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December 2, 1997

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

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 for filing with the Commission are an original and two (2) copies of the Brief of the Municipal Intervenors Group in the above-captioned matter. Also enclosed is a 3.5" diskette containing a copy of the Brief in Word 6.0 format. Two (2) copies of this Brief, together with a diskette, have been served upon Chairman Quain and all Commissioners, the Commission's Office of Special Assistants, and the Commission's Law Bureau. A copy of the Brief also has been served upon each of the persons in the manner indicated on the attached Certificate of Service.

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James J. McNulty, Acting Secretary  
December 2, 1997  
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Please direct any questions regarding this filing to me. Thank you for your attention to this matter.

Very truly yours,



Lillian S. Harris

Counsel for Municipal Intervenors Group

LSH/klb  
Enclosures

cc: Chairman John M. 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  
Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Petition Of ENRON Energy Services Power, :  
Inc. For Approval Of An Electric Competition : Docket No. P-00971265  
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 :

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BRIEF OF  
MUNICIPAL INTERVENORS GROUP

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DATED: December 2, 1997

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## I. STATEMENT OF THE CASE

This proceeding commenced on April 1, 1997 when PECO Energy Company ("PECO") filed its Restructuring Plan with the Pennsylvania Public Utility Commission ("Commission") in compliance with the mandate of the Electricity Generation Customer Choice and Competition Act ("the Act")<sup>1</sup>. PECO's Plan, requested *inter alia*, that the Commission approve PECO's proposed "unbundling" of its proposed rates, its proposed Competitive Transition Charges ("CTC"), and proposed tariff provisions.

PECO's Restructuring Plan met quickly with great opposition and the contested proceeding was thus assigned to the Honorable Marlane R. Chestnut and the Honorable Charles E. Rainey, Jr. for the conduct of hearings and the issuance of a Recommended Decision.<sup>2</sup> The Petition to Intervene of the Municipal Intervenors Group ("the Municipal Group") was granted at the prehearing conference of May 21, 1997 and memorialized in Prehearing Order #2, dated June 11, 1997. The Municipal Group is an ad hoc group of 27 municipalities each of whom is a municipality located within PECO's authorized service territory and each of whom purchases electricity for street lighting service from PECO under PECO's Rate SL-E. The Municipal Group contends that PECO's Rate SL-E, as it currently exists and as PECO has proposed to "unbundle" it, fails to properly and fairly allocate revenue responsibility to municipal customers and thereby, precludes a reasonable and fair opportunity for municipal customers to benefit from a competitive environment

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<sup>1</sup> 66 Pa. C.S. §§2801-2812.

<sup>2</sup> On August 27, 1997, a joint petition was filed with the Commission requesting that the Commission forego the use of a recommended decision in ruling on PECO's Partial Settlement. By Order entered October 2, 1997, the Commission granted the petition and directed that the record be certified to the Commission for decision in accordance with 52 Pa. Code §5.531(a).

for electric generation. Because Enron has used PECO's "location charges" for illustrative purposes in developing its SL-E rates, the Municipal Group likewise objects to the Enron Plan.<sup>3</sup>

On August 25, 1997, PECO and several other parties filed a "Joint Petition for Partial Settlement" ("Partial Settlement")<sup>4</sup> which purports to resolve many of the pending issues in PECO's Restructuring Plan. PECO and the other signatories allege that the Partial Settlement provides substantial benefits to PECO customers. The Municipal Group and other parties could not disagree more.

On October 7, 1997, Enron Energy Services Power, Inc. ("EESPI") 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 ("the Enron Plan"). The Enron Plan accepts PECO's level of stranded costs as being \$5.461 and provides for payment of those costs to PECO. The Enron Plan also adopts (for illustrative purposes) the transmission and distribution charges proposed by PECO in its Partial Settlement, including the "Location Charge" for Rate SL-E customers. Enron claims that its Plan allows for the development of competition within PECO's service territory and provides 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).

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<sup>3</sup> Enron witness Paul D. Reising (Enron Statement No. 7), clarified that Enron's use of PECO's transmission and distribution charges (and in the case of Rate SL-E -- "location charges") in its proposed electric delivery service tariff was for illustrative purposes only and that Enron maintained its position that PECO's transmission and distribution charges were too high, for all of the reasons stated in Mr. Reising's prior testimony. The Municipal Group agrees with Enron that the location charges for Rate SL-E are too high and opposes Enron's proposal to the extent that it in any way endorses PECO's unbundling proposal for Rate SL-E.

<sup>4</sup> The Partial Settlement was supported by: 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.

Between April and November 1997, numerous prehearing conferences and evidentiary hearings were held. Not surprisingly, the Joint Signatories failed to achieve unanimous support for PECO's Partial Settlement. Thus, hearings were scheduled on all issues implicated by PECO's original Restructuring Plan, by its Partial Settlement, and by the Enron Plan.

Literally volumes of testimony and accompanying exhibits were produced and admitted into the record. The Municipal Group presented the testimony of two witnesses. The first was the President of Lumen Group, Mr. James L. Crist. Lumen Group is a consulting firm that provides analysis and advice to large electric and gas utilities and unregulated energy service providers in the areas of product development, strategic planning, new business planning, marketing planning, marketing communications, sales force planning, and market intelligence.<sup>5</sup> Mr. Crist has been in the energy business for 20 years. He has extensive experience in the electric industry and he is a frequent lecturer and teacher on electric industry topics.<sup>6</sup> Mr. Crist sponsored Municipal Intervenors Group Statement Nos. 1 and 2. The Municipal Group's second witness was Cornell Hopkins, Township Manager for Newtown Township, Bucks County, Pennsylvania. Mr. Hopkins testified regarding the astronomically high location charges for street lighting service purchased by Newtown Township under PECO's Rate SL-E. He also testified regarding projected charges under the PECO Partial Settlement. Mr. Hopkins sponsored Municipal Intervenors Group Statement No. 3.

