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December 2, 1997

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

Re: Application of Peco Energy Company for Approval of Its Restructuring Plan	:	:	Docket No. R-00973953
 Petition of Enron Energy Services Power Inc. for Approval of an Electric Competition and Customer Choice Plan	:	:	Docket No. P-00971265 (Consolidated)

Dear Mr. McNulty:

Enclosed please find two copies of the Environmentalists' brief in the above-captioned proceeding. I have also enclosed a computer diskette with the brief in electronic format.

The brief is being served on all parties of record in accord with the attached Certificate of Service.

Sincerely,



Roger E. Clark
Attorney for The Environmentalists

Enclosures: Brief of the Environmentalists
Certificate of Service
Computer diskette

Copies: The Honorable John M. Quain
The Honorable Robert K. Bloom
The Honorable John Hanger
The Honorable David W. Rolka
The Honorable Nora Browneli

The Honorable Marlane R. Chestnut
The Honorable Charles E. Rainey, Jr.
Cheryl Walker Davis, Off. of Special Assts.

All Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY
COMPANY FOR APPROVAL OF
ITS RESTRUCTURING PLAN

Docket No. R-00973953

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

Docket No. P-00971265
(consolidated)

**Brief of
The Environmentalists**

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I. Introduction

A. Searching for Signs

Michelangelo described his creative process not as sculpting statues but as “liberating the figure from the marble that imprisons it.” He would study the block of marble for “signs of life” and when he saw the figure’s form inside, he would chip away at the marble and liberate the figure within.¹ Like the Renaissance artist, the Pennsylvania Public Utility Commission (“the Commission”) is facing a huge mass of written testimony, exhibits, hearing transcripts and other record evidence. It is looking for signs of the form of the new restructured marketplace it must now create for Pennsylvania.

In this brief, the Environmentalists² will try to share our vision of the new marketplace, where:

... consumers have access to adequate, safe, clean, reliable and efficient energy services at fair and reasonable prices at the lowest long-term cost to society.³

We believe that the components of this vision are before us in the record of this proceeding involving the PECO Energy Company (“PECO”). Now some very skilled chipping away must be done by the Commission.

¹H.W. Janson, *History of Art: A Survey of the Major Visual Arts from the Dawn of History to the Present Day*, Prentice-Hall, Inc. and Harry W. Abrams, Inc, Revised and Enlarged Edition, 1970, p. 10.

²The Environmentalists consist of the Clean Air Council, the Sierra Club, the Philadelphia Solar Energy Society, the Energy Coordinating Agency, the Grass Roots Alliance for a Solar Pennsylvania and the Nonprofits Energy Savings Investment Program.

³This is the goal which begins *The Environmentalists' Vision for the New Electricity Marketplace*. This two-page document, drafted by the client group, is in this proceeding's record as Exhibit DS-2 of Environmentalists' Statement 1-S (David Schoengold).

B. The Three Tests

In determining which ideas to keep and which to discard, the Environmentalists urge the Commission to apply three tests. The first test is whether the offered proposal is in the public interest. For the Environmentalists, the public interest is found in the answers to three questions: is it good for the consumer, is it good for competition, and most important for the Environmentalists, is it good for the environment?

By asking the first question, is it good for the consumer, we mean will consumers see a meaningful cut in electricity prices? Will the benefits of restructuring be shared by all customer classes? Will low income consumers have access to essential electric services on reasonable terms and conditions and will they be able to participate in the new market? Will consumers receive the information and education they need to meaningfully participate in the new market?⁴

The Three Tests

- (1) Is the proposal in the public interest?
 - Is it good for consumers?
 - Is it good for competition?
 - Is it good for the environment?
- (2) Is the proposal consistent with the Act?
- (3) Are the rates and charges imposed by the proposal just and reasonable?

The second question under the public interest test is whether the proposal is good for competition. Pennsylvania will realize the benefits of restructuring only if the Commission succeeds in creating a robust and vibrant competitive marketplace. Do the stranded cost recovery and the unbundled energy prices allow for meaningful competition? Is the market domination of the monopoly utility constrained? Are fair rules developed and enforced which prevent

⁴Consumers need to understand the basic workings of the electric system and how it will change under restructuring. All of us have heard consumers ask if their lights will go out if the supplier they chose goes out of business. Misunderstanding of this type will interfere with the proper functioning of the market.

restraint of trade and other practices? As one of the parties noted in its brief in the retail access pilot proceeding, “[t]his Commission cannot take competition for granted.”⁵ In evaluating the results of the Act and the Commission’s implementation of it, people will look first and foremost to whether the Commission succeeds in producing a competitive market.

The third and final question of the public interest test is whether the proposal is good for the environment. Does the proposal help reduce adverse public health and environmental consequences of the production, transmission, distribution and use of electricity? Does the proposal support energy conservation and efficiency, renewable energy and other clean energy alternatives? Does the proposal advance a sustainable energy future for Pennsylvania? The Environmentalists believe that the new marketplace must reflect these critical, long-term public goals and not simply be a mad rush for the next cheap kilowatthour.

The second test which the Environmentalists urge the Commission to apply in its decision-making is whether the proposal is consistent with the Electricity Generation Competition and Customer Choice Act (“the Act”)⁶. While the Commission has been working to implement many elements of the Act since it was enacted on December 3, 1996, this restructuring Order will be the first time that the Commission will rule on some of its more complex and contentious provisions.

⁵Docket P-00971168 *et al.*, Main Brief of Conectiv Energy (August 13, 1997), page 2. They note that despite the necessary legislative and regulatory actions, neither the telecommunications industry nor the natural gas industry has yet to experience successful competitive markets.

⁶66 Pa.C.S. §§ 2801 *et seq.*

The third test for restructuring proposals is whether the rates and charges imposed are just and reasonable. The Act did not repeal the Public Utility Code, it simply added a new chapter to the existing body of public utility law. The Code's standards of just and reasonable rates, used and useful and the other sections of the Public Utility Code are still the law. They must apply to the new rates imposed by the restructuring plan.

C. The Issues

In reviewing the long list of issues which have been raised in this proceeding, the Environmentalists suggest that they fall into two groups. The first tier are the issues which are most critical in the Commission's Order: the quantification and treatment of stranded costs, the unbundling of rates, and the actions to be taken to prevent market domination by the existing monopoly utility. The Commission's determination of these three issues will control the form of the new electric marketplace. The Environmentalists' recommendations on each of these issues are addressed in the next three sections of this brief.

In addition to these three fundamental issues, there is a second tier of important issues concerning such topics as universal service, energy conservation, renewable energy, distributed power, consumer information and education, and Pennsylvania's sustainable energy future. The Environmentalists' recommendations on these issues make up the balance of this brief.

The Environmentalists contend that neither the Joint Petition for Partial Settlement ("the Partial Settlement") nor the Enron Customer Choice Plan ("the Choice Plan") should be adopted as submitted. Instead, the Commission should evaluate all of the evidence

and positions which have been presented by the various parties and selectively fashion its own restructuring Order for PECO. It is time for the Commission to pick up the hammer and chisel and to start chipping away to create Pennsylvania's new electric marketplace.

II. Determining Stranded Costs

A. Introduction

Peter Bradford sounded the call as to what is at stake in the debate over stranded costs:

Strandable investment is the public's best road to an effectively competitive and an environmentally acceptable future. Regulators, legislators and others in the public sector must not give it away until that future is well secured. The opportunity for recovery of a substantial amount of stranded costs should be expressly conditioned on full utility cooperation in achieving the best result for customers and the environment in the years ahead.⁷

What will Pennsylvania have to show for the payment of stranded costs in this proceeding? Will we make an investment in a sustainable energy future by creating the Sustainable Development Fund? Will we have net metering and interconnection rules which will facilitate the development of new, clean energy technologies? Will we have a new commitment to energy conservation and efficiency? Will we have universal service programs that make energy bills affordable by reducing consumption rather than simply subsidizing it? Will we be on the road to adequate, safe, clean, reliable and efficient energy services at fair and reasonable prices at the lowest long-term cost to society? The Environmentalists hope the answer to all of these questions is yes.

⁷CEPA *et al.* Statement of Peter Bradford, p. 13, l. 5-9.

The quantification of stranded costs will be the linchpin of the Commission's restructuring order. A higher stranded cost award means a higher Competitive Transition Charge and/or a higher Intangible Transition Charge ("CTC" and "ITC") in the unbundled rates. Because of the rate cap,⁸ a higher CTC/ITC means a lower generation credit, which means that less of the bill is subject to competition and customers have less opportunity to obtain savings from alternate suppliers. This means that alternate suppliers have a tougher time entering and staying in the market and robust competition fails to develop and the promise of the Act is unfulfilled.⁹

These issues are important to the Environmentalists because the absence of competition will, according to Environmentalists' witness David Schoengold, "slow down the introduction of new, clean generating options (both fossil-fueled options and renewable resource options)." In addition, a high stranded cost recovery "will indirectly subsidize existing generation ... including older inefficient, polluting units"¹⁰ and these emissions "will make it more difficult to maintain air quality at levels sufficient to protect human health and property." This in turn may "impose restrictions on economic development, constraining the siting of manufacturing operations or competitive power producers."¹¹ How the Commission treats stranded costs will have a very large impact on the fate of the current generation of polluting and unsafe generating plants and whether and when Pennsylvania moves to a new and healthier electric future for our children.

⁸66 Pa.C.S. §2804(4).

⁹These relationships are described in NEV Statement No. 1 (David Boonin), p. 13, l. 28 to p. 14, l. 10 and NEV Statement No. 1-SR (David Boonin), p. 1, l. 28 to p. 2, l. 7.

¹⁰Environmentalists' Statement No. 1-S (David Schoengold), p. 4, l. 15-22.

¹¹Environmentalists' Statement No. 1-S (David Schoengold), p. 5, l. 14-17.

B. Quantifying Stranded Costs

1. Introduction

The Joint Settlement (and the Choice Plan) include several different categories of stranded costs, including stranded generating assets, stranded regulatory assets, nuclear decommissioning, fossil fuel decommissioning and other transition costs. The Environmentalists have addressed some of these categories in filed testimony, and for others we have adopted the recommendations of other parties.

2. Stranded Generating Assets

Approximately 60% of PECO's total stranded cost claim is its calculation of \$4.484 billion of stranded generating assets. This claim was calculated by taking the "value" of its generating assets under regulation and subtracting from it the value of those same assets in the free market. The market value estimate involves 30+ year projections of every important variable in the business, including electricity prices (expressed on an hourly basis), customer consumption and demand, the hourly output of all of its generating plants, and the O&M and capital costs (including such things as life extensions, environmental compliance,¹² etc.). It is the sort of exercise which makes consultants wealthy. In the Partial Settlement, the stranded generating asset claim of \$4.484 billion is

"The difficulty in accurately predicting the future is one of the reasons that many utilities are in difficult positions today with respect to stranded assets."

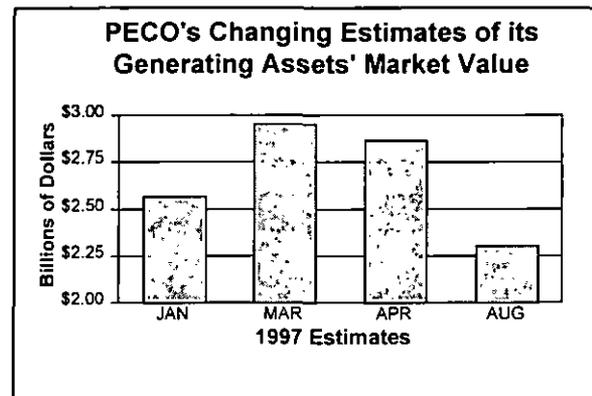
David Schoengold
Environmentalists' Statement
No. 1-S, p. 22, l. 3-5.

¹²One example of the "fictional" aspects of this analysis is that PECO assumes no future changes in emission standards or other environmental regulations. No new compliance costs are shown for the EPA's recently adopted ozone and small particulate regulations. Is the probability really zero that in the next 30 years, we will see no standards to reduce carbon dioxide emissions?

the difference between a regulated value of \$6.787 billion minus a market value of \$2.303 billion.¹³

At least that is the number which PECO is using most recently. Between January and August of this year, PECO has presented four quite different estimates of the market value of its generating assets, due to changing market price estimates and other assumptions.

In its initial filing of the securitization application on January 22, 1997, PECO stated the market value of its generation plant was \$2.568 billion.¹⁴ By early March, the market value estimate in the securitization case



increased 15% to \$2.948 billion.¹⁵ In the April 1, 1997 restructuring filing, the market value decreased by 3% to \$2.863 billion¹⁶ and in the August 25, 1997 Partial Settlement, the market value dropped an additional 20% to \$2.303 billion.¹⁷

These changing numbers reflect the inherent inadequacy of PECO's methodology for quantifying its stranded costs. As David Schoengold testified,

[t]he key problem is its sensitivity to the input parameters.
While this might not be so much of a problem if the method is

¹³Joint Petition for Partial Settlement, ¶ 18, p. 17. See also PECO Statement No. 1 (Thomas Hill), pp. 9-16.

