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December 2, 1997

(VIA HAND DELIVERY)

Mr. John McNulty, Acting Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17120-3265

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

Dear Mr. McNulty:

Enclosed herewith for filing in the above-captioned proceedings, pursuant to the November 20, 1997 Prehearing Order No. 6 of Administrative Law Judges Chestnut and Rainey, are two hard copies and one 3.5" diskette of the *Brief of the Southeastern Pennsylvania Transportation Authority*.

Further, as directed by the Judges' November 20 Order, we are submitting two copies and one diskette of the *Brief* to each of the Commissioners, the Office of Special Assistants, and the Law Bureau, as well as one copy each to Judges Chestnut and Rainey.

Also enclosed are five additional copies of the above-referenced filing which we request that you time-stamp and return to our courier.

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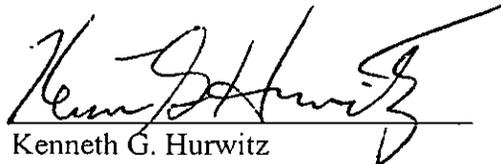
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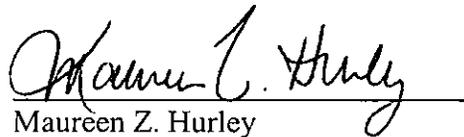
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Mr. John McNulty, Acting Secretary
December 2, 1997
Page 2

Thank you for your assistance.

Very truly yours,


Kenneth G. Hurwitz


Maureen Z. Hurley

Enclosures

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David W. Rolka, Commissioner
John Hanger, Commissioner
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Nora Mead Brownell, Commissioner
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John Povilaitis, Law Bureau
Parties listed on Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility
Commission

v.

PECO Energy Company

PECO Application for Approval of its Restructuring
Plan and Joint Petition for Partial Settlement

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.
R-00973953

Docket No.
P-00971265

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**BRIEF OF THE
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TRANSPORTATION AUTHORITY**

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Dated: December 2, 1997

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission)	
)	
v.)	Docket No. R-00973953
)	
PECO Energy Company)	
)	
PECO Application for Approval of its Restructuring Plan and Joint Petition for Partial Settlement)	
)	
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 THE
SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY**

**I.
INTRODUCTION**

Pursuant to Rules 5.501 and 5.502 of the Commission's Rules of Practice and Procedure (the "Rules"), 52 PA. CODE § 5.501 and 5.502, and Prehearing Order No. 6 entered by Administrative Law Judges Marlane R. Chestnut and Charles E. Rainey, Jr., on November 20, 1997, the Southeastern Pennsylvania Transportation Authority ("SEPTA") respectfully files its brief in the above-captioned proceedings. SEPTA's electric power costs are approximately \$33 million annually, approximately \$26 million

of which is attributable to electric power purchased from PECO Energy Company (“PECO”). SEPTA is one of PECO’s largest customers.

SEPTA filed a *Motion to Intervene* in these proceedings on November 17, 1997, which was granted on November 20. Having intervened shortly before the record closed, SEPTA will not burden the Commission or the parties with a comprehensive brief that advocates positions not previously disclosed. Rather, this brief confines itself to one aspect of the *Joint Petition for Partial Settlement*^{1/} (“the Partial Settlement”). SEPTA urges the Commission to address this aspect of the *Partial Settlement* at this time, in the interest of enhancing public understanding of the rules applicable in a restructured electricity marketplace.

Specifically, this brief addresses Paragraph 13 of the *Partial Settlement*, which deals with the critical issue of recovery of the competitive transition charge (“CTC”) and the intangible transition charge (“ITC”) from those industrial and commercial customers who “significantly reduce” their purchases of electricity through installation of on-site generation.^{2/} Paragraph 13 and Exhibit E of the *Partial Settlement* provide for recovery

^{1/} Joint Petition for Partial Settlement of PECO Energy Company’s Proposed Restructuring Plan and Application for a Qualified Rate Order, Docket No. R-00973952, August 25, 1997.