The record will be certified to the Commission for decision on December 2, 1997 and the Commission must now evaluate PECO's Restructuring Plan as submitted on April 1, 1997, PECO's Partial Settlement, and the Enron Plan to determine whether any one of them meets the requirements of the Act. It is the Municipal Group's position that none of the referenced "Plans"

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<sup>5</sup> Municipal Intervenors Group Statement No. 1 at 1.

<sup>6</sup> *Id.* at 3.

passes muster because none of them would provide Rate SL-E customers with an opportunity to meaningfully participate in the competitive marketplace for energy generation.

## II. SUMMARY OF THE ARGUMENT

The Commission should reject PECO's proposed unbundling of Rate SL-E because the proposed unbundling perpetuates the grossly unfair way in which Rate SL-E customers currently are billed for street lighting service and because the proposed unbundling will not give Rate SL-E customers any meaningful economic choice of electricity suppliers in the new competitive environment.<sup>7</sup> PECO's existing Rate SL-E is a three-part rate design that consists of a monthly location charge, a capacity charge, and an energy charge. Under that design, the members of the Municipal Group pay about 85% of their annual bills for street lighting service through the fixed monthly location charge. In fact, during 1996, the members of the Group together paid PECO well over \$2,000,000 in location charges. Under PECO's Partial Settlement, the monthly location charge would represent 78% of the SL-E annual bill in the year 2008, when competition is supposed to be in full swing.

Rate SL-E and, in particular, the monthly location charge under that Rate, recovers costs that Rate SL-E customers do not cause PECO to incur. Even assuming that Rate SL-E customers cause PECO to incur all of the costs that PECO recovers under the Rate, Rate SL-E customers still are subsidizing other PECO ratepayers and rate schedules in the amount of \$3,673,000 per year. Subsidies across classes and rate schedules like the one that Rate SL-E customers have been

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<sup>7</sup> PECO has used the same method of "unbundling" Rate SL-E in its Restructuring Plan and the Partial Settlement. To the extent that Enron utilizes that same methodology in its Plan, the Municipal Group likewise objects to it as contrary to the Act.

providing and will continue to provide under PECO's proposed unbundling are contrary to Section 2804(7) of the Act<sup>8</sup> and have no place in a market-driven, competitive world.

Both as it exists and as PECO has proposed to unbundle it, Rate SL-E insulates PECO from any risk of revenue recovery, an insulation that also has no place in a market-driven competitive world. PECO's proposed unbundling of Rate SL-E does not give customers any real chance to save money on their electricity bills through competition or through the introduction of more efficient street-lighting facilities. PECO's design of Rate SL-E is simply a remnant of a bygone era. It has no place in a competitive environment. Finally, compared to what street lighting customers of other participants in the competitive electricity market are paying and, in particular, customers of other Pennsylvania electric utilities, PECO's Rate SL-E customers pay far too much for street lighting service and will continue to do so under PECO's proposed unbundling.

### III. ARGUMENT

#### A. PECO, the Joint Signatories, and Enron Bear the 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). In this case, PECO, the Joint Signatories, and Enron, as the proponents of Orders seeking Commission approval of their respective Plans (and the Partial Settlement), clearly bear the burden of proving that their proposals are in the public interest. Their burden is a heavy one.

The General Assembly has declared as its policy inter alia that:

(3) Because of advances in electric generation technology and Federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market....

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<sup>8</sup> 66 Pa. C.S. §2804(7)

\* \* \*

(5) Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.

\* \* \*

(9) Electric service...should be available to all customers on reasonable terms and conditions.

\* \* \*

(12) The purpose of this chapter is to...establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity....

\* \* \*

and

(14) This chapter requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth....

66 Pa. C.S. §2802.

To achieve these lofty goals, the Commission has been charged with the awesome task of ensuring that electric utilities reasonably and fairly unbundle “electric utility services, tariffs and customer bills to separate the charges for generation, transmission, and distribution.” 66 Pa. C.S. §2804(3). It is the Municipal Group’s position that PECO, the Joint Signatories to the Partial Settlement, and Enron have failed to unbundle Rate SL-E in a manner that comports with the Act and therefore, they have failed to meet their heavy burden of proof.

**B. PECO’s Characterization of Rate SL-E As An “Energy-Only” Rate Schedule Is Not Only Misleading, It Is Ridiculous**

PECO introduced Rate SL-E in 1986 through a petition to the Commission to put the Rate into effect on less than statutory notice.<sup>9</sup> Until the introduction of Rate SL-E, the only street lighting service available to municipal customers outside of the Philadelphia municipal limits was Rate SL-S, a service that was based on PECO’s ownership of all of the facilities used to provide

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<sup>9</sup> Petition of PECO, Docket No. R-860414 (Petition filed May 12, 1986); Municipal Intervenors Group Statement No. 1 at 4.

street lighting.<sup>10</sup> The introduction of Rate SL-E was intended to give customers the option to purchase from PECO or to install themselves, the lights, brackets and other facilities used to provide street lighting service and, in turn, to pay a lower rate than the prevailing SL-S rate.<sup>11</sup>

PECO characterized Rate SL-E as an "energy only" street lighting service.<sup>12</sup> As the Municipal Group's witness Mr. Crist testified, not only was this characterization unfair, "it was ridiculous."<sup>13</sup> This is because, under the rate design that PECO proposed to introduce for Rate SL-E, the customer would pay a monthly charge of \$8.91 for each "location," a capacity charge of \$.00227 per watt, and an energy charge of \$.03212 per kwh. Basically, "hardly any part of a customer's bill was based on energy."<sup>14</sup>

