THE LAW FIRM OF

MALATESTA HAWKE & McKEON LLP

HARRISBURG ENERGY CENTER
100 NORTH TENTH STREET
HARRISBURG, PENNSYLVANIA 17101
(717) 236-1300
FAX (717) 236-4841

http: //www.MHM-LAW.com

MAILING ADDRESS:
P.O. BOX 1778
HARRISBURG, PA 17105

JOSEPH J. MALATESTA, JR.
WILLIAM T. HAWKE
KEVIN J. McKEON
LOUISE A. KNIGHT
THOMAS J. SNISCAK
NORMAN JAMES KENNARD
LILLIAN SMITH HARRIS
SCOTT T. WYLAND
JANET L. MILLER
SUSAN J. SMITH
TODD S. STEWART
PETER W. KOCIOLEK, JR.

December 2, 1997

James J. McNulty, Acting Secretary
Pennsylvania Public Utility Commission
North Office Building - Filing Room
PO Box 3265
Harrisburg, PA 17105-3265

RE: Pennsylvania Public Utility Commission v. PECO Energy Company – Application For Approval Of A Restructuring Plan And Consumer Education Program Pursuant To Section §2806 Of The Public Utility Code; Docket No. R-00973953

Petition Of ENRON Energy Services Power, Inc. For Approval Of An Electric Competition And Customer Choice Plan And For Authority Pursuant To Section 2807(E)(3) Of The Public Utility Code To Serve As The Provider Of Last Resort In The Service Territory Of PECO Energy Company; Docket No. P-00971265

BRIEF OF MID-ATLANTIC POWER SUPPLY ASSOCIATION

Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and two (2) copies of Mid-Atlantic Power Supply Association's Brief in connection with the above-captioned proceedings. Also enclosed is a 3.5" diskette containing a copy of the Brief. Two (2) copies of this Brief, together with a diskette, have been served on the Commission's Office of Special Assistants, the Commission's Law Bureau, and each of the Commissioner's offices. A copy of the Brief also has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

Janet L. Miller

William T. Hawke
Janet L. Miller
Todd S. Stewart

Counsel for the Mid-Atlantic Power Supply Association

WTH:JLM/kmg
Enclosures

cc: Chairman John Quain
Vice Chairman Robert Bloom
Commissioner John Hanger
Commissioner David Rolka
Commissioner Nora Mead Brownell
Cheryl Walker Davis, Office of Special Assistants
Frank B. Wilmarth, Law Bureau
Attached Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission v. PECO Energy Company – Application For Approval Of A Restructuring Plan And Consumer Education Program Pursuant To Section 2806 Of The Public Utility Code	:	Docket No. R-00973953
Petition Of ENRON Energy Services Power, Inc. For Approval Of An Electric Competition And Customer Choice Plan And For Authority Pursuant To Section 2807(E)(3) Of The Public Utility Code To Serve As The Provider Of Last Resort In The Service Territory Of PECO Energy Company	:	Docket No. P-00971265

BRIEF OF
MID-ATLANTIC POWER SUPPLY ASSOCIATION
("MAPSA")

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

DATED: December 2, 1997

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

I. STATEMENT OF THE CASE.

A. Procedural History.

On April 1, 1997, PECO Energy Company ("PECO") filed its Restructuring Plan with the Pennsylvania Public Utility Commission ("Commission") in accordance with the provisions of the Pennsylvania Electricity Generation Customer Choice and Competition Act ("Competition Act" or "Act"), 66 Pa. C.S. §2801 et seq. This Restructuring Plan, inter alia, requests Commission approval of the imposition of specific unbundled rates, a Competitive Transition Charge ("CTC"), and specific tariff provisions allegedly designed to provide customers with direct access to licensed electric generation suppliers ("EGS"). The Restructuring Plan also requests recovery of $6.8 billion of transition and stranded costs, and the implementation of procedures that allow PECO to meet its universal service and consumer education obligations.

The Mid-Atlantic Power Supply Association ("MAPSA"), a party in this proceeding, is an incorporated association of power suppliers with an interest in the emerging electric power supply market within the Commonwealth of Pennsylvania and the Mid-Atlantic region. MAPSA's Board members include power marketers, independent power producers and a broad range of companies who support the electric services industry.[1]

On August 25, 1997, PECO and several other parties filed a "Joint Petition for Partial Settlement" ("Partial Settlement"),[2] the terms of which are detailed below in this Brief. The Joint

[1] Currently, MAPSA's Board of Directors includes representatives of Air Products and Chemicals, Inc.; Atlantic Generation, Inc.; CNG Energy Services Corporation; Cogen Technologies, Inc.; Natural Gas Clearinghouse; DuPont Power Marketing, Inc.; The Eastern Group; Energy Investment Advisors; Enron Capital & Trade Resources; Edison Source; Odyssey Strategies, Inc.; and U.S. Generating Company. While PECO vigorously has tried to characterize MAPSA as being "controlled" by Enron, such is not the case. Enron is a single Board member with "one vote," just like any other member. Indeed, as will become abundantly clear in this Brief, MAPSA has a position which is different than that of Enron.

[2] The "Joint Signatories" to the Joint Petition for Partial Settlement include PECO; Senator Vincent J. Fumo; Lance S. Haver; the Consumers Education and Protective Association, et al.; the Office of Trial Staff; the Office of Consumer

Petition was a "partial" settlement in that it did not include all the parties with an interest in the outcome of this proceeding, nor did it address all the issues necessary to a resolution of the issues raised as part of PECO's Restructuring Plan.

On August 27, 1997, MAPSA submitted to PECO a "Counter Offer" to the Partial Settlement ("Counter Proposal"). The specific terms of MAPSA's Counter Proposal are detailed below in this Brief; however, the Counter Proposal was designed to preserve most elements of the settlement, except for those provisions which MAPSA believes must be changed to ensure the full-fledged, robust competition envisioned by the Competition Act. While MAPSA's Counter Proposal was summarily dismissed by PECO, it was introduced into the evidentiary record during hearings held on October 15, 1997, as a proposed reasonable resolution of this initial and significant restructuring proceeding.

On October 7, 1997, Enron Energy Services Power, Inc. ("Enron") filed a Petition with the Commission for approval of an Electric Competition and Customer Choice Plan for authority to provide service as the "Provider of Last Resort" in PECO's service territory ("Choice Plan"). Enron later suggested that the Choice Plan possibly might be modified, in among other ways, to request that the Provider of Last Resort be a function subject to bid. The Choice Plan provides for payment to PECO of stranded costs in the amount of $5.461 billion. More importantly, the Choice Plan is designed to allow for the development of competition within PECO's service territory, to provide for greater savings for PECO's customers (i.e., 20% rate reductions from September 1, 1998, through December 31, 2000, and rate reductions of 10% in 2001 and 4% in 2002), and to allow for the provision of metering and billing services by competitive suppliers.

Advocate; the Office of Small Business Advocate; the Philadelphia Area Industrial Energy Users Group; the Environmentalists; the American Association of Retired Persons and the Department of the Navy.

On October 2, 1997, the Commission entered an Order which granted a Petition filed by PECO and several parties to forego the use of a Recommended Decision and to have the matter certified directly to the Commission for decision. Also on October 2, 1997, the Commission issued a Tentative Order, finalized on November 6, 1997, in response to a Petition filed by PECO and several parties to consider in generic proceedings certain issues related to PECO's Restructuring Plan. These two Orders directed the parties to these proceedings to address, either in testimony or in briefs, the question of state and federal jurisdiction, the ability of an entity other than a public utility to perform metering and billing services, the structural and operational relationships between PECO and its affiliates and between PECO and the EGSs, and any other elements required by the Competition Act to be included in a Restructuring Plan. All other issues not resolved by the Partial Settlement (standards and codes of conduct, generation and transmission and distribution reliability and environmental issues) were left for examination in generic proceedings to be instituted by the Commission.

Between April and November, 1997, several Prehearing Conferences as well as evidentiary hearings were held before Administrative Law Judges Marlane R. Chestnut and Charles E. Rainey, Jr. Now pending before the Commission for disposition are: (1) PECO's original Restructuring Plan as submitted on April 1, 1997; (2) the Joint Petition for Partial Settlement; (3) MAPSA's Counter Proposal; and, (4) Enron's Choice Plan. This Brief responds to the issues specified in the Commission's October 2, 1997, and November 6, 1997 Orders, and to the various parties' proposed resolution of this proceeding.

In short, MAPSA's position is that the Joint Petition for Partial Settlement as modified by MAPSA's Counter Proposal (in accord with the evidence submitted) should be adopted as the final resolution of this proceeding. In the alternative, should the Commission not adopt MAPSA's

Counter Proposal, it should adopt Enron's Choice Plan modified so that the Provider of Last Resort function be subject to bid.

B. Summary Of The Terms Of The Joint Petition For Partial Settlement Filed By PECO Energy Company And The Joint Signatories; And, MAPSA's Counter Proposal.

The Partial Settlement, as filed on August 25, 1997, gives PECO the right to recover $5.461 billion in stranded assets and costs through the CTC. It purports to guarantee a 10% across-the-board rate reduction for all PECO customers, effective September 1, 1998. It allegedly provides for annual reductions in the CTC, beginning on January 1, 1999, and continuing through December 31, 2008. It extends the distribution and transmission rate cap protections provided by the Competition Act until January 1, 2004, and the generation rate cap protections until January 1, 2009. It contains agreements by PECO: (1) to "write off" at least $2.0 billion of stranded assets and costs; (2) to transfer its generation operation to a separate corporate affiliate or subsidiary; (3) to expand its current universal service program; (4) to educate consumers within its service territory about restructuring and competition; and, (5) to encourage small renewable energy technologies. PECO further agrees not to seek recovery of increases in nuclear decommissioning costs before January 1, 2004. Finally, the Partial Settlement contains an agreement by certain of the Joint Signatories to withdraw all pending objections previously filed with the Commission and/or the Pennsylvania Commonwealth Court with respect to PECO's Restructuring Plan, the constitutionality of the Competition Act, and the Commission's final Order entered in connection with PECO's securitization proceeding.

In response to the Partial Settlement, MAPSA made a Counter Proposal. Specifically, the Counter Proposal preserves: (1) PECO's ability to recover $5.5 billion of stranded and transition costs; (2) the immediate 10% rate reduction for PECO customers; and (3) the extended rate caps

established in the Partial Settlement for future years.[3] In order to make the terms of Partial Settlement in compliance with the legal mandate of robust competition, however, MAPSA's Counter Proposal modified the Partial Settlement by including: (1) a higher "Default Energy and Capacity Offer" (i.e., and effective "generation credit" for those customers who shop); (2) a lower distribution rate; (3) a proposal for the competitive provision of metering and billing services; and, (4) a procedure and schedule to develop an Interim Code of Conduct to govern the operational relationship between PECO, its affiliates and the alternative suppliers.

C. Burden Of Proof.

It is well established that "the proponent of a rule or order has the burden of proof." 66 Pa. C.S. §332(a). A party with the burden of proof has a duty to establish a fact by a preponderance of the evidence. The term "preponderance of the evidence" means that one party has presented evidence which is more convincing than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 365 Pa. 45, 70 A.2d 854 (1950). In this case, it is PECO and the Joint Signatories, as the parties seeking approval of the Joint Petition for Partial Settlement, which clearly bear the burden of proving that the settlement proposal is reasonable and in the public interest. To the extent that PECO is requesting, in the alternative, that portions of its original Restructuring Plan be approved by the Commission, PECO also must carry that burden of proof and show that those provisions are in the public interest. MAPSA maintains that PECO and the other Joint Signatories have failed completely to meet their burden.

