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December 2, 1997

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17120

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:

In accordance with Prehearing Order #6 in the above-referenced, consolidated proceedings, enclosed for filing are two (2) copies of the Main Brief of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") as well as a 3.5" diskette containing the Brief in WordPerfect 5.1 and Microsoft Word 6.0 formats. Two hard copies and one diskette are also being served upon the Office of Special Assistants, the Law Bureau, and each Commissioner's office.

As evidenced by the attached Certificate of Service, all known parties to this proceeding have been duly served. Please date stamp the extra copy of this transmittal letter and kindly return for our filing purposes.

Very truly yours,

McNEES, WALLACE & NURICK-

By *Derrick P. Williamson*
Derrick P. Williamson

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Enclosures
c: Certificate of Service
Honorable Marlane R. Chestnut (via Federal Express)
Honorable Charles E. Rainey, Jr. (via Federal Express)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Docket No. R-00973953

PECO Energy Company;
Application of 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 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

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MAIN BRIEF OF THE
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP

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Boeing Defense & Space Group
- Helicopters Division
Lukens Inc.
Nabisco Inc.
Rohm and Haas Company
Sun Company, Inc. (R&M)
Thomas Jefferson University/
Jefferson Health System

Air Liquide America Corporation
ARCO Chemical Company
Budd Company
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Dated: December 2, 1997

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I. INTRODUCTION

The Philadelphia Area Industrial Energy Users Group ("PAIEUG")¹ submits this Main Brief in accord with the final procedural schedule in this consolidated proceeding. PAIEUG is an ad hoc association of large, energy-intensive industrial and institutional consumers of electricity currently receiving service from PECO Energy Company ("PECO" or "the Company"). PAIEUG members consume over three billion kilowatt-hours of electricity, and this high volume consumption of electricity constitutes a significant cost of production and operation for PAIEUG members. Proper resolution of the PECO restructuring proceeding is of utmost importance to PAIEUG and will impact PAIEUG and its members' businesses for years to come.

In this context, PAIEUG presented to the Commission a formidable litigation position setting forth the bases upon which electric restructuring should proceed for PECO Energy Company and its customers. PAIEUG prepared the following testimony:

- | | |
|---------------------------------|--|
| PAIEUG Statement No. 1: | Direct testimony and exhibits of Stephen J. Baron (addressing policy, rate unbundling/design, access issues, etc.); |
| PAIEUG Statement No. 2: | Direct testimony and exhibits of Randall J. Falkenberg (addressing market price and quantification of stranded generation costs); |
| PAIEUG Statement No. 3: | Direct testimony and exhibits of Lane Kollen (addressing regulatory assets and other claimed transition and stranded costs); |
| PAIEUG Statement No. 1R: | Rebuttal testimony of Stephen J. Baron (addressing universal service, cost allocation and tariff availability issues); |
| PAIEUG Statement No. 1S: | Surrebuttal testimony of Stephen J. Baron; |

¹Current members of PAIEUG are listed on the cover of this brief.

PAIEUG Statement No. 2S: Surrebuttal testimony and exhibits of Randall J. Falkenberg; and
PAIEUG Statement No. 3S: Surrebuttal testimony of Lane Kollen.

Given the scope and strength of PAIEUG's litigation position, PAIEUG was well-positioned to engage PECO Energy Company and the other parties to this proceeding in settlement negotiations. In usual circumstances, the ability to negotiate a settlement results in preservation of time and resources that would otherwise be exhausted in litigating the case. In addition, negotiated settlement leads to definitive solutions that benefit all parties. With this in mind, PAIEUG pursued and consummated a settlement with PECO and the other major consumer interests participating in this proceeding: Senator Vincent J. Fumo; Lance S. Haver; the Consumers Education and Protective Association, et al. ("CEPA"); the Office of Trial Staff ("OTS"); the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the American Association of Retired Persons ("AARP"); and the Department of Navy ("Navy"). The settlement was embodied in the Joint Petition for Partial Settlement ("Partial Settlement") filed with the Commission on August 27, 1997.

PAIEUG filed a Statement in Support of the Partial Settlement on September 12, 1997. PAIEUG identified by letter dated September 16, 1997, portions of its direct testimony supportive of the Joint Petition for Partial Settlement. In addition, PAIEUG also submitted testimony in October 1997 responsive to supplemental testimony filed in opposition to the Settlement by the so-called Pennsylvania Electric Competition Coalition ("PECC") and the Mid-Atlantic Power Supply Association ("MAPSA"): **PAIEUG Statement No. 1SS (supplemental surrebuttal testimony of Stephen J. Baron).**

Despite the prodigious efforts of the parties to enter into a settlement that is in the public interest, Enron Energy Services Power, Inc. ("EESPI," an affiliate of Enron Power Services Corporation, referred to together as "Enron"), filed with the Commission what was styled as a "Petition 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" ("Enron Petition"). The Enron Petition was docketed at P-00971265, and subsequently consolidated (over PAIEUG's objection) with the PECO Restructuring proceeding. The publicly advertised purpose of the Enron Petition was to provide an alternative to the Partial Settlement (which was entered into by virtually all of the customer interests).

As a result of the Commission's decision to essentially place the Partial Settlement in competition with the proposal set forth in the Enron Petition², PAIEUG filed additional testimony opposing the Enron Petition; PAIEUG submitted at Docket No. P-00971265: **PAIEUG Statement No. 1E (direct testimony and exhibit of Stephen J. Baron).**

²Of course, if PAIEUG had known that any settlement that it would enter into would be subject to challenge by any competing proposal conjured up by any lone participant in the PECO Restructuring proceeding, PAIEUG certainly would have at least hesitated before proceeding with settlement, a benefit of which is supposed to be a reduction in required time and resources.

Having endured various rounds of testimony and hearings³ addressing the litigated PECO Restructuring proceeding, the Partial Settlement, and the Enron Petition (to include numerous variations thereof), PAIEUG must brief these proceedings on a truncated, consolidated basis. That is, the Commission requires that, within the confines of a 45-page limit, PAIEUG brief: (1) its support for the Partial Settlement; (2) its opposition to the Enron Petition; and (3) its litigation position, assuming that neither the Partial Settlement nor the Enron Petition is approved by the Commission. The briefing of PAIEUG's litigation position necessitates that PAIEUG, within the body of the same brief, set forth a litigation position that does not square precisely with PAIEUG's support for the Partial Settlement, given that the settlement represents a compromise of competing litigation positions. Accordingly, the Commission requires that PAIEUG set forth a position that can be construed as opposing the Partial Settlement, in essence requiring that PAIEUG violate its commitment to support the Partial Settlement. PAIEUG and its counsel proceed in this illogical undertaking with extreme consternation.