¹⁴Application of PECO Energy Company for Issuance of a Qualified Rate Order, Docket No. R-00973877, Statement No. 1 (Thomas Hill), p. 11, l. 12.

¹⁵Application of PECO Energy Company for Issuance of a Qualified Rate Order, Docket No. R-00973877, Statement No. 1-R (Thomas Hill), p. 12, l. 12-13.

¹⁶PECO Statement No. 1 (Thomas Hill), p. 14, l. 8.

¹⁷Joint Petition for Partial Settlement, ¶ 18, p. 17.

used in a way that allows for regular corrections, the Partial Settlement is based on a one-time use of the method to arrive at a CTC, with no mechanism for adjusting the CTC if conditions change. A small difference in the estimate of market price can make a huge difference in the calculated level of assumed stranded generating assets. A few tenths of a cent difference in market price can mean hundreds of millions of dollars in stranded costs. For example, a 0.4 cent per kWh difference in market price meant a \$788 million stranded cost difference in the initial PECO restructuring filings.¹⁸

Based on such shaky numbers, the Joint Settlement seeks to collect billions of dollars from ratepayers over the course of a decade. The Environmentalists contend that any such charges would be so fraught with uncertainty as to make them anything but just and reasonable unless an alternative approach is taken to reduce the uncertainty.

3. The Environmentalists' Recommendation for Reducing the Quantification Uncertainty

The Environmentalists' recommendation to deal with the inherent uncertainty in the quantification of the stranded generating assets is a tracking account mechanism which would allow the generating asset value to vary with changes in electricity market prices. The quantification of the value of generating assets would not be set in stone by the Commission's Order, but would be subject to adjustment each year at the Commission's annual review of CTC collections under 66 Pa.C.S. §2808(f).¹⁹ This approach was also proposed and recommended by New Energy Ventures²⁰

¹⁸Environmentalists' Statement No. 1-S (David Schoengold), p. 21, l. 5-14.

¹⁹Environmentalists' Statement No. 1-S (David Schoengold), p. 26, l. 15-22.

²⁰NEV Statement No. 1 (David Boonin), Ex. DMB-4.

C. Mitigating Stranded Costs

The Act imposes upon the utilities the undeniable responsibility to mitigate their stranded costs. The definition of “transition or stranded costs” are certain costs “which the commission determines will remain following mitigation by the electric utility.”²¹ Another section of the Act directs the Commission to consider “the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs by appropriate means in a manner that is reasonable under all of the circumstances...” and cites several specific mitigation strategies which should be considered.²² It is interesting to note that the mitigation must be “commensurate with the magnitude of the ... stranded costs” and that the duty to mitigate exists not just up to the filing of the restructuring plan, but extends throughout the transition period.²³

One proven mitigation strategy which PECO has reduced rather than expand in the recent past is demand-side management. Energy conservation and load management mitigate stranded costs because they reduce the retail allocation of PECO's stranded generating assets by reducing net retail peak load and freeing up capacity and energy for wholesale transactions. Environmentalists' witness David Schoengold estimated that a program of cost-effective DSM could “mitigate retail stranded asset costs

By reducing net retail peak load and freeing up capacity and energy for wholesale transactions, a meaningful energy conservation and load management program could mitigate PECO's stranded costs by \$1 billion.

²¹66 Pa.C.S. §2803, definition of “Transition or stranded costs.”.

²²66 Pa.C.S. §2808(C)(4). This is another reason to recommend the trading account mechanism for the quantification of stranded costs.

²³66 Pa.C.S. §2808(C)(4).

by as much as \$1 billion."²⁴ One of his recommendations was to double the Low-Income Usage Reduction Program budget from \$4 million a year to \$8 million a year.²⁵

D. Sharing the Burden of Stranded Costs

One of the policy declarations contained in the Act is that:

[i]n moving toward greater competition in the electricity generation market, the Commonwealth must resolve certain transitional issues **in a manner that is fair** to customers, electric utilities, investors, the employees of electric utilities, local communities, nonutility generators of electricity and other affected parties.²⁶ [emphasis added]

In responding to this theme of a fair sharing of the responsibility, Environmentalists' witness David Schoengold testified:

... I believe that in a situation such as PECO's where there is a huge economic loss to address, it is not appropriate for the customers to have to bear the full responsibility for that loss and for the stockholders to receive a full return *on* their investment as well as return *of* their investment. I doubt that PECO's management would honestly try to claim that the company bore absolutely no responsibility for causing any of the stranded cost. 100 percent recovery of the stranded generating asset costs puts 100 percent of the responsibility for the economic losses on the customers and 0 percent on the company.²⁷

Mr. Schoengold developed a model which examines depreciation, remaining rate base and returns on rate base year by year. He determined that stockholders made an initial investment of \$5.952 billion in the generating assets and have been allowed a total

²⁴Environmentalists' Statement No. 1-S (David Schoengold), p. 31, l. 24-25.

²⁵Environmentalists' Statement No. 1-S (David Schoengold), p. 34, l. 11-18.

²⁶66 Pa.C.S. §2802(8).

²⁷Environmentalists' Statement No. 1-E (David Schoengold), p. 40, l. 4-14.

recovery of \$7.818 billion, or 149% of the original investment and an internal rate of return of their investment to date of 8.1%. He then went on to analyze the level of stranded generating asset cost recovery which would be necessary to pay off the debt holders and to provide the stockholders with a return of their investment and an 8.1% return on their investment. He determined that this level was \$1.152 billion, or 25.7% of the Partial Settlement's generating asset stranded claim of \$4.484 billion. And as Mr. Schoengold stated, an "8.1% return on a bad investment seems quite reasonable."

A stranded generating asset recovery of \$1.152 billion would allow PECO to pay off the debt holders and to provide the stockholders with a return <u>of</u> , and a 8.1% return <u>on</u> , their investment.
--

The Environmentalists recommend that the Commission adopt Mr. Schoengold's analysis and reduce the stranded generating asset recovery to no more than \$1.152 billion.

E. Other Stranded Costs

The Environmentalists have evaluated the evidence presented by the other parties in this proceeding and have determined which recommendations for stranded costs are most reasonable. These figures we recommend be used by the Commission are summarized on the following page in Table 1.

F. Recovering Stranded Costs

Once the stranded costs have been quantified, the task is then to design the recovery mechanism which will "... provide the investors in Pennsylvania electric utilities with a fair opportunity to fully recover the amount of transition or stranded costs that the

**Table 1:
The Environmentalists' Recommendations on Stranded Costs**

<u>Category</u>	<u>Partial Settlement</u>	<u>Environmentalists</u>
Generating assets	\$4.484 billion	\$1.152 billion (1)
Regulatory assets	\$2.272 billion	\$1.657 billion (2)
Nuclear decommissioning	\$0.234 billion	\$ 0 (3)
Fossil decommissioning	\$0.127 billion	\$ 0 (4)
Other transition costs	\$0.033 billion	\$0.033 billion (5)
TOTAL	\$7.150 billion	\$2.840 billion x 96.2% (6)
		\$2.732 billion

- Notes: (1) Environmentalists' Statement 1-S (David Schoengold), p. 40.
 (2) OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 2 (Revised).
 (3) OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1 (Revised).
 (4) OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1 (Revised).
 (5) OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1 (Revised).
 (6) Retail jurisdictional fraction from Environmentalists' Statement 1-S (David Schoengold), Exhibit DS-7, Schedule 1.

commission determines to be just and reasonable."²⁸ The Environmentalists recommend the following principles in designing this mechanism:

1. The recovery period should be no longer than necessary.

The Act provides for a CTC collection period which would end on December 31, 2005,²⁹ but both the Partial Settlement and the Choice Plan extend the recovery for an additional three years. Both choose to delay the major rate cuts which come at the end of the CTC recovery so they can provide a slightly larger rate cut now, but as the

²⁸66 Pa.C.S. §2804(14)

²⁹66 Pa.C.S. §2808(b). A longer recovery period is permitted for "good cause."

Commission's Data Request Set III

highlighted, this only increases the total costs to ratepayers. Since the CTC/ITC charge is a stone around the necks of ratepayers and a distortion of the true

competitive market, it should be with us no longer than necessary. The Environmentalists support the seven year recovery period contained in the Act. As David Schoengold testified, "... it is preferable to finish up the stranded cost collection (and to achieve the full benefits of competition) sooner rather than later."³⁰

**The Environmentalists' Principles on
the Recovery Mechanism**

1. The recovery period should be no longer than necessary.
2. The recovery should be reconcilable.
3. The recovery should be level over the recovery period.

2. The recovery should be capped and reconcilable by class.

Because the CTC and the ITC are charges added to each kilowatt-hour, the total recovery of each is directly dependent on the number of kilowatt-hours sold throughout the collection period. Even a very small discrepancy between projected sales and actual sales will result in a large difference in collections. In computing its CTC/ITC charges, the Partial Settlement assumes that future load growth will be zero, but if load instead grows at a modest 1%, the CTC/ITC collections will exceed the approved level by 7%.³¹ The Partial Settlement's lack of a cap on CTC collection and the absence of any CTC reconciliation are two of the agreement's most serious flaws. The Act directed the Commission to "establish procedures for the annual review of the competitive transition

³⁰Environmentalists' Statement No.1-E (David Schoengold), p. 12, l. 6-7.

³¹Environmentalists' Statement No 1-S (David Schoengold), p. 11, l. 16-22. The 7% figure is the increase in CTC recovery shown on Mr. Schoengold's table between 0% growth and 1% growth.

charge” and to “reconcile the annual revenues received from the charge” at the approved level³² and it should do so.

In designing the reconciliation mechanism, it is critical to prevent cost shifting between customer classes. CTC/ITC recovery should be set for each class and reconciliation should occur within each class.³³ This is important because of the different growth rates for the different classes. For example, if high growth is experienced in the residential class, and low growth in the industrial class and reconciliation was calculated on a system-wide basis, CTC/ITC recovery would be shifted to residential customers from the industrial customers.³⁴ With reconciliation by class, the residential CTC/ITC charge under this scenario would be reduced or shortened (to reflect the faster recovery) and the industrial CTC/ITC charge would be increased or lengthened (to make up for the under-recovery).

3. The recovery should be level over the recovery period.

The Act implies straight amortization of stranded costs³⁵ and this is appropriate. The Environmentalists oppose both the Partial Settlement and the Choice Plan proposals for unbalanced recovery of the CTC/ITC charges over the recovery period. Reconciliation should be structured to recover the stranded costs in equal annual amounts. This will

³²66 Pa.C.S. §2808(f).

³³This position is shared by others. See OCA Statement No. 4 (Lee Smith), p. 11-12.

³⁴This hypothetical is exactly what has occurred this decade. The residential and commercial classes have experienced load growth, but the industrial class has seen a drop in number of customers, peak load and energy consumption. PECO 1997 Annual Resource Planning Report, in the record as Conectiv Cross-Examination Exhibit 2.

³⁵66 Pa.C.S. §2808(f).

conform to §2808(f) and will most closely resemble the market, where prices fluctuate because of natural market conditions but not because of a misplaced attempt to engineer rates.

III. Unbundling the Rates

A. Introduction

The Act requires “the unbundling of electric utility services, tariffs and customers bills to separate the charges for generation, transmission and distribution.”³⁶ The other explicit charge which is to be included in the bill is the CTC and the ITC. The unbundling of rates is where the rubber meets the road for the ratepayers, for this tells customers what part and how much of their bill they can take shopping for alternative suppliers and what part and how much will continue to be tied to the monopoly utility.

B. The CTC / ITC Charge

The Commission has several issues to consider in designing the unbundled CTC/ITC charge, including its total magnitude, the number of years it is collected and whether it is flat, increases or decreases over the collection period.

The magnitude of the CTC/ITC is determined by the total authorized stranded cost recovery and by the assumptions about sales. The Partial Settlement proposes to collect the CTC/ITC for a period of 10 years, but the Environmentalists recommend a 7 year collection period.