---

[3] As pointed out by a number of parties during the hearings, several computational errors existed in MAPSA's proposed schedule of rates resulting in unintended rate cap "violations." As MAPSA's witness readily noted, these unintentional mistakes must be corrected. Attached to this Brief as **Appendix "A"** are the suggested appropriate changes; these and any other necessary changes can be made as part of the "compliance" filing procedures which will follow this proceeding. **Once again, MAPSA's intent in making its Counter Proposal is to preserve the recovery of all of PECO's agreed-to stranded costs, the 10% rate reduction, and the extended rate caps.**

II. STATEMENT OF THE ISSUES (QUESTIONS) TO BE ANSWERED.

The overall fundamental issue for the Commission to decide may be phased as follows:

> Will the Joint Petition for Partial Settlement filed by PECO and the various Joint Signatories create the full-fledged competitive environment envisioned by the Competition Act?
>
> **MAPSA's Position and Suggested Answer:** The Joint Petition for Partial Settlement is not in the public interest because it includes a generation credit which is insufficient to allow for the development of electric generation competition, it does not provide for the competitive provision of metering and billing services which will further benefit Pennsylvania consumers, and it does not contain the requisite safeguards (an interim code of conduct and a supplier tariff) that are necessary to prevent barriers to competition.

The specific subissues which must be addressed individually by the Commission in deciding the fundamental issue are as follows:

1. Should the "effective generation credit" to be given to customers who shop for alternative generation supply be higher than that proposed in the Joint Petition for Partial Settlement?[4]

   MAPSA's Position and Suggested Answer: Yes. The effective generation credit proposed in the Partial Settlement is too low to allow competitive suppliers to enter the market and competition will not develop.

2. Should the distribution rate to be charged by PECO be lower than that proposed in the Joint Petition for Partial Settlement?

   MAPSA's Position and Suggested Answer: Yes. The distribution rate proposed in the Partial Settlement is too high; it allows PECO to overrecover costs through a high distribution rate that should be recovered as part of the generation rate.

3. Should the Commission allow for the provision of metering and billing services by suppliers other than PECO?

   MAPSA's Position and Suggested Answer: Yes. The competitive provision of these services will allow suppliers, including PECO, to

[4] At the outset, it should be noted that, in the deregulated world, there will be no "generation credit." Rather, what will exist is an unregulated generation price, subject to competition. However, in the context of the rate cap provisions used in the statute and PECO's Restructuring Plan, the difference between the rate caps and the total of all nonbypassable utility charges, is the only amount that can be competed for, thereby forming an "effective generation credit."

"package" an array of services to meet individual customer needs, thereby providing better service and lower prices to the consumer.

4. Should the Commission establish in this proceeding an Interim Code of Conduct that includes structural and operational rules to govern the development of the relationship between PECO, its generation affiliate and the alternative suppliers?

MAPSA's Position and Suggested Answer: Yes. An Interim Code of Conduct is necessary to protect alternative suppliers from PECO's anti-competitive behavior against competitors or its preferential treatment of its affiliates; this behavior will slant the competitive market in PECO's favor, to the detriment of consumers.

5. Should the Commission establish in this proceeding a pro-competitive supplier access tariff?

MAPSA's Position and Suggested Answer: Yes. A supplier access tariff is necessary to prevent PECO from restricting access to the marketplace by competitive suppliers, thereby allowing PECO to retain its monopoly share of the market and thwart the development of competition.

6. Should the Commission review the level of Competitive Transition Charges (CTC) being collected by PECO on a regular basis?

MAPSA's Position and Suggested Answer: Yes. Periodic review of the CTC is the only way to ensure that PECO does not frustrate competition by collecting revenue that will allow it to sell power at below-market prices.

7. Should PECO be permitted to value and transfer generation assets to a corporate affiliate without prior Commission review and approval?

MAPSA's Position and Suggested Answer: No. Allowing PECO to value and transfer generation assets without Commission review of all aspects of the transfer, and a determination regarding the public interest and value of that transfer, is contrary to the Public Utility Code.

III. SUMMARY OF MAPSA'S POSITION ON THE TERMS OF PECO'S RESTRUCTURING PLAN AND THE JOINT PETITION FOR PARTIAL SETTLEMENT.

PECO's Restructuring Plan, as filed on April 1, 1997, contains several serious flaws that render it contrary to the public interest and the Competition Act's mandate for competition among EGS. Most notably, the Restructuring Plan will result in a failure of electric generation competition, with its resultant price decreases. First, the Restructuring Plan obstructs retail competition by allowing PECO to retain market power in the restructured marketplace. It effectively eliminates the opportunity for entry into the market in PECO's service territory by competitive suppliers because it contains an effective generation rate component that is simply too low for EGS' to compete. Further, it is anti-competitive because it does not provide for the provision of metering and billing services by any entity other than PECO. Finally, it contains no provisions which will protect competitive suppliers from anti-competitive behavior of PECO and its generation affiliate.

Unfortunately, the Partial Settlement, as currently drafted, does little to address the anti-competitive flaws contained in PECO's original Restructuring Plan. It too contains an effective generation rate that is still too low to allow alternative suppliers to enter the competitive electric marketplace. It similarly fails to provide for the competitive provision of metering and billing services. And, it similarly lacks operating protections (namely, an Interim Code of Conduct and a supplier tariff) that are needed to prevent barriers to entry into the market by competitive suppliers. Such barriers and favoritism will frustrate, not create, the robust competitive electric market envisioned by the Competition Act, and will negate the opportunity for the concomitant lower prices for consumers.

MAPSA's Counter Proposal attempts to preserve those elements of the Partial Settlement that are not harmful to competition. (MAPSA Statement No. 1-S at 4; MAPSA Exhibit DEJ-1S). MAPSA believes the Counter Proposal provides to PECO and the Joint Signatories the benefits that were negotiated as part of the Partial Settlement; but, it also provides for a structure of rates and other provisions that are necessary to allow competition to grow and thrive in the Pennsylvania electric market in Southeastern Pennsylvania.

IV. ARGUMENT.

A. Introduction.

At the very threshold of the process of reviewing any electric utility's restructuring plan, it must be realized that the CTC, by its very definition, is a device that allows utilities to recover costs which are not recoverable in the ordinary competitive market.[5] While one could argue that no above-market cost is reasonable for ratepayers to bear, such an argument has been considered and rejected by the Pennsylvania Legislature, which alternatively has determined that it is appropriate for electric utilities to recover their "reasonable" above-market costs. Thus, the CTC, by its very nature of imposing above-market costs on ratepayers, is an anti-competitive device which serves to allow utilities to recover some of their prior investments which now have turned out to be "above-market."

On the other hand, while the Competition Act mandates the imposition of "reasonable" anti-competitive charges, it also establishes, as its dual goal, the promotion of competition.

[5] The CTC is defined as "[a] nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network which (charge) is designed to recover an electric utility's transition or stranded costs . . . ." 66 Pa. C.S. §2803. And, the "transition or stranded costs" are defined to be "[a]n electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability . . . which may not be recoverable in a competitive electric generation market . . . ." 66 Pa. C.S. §2803 (emphasis supplied).

Therefore, the Commission's schizophrenic task in all of these restructuring proceedings is to oversee and direct the development of a competitive market, while still allowing the existence of an anti-competitive ratemaking device "left-over" from the prior regulatory period.

Looking at the situation from its proper perspective, unless subject to careful and ongoing regulatory scrutiny, the CTC can and will be used by PECO and the other electric utilities as a cleverly designed device to allow the utilities to charge under-market, and possibly even under-cost prices for generation, and still recover the previously allowed regulatory expenses and profit. For example, it is possible for a utility in the new competitive world to charge an under-market (or even under-cost) generation rate and still recover its full pre-1997 revenue requirement by using the CTC to recover the difference; all that is required to accomplish this result is to convince the Commission, in these restructuring proceedings, that the market price will be lower than it actually turns out to be.

Of course, the only true and exact measure of net generation costs "not recoverable in a competitive market" would be found by comparing the book value of facilities with the sale price obtained through an "open-bid RFP," similar to that proposed by GPU Energy (i.e., Metropolitan Edison Company and Pennsylvania Electric Company). PECO's proposal in this proceeding to transfer its assets to a generation affiliate or subsidiary without full Commission review of the value of that transfer, however, frustrates the Commission's ability to determine PECO's "real" stranded costs at this time, leaving the Commission with the uncertainty of market price prognostication and speculation. Accordingly, PECO's decision to forego an "RFP" process must be viewed as a negative reflection on the credibility of its market price projections.

Indeed, it is submitted that the rate proposals contained in Table A of the Joint Petition for Partial Settlement (see the discussion in Section B.1. below) are carefully designed to enable PECO

to charge under-market prices, and at the same time, enable it to recover its pre-1997 revenue requirement, less the 10% rate decrease. MAPSA submits that what PECO has done, quite craftily, by structuring a relatively high CTC over the next few years, with an accompanying relatively low generation credit, is to "give up" a 10% loss of revenue, in return for gaining freedom from meaningful competition until 2004 or 2005. As will be argued later in this Brief, this insidious use of the CTC is apparent even in the Exhibits of PECO's own witness.

While the Commission has restricted discretion with regard to allowing stranded cost recovery (namely, it must allow that amount which is found to be reasonable and non-mitigable), it has complete discretion to determine whether that recovery is "front-end" (i.e, more in the early years, and less in the later years), "levelized" (i.e., equal over the years), or "back-end" (i.e., more in the later years). Further, as argued in this Brief, the Commission has complete discretion regarding all other elements that are necessary to establish a competitive market (i.e., the full unbundling of services and the requirement of a pro-competitive supplier tariff). 66 Pa. C.S. §2802(12) and (14).

While MAPSA agrees with the Joint Signatories that the $5.461 billion stranded cost figure proposed by PECO in the Partial Settlement is "reasonable" for purposes of a settlement of this proceeding, it disagrees that the recovery of that amount should be "front-end," due to its extreme anti-competitive effect; rather, it should be more "level," or "back-end." Additionally, the Restructuring Plan must be modified to ensure access to customers by competitive suppliers. It must be remembered that, without competition, there are no "stranded costs," by definition, under the provisions of the Public Utility Code, 66 Pa. C.S. §2803; see also 66 Pa. C.S. §2811 (regarding the Commission's duty to monitor the "properly functioning and workable competitive electricity market").

Therefore, in the absence of a properly functioning and workable competitive electricity market, there is no need to compensate PECO or its shareholders for costs which are stranded by competition, because there are none.

B. The Joint Petition For Partial Settlement Is Not In The Public Interest Because It Contains Provisions Which Are Anti-Competitive And Bar Entry Into The Marketplace By Alternative Electric Generation Suppliers.

1. The Joint Petition For Partial Settlement Is Not In The Public Interest Because It Contains An Effective Generation Credit That Is Too Low To Allow Alternative Suppliers To Enter The Competitive Market.

The rates proposed in the Partial Settlement are "unbundled" to reflect the rates to be charged beginning on January 1, 1999. At that time, customer bills will begin to reflect separate rates for each of the separate service components that will result from the competitive provision of electric service. These components include: (i) distribution; (ii) transmission; and, (iii) a charge for stranded costs (CTC or ITC, if applicable). The specific rates proposed in the Partial Settlement are set forth on "Table A - Schedule of System-Wide Average Rate Decreases." (Partial Settlement at p. 8, attached to this Brief as **Appendix "B,"** but referred to in this Brief as "Table A").