Nonetheless, PAIEUG must pursue briefing on potentially contradictory positions as this brief constitutes the process that the Commission allows as due. Accordingly, set forth in this brief are PAIEUG's support for the Partial Settlement, its opposition to the Enron Petition, and its litigation position on PECO's restructuring plan.

³In a severely compressed time frame necessitated in large measure by Enron's, MAPSA's, Connectiv's and New Energy Venture's ("NEV's") insistence that the Commission simultaneously resolve the Petition for Partial Settlement, the Enron Petition, any other proposal not previously contained in prefiled direct testimony, and the parties' primary litigation positions.

II. SUMMARY OF POSITION

The Joint Petition for Partial Settlement entered into by numerous parties to this proceeding, to include PECO Energy Company and virtually all of the customer interests, is in the public interest and equitably balances the interests of PECO, its customers, and other affected parties. The Partial Settlement, in fact, exceeds the universe of public benefit that could have been achieved in litigating the case and it provides relief beyond that required by the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801, et seq. ("the Act"). The Partial Settlement should be approved as filed.

Conversely, Enron's Petition must be rejected. The Enron Petition amounts to little more than an eleventh-hour attempt to derail the Partial Settlement entered into by PECO Energy Company and its customer base. The impotence of the Enron Petition reveals itself in that the Commission may not, as a matter of law, provide much of the relief requested by Enron. Moreover, Enron's proposed "Choice" plan and its subsequent attempts to revive it through testimony and amendment display an egregious lack of familiarity with the needs of customers in the PECO service territory and defy a sound understanding of the public interest.

Assuming that the Enron Petition is rejected (and it must be) and that the Joint Petition for Partial Settlement is not approved, PAIEUG must present its litigation position in this proceeding. Fundamental to PAIEUG's litigation position is its recommendation that the Commission determine that PECO is entitled to recover stranded costs of no more than \$2.21 billion, which reflects a just and reasonable amount of stranded costs appropriate to recover from ratepayers. In addition, in collecting stranded costs through a Competitive Transition

Charge ("CTC"), a CTC-residual approach should be utilized. Among other issues, specific attention must be given to the unbundling and concurrent cost responsibility associated with those customers receiving service under PECO's Rate Schedule HT, the Large Interruptible Load Rider ("LILR"), the Economic Efficiency Rider ("EER"), and tariff Rule 4.6 contracts.

PAIEUG believes that the Commission's decision should be obvious: approve the Partial Settlement and allow the transition to competition to begin. Absent that approval, the Commission will force parties into continued litigation at the regulatory and appellate levels, which will place an ominous cloud over the Commonwealth's ability to implement the Act. Even if the Partial Settlement does not produce the level of competition in 1999 desired by Enron and others, neither does the Act. The Partial Settlement, like the Act, provides for a reasoned transition to competition that adequately protects the interests of consumers and PECO, while allowing competition to begin. Any contrary result would frustrate the intent of the Act and the arduous efforts of all participants that have meaningfully contributed to the Act's passage and implementation.

III. THE JOINT PETITION FOR PARTIAL SETTLEMENT REPRESENTS A REASONABLE COMPROMISE OF COMPETING LITIGATION POSITIONS, IS IN THE PUBLIC INTEREST, AND SHOULD BE APPROVED WITHOUT MODIFICATION.

A. Introduction.

Extensive and exhaustive discussions among parties to this proceeding culminated in the filing of the Joint Petition for Partial Settlement on August 27, 1997. The Partial Settlement is not only fully consistent with the public interest and the Act, but it in large measure exceeds the universe of public benefit that could have been achieved in litigating the case, and it exceeds many benefits available under the Act for customers. Of particular importance to PAIEUG, the Partial Settlement ensures that LILR, EER, Rule 4.6, and Rate HT customers, as well as self-generating customers, are treated in compliance with the Act.

B. The Partial Settlement Provides Substantial Benefits To All Customers And Other Market Participants.

The Partial Settlement sets forth key terms that ensure substantial benefits for all customers and market participants. In many instances, these benefits exceed the scope of potential benefit that could have been achieved in litigation. However, the key terms of the Partial Settlement are, in fact, properly derived from record evidence and/or reasonable interpretations of the Act. Key benefits of the Partial Settlement are set forth below.

Acceleration of Customer Choice: The Act provides that full retail access must be phased-in by January 2001. 66 Pa.C.S. § 2806(b)(3). The Partial Settlement, however, accelerates this transition by ensuring that all customers will have direct access to alternative generation suppliers by January 2, 2000, thereby substantially exceeding the minimum requirements of the Act. Partial Settlement, ¶ 15; PAIEUG Statement No. 1SS, p. 5. This

particular benefit was initially proposed by PAIEUG and serves the interests of marketers and customers. PAIEUG Statement No. 1, pp. 58-59.

Guaranteed Rate Cap Reductions: The Partial Settlement provides for a guaranteed 10% rate reduction for all customers effective September 1, 1998, with continuing total rate reductions to apply through December 31, 2003. Partial Settlement, ¶¶ 8-9. The Act does not provide for mandated rate reductions during the pendency of the transition to retail competition. This aspect of the Partial Settlement represents a tremendous benefit to consumers and is justified based on the totality of the settlement and aggressive litigation positions advanced regarding PECO's stranded costs and sharing. See, e.g., PAIEUG Statement No. 1, pp. 9-14; PAIEUG Statement No. 1SS, p. 5.

Recovery of Stranded Costs: PECO sought to recover from ratepayers alleged stranded costs of approximately \$7.5 billion. Conversely, PAIEUG, among other intervening parties and complainants, prepared direct testimony challenging and proposing substantial reductions in PECO's stranded cost claim. See generally PAIEUG Statement Nos. 1, 2, & 3. The Partial Settlement provides that PECO may recover \$5.461 billion in stranded costs, which facilitates a significant \$2.0 billion write-off by PECO. See Partial Settlement, ¶¶ 17-21. This write-off effectively requires that PECO's shareholders absorb stranded costs, consistent with sharing proposals advocated in the litigated portion of this case. PAIEUG Statement No. 1, pp. 15-23; 66 Pa.C.S. §§ 2802(15), 2804(13) & (14), & 2808(c)(3). It resolves the competing litigation positions of all the parties that submitted comprehensive analysis and testimony on market prices and stranded cost quantification within the initial

litigated portion of this case,⁴ and it ensures the identification and quantification of a level of stranded costs that is just and reasonable to recover from ratepayers, in contemplation of the Partial Settlement as a whole. Clearly, in strictly defining and limiting PECO's ability to recover its stranded costs, competition is facilitated and the public interest is served.