³⁶66 Pa.C.S. §2804(3)

The CTC/ITC recommendations of the parties are summarized in Table 2 on the next page. As can be seen in the figures, the parties took different approaches to the annual level of the CTC/ITC kilowatt-hour charge. The Partial Settlement begins with a high CTC/ITC which, after a slight rise, decreases throughout the collection period. Enron starts with a low CTC/ITC which the increases. As discussed earlier, the Environmentalists recommend that the CTC/ITC recovery be equal throughout the collection period, and because of the assumption of a slight load growth, the kilowatt-hour CTC/ITC charge is able to decrease slightly in the Environmentalists' proposal.³⁷

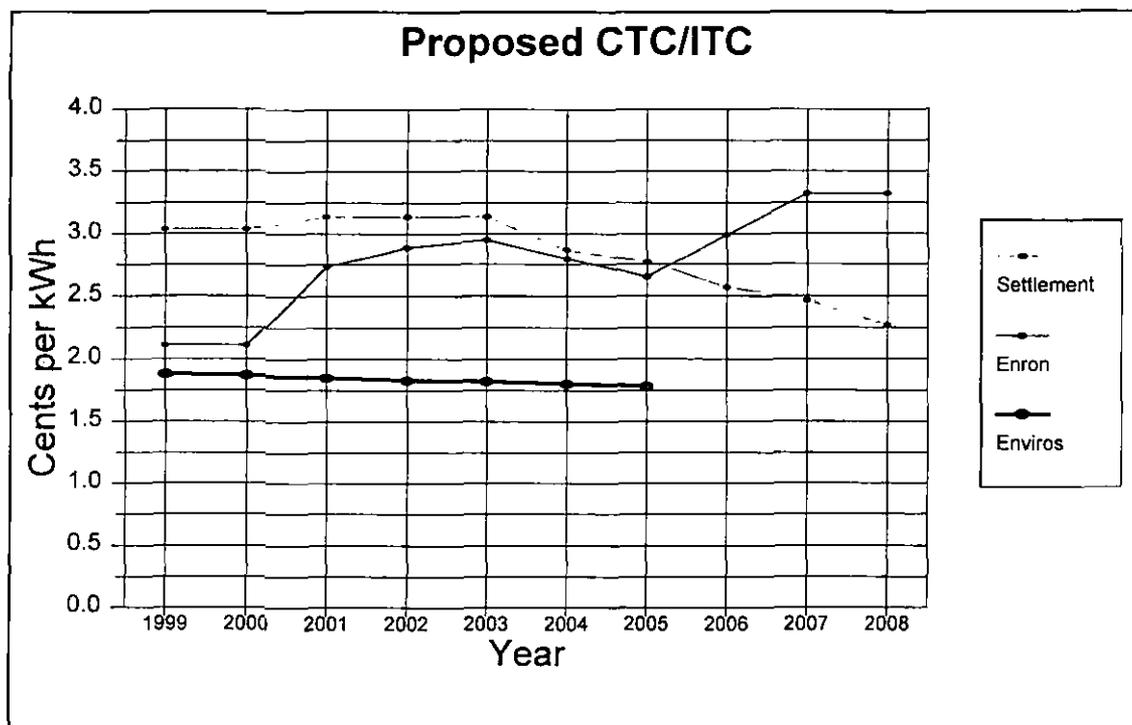
Table 2:

Year	Proposed CTC/ITC				
	(1) Settlement	(2) Enron	(3) Enviro	(4) MAPSA	(5) PECC
1999	3.04	2.11	1.88	2.19	2.01
2000	3.04	2.11	1.87	2.07	2.18
2001	3.14	2.73	1.85	2.45	2.29
2002	3.14	2.89	1.83	2.62	2.27
2003	3.14	2.95	1.82	2.69	2.28
2004	2.87	2.80	1.80	2.61	2.23
2005	2.77	2.65	1.78	2.52	2.22
2006	2.57	2.99		2.41	2.18
2007	2.47	3.32		2.76	2.15
2008	2.27	3.32		2.61	2.20

Sources: (1) Partial Settlement, Table A, p. 8.
(2) Enron (EESPI) Statement 1-R (Steven Kean), Attachment A.
(3) Environmentalists' 1-E (David Schoengold), Ex. DS-1, Sch. 1.
(4) MAPSA Statement 1-S (Donald Johnstone), Schedule A.
(5) NEV Statement 1-SR (David Boonin), Exhibit DMB-16

³⁷As shown in Environmentalists' Statement No. 1-E, Exhibit DS-1, Schedule 2, David Schoengold's CTC/ITC computation repeated here was based on the regulatory asset recommendation of the OCA. For this number, he used \$2.272 billion, as reported in PECO Statement No. 1-R (Thomas Hill), Exhibit TPH-16. The correct OCA figure is \$1.657 billion as shown in OCA Statement No. 1-S (Richard LaCapra), Exhibit RLC-2,p. 2 (Revised). This will reduce the Environmentalists' recommended CTC/ITC charges below the level shown in this table.

In addition, the CTC/ITC recommendations of the Partial Settlement, Enron and the Environmentalists are shown graphically.



C. The Generation Credit

The generation credit is the most critical number to both the ratepayers (because it is the amount they can take shopping to find a lower price from another supplier) and for the alternate suppliers (because the degree to which they can undercut the generation credit will determine to a very large extent their ability to attract customers).

The generation credit recommendations of the parties are summarized in Table 3 on the next page. In addition, the generation credit figures of the Partial Settlement, Enron and the Environmentalists are shown graphically. As can be seen in the graphic, the generation credit in the Partial Settlement begins quite low and then rises quite

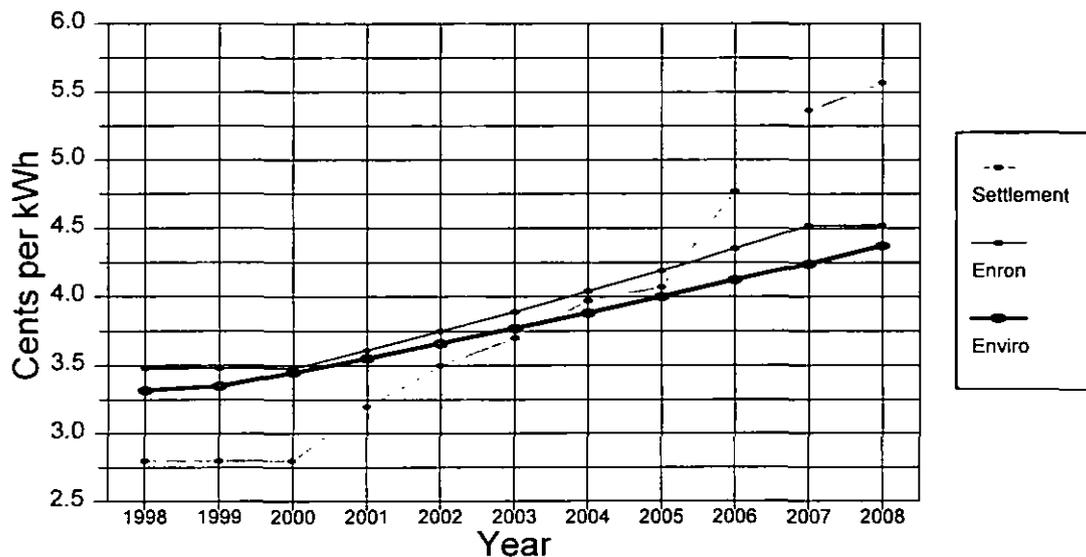
Table 3:

Proposed Generation Credits

<u>Year</u>	<u>(1) Settlement</u>	<u>(2) Enron</u>	<u>(3) Enviro</u>	<u>(4) MAPSA</u>	<u>(5) NEV</u>	<u>(6) PECC</u>
1999	2.80	3.48	3.35	4.01	3.75	3.80
2000	2.80	3.48	3.45	4.13	3.81	4.02
2001	3.20	3.61	3.55	4.25	3.93	4.41
2002	3.50	3.75	3.66	4.38	4.07	4.61
2003	3.70	3.89	3.77	4.51	4.20	4.71
2004	3.97	4.04	3.88	4.64	4.34	4.93
2005	4.07	4.19	4.00	4.78	4.49	5.10
2006	4.77	4.35	4.12	4.93	4.64	5.29
2007	5.37	4.52	4.24	5.08	4.80	5.48
2008	5.57	4.52	4.37	5.23	4.88	5.68

- Sources:** (1) Partial Settlement, Table A, p. 8.
 (2) Enron (EESPI) Statement No. 1-R (Steven Kean), Attachment A.
 (3) Environmentalists' Statement No. 1-E (David Schoengold), Ex. DS-1, Sch. 1.
 (4) MAPSA Statement 1-S (Donald Jonhstone), Schedule A.
 (5) NEV Statement No. 1-SR (David Boonin), Exhibit DMB-16
 (6) PECC Statement No. 1-SR (Steven Mitnick), Ex. SAM-SR2

Proposed Generation Credits



steeply. The generation credits proposed by Enron and the Environmentalists begin higher than the Partial Settlement, but have a shallower slope.

D. Summary of The Environmentalists' Unbundled Rates

In the Partial Settlement, the unbundled rates are shown in Table A.³⁸ The Environmentalists' version of this table is shown in Table 4.

Table 4:

The Environmentalists' Recommendation on Unbundled Rates
(cents per kWh)

Date	Trans	Dist	CTC/ ITC	Energy/ Capacity	Total	Discount from 12/96
9/1/98	0.47	2.64	1.90	3.32	8.33	16.2 %
1/1/99	0.47	2.64	1.88	3.35	8.34	16.1 %
1/1/00	0.47	2.64	1.87	3.45	8.42	15.3 %
1/1/01	0.47	2.64	1.85	3.55	8.51	14.4 %
1/1/02	0.47	2.64	1.83	3.66	8.60	13.5 %
1/1/03	0.47	2.64	1.82	3.77	8.69	12.5 %
1/1/04	0.47	2.64	1.80	3.88	8.79	11.6 %
1/1/05	0.47	2.64	1.78	4.00	8.89	10.6 %
1/1/06	0.47	2.64	0.00	4.12	7.23	27.3 %
1/1/07	0.47	2.64	0.00	4.24	7.35	26.1 %
1/1/08	0.47	2.64	0.00	4.37	7.48	24.8 %

³⁸Joint Petition for Partial Settlement, Table A, p. 8.

IV. Preventing Market Domination

A. Introduction

A just and reasonable set of unbundled rates is an essential condition to creating a robust competitive market, but an adequate generation credit alone is not enough to ensure all customers have meaningful choices of electricity suppliers and services. The Commission must also address the problem of market domination by PECO by virtue of its status as the monopoly supplier in this region for the last century. As Environmentalists' witness Bruce Biewald testified,

A great many of PECO's electricity customers are unlikely to make any choice at all regarding their electricity supplier... If PECO is designated the default supplier of these customers, then it will be granted a significant market share without incurring the marketing and transaction costs that would be required of competitive utilities. This formidable advantage would add to the numerous tangible and intangible competitive advantages that are typically enjoyed by incumbent utilities.³⁹

To address the problem of market domination by PECO, the Environmentalists proposed a system for allocating non-choosing customers to alternative suppliers serving PECO's service territory. We call this the Better Choice Plan.⁴⁰

Before reviewing the specifics of this proposal, it is important to understand the distinction we are making between the concepts of "provider of last resort" and "default supplier." The provider of last resort is the "entity that is assigned the responsibility of

³⁹Environmentalists' Statement No. 2-E (Bruce Biewald), p. 2, l. 16 to p.3, l. 2.

⁴⁰The genesis of the Better Choice Plan was the experience in the long distance telephone industry, where the Federal Communications Commission in 1985 sought to end the market domination of AT&T and encourage meaningful competition by setting up a market allocation pool of other carriers to provide long distance service to customers who failed to select a carrier. Enron (EESPI) Statement No. 3 (Douglas Bohi), p. 13-14.

ensuring that all electricity customers will have access to a reliable supply of electricity at reasonable prices, terms and conditions."⁴¹ The provider of last resort is required to serve customers who, for a variety of reasons, cannot obtain generation services from any alternative supplier. The Act makes the electric distribution company the provider of last resort⁴² and provides a funding mechanism to cover the cost of those services for those unable to pay.⁴³ The Environmentalists recommend that PECO be the provider of last resort.⁴⁴

The Better Choice Plan introduces the concept of "default supplier" which is very different than the provider of last resort. The default supplier is the supplier that serves the default customers, or those customers who are eligible to choose an alternative generation supplier but have failed to do so. Under the Settlement Proposal, PECO is the default supplier and under the Choice Plan, Enron is the default supplier. Under the Environmentalists' Better Choice Plan, a more diverse market is created because the alternative suppliers active in the market can volunteer to become part of the default supplier group which will serve the customers who fail to choose.

Default Supplier \neq Provider of Last Resort

Before describing the mechanics of the proposal, two other concepts must be addressed - the default customer and the default supplier group.

⁴¹Environmentalists' Statement No. 2-E (Bruce Biewald), p. 29, l. 3-5.

⁴²66 Pa.C.S. §2807(e).

⁴³66 Pa.C.S. §2804(8) and (9).