Referring specifically to Table A, the column "Total Bill Rate Cap" represents the amount that PECO customers were paying per "kilowatt hour" ("kWh") for electricity on December 31, 1996, less the 10% rate decrease, and is the maximum amount that can be charged under the Competition Act. This amount, the Total Bill Rate Cap, is the total of the charges for transmission, distribution, CTC/ITC, and energy and capacity. (Table A, Column 5). Using the Total Bill Rate Cap as a starting point, rates for transmission, distribution, CTC and energy and capacity were developed. The Partial Settlement sets transmission and distribution rates at 0.47¢ and 2.64¢, respectively, beginning January 1, 1999, and ending December 31, 2003. (Table A, Columns 1 and 2). The CTC rate begins at 3.04¢ in 1999, rises to 3.14¢ in 2001-2003, then slowly decreases to

a low of 2.47¢ in 2007 and 2008. (Table A, Column 3). The rate for energy and capacity is set at its lowest, 2.80¢, in 1999 and 2000; from there, it slowly rises to a high of 5.57¢ in 2008. (Table A, Column 4).[6]

The importance of the figures on Table A, and their affect on the ability of competitive suppliers to enter the generation market in Pennsylvania, is centered in the rate which the Partial Settlement has labeled the "Energy and Capacity Cap." This Energy and Capacity Cap is the DIFFERENCE between the TOTAL of (1) the transmission charge, plus (2) the distribution charge, plus (3) the CTC (or ITC), AND the Total Bill Rate Cap. That is, the Energy and Capacity Cap is the effective generation credit that will be offered to PECO customers who shop for competitive generation supply. As such, the Energy and Capacity Cap represents the "bogey" which competitive suppliers "must beat" in order to make a sale to a PECO customer (assuming that price is the customer's only consideration). For example, beginning on January 1, 1999, a competitive supplier will have to provide generation fully delivered to a PECO customer at a price less than 2.80¢ per kWh; otherwise, PECO will retain that customer and its monopoly share of the market. Simply stated, with the values of the Energy and Capacity Cap as proposed in Table A, where the effective generation credit proposed to be given to customers who shop for generation from competitive suppliers is lower than the total delivered price of that power, PECO will retain its existing customers, and there will be no competitive market.

While the rates proposed on Table A of the Partial Settlement are the product of "negotiation" between some of the parties to this proceeding, PECO certainly would have had to negotiate from the perspective of the rates proposed in its original Restructuring Plan filing. The

[6] The rates set forth in Table A of the Partial Settlement were specifically conditioned on PECO's ability and legal right to securitize up to $4.0 billion in stranded assets and costs. In the event that securitization does not occur, the rates for CTC and the rate caps will be increased by 0.3¢ per kWh.

generation rate included in PECO's Restructuring Plan was calculated in the same manner as the rates included in the Partial Settlement -- the proposed generation rate was the remainder reached by subtracting the transmission, distribution and CTC rates from the total bill rate cap. (MAPSA Statement No. 1 at 5-6). As testified to by MAPSA's witness, Donald E. Johnstone[7], however, there is no "appropriate relationship" between the market price that may prevail and the generation rate that has been proposed by PECO. (MAPSA Statement No. 1 at 6). This conclusion is evident from PECO's own evidence -- three forecasts of system average market price, each one prepared by a different consultant. (MAPSA Statement No. 1 at 6-7). These forecasts established future market wholesale prices for 1999 that range from 2.45¢ per kWh to 2.84¢ per kWh. (MAPSA Statement No. 1 at 6-7). Under any of the three PECO forecasts, even the highest forecast wholesale price of 2.84¢ per kWh, the system average market price is higher than the generation rate component of the residential rates as developed by PECO. (MAPSA Statement No. 1 at 8). However, PECO "conservatively" used the lowest of these three forecasts to develop its CTC, thus yielding the highest CTC and, conversely, the lowest, and most anti-competitive generation rate. (MAPSA

[7] In the hearings, PECO attempted to challenge MAPSA's expert witness on the grounds that he was not an economist and on the grounds that he had not performed any market price study himself, nor had he reviewed any market price study prepared by any MAPSA member. These challenges, however, are wholly lacking in merit. First, it is well-settled that an "expert" is any witness who possesses "knowledge, skill, experience, training or education" in a specific discipline, and who has testimony that "will assist the trier of fact to understand the evidence or determine a fact in issue." An expert may testify with regard to any issues concerning "scientific, technical, or other specialized knowledge." See Fed. R. Evid. 702. Similarly, Pennsylvania requires only that the subject matter of expert testimony be beyond the experience of the average layman. Commonwealth v. O'Searo, 352 A.2d 30 (Pa. 1976). Second, the fact that Mr. Johnstone did not perform any market price study himself, in no manner effects his credentials or his credibility. It is well established that experts may base their opinions or inferences upon facts or data "perceived by or made known to the expert at or before the hearing.... If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts of the data need not be admissible into evidence." See Fed. R. Evid. 703. Similarly, Pennsylvania law is clear that the testimony of experts may be based upon reports or studies performed by other parties, where those reports are in evidence. Milan v. Commonwealth, 620 A.2d 721 (Pa. Cmwlth. 1993), app. denied. 633 A.2d 154 (Pa. 1993). In this case, MAPSA's expert performed his study and rendered his opinion based upon his review of PECO's evidence submitted in this case. In short, Mr. Johnstone appropriately analyzed PECO's market price evidence, and is rendering his expert opinion regarding whether that evidence sets forth a price that will allow for competition. This opinion certainly is within the realm of Mr. Johnstone's expertise, and it is entitled to significant weight as an aid to the Commission in reaching its decision.

Statement No. 1 at 7). Using this approach allows PECO to (i) establish an artificially low price for its generation; (ii) recover a large portion of its fixed production costs through the use of the CTC; and (iii) retain its monopoly market power in its service territory. (MAPSA Statement No. 1 at 7-9).

MAPSA's witness further testified that the system average market prices for 1999 resulting from any of PECO's wholesale market price forecasts, adjusted only for line losses, still would be higher than the generation credit proposed by PECO.[8] For example, the system average forecast prices for 1999 (adjusted for line losses) will range from 2.70¢ to 3.13¢ per kWh, while the PECO Restructuring Plan and the Partial Settlement propose a 1999 generation credit for residential customers of 2.60¢ and 2.80¢ per kWh, respectively. (MAPSA Statement No. 1 at 7-8, 10-12). Thus, a customer shopping for generation supply would most likely choose to remain with PECO to take advantage of the lower generation cost, thereby allowing PECO to retain its monopoly of the market. (MAPSA Statement No. 1 at 9-11).

This difference between the future market price and the generation credit is even more glaring when the necessary suppliers' delivery costs are added to the forecast amount to obtain a retail, or fully delivered price. To realistically compare the generation credit to the forecasts of future market retail prices, all costs that an alternative supplier will incur to deliver power to the customer must be added. (MAPSA Statement No. 1-S at 7). These costs include the cost to the supplier for things such as: marketing; forecasting, aggregating and scheduling load; reconciliation

[8] Line losses are manifest in the heat generated as electricity travels through the multiple transformers and miles of wire between the generation source and the customer. The practical effect is that it takes energy simply to move electricity through the delivery system. The delivery company must either supply the energy needed to move the electricity (and charge for it) or a supplier may provide the delivery company with the energy that is needed to move the retail electricity throughout the delivery system. The latter approach is the one all parties have been following in Pennsylvania. The practical effect is the following. In order to provide 100 kWh to a residential customer, 110.3 kWh have to be supplied to PECO. The extra 10.3 kWh are expended in the PECO delivery system in order to move the 100 kWh to the residential customer. The extra 10.3 kWh divided by the 110.3 kWh is the 9.35% loss rate. From the perspective of the supplier, 110.3 kWh must be paid for at the wholesale level to be supplied to PECO in order to have

and balancing of supply with loads and related imbalance costs; collection of amounts due for services provided; and the costs of supplier compliance with the Commission's regulations at Chapter 56. (MAPSA Statement No. 1-S at 7). These costs, developed by MAPSA's witness from PECO's class cost of service studies, total 0.48¢ per kWh, or approximately 1/2 cent. (MAPSA Statement No. 1-S at 7). With these additional expenses taken into consideration, the total cost at which a competitive supplier could realistically provide power to a retail residential customer will not be 2.80¢ per kWh but may be as high as 4.38¢ per kWh[9], when appropriate adjustments are made for the cost of capacity. (MAPSA Statement No. 1-S at 7-9; MAPSA Exhibit DEJ-2S, attached hereto as **Appendix "C"**). Either by using MAPSA's witness' specific adjustments (MAPSA Exhibit DEJ-2S) to PECO's "conservative" wholesale price prediction, or by simply making adjustments for line losses and adding supplier retail costs (0.48¢ per kWh) to PECO's "unconservative" wholesale price prediction, one finds that PECO's effective generation credit of 2.80¢ per kWh is not competitive, whereas MAPSA's Counter Proposal is competitive. Thus, in any event, the rates proposed on Table A of the Partial Settlement will make it virtually impossible for true competition to develop in PECO's service territory and PECO will thereby retain its monopoly position in the market. (MAPSA Statement No. 1-S at 2, 10).

Even PECO's own expert witness, Dr. William H. Hieronymus, specifically testified that "there will be little if any headroom between market generation costs and the [Energy and Capacity Cap] during the first several years of the transition to competition." (PECO Statement No. 6-RJ at 7) (emphasis supplied) ("headroom" is the term for the difference between the wholesale price of

---

100 kWh to sell to a residential customer. Thus, the retail price of 100 kWh must include the cost of 110.3 kWh supplied from the wholesale market.

[9] In this regard, it should be noted that the 2.80¢ per kWh figure is a system average figure, while MAPSA's 4.38¢ per kWh is a residential figure. MAPSA's witness estimated that the system average rate would be approximately 4.0¢ per kWh in 1999 which is consistent with MAPSA's Counter Proposal. (MAPSA Exhibit DEJ-1S, Schedule A).

energy and the fully delivered or retail price of energy). This admitted lack of "headroom," and therefore the lack of competition, is even more evident in an examination of PECO's own exhibit, Exhibit WHH-9 attached hereto as **Appendix "D"**, which compares the system average Energy and Capacity Cap rate for the years 1999-2008 (as proposed in Table A of the Partial Settlement) with the retail energy and capacity costs expected to exist for each year based on two of the market price forecasts entered into evidence by PECO in this proceeding. Although Dr. Hieronymus testified that his comparison showed that "[f]or both price forecasts and for all load factors, the average [Energy and Capacity Cap] exceeds the average market cost of energy [i.e., the fully delivered cost of generation] over the period on both a simple average and present value basis" (PECO Statement No. 6-RJ at 6), a closer examination of Exhibit WHH-9 indicates that, for 80% load factor customers, the Energy and Capacity Cap actually is **below** the forecast market price until the year 2002 or 2003, depending on the forecast used. For 70% load factor customers, the Energy and Capacity Cap is **below** the forecast market price until the year 2004 or 2006, depending on the forecast used. And, for 60% load factor customers, the Energy and Capacity Cap is **below** the forecast market price until the year 2006. (PECO Exhibit WHH-9). If the Energy and Capacity Cap rates proposed in the Partial Settlement are adjusted to eliminate customers who have special contracts under PECO's Large Interruptible Load Rider, Economic Efficiency Rider and Rule 4.6 Rider,[10] competition will not be possible for alternative suppliers until 2001-2002 for 80% load factor customers, 2002 for 70% load factor customers and 2004-2006 for 60% load factor customers. (PECO Exhibit WHH-9). When the Energy and Capacity Cap rate is below the retail

[10] According to PECO witnesses Hill and Hieronymus, inclusion of these customers in the comparison is inappropriate because they represent unique customers that receive service at discounted or non-standard rates. (PECO Statement No. 1-RJ at 9; PECO Statement No. 6-RJ at 5).

cost of energy and capacity, customers seeking a price savings will choose PECO as their generation supplier.

Thus, it is clear from the evidence supplied by PECO's own witness that, under the rate proposals contained in the Partial Settlement, there will be no meaningful competition until at least the year 2004 for customers operating at less than a 60% load factor. Surely, these customers represent the bulk of the customer load which PECO now serves. While various customers and parties to the Partial Settlement may have been persuaded, for whatever reason, to accept a sure 10% rate decrease, they (and the bulk of PECO's customers who are not represented in this proceeding) are entitled to more -- namely, the benefits of robust competition which indeed are mandated by the Act.