Extension of Transmission and Distribution Rate Caps: The Act provides only that unbundled transmission and distribution charges will be capped for a period not to exceed 54 months from the effective date of Chapter 28 (or through June 30, 2001). 66 Pa.C.S. § 2804(4). The Partial Settlement exceeds the requirements of the Act by ensuring that PECO's transmission and distribution charges will be capped until January 1, 2004. Partial Settlement, ¶ 9. This provides benefits to all customers. PAIEUG Statement No. 1SS, p. 6.

Extension of Generation Rate Cap: The Act provides that generation rates may be capped through no later than December 31, 2005. 66 Pa.C.S. § 2804(4). The Partial Settlement, however, ensures that an adjusted generation rate cap will continue through December 31, 2008. Partial Settlement, ¶ 9. Clearly, this additional consumer protection is in the public interest. PAIEUG Statement No. 1SS, p. 6. It also reflects the PAIEUG proposal to extend the generation rate cap in the event the CTC or ITC recovery period is extended. PAIEUG Statement No. 1, pp. 26-27.

Universal Service: The Act requires only that protections policies and services assisting customers who are low-income are to be "continued." 66 Pa.C.S. § 2802(17). The

⁴The Commission must recognize that parties now opposing the Partial Settlement did not present comprehensive market price forecasts or stranded cost recovery proposals in the litigation phase of this proceeding; such parties, like Enron, only began to address these issues after the Joint Petition for Partial Settlement was filed.

Partial Settlement provides that these services may be continued and expanded. Partial Settlement, ¶¶ 22-28. Again, this provision of the Partial Settlement exceeds the requirements of the Act. In addition, the Partial Settlement consummates agreement among the signatories to defer any contention regarding allocation and recovery of universal service costs should they be further increased beyond \$50 million. Id., ¶ 25. This compromise satisfies PAIEUG's opposition to bearing any share of universal service costs at this time. See PAIEUG Statement No. 1R, pp. 3-9.

Unbundling and Customer Protection: The Act requires that the unbundling of transmission, distribution and generation services be conducted fairly and in a manner that ensures that no intra- or inter-class cost shifts are effected. The Partial Settlement and the unbundled rates embodied therein properly reflect an unbundling consistent with approved cost-of-service principles, which ensure that no customer or class of customers is disadvantaged as a result of inter- or intra-class cost shifts. Guaranteed rate reductions are fairly apportioned among the classes, and CTC responsibility is properly fixed based upon PECO's last-approved cost-of-service study, whether or not the customer continues to purchase its supply from PECO Energy. See Partial Settlement, App. C. This is consistent with the component rate cap and cost-shifting provisions of the Act. See 66 Pa.C.S. §§ 2804(4) & 2808(a). It also facilitates competition, which benefits customers and marketers.

Market Prices and Declining CTCs: The Partial Settlement reflects market prices that properly increase over time (within the unbundled generation component) and a generally declining CTC for each year of recovery. Partial Settlement, ¶ 9 - Table A. These aspects

of the settlement provide benefits of certainty and predictability, which will foster customers' abilities to engage competition in the transition period. PAIEUG Statement No. 1SS, pp.6-7.

C. The Partial Settlement Provides Additional Benefits Of Critical Importance To PAIEUG Members.

In addition to the benefits afforded by the Partial Settlement as outlined above, certain elements of the Partial Settlement are of critical importance and benefit to large industrial and institutional customers.⁵

The Partial Settlement fairly disposes of the complicated unbundling of PECO's Large Interruptible Load Rider ("LILR") and Rate HT customers, as well as customers with contracts under PECO's Economic Efficiency Rider ("EER") and Rule 4.6. This is accomplished by ensuring (1) that no costs are shifted either on an intra- or inter-class basis; (2) that contract sanctity is maintained; and (3) that such customers continue to be protected by the customer rate cap protections in the Act.

Specifically, the Partial Settlement explains in detail the basis for unbundling LILR, EER, and Rule 4.6 contracts and ascertaining CTCs for customers served under these tariff options. Partial Settlement, ¶ 12. This unbundling method ensures compliance with the component rate cap and cost shifting provisions of the Act, and it reasonably protects large customer interests without imposing any additional costs on other classes. See PAIEUG Statement No. 1S, pp. 12-17; PAIEUG Statement No. 1, pp. 45-52. The result is that these

⁵There are other specific benefits that are of importance to other groups as well, but PAIEUG will not focus on those aspects of the Partial Settlement given the page constraint for this brief.

customers will be protected by the rate cap provisions of the Act and they will have reasonable opportunities to engage competitive supplies.

The Settlement also provides that PECO will continue the availability of LILR, Rule 4.6, and EER service offerings for current customers, and EER and Rule 4.6 options will also be available to prospective customers.⁶ Partial Settlement, ¶ 12. The continued availability of these alternatives stand to promote competition and economic development. See PAIEUG Statement No. 1SS, p. 6. This stands in stark contrast to the Enron proposal to eliminate such offerings, to which PAIEUG takes exception. See PAIEUG Statement No. 1R, pp. 11-13.

The Partial Settlement also provides that customers may resolve any CTC/ITC responsibility through a lump-sum payment, which is consistent with the Act. Partial Settlement, ¶ 12. 66 Pa.C.S. § 2808(b). Again, this facilitates a customer's ability to engage competition depending on the customer's unique financial circumstances.

The Partial Settlement resolves issues relating to existing and contemplated self- or on-site generation and CTC/ITC obligations; again, this resolution ensures that no other customer or class of customers is prejudiced. Partial Settlement, ¶ 13. In turn, the business and economic development needs of industrial and commercial customers are fairly preserved. This represents a reasonable compromise of initial differences regarding self-generation and cost responsibility for the CTC. See PAIEUG Statement No. 1, pp. 55-56; PAIEUG Statement No. 1SS, p. 7.

⁶The Partial Settlement also implicitly recognizes the continuation of various other riders and service options.

Finally, the Partial Settlement ensures a selection process that will allow all industrial and large commercial customers to participate in the initial phase-in of competition beginning January 1, 1999; that is, the settlement provides that for Rate HT and PD customers, if individual customer peak load subscriptions exceed the class peak load limitation, then each customer's subscription will be reduced to meet the class peak load limitation. Partial Settlement, ¶ 15. This is consistent with PAIEUG's direct case (PAIEUG Statement No. 1, pp. 57-59), and it will eliminate the potential for disadvantages being created among commercial and industrial customers because all customers in these classes will be able to participate in the phase-in at the same time and to the same degree.