As Mr. Crist testified:

Using a typical mercury vapor street light in use in 1986 of 8,000 lumens, using 200 watts and 820 kwh of energy, a customer's annual bill under Rate SL-E rates proposed by PECO in 1986 would have been \$138.71, of which \$106.92, or 77%, was payment of the location charge. By way of contrast, the "energy" portion of the customer's bill would have been \$26.33 or 19%, a portion that hardly supported PECO's "energy only" characterization.<sup>15</sup>

The Commission approved PECO's petition to put Rate SL-E into effect on less than statutory notice, and because PECO had filed its petition during the pendency of a general rate increase proceeding, PECO conformed the original rates under Rate SL-E to the results of its general rate increase proceeding.<sup>16</sup> As such, the initial SL-E Rates that PECO put into effect on July 4, 1986, were a location charge of \$8.55 per month, a capacity charge of \$.00212 per watt, and an energy charge of \$.02674 per kwh. PECO's design of the Rate SL-E was the same as it had

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

<sup>13</sup> Municipal Intervenors Group Statement No. 1 at 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

proposed in its petition. Under the above example, \$102.60, or 79% of the customer's annual bill, would have paid for the location charge, while only \$21.93, or 17%, would have paid for energy under PECO's "energy only" design.<sup>17</sup>

Since 1986, things only have gotten worse for Rate SL-E customers. For instance, when PECO introduced Rate SL-E in 1986, the unit rates were based on PECO's system average rate of return.<sup>18</sup> That is no longer the case. As demonstrated by PECO Exhibit RAC-1, that has been identified and described by PECO witness Robert A. Clemmer, PECO's system average rate of return for the 12 months ended December 31, 1996 was 9.88%, but its rate of return under Rate SL-E was 16.04%. Thus, customers under Rate SL-E are providing a significant subsidy to other PECO rates schedules and ratepayers.

What is worse, is that Rate SL-E has become even less of an "energy only" charge than it was when introduced in 1986. The rate design under Rate SL-E has not changed, but the unit rates have. As evidenced by PECO's duly filed and effective tariff, the location charge is now \$10.01 per month, the demand charge is \$.00276 per watt, and the energy charge is \$.01741 per kwh.<sup>19</sup> Mr. Crist applied the same example as used previously to determine that over 85% of the customer's annual bill presently goes to the location charge, a charge over which the customer has absolutely no control through either conservation or purchases of generation from providers other than PECO.<sup>20</sup>

Mr. Sundermeir, PECO's witness regarding unbundled rates, rate design issues and other related issues attempted to defend PECO's "energy only" characterization of Rate SL-E as an effort

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<sup>16</sup> Petition of PECO, Docket No. R-860414.

<sup>17</sup> Municipal Intervenors Group Statement No. 1 at 6-7.

<sup>18</sup> Id. at 7; Petition of PECO, Docket No. R-860414, Exhibit C at 3.

<sup>19</sup> Municipal Intervenors Group Statement No. 1 at 7.

<sup>20</sup> Id.

by PECO to differentiate it from the rate for street lighting service that already existed in 1986, Rate SL-S.<sup>21</sup> As noted by Mr. Crist, “If PECO in 1986 was looking for a way to differentiate its ‘new’ Rate SL-E from its existing Rate SL-S, it could not have chosen a more misleading distinction than ‘energy only.’”<sup>22</sup> The point is, however, that since the time that Rate SL-E first was introduced, customers under that Rate Schedule have never had any real control over their bills for street lighting service because anything they could have done to reduce their consumption – like the introduction of more efficient street lighting facilities – would have made virtually no difference whatsoever in their electricity bills.<sup>23</sup> Because of the high fixed monthly location charges that Rate SL-E customers are required to pay, a very insignificant portion of the customer’s total electricity bills are for “energy.” PECO’s reference to Rate SL-E as “energy only” suggested that energy was the only product for which Rate SL-E customers would be billed. As noted by Mr. Crist, Rate SL-E customers “were and have been billed for just about anything but energy.”<sup>24</sup>

The testimony of Cornell Hopkins, Township Manager of Newtown Township, Bucks County, confirms Mr. Crist’s conclusion. Mr. Hopkins testified that Newtown Township is a Rate SL-E customer that paid a total of \$134,241.36 in charges for SL-E service in calendar year 1996.<sup>25</sup> The location charges were \$118,077.96 for 1996 which is approximately 88% of the total charges paid by Newtown Township for street lighting services. Only 12% of the bill was for the amount of electricity used.<sup>26</sup> Mr. Hopkins also testified that under PECO’s Partial Settlement, PECO would still impose a monthly location charge per street light. He noted that the location charge would commence at its existing level of \$10.01 per street light per month and go through a phased

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<sup>21</sup> PECO Statement No. 13-R and Exhibit WFS-7.

<sup>22</sup> Municipal Intervenors Group Statement No. 2 at 11.

<sup>23</sup> Municipal Intervenors Group Statement No. 2 at 11-12.

<sup>24</sup> Municipal Intervenors Group Statement No. 2 at 12, lines 5-6.

<sup>25</sup> Municipal Intervenors Group Statement No. 3 at 2.