^{2/} It is SEPTA’s understanding that Enron Energy Services Power, Inc. (“Enron”) is requesting that the Commission approve the *Choice Plan* in conjunction with the elements of the *Partial Settlement* which are not inconsistent with the *Choice Plan*. (See *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, October 7, 1997, at 7.) Because Paragraph 13 of the *Partial Settlement* has no counterpart in the *Choice Plan*, it appears to be one such “not inconsistent” element. Hence, the issues raised in this brief arise

Footnote continued on next page

of the fully allocated share of transition costs for such customers, except for a specified subset of such customers.^{3/} To the extent it deals with the CTC, Paragraph 13 implements Section 2808(a) of the Public Utility Code, Title 66 of the Pennsylvania Consolidated Statutes (the “Code”), as added by the Electricity Generation Customer Choice and Competition Act (the “Act”).^{4/} Section 2808(a) states in pertinent part:

If a customer installs on-site generation which operates in parallel with other generation on the public utility’s system and which *significantly reduces* the customer’s purchases of electricity through the transmission and distribution network, the customer’s fully allocated share of the transition or stranded costs shall be recovered from the customer through a competitive transition charge.^{5/}

66 Pa. C.S. § 2808(a), *emphasis supplied*.

SEPTA contends, and seeks a declaration by the Commission, that neither Section 2808(a), nor Paragraph 13 of the *Partial Settlement* which derives therefrom (to the

Footnote continued from previous page

regardless of whether the Commission favors the *Partial Settlement* or the *Choice Plan* as a whole.

^{3/} Paragraph 13 of the *Partial Settlement* provides that, with respect to any existing industrial or commercial customer whose peak load during 1996 was at least four megawatts and who can document that he was actively self-generating or considering self-generation as of December 31, 1996 or earlier, such customer would pay CTC/ITC charges following the start-up of any self-generating facility installed before December 31, 2008 calculated by PECO as one-third of the dollar amount that would have been charged had the customer been billed for the CTC/ITC at the prevailing Rate HT ITC/CTC charges using billing determinants based on average usage for calendar year 1996.

^{4/} Unless otherwise stated herein, all references to a “Section” or “Sections” refer to the Code.

^{5/} For the Commission’s convenience, copies of Paragraph 13 of the *Partial Settlement*, as well as Appendix E thereto, and Section 2808(a), are attached hereto as Attachment “A”.

extent it applies to the CTC), applies to customers who, through the installation of on-site generation, cease making any purchases of electricity through the utility's transmission and distribution network but who remain physically interconnected with (*i.e.*, operate in parallel with other generation on) the public utility's system. In other words, once such a customer *reduces its electricity purchases from the utility to zero*, and elects to utilize no transmission, distribution or other service of the utility, that entity should not be required to pay a Competitive Transition Charge, notwithstanding the above-quoted statutory provision.^{6/} This interpretation is the proper one not only because it emanates from the plain meaning of the above-quoted provision of Section 2808(a) -- which, on its face, deals only with *significant reductions* in purchases, not cessations or eliminations of them -- but, as demonstrated in this brief, is the only interpretation that is consistent with other language in Section 2808(a) and elsewhere in the Act.

Furthermore, this interpretation faithfully reflects the general policies behind the Act, which are spelled out in Section 2802. Recognizing the importance of fairly resolving issues associated with the transition to a competitive generation marketplace, the General Assembly found that the Commission should be empowered to establish a mechanism for electric utilities to recover an appropriate amount of transition or stranded costs. 66 Pa. C.S. §§ 2802(8), (15). The General Assembly also declared a policy that Pennsylvanians should be able to take advantage of the lower costs brought about by

^{6/} SEPTA in this brief does not request a ruling on, and takes no position as to, the Intangible Transition Charge ("ITC") under Paragraph 13 of the *Partial Settlement*. SEPTA expressly reserves its rights to address the ITC in the future.

increasing competition in the electricity generation market. 66 Pa. C.S. §§ 2802(5), (8). That these two policies are basically at odds with one another could not have escaped the attention of the Act's drafters. The provisions of the Act relating to transition costs and transition cost recovery mechanisms, thus, must be viewed as carefully crafted compromises consistent with *both* of these declarations of legislative intent.