To create workable competition, two things must change -- the Energy and Capacity Cap proposed on Table A of the Partial Settlement must be increased, and the Distribution Rate proposed on Table A must be decreased. (MAPSA Statement No. 1-S at 4). Because the Energy and Capacity Cap represents the cost at which competitive suppliers must offer fully delivered power to the customer, this charge must be high enough to include all of the costs which the suppliers will incur in providing this service, and still make it worthwhile for these suppliers to compete in Pennsylvania. (MAPSA Statement No. 1-S at 5, 7). In other words, the Energy and Capacity Cap must be over and above the supplier's wholesale cost of power. If PECO is able to offer power at 2.80¢ per kWh as proposed by the Partial Settlement, it is easy to see why PECO will retain its market share and competition will not develop.

Even assuming, arguendo, that a competitive supplier were willing to "beat" the proposed 2.80¢ figure, PECO can be expected to selectively discount its own energy and capacity offer, as it has in the past with flexible pricing, in order to retain its monopoly position in the market.

(N.T. at 559-560). Therefore, the generation credit to be offered to PECO customers to encourage them to shop for alternative generation, and to create a competitive market as envisioned by the Competition Act, must be significantly large enough to avoid selective discounting.

While PECO has argued vigorously in this proceeding that 2.80¢ per kWh will allow for "some competition," the record in this case contains persuasive and substantial evidence coming from PECO that the Partial Settlement will produce only "an opportunity" for competition to develop; certainly not the robust competition for all customers as mandated by the Act. First, as argued later in this Brief, at Section IV.B.6., the record establishes that one overall goal of PECO in this case is to delay competition until 2004-2005. Second, although the record (unsurprisingly) does not contain absolute or "smoking gun" admissions, it does contain clear inferences that PECO does not believe that the Partial Settlement will expose it to any significant competitive threat. For example, one key witness testified on cross-examination at the October 14, 1997 hearing as follows:

> Q: Now, it's your position, as I understand it generally, that this joint settlement is designed to promote a robust competitive market, is it not?
>
> A: I think it is the company's position, again, being one signatory to the joint petition, that there is ample opportunity for a competitive market to develop within the construct of this joint petition.
>
> Q: And how would you define that competitive market?
>
> A: There will be competitive supply for energy and capacity to customers over the period of time commencing January 1st, 1998 through and including December 31, 2008.
>
> * * * * *
>
> Q: How many suppliers do you envision would be necessary with some degree of equal market share to constitute a robust competitive market?

A: I guess my sense is that you do not need competition, competitors to have equal market share to have reasonable -- a reasonably competitive market. I think it will be necessary for competitors to participate and the indication that they are competing, itself, makes the market and I would refer you again to some of the testimony of Dr. Hieronymus which addresses that on point.

(N.T. 565-566).

* * * * *

Q: Do you have any estimates or guesstimates of the loss of market share by 2002?

A: No, I do not.

(N.T. 564).

It is evident from the testimony quoted above that either: (1) PECO is confident that implementation of the rates proposed in the Partial Settlement, while allowing for some minor competition, will not seriously threaten its current monopoly position in the market; or (2) PECO has not proved that the Partial Settlement will produce the robust competition envisioned in the Act. It is submitted that, in order to have robust competition, there must be many suppliers actually competing for load, with a significant loss of market share by the incumbent. (MAPSA Statement No. 1 at 9).

While the CTC must allow PECO and other utilities to recover their reasonable stranded costs, particular care must be taken to keep the CTC from acting as a bar to competition, as it does in this case, by enabling utilities to charge below market prices. If the CTC is set too high, as it is in this case, the effective generation credit will be too low. Thus, the effective generation credit (in this case, PECO's "Energy and Capacity Cap") and the CTC must be set jointly, in order to achieve a competitive market while allowing for appropriate stranded cost recovery. Quite simply, the Partial Settlement bars competition by initially establishing a relatively "high" CTC, which

thereafter declines, while establishing an initial generation credit that is too low to allow for the development of competition. Rather, the design should be just the opposite, as proposed by MAPSA in this case; there should be either, a lower initial CTC with a gradual increase over the years, or, a completely levelized CTC, both designed to give suppliers the necessary "headroom" to compete.

2. The Joint Petition For Partial Settlement Is Not In The Public Interest Because It Contains A Distribution Rate That Overrecovers The Appropriate Costs of Distribution Service; This Distribution Rate Must Be Lower.

As noted above, the Partial Settlement sets the distribution rate at 0.47¢, effective January 1, 1999 through December 31, 2003. This rate is too high, and therefore unreasonable and contrary to the public interest, because it includes allocations of costs that will be incurred by PECO for services associated with its generation, marketing, customer service and sales functions. (MAPSA Statement No. 1 at 22-23; MAPSA Statement No. 1-S at 5). As explained by MAPSA's witness, PECO inappropriately allocated 100% of some categories of costs included in its Administrative and General Expenses and General and Common Plant Expenses to the distribution function, when, in fact, a portion of the costs associated with these categories of expenses should have been allocated to both distribution and generation functions. (MAPSA Statement No. 1 at 22-23). The result of this misallocation is that PECO's cost of generation is artificially decreased, while the cost of delivery is increased. (MAPSA Statement No. 1 at 21). Such a result is anti-competitive -- i.e., it increases PECO's ability to provide generation services at the lower price established by the Partial Settlement, PECO retains its monopoly share of the existing market and competition will not develop. (MAPSA Statement No. 1 at 21).

To address this allocation error, and the concomitant error in the level of the distribution rate set forth in the Partial Settlement, MAPSA proposed, in its Counter Proposal, that the distribution

rate be decreased from 2.64¢ per kWh to 2.24¢ per kWh. (MAPSA Exhibit DEJ-1S, Schedule A). Although the 0.40¢ difference properly should be allocated back into the calculation of the proper generation rate, for purposes of the Counter Proposal, MAPSA allowed for collection of this difference in the CTC in order not to completely imbalance the settlement negotiated by the parties. (MAPSA Statement No. 1-S at 6).

3. The Joint Petition For Partial Settlement Is Not In The Public Interest Because It Does Not Provide For Competitive Metering And Billing Which Will Provide Additional Cost Savings For Customers.

The obligation to provide metering and billing services is not addressed in the Partial Settlement, but is included in those issues to be addressed by the Commission as "unresolved" in this proceeding. See October 2, 1997 and November 6, 1997 Orders. In its Restructuring Plan, PECO proposes to retain the ability to provide metering and billing services to all PECO customers. The only exception provided by PECO will be for those customers who shop for competitive generation power and choose, as provided by the Competition Act, to receive a separate bill for that service from the generation supplier. Even for those customers who shop, PECO will continue to bill for delivery of power (i.e., transmission and distribution) and for transition charges.

PECO's continued monopoly control over metering and billing services clearly is anti-competitive and will hinder the ability of competitive suppliers to "package" their services to meet the needs of and to create a savings for the customer. As noted by MAPSA's witness, metering standards for the competitive market must meet the evolving nature of the market that will exist after full retail access is available. (MAPSA Statement No. 1 at 26). In the restructured marketplace, competitive provision of services such as metering and billing will provide both convenience and savings to customers. A customer who desires to shop for a competitive supplier clearly should be able to receive and pay a single bill for all electric services -- no matter who the

supplier is. By allowing competitive metering and billing, a customer will receive a further convenience because competition will assist in the development of new and innovative services designed to meet a customer's particular needs. Savings will be achievable because competition will create a pool of customers looking for an alternative array of services at lower prices. Allowing services such as metering and billing to be provided by all suppliers, not just by PECO and not just the single exception provided for by the Competition Act, will lead to better services and lower prices for Pennsylvania consumers.

PECO contends that the Competition Act "assigns" the metering and billing functions solely to the electric distribution company ("EDC"); this argument is wholly lacking in merit for the following reasons. Section 2807(d) of the Competition Act, states that the "electric distribution company shall continue to provide customer service functions [including meter reading] consistent with the regulations of the commission." 66 Pa. C.S. §2807(d) (emphasis supplied). Thus, the Act clearly, and on its face, contemplates that the Commission has the power to regulate what functions the EDC will perform; that is, the Act does not "assign" any function to the EDC as argued by PECO. Rather, the Act states that the Commission "may require the unbundling of other services" (i.e., services other than generation, transmission, and distribution, such as metering and billing). 66 Pa. C.S. §2804(3).

Furthermore, the Commission's current regulations do not mandate that metering must be performed by the utility. Chapter 57 of the Commission's regulations, relating to electric service, does not address the subject; rather, it currently only requires utilities to test meters, 52 Pa. Code §57.20 and §57.22. This Section must be read, however, in conjunction with 52 Pa. Code §56.12, which provides that "a utility shall render bills based on actual meter readings by utility company personnel." However, this latter Section has been found specifically by the Commission merely to

set the general requirement that a customer is entitled to an accurate bill, not an estimated bill; and, it also has been held specifically that this Section does not prohibit entities other than the utility from reading meters. Fritz v. The Peoples Natural Gas Company, C-00957277 (Order entered February 8, 1996, adopting the Initial Decision of ALJ Schnierle issued December 18, 1995). Finally, it is noted that, even if the existing regulations somehow were read to require the utility to perform metering (which they do not), the Competition Act also specifically states that the purpose of the Act is to "modify existing legislation and regulations" and to require utilities "to unbundle their rates and services" in order to provide for competition. 66 Pa. C.S. §2802(12) and (14). Therefore, if the Commission in this proceeding determines that the competitive provision of metering services will accomplish the goals of the Act, any inconsistent regulation must be considered to have been amended by the Act.

The arguments set forth above with respect to the competitive provision of metering services also apply with respect to the billing of customers for services provided in the new competitive market. In addition, Section 2807(c) of the Competition Act only states that "the electric distribution company may be responsible for billing customers for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services." 66 Pa. C.S. §2807(c) (emphasis supplied). Thus, the competitive provision of billing services to electric customers in Pennsylvania by entities other than PECO already is specifically permitted by the Act, should the Commission determine, as it should, that such a practice is in the public interest.

4. The Joint Petition For Partial Settlement Is Not In The Public Interest Because It Does Not Contain An Interim Code Of Conduct To Protect Competitive Suppliers And Customers From PECO's Anti-Competitive Behavior Against Competitors Or Its Preferential Treatment Of Its Affiliates.

One of the aspects of both PECO's Restructuring Plan and the Partial Settlement that most concerns MAPSA and its members is the ability of PECO to continue to control the market in anti-competitive ways, because of the lack of an enforceable Code of Conduct that will govern PECO's operational interactions with its generation affiliate and with competitive generation suppliers. If these relationships in the restructured marketplace do not allow equal access and participation in the market for all parties, the ability of competitive suppliers to enter the market and compete will be inhibited, thereby allowing PECO to preserve its monopoly position in the marketplace and eliminating the possibility of cost savings for consumers.

One way to ensure that non-discriminatory structural and operational relationships are developed between PECO and its generation affiliate, and between PECO and the competitive suppliers, is to establish an Interim Code of Conduct in this proceeding. MAPSA's Counter Proposal contained such an Interim Code of Conduct. (MAPSA Exhibit DEJ-1S, Attachment 2). In spite of the Commission's determination to treat the issue generically, at least an Interim Code of Conduct must be established in this restructuring proceeding. A rulemaking, by its very nature is general, and not company-specific. While the rulemaking, which will take at least a year to complete, may set detailed guidelines, it will require specific filings to be made by each utility; those filings, in all likelihood, will be subject to further adjudicatory-type proceedings, which may not be resolved until well into the first year of competition, even assuming that the final rules are adopted by the end of 1998.