<sup>26</sup> *Id.*

reduction to \$6.81 in the year 2008. The first reduction of the location charge would not occur until January 1, 1999, and it would only drop to \$7.66 per street light.<sup>27</sup> Mr. Hopkins noted that Newtown Township would have little incentive to shop around for electric generation, given that the majority of the street lighting bill that is paid to PECO and would continue to be paid to PECO under PECO's Restructuring Plan or its Partial Settlement is comprised of location charges.<sup>28</sup>

**C. The Location Charge Under Rate SL-E Includes Costs That SL-E Customers Should Not Pay and Is Nevertheless Too High**

PECO has misallocated a considerable amount of electric plant in service, including an allocation of common elements, to the location charge for Rate SL-E. PECO's witness, Mr. Sundermeir, has conceded the point. He did not disagree with Mr. Crist that excessive costs have been allocated to Rate SL-E.<sup>29</sup>

It is quite significant that PECO witness Sundermeir did not disagree with the point that excessive costs have been allocated to Rate SL-E. Mr. Sundermeir instead claims that there is no basis for allocating the excessive costs to other rates. As stated by Mr. Crist, "[i]t is obvious that if certain costs do not belong under Rate SL-E then they belong somewhere else."<sup>30</sup> Misallocated costs should not stay under Rate SL-E simply because they have not been specifically earmarked for allocation to some other rate schedule. PECO has an obligation to determine where those costs should properly be assigned.<sup>31</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 2-3. In his Rejoinder testimony, Thomas P. Hill, Jr. of PECO made an arithmetic adjustment to Mr. Hopkins' calculations regarding the predicted location charges under the Partial Settlement. Mr. Hill's calculations simply confirm Mr. Hopkins' statements that the location charges are and will remain astronomically high under PECO's proposals.

<sup>29</sup> PECO Statement No. 13-R and PECO Exhibit WFS-7; Municipal Intervenors Group Statement No. 2 at 8.

<sup>30</sup> Municipal Intervenors Group Statement No. 2 at 8.

<sup>31</sup> *Id.*

As a result of the misallocation, the location charge is astronomically high. PECO's misallocation started and continues under Rate SL-S, the municipal street lighting service that was in effect prior to 1986 and on which the design of Rate SL-E was based. Under both rates, but especially Rate SL-E, PECO has allocated a large amount of distribution costs to the location charge.<sup>32</sup>

Only those distribution costs that are incurred specifically and exclusively for street lighting should be included in PECO's Rate SL-E location charge. PECO has failed, to date, to specifically identify the costs that it allegedly incurs to provide Rate SL-E service. However, an electric utility distribution system is designed to serve residential, commercial and industrial customers. Once that system is designed, if a municipality then decides to buy and hang a 200 watt street light off an existing pole, the municipality only should be charged for the incremental costs that are incurred by the utility. It is plain to see and PECO has conceded that Rate SL-E customers are paying a lot more than those incremental costs in the monthly location charge.

The testimony of the Municipal Group stands virtually uncontradicted by PECO or any other party. PECO witness Sundermeir, who filed responsive testimony to that of Mr. Crist, was silent on many of the criticisms raised by Mr. Crist regarding Rate SL-E. The Commission can interpret Mr. Sundermeir's silence in one of two ways - - either Mr. Sundermeir agrees with Mr. Crist but does not want to say so, or he disagrees with Mr. Crist but has no basis to support his disagreement.<sup>33</sup> Either way, Mr. Sundermeir really has not contested any of the seven reasons that Mr. Crist identified as a basis for rejection of PECO's Rate SL-E as it exists and as it is proposed.

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<sup>32</sup> Municipal Intervenors Group Statement No. 1 at 8.

<sup>33</sup> Municipal Intervenors Group Statement No. 2 at 10.

PECO also presented the rejoinder testimony of Thomas P. Hill, Jr.,<sup>34</sup> however, Mr. Hill's testimony does not respond to any of the specific criticisms raised by Mr. Crist. It simply reiterates the total bill reductions which are proposed for Rate SL-E customers under PECO's Partial Settlement. The Municipal Group disagrees with Mr. Hill that the reductions in the Rate SL-E are "substantial." Instead the Municipal Group submits that the nominal drop in the location charge proposed by PECO and similar reductions to the energy components of Rate SL-E do not solve the core problem that the design of Rate SL-E does not permit Rate SL-E customers to benefit from a competitive environment.

It does not ultimately matter, however, whether the monthly location charge is "astronomically high" or just "high."<sup>35</sup> What matters is that PECO's proposed unbundling of Rate SL-E under its Restructuring Plan or its Partial Settlement<sup>36</sup> leaves the monthly location charge per pole in place and thus provides Rate SL-E customers with no real opportunity to save money on their electricity bills by being able to shop around.<sup>37</sup> The fact that the location charge would drop slightly over time under the Partial Settlement (commencing in January, 1999) means little because the location charge remains as the overwhelming majority of the Rate SL-E customer's bill.<sup>38</sup>

The Municipal Group compared the monthly location charge under Rate SL-E to the monthly service charge paid by a municipal customer under PECO's Rate GS -- General Service -- electricity service available to governmental agencies, including municipalities, for uses other than street lighting.<sup>39</sup> The Rate GS monthly service charge for a facility like a maintenance shed at a municipal park is \$6.63. Assuming that Rate GS is designed using traditional rate design principles,

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<sup>34</sup> PECO Statement No. 1-RJ.

<sup>35</sup> Municipal Intervenor Group Statement No. 2 at 15.

<sup>36</sup> To the extent that the Enron Plan uses the PECO "unbundling" methodology for Rate SL-E, the Municipal Group opposes it for the same reasons stated here.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

the monthly charge is intended to recover all of PECO's usual distribution costs, including poles, wires, transformers and conduit. The Rate GS monthly service charge also includes the cost of an electric meter, a cost that is not incurred by PECO to provide Rate SL-E service. In addition, PECO incurs monthly or other regular meter reading costs and costs to calculate bills based on those meter readings for Rate GS customers, while it does not incur similar costs for Rate SL-E service. Therefore, notwithstanding the fact that Rate SL-E customers only should be allocated incremental distribution system costs, and notwithstanding the fact that Rate GS customers cause PECO to incur costs that Rate SL customers do not, PECO's Rate SL-E customers pay a monthly charge of \$10.01 per location, while a Rate GS customer pays a \$6.63 monthly charge. What is wrong with this picture?