As PAIEUG has consistently maintained, the Partial Settlement cannot be viewed or evaluated in a vacuum. The Partial Settlement must be viewed as a whole; critical to PAIEUG in analyzing and committing its support to the Partial Settlement were the specific benefits achieved regarding Rate HT, LILR, EER, and Rule 4.6 customers.⁷

D. Response To Commission Inquiry Regarding Jurisdiction Over Transmission.

In a Tentative Order entered at this docket on October 2, 1997, the Commission inquired as to the issue of jurisdiction over transmission and whether the Partial Settlement correctly accomplishes unbundling.

The Partial Settlement does accomplish an appropriate unbundling, it being understood by PAIEUG that:

⁷By comparison, the Enron "Choice" plan (as well as subsequent proposals from others opposing the Partial Settlement) improperly engages in a game of pick-and-choose in adopting some aspects, but not all, of the Partial Settlement.

- (1) Where a customer uses PECO for its transmission and distribution ("T&D") service, all ancillary services are subsumed/included in the unbundled T&D rates;
- (2) Where a customer or marketer uses transmission from PJM, then they purchase under the PJM transmission tariff (to the extent that PECO is not mandated to provide the service);
- (3) The revenue requirement that formed the basis of PECO's zonal PJM tariff is recovered by PECO's unbundled T&D tariffs appended to the Partial Settlement. See PAIEUG Statement No. 1, pp. 52-53.

E. The Joint Petition For Partial Settlement Should Be Approved By The Commission.

The Commission employs a basic public interest test in evaluating whether a settlement should be approved. In pertinent part, the Commission must conclude that the settlement is, in its entirety, in the public interest. See, e.g., Pa. P.U.C. v. Bell Atlantic, Inc., 1996 Pa. PUC LEXIS 17, *5 (Tent. Order, Docket No. M-00950655, Jan. 16, 1996).

When viewed in its entirety, the Partial Settlement in this proceeding is reasonable and in the public interest. This is particularly so given the numerous benefits afforded the public as outlined above. The Joint Petition for Partial Settlement should be approved.⁸

⁸See Appendix A for a limited list of Proposed Findings of Fact and Conclusions of Law.

IV. THE ENRON PETITION MUST BE REJECTED.

A. Introduction.

Enron (more precisely EESPI, an Enron affiliate) filed its original Petition in the above-referenced docket (P-00971265) on October 7, 1997. Various parties to include PAIEUG filed answers opposing the Enron Petition given its numerous legal, technical, and public interest infirmities, and its essential lack of merit. Since October 7, Enron has continually revised and updated its proposal through, direct, rebuttal, rejoinder (even an attempt to late-file written "sur-rejoinder"), and interrogatory responses, to the point where it is difficult to identify the actual Enron plan.

Enron's Petition essentially purports to save the PECO customers from the anti-competitive conditions that allegedly would occur if the Joint Petition for Partial Settlement is approved by the Commission. In reality, the Enron Petition would effectively derail the substantial efforts of the other parties in the PECO restructuring proceeding to bring consumer benefits and workable and expeditious direct access to retail customers in the PECO service territory. The Enron plan demonstrates a lack of understanding of the needs of PECO's retail customers and the steps necessary to bring viable, long-term competition to the consumers in Pennsylvania.

There are numerous infirmities, legal and otherwise, inherent in Enron's "Choice" proposal. Unfortunately, given the page limitation constraining this brief, only a few of the major deficiencies are highlighted herein. It is nonetheless clear that the Enron Petition must be rejected.

B. Enron's Petition Constitutes An Extra-Procedural Attempt To Derail The Partial Settlement.

Enron's Petition should be recognized for what it is -- an eleventh hour attempt to bootstrap a previously unfiled litigation position into a proceeding that started over six months prior to the filing of the petition and that was within days of commencing hearings on the Partial Settlement. Moreover, the Enron Petition was filed nearly six weeks after the Joint Petition for Partial Settlement was filed and nearly four months after parties were required to submit their litigation positions in testimony. The Enron Petition was designed to derail and replace the Partial Settlement, Enron having failed to establish a litigation position that was sufficient to serve its needs. In fact, Enron admits it conjured its Petition as an alternative to the Partial Settlement. Tr. at 1315.

Whereas the Partial Settlement is based on issues and positions raised by parties in pre-filed written testimony in response to PECO's restructuring plan and represents a compromise of those competing litigation positions, the Enron Petition bears little resemblance to any direct testimony supplied by Enron. For example, although two rounds of testimony were exchanged among the parties prior to the filing of the Partial Settlement, Enron did not once even impliedly address the need for the proposed tariff changes discussed in the tariff supplied with the Enron Petition. If, as Enron now asserts, the issues in the tariff were of such importance that they will inhibit the development of a competitive market, then those issues should have been raised by Enron in its direct testimony concerning the restructuring filing.

The Commission is under a statutory obligation to render a decision on the PECO restructuring filing within nine months of the filing date. 66 Pa.C.S. § 2806(f). Enron's actions at this late stage highlight the inadequacy of Enron's initial evidentiary presentation and Enron's intent to derail the settlement.

C. The Commission Is Without The Authority To Grant Relief Enron Requests.

The Commission recognized long ago that it exists as a statutory creature, having only the powers granted to it by the Legislature. Accordingly, if the Commission lacks statutory authority to award specific relief that has been requested, it must deny the request. See, e.g., Morgan v. Pennsylvania Gas & Water Co., 47 PaPUC 232, 237 (1973).

In this case, the Commission cannot provide relief requested by Enron's Petition; therefore, the Petition must be rejected.