Accordingly, when the General Assembly provided in Section 2808(a) that a "customer who installs on-site generation . . . which significantly reduces the customer's purchases of electricity through the transmission and distribution network" must pay its "fully allocated share of transition or stranded costs," it likely intended to define a precise set of circumstances under which this responsibility would have to be borne. At the same time, recognizing the competing goal of promoting competition in the electricity generation market, the drafters probably were loathe to impose this responsibility upon customers who entirely sever their economic relationship with the electric utility by installing on-site generation and ceasing to purchase any services from the electric utility. To infer otherwise would mean that the General Assembly was willing to allow the Commission to impose a substantial one-time exit fee, or continuing exit fee payments over the duration of the entire transition period, upon customers who had long since ended their economic relationship with the electric utility. This interpretation of the statute would plainly be at odds with its underlying competitive goals.

II.
ARGUMENT

Neither Section 2808(a), nor Paragraph 13 of the Partial Settlement, Should be Interpreted To Apply to Customers Who Install On-Site Generation, Cease Purchasing Electricity Through the Public Utility's Transmission and Distribution Network, But Remain Physically Connected to the Network.

A. **The Phrase “Significantly Reduced” Has a Plain Meaning That Does Not Include the Concept of a “100% Reduction.”**

The plain meaning of the statutory phrase “significantly reduces” contained in Section 2808(a) (and by extension, Paragraph 13 of the *Partial Settlement*) clearly does not extend to a customer’s election to stop all purchases of electricity from his local utility in favor of self-generating all of his electric power requirements. If a consumer who typically has purchased a large number of units of a product or service annually from a certain supplier reports that he has “significantly reduced” his purchases, his comment (absent sarcasm) would not be interpreted by any reasonable person to signal that he no longer buys any units from that supplier. Rather, the word “reduced,” even if modified by the word “significantly,” would be understood to mean cutting back on purchases. The plain meaning and common usage of the word “reduced” simply does not include the concept of “reduced by 100%”. That concept is more precisely captured by any of a variety of words -- “stopped,” “ceased,” or “terminated,” to list the most commonly used ones -- that plainly convey that henceforth, no more purchases will be made.

If the General Assembly had intended to include termination of electricity purchases within the ambit of Section 2808(a), it could easily have overcome the gap left

by the plain meaning of the words “significantly reduces.” For example, it could have added after the words, “significantly reduces” a phrase such as “or results in a complete cessation of.” Neither this nor any other word or phrase, however, was included to alter the plain meaning of the phrase “significantly reduces” as used in the Act, namely, a reduction in electricity purchases short of termination of generation service.

B. SEPTA’s Interpretation of the Phrase “Significantly Reduces” in Section 2808(a) is Consistent With Other Provisions of the Act.

1. Section 2808(a): “accessing the transmission and distribution network”

The interpretation of Section 2808(a) urged above by SEPTA is consistent with, and in fact is required by, the statutory language addressing payment of the CTC. The first sentence of Section 2808(a) states:

To provide each electric utility with an opportunity to recover its transition or stranded costs following the Commission’s determination under subsection (c), every customer *accessing the transmission or distribution network* shall pay a competitive transition charge to the electric distribution company in whose certificated territory that customer is located.

66 Pa. C.S. § 2808(a), *emphasis supplied*.^{2/}

The factual situation presented by SEPTA herein does not involve a “customer” who meets the statutory qualifier, “accessing the transmission or distribution network.” First, it is clear that a person who purchases no electric supply, transmission or

^{2/} The definition of “Competitive Transition Charge” in Section 2803 also contains the language in italics.

distribution service from any entity is not a “customer” under the Act. Section 2803 defines “customer” as “a retail electric customer,” which in turn is defined in that section as “a direct purchaser of electric power.”

Second, a self-generator who provides 100% of its electric power requirements, and purchases no generation, transmission or distribution service from its former utility provider, does not use the network for any purpose and should not be deemed to be “accessing” the network simply by virtue of maintaining a physical interconnection to the grid. That a mere physical interconnection is not enough to characterize a self-generator as “accessing” the network is made clear in the definition in the Act of a related term, “direct access.”

Section 2803 defines “direct access” as the right of electric generation suppliers and end-use customers “to *utilize and interconnect* with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system *to transport electricity from any generator of electricity to any end-use customer.*” 66 Pa. C.S. § 2803, *emphasis supplied*. The foregoing definition first focuses on the right to both “*utilize and interconnect with*” the network, implying that interconnection is distinct from utilization, and that direct access connotes the right to both elements, *i.e.*, utilization and interconnection. The self-generator under the facts presented by SEPTA herein, by contrast, may be interconnected with the network but does not use the network for any purpose.