The above example illustrates that the same customer - municipal government - uses and pays for the same electricity to operate its maintenance shed under Rate GS and its street lights under SL-E. However, for the maintenance shed the municipal government pays a fixed charge of only \$6.63 a month, but, for each street light, a much higher fixed monthly charge of \$10.01 per month. If the municipal government adds a 200 watt floor lamp to a the maintenance shed, PECO does not add an extra \$6.63 or worse, \$10.01 as a fixed monthly charge to the municipalities' bill. However, if a municipality adds a street light to dark street or road in order to make it safer, PECO adds an additional fixed charge of \$10.01 to the municipalities' bill. As noted by Mr. Crist, "[t]hat would be like you and me at home paying PECO \$10.01 a month for each lamp in our house."<sup>40</sup>

PECO's response to Mr. Crist's cogent observations was essentially a non-response. PECO did however admit by its responsive testimony that its Rate GS customers will be better positioned

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<sup>39</sup> *Id.*

<sup>40</sup> Municipal Intervenors Group Statement No. 1 at 10.

to take advantage of competition than customers under Rate SL-E.<sup>41</sup> This is because more of the Rate GS costs are allocated to energy charges, and thus, Rate GS customers have more of an opportunity than Rate SL-E customers to reduce their electricity bills through choosing a supplier other than PECO.

Based upon PECO's admission that excessive costs are allocated to Rate SL-E, the Commission must require PECO to modify Rate SL-E so that each municipal street lighting customer pays a single fixed monthly charge regardless of the number of street lights that the customer owns and operates. This remedy assumes that the kinds of fixed monthly charges that public utilities have been allowed to justify in the name of "revenue stability" in the bygone era of full regulation still have a place in a competitive environment.<sup>42</sup> A single fixed monthly charge - even one as high as \$10.01 - should cover PECO's costs to bill for an unmetered service.

With respect to Mr. Sundermeir's claim that the proposed remedy would only allow PECO to recover a small fraction of location-related costs or would result in PECO's having to divide its location-related revenue requirement by the number of Rate SL-E customers instead of by the number of street lighting locations, the Commission should recognize his comments as an attempt both to transform a competition and restructuring issue to a mechanical ratemaking issue and to deflect attention away from PECO through the threat of class warfare between large and small Rate SL-E customers. The solution proposed by the Municipal Group would put an end to PECO's continued use of myopic ratemaking dogma to frustrate any opportunity for Rate SL-E customers to participate meaningfully in the competitive market place for electricity. The critical question is whether PECO's monthly location charge that now represents about 85% of the Rate SL-E customer's electricity bill and which would still represent 78% of that bill in the year 2008 when

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<sup>41</sup> Municipal Intervenors Group Statement No. 2 at 15.

electric competition is supposed to be in full swing, is even remotely defensible in the competitive environment that the Act was intended to create. Clearly, the answer is no.<sup>43</sup>

**D. Rate SL-E, As It Currently Exists And As PECO Has Proposed To Unbundle It, Subsidizes Other PECO Ratepayers and Rate Schedules In Contravention Of §2804(7) of the Public Utility Code**

Assuming, without conceding, that Rate SL-E customers cause PECO to incur all of the costs that it recovers under the Rate, Rate SL-E customers still are subsidizing other PECO ratepayers and rate schedules in the amount of \$3,673,000 per year.<sup>44</sup> PECO has allocated too high of a revenue requirement to Rate SL-E customers. PECO has allocated too much plant in service to the rate base for Rate SL-E and Rate SL-E customers are paying a rate of return that is significantly higher than PECO's system average rate of return.<sup>45</sup> Mr. Crist quantified the excess revenue allocation attributable to Rate SL-E customers. As shown on PECO Exhibit RAC-1, at page 5, Rate SL-E customers have been allocated a total annual revenue responsibility of \$9,557,000. That revenue allocation produces a rate of return of 16.04%. To reduce that rate of return to the system average of 9.88%, PECO would have to reduce the revenue responsibility allocated to Rate SL-E customers by \$3,673,000 annually or by 38.4%.<sup>46</sup>

The General Assembly has recognized that in a market-driven, competitive world, there should not be subsidies across customer classes. Thus, it mandated that the "Commission shall require that restructuring of the electric utility industry be implemented in a manner that does not unreasonably discriminate against one customer class to the benefit of another." 66 Pa. C.S.

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<sup>42</sup> Municipal Intervenors Group Statement No. 1 at 10.

<sup>43</sup> Municipal Intervenors Group Statement No. 2 at 17.

<sup>44</sup> Municipal Intervenors Group Statement No. 1 at 11-13; Municipal Intervenors Group Statement No. 2 at 6 and 8-10.

<sup>45</sup> Municipal Intervenors Group Statement No. 1 at 11.

<sup>46</sup> *Id.* at 11-12.