1. The Commission has no authority to designate a PLR other than PECO during the transition period.

There is no basis in the Act for an alternative generation supplier to petition the Commission to be the PLR as the Enron plan requests. See Enron Petition, ¶¶ 8 and 23(h). The Act states that while an electric distribution company ("EDC") collects a competitive transition charge ("CTC") or an intangible transition charge ("ITC") from customers, the EDC will continue to have the full obligation to serve all customers in its present service territory. Id. at 2807(e)(1). This obligation to serve is specifically defined to include the

provision of electricity for the default customers.⁹ Id. In other words, during the transition period (the period in which the EDC collects an ITC or CTC) the Act mandates that the EDC act as the PLR.¹⁰ As such, the Enron request to identify an alternative PLR is not within the PUC's authority under the Act.¹¹

2. The PUC has no authority to issue PECO a QRO at Enron's request.

Enron requests that the Commission issue to PECO an irrevocable QRO authorizing PECO to issue transition bonds for \$5.461 billion. Enron Petition, ¶ 23(l). The Act specifically states, however, that a QRO "may be adopted by the commission **only upon the application of an electric utility.**" 66 Pa. C.S. § 2812(a)(1) (emphasis added). The Act reiterates the concept that a QRO must originate with the electric utility in Section 2806(e),

⁹PAIEUG will use the term "default customer" as it is defined in the Enron Petition; *i.e.*, "customers who do not choose an electric generation supplier other than the PLR or who return, for whatever reason, voluntarily or otherwise, to the electric service of the PLR." Enron Petition, p. 6. PAIEUG would note, however, that it is not clear that Enron would include all customers entered into LILR, EER, and Rule 4.6 contracts with PECO as default customers. Consequently, Enron would incur no duty to honor the contracts that PECO entered into with these customers as part of PECO's PLR role. PAIEUG opposes the exclusion of these contract customers from the category of default customers.

¹⁰It is possible that the EDC may be permitted prior to the end of the transition period to transfer this obligation to another entity with the Commission's consent through an abandonment proceeding. However, PECO has indicated that it will not consent to relinquishing its role as PLR.

¹¹In fact, Section 2807(e)(3) confirms that only after the transition period has ended, could the PLR role be fulfilled by an entity other than the EDC. Id. at 2807(e)(3). To construe Section 2807(e)(3) as authorizing the Commission to anoint an alternate PLR during the transition period would make the Act's explanation of the EDC's obligation to supply electricity as part of its obligation to serve during the transition period contained in Section 2807(e)(1) redundant and nonsensical. Such an interpretation would be contrary to the rules of statutory construction, which militate against interpretations of statutes that render a provision mere surplusage. 1 Pa.C.S.A. § 1921.

wherein it states "a utility may apply to the commission for a qualified rate order under section 2812 for some or all of its transition or stranded costs." Id. at 2808(e). In addition, the Commission has no authority to order that PECO request a QRO. The Act places the option of securitization solely with the utility. See id. at 2812(a)(1) and 2808(e). The PUC is without the statutory authority to provide the relief Enron requests.

3. The PUC has no authority to require PECO to sell or transfer its transition bonds.

Even assuming that the PUC could issue a QRO to PECO at the behest of some entity other than PECO (and it cannot), the Commission has no authority to order PECO to sell or transfer its transition bonds as Enron requests (at a mandated interest rate of 9.66%¹²).

Enron Petition, ¶23(m). The Act specifically states:

After the issuance of a qualified rate order, the electric utility retains sole discretion regarding whether to assign, sell or otherwise transfer intangible transition property or to cause the transition bonds to be issued, including the right to defer or postpone such assignment, sale, transfer or issuance.

66 Pa. C.S. § 2812(a)(1). Such an explicit legislative statement cannot be ignored by this Commission, even in pursuit of any alleged "purpose" of the Act. 1 Pa. C.S.A. § 1921(b). The PUC lacks the authority under the Act to provide the relief upon which Enron's "Choice" plan depends.

4. The Commission has no authority to order PECO to enter into the contractual arrangements to "fulfill" Enron's "Choice" plan.

Enron's plan (assuming Enron could surpass the PLR and QRO legal impediments) depends upon PECO entering into a Power Purchase Agreement ("PPA") and a Metering

¹²Subsequently revised to 9.31% by Enron in one of many modifications to its proposal.

Billing and Collection Services Agreement with Enron. Enron Petition, ¶ 23(i), (j), and (k), ¶ 27, ¶ 28, and ¶ 29. PECO has disavowed any intention to voluntarily enter such agreements (tr. at 1811); thus effectuation of the Enron Plan will require a Commission Order. Of course, the PUC has no authority (and Enron can cite to none) to require PECO's adherence to such agreements (or to require PECO to accept other fixed conditions embodied in the Enron Petition, such as adoption of Enron's market price projections for provision of services as a PLR).

5. Conclusion.

As detailed above, the Enron Petition depends upon the provision of relief that is outside the scope of the PUC's statutory authority.¹³ Accordingly, the PUC must deny the relief that Enron requests.

D. **The Market Prices And CTCs Upon Which Enron's Plan Is Based Are Unsubstantiated And Unreasonable.**

The market prices inherent in Enron's proposal are based on no substantial or significant analysis. Enron's (and "PECC's") supposed market price witnesses have provided no detailed market price modeling or analysis.¹⁴ See, e.g., EESPI Statement Nos. 4, 4-R; tr. at 1543, 1546, 1563. As painfully revealed by PECO witness Hieronymus in response to Enron's "market price" testimony, Enron's estimates of long-run marginal cost of generation

¹³Other legal impediments not briefed due to page limitations include Enron's or EESPI's unwillingness to be designated a public utility if it is a PLR (tr. at 1297) and the PUC's consequent lack of authority to impose rate caps.

¹⁴Such as the detailed and legitimate market price forecast submitted by PAIEUG witness Falkenberg.

is unsupported, biased, and chock-full of errors. PECO Statement No. 6-E, pp. 5-11. In fact, Enron admits it relied on no written analyses in establishing market prices in its original proposal, just "logic". Tr. at 1563, 1347, 1355-57.

Enron changed its market price (generation credit) inputs a number of times, but provided their final estimates on November 12, 1997. Id. at 1355; EESPI Statement No. 1-R, Exh. A. Again, Enron acknowledges no written market price analysis or projection for these updated prices. Tr. at 1357-58. It is patently unreasonable to accept a \$5 billion dollar plan -- a plan that purports to establish the basis for restructuring the industry -- on the basis of Enron's abject speculation as to market price, particularly when Enron itself will not bear the risk of its market price inaccuracy.

Regardless of their speculative nature, the market prices embodied in the final-version Enron plan for 1999 through 2001 are overstated in comparison to those reflected in the Partial Settlement. Compare EESPI Statement No. 1-R, Att. A, with Partial Settlement, ¶ 9 - Table A. The only possible motivation for this overstated market price is to allow the competitive Enron affiliate to garner market share early in the transition while still profiting handsomely from a generous margin on the sale. See tr. at 1370.