SEPTA believes that the critical element required in order for an end-use customer to be characterized as “accessing the transmission and distribution network” under Section 2808(a) is use of the system to receive energy from a generation supplier. That use, in fact, is identified in the second italicized phrase in the definition of “direct access” quoted in the paragraph above, in the context of requiring that the rights of an end-use customer to use the network be subject to rates, terms and conditions of service “comparable to the transmission and distribution companies’ own use of the system *to transport electricity from any generator of electricity to any end-use customer.*” 66 Pa. C.S. § 2803, *emphasis supplied*. The comparability concept embedded in the definition of “direct access” thus highlights that, under the Act, the *sine qua non* of an end-user’s “accessing” the network is his use of the network to transport electric energy. The mere presence of a physical interconnection without such actual use should not -- and cannot consistent with the Act as a whole -- be interpreted to constitute “accessing” the network for purposes of Section 2808(a), nor by extension, Paragraph 13 of the *Partial Settlement*.

2. ***Section 2803: Definition of “Competitive Transition Charge”***

The interpretation of Section 2808(a) urged by SEPTA herein is not inconsistent with the “nonbypassable charge” requirement contained in the definition of “Competitive Transition Charge.” CTC is defined in Section 2803, in relevant part, as “a *nonbypassable* charge, applied to the bill of every customer accessing the transmission or distribution network . . .” 66 Pa. C.S. § 2803, *emphasis supplied*. Thus, the CTC is to be recovered only from customers who access the network. If a self-

generator chooses not to access the network, then not imposing the CTC on that self-generator would not constitute a bypass because the charge, by definition, was not recoverable from him in the first instance. Bypass would occur only if a “customer accessing the transmission or distribution network” were permitted to avoid the CTC.^{8/}

III. CONCLUSION

SEPTA urges the Commission to find that neither Section 2808(a), nor Paragraph 13 of the *Partial Settlement*, requires that customers who install on-site generation and cease taking any services from their former utility provider, but remain physically connected to the utility’s transmission and distribution network, must pay a Competitive Transition Charge.^{9/}

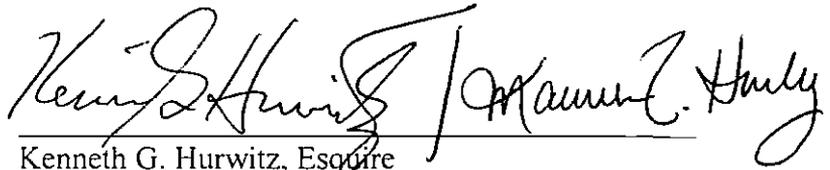
As demonstrated herein, such a finding is consistent with the plain meaning of the operative words “significantly reduces” that are found both in Section 2808(a) and in Paragraph 13 of the *Partial Settlement* and is required by the statutory language in the same section of the Act which specifies the entities subject to the CTC payment requirement -- “customers accessing the transmission or distribution network.” Furthermore, to find that on-site generators who elect to completely sever their economic relationship to their former utility provider do not remain subject to the CTC would not

^{8/} SEPTA’s argument that the phrase “accessing” the network implies the utilization of the network to procure some utility service is bolstered by the use of the phrase “applied to the bill of every customer” in Section 2803’s definition of CTC. This phrase implies that the customer is already receiving a bill, which in turn implies that he is presently purchasing some service from the utility.

^{9/} Attached as Attachment “B” hereto is SEPTA’s *Proposed Conclusion of Law*.

violate the "nonbypassable charge" requirement in the statute, and would reflect an appropriate balancing of competing policy goals relating to the transition to a restructured electric industry in the Commonwealth.