⁴⁴Environmentalists' Statement No. 2-E (Bruce Biewald), p. 31, l. 3 and Environmentalists Statement 3-E (Roger Colton), p. 5, l. 24-28.

B. The Default Customer - The Failure to Choose

It is widely acknowledged that when an industry moves from a regulated monopoly to an open market, many customers stay with the monopoly supplier.⁴⁵ Some argue that these customers are "choosing not to choose" and that it is inappropriate to interfere in this "choice." But Environmentalists' witness Roger Colton showed the error in this argument:

Consumer choice implies that given an opportunity, a consumer will use his or her knowledge of available alternatives to translate wants into satisfaction.

In fact, however, considerable consumer research finds that there is no conscious exercise of discretion in the failure of consumers to choose an alternative supplier of service when an industry moves from a regulated monopoly to a competitive model. Indeed, "staying put" is the antithesis of exercising discretion. It is the failure to choose.⁴⁶

Mr. Colton suggested three reasons why many customers fail to choose and noted that the Better Choice Plan promoted competition by helping customers overcome all three barriers:

In each case, jump-starting the competitive electric market will help address the factors that led to the consumer paralysis in decision-making. Allocating the non-choosing consumers among alternative suppliers will help generate consumer experience that will overcome confusion and skepticism. Allocating consumers among alternative suppliers will help generate experience in seeking out and understanding information. Allocating consumers will help overcome the

⁴⁵For example, see Enron (EESPI) Statement No. 3 (Douglas Bohi), p. 13-14.

⁴⁶Environmentalists Statement No. 3-E (Roger Colton), p. 2, l. 8-14.

simple consumer inertia that leads to a consumer failure to act.⁴⁷

Mr. Colton testified that a transitional market mechanism such as the Better Choice Plan was an appropriate and helpful response to these temporary customer difficulties.⁴⁸

C. The Default Supplier Group

Under the Environmentalists' Better

Choice Plan, suppliers can volunteer to participate in the default supplier group if they agree to seven conditions. These conditions, listed in the box to the right, are designed to protect the customers and to advance some important public interest goals. This *quid pro quo* is fair and appropriate because participation in the group is entirely voluntary and the participating suppliers receive from the Commission the private benefit of an allocation of default customers without incurring the costs and effort to recruit these customers.

The Environmentalists' Recommended Public Interest Standards for Participation in the Default Supplier Group

1. The price for the generation services will be no higher than the unbundled generation rate that PECO will be allowed to charge.
2. Any default customer who elects to switch generation suppliers will not be charged a contract termination fee or other penalty.
3. The energy and capacity to serve default customers meets an environmental baseline comparable to the applicable Pennsylvania environmental regulations.
4. The resource mix includes at least one percent renewable resources and the supplier has a net metering tariff and other policies to facilitate the interconnection of small-scale clean and renewable energy generation.
5. Customers would be informed about the fuel mix, air emissions and other wastes (radioactive, solid and liquid) of all of its power sold in Pennsylvania, in a simple, uniform format.
6. The generation supplier would contribute 0.5 percent of its total Pennsylvania power revenues to the Pennsylvania Sustainable Development Fund.
7. Customers would be informed about the number and percentage of its work force that is employed in Pennsylvania.

⁴⁷Environmentalists Statement No. 3-E (Roger Colton), p. 3, l. 23 to p. 6, l. 2.

⁴⁸Environmentalists Statement No. 3-E (Roger Colton), p. 6, l. 2-5.

D. Allocating Default Customers

The Better Choice Plan⁴⁹ begins with customers selecting their generation suppliers, just as they would under the Act and the other proposals. At no time does the Better Choice Plan interfere with any election by any customer to be served by a particular supplier. A customer will always be able to select a particular supplier and that selection will prevail. The Plan envisions that an enrollment period for customers will begin on January 1, 1999, January 1, 2000 and January 1, 2001⁵⁰ and eligible customers will select their generation suppliers at those times. After a reasonable time following the opening of the eligibility, the results of the selection process will be published and evaluated to determine PECO's share of the customers.

The PECO share would include (1) the customers who had made an affirmative selection of PECO, (2) the customers who had made an affirmative selection of one of PECO's affiliated generation suppliers,⁵¹ and (3) the default customers (*i.e.* those who failed to make any selection at all). If the PECO share is less than 50%, nothing further would happen under the Better Choice Plan. The 50% figure is used as a threshold to identify the point at which PECO's market share threatens the health of the competitive

⁴⁹The Better Choice Plan is described in Environmentalists' Statement No. 2-S (Bruce Biewald), pp. 10-32.

⁵⁰The Environmentalists support the Partial Settlement's accelerated enrollment schedule. If that new schedule is supported by the Commission, the number of enrollment periods would change, but all other aspects of the Better Choice Plan would remain the same.

⁵¹Because of the competitive advantage Horizon Energy and EnergyOne have over other competitors due to their affiliation with PECO, the Environmentalists suggest that for purposes of the market share determination, their customers be considered PECO customers and they not be eligible to participate in the default supplier pool. The Biewald testimony lists several conditions which would allow these PECO affiliates to be treated like the other generation suppliers. Environmentalists' Statement No. 2-E (Bruce Biewald), p. 16, l. 11 to p. 17, l. 17.

market. If that share is less than 50%, then the remedy of the Better Choice Plan is unneeded. If the PECO share is 50% or more, then the Better Choice Plan's allocation mechanism would be triggered.

When the PECO share is 50% or more, the Better Choice Plan would allocate all default customers to be served by the non-PECO generation suppliers who have volunteered and qualified to be part of the default supplier group. The default customers would be allocated on a random basis between the suppliers in the default supplier group in proportion to the market share of each member supplier.

The Environmentalists acknowledge that implementation of the Better Choice Plan is possible only after additional work to address some of the unresolved issues, but we urge the Commission to include it in the final Order to prevent the serious threat of market domination by the monopoly provider which would be fatal to the emergence of a competitive market.

V. Universal Service

A. Introduction

As noted in the Act, electricity has become a necessity of life.⁵² But for many of PECO's low-income customers, it is a necessity they cannot afford. Roger Colton testified for the Environmentalists that the average Philadelphia household eligible for universal service programs spends, on a percentage-of-income basis, 5.9 times as much for

⁵²66 PA.C.S. §2802(9).

electricity as the average PECO customer.⁵³ The Partial Settlement took a large step in the right direction to address these issues and the Environmentalists commend Senator Fumo, CEPA and the other members of their coalition for bringing these issues to the forefront in the settlement negotiations.

B. The Expansion of Universal Service

The Partial Settlement expands PECO's universal service programs to include up to 100,000 customers and provides for an annual budget of up to \$50 million. The Environmentalists strongly support this expansion, though we do not believe it goes far enough. Roger Colton testified that full enrollment would mean 130,000 participants and the total expenditures of \$69 million a year.⁵⁴

The Need for Universal Services in the PECO Service Territory	
130,000 potential customers	
CAP / CAP Rate	\$59.25 million/yr.
LIURP	\$ 8.34 million/yr.
CARES / MEAF / LIHEAP	\$ 0.96 million/yr.
TOTAL	\$68.55 million/yr.

C. LIURP

The Low-Income Usage Reduction Program is a cost-effective means of reducing the energy costs of low income households so that the electric bill is affordable. The Partial Settlement caps the annual LIURP budget at \$4 million (out of a total universal service budget of \$50 million). The Environmentalists object that only 8% of the budget

⁵³10.6% of their income versus 1.8% of their income. Environmentalists' Statement No. 1 (Roger Colton), p. 20, l. 14-16.

⁵⁴Environmentalists' Statement No. 1 (Roger Colton), Ex. RDC-7,p. 1-2.

goes to energy conservation, while the remaining 92% goes to subsidize consumption and other administrative costs. The LIURP budget should be increased to \$8 million a year, especially in light of its added value as a stranded cost mitigation strategy.⁵⁵

PECO's LIURP program is also in need of some fresh thinking regarding eligible measures. For example, energy-efficient refrigerators were proven to be a very cost-effective strategy in a recent PECO pilot, but they have not become an eligible measure under LIURP.

D. CAP Rate

The Environmentalists support the expanded CAP Rate program proposed in the Partial Settlement. Reducing the cost of electricity is an important tool for making the electric bill affordable, but high consumption customers need additional services to help them reduce their consumption to the subsidized levels.

The increase in customer terminations by PECO raises questions about the effectiveness of CAP Rate the CAP program. The evaluation of the CAP Rate program should be shared with the Commission and others and carefully evaluated before PECO is allowed to abandon the CAP program design and replace it with CAP Rate.

The CAP Rate program must be effectively linked to energy education, energy conservation and other services. The Environmentalists recommend that the CAP Rate program be modified so that all customers consuming more than 110% of the subsidized levels are referred to the other universal service programs and receive these other

⁵⁵See the discussion of conservation as a mitigation strategy, pp. 10-11.

services. We wholeheartedly support the Partial Settlement's conclusion that prepaid meters are inappropriate for low income households and should not be used for that customer group.

E. Renewable Energy Pilot

The one explicit reference in the Act to renewable energy is found in the definition of the phrase "universal service and energy conservation."⁵⁶ The universal service program proposed by PECO ignores renewable energy altogether. The Environmentalists urge the Commission to direct PECO to develop and offer a renewable energy pilot program as a component of its universal service program. This pilot could offer renewable technologies such as solar domestic water heating, solar photovoltaics, wood-fired water and/or space heating, etc.

F. Consumer Protection

The Act recognizes Chapter 56 as a most important consumer protection and it requires that customer services ("including meter reading, complaint resolution and collections") be "maintained at the same level of quality"⁵⁷ The Partial Settlement commits the Joint Petitioners to "thoroughly review and, as appropriate, to recommend changes" to Chapter 56 and other Commission regulations and procedures.⁵⁸ While the

⁵⁶66 Pa.C.S. §2803, definition of "Universal service and energy conservation."

⁵⁷66 Pa.C.S. §2807(d).

⁵⁸Joint Petition for Partial Settlement, ¶28, pp. 23-24.

Environmentalists recognize that some revision of the regulations may be appropriate given the scope of the restructuring changes, we urge caution in this effort. Restructuring cannot become the excuse to gut the protections of Chapter 56.

G. Allocation of Universal Service Costs

The cost of providing universal service is recognized as a "public service cost" in the Act.⁵⁹ As a public service cost, all sectors of the public should bear the costs, but this is not the case under the Partial Settlement. Environmentalists' witness Roger Colton presented a compelling argument that universal service is the compensation for the valuable public perquisites of eminent domain and the right to use public streets. These rights are of tremendous value to PECO and to all who receive service from PECO, for without them, all ratepayers would bear higher costs. As Mr. Colton testified, "[t]he commitment to universal service is simply the compensation to the public for having provided these public benefits."⁶⁰

Under the Partial Settlement, the \$50 million cost of the programs will be borne only by residential ratepayers as a component of their T&D costs.⁶¹ This should be contrasted with the various economic development tariffs for "payment-troubled" industrials. These programs are included in the rates for all customers.

⁵⁹66 Pa.C.S. §2802(17).

⁶⁰Environmentalists' Statement No. 1 (Roger Colton), p. 29, l. 18 to p. 33, l. 27.

⁶¹Joint Petition for Partial Settlement, ¶ 25, p. 22.

The Commission should amend the cost recovery provisions of the universal service programs to include those costs in the rates of all ratepayers.

H. Public Input

The Partial Settlement provides for two separate opportunities for public input. The Joint Petitioners will be able to review and comment on recommendations for changes to the CAP Rate program.⁶² The second opportunity is in a newly-created LIURP Advisory Committee to review PECO's LIURP program design and delivery.⁶³

The Environmentalists support the concept of public input, however we believe this input would be more meaningful if the Commission directed PECO to establish a single Universal Service Advisory Committee which would be charged with reviewing all universal service programs. Committee membership should be defined to ensure it is *inclusive and balanced*. *The committee should meet as needed, but at least twice a year*. Its meetings should be transcribed. The committee should present its recommendations in writing to PECO and the company should be required to respond in writing to the committee's recommendations. Lastly, the Partial Settlement's prohibition on LIURP service delivery contracts with any committee member's organization⁶⁴ should be removed. PECO should want qualified people both on its advisory committee and delivering its program services, but the Partial Settlement requires individuals to choose

⁶²Joint Petition for Partial Settlement, ¶22, p. 21.

⁶³Joint Petition for Partial Settlement, ¶27, p. 23.

⁶⁴Joint Petition for Partial Settlement, ¶27, p. 23.

one or the other. Because the committee is only advisory, no conflict of interest will exist and any appearance of a conflict can be avoided by full disclosure and openness.