By comparison, Enron's market prices for the period 2006 through 2008 are drastically understated (id.); Enron has not allowed for any reasonable escalation in the market prices. The effect of this understatement will be to force customers to return to Default Customer status in the last half of the transition period because customers will not be able to procure electricity at less than the generation credit identified in the Enron plan, particularly when the CTC component is rising in those years. The Enron proposal will lead

to a squeezing out of competition after a few years, with Enron doing the squeezing. See PECO Statement No. 6-E, pp. 2-3. This contravenes the manner in which the transition to full competition should occur -- customers should not be disincented to take advantage of the market in the latter stages of the transition.

The CTC contained in the Enron plan increases through the transition period, with the CTC being, on average, nearly 1¢/kWh greater than that contained in the Partial Settlement for the final years of the recovery period. Compare EESPI Statement No. 1-R, Att. A, with Partial Settlement, ¶ 9 - Table A. This will further discourage customers from pursuing competitive alternatives. Enron's market prices stagnate in the latter years of the transition period, while its CTCs are higher in comparison to those in the Partial Settlement. This dynamic within the Enron "Choice" plan will further disincen customer choice in the final years of the transition, a result that defies the very purpose of the transition.¹⁵

E. Adoption Of The Enron Proposal Would Adversely Affect Customer Interests.

In general, customers would suffer under the Enron proposal because: (1) as noted above, the CTC increases (i.e., is backloaded) under Enron's plan, thereby impinging upon customers' desire and ability to access competitive supplies in the latter years of the transition (PECO Statement No. 1-E, pp. 8-9); (2) Enron's market prices are unrealistically

¹⁵Worse yet, the market price and CTC gymnastics performed by Enron would have been even more gross, but for the fact that Enron reduced T&D rates by almost 1¢/kWh. See id.; tr. at 1401-03. This enabled Enron not only to manipulate market prices and the CTC, but it allowed Enron to create the illusion of a rate reduction. See tr. at 1406, 1408-09. Obviously, if one were to plug Enron's proposed (and apparently unsubstantiated) T&D rates into the Partial Settlement, even greater, "real" rate reductions would be achieved under the Partial Settlement. See tr. at 1806.

low in the final years of the transition, thereby further depressing customers' desire and ability to shop; and (3) extra-statutory concessions in the Partial Settlement would be lost under the Enron plan (id. at 10). In addition, the customer interest cannot be properly served by reliance on totally unsubstantiated market price estimates, let alone that EESPI as the PLR has no apparent financial or technical integrity (see tr. at 1318-30) and is unwilling to commit to public utility status (tr. at 1297). Nor can the public interest be served by a proposal based on an apparently unsubstantiated, yet enormous, reduction to the T&D components of the total rate. See Footnote 15, p. 22, supra.

Though the Enron Petition sets forth proposals that are damaging to all customers, of particular concern to PAIEUG is Enron's total and blatant disregard of the interests of large industrial and institutional customers: Indeed, the Enron proposal is, upon careful review, anathema to competition and choice for large customers.

The original Enron proposal contemplated closure or adverse modification of numerous tariff provisions and riders associated with large industrial usage, to include:

- Elimination and/or modification of LILR, to include an increase in LILR rates;
- Elimination of the EER alternative;
- Preclusion of LILR, EER, and Rule 4.6 customers from default service;
- Modification of the Auxiliary Service Rider to only apply to T&D;
- Elimination of the Cooling Thermal Storage Rider;
- Modification of the Curtailment HT Rider to exclude generation services;
- Modification of the Night Service HT Rider;
- Elimination of the Capacity Reservation Rider; and
- Elimination of Interruptible Rider 1.

To the extent Enron is proposing to eliminate LILR, this will adversely affect those customers currently willing to receive interruptible service under LILR. PAIEUG Statement

No. 1E, pp. 10-14. These customers would receive immediate rate increases upon elimination of the rider, in contravention to various provisions of the Act, but most notably the total and component rate cap provisions of Section 2804(4). To the extent Enron modifies or re-prices LILR, this change would also represent an increase in rates within the LILR tariff (PAIEUG Statement No. 1E, p. 14), also in violation of the Act. Conversely, the Partial Settlement ensures continuation of the LILR offering, appropriate unbundling of LILR (particularly with respect to the CTC), and it contemplates no rate increase.

It now appears that Enron has agreed to treatment of LILR comparable to that found in the Partial Settlement, but it is not entirely clear. EESPI Statement No. 5-R, p. 12; tr. at 1709. Indeed, though Enron has stated that it will make an alternative to LILR available, that alternative contemplates interruptible service for T & D, not generation. Tr. at 1714.

Enron has proposed to eliminate the EER as applied to generation. EESPI Statement No. 5-R, p.14. Obviously, if it is Enron's intent to repudiate current EER contracts, it will lead to rate increases, again in contravention to the rate cap provisions of the Act (and contract law). At a minimum, Enron is proposing to foreclose availability to prospective customers (for generation), thus Enron is still engaged in a design to eliminate current choices in the name of competition; the premise is preposterous. See PAIEUG Statement No. 1E, pp. 11-14. The same holds true for Enron's treatment of the Rule 4.6 option.

In addition, Enron refuses to consent under its plan that EER and Rule 4.6 customers will be served as default customers (see tr. at 1430-31, 1728, 1732-33; EESPI Statement No. 5-R, p. 15), thus Enron would refuse to serve these customers (provide the negotiated rate) as the default provider, effectively eliminating the cap on their current rates in violation of

the Act. PAIEUG Statement No. 1E, pp. 14-15. Enron's witness frankly admitted that Enron cannot currently commit to provide these customers service at their current rates. See tr. at 1731. Clearly PAIEUG cannot accept a proposal that removes a statutory safeguard. By way of comparison, the Partial Settlement properly recognizes the need to continue EER and Rule 4.6 availability for current and prospective customers. In addition, the Partial Settlement ensures an unbundling and CTC allocation that will enable customers served under these terms to access competitive supplies.

Enron likewise proposes as part of its "Choice" plan to modify or eliminate various riders¹⁶, thereby insuring that customers served under those riders would experience rate increases. PAIEUG Statement No. 1E, p. 16. As with Enron's proposals for LILR, EER, and Rule 4.6 customers, these increases necessarily violate the Act in denying customers total and unbundled element rate cap protection. 66 Pa.C.S. § 2804(4).