Respectfully submitted,



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Dated: December 2, 1997
52662.02

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Brief of Southeastern Pennsylvania Transportation Authority* was served in the manner indicated, this 2nd day of December, 1997, upon the following:

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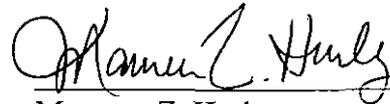
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Attorneys for the SOUTHEASTERN
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AUTHORITY

ATTACHMENT "A"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1509

Session of
1995

INTRODUCED BY DURHAM, FICHTER, KENNEY, EVANS, TRELLO,
YOUNGBLOOD, PRESTON AND WOGAN, APRIL 27, 1995

SENATOR LOEPER, RULES AND EXECUTIVE NOMINATIONS, IN SENATE, RE-
REPORTED AS AMENDED, NOVEMBER 20, 1996

AN ACT

1 ~~Amending Title 66 (Public Utilities) of the Pennsylvania~~ <—
 2 ~~Consolidated Statutes, providing for the regulation of~~
 3 ~~taxicabs in cities of the first class.~~
 4 AMENDING TITLES 15 (CORPORATIONS AND UNINCORPORATED <—
 5 ASSOCIATIONS) AND 66 (PUBLIC UTILITIES) OF THE PENNSYLVANIA
 6 CONSOLIDATED STATUTES, PROVIDING FOR GENERATION CHOICE FOR
 7 CUSTOMERS OF ELECTRIC COOPERATIVES AND UTILITIES; FURTHER
 8 PROVIDING FOR DEFINITIONS; REENACTING PROCEDURAL REQUIREMENTS
 9 FOR TAXICAB CERTIFICATES AND MEDALLIONS; PROVIDING FOR
 10 RESTRUCTURING OF THE ELECTRIC UTILITY INDUSTRY; AND FURTHER
 11 PROVIDING FOR TAXATION.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. Section 2404(a) of Title 66 of the Pennsylvania~~ <—
 15 ~~Consolidated Statutes is amended to read:~~

16 SECTION 1. TITLE 15 OF THE PENNSYLVANIA CONSOLIDATED <—
 17 STATUTES IS AMENDED BY ADDING A CHAPTER TO READ:

18 CHAPTER 74
 19 GENERATION CHOICE FOR CUSTOMERS
 20 OF ELECTRIC COOPERATIVES
 21 SEC.

1 DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND
2 ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT
3 THE END OF THE PHASE-IN PERIOD.

4 (3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT
5 IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN
6 ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC
7 DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE
8 SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET
9 PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL
10 REASONABLE COSTS.

11 (4) IF A CUSTOMER THAT CHOOSES AN ALTERNATIVE SUPPLIER
12 AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION
13 COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION
14 COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW
15 APPLICANT FOR ENERGY SERVICE.

16 § 2808. COMPETITIVE TRANSITION CHARGE.

17 (A) GENERAL RULE.--TO PROVIDE EACH ELECTRIC UTILITY WITH AN
18 OPPORTUNITY TO RECOVER ITS TRANSITION OR STRANDED COSTS
19 FOLLOWING THE COMMISSION'S DETERMINATION UNDER SUBSECTION (C),
20 EVERY CUSTOMER ACCESSING THE TRANSMISSION OR DISTRIBUTION
21 NETWORK SHALL PAY A COMPETITIVE TRANSITION CHARGE TO THE
22 ELECTRIC DISTRIBUTION COMPANY IN WHOSE CERTIFICATED TERRITORY
23 THAT CUSTOMER IS LOCATED. THE COSTS TO BE RECOVERED SHALL BE
24 ALLOCATED TO CUSTOMER CLASSES IN A MANNER THAT DOES NOT SHIFT
25 INTER-CLASS OR INTRA-CLASS COSTS AND MAINTAINS CONSISTENCY WITH
26 THE ALLOCATION METHODOLOGY FOR UTILITY PRODUCTION PLANT ACCEPTED
27 BY THE COMMISSION IN THE ELECTRIC UTILITY'S MOST RECENT BASE
28 RATE PROCEEDING. IF A CUSTOMER INSTALLS ON-SITE GENERATION WHICH
29 OPERATES IN PARALLEL WITH OTHER GENERATION ON THE PUBLIC
30 UTILITY'S SYSTEM AND WHICH SIGNIFICANTLY REDUCES THE CUSTOMER'S