The Interim Code of Conduct proposed by MAPSA addresses the relationship between PECO's distribution functions and its dealings with its generation affiliates in the restructured market. The Interim Code also addresses the relationships that will exist between PECO and the competitive suppliers. Specifically, the Interim Code proposed by MAPSA prohibits the sharing of employees, and requires functional and physical separation of the operational services to be provided by PECO's distribution and generation affiliates. (MAPSA Exhibit DEJ-1S, Attachment 2, ¶¶1-3). It requires that PECO give no preference to its generation affiliates, nor discriminate against any non-affiliate, in the processing of customer requests for service or in the provision of access to distribution and transmission facilities. (Id. at ¶¶4-6). The proposed Interim Code requires that PECO equally supply or sell goods and services, and directs that the charges, terms and conditions contained in its tariffs be applied equally to both affiliated and non-affiliated generation suppliers. (Id. at ¶¶8-9). It also requires that the provision of regulated goods and services by PECO could not be tied into the acceptance of generation service from PECO or its affiliates. (Id. at ¶7). It requires that customer assistance services would be provided to affiliated and non-affiliated suppliers at the same rates, terms and conditions; that pricing and operational information would be shared at the same time and in the same manner with all suppliers; and that neither PECO nor its affiliated generation suppliers would disburse information to customers which would state or imply that service provided by PECO or its affiliates was of a better quality or that service to be provided by a non-affiliate supplier was of lesser quality. (Id. at ¶¶10-13).

MAPSA believes that the provisions set forth in the Interim Code of Conduct contained in its Counter Proposal are reasonable and that they will further the purpose of the Competition Act -- the development of a competitive market -- by restricting PECO's use of anti-competitive behavior

which could act as a barrier to the market entry of alternative suppliers. These provisions should be adopted until such time as the Commission's rulemaking and subsequent proceedings are complete.

5. The Joint Petition For Partial Settlement Is Not In The Public Interest Because It Does Not Provide For The Creation And Implementation Of A Pro-Competitive Supplier Access Tariff, Thereby Restricting Access To The Marketplace By Competitive Suppliers.

As discussed earlier in this Brief, MAPSA believes it is vital to the development of a fair and competitive electric market that interim rules to govern the structural and operational relationship between PECO and its generation affiliate, and between PECO and the competitive suppliers, be adopted as part of this proceeding, and that they remain in place until such time as the Commission has enacted permanent guidelines or regulations on these issues. Because neither PECO's Restructuring Plan, nor the Partial Settlement, contains specific tariff terms to govern utility/affiliate/supplier interactions, both the Plan and the Settlement are inadequate and contrary to the public interest which is to further the development of competition.

While MAPSA did not submit a specific supplier tariff as part of its Counter Proposal, it did propose that PECO and the competitive suppliers meet and negotiate the terms of interim operating and supplier interaction rules, with a date for completion of this negotiation to be no later than June 1998. (MAPSA Exhibit DEJ-1S, p. 2 at ¶10). In the alternative, MAPSA would endorse the establishment of a tariff similar to that proposed as part of Enron's Choice Plan. (Enron Energy Services Power, Inc. ("EESPI") Statement No. 5, Exhibit A). While MAPSA does not necessarily endorse each of the provisions of the Enron supplier access tariff as written, MAPSA does believe that the proposed tariff adequately addresses issues which are particularly necessary to the prevention of barriers to supplier access of PECO's delivery system. These issues include, but are not limited to: (a) procedures for solicitation, enrollment and provision of service to end-users (EESPI Statement No. 5, Exhibit A, Rule 2, pp. 12-14); (b) EGS requirements for load forecasting,

scheduling and reconciliation of electric energy delivery over PECO's distribution and transmission system (EESPI Statement No. 5, Exhibit A, Rule 3, pp. 15-17); (c) tariff and contract options available to an EGS (EESPI Statement No. 5, Exhibit A, Rule 11, p. 26); (d) service continuity (EESPI Statement No. 5, Exhibit A, Rule 12, pp. 26-27); (e) metering and billing services (EESPI Statement No. 5, Exhibit A, Rules 14 and 16, pp. 28, 30-31); (f) billing and payment for services (EESPI Statement No. 5, Exhibit A, Rule 17, pp. 32); (g) termination of service (EESPI Statement No. 5, Exhibit A, Rules 18-20, pp. 33-34); (h) customer service obligations (EESPI Statement No. 5, Exhibit A, Rule 22, pp. 34-35); (i) competitive safeguards (EESPI Statement No. 5, Exhibit A, Rule 23, pp. 35-36); and, (j) default service (EESPI Statement No. 5, Exhibit A, Rule 24, pp. 37-39).

6. The Joint Petition For Partial Settlement Is Not In The Public Interest Because It Is Designed To Minimize Shareholder Risk At The Expense Of A Competitive Market; The Only Way To Ensure That The CTC Will Not Create A Windfall To PECO At The Customers' Expense, And To Ensure That It Will Not Be Used To Frustrate Competition, Is To Review It On A Somewhat Regular Basis During Its Collection Period.

That PECO's overall motive and goal in this proceeding is to delay competition, is not just implicitly apparent. Rather, PECO's motive is found in the evidentiary record and is based upon its belief that the Competition Act does not appropriately balance the Company's shareholder and ratepayer interests; in short, PECO's "real position" is that competition should be phased-in by the year 2005, instead of 2001 as provided for by the Act. (N.T. 558, 563).

As readily admitted by a PECO witness at hearings in this case (N.T. 558-559), the year 2005 was the year which PECO originally supported (during the "stakeholder legislative effort" in 1996) for the commencement of real competition. While PECO promised everyone in the "stakeholder group" in late 1996 that it agreed with an amendment to the draft legislation which provided for competition in 2001, it immediately "went back to the drawing board," and cleverly

designed a restructuring proposal with an insidious CTC to defeat the Act's mandate for full competition by the year 2001. This conclusion is not merely speculative; rather, it is clearly supported by the record developed in this proceeding, wherein PECO expressed its true position regarding the effect of the Act:

> [T]he Competition Act, while striving to equitably balance the interests of customers and shareholders, tips the scales decidedly in favor of the former.

(PECO Statement No. 1 at 14) (emphasis supplied).

While PECO's witness under cross-examination tried to hide the Company's true position that the Act is slanted in the customers' favor, he succeeded only in giving diametrically conflicting testimony:

> Q: But in terms of balancing between shareholder and customer, it's your position that the legislation, as drafted and passed by the Legislature, tips the scales in favor of the customers.
>
> A: I wouldn't class it that way, Mr. Hawke. I would say that the act, itself, is an act which balances the needs of customers or the desires of customers. It balances the needs or desires of companies and their shareholders. I think it reasonably reflects other constituencies, including the suppliers, of which you are representing one.

(N.T. 562-563).

Further, PECO's true anti-competitive motives are borne out by its corporate history, both of using the regulatory process, and of abusing the regulatory process, as an anti-competitive shield. As PECO witness Hill readily acknowledged, PECO has been innovative in using the regulatory process to retain load. Mr. Hill stated:

> **Retention of Customer Load.** PECO has been innovative in developing flexible rate offerings designed to retain existing industrial load and to promote economic development. These flexible rates

> have resulted in revenue retention in excess of $60 million on an annualized basis.

(PECO Statement No. 1 at 22).

Of course, this prowess at using the regulatory process, obviously must be viewed as anti-competitive, vis-a-vis the competitive energy suppliers. More significantly, however, and pertinent to this proceeding, is the absolute fact that PECO has not only used the regulatory process to defeat the competitive threat of cogeneration, it has abused that process. Namely, in the mid-to-late 1980s, PECO insisted upon treating cogenerators as any other industrial customer, and provided a tariff, known as the Auxiliary Service Rider ("ASR"), to supply cognerators with essential backup and maintenance power. In reviewing and striking PECO's tariff provisions, the Commission found as follows:

> As will become obvious, infra, PECO has attempted, by its refusal to recognize these actual costs and by its insistence on treating cogenerators as any other industrial customer to erect obstacles to the development of cogeneration in its service territory. Instead of attempting to work with potential cognerators for the benefit of all ratepayers, it has attempted to hold back the progress of cogeneration.

Pa. PUC v. Philadelphia Electric Company, R-850290 (Recommended Decision at 7, adopted by the Commission, 61 Pa. P.U.C. 810 (1986).

And, to this very day, PECO still would attempt to have this Commission believe that it never engaged in anti-competitive behavior, contrary to the best interests of its ratepayers:

> Q. And is it also fair to say that PECO was generally successful in encouraging its large customers not to engage in cogeneration?
>
> A. I think we have a degree of development of cogeneration where it makes business sense for those customers and the company has encouraged that . . . . But, there has a limited amount of cogeneration development in our service [area].

> For reasons that the customer would have to explain, not PECO.

(N.T. 560).

In short, it is submitted that the Company which abused the regulatory process in developing rates essential to cogenerators, now presents the Commission with "Table A"; if adopted by the Commission, Table A will produce the same result as the ASR -- a withholding of the progress of competition, contrary to the mandates of the Competition Act.

There are only two ways to ensure that the CTC will not create a windfall to PECO at the customers' expense, and to ensure that it will not be used to frustrate competition. First, the CTC must be reviewed on a somewhat regular basis during its collection period; second, true divestiture should be required. Because divestiture cannot be ordered by the Commission, however, it is therefore essential that the CTC be reviewed. While PECO argues that the CTC cannot be adjusted in the future, there simply is no support, either at law or in reason, for such a proposition. According to PECO's argument, the CTC must be established today -- when market prices are significantly depressed due to excess capacity -- in order to define the recovery of "above-market" prices for years to come. Of course, if the market price in future years turns out to be higher than expected, PECO theoretically will not recover its entire stranded cost. On the other hand, if PECO's current projections of market price turn out to be lower than those which actually exist in future years, PECO and its shareholders will obtain a windfall -- at the expense of its customers and at the expense of developing a competitive market. The fact of the matter is, as verified by history, that nobody knows what the price of electricity will be with any degree of certainty in the near or distant future, and this Commission simply cannot afford to err. Because divestiture cannot be ordered, and because PECO has frustrated the true determination of its stranded cost by proposing to transfer its assets to an affiliate, the CTC simply must be revisited, as suggested by MAPSA's witness in this

proceeding, if not every year, at least on some regular basis (for example, every two years) throughout the recovery period. (MAPSA Statement No. 1 at 17).

7. The Joint Petition For Partial Settlement Is Not In The Public Interest Because It Proposes To Allow A Transfer Of PECO's Generation Assets To A Corporate Affiliate Without Prior Commission Review And Approval And Without A Prior Commission Determination Of The Value Of The Assets.

The Partial Settlement also contains a provision which will permit PECO to transfer all of its generating functions, not on a market basis to an independent third party, but to a separate corporate affiliate or subsidiary. As part of this proposed transfer, however, PECO also gets to automatically value the assets being transferred at $2.303 billion, without any record evidence regarding the value of those assets. As argued previously, this proposed transfer frustrates the Commission's job of determining a true stranded cost figure, and requires the Commission, instead, to engage in market price speculation.

While the Partial Settlement "acknowledges" that certain regulatory approvals are required for this transfer to take place in the future, it also provides that none of the Joint Signatories will "oppose, nor support any opposition to" PECO's efforts to obtain these approvals. (Partial Settlement at p. 15). The parties' proposal, to allow PECO to allow the generation assets to be transferred to its generation affiliate without the development of a prior and complete record, is contrary to the spirit, if not the letter of the Public Utility Code. The Joint Signatories must be "unshackled" from their agreement not to challenge the transfer and the value of PECO's assets.

Section 1102 of the Public Utility Code, 66 Pa. C.S. §1102, clearly provides that asset transfers require the prior approval of the Commission. Even if the parties to the Partial Settlement can waive their rights to review the proposed transfer, the Commission should not permit PECO to transfer assets currently being used in the provision of electric service, without first reviewing all

aspects of that transfer, and without making specific determinations regarding the public interest aspects of the transfer, as well as the appropriate value to be assigned to the generation assets being transferred. For this reason, the "generation asset transfer" provision of the Partial Settlement has not been proven to be in the public interest, and it should be rejected, in spite of the Joint Signatories current agreement to waive their rights.

C. PECO's Original Restructuring Plan, As Filed On April 1, 1997, Similarly Is Not In The Public Interest Because It Will Not Allow For The Development of Competition For Pennsylvania Electric Consumers As Envisioned By The Competition Act And As Expressed By The Legislature And The Commission.