Enron's proposal is clearly misguided in this regard. Enron's witness expressly noted his interpretation of the rate cap provisions of the Act as not applying to customers currently served under riders. Tr. at 1717, 1724. Indeed, the Enron witness stated that the rate cap provisions of the Act do not cover any of the riders currently available to and utilized by PECO's customers, Tr. at 1727. This is directly at odds with the plain language and intent of the Act, which provides: "**the total charges . . . for service to any customer . . . shall**

¹⁶Enron's witness confirmed that various riders would be eliminated and that no default service would be provided pending elimination; e.g., the Cooling Thermal Storage Rider (tr. at 1714, 1716), Curtailment Ht Rider (tr. at 1722). In fact, **Enron acknowledged that other than its backtracking on LILR, the other riders (which it proposes to modify or eliminate) "are inconsistent with [an unbundled environment]."** Tr. at 1719.

not exceed the total charges . . . for such service as of the effective date of this chapter." 66 Pa.C.S. § 2804(4)(i)(A) (emphasis added). Likewise, the sections of the Act governing the T & D rate cap and the generation rate cap reference all customers, not just those receiving service under the primary rate schedules. *Id.* at § 2804(4)(i)(B) & (ii). The Act surely does not imply, as Enron apparently believes, that rate cap protection, a cornerstone to the legislation, would apply only to certain customers but not others. Such an interpretation not only runs counter to the express language in Section 2804, but it would wreak havoc with any attempt to comply with other provisions of the Act, such as those prohibiting cost shifting.

Enron's proposal to eliminate and modify various riders of import to industrial and large commercial customers (as well as Enron's representation that it will not treat these customers as default customers) amounts to a prescription for rate increases for these customers in violation the Act. Enron's proposal must be rejected.

In sum, the Enron "Choice" plan as it affects current flexible service and pricing options is anti-competitive, anti-choice, and anti-industrial. If adopted, the Enron proposal would not only violate the Act, but it would pose an immense threat to the economy of greater Philadelphia. The Enron proposal is clearly motivated to minimize PECO's discretion to negotiate with customers under the available riders, the continuation of which is fully contemplated under the Act. 66 Pa.C.S. § 2806(h). The Enron plan is clearly contrary to the public interest in this regard. The "Choice" plan is not. It must be rejected.¹⁷

¹⁷See limited Findings of Fact and Conclusions of Law in Appendix B.

V. PAIEUG'S POSITION ON PECO'S RESTRUCTURING PLAN

A. Introduction.

PECO seeks approval of its restructuring plan pursuant to 66 Pa.C.S. § 2806. Within its request for approval, PECO seeks to recover stranded costs of approximately \$7.5 billion. PECO believes it is entitled to 100% recovery of these claimed costs from ratepayers.

PAIEUG opposes the PECO claim. Consistent with the requirements of the Act, PECO should be entitled to recover from ratepayers no more than \$2.209 billion. In addition, various other proposals put forth by PECO require modification or rejection. Moreover, certain additional safeguards and proposals should be adopted by the Commission.

B. PECO Should Be Entitled To Recover From Ratepayers No More Than \$2.209 Billion.

1. **The PUC has the discretion to quantify stranded costs and allow less than 100% recovery of those costs.**

All statutes must be interpreted according to the rules contained in the Statutory Construction Act, 1 Pa.C.S. §§ 1501-1911. "Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage...." Id. at § 903(a). The Supreme Court of Pennsylvania has recognized that when interpreting a statute, the statute should be interpreted according to the plain, unambiguous meaning of the statutory language. Markle v. Workman's Compensation Appeal Board, 541 Pa. 148, 157, 661 A.2d 1355, 1360 (1995), reargument denied (August 10, 1995). In analyzing PECO's claim for stranded cost recovery, the Commission need only look at the plain language in the Act in carrying out its charge. The Act sets forth a two-step process for identifying stranded costs that are appropriate to recover from ratepayers.

First, the Commission must quantify the utility's net transition and stranded costs. That is, based on the substantial evidence presented by intervenors and the utility,¹⁸ the Commission must quantify the utility's actual, net stranded or transition costs pursuant to the definition of transition and stranded costs and the appropriate standards and requirements for determination. 66 Pa.C.S. §§ 2803, 2804, & 2808.

Second, the Commission must identify the amount of the quantified transition or stranded costs that would be appropriate, i.e., "just and reasonable," to recover from ratepayers. As reflected in the Act's Declaration of Policy, "the Commission is empowered ... to determine the level of transition or stranded costs for each electric utility and provide a mechanism, the competitive transition charge, for recovery of an appropriate amount of such costs in accordance with the standards established in this chapter." 66 Pa.C.S. § 2802(15) (emphasis added). The requirement that utilities be entitled to recover only a just and reasonable amount of transition or stranded costs from ratepayers is further articulated in Sections 2804(13) & (14) and Section 2808, which specifically contemplates that the Commission will exercise its discretion in determining the level of generation-related transition or stranded costs that may be recovered through the competitive transition charge.

¹⁸The utility is required in filing its restructuring plan to present a proposed competitive transition charge ("CTC") and a complete accounting of its claimed transition or stranded costs. See 66 Pa.C.S. § 2806(e) and the PUC's Order regarding the filing of restructuring plans (entered February 13, 1997, at Docket No. M-00960890).

66 Pa.C.S. § 2808(c)(3). In short, the Commission has absolute discretion to allow less than 100% recovery of quantified stranded generation costs from ratepayers.¹⁹

The Commission has recognized as much. See Application of PECO Energy Company for Issuance of a Qualified Rate Order, Docket No. R-00973877, Opinion and Qualified Rate Order ("QRO") (May 22, 1997), pp. 15-16. In fact, Commissioner Hanger expressly stated in a Statement issued on May 8, 1997, in the QRO case:

If the stranded investment claim involves generation plant investment, the Act requires the Commission to conduct a two-step analysis. First, the Commission must determine how much of the claim is known and measurable and to calculate the amount on a net, present value basis. Once the Commission identifies the amount..., the Act requires the Commission to decide how much of that total would be "just and reasonable" to allow shareholders to recover.

Statement of Commissioner John Hanger, May 8, 1997, Docket No. R-00973877, p. 7. As also noted by Commissioner Hanger, the term "just and reasonable" requires balancing the interests of shareholders, ratepayers, and new entrants. Id. at 8. The Pennsylvania Supreme Court stated:

[T]he term "just and reasonable" was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy

¹⁹ Even assuming that there is ambiguity in the statute (and there is no ambiguity), the Statutory Construction Act provides that the object of statutory interpretation is to ascertain and effectuate the intention of the General Assembly. 1 Pa.C.S. § 1921(a); Markle, 661 A.2d at 1360. The intent of the General Assembly is articulated in the Declaration of Policy at Section 2802 of the Act, wherein the Legislature has stated that the Commission is "empowered under this chapter to determine the level of transition or stranded costs and effect a mechanism for the recovery of "an appropriate amount of such costs." 66 Pa.C.S. § 2802(15). The Legislature clearly intended the Commission's exercise of discretion in determining stranded costs and then identifying an amount that is appropriate for recovery.

concerning the appropriate balance between prices charged to utility consumers and returns on capital to utility investors....