§2804(7).<sup>47</sup> Accordingly, the Commission must eliminate the subsidies being borne by Rate SL-E customers. Recognizing that the Commission has approved rates for PECO that, for 1996, produced a system average rate of return of 9.88%, the Municipal Group is simply requesting that the Commission eliminate the subsidy being provided by Rate SL-E customers by reallocating revenue responsibility away from Rate SL-E and to other rate classes that, under PECO's 1996 cost of service study, are paying less than a system average rate of return. It is within PECO's expertise to develop a revenue allocation by class that is non-discriminatory and unit rates to recover those revenues.<sup>48</sup>

PECO has not disputed the fact that Rate SL-E customers are subsidizing other PECO rates and rate schedules by almost \$3.7 million annually. In response to the testimony of Mr. Crist, Mr. Sundermeir did not refute Mr. Crist's analysis, instead he focused on the Municipal Group's suggested remedy. Mr. Sundermeir claimed that a reallocation of revenue responsibility would allegedly violate the caps on rates contained in the Act.<sup>49</sup> He also notes that a utility's rate of return from a particular customer class or rate schedule is often a moving target that rarely hits the utility's system average rate of return.<sup>50</sup>

In response to Mr. Sundermeir, Mr. Crist stated:

First, it is important to note that, by suggesting that PECO be allowed to reallocate almost \$3.7 million in annual revenue responsibility to other ratepayers and rate schedules, I was attempting to give PECO the benefit of the doubt that it should be allowed to recover the money at all through its existing menu of services. In point of fact, if the only options permitted by the Customer Choice Act are whether PECO suffers a revenue shortfall or Rate SL-E customers continue to pay excessive rates, then it clearly is PECO, and not Rate SL-E customers, who should take the hit. PECO, and not Rate SL-E customers, was the primary mover in the rate proceedings that produced

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<sup>47</sup> 66 Pa. C.S. §2804(7).

<sup>48</sup> Municipal Intervenors Group Statement No. 1 at 12-13.

<sup>49</sup> 66 Pa. C.S. §2804.

<sup>50</sup> PECO Statement No. 13-R and Exhibit WFS-7.

the cross-subsidy, and PECO, and not Rate SL-E customers, was an active participant in the development of the Customer Choice Act which contains the rate caps that supposedly tie PECO's hands.

Municipal Intervenors Group Statement No. 2 at 9. Mr. Crist was quick to point out, however, that there are other options available to PECO. For example, the Act contains exceptions to the rate caps normally imposed.<sup>51</sup> One of these exceptions is for any new services that PECO offers for the first time after January 1, 1997. Obviously, in a competitive and less regulated market place, PECO may have the opportunity to introduce new revenue streams which may more than offset the reduced revenue stream produced by an end to the unwarranted and excessive cross-subsidy that Rate SL-E customers have been providing for so long.<sup>52</sup>

With respect to PECO's argument that the rate of return is a moving target, Mr. Crist did not disagree. However, Mr. Crist pointed out succinctly that we here are not talking about variations from the system average rate of return of plus or minus 5% or 10% that one can attribute to variations in weather or other types of external forces that may affect consumption from year to year. Rather, the variation is over 62% from the system average rate of return and the Rate SL-E service is unaffected by year-to-year changes in weather.<sup>53</sup>

The Act is clear that cross-subsidization between customer classes is unacceptable. The Municipal Group has clearly established that Rate SL-E customers have subsidized other PECO rate payers and rate schedules to the tune of \$3.7 million annually. The Commission should halt this subsidization immediately. As Mr. Crist noted, "If one were to use a biological analogy, Rate SL-E

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<sup>51</sup> 66 Pa. C.S. §2804(4)(iii).

<sup>52</sup> Municipal Intervenors Group Statement No. 2 at 9-10.

<sup>53</sup> *Id.* at 10.

customers are the hosts to a wide variety of parasites that include not only other PECO ratepayers, but PECO itself.”<sup>54</sup>

**E. Rate SL-E, As It Currently Exists and As PECO Has Proposed To Unbundle It, Virtually Insulates PECO From Any Risk of Revenue Recovery Either As a Result of Variations In Customer Consumption or As a Result of Loss of Market Share To Competition**

As discussed above, over 85% of a Rate SL-E customer’s annual bill now goes to pay location charges. Customers have no control over the location charge either through conservation or, more importantly for purposes of this proceeding, through purchases of generation from providers other than PECO. PECO has designed the SL-E Rate in such a manner so as to effectively insulate itself from any risk of revenue recovery. If customers vary their consumption, PECO still collects its location charges. If customers choose an alternate supplier and PECO loses market share, PECO still recovers its location charges. Rate SL-E customers never have had any real control over their bills for street lighting service because anything they could have done to reduce their consumption would have made almost no difference whatsoever in their electricity bills. In the context of this new competitive world where electric customers are meant to receive economic choices, PECO’s existing and proposed design of Rate SL-E is particularly unfair and offensive.

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<sup>54</sup> Municipal Intervenors Group Statement No. 1 at 4.

**F. Because Rate SL-E Customers Pay (And Will Continue To Pay Under PECO's Proposals) Such a Disproportionate Amount of Their Bill for the Fixed Location Charge, They Have No Realistic Opportunity To Reap Any Savings In a Competitive Marketplace**

PECO's proposed "unbundling" of Rate SL-E does not provide a reasonable and fair opportunity for municipal customers to benefit from a competitive environment for electric generation. Under PECO's original Restructuring Plan or the Partial Settlement, the only part of the Rate SL-E bill for which the customer will be able to shop around is the generation charge. Under the example provided earlier, Rate SL-E customers only can save on 5% of their annual bill through competition. Even if Rate SL-E customers buy generation at a savings of 10%, as alleged to be the case under the Partial Settlement, Rate SL-E would save 10% of 5% or .5% on their total bill.<sup>55</sup> If that is the best that restructuring of the electric industry can provide to Pennsylvania citizens, then both the General Assembly and this Commission are wasting their time.<sup>56</sup>

**G. Because Rate SL-E Customers Pay (And Will Continue To Pay Under PECO's Proposals) Such a Disproportionate Amount of Their Bill for the Fixed Location Charge, They Have No Real Chance To Save Through Energy Efficiency**

PECO's design of Rate SL-E provides absolutely no incentive for Rate SL-E customers to take advantage of efficiency improvements in street lighting technology. As Mr. Crist testified, a mercury vapor light that was used in 1986 uses about twice the amount of electricity for the same lumens as a high pressure sodium lamp in use in 1997.<sup>57</sup> However, because of the high location charge and low energy charge under Rate SL-E, a customer's replacement of an old mercury light with a new sodium light would result in very little reduction to that customer's electric bill. Therefore, PECO's proposed "unbundling" of Rate SL-E provides customers no incentive

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<sup>55</sup> Municipal Intervenors Group Statement No. 1 at 13-14.