PECO's original Restructuring Plan contains the same flaws as does the Partial Settlement; therefore, MAPSA's arguments that PECO's Restructuring Plan is not in the public interest are the same as the arguments set forth above in this Brief with respect to MAPSA's contention that the Partial Settlement is not in the public interest. Neither PECO's original Restructuring Plan, nor its revised Plan, as reflected in the Partial Settlement, will lead to the development of a competitive retail market for electric generation in PECO's service territory. In order to foster the development of a market for retail generation supply in Pennsylvania, and reduce the probability that PECO will continue to hold its monopoly market power in its service territory, the same important changes must be made to PECO's Restructuring Plan as must be made to the Partial Settlement.

There must be a generation rate component included in the Restructuring Plan that is higher than that proposed by PECO in order to provide a reasonable opportunity for competition to begin and to flourish. (MAPSA Statement No. 1 at 5-21). Also, costs must be appropriately allocated between the continuing monopoly services and new competitive services that will continue to be provided by PECO, but which also may be provided by alternative suppliers. (MAPSA Statement No. 1 at 21-23). There should be a more explicit code of conduct that will promote fair and equitable treatment among competitors. (MAPSA Statement No. 1 at 24-25). New generation

suppliers also should have the right to install and read billing meters and should not be precluded from providing customers with a single bill for supply and delivery services. (MAPSA Statement No. 1 at 25-28). Finally, the Restructuring Plan contains no tariff for services that will be provided to new generation suppliers; a supplier tariff is vital because it will address important aspects of PECO's structural and operational relationship with future competitive suppliers. (MAPSA Statement No. 1 at 28).

D. It Is Important For The Commission To Decide Certain Unresolved Issues In This Proceeding; That Is, (1) Metering And Billing Should Be Competitive Services, (2) An Interim Code Of Conduct Is Needed To Establish The Structural And Operational Relationships That Will Exist In The Restructured Marketplace, and (3) A Pro-Competitive Supplier Access Tariff Is Necessary To Provide Full Development Of Competition.

As noted in the Procedural History, above, the Joint Petition for Partial Settlement did not resolve all issues related to PECO's Restructuring Plan. Instead, PECO and several other parties requested that the Commission consider certain issues in generic rulemaking proceedings. While the Commission determined that some of the issues identified by the parties should be addressed in generic proceedings, and is initiating a rulemaking proceeding to address these issues, the parties were directed to litigate and brief several specific issues and "any other issue that is statutorily required to be considered by the Commission in resolving PECO's Restructuring Plan." (October 2, 1997 Tentative Order at 4; November 6, 1997 Order at 2). Two of these "unresolved" issues are of particular concern to MAPSA; the competitive provision of metering and billing services and the establishment of structural and operational rules to further the development of competition and to prevent anti-competitive behavior by PECO. Although MAPSA will not repeat its arguments in full at this point in this Brief (see Sections IV.B.3, IV.B.4. and IV.B.5., above); MAPSA believes that these issues should be resolved in this proceeding in the following manner:

1. Metering and billing should be unbundled and alternative suppliers should be permitted to offer these services on a competitive basis so that a greater array of services and additional cost savings can be provided to consumers.

2. The structural and operational relationship between PECO and its affiliates, as well as between PECO and the alternative suppliers, must be fair and competitive so that effective competition and cost savings will be available to PECO's customers; an Interim Code of Conduct governing these aspects of competition should be established in this proceeding.

3. In addition to an Interim Code of Conduct, there must be a pro-competitive supplier access tariff in place because, in the restructured marketplace, the suppliers will often be the utility "customer" rather than simply end users of electricity; PECO cannot be permitted to create anti-competitive barriers to suppliers' full access to transmission facilities.

4. At the very least, the Commission should adopt MAPSA's proposal to set a schedule for the parties to negotiate operations rules, with a date certain being established for completion of those negotiations, and with provisions for the initiation of a Commission proceeding, with decision on an expedited basis, if an agreement cannot be reached.

The omission of provisions for competitive metering and billing by suppliers from PECO's Restructuring Plan and from the Joint Petition for Partial Settlement constitutes a fatal flaw which should prevent the Commission from approving either the Restructuring Plan or the Partial Settlement. MAPSA not only believes the Commission has the authority and the ability by statute to order that metering and billing services be unbundled and provided on a competitive basis, but that the Commission should find the competitive provision of these services to be reasonable and in the public interest. By not addressing the issue of metering and billing in the Partial Settlement, PECO has retained its ability to continue to perform these services for all customers (except those who choose to receive a separate bill for generation provided by an alternative supplier) at least until the

Commission's rulemaking is completed, thereby retaining its monopoly share of the market for these services and preventing maximum cost savings by consumers. In an effort to fully promote competition, the Commission should determine that these services can and should be provided on a competitive basis by all suppliers.

With respect to the development of an Interim Code of Conduct to govern the structural and operational relationship of PECO with its generation affiliate and the competitive suppliers, PECO has proposed that these issues be resolved by the Commission in a generic proceeding that will not be completed for some period of time, or until well into 1999, at the earliest. The period of transition to competition will be a vital time during which the relationships that will exist in the new restructured world will be formed. Allowing these relationships to form without any guidance from the Commission as to the permitted scope and limitation of the activities in which the parties will engage during the development of competition merely gives PECO an opportunity to structure these important relationships and the new marketplace for its benefit and to the detriment of both competitive suppliers and consumers. And, as argued previous, the "rules' will not take effect on a company-specific basis until well into 1999, at the earliest. Competition will not develop if the environment is not fair and equal for all players; and, the loser in this "game" will be Pennsylvania consumers who will be forced to continue to pay high prices for electricity. Such a result is against the purpose and intent of the Competition Act and cannot be allowed by this Commission. Thus, the Commission should establish an Interim Code of Conduct governing the structural and operational aspects of the utility/affiliate/supplier relationship.

A specific piece of the structural and operational relationship that must be created between PECO and the competitive suppliers is the development of rules to govern access by suppliers to PECO's transmission and distribution facilities. This important issue also has been left unresolved

by the Partial Settlement. To ensure that PECO does not thwart the development of competition by creating barriers to facilities' access, the Commission should establish (or, at a minimum, should oversee the establishment of) a pro-competitive supplier access tariff that includes at least procedures under which PECO and the competitive suppliers will handle the following issues: (a) solicitation, enrollment and provision of service to end-users; (b) EGS requirements for load forecasting, scheduling and reconciliation of electric energy delivery over PECO's distribution and transmission system; (c) tariff and contract options available to an EGS; (d) service continuity; (e) metering and billing services; (f) billing and payment for services; (g) termination of service; (h) customer service obligations; (i) competitive safeguards; and, (j) default service.

As indicated previously, MAPSA generally supports Enron's proposed supplier tariff. However, if the Commission determines that it is more appropriate for the interested parties to develop a supplier access tariff, then the Commission should establish a procedure similar to that proposed in MAPSA's Counter Proposal (MAPSA Exhibit DEJ-1S, p. 2 at ¶10), under which PECO, its generation division or affiliate and the competitive suppliers would meet to negotiate interim rules to govern the operational and structural relationships that will exist in the restructured market. These interim rules would be in effect until the Commission has addressed these issues and completed a set of operating and supplier interaction rules as part of its generic rulemaking proceeding. Any Commission Order also should include a date certain by which the negotiating parties would complete their negotiations and present a proposal to the Commission for review, and should provide for the initiation of a Commission proceeding to establish interim rules, on an expedited basis, if agreement of the interested parties cannot be reached.

E. If MAPSA's Counter Proposal Is Not Adopted By The Commission As A Modification To The Joint Petition For Settlement, The Commission Should Adopt Enron's Choice Plan Rather Than Accepting The Anti-Competitive Terms Of The Partial Settlement Or PECO's Original Restructuring Plan.

PECO's Restructuring Plan and the Joint Petition for Partial Settlement both envision that PECO will be the "Default Service Provider" in PECO's service territory. In contrast, the Enron Choice Plan seeks Commission approval to designate Enron as the Default Service Provider. Enron later suggested that the Provider of Last Resort possibly might be a function which could be subject to bid; a position MAPSA endorses.

The objectives of the Enron Choice Plan are similar to the elements MAPSA believes are important for the creation of a fair, competitive market for electricity services. For example, the Choice Plan recognizes that there is a competitive market for services such as metering and billing, customized to the customer's needs. As discussed earlier in this Brief, provision of these services on a competitive basis by entities other than PECO is precluded by PECO's Restructuring Plan and by the Partial Settlement. MAPSA believes that the creation of a competitive market for services such as metering and billing should be an integral part of the restructured market (see, MAPSA Exhibit DEJ-1S, Attachment 1); and, for the reasons cited previously, MAPSA's position is that the competitive provision of these services is <u>not</u> precluded by the Competition Act. Competition in the market to provide these and other services should be encouraged by the Commission as consumers stand to reap the benefits of this competition in the form of lower prices.

More significantly, MAPSA believes that Enron's Choice Plan exposes the gross inadequacy of the terms and conditions contained in PECO's Restructuring Plan and in the Partial Settlement. PECO's attack on the Choice Plan has centered on pointing out "how much money Enron stands to

make." This fact, if true, only exposes how much more PECO stands to gain if either the Restructuring Plan or the Partial Settlement is approved.

While MAPSA's primary position is that its Counter Proposal should be adopted as a modification to the Partial Settlement presented in this proceeding, in the alternative, the Commission should adopt Enron's Choice Plan with the proviso that the Provider of Last Resort function should be bid competitively.

VI. CONCLUSION.

For all of the foregoing reasons, MAPSA requests that this Commission find that neither PECO's original Restructuring Plan nor the Joint Petition for Partial Settlement filed by PECO and the Joint Signatories on August 25, 1997, is reasonable and in the public interest; on the contrary, the original Restructuring Plan and the Partial Settlement are anti-competitive, contrary to the mandates of the Competition Act. On this basis, the Joint Petition for Partial Settlement as modified by MAPSA's Counter Proposal (in accord with the evidence submitted) should be adopted as the final resolution of this proceeding. In the alternative, should the Commission not adopt MAPSA's Counter Proposal, it should adopt Enron's Choice Plan modified so that the Provider of Last Resort be a function subject to bid.

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

DATED: December 2, 1997

SCHEDULE A

MID-ATLANTIC POWER SUPPLY ASSOCIATION'S
COUNTER OFFER
TO PECO SETTLEMENT PROPOSAL

Year	Trans-mission	Distribution	CTC	Standard Offer	Bill Cap	Generation Cap	CTC Revenues	Total Usage
1999	0.51	2.24	2.193	4.01	8.95	6.20	$740,916,589	33,780,905,000
2000	0.51	2.24	2.073	4.13	8.95	6.20	714,317,836	34,456,523,100
2001	0.51	2.24	2.449	4.25	9.45	6.70	860,819,671	35,145,653,562
2002	0.51	2.24	2.622	4.38	9.75	7.00	939,867,227	35,848,566,633
2003	0.51	2.24	2.690	4.51	9.95	7.20	983,767,955	36,565,537,966
2004			2.605	4.59		7.20	971,633,844	37,296,848,725
2005			2.516	4.68		7.20	957,076,851	38,042,785,700
2006			2.412	4.79		7.20	936,046,421	38,803,641,414
2007			2.764	4.44		7.20	1,094,154,411	39,579,714,242
2008			2.612	4.59		7.20	$1,054,565,306	40,371,308,527

APPENDIX "A"

Table A

SCHEDULE OF SYSTEM-WIDE AVERAGE RATE DECREASES *

Effective Date	Transmission (1)	Distribution (2)	CTC or ITC (3)	CTC/ITC % Decreases (b) (3')	Energy & Capacity Cap (4)	Total Bill Rate Cap (5) (1)+(2)+(3) +(4)	Generation Rate Cap (6)=(3)+(4)
	¢/Kwh	¢/Kwh	¢/Kwh	%	¢/Kwh	¢/Kwh	¢/Kwh
September 1, 1998	N/A	N/A	N/A	N/A	N/A	8.95¢	N/A
January 1, 1999	0.47¢	2.64¢	3.04¢	10%	2.80¢	8.95	5.84¢
January 1, 2000	0.47	2.64	3.04	10%	2.80	8.95	5.84
January 1, 2001	0.47	2.64	3.14	9%	3.20	9.45	6.34
January 1, 2002	0.47	2.64	3.14	9%	3.50	9.75	6.64
January 1, 2003	0.47	2.64	3.14	9%	3.70	9.95	6.84
January 1, 2004	(c)	(c)	2.87	12%	3.97	N/A	6.84
January 1, 2005	(c)	(c)	2.77	13%	4.07	N/A	6.84
January 1, 2006	(c)	(c)	2.57	15%	4.77	N/A	7.34
January 1, 2007	(c)	(c)	2.47	16%	5.37	N/A	7.84
January 1, 2008	(c)	(c)	2.27	18%	5.57	N/A	7.84
(end 12/31/08)				40%			

(a) All prices reflect average retail billing for all classes of service (including gross receipts tax). Detail of actual individual rates for each class of service is provided in Appendix B and Appendix C. The average prices as presented in this Table A reflect the profile of service contained in PECO's proof of revenue set forth in Appendix B and Appendix C.