Pa. P.U.C. v. Pennsylvania Gas & Water Co., 424 A.2d 1215, 1219 (1980).

The Commission has the statutory authority and obligation to exercise discretion in identifying an appropriate, just and reasonable amount of transition or stranded costs that are recoverable from ratepayers. It is against this backdrop and pursuant to this analysis that the Commission must analyze PECO's claim for stranded costs and recovery.

2. PECO has total stranded and transition costs of \$2.682 billion.

PECO should be permitted to recover no more than \$2.209 billion of stranded costs from ratepayers. This \$2.2 billion stranded cost value includes both generation-related stranded costs (offset for sharing) and regulatory assets (including nuclear decommissioning) stated on a present value revenue requirement basis. Ratepayers should compensate PECO for stranded costs by an amount not to exceed \$2.2 billion (present value) for a period not to exceed seven years. See PAIEUG Statement No. 1, p. 9.

a. PECO has net regulatory assets of \$805.177 million.

With respect to PECO's claim for regulatory assets, PAIEUG identified total, net regulatory assets on a present value basis (at December 31, 1998) of \$805.177 million. See PAIEUG Statement No. 3, pp. 6, 11-58.²⁰ PAIEUG witness Kollen detailed various

²⁰This quantification properly recognizes that regulatory assets (which include deferred charges typically recoverable under current regulatory practice and the unfunded portion of the utility's projected nuclear generating plant decommissioning costs) must be known and measurable, must be net of regulatory liabilities, must be stated on a net present value basis, and must be just and reasonable for recovery from ratepayers. Id. at 7-8; 66 Pa.C.S. §§ 2803, 2804(13), 2808(c)(1) & (3).

adjustments to PECO's claim that are explained in his testimony: Id. Many adjustments reflected PECO's failure to net present value its assets. A brief discussion of a few, but not all, of the PAIEUG adjustments follows.

PAIEUG has made adjustments to PECO's claim for costs associated with its SFAS 109 accounting asset. These adjustments were largely a function of the Company's failure to state the SFAS 109 regulatory asset on a net present value basis as required under the Act and PECO's incorrect assumption regarding amortization of the SFAS 109 regulatory asset. PAIEUG Statement No. 3, pp. 11-18; PAIEUG Statement No. 3S, pp. 4-11.

The PAIEUG recommendation also provides an adjustment (downward) for PECO's claim for deferred fuel costs as a regulatory asset. Specifically, PECO has made a claim for an ongoing projection of an undercollection associated with fuel costs. However, PECO failed to bear the burden of proving the prudence and reasonableness of its projected undercollections and failed to meet the "known and measurable" standard required by the Act. See PAIEUG Statement No. 1, pp. 19-22; PAIEUG Statement No. 3S, pp. 12-13.

PECO's request for recovery of future fossil decommissioning costs must be rejected in its entirety. See PAIEUG Statement No. 3, pp. 49-56; PAIEUG Statement No. 3S, pp. 23-27. The fossil decommissioning cost study provided by PECO witness LaGuardia was erroneous and, at a minimum, failed to establish associated stranded costs that are "known and measurable" as required by the statute. Id. More importantly, this claim squarely defies the established legal precedent, upon which the Commission has historically and consistently relied. See Penn Sheraton Hotel v. Pa. P.U.C., 184 A.2d 324, 327 (1962).

The following table illustrates the PAIEUG's full recommendation²¹ for PECO's claim of regulatory assets at 12/31/98:

**PECO RESTRUCTURING
REGULATORY ASSETS AT 12/31/98
SUMMARY
(\$000)**

<u>Description</u>	<u>PECO</u>	<u>PAIEUG</u>
SFAS 109	1,687,069	736,153
Deferred Fuel	311,468	96,162
CC on 50% Limerick Common	175,812	175,812 (1)
Unamortized Loss on Reacquired Debt	158,311	158,311 (1)
Pension Overfunding	0	(217,347)
SFAS 106	100,580	(130,467)
Limerick 1 Declaratory Order	18,301	14,305
Limerick 2 Declaratory Order	67,985	53,141
CC on 50% Peach Bottom/Salem/Eddy Common	17,400	17,400 (1)
Nuclear Design Basis Documentation	28,852	0
Peach Bottom/Limerick Water Chemistry	6,692	0
Compensated Absences	<u>16,587</u>	<u>16,587 (1)</u>
Total Regulatory Assets	2,589,057	920,057
Fossil Decommissioning	126,605	0
Nuclear Decommissioning	236,929	(140,410)
Other Transition Costs	<u>32,661</u>	<u>25,530</u>
Total	<u>2,985,252</u>	<u>805,177</u>

Notes: (1) PAIEUG has not addressed these issues and does not affirmatively support these PECO issues or PECO's quantifications.

b. PECO has stranded generation investment of \$1.877 billion.

Pursuant to the analysis of PAIEUG witness Falkenberg, PAIEUG has established that PECO has total generation-related stranded costs of \$1.877 billion²². This quantification is derived from Mr. Falkenberg's analysis and utilization of his own market price modeling.

²¹For a full exposition on all PAIEUG adjustments, see PAIEUG Statement No. 3.

²²Mr. Falkenberg's analysis utilizes a discount rate of 7.6% in computation of market value and generation stranded costs as per the testimony of PAIEUG witness Kollen. See PAIEUG Statement No. 3, pp. 59-70.

The bulk of Mr. Falkenberg's discussion and explanation of his modeling is contained in PAIEUG Statement No. 2, pp. 91-111. As noted, Mr. Falkenberg's modeling identifies a total stranded generation cost for PECO of \$1.877 billion. Id. at 109.

As the Commission is aware, Mr. Falkenberg's analysis is of the highest veracity. The Commission previously relied exclusively on Mr. Falkenberg's analysis and conclusions regarding the quantification of PECO's generation-related stranded costs in PECO's recent securitization proceeding. See Application of PECO Energy Company for Issuance of a Qualified Rate Order, Docket No. R-00973877, Opinion and Qualified Rate Order (May 22, 1997), p. 34. By comparison, the market price studies performed for and relied