I. Administration

The Environmentalists recommend that PECO contract out both the delivery and administration of the universal service programs. The Partial Settlement provides that PECO will contract with community-based groups to be direct providers for LIURP, but all other universal service programs will be delivered by PECO and PECO will continue as the administrator of all of the programs. The Environmentalists urge the Commission to restructure PECO's universal service program and to unbundle the administration of the program by requiring it to be contracted out to a qualified community-based organization. Roger Colton described the ideal candidate as "an experienced non-profit, community-based organization with both a strong track record in the provision of energy assistance, conservation and education programs, and the ability to leverage significant amounts of additional public and private resources to help resolve the energy problems of PECO's low-income customers."⁶⁵

VI. Distributed Energy

A. Introduction

The Act appears to envision an energy future which is very similar to today's world, in which the generation of electricity is dominated by large central-generating stations.

⁶⁵Environmentalists' Statement No. 1 (Roger Colton), p. 38, l. 18-23.

The Environmentalists have advanced a different view that our generation future will be marked by more decentralized, distributed systems. The challenge facing us is to design a marketplace which can accommodate not only the large central plants, but also the energy future of small turbines, roof-shingle photovoltaics and dishwasher-size fuel cells. We need marketplace rules which allow these new distributed energy sources.

B. Net Metering

PECO currently has a net metering tariff known as Rate R-S. While there are some limitations to the existing rate, PECO should be recognized as a Pennsylvania leader in this field. The Partial Settlement expanded Rate R-S to include all customer classes and to include renewable energy technologies beyond solar photovoltaics.

The Environmentalists advocate several additional changes.⁶⁶ First, the expansion of Rate R-S must be clarified. The Partial Settlement states "all" customers, but the revised tariff sheets do not make this change. Second, fuel cells should be an eligible technology under Rate R-S since they are a very clean technology. Third, the cap of 5,000 customers should be removed. There is no cap with the existing Rate R-S and there should be none in the new Rate R-S. Fourth, the net metering provisions should be clarified to specify retail-in/retail-out up to net each month. Fifth, customers should be able to carry forward a generation credit (at the retail-out rate) for up to 12 months. And sixth, the net metering provisions must address what happens when the customer is purchasing power from an alternate supplier.

⁶⁶Environmentalists' Statement No. 1-E (David Schoengold), p. 12 and Exhibit DS-4.

C. Interconnection

A net metering tariff is critical, but distributed energy projects which face endless interconnection obstructions and high fees will never succeed. To remove unnecessary barriers to interconnection, the Environmentalists recommend several changes to the connection provisions of the tariff. First, the technical standards should be simplified and made consistent with IEEE, UL and other national standards. Second, for photovoltaic and other simple systems, the engineering review should be replaced with an inspection designed to confirm that the systems meet IEEE and UL standards and the cost of this review should be capped at \$35. The interconnection review fee for other installations should be capped at \$250. Third, the tariff should allow a customer three metering options at the customer's choice: a non-ratcheted bidirectional meter; two meters; or a smart meter. There should be no additional meter-reading fee.

VII. Consumer Information and Education

A. Introduction

Consumer information and education were important components of the Act. Recognizing that consumers need an educational foundation for the purchasing and other market decisions they will soon be called upon to make, the Act requires that:

[p]rior to the implementation of any restructuring plan under section 2806 (relating to implementation, pilot program and performance-based rates), each electric distribution company, in conjunction with the commission, shall implement a consumer education program informing customers of the changes in the electric utility industry. The program shall

provide consumers with information necessary to help them make appropriate choices as to their electric service.⁶⁷

In addition to the education program responsibility, the Act made the Commission responsible for ensuring that consumers have quality information to help them make sound decisions in the new marketplace. The Commission was directed to promulgate regulations:

... to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.⁶⁸

The importance of educated consumers and access to objective, understandable information was certainly reinforced by the recent experience with the retail access pilot programs. One need look no further than the barrage of confusing and empty advertisements which have been flooding over us in the pilot programs to see that the Act was correct.

Joe Izuzu may make us smile, but he fails to give us the information we need to make sound energy decisions.

An active Commission role is appropriate and necessary. Consumers are clamoring for accurate information in an uniform and understandable format. Without it, many of those who volunteered for the pilot programs

⁶⁷66 Pa.C.S. §2807(d)(3).

⁶⁸66 Pa.C.S. §2807(d)(2)

are giving up and dropping out. There should be no lingering doubts that the Commission must implement a state-wide consumer education program.⁶⁹

B. Consumer Education

As part of its restructuring filing, PECO submitted its plan for an education program and the Environmentalists responded in testimony of Roger Colton.⁷⁰ A revised consumer education program was included in the Partial Settlement⁷¹ and the Environmentalists support this section of the Partial Settlement.

The Joint Petitioners agreed that a state-wide Consumer Education Program should be implemented by the Commission and supplemented by individual utility efforts. Appendix G of the Partial Settlement outlined the steps needed to implement that program. The Environmentalists particularly support the Partial Settlement's discussion of the education program content:

- (1) to educate consumers about restructuring generally and the advent of consumer choice;
- (2) to educate consumers about the decisions they will be called to make;
- (3) to educate consumers about how to evaluate their electricity consumption and the potential to reduce this consumption through energy conservation and energy efficiency strategies; and,

⁶⁹The Commission has opened several generic dockets to address the education and information issues and the Environmentalists have participated (and will continue to participate) in those proceedings.

⁷⁰Environmentalists' Statement No. 1 (Roger Colton). See particularly pages 4-19 and Exhibit RDC-3 (Summary of Consumer Education Recommendations). See also OCA Statements No. 5 and 5-SE (Barbara Alexander), Enron (EPMI) Statement 5 (Raymond Bowen, Jr.) and AARP Statement 1 (Mark Cooper).

⁷¹Joint Petition for Partial Settlement, ¶¶ 29-32, pp. 24-25 and Appendix G.

- (4) to educate consumers about the production of electricity, the various technologies used to produce electricity, and the environmental consequences of this production.⁷²

C. Consumer Information

The one addition to the consumer information aspects of this proceeding which the Environmentalists wish the Commission to make involves the need for environmental disclosure. Environmentalists' witness Bruce Biewald testified about the value to consumers of knowing both the fuel mix and the emissions/wastes produced by the power they are considering to purchase.⁷³ As discussed in the Regulatory Assistance Project report which was an exhibit to the Biewald testimony, much good work is taking place around the country on this issue. Whether in the restructuring Order or the generic proceeding, emission and waste information should be added to the consumer information requirements.

VIII. Transmission and Distribution Planning

A. Introduction

Much of the attention in this proceeding has focused on the generation component of the electric utility industry, but both the transmission and the distribution segments of the industry will be undergoing major changes as well.

⁷²Joint Petition for Partial Settlement, Appendix G, Step 5.

⁷³Environmentalists' Statement No. 3 (Bruce Biewald), pp. 9-17 and Exhibit BEB-3 (the Regulatory Assistance Project's March 1997 report *Full Environmental Disclosure for Electricity: Tracking and Reporting Key Information*).

B. The Need for Life-Cycle Cost Analysis of Alternatives to Line Upgrades

The Environmentalists submit that as load grows, Pennsylvania's Electric Distribution Companies ("EDC") will come under increasing pressure to upgrade transmission and distribution lines. However, before an EDC invests ratepayer money in such actions, it should first evaluate the life-cycle costs of a number of alternatives, including energy conservation and efficiency, load management and distributed energy generation.⁷⁴ While integrated resource planning may have lost some applicability for generation decisions in the restructured market, it remains an important tool in the regulated world of transmission and distribution. Targeted area planning is good practice.

The Partial Settlement addresses an "annual distribution planning process which evaluates cost-effective alternatives to distribution improvements."⁷⁵ The Environmentalists contend that this directive should be strengthened to require public involvement and review, with public access to planning documents and supporting materials.

IX. Nuclear Decommissioning

A. Introduction

The manner in which the Commonwealth authorizes the decommissioning and decontamination of its nuclear power plants may be one of the most significant legacies of the Act. It is essential that adequate funding be available for this task to minimize the

⁷⁴Environmentalists' Statement No. 1-S (David Schoengold), pp. 17-19.

⁷⁵Partial Settlement, ¶ 38, p. 28.

possibility of radioactive exposure to our future generations. Nevertheless, the cost of undertaking such a task is massive and difficult to predict. Any mechanism to provide funding for decommissioning must be both efficient and equitable and nuclear plant operators should be responsible for some portion of the decommissioning costs so as to have a motive to control these costs.

The Partial Settlement includes an extensive section on nuclear decommissioning.⁷⁶ The Environmentalists support these provisions, provided the following issues are addressed.

B. Nuclear Decommissioning is Not a Stranded Cost

The Partial Settlement has \$234 million of stranded cost recovery earmarked for nuclear decommissioning. Before the Commission awards any stranded cost recovery for decommissioning, we recommend that PECO be required to develop and demonstrate a plan to mitigate nuclear stranded costs. As part of this plan, PECO must accept partial Company funding of decommissioning deficiencies as an incentive to manage costs.

C. The Need for an External Fund

The possibility of early retirement of PECO's nuclear stations must be taken into consideration in the design of decommissioning funding plans. Widespread discussion has occurred debating the effect that electric restructuring and competition will have on nuclear power plants. Environmentalists' witness Bruce Biewald suggests at least two of

⁷⁶Joint Petition for Partial Settlement, ¶ 20, pp. 17-19.

PECO's units may not be able to compete.⁷⁷ The financial difficulty that the company could then experience from a retiring plant's loss of income is a persuasive reason for the maintenance of an external fund for decommissioning. It prevents the mis-allocation of the funding for other purposes.⁷⁸ Restrictions should be placed upon the use of the decommissioning funds and Commission jurisdiction should be preserved.

D. Cost-Benefit Analysis of Early Retirement

Any proposed increases in customer payments should trigger a cost-benefit analysis justifying the cost increase. In the event that PECO requests an increase in decommissioning funding, it must demonstrate that the increase is consistent with an overall economic plan for the unit. For example, if the Company plans to continue operating the unit for which the funding increase is requested, then it should present a cost-benefit analysis that shows that continued operation, with the increased decommissioning funding levels, is the economic course of action.

E. Spent Nuclear Fuel

The treatment of spent nuclear fuel should be clarified and adjusted. Not unlike the removal and disposal of ash from coal-fired units, the handling, storage and disposal of spent fuel rods at nuclear generating stations are a part of ongoing operations and maintenance and should be treated as such by the Commission. Indeed, PECO has

⁷⁷Environmentalists' Statement No. 3 (Bruce Biewald), p. 32, I. 1-9.

⁷⁸Environmentalists' Statement No. 3 (Bruce Biewald), p. 32, I. 12-26.

included the Department of Energy's 1 mil/kWh charge for nuclear waste disposal programs in its projection of fuel costs and the market value of its nuclear assets.⁷⁹

Despite treating this charge as an O&M expense, PECO now proposes to pay for this dry case storage through decommissioning funding.⁸⁰ PECO should not be allowed to have it both ways. Since PECO has chosen to view the disposal of spent fuel as an operation and maintenance cost, a characterization with which we concur, it should not be given an opportunity to transfer the funding of disposal out to a wires charge.

X. Sustainable Development Fund

A. Introduction

The final issue in this brief, but one the Environmentalists have been advancing since the PECO securitization proceeding, is our proposal to the Commission for a *Sustainable Development Fund to finance and promote energy conservation and efficiency, renewable energy and other clean energy technologies*. While a large part of the restructuring proceeding is looking backwards and charging ratepayers billions of dollars for past mistakes, we should also be looking forward and making a modest investment in Pennsylvania's sustainable energy future.

⁷⁹PECO Statement 1 (Thomas Hill), p. 10 and Exhibit TPH-2.

⁸⁰PECO Statement No. 8 (Thomas LaGuardia), Exhibit TLG-1, Section 4, page 19; Exhibit TLG-2, Section 4, pages 15-16; Exhibit TLG-3, Section 4, page 14.

B. The Mission and Structure of the Sustainable Development Fund

In addressing the mission for the Sustainable Development Fund, Environmentalists' witness David Schoengold submitted the Long Island Power Authority's draft policy statement on its Clean Energy Fund.⁸¹ Some of the highlights of that mission statement are extracted in the box to the right.

<p>The Mission of the Sustainable Development Fund</p> <p>to support energy efficiency, clean distributed generation and renewable technologies</p> <p>to support economic development projects which promote clean energy</p> <p>to support cost-effective clean energy alternatives to distribution system upgrades</p> <p>to develop reasonable interconnection standards</p> <p>to review and publicize power plant emission and waste data</p> <p>to encourage clean energy supplies in the generation mix offered to Pennsylvania customers</p> <p>to encourage energy efficiency and renewable energy resource technologies to locate in Pennsylvania</p>

C. The Budget of the Sustainable Development Fund

The Environmentalists propose that the Sustainable Development Fund be financed by all suppliers through an annual contribution equal to 0.5% of their operating revenues. As PECO witness Hill noted, this contribution rate would, on a statewide basis, generate a ten-year total of \$220 million.⁸² While he intended this number to appear overly large, in fact it is quite modest compared to the investment other states are making in energy conservation and clean energy technologies. The Long Island Power Authority's Clean Energy Fund will have an annual budget of \$32 million, more than Mr. Hill's annual figure for all of Pennsylvania.