(b) The figures listed in this column present, on average for each year, the percentage decreases in the CTC or ITC relative to PECO's total bundled rates for service on December 31, 1996.

(c) The cap on PECO's transmission and distribution rates under Section 2804(4) of the Electric Competition Act will be extended until January 1, 2004.

Residential Generation Rate Design
Example Based on 1999 Costs

Line		
	Energy Component	**Amount**
1	System average market energy component	2.29¢
2	Adjustment to reflect class usage profile (0.26%)	0.01¢
3	Subtotal	2.30¢
4	Adjustment to reflect class electrical delivery losses (9.35%)	0.22¢
5	Total	2.52¢
	Capacity Component	
6	Market cost of new capacity per kW	$42.00
7	Reserve Requirement (assume 18%)	7.56
8	Subtotal	$49.56
9	Adjustment to reflect class electrical losses (assume 9.35%)	4.63
10	Total	$54.19
11	Convert to a kWh charge for energy only rates (45% load factor)	1.38¢
	Summary	
12	Energy	2.52¢
13	Capacity	1.38¢
14	Retail Business Costs	.48¢
15	Generation Rate Component (also the recommended Default	
16	Energy and Capacity Offer)	4.38¢

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

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

APPENDIX "B"

APPENDIX E
PROPOSED FINDINGS OF FACT

1. Pursuant to Section 2806 of the Pennsylvania Public Utility Code, PECO Energy Company ("PECO") filed its Restructuring Plan on April 1, 1997.

2. PECO's Restructuring Plan requests Commission approval for the imposition of specific unbundled rates and a Competitive Transition Charge.

3. PECO's Restructuring Plan requests Commission approval for specific tariff provisions designed to provide customers with direct access to licensed electric generation suppliers.

4. PECO's Restructuring Plan requests Commission approval for recovery of $6.8 billion of transition and stranded costs.

5. PECO's Restructuring Plan requests Commission approval of procedures through which PECO will meet its universal service and consumer education obligations.

6. MAPSA, a party in this proceeding, is an incorporated association of power suppliers, power marketers, independent power produces and other entities who support the electric services industry.

7. On August 25, 1997, PECO and several other parties to this proceeding filed a Joint Petition for Partial Settlement ("Partial Settlement").

8. The Joint Signatories to the Joint Petition for Partial Settlement include PECO, Senator Vincent J. Fumo; Lance S. Haver; the Consumers Education and Protective Association, et al.; the Office of Trial Staff; the Office of Consumer Advocate; the Office of Small Business Advocate; the Philadelphia Area Industrial Energy Users Group; the Environmentalists; the American Association of Retired Persons and the Department of the Navy.

9. The Partial Settlement gives PECO the right to recover $5.461 billion in stranded assets and costs through the CTC.

10. The Partial Settlement gives PECO customers a 10% across-the-board rate reduction, effective September 1, 1998.

11. The Partial Settlement provides for annual reductions of the CTC and extends the rate cap protections provided in the Competition Act.

12. In the Partial Settlement, PECO agrees to write off at least $2.0 billion of stranded assets and to transfer generation operations to a separate corporate affiliate or subsidiary.

13. In the Partial Settlement, PECO agrees to expand its current universal service program and to educate consumers within its service territory about restructuring and competition.

14. In the Partial Settlement, PECO agrees to encourage small renewable energy technologies.

15. In the Partial Settlement, PECO agrees not to seek recovery of increases in nuclear decommissioning costs before January 1, 2004.

16. Several of the Joint Signatories, as part of the Partial Settlement, agreed to withdraw all pending objections previously filed with respect to PECO's Restructuring Plan, the constitutionality of the Competition Act and the Commission's final Order entered in PECO's securitization proceeding.

17. The rates proposed in the Partial Settlement are unbundled to reflect rates to be charged, effective on January 1, 1999.

18. Table A of the Partial Settlement - Schedule of System-Wide Average Rate Decreases - sets forth the proposed rates to be charged as a result of this proceeding. These charges include a charge for transmission, distribution, CTC and capacity and energy.

19. The Total Bill Rate Cap shown on Table A represents the amount that PECO customers were paying per kilowatt hour for electricity on December 31, 1996, less the 10% decreases agreed to in the Partial Settlement.

20. Transmission rates shown on Table A of the Partial Settlement are 0.47¢, beginning January 1, 1997 and ending December 31, 2003.

21. Distribution rates shown on Table A of the Partial Settlement are 2.64¢, beginning January 1, 1997 and ending December 31, 2003.

22. The distribution rate proposed in the Partial Settlement is too high because it includes an allocation of costs that will be incurred for services that are related to generation. MAPSA Statement No. 1 at 22-23; MAPSA Statement No. 1-S at 5.

23. The CTC rate shown on Table A of the Partial Settlement begins at 3.04¢ in 1999, rises to 3.14¢ in 2001-2003, and decreases to a low of 2.47¢ in 2007 and 2008.

24. The Energy and Capacity Cap figures shown on Table A of the Partial Settlement represent the "effective generation credit" to be offered to customers who shop for generation.

25. The Energy and Capacity Cap is the difference between the total of (1) the transmission charge, plus (2) the distribution charge, plus (3) the CTC (or ITC), and the Total Bill Rate Cap.

26. The Energy and Capacity Cap is the "offer" against which alternative suppliers must compete to sell generation to PECO's customers.

27. The Energy and Capacity Cap rates shown on Table A of the Partial Settlement are 2.80¢ in 1999 and 2000, rising to a high of 5.57¢ in 2008.

28. If an alternative supplier cannot deliver power to a customer at or below the Energy and Capacity Cap, competition will not develop.

29. There is no appropriate relationship between the forecasted market price and the generation credit proposed by PECO. MAPSA Statement No. 1 at 6.

30. PECO's forecasts reflect wholesale market prices for 1999. These forecasts range from 2.45¢ per kWh to 2.84¢ per kWh. MAPSA Statement No. 1 at 6-7.

31. Under any of the PECO forecasts, the market price for 1999 will be higher than the generation credit. MAPSA Statement No. 1 at 8.

32. PECO used the lowest forecast to develop the CTC rate, resulting in a high CTC. MAPSA Statement No. 1 at 7.

33. Because the CTC and the generation credit must be set jointly, a high CTC means that the effective generation credit will be low.

34. The CTC should be revisited on some regular basis throughout the recovery period. MAPSA Statement No. 1 at 17.

35. To realistically compare the generation credit to the forecasts of future market price, all costs incurred by an alternative supplier to deliver power to the customers must be added to the wholesale price paid by the supplier. MAPSA Statement No. 1-S at 7.

36. Supplier costs include marketing; forecasting, aggregating and scheduling load; reconciliation and balancing of supply with loads and related imbalance costs; collection of amounts due for services provided; and the costs of supplier compliance with the Commission's regulations at Chapter 56. MAPSA Statement No. 1-S at 7.

37. These costs total approximately 1/2 cent per kWh. MAPSA Statement No. 1-S at 7.

38. When supplier costs are taken into consideration, the cost at which a competitive supplier must offer power may be as high as 4.38¢ per kWh. MAPSA Statement No. 1-S at 7-8; MAPSA Exhibit DEJ-2S.

39. There will be little if any headroom between market generation costs and the Energy and Capacity Cap during the first years of transition to competition. PECO Statement No. 6-RJ at 7.

40. When the system average Energy and Capacity Cap rates proposed on Table A are compared with the retail energy and capacity costs derived from PECO's market forecasts, the results indicate that there will be no meaningful competition until at least the year 2004 for customers operating at less than a 60% load factor. PECO Exhibit WHH-9.

41. On August 27, 1997, MAPSA submitted to PECO a Counter Proposal to the Joint Petition for Partial Settlement. This Counter Proposal was rejected by PECO but became part of the evidentiary record of this proceeding.

43. MAPSA's Counter Proposal preserves most elements negotiated by the parties to the Joint Petition for Partial Settlement.

44. MAPSA's Counter Proposal allows PECO to recover $5.5 billion of stranded and transition costs.

45. MAPSA's Counter Proposal preserves the 10% rate reduction negotiated for PECO customers as part of the Partial Settlement.

46. MAPSA's Counter Proposal preserves the extended rate caps established by the Partial Settlement.

47. MAPSA's Counter Proposal modifies the Partial Settlement by increasing the "Energy and Capacity Cap" (i.e., the effective generation credit for customers who shop for generation) and by decreasing the distribution rate.

48. MAPSA's Counter Proposal decreases the distribution rate from 2.64¢ per kWh to 2.24¢ per kWh. MAPSA allowed for collection of the difference through the CTC. MAPSA Exhibit DEJ-1S, Schedule A; MAPSA Statement No. 1-S at 6.

49. MAPSA's Counter Proposal increased the Energy and Capacity Cap to 4.01¢ per kWh in 1999, rising to 5.23¢ per kWh in 1008. MAPSA Exhibit DEJ-1S, Schedule A. MAPSA allowed for

50. MAPSA's Counter Proposal included a proposal for the competitive provision of metering and billing services. MAPSA Exhibit DEJ-1S, Attachment 1.

51. MAPSA's Counter Proposal included a proposal for the development of an Interim Code of Conduct to govern the operational relationship between PECO, its generation affiliate and the competitive suppliers. MAPSA Exhibit DEJ-1S, p. 2, ¶10 and Attachment 2.

52. On October 7, 1997, Enron Energy Services Power, Inc. file a Petition for approval of an Electric Competition and Customer Choice Plan.

53. Enron's Choice Plan requests Commission approval for Enron to be the Provider of Last Resort in PECO's service territory.

54. Enron has suggested that the Provider of Last Resort function could be a function subject to bid.

55. Enron's Choice Plan for payment to PECO of stranded costs in the amount of $5.461 billion.

56. Enron's Choice Plan will allow for the development of competition within PECO's service territory.

57. Enron's Choice Plan provides rate reductions to PECO customers: 20% from September 1, 1998 through December 31, 2000, 10% in 2001 and 4% in 2002.

58. Enron's Choice Plan allows competitive suppliers to provide metering and billing services to PECO's customers.

59. Enron's Choice Plan includes a supplier access tariff with procedures for handling the following issues, among others: (a) solicitation, enrollment and provision of service to end-users; (b) EGS requirements for load forecasting, scheduling and reconciliation of electric energy delivery over PECO's distribution and transmission system; (c) tariff and contract options available to an EGS; (d) service continuity; (e) metering and billing services; (f) billing and payment for services; (g) termination of service; (h) customer service obligations; (i) competitive safeguards; and, (j) default service. EESPI Statement No. 5, Exhibit A.

60. The Commission's October 2, 1997 and November 6, 1997 Orders directed the parties to address whether entities other than PECO are permitted by the Competition Act to provide metering and billing services.