1 PURCHASES OF ELECTRICITY THROUGH THE TRANSMISSION AND
2 DISTRIBUTION NETWORK, THE CUSTOMER'S FULLY ALLOCATED SHARE OF
3 TRANSITION OR STRANDED COSTS SHALL BE RECOVERED FROM THE
4 CUSTOMER THROUGH A COMPETITIVE TRANSITION CHARGE. THE RECOVERY
5 OF TRANSITION OR STRANDED COSTS ASSOCIATED WITH EXISTING
6 GENERATING FACILITIES IS CONTINGENT ON CONTINUED OPERATION AT
7 REASONABLE AVAILABILITY LEVELS OF THE GENERATION FACILITIES FOR
8 WHICH RECOVERY HAS BEEN APPROVED, EXCEPT WHEN THE GENERATION
9 FACILITY IS UNECONOMIC ON A PRODUCTION COST BASIS BECAUSE OF THE
10 TRANSITION TO A COMPETITIVE MARKET.

11 (B) PERIOD FOR COLLECTING COMPETITIVE TRANSITION CHARGE.--
12 THE COMPETITIVE TRANSITION CHARGE SHALL BE INCLUDED ON BILLS TO
13 CUSTOMERS FOR A PERIOD NOT TO EXCEED NINE YEARS FROM THE
14 EFFECTIVE DATE OF THIS CHAPTER UNLESS AN ALTERNATIVE PAYMENT
15 METHODOLOGY IS MUTUALLY AGREED UPON BY THE CUSTOMER AND THE
16 UTILITY OR UNLESS THE COMMISSION, IN ITS DISCRETION AND FOR GOOD
17 CAUSE SHOWN, ORDERS AN ALTERNATIVE PAYMENT PERIOD. IN
18 ESTABLISHING THE LENGTH OF THE PERIOD FOR COLLECTION OF THE
19 COMPETITIVE TRANSITION CHARGE, THE COMMISSION SHALL CONSIDER THE
20 EFFECT ON THE ABILITY OF THE COMMONWEALTH TO COMPETE IN
21 ATTRACTING INDUSTRY AND JOBS, ON THE FINANCIAL HEALTH OF
22 ELECTRIC UTILITIES AND OTHER RELEVANT FACTORS.

23 (C) DETERMINATION OF COMPETITIVE TRANSITION CHARGE.--IN
24 DETERMINING THE LEVEL OF TRANSITION OR STRANDED COSTS THAT AN
25 ELECTRIC UTILITY MAY RECOVER THROUGH THE COMPETITIVE TRANSITION
26 CHARGE, THE COMMISSION SHALL APPLY THE FOLLOWING PRINCIPLES:

27 (1) THE COMMISSION SHALL ALLOW RECOVERY OF REGULATORY
28 ASSETS AND OTHER DEFERRED CHARGES TYPICALLY RECOVERABLE UNDER
29 CURRENT REGULATORY PRACTICE, THE UNFUNDED PORTION OF THE
30 UTILITY'S PROJECTED NUCLEAR GENERATING PLANT DECOMMISSIONING

All Rate HT industrial customers, LILR customers, and Rule 4.6 and EER customers shall have the right to pay all applicable CTC/ITC charges in one lump sum. For customers exercising this option, PECO and the customers will negotiate a mutually acceptable lump sum using the customer's most recent 12 months of demand and energy usage as billing determinants, unless such demand and energy usage will not be representative of the customer's likely demand and energy consumption during the CTC/ITC recovery period (in which case representative values will be used), applied to the CTC/ITC charges for the entire CTC/ITC recovery period, discounted using PECO's after-tax cost of capital. Exercise of the rights in this paragraph 12 and paragraph 13 below shall impose no additional burdens on any other customer classes.

13. Recovery of CTC/ITC from industrial and commercial customers that significantly reduce their purchases through installation of on-site generation will be as fully set forth in Appendix E hereto, which is incorporated as a part of this Partial Settlement; provided, however, that existing industrial and commercial customers whose peak load during 1996 was at least four (4) megawatts, and who can document that they were actively self generating or considering self-generation as of December 31, 1996 or earlier, will pay CTC/ITC charges following full start-up of any self-generation facility they install before December 31, 2008 as follows:

- i. PECO will calculate the customer's average billing demand and energy usage for calendar year 1996;
- ii. Using those billing determinants PECO will determine the dollar amount that would be charged were the customer billed for CTC/ITC using the prevailing Rate HT CTC/ITC charges;

- iii. PECO will bill the customer one-third of the dollar amount determined in accordance with step 2.