<sup>56</sup> *Id.* at 14.

whatsoever to upgrade their equipment to higher efficiency that will conserve energy to the benefit of all.<sup>58</sup>

#### **H. SL-E Customers Pay Too Much For Street Lighting Service**

While PECO's charges for street lighting service under Rate SL-E are chilling when examined on a standalone basis, they are even more outrageous when compared to street lighting services of other electric utilities. The Municipal Group examined Pennsylvania Power & Light Company's ("PP&L") street lighting service because it is an electric utility that borders PECO's service territory and is likely to be one of PECO's primary competitors. PP&L, like PECO, has a street lighting service that is characterized as "energy only."<sup>59</sup> However, unlike PECO's Rate SL-E, PP&L's energy only rate – Rate SE – does not have any fixed monthly charge at all. Street lighting service that costs a PECO customer over \$130 a year costs a PP&L customer a little over \$35 a year.<sup>60</sup> Even Duquesne Light Company, which is considered to be one of the most expensive electric utilities in the country, provides cheaper street lighting service. A customer of Duquesne would pay less than \$65 a year for the same service provided by PECO.<sup>61</sup> While it is unclear whether and the extent to which these differences are due to PECO's excessive allocation of costs to Rate SL-E customers, those customers' subsidization of other PECO rates and ratepayers, or PECO's absurd rate design for Rate SL-E, it is clear, however, that PECO's Rate SL-E is completely unacceptable and indefensible in a competitive market place for electricity.<sup>62</sup>

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<sup>57</sup> *Id.* at 15.

<sup>58</sup> *Id.*

<sup>59</sup> Municipal Intervenors Group Statement No. 1 at 14.

<sup>60</sup> *Id.*

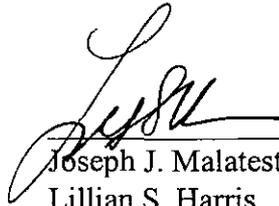
<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

#### IV. CONCLUSION

For all of the foregoing reasons, the Municipal Group requests that this Commission determine that PECO, the Joint Signatories, and Enron all have failed to meet their respective burdens of proving that their Plans/Partial Settlement are reasonable and in the public interest. The Municipal Group requests that the Commission direct PECO to unbundle Rate SL-E in a manner that provides Rate SL-E customers a meaningful opportunity to participate in and benefit from the competitive marketplace for electricity generation.

Respectfully submitted,



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## APPENDIX "A" -- PROPOSED FINDINGS OF FACT

1. PECO's characterization of Rate SL-E as an "energy only" service was and is ridiculous. Municipal Intervenors Group Statement No. 1 at 5.
2. As implemented in 1986, the "energy" portion of a Rate SL-E customer's bill would have been only 17%. Municipal Intervenors Group Statement No. 1 at 7.
3. Currently, 85% of the typical Rate Schedule SL-E bill pays for the location charge, a charge over which the customer has no control through energy conservation or through the choice of an alternate supplier. Municipal Intervenors Group Statement No. 1 at 7.
4. Under PECO's Partial Settlement, in the year 2008, 78% of the typical Rate Schedule SL-E bill would pay for the location charge, a charge over which the customer has no control through energy conservation or through the choice of an alternate supplier. Municipal Intervenors Group Statement No. 2 at 17.
5. Under PECO's proposed unbundling of Rate SL-E (under its Restructuring Plan or its Partial Settlement), the only portion of the SL-E bill for which the customer will be able to shop around is the generation charge. Municipal Intervenors Group Statement No. 1 at 13 and Municipal Intervenors Group Statement No. 2 at 5.
6. PECO's proposed unbundling of Rate SL-E (under its Restructuring Plan or its Partial Settlement) provides very little savings to Rate SL-E customers and virtually no opportunity for Rate SL-E customers to shop around because the large majority of the charges are loaded into the astronomically high location charge. Municipal Intervenors Group Statement No. 1 at 13 and 15; Municipal Intervenors Group Statement No. 2 at 7 and 16.
7. PECO's proposed unbundling of Rate SL-E (under its Restructuring Plan or its Partial Settlement) does not give customers any real chance to save money on their electricity bills through the introduction of more efficient lighting facilities because the large majority of the charges are loaded into the astronomically high location charge. Municipal Intervenors Group Statement No. 2 at 7.
8. The existing and proposed Rate SL-E insulates PECO from the risk of revenue recovery. Municipal Intervenors Group Statement No. 1 at 4; Municipal Intervenors Group Statement No. 2 at 6-7.
9. Rate SL-E customers are subsidizing other PECO ratepayers and rate schedules in the amount of \$3,673,000, per year. Municipal Intervenors Group Statement No. 1 at 4 and 7; Municipal Intervenors Group Statement No. 2 at 6.