⁸¹Environmentalists' Statement No. 1-E (David Schoengold), Exhibit DS-5.

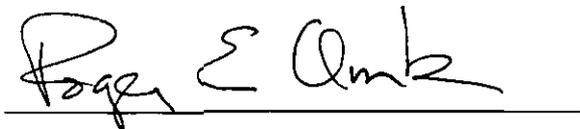
⁸²PECO Statement No. 1-ER (Thomas P. Hill, Jr.), p. 6, l. 3-4.

XI. Conclusion

Tomorrow (December 3rd) is the first anniversary of the Act. Since it was passed, everyone knew that many of the monumental decisions would fall on the Commission. The Environmentalists have shared, as best we can, our vision for the job ahead. It is now the Commission's task to create the marketplace where the residents and the businesses of Pennsylvania have access to adequate, safe, clean, reliable and efficient energy services at fair and reasonable prices at the lowest long-term cost to society.

Respectfully submitted,

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY	:	
COMPANY FOR APPROVAL OF	:	DOCKET NO. R-00973953
ITS RESTRUCTURING PLAN	:	
PETITION OF ENRON ENERGY	:	
SERVICES POWER, INC. FOR	:	DOCKET NO. P-00971265
APPROVAL OF AN ELECTRIC	:	(consolidated)
COMPETITION AND CUSTOMER	:	
CHOICE PLAN	:	

APPENDIX A

**The Environmentalists'
Proposed Findings of Fact**

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General consideration

1. Consumers should have access to adequate, safe, clean, reliable and efficient energy services at fair and reasonable prices at the lowest long-term cost to society.¹

CTC considerations

2. The opportunity for recovery of a substantial amount of stranded costs should be expressly conditioned on full utility cooperation in achieving the best result for customers and the environment in the years ahead.²
3. A higher stranded cost award means a higher Competitive Transition Charge and/or a higher Intangible Transition Charge ("CTC" and "ITC") in the unbundled rates.
4. Because of the rate cap,³ a higher CTC/ITC means a lower generation credit, which means that less of the bill is subject to competition and customers have less opportunity to obtain savings from alternate suppliers.⁴
5. A higher CTC means that alternate suppliers have a tougher time entering and staying in the market and robust competition fails to develop and the promise of the Act is unfulfilled.⁵
6. The absence of competition will slow down the introduction of new, clean generating options (both fossil-fueled options and renewable resource options).
7. A high stranded cost recovery will indirectly subsidize existing generation, including older inefficient, polluting units.⁶

¹Exhibit DS-2 of Environmentalists' Statement 1-S (David Schoengold).

²CEPA *et al.* Statement No. (Peter Bradford), p. 13, l. 5-9.

³66 Pa.C.S. §2804(4).

⁴NEV Statement No. 1 (David Boonin), p. 13, l. 28 to p. 14, l. 10 and NEV Statement No. 1-SR (David Boonin), p. 1, l. 28 to p. 2, l. 7.

⁵NEV Statement No. 1 (David Boonin), p. 13, l. 28 to p. 14, l. 10 and NEV Statement No. 1-SR (David Boonin), p. 1, l. 28 to p. 2, l. 7.

⁶Environmentalists' Statement 1-S (David Schoengold), p. 4, l. 15-22.

8. The emissions of existing generating units will make it more difficult in Pennsylvania to maintain air quality at levels sufficient to protect human health and property.⁷
9. This in turn may "impose restrictions on economic development, constraining the siting of manufacturing operations or competitive power producers."⁸

Quantifying Stranded Costs

10. The Joint Settlement and the Choice Plan include several different categories of stranded costs, including stranded generating assets, stranded regulatory assets, nuclear decommissioning, fossil fuel decommissioning and other transition costs.

Stranded Generating Assets

11. Approximately 60% of PECO's total stranded cost claim is its calculation of \$4.484 billion of stranded generating assets. In the Partial Settlement, the stranded generating asset claim of \$4.484 billion is the difference between a regulated value of \$6.787 billion minus a market value of \$2.303 billion.⁹
12. Between January and August of this year, PECO has presented four quite different estimates of the market value of its generating assets: initially \$2.568 billion;¹⁰ by early March \$2.948 billion;¹¹ in April, 1997 \$2.863 billion;¹² and in August, 1997, \$2.303 billion.¹³
13. The Partial Settlement's stranded generating asset figure is unreliable.

⁷Environmentalists' Statement 1-S (David Schoengold), p. 5, l. 14-17.

⁸Environmentalists' Statement 1-S (David Schoengold), p. 5, l. 14-17.

⁹Joint Petition for Partial Settlement, ¶ 18, p. 17. See also PECO Statement No. 1 (Thomas Hill), pp. 9-16.

¹⁰Application of PECO Energy Company for Issuance of a Qualified Rate Order, Docket No. R-00973877, Statement No. 1 (Thomas Hill), p. 11, l. 12.

¹¹Application of PECO Energy Company for Issuance of a Qualified Rate Order, Docket No. R-00973877, Statement No. 1-R (Thomas Hill), p. 12, l. 12-13.

¹²PECO Statement No. 1 (Thomas Hill), p. 14, l. 8.

¹³Joint Petition for Partial Settlement, ¶ 18, p. 17.

14. The Partial Settlement's stranded generating asset figure is unreliable because PECO's methodology for quantifying its stranded costs is inadequate due to its high sensitivity to input parameters and lack of a correction or reconciliation.¹⁴

The Environmentalists' Recommendation for Quantifying Stranded Generating Assets

15. The Environmentalists' approach to deal with the inherent uncertainty in the quantification of the stranded generating assets is a tracking account mechanism which would allow the generating asset value to vary with changes in electricity market prices, subject to adjustment each year at the Commission's annual review of CTC collections under 66 Pa.C.S. §2808(f).¹⁵
16. The Environmentalists' approach was also proposed and recommended by New Energy Ventures.¹⁶

Mitigating Stranded Costs

17. One proven mitigation strategy is demand-side management.¹⁷
18. Energy conservation and load management mitigate stranded costs because they reduce the retail allocation of PECO's stranded generating assets by reducing net retail peak load and freeing up capacity and energy for wholesale transactions.¹⁸
19. A program of cost-effective DSM could mitigate retail stranded asset costs by as much as \$1 billion.¹⁹

¹⁴Environmentalists' Statement No. 1-S (David Schoengold), p. 21, I. 5-14.

¹⁵Environmentalists' Statement No. 1-S (David Schoengold), p. 26, I. 15-22.

¹⁶NEV Statement No. 1 (David Boonin), Ex. DMB-4.

¹⁷Environmentalists' Statement No. 1-S (David Schoengold), p. 31, I. 24-25.

¹⁸Environmentalists' Statement No. 1-S (David Schoengold), p. 31, I. 24-25.

¹⁹Environmentalists' Statement No. 1-S (David Schoengold), p. 31, I. 24-25.

20. Doubling the Low-Income Usage Reduction Program budget from \$4 million a year to \$8 million a year would materially help mitigate PECO's stranded costs.²⁰
21. PECO has cut back on its demand side management program scope.

Sharing the Burden of Stranded Costs

22. It would be unfair for the customers to have to bear the full responsibility for PECO's stranded investment loss and for the stockholders to receive a full return on their investment as well as return of their investment.²¹
23. A stranded generating asset recovery of \$1.152 billion would allow PECO to pay of the debt holders and to provide the stockholders with a return of and an 8.1% return on their investment.
24. With respect to PECO's claimed stranded assets, stockholders made an initial investment of \$5.952 billion in the generating assets and have been allowed a total recovery of \$7.818 billion, or 149% of the original investment and an internal rate of return of their investment to date of 8.1%.
25. A level of stranded generating asset cost recovery which would be necessary to pay off the debt holders and to provide the stockholders with a return of their investment and an 8.1% return on their investment would be \$1.152 billion.
26. A recovery of \$1.52 billion is 25.7% of the Partial Settlement's generating asset stranded claim of \$4.484 billion.
27. An 8.1% return on a bad investment would be quite reasonable.

Other Stranded Costs

28. The most reasonable recovery of regulatory assets would be at a value of \$1.657 billion.²²

²⁰Environmentalists' Statement No. 1-S (David Schoengold), p. 34, l. 11-18.

²¹Environmentalists' Statement No. 1-E (David Schoengold), p. 40, l. 4-14.

²²OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 2 (Revised).

29. The most reasonable recovery of nuclear decommissioning costs would be zero.²³
30. The most reasonable recovery of fossil decommissioning costs would be zero.²⁴
31. The most reasonable recovery of other transition costs would be zero.²⁵

Total Stranded Costs

32. PECO's stranded cost recovery must be jurisdictionalized, using a factor of 96.2%.²⁶
33. The total PECO stranded cost recovery would not be reasonable, or in the public interest, if in excess of \$2.732 billion.

Recovering Stranded Costs

The recovery period no longer than necessary

34. Both the Partial Settlement and the Choice Plan extend the recovery to 10 years.
35. Delaying some of the rate cut by extending the CTC recovery to 10 years increases the total costs to ratepayers.
36. The CTC/ITC charge distorts customer price signals for the competitive retail market as long as it is in effect.
37. It is more reasonable to finish up the stranded cost collection sooner rather than later.²⁷

²³OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1 (Revised).

²⁴OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1 (Revised).

²⁵OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1 (Revised).

²⁶Jurisdictional fraction from Environmentalists' Statement 1-S (David Schoengold), Exhibit DS-7, Schedule 1.

²⁷Environmentalists' Statement No.1-E (David Schoengold), p. 12, l. 6-7.

The recovery reconcilable by class

38. Because the CTC and the ITC are charges added to each kilowatthour, the total recovery of each is directly dependent on the number of kilowatthours sold throughout the collection period.
39. Given the amounts involved in CTC/ITC recovery, even a very small discrepancy between projected sales and actual sales will result in a large difference in collections.
40. The Partial Settlement, in computing its CTC/ITC charges, assumes that future load growth will be zero.
41. The Partial Settlement's assumption of zero PECO load growth over the CTC/ITC collection period is unreasonable.
42. The effect of assuming zero load growth for the CTC/ITC period of the Partial Settlement, given the lack of reconciliation, is extremely great — e.g., if load instead grows at 1%, the CTC/ITC collections will be 7% greater than approved.²⁸
43. It would be unreasonable, and unfair to customers, to fail to provide for reconciliation of annual CTC/ITC collections.
44. In designing the reconciliation mechanism, it is critical to prevent cost shifting between customer classes.
45. It is most reasonable to set CTC/ITC recovery for each class and reconcile the resulting collections on a class basis.²⁹
46. Reconciling on a system basis, rather than on a class basis, would shift responsibility for CTC/ITC collections among the classes.
47. The classes will likely experience different growth rates.
48. It is reasonable to reconcile on a class basis because PECO's customer loads have been growing at different rates for the major classes -- residential and

²⁸Environmentalists' Statement 1-S (David Schoengold), p. 11, l. 16-22. The 7% figure is the increase in the CTC recovery totals shown on the table between 0% growth and 1% growth.

²⁹See, e.g., OCA Statement No. 4 (Lee Smith), p. 11-12.

commercial classes have experienced load growth, but the industrial class has seen a drop in number of customers, peak load and energy consumption.³⁰

49. With class-based reconciliation and with the trend of differential load growth rates continuing, all other things being equal, it will be reasonable for the reconciliations to reduce or shorten residential CTC/ITC, to reflect the faster recovery, and increase or lengthen the industrial CTC/ITC charge, to make up for the under-recovery.

The recovery level over the recovery period

50. Straight amortization of stranded costs³¹ would be reasonable.
51. The Partial Settlement and the Choice Plan proposals provide for an unreasonable, unbalanced recovery of the CTC/ITC charges over the recovery period.
52. It would be reasonable for reconciliation to be structured to recover the authorized stranded costs in equal annual amounts because, of the alternatives proposed, it will most closely resemble the market, where prices fluctuate because of natural market conditions but not because of engineered rates.

Unbundling the Rates

53. It is reasonable to unbundle rates in order to tell customers what part and how much of their bill they can take shopping for alternative suppliers and what part and how much will continue to be tied to the monopoly utility.

The CTC / ITC Charge

54. The parties took different approaches to the annual level of the CTC/ITC kilowatt-hour charge:

³⁰PECO 1997 Annual Resource Planning Report, in the record as Conectiv Cross-Examination Exhibit 2).