61. PECO's Restructuring Plan proposes that PECO will continue to provide metering and billing services, subject only to the single exception provided in the Competition Act. The Partial Settlement did not make different provisions for metering and billing.

62. PECO originally supported the year 2005 (in the stakeholder legislative efforts) for the commencement of competition, instead of 2001 as provided for by the Competition Act. N.T. 558-559, 563.

63. PECO believes that the Competition Act is slanted in favor of the customer. PECO Statement No. 1 at 14.

64. In the past, PECO has been innovative in using the regulatory process to retain customer load. PECO Statement No. 1 at 22.

65. One of PECO's overall motive and goals in this proceeding is to delay competition. (N.T. 558, 559, 563) (PECO Statement No. 1 at 14) (N.T. 562-563) (N.T. 560).

ULTIMATE FINDINGS OF FACT

66. The Joint Petition for Partial Settlement contains an effective generation credit that too low to allow alternative suppliers to enter the market. (MAPSA Statement No. 1 - S; MAPSA Exhibit DEJ-2s) (PECO Statement No. 6-RJ at 7) (PECO Exhibit WHH-9)

67. The Joint Petition for Partial Settlement contains a distribution rate which includes allocations of costs that will be incurred by PECO for services associated with its generation, marketing, customer service and sales functions. (MAPSA Statement No. 1 at 22-23; MAPSA Statement No. 1-S at 5).

68. Metering standards for the competitive market must meet the evolving nature of the market which will exist after full access is available, and allowing such services as metering and billing to be provided by all suppliers, not just by PECO, will lead to better services and lower prices. (MAPSA Statement No. 1 at 26).

69. The CTC must be revisited on some regular basis throughout its recovery period. (MAPSA Statement No. 1 at 17).

70. It is essential that there be an explicit Interim Code of Conduct in order to promote fair and equitable treatment among competitors. (MAPSA Statement No. 1 at 24-25).

71. It is essential that there be a pro-competitive supplier access tariff in order to promote fair and equitable treatment among competitors. (MAPSA Exhibit DEJ-1S, page 2, paragraph 10).

APPENDIX F
PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.

2. PECO and the Joint Signatories, as the proponents of the Joint Petition for Partial Settlement, have the burden of proof to prove that the terms of the Partial Settlement are reasonable and in the public interest. 66 Pa. C.S. 332(a).

3. PECO, as the proponent of its April 1, 1997 Restructuring Plan, has the burden of proof to prove that the Restructuring Plan is reasonable and in the public interest. 66 Pa. C.S. 332(a).

4. One goal of the Competition Act is to promote competition; another goal is to allow utilities to recover "reasonable" transition charges. 66 Pa. C.S. §2802(3), (5), (7), (12), (14), and (15).

5. The Commission has complete discretion regarding all other elements that are necessary to establish a competitive market. 66 Pa. C.S. §2802(12) and (14).

6. A Competitive Transition Charge (CTC) is "[a] nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network which (charge) is designed to recover an electric utility's transition or stranded costs as determined by the *commission. . . .*" *66 Pa. C.S. §2803.*

7. "Transition or stranded costs" are "[a]n electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market . . . ." 66 Pa. C.S. §2803.

8. Section 2807(c) of the Competition Act does not prohibit entities other than the utility from providing billing services to utility customers. 66 Pa. C.S. §2807(c).

9. Section 2807(d) of the Competition Act gives the Commission the power to regulate what functions the EDC will perform. 66 Pa. C.S. §2807(d).

10. Section 2804(3) of the Competition Act states that the Commission may require the unbundling of services other than generation, transmission and distribution. 66 Pa. C.S. §2804(3).

11. Neither Chapter 57, nor Chapter 56 of the Commission regulations prohibit entities other than the utility from performing metering or billing functions. 66 Pa. C.S. §§57.20, 57.22, 56.12.

12. Section 1102 of the Public Utility Code provides that asset transfers require prior approval of the Commission; thus, PECO's attempt to value and transfer generation assets without full Commission review of all aspects of the transaction is contrary to the spirit if not the letter of the Public Utility Code. 66 Pa. C.S. §1102(a)(3).

13. An "expert witness" is any witness who possesses "knowledge, skill, experience, training or education" in a specific discipline, and who has testimony that "will assist the trier of fact to understand the evidence or determine a fact in issue." An expert may testify with regard to any issues concerning "scientific, technical, or other specialized knowledge." Fed. R. Evid. 702.

14. Pennsylvania Law requires only that the subject matter of expert testimony be beyond the experience of the average layman. Commonwealth v. O'Searo, 352 A.2d 30 (Pa. 1976).

15. An expert witness may base their opinions or inferences upon facts or data "perceived by or made known to the expert at or before the hearing.... If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts of the data need not be admissible into evidence." Fed. R. Evid. 703.

16. Pennsylvania law provides that the testimony of experts may be based upon reports or studies performed by other parties, where those reports are in evidence. Milan v. Commonwealth, 620 A.2d 721 (Pa. Cmwlth. 1993), app. denied. 633 A.2d 154 (Pa. 1993).

17. The Joint Petition for Partial Settlement is not in the public interest because it contains an effective generation credit that is too low to allow alternative suppliers to enter the competitive market.

18. The Joint Petition for Partial Settlement is not in the public interest because it contains a distribution rate that over-recovers the appropriate costs of distribution service.

19. The Joint Petition for Partial Settlement is not in the public interest because it does not provide for competitive metering and billing which will provide additional cost savings for customers.

20. The Competition Act contemplates that the Commission has the power to regulate what functions distribution companies will perform.

21. The Act does not assign any metering function solely to electric distribution companies; rather, the Act permits the Commission to require the unbundling of services other than generation, transmission and distribution, such as metering and billing.

22. The Competitive provision of metering and billing services to electric customers by entities other than the incumbent utility is authorized by the Act and is in the public interest.

23. The Joint Petition for Partial Settlement is not in the public interest because it does not contain an Interim Code of Conduct to protect competitive suppliers; the provisions set forth in the Interim Code of Conduct contained in MAPSA's counter proposal are reasonable and they will further the purpose of the Competition Act.

24. The Joint Petition for Partial Settlement is not in the public interest because it does not provide for the creation and implementation of a pro-competitive supplier access tariff.

25. The Joint Petition for Partial Settlement is not in the public interest because it is designed to minimize shareholder risk at the expense of a competitive market.

26. In order to ensure that the CTC will not create a windfall to PECO at the customer's expense, and to ensure that the CTC will not be used to frustrate competition, it is reasonable and appropriate to review it on a regular basis during the collection period.

27. Table A as found in the Joint Petition for Partial Settlement, if adopted by the Commission, would result in a withholding of the progress of competition, contrary to the mandates of the Competition Act.

28. The Joint Petition for Partial Settlement is not in the public interest in that it proposes to allow a transfer of PECO's generation assets to a corporate affiliate without prior Commission review and approval and without a prior Commission determination of the assets.

29. PECO's Restructuring Plan, as filed on April 1, 1997, is not in the public interest because it will not allow for the development of a competitive market as required and contemplated by the Competition Act.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing document upon the persons named and in the manner indicated below.

Service By Federal Express:

Paul R. Bonney, Esquire
Noel H. Trask, Esquire
Micahel A. Carvin, Esquire
PECO Energy Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101-8699
215-568-3389

John L. Munsch, Esquire
Allegheny Power Corporation
800 Cabin Hill Drive
Greensburg, PA 15601
412-838-6177

Paul E. Russell, Esquire
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, PA 18101
610-774-6726

Steven P. Hershey, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
215-981-0434

Roger Clark, Esquire
Environmentalists
905 Denston Drive
Ambler, PA 19002-3901
215-628-2630

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

Donald A. Kaplan, Esquire
Pennsylvania Power & Light Company
Suite 500
1735 New York Avenue, NW
Washington, DC 20006-4759
202-331-1024

Joseph A. Dworetsky, Esquire
New Energy Ventures
Hangley Aronchick Segal & Pudlin
One Logan Square, 12th Floor
Philadelphia, PA 19103
215-568-0300

Audrey Van Dyke, Esquire
Naval Facilities Engineering Command
Washington Navy Yard
Building 218, Room 200
901 M Street, SE
Washington, DC 20374-5018
202-433-2591

Usher Fogel, Esquire
Pennsylvania Petroleum Association
Roland Fogel Koblenz & Carr LLP
1 Columbia Place
Albany, NY 1227
518-434-3232

Gordon Smith, Esquire
Electric Clearinghouse, Inc.
Duke Energy Trading & Marketing LLC
Vastar Power Marketing, Esquire
NorAm Energy Management, Inc.
John & Hengerer
1200 17th Street, NW, Suite 600
Washington, DC 20036-3006
202-429-8805

Stephanie A. Sugrue, Esquire
QST Energy, Inc.
Duane, Morris & Heckscher, LLP
1667 K Street NW
Suite 700
Washington, DC 20006-1608

Vincent J. Walsh, Jr., Esqurie
Southeastern PA Transportation Authority
1234 Market Street, Fifth Floor
Philadelphia, PA 19107-3780

Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141

Service By Hand Delivery:

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

Bernard A. Ryan, Jr., Esquire
Karen Oill Moury, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
717-783-2831

Kenneth Mickens, Esquire
Charles Daniel Shields, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
Pitnick Building
Harrisburg, PA 17105-3265
717-787-2677

David M. Kleppinger, Esquire
Derrick P. Williamson, Esquire
PAIEUG
McNees Wallace & Nurick
100 Pine Street
Harrisburg, PA 17108
717-237-5300

Terrance Fitzpatrick, Esquire
David DeSalle, Esquire
GPU Energy
Ryan Russell Ogden & Seltzer
800 North Third Street, Suite 101
Harrisburg, PA 17102
717-233-5287

Christopher B. Craig, Esquire
Senator Vincent Fumo
Room 545 Main Capital Building
Harrisburg, PA 17120
717-783-5210

Walter W. Cohen, Esquire
Andrew J. Giorgione, Esquire
Indianapolis Power & Light Company
204 State Street
Harrisburg, PA 17101
717-234-9734

Daniel Clearfield, Esquire
Gerald Gornish, Esquire
Enron Corp.
Wolf Block Schorr & Solis-Cohen
401 North Front Street
Harrisburg, PA 17101
717-237-7161

Robert A. Mills, Esquire
Pennsylvania Retailers' Association
McNees Wallace & Nurick
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
717-237-5300

Linda C. Smith, Esquire
AARP
Dilworth Paxson Kalish & Kauffman
305 North Front Street
Suite 403
Harrisburg, PA 17101
717-783-5210

Joseph J. Malatesta, Jr., Esquire
Lillian Smith Harris, Esquire
Municipal Intervenors Group
Malatesta Hawke & McKeon LLP
PO Box 1778
Harrisburg, PA 17105

Craig A. Doll, Esquire
Delmarva Power & Light Company
214 State Street
Harrisburg, PA 17101
717-230-9750

John J. Gallagher, Esquire
Zsuzsanna E. Benedek, Esquire
Enron Energy Services, Power, Inc.
LeBouef, Lamb, Greene & MacRae
200 North Third Street, Suite 300
P.O. Box 12105
Harrisburg, PA 17108-2105

Via First Class Mail:

Bruce A. Connell, Esquire
DuPont Power Marketing, Inc.
600 North Dairy Ashford, ML-1034
Houston, TX 77079

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

Paul L. Ziegler, Esquire
Delaware Valley Schools
Energy/Utility Consortium
Ziegler & Zimmerman, PC
355North 21st Street, Suite 304
P.O. Box 1080
Camp Hill, PA 17011-3707

Ethan Giddings
217 Rodman Avenue
Jenkintown, PA 19046
Michael L. Kessler
Vice President and General Counsel
American Energy Solutions, Inc.
111 South Alfred Street
Alexandria, VA 22314

Susan Shanaman, Esquire
Center for Energy and Economic Development
212 North Third Street, Suite 203
Harrisburg, PA 17101-1505

Janet L. Miller

DATED: December 2, 1997