10. Subsidies across classes and rate schedules like the one that Rate SL-E have been providing and will continue to provide under PECO's proposed unbundling have no place in a market driven, competitive world. Municipal Intervenor Group Statement No. 2 at 6.
11. PECO has allocated too high of a revenue requirement to Rate SL-E customers. Municipal Intervenor Group Statement No. 1 at 11.
12. One reason for the excess allocation of a revenue requirement to Rate SL-E is an excess allocation of plant in service to that rate schedule. Municipal Intervenor Group Statement No. 1 at 11.
13. A second reason for the allocation of an excess revenue requirement to Rate SL-E is the excess rate of return over the system average which is achieved by Rate Schedule SL-E. Municipal Intervenor Group Statement No. 1 at 11.
14. The rate of return for Rate SL-E for the 12 months ending December 31, 1996 was 16.04% while the system average rate of return was 9.88%. Municipal Intervenor Group Statement No. 1 at 7.
15. The rate of return for Rate SL-E varies by over 62% from the system average rate of return. Municipal Intervenor Group Statement No. 2 at 10.
16. Street lighting service is unaffected by year-to-year changes in weather. Municipal Intervenor Group Statement No. 2 at 10.
17. In order to reduce the Rate SL-E rate of return to the system average of 9.88%, PECO must reduce the revenue responsibility allocated to Rate SL-E customers by \$3,673,000 annually. Municipal Intervenor Group Statement No. 1 at 12.
18. The only distribution costs that should be allocated to Rate SL-E are the incremental costs which PECO incurred after the installation of its poles, wires, and transformers. Municipal Intervenor Group Statement No. 1 at 8.
19. While Rate SL-E customers use wires, poles and transformers that PECO initially installed to serve core customers, Rate SL-E customers, however, did not cause PECO to incur those costs. Those costs would have been incurred even if there were no street lighting customers on PECO's system. Municipal Intervenor Group Statement No. 2 at 13.
20. Rate SL-E and, in particular, the monthly location charge under that rate, recovers costs that Rate SL-E customers do not cause PECO to incur. Municipal Intervenor Group Statement No. 2 at 6.
21. Rate SL-E customers are paying more than the incremental costs associated with Rate SL-E service in the monthly location charge. Municipal Intervenor Group Statement No. 1 at 8.
22. The Customer Choice Act contains exceptions to the rate caps that the Act imposes. Municipal Intervenor Group Statement No. 2 at 9.

23. Any new services that PECO offers for the first time after January 1, 1997 are not subject to the rate caps in the Act. Municipal Intervenors Group Statement No. 2 at 9-10.
24. The same municipal customer pays \$6.63 a month for GS service to operate a maintenance shed, but pays \$10.01 a month for a fixed location charge for a street light. Municipal Intervenors Group Statement No. 1 at 10.
25. Assuming that PECO designed the monthly service charge under Rate GS using traditional rate design principles, then the \$6.63 charge recovers the usual distribution costs, including poles, wires, transformers and conduit. Municipal Intervenors Group Statement No. 1 at 9.
26. The Rate GS service charge also would recover the cost of the meter, the cost for reading meters and the cost of billing for metered service. At the same time, Rate SL-E, which has a higher customer or location charge, is not a metered service. Municipal Intervenors Group Statement No. 1 at 9.
27. Rate GS customers will be better positioned to take advantage of competition than customers under Rate SL-E because more of their allocated costs of service are recovered through energy charges. Municipal Intervenors Group Statement No. 2 at 15-16.
28. While street lighting service costs PECO's SL-E customers approximately \$130 per year, it costs PP&L street lighting customers \$35 per year and Duquesne customers less than \$65 per year. Municipal Intervenors Group Statement No. 1 at 14.
29. Compared to what street lighting customers of other participants in the new competitive market are paying and, in particular, customers of other Pennsylvania electric utilities, PECO's Rate SL-E customers pay far too much for street lighting service and will continue to do so under PECO's proposed unbundling. Municipal Intervenors Group Statement No. 2 at 7.

## APPENDIX "B" - - PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction to resolve the issues raised in this proceeding. 66 Pa. C.S. §§2801-2812.
2. The purpose of the Electricity Generation Customer Choice and Competition Act was to create direct access by retail customers to a competitive market for the generation of electricity. The Act requires that electric utilities rebundle rates and services to allow competitive suppliers to generate and sell electricity directly to Pennsylvania consumers. 66 Pa. C.S. §§2802 and 2804.
3. The purpose of unbundling electric rates is to give electric utility customers a meaningful economic choice that they presently do not have. PECO's Rate SL-E as it exists and as it is proposed to be unbundled, does not give customers who subscribe to that rate any more of an economic choice than they have now.
4. Electric utilities are required by the Act to unbundle electric utility services, tariffs and customers bills to separate the charges for generation, transmission and distribution. 66 Pa. C.S. §2804.
5. The Commission must require that restructuring of the electric utility industry be done in a manner that does not unreasonably discriminate against one customer class to the benefit of another. 66 Pa. C.S. §2804(7).
6. Rate SL-E, as it exists and as PECO proposes to unbundle it, unlawfully subsidizes other PECO ratepayers and rate schedules, in contravention of Section 2804(7) of the Act.
7. The Commission may approve exceptions to the rate caps outlined in the Act. 66 Pa. C.S. §2804(4)(iii).
8. The rate caps identified in the Act do not apply to new services offered for the first time after the effective date of the Act, that is, January 1, 1997. 66 Pa. C.S. §2804(4)(vi).
9. PECO, the Joint Signatories to the Partial Settlement, and Enron all bear the burden of proof under 66 Pa. C.S. §332.
10. PECO, the Joint Signatories to the Partial Settlement, and Enron all have failed to carry their heavy burden of proving that their respective "Plans" are in the public interest.

## 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.

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