³¹66 Pa.C.S. §2808(f).

- a. The Partial Settlement begins with a high CTC/ITC which, after a slight rise, decreases throughout the collection period. Partial Settlement, Table A, p. 8.
 - b. Enron's Choice Plan starts with a low CTC/ITC which increases. Enron (EESPI) Statement 1-R (Steven Kean), Attachment A.
 - c. The Environmentalists recommend that the CTC/ITC recovery be equal throughout the collection period, and, because of the assumption of a slight load growth, they recommend that the kilowatt-hour CTC/ITC charge decrease slightly. (Environmentalists' 1-E (David Schoengold), Ex. DS-1, Sch. 1.)
 - d. MAPSA and NEV also provide variable level proposals. (MAPSA Statement 1-S (Donald Johnstone), Schedule A; NEV Statement 1-SR (David Boonin), Exhibit DMB-16)
55. The Environmentalists' levelized proposal is most reasonable.

The Generation Credit

56. The generation credit is a most critical number to both the ratepayers because it is the amount that they can take shopping to find a lower price from another supplier.
57. The generation credit is a most critical number to the alternate suppliers because the degree they can undercut the generation credit will determine to a very large extent their ability to attract customers.
58. The generation credit recommendation of the parties differed:
- a. The generation credit in the Partial Settlement begins quite low and then rises quite steeply;³²
 - b. The generation credits proposed by Enron and the Environmentalists begin higher than the Partial Settlement, but have a shallower slope;³³

³²Partial Settlement, Table A, p. 8.

³³Enron (EESPI) Statement No. 1-R (Steven Kean), Attachment A; Environmentalists' Statement No. 1-E (David Schoengold), Ex. DS-1, Sch. 1.

- c. Other parties' proposals also begin higher than than the Partial Settlement's, and present flatter slopes than the Partial Settlement's;³⁴
59. The Partial Settlement's schedule of proposed generation credits begins at too low a level to facilitate the transition to competition, and must be rejected.
60. The Environmentalists' proposed schedule of generation credits is reasonable, will facilitate an orderly transition to retail competition, and should be adopted.

Summary of The Environmentalists' Unbundled Rates

61. In the Partial Settlement, the unbundled rates are shown in Table A.³⁵
62. The Environmentalists' version of Partial Settlement Table A, shown in their Brief, Table 4, is reasonable, and should be adopted.

Better Choice Plan: Preventing Market Domination

63. A just and reasonable set of unbundled rates is an essential condition to creating a robust competitive market.
64. An adequate generation credit alone is not enough to ensure all customers have meaningful choices of electricity suppliers and services.
65. The restructuring order must address the problem of market domination by PECO by virtue of the Company's status as the monopoly supplier in this region for the last century.
66. A great many of PECO's electricity customers are unlikely to make any choice at all regarding their electricity supplier during the early transition years.³⁶

³⁴MAPSA Statement 1-S (Donald Jonhstone), Schedule A; NEV Statement No. 1-SR (David Boonin), Exhibit DMB-16; PECC Statement No. 1-SR (Steven Mitnick), Ex. SAM-SR2.

³⁵Joint Petition for Partial Settlement, Table A, p. 8.

³⁶Environmentalists' Statement No. 2-E (Bruce Biewald), p. 2, l. 16 to p.3, l. 2.

67. If PECO is designated the default supplier of these non-selecting customers, then it will be granted a significant market share without incurring the marketing and transaction costs that would be required of competitive utilities.³⁷
68. PECO's receiving by default the non-selecting customers would impede the transition to retail competition because it would add to the numerous tangible and intangible competitive advantages that are typically enjoyed by incumbent utilities.³⁸
69. The Environmentalists proposal for a system for allocating non-choosing customers to alternative suppliers serving PECO's service territory, the "Better Choice Plan", reasonably addresses the contingency of large numbers of non-selecting customers, is the best alternative proposed to address the issue, and should be adopted.
70. The Better Choice Plan appropriately relies on the experience in the long distance telephone industry, where the Federal Communications Commission in 1985 sought to end the market domination of AT&T and encourage meaningful competition by setting up a market allocation pool of other carriers to provide long distance service to customers who failed to select a carrier.³⁹
71. There is an important distinction between the concepts of "provider of last resort" and "default supplier":
 - a. The provider of last resort is the "entity that is assigned the responsibility of ensuring that all electricity customers will have access to a reliable supply of electricity at reasonable prices, terms and conditions."⁴⁰
 - b. The provider of last resort is required to serve customers who, for a variety of reasons, cannot obtain generation services from any alternative supplier.

³⁷Environmentalists' Statement No. 2-E (Bruce Biewald), p. 2, l. 16 to p.3, l. 2.

³⁸Environmentalists' Statement No. 2-E (Bruce Biewald), p. 2, l. 16 to p.3, l. 2.

³⁹Enron (EESPI) Statement No. 3 (Douglas Bohi), p. 13-14.

⁴⁰Environmentalists' Statement No. 2-E (Bruce Biewald), p. 29, l. 3-5.

- c. The default supplier is the supplier that serves the default customers, or those customers who have failed to choose an alternative generation supplier.
 - d. Under the Settlement Proposal, PECO is the default supplier and under the Choice Plan, Enron is the default supplier.
72. Under the Environmentalists' Better Choice Plan, a more diverse market is created because the alternative suppliers active in the market can volunteer to become part of the default supplier group which will serve the customers who fail to choose.
73. It is reasonable to designate PECO to be the provider of last resort.⁴¹

The Default Customer - The Failure to Choose

74. It is widely acknowledged that when an industry moves from a regulated monopoly to an open market, many customers stay with the monopoly supplier.⁴²
75. Considerable consumer research finds that there is no conscious exercise of discretion in the failure of consumers to choose an alternative supplier of service when an industry moves from a regulated monopoly to a competitive model.⁴³
76. A transitional market mechanism such as the Better Choice Plan is an appropriate and helpful response to the temporary customer difficulties in choosing a supplier during the transition to competition.⁴⁴

The Default Supplier Group

77. The seven supplier conditions for participation in the Better Choice Plan are reasonable, given the voluntary nature of the plan, will enhance the transition to competition, and should be adopted.

⁴¹Environmentalists' Statement No. 2-E (Bruce Biewald), p. 31, l. 3 and Environmentalists Statement 3-E (Roger Colton), p. 5, l. 24-28.

⁴²For example, see Enron (EESPI) Statement No. 3 (Douglas Bohi), p. 13-14.

⁴³Environmentalists Statement No. 3-E (Roger Colton), p. 2, l. 8-14.

⁴⁴Environmentalists Statement No. 3-E (Roger Colton), p. 6, l. 2-5.

Allocating Default Customers

78. The Better Choice Plan's⁴⁵ 50% test for determining whether to begin the plan's operation is a reasonable threshold test, and should be adopted.
79. The threshold test should be whether a "PECO share", defined just below, amounted to 50% or more — (1) the customers who had made an affirmative selection of PECO, (2) the customers who had made an affirmative selection of one of PECO's affiliated generation suppliers, and (3) the default customers (*i.e.* those who failed to make any selection at all).
80. It is reasonable when the PECO share, as defined, is 50% or more, to allocate all default customers to be served by the non-PECO generation suppliers who have volunteered and qualified to be part of the default supplier group, as the Plan provides.
81. It is reasonable to convene in this docket a supplementary proceeding to address the details of the Better Choice Plan.

Universal Service

82. Electricity has become a necessity of life in PECO's service territory.⁴⁶
83. Many of PECO's low-income customers, it is a necessity they cannot afford the electricity they need.
84. The average Philadelphia household eligible for universal service programs spends, on a percentage of income basis, 5.9 times as much for electricity as the average PECO customer.⁴⁷

⁴⁵The Better Choice Plan is described in Environmentalists' Statement No. 2-S (Bruce Biewald), pp. 10-32.

⁴⁶66 PA.C.S. §2802(9).

⁴⁷10.6% of their income versus 1.8% of their income. Environmentalists' Statement No. 1 (Roger Colton), p. 20, l. 14-16.

The Expansion of Universal Service

85. The Partial Settlement's expansion of PECO's universal service programs to include up to 100,000 customers with an annual budget of up to \$50 million is on the low end of the scale of reasonableness.
86. It is more reasonable to expand the PECO universal service programs to 130,000 participants and total expenditures of \$69 million per year.⁴⁸

LIURP

87. The Low-Income Usage Reduction Program is a cost-effective means of reducing the energy costs of low income households so that the electric bill is affordable.
88. The Partial Settlement's cap of the annual LIURP budget at \$4 million, out of a total universal service budget of \$50 million, is unreasonably low, providing for only 8% of the budget going to energy conservation, while the remaining 92% goes to subsidize consumption and other administrative costs.
89. The LIURP budget should be expanded, especially in light of its added value as a stranded cost mitigation strategy.
90. It is reasonable to expand the PECO LIURP program through a supplementary proceeding in this docket, addressing additional eligible measures.

CAP Rate

91. The expanded CAP Rate program proposed in the Partial Settlement is reasonable, and should be adopted, with modification to link it to reducing low income customers' consumption.
92. It is reasonable to require that the CAP Rate program be effectively linked to energy education, energy conservation and other services in order to assist low income customers to reduce their consumption, and such a provision should be adopted, and addressed in a supplementary proceeding of this docket.

⁴⁸Environmentalists' Statement No. 1 (Roger Colton), Ex. RDC-7, p. 1-2.

93. It is reasonable to modify the CAP Rate program so that all customers consuming more than 110% of the subsidized levels are referred to the other universal service programs and receive these other services.

Renewable Energy Pilot

94. The universal service program proposed in the Partial Settlement is *unreasonable insofar as it ignores renewable energy, as the latter appears in the definition of "universal service and energy conservation"*.
95. It is reasonable for PECO to develop and offer a renewable energy pilot program as a component of its universal service program, providing a discernible fraction of its power from renewables, and offering power from renewable technologies, such as wind, solar domestic water heating, solar photovoltaics, wood-fired water and/or space heating, and such a provision should be adopted, and addressed in a supplementary proceeding of this docket.

Chapter 56 Consumer Protection

96. The Partial Settlement is unreasonable to the extent that its commitment to "thoroughly review and, as appropriate, to recommend changes" to Chapter 56 and other Commission regulations and procedures,⁴⁹ and this provision should be rejected at this time.

Allocation of Universal Service Costs

97. As universal service is a public service cost, it is reasonable for all sectors of the public should bear the costs, including all customer classes.
98. To the extent that the Partial Settlement would excuse any class of customers from contributing to universal service costs, such an exclusion is unreasonable and the provision should be rejected.
99. As a matter of public policy universal service is the utility's compensation for the valuable public perquisites of eminent domain and the right to use public streets,

⁴⁹Joint Petition for Partial Settlement, ¶128, pp. 23-24.

which are of tremendous value to PECO and to all who receive service from PECO.

100. To the extent that the Partial Settlement would assign the first \$30 million of program costs only to residential ratepayers as a component of their T&D costs, the Partial Settlement is unreasonable and the provision should be rejected in favor of a provision that assigns such costs to all customer classes.

Public Input

101. To the extent that the Partial Settlement provides for two separate opportunities for public input, through the Joint Petitioners comments on the CAP Rate program⁵⁰ and a LIURP Advisory Committee⁵¹, proposal is only reasonable in part, and should be modified to set up one entity, with explicit PECO responsibilities to provide requested information on a timely basis, transcriptions of meeting, well-balanced membership, unrestricted by status as LIURP providers, and for coverage of costs by PECO.

Administration

102. It is more reasonable for PECO to contract out both the delivery and administration of the universal service programs than to run either operation in-house, and such a modified proposal should be adopted.
103. It is reasonable for PECO to contract with community-based groups to be direct providers for LIURP, and the proposal should be adopted
104. It is most reasonable for PECO to contract for all of its universal service programs with experienced non-profit, community-based organizations with both a strong track record in the provision of energy assistance, conservation and education programs, and the ability to leverage significant amounts of additional public and private resources to help resolve the energy problems of PECO's low-income customers⁵², and such a requirement should be adopted.

⁵⁰Joint Petition for Partial Settlement, ¶22, p. 21.

⁵¹Joint Petition for Partial Settlement, ¶27, p. 23.

⁵²Environmentalists' Statement No. 1 (Roger Colton), p. 38, l. 18-23.

