the detail of its attempts to initiate settlement discussions prior to the filing of its Choice Plan,¹⁴ it can state for the record that in its view it has been denied any opportunity to participate in any meaningful discussions with PECO either prior to or after the filing of the Partial Settlement.

In Enron's view, this type of activity designed to keep certain parties out of the process should not be tolerated by the Commission. Despite the Petitioners' assertions, the Commission has never endorsed a settlement process that is designed to preclude participation by an entire group of interested parties. What the Commission has consistently endorsed is a process in which all parties are given a meaningful opportunity to sit down and attempt to resolve their differences.¹⁵ Enron completely supports the Commission's initiative in furtherance of fair and reasonable settlement negotiations and

¹⁴ Enron recognizes it is prohibited by proprietary agreement from disclosing to the Commission the detail and content of its settlement activities. However, Enron is willing to waive its rights to keep the detail and content of this activity confidential in order to allow full disclosure to the Commission and to enable the Commission to judge for itself.

¹⁵ For example, the Commission's ADR process provides such a mechanism.

resulting agreements. However, Enron believes the process utilized here is a "far cry" from the process that has been consistently endorsed by the Commission.

Enron strongly believes the Choice Plan represents a resolution of PECO's Restructuring Proceeding which is consistent with the Public Utility Code and underlying public policy. Enron submits that the Commission should move forward to evaluate Enron's Choice Plan consistent with the procedures set forth in its October 9, 1997 Opinion and Order.

V. CONCLUSION

For all of the foregoing reasons, Enron respectfully requests the Commission to deny the petitions for reconsideration and affirm its October 9, 1997 Opinion and order in the above-captioned matter.

Respectfully submitted,



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Attorneys for Enron Energy Services Power, Inc.

Dated: October 30, 1997

CERTIFICATE OF SERVICE

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

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Alan Kohler

Dated: October 30, 1997



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

IN REPLY PLEASE
REFER TO OUR FILE

October 30, 1997

Mr. Tom Muldoon
President
Philadelphia Convention & Visitors
Bureau
1515 Market Street
Suite 2020
Philadelphia, PA 19102-2071

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Office of Prothonotary
Public Utility Commission

Dear Mr. Muldoon:

R-973953

Thank you for your letter of October 6, 1997, to Chairman John Quain expressing your support for PECO Energy Company's restructuring filing proceeding under the Pennsylvania Electric Generation Customer Choice and Competition Act.

Please know that I have taken the liberty of forwarding your correspondence to the Acting Secretary of the Commission for inclusion into the official file of this proceeding.

Thank you again for the benefit of your thinking on this very important matter.

Sincerely,



Rosemary Chiavetta, Esq.
Director of Legislative Affairs

cc: Chairman Quain
Acting Secretary McNulty ✓

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OCT 17 1997

October 6, 1997

CHAIRMAN QUAIN'S
OFFICE

The Honorable John Quain
Chairman
Pennsylvania Public Utility Commission
Philadelphia State Office Building, 13th Floor
Broad & Spring Garden Streets
Philadelphia, PA 19130

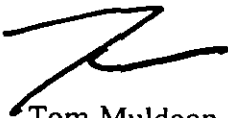
**RE: PECO Energy Company
Electric Competition Restructuring Plan**

Dear Chairman Quain:

I would have liked to be involved in the public hearings being held this week, but unfortunately, my calendar would not permit my attendance.

Please accept this letter as my voice supporting the settlement regarding PECO Energy's restructuring filing. I see many advantages in this issue: customer choice; reduction in rates; and most importantly, the appeal this will have in steering new businesses to our region.

Sincerely,



Tom Muldoon
President

TOM:wk

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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BOSTON
DENVER
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LOS ANGELES
NEWARK
PITTSBURGH
PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

October 31, 1997

BY HAND

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

KJK

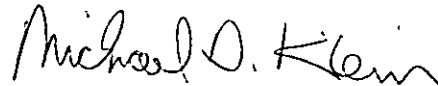
Re: Pennsylvania Public Utility Commission v. PECO Energy Company
Docket No. R-00973953

Dear Mr. McNulty:

Enclosed please find for filing three (3) copies of a Certificate of Service evidencing service of Enron Energy Services Power, Inc.'s Responses to PECO Energy Company's Interrogatories, Set XIII.

If you have any questions concerning this matter, please contact me at your convenience.

Sincerely,



Michael D. Klein

MDK/mas
enclosure

cc: All Parties on Certificate of Service
Daniel Clearfield, Esquire

DOCUMENT
FOLDER

PROTHONOTARY'S OFFICE
97 OCT 31 PM 4:05

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

Docket No. R-00973953

CERTIFICATE OF SERVICE

I hereby certify that I have on this 31st day of October, 1997, served a true copy of the foregoing Responses to PECO Energy Company's Interrogatories, Set XIII, on behalf of Enron Energy Services Power, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa.Code § 1.54:

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NOV 06 1997

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97 OCT 31 PM 4:05
U.S. DISTRICT COURT
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