14. The cap on PECO's transmission and distribution charges, which otherwise would expire on June 30, 2001 under Section 2804(4) of the Electric Competition Act (66 Pa.C.S. § 2804(4)), will be extended until January 1, 2004. The Joint Petitioners shall not challenge PECO's transmission or distribution rate structure, as set forth in PECO's Restructuring Plan filing, or the level of PECO's transmission or distribution rates as set forth in Appendix C hereto until the expiration of the transmission and distribution cap on January 1, 2004. The charges for distribution service shall be separately stated on retail customer bills. The Joint Petitioners agree that, depending on how this Commission and the FERC resolve the manner in which retail customers may obtain transmission service, charges for transmission service shall be separately stated on retail customer bills unless they are already included by alternative generation suppliers in the market price of delivered energy and capacity or unless the customer purchases the transmission service directly.

15. Direct customer access to alternative generation suppliers will be phased in for all customers on a first-come, first-served basis in three steps -- one-third of the peak load of each customer class of service will have access on January 1, 1999, two-thirds of the peak load of each customer class on January 2, 1999, and the remainder on January 2, 2000. With respect to Rate HT and PD customers only, if the individual customer peak load subscriptions exceed the class peak load limitation for one or more of these steps, then each customer's subscription will be reduced pro rata to meet the class peak load limitation. The Rate GS class will be divided into

Tariff Language to be Added to the Auxiliary Service Rider**CTC/ITC Cost Recovery and On-site Generation:**

To ensure that customers that use on-site generation equipment that operates in parallel with PECO Energy's transmission and distribution system pay their fully allocated share of Transition or Stranded Costs through the Company's CTC and ITC, the Company will follow the following procedure:

1. For all customers served under the Auxiliary Service Rider, PECO will determine annually following completion of each calendar year during which it is charging a CTC and/or ITC whether any such customer purchased at least 10% fewer kilowatt-hours through PECO's transmission and distribution system than the customer purchased during the applicable base year as defined below.
2. Base Year definition: For customers who begin service under the Auxiliary Service Rider on or after January 1, 1997, the base year will be the immediate prior calendar year. For all other Auxiliary Service Rider customers, the base year will be 1996.
3. For all such customers, PECO will then determine the extent to which the reason for the reduction is use of on-site generation equipment. If this cannot be determined using metering data otherwise available to the Company, the customer will be required to provide metering data for its generator, or of its load served by that generator.
4. If the Company determines that the ratio expressed as a percentage between: (1) the amount of the usage difference caused by the on-site generation, and (2) the base year usage, is 10% or more, then the Company will render a separate bill to the customer that is equal to the difference between: (1) the total CTC/ITC amount that the customer would have paid in the just completed calendar year using monthly usage and demand data for the base year (adjusted for any portion that is not related to on-site generation) and (2) the total CTC/ITC amount that the customer did pay in the just completed calendar year.
5. The separate bill will be issued in the first quarter of the new calendar year, and will be due within thirty (30) days of the issuance date printed on the bill.

ATTACHMENT "B"

**PROPOSED CONCLUSION OF LAW
OF THE
SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY**

SEPTA respectfully requests that, regardless of whether the Commission adopts the *Choice Plan* or the *Partial Settlement*, the Commission should make the following conclusion of law:

1. Neither 66 Pa. C.S. § 2808(a), nor Paragraph 13 of the *Partial Settlement*,^{1/} which derives therefrom, applies to customers who, through the installation of on-site generation, cease making any purchases of electricity through the utility's transmission and distribution network but remain physically interconnected with (*i.e.*, operate in parallel with other generation on) the public utility's system. Once such a customer reduces its electricity purchases from the public utility to zero, and elects to utilize no transmission, distribution or other service of the public utility, that entity should not be required to pay a Competitive Transition Charge.

^{1/} As stated in its brief, SEPTA does not request a ruling on, and takes no position therein, as to the Intangible Transition Charge ("ITC") under Paragraph 13 of the *Partial Settlement*.