Distributed Energy

105. It is reasonable to adopt measures that will enhance marketplace rules which allow new, distributed energy sources.

Net Metering

106. PECO currently has a net metering tariff known as Rate R-S, a Pennsylvania leader in this field.
107. It is reasonable to modify the Rate R-S net metering tariff with the following conditions,⁵³ and the rate, as modified, should be adopted:
- a. include all customers and customer classes;
 - b. Include renewable energy technologies other than solar photovoltaics;
 - c. the expansion of Rate R-S must be clarified so that the revised tariff sheets do make the "all customers" and others changes;
 - d. fuel cells shall be an eligible technology;
 - e. the number of customers eligible for the rate shall not be capped, per the present tariff;
 - f. the net metering provisions shall be clarified to specify retail-in/retail-out up to net each month;
 - g. customers shall be able to carry forward a generation credit (at the retail-out rate) for up to 12 months;
 - h. the net metering provisions must address billing and other procedures when the customer is purchasing power from an alternate supplier to PECO.

Interconnection

108. It is reasonable to remove unnecessary barriers in PECO tariff R-S for distributed power, which changes should be adopted, including:
- a. The technical standards should be simplified and made consistent with IEEE, UL and other national standards;

⁵³Environmentalists' Statement No. 1-E (David Schoengold), p. 12 and Exhibit DS-4.

- b. For photovoltaic and other simple systems, the engineering review should be replaced with an inspection designed to confirm that the systems meet IEEE and UL standards, at a cost of no more than \$35;
- c. The interconnection review fee for other installations should be capped at \$250;
- d. The tariff should allow a customer three metering options at the customer's choice: a non-ratcheted bidirectional meter; two meters; or a smart meter and there should be no additional meter-reading fee.

Consumer Information and Education

- 109. Consumer information and education are important tools for effecting the transition to retail competition.
- 110. The pilot programs have demonstrated the inadequacy of electricity competition consumer information to date -- confusing and empty advertisements.

Consumer Education

- 111. The revised consumer education program included in the Partial Settlement⁵⁴ is reasonable and should be adopted.

Consumer Information

- 112. It is valuable to consumers to knowing both the fuel mix and the emissions/wastes produced by the power they are considering to purchase.⁵⁵
- 113. Good work is taking place around the country before other state commissions on the issue of disclosure of fuel mix and emissions/wastes, and suppliers in the PECO service territory should be required to provide such information in a clear,

⁵⁴Joint Petition for Partial Settlement, ¶ 29-32, pp. 24-25 and Appendix G.

⁵⁵Environmentalists' Statement No. 3 (Bruce Biewald), pp. 9-17 and Exhibit BEB-3 (the Regulatory Assistance Project's March 1997 report *Full Environmental Disclosure for Electricity: Tracking and Reporting Key Information*).

simple and accurate format, under the consumer information requirements, subject to a supplementary proceeding to be held in this docket.

Transmission and Distribution Planning

114. Both the transmission and the distribution segments of the Company's service territory will be undergoing major changes.
115. PECO, as a T&D company, will come under increasing pressure to upgrade transmission and distribution lines as its load grows.
116. It is not reasonable for PECO, as an electric distribution company, to invest ratepayer money in T&D upgrades or additions without first evaluating the life-cycle costs of a number of alternatives, including energy conservation and efficiency, load management and distributed energy generation.⁵⁶
117. Integrated resource planning will remain an important tool in the regulated world of transmission and distribution, and targeted area planning is good utility practice.
118. The Partial Settlement's provisions for an "annual distribution planning process which evaluates cost-effective alternatives to distribution improvements",⁵⁷ must be amended as follows in order to be reasonable, and, as amended, should be adopted:
 - a. Require public involvement and review;
 - b. Require public access to planning documents;
 - c. Require PECO to provide to participants, on a timely basis, supporting materials.

Nuclear Decommissioning

119. The manner in which the Commonwealth authorizes the decommissioning and decontamination of its nuclear power plants is critical to the public health and welfare.

⁵⁶Environmentalists' Statement No. 1-S (David Schoengold), pp. 17-19.

⁵⁷Partial Settlement, ¶ 38, p. 28.

120. It is essential that adequate funding and prudent management be available for decommissioning the PECO nuclear plants in order to minimize the possibility of radioactive exposure to the future generations.
121. Nuclear decommissioning costs are likely to be massive and difficult to predict.
122. Any mechanism to provide funding for decommissioning must be both efficient and equitable to customers, and nuclear plant operators should be responsible *for some portion of the decommissioning costs so as to have an interest in controlling those costs.*
123. Without the following amendments, the Partial Settlement's extensive section on nuclear decommissioning⁵⁸ would be unreasonable. It should be amended as follows, and, as amended, should be adopted:
 - a. Before the Commission awards any stranded cost recovery for decommissioning, PECO must develop and demonstrate, in a supplemental proceeding of this docket, a plan to mitigate nuclear stranded costs, accepting partial Company funding of decommissioning *deficiencies as an incentive to manage costs;*
 - b. The decommissioning fund shall continue to be an external fund;
 - c. The Company shall provide a process for revisiting decommissioning costs in view of the potential for early nuclear plant retirements;⁵⁹
 - d. Each proposed increase in customer decommissioning payments through the regulated rates shall trigger a cost-benefit analysis justifying the cost increase, as a material proposition of the case, with a requirement for PECO to run a full analysis and file same, including backup, with its request;

⁵⁸ Joint Petition for Partial Settlement, ¶ 20, pp. 17-19.

⁵⁹ Environmentalists' Statement No. 3 (Bruce Biewald), p. 32, l. 1-9.

- e. The costs of spent nuclear fuel, including dry cask storage and the DOE 1 mill/kWh waste disposal charge^{60, 61}, shall not be charged in the regulated rates, but shall be absorbed by the generating company as O&M costs;

Sustainable Development Fund

- 124. It is reasonable for PECO to fund a Sustainable Development Fund, with broad customer interests governing it, to finance and promote energy conservation and efficiency, renewable energy and other clean energy technologies for the PECO service territory (Environmentalists' Statement No. 1-E (David Schoengold), Exhibit DS-5.), and should be adopted, with PECO funding in the amount of 0.5% of the Company's revenues as a mitigation measure for stranded investment.
- 125. A Sustainable Development Fund with purposes like the Long Island Power Authority's Clean Energy Fund, funded annually at \$32 million, is a reasonable model for a PECO-funded fund. (Environmentalists' Statement No. 1-E (David Schoengold), Exhibit DS-5, p. 2)

⁶⁰PECO Statement 1 (Thomas Hill), p. 10 and Exhibit TPH-2.

⁶¹PECO Statement No. 8 (Thomas LaGuardia), Exhibit TLG-1, Section 4, page 19; Exhibit TLG-2, Section 4, pages 15-16; Exhibit TLG-3, Section 4, page 14.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY	:	
COMPANY FOR APPROVAL OF	:	DOCKET NO. R-00973953
ITS RESTRUCTURING PLAN	:	
PETITION OF ENRON ENERGY	:	
SERVICES POWER, INC. FOR	:	DOCKET NO. P-00971265
APPROVAL OF AN ELECTRIC	:	(consolidated)
COMPETITION AND CUSTOMER	:	
CHOICE PLAN	:	

APPENDIX B

**The Environmentalists'
Proposed Conclusions of Law**

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Burden of proof

1. Ordinarily "the burden of proof in a rate proceeding is squarely upon the utility to establish that the rate is just and reasonable". Penn. Power Co. V Pa. PUC, 55 Pa. Commw. 477, 625 A.2d 719, 723 (Pa. Commw. 1993), *alloc. den.* 637 A.2d 288 (1994). See also Mon. 3/10/97 Tr. 413 (ALJ).
2. Given the long term effect of this restructuring case, PECO must prove its case with compelling evidence.

The three tests with which to assess the proposals

3. The Commission must use three tests to determine whether, and to what extent, to approve a restructuring order for PECO under the Act:
 - a. Is the proposal in the public interest? This, in turn, resolves to three material questions:
 - i. Is it good for the environment?
 - ii. Is it good for consumers?
 - iii. Is it good for competition?
 - b. Is the proposal consistent with the Act?
 - c. Are the rates and charges imposed by the proposal just and reasonable?
4. The Commission has the power and authority under the Act and under pre-existing law, to select among the parties' proposals and the evidence of record, in fashioning a restructuring order in this docket.
5. The Commission has the power and authority under the Act to take official notice of the generic orders and proceedings developed under the Act, and apply facts recognized, to the order in this docket.
6. The Commission has the power and authority under the Act to require further, supplementary proceedings in this docket when the Commission finds that the timing and/or complexity of the matters at issue so require.

Mitigation

7. The Act imposes upon the utilities the undeniable responsibility to mitigate their stranded costs because:
 - a. The definition of “transition or stranded costs” are certain costs “which the commission determines will remain following mitigation by the electric utility;”¹ and
 - b. Another section of the Act directs the Commission to consider “the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs by appropriate means in a manner that is reasonable under all of the circumstances...” and cites several specific mitigation strategies which should be considered;² and
 - c. The mitigation must be “commensurate with the magnitude of the ... stranded costs” and that the duty to mitigate exists not just up to the filing of the restructuring plan, but extends throughout the transition period.³

CTC considerations

8. The policy of the Act includes that the Commonwealth must resolve certain transitional issues in a manner that is fair to customers, electric utilities, investors, the employees of electric utilities, local communities, nonutility generators of electricity and other affected parties.⁴
9. Once the stranded costs have been quantified, the Commission must design the recovery mechanism which will “... provide the investors in Pennsylvania electric utilities with a fair opportunity to fully recover the amount of transition or stranded costs that the commission determines to be just and reasonable.”⁵

¹66 Pa.C.S. §2803, definition of “Transition or stranded costs.”

²66 Pa.C.S. §2808(C)(4).

³66 Pa.C.S. §2808(C)(4).

⁴66 Pa.C.S. §2802(8).

⁵66 Pa.C.S. §2804(14)

10. The Act directed the Commission to "establish procedures for the annual review of the competitive transition charge" and to "reconcile the annual revenues received from the charge" with the approved level⁶.
11. The Act provides for a CTC collection period which would end on December 31, 2005.⁷
12. If the Commission failed to reconcile CTC/ITC collections the resulting customer charges would be unlawful; therefore the Commission should provide for reconciliation.
13. It would be unlawful to shift CTC/ITC responsibility among the rate classes through a mechanism that would reconcile revenues on a system basis rather than on a class basis.
14. The Act implies straight amortization of stranded costs.⁸
15. The Act, §2808(f), supports reconciliation of CTC/ITC charges and revenues to be structured to recover the authorized stranded costs in equal annual amounts.

Unbundling and timing of competition

16. The Act requires "the unbundling of electric utility services, tariffs and customers bills to separate the charges for generation, transmission and distribution."⁹
17. The Act, by its terms, permits the introduction of retail competition to 2/3 of the customers on January 2, 1999, and to all of the customers by January 2, 2000.

⁶66 Pa.C.S. §2808(f).

⁷66 Pa.C.S. §2808(b). A longer recovery period is permitted for "good cause."

⁸66 Pa.C.S. §2808(f).

⁹66 Pa.C.S. §2804(3)

Better choice plan issues

18. The Act makes the electric distribution company the provider of last resort¹⁰ and provides a funding mechanism to cover the cost of those services for those unable to pay.¹¹
19. The Commission has the power and authority to order a supplementary proceeding to address the details of the Better Choice Plan in order to anticipate the commencement of the Plan and, upon conditions meeting the Plan's threshold test, to provide for the Plan's smooth operation.

Universal service

20. The Act explicitly incorporates renewable energy in the definition of phrase "universal service and energy conservation."¹²
21. The Act's inclusion of renewable energy in the definition of "universal service and energy conservation" requires PECO's restructuring plan to provide for the delivery of renewable energy.
22. The Act recognizes Chapter 56 as a most important consumer protection and it requires that customer services ("including meter reading, complaint resolution and collections") be "maintained at the same level of quality"¹³, and permits for no exceptions.
23. The cost of providing universal service is recognized as a "public service cost" in the Act,¹⁴ and must be the responsibility of all customer classes.

¹⁰66 Pa.C.S. §2807(e).

¹¹66 Pa.C.S. §2804(8) and (9).

¹²66 Pa.C.S. §2803, definition of "Universal service and energy conservation."

¹³66 Pa.C.S. §2807(d).

¹⁴66 Pa.C.S. §2802(17)

24. The Act requires that each electric distribution company shall implement an adequate and robust consumer education program.¹⁵

Customer education

25. In addition to the education program responsibility, the Act made the Commission responsible for ensuring that consumers have quality information to help them make sound decisions in the new marketplace.¹⁶

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¹⁵66 Pa.C.S. §2807(d)(3).

¹⁶66 Pa.C.S. §2807(d)(2)

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COMPETITION AND CUSTOMER	:	
CHOICE PLAN	:	

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I hereby certify that I am on this 2nd day of December, 1997 causing to be served today the Environmentalists' brief in the above-captioned proceeding by personal service upon following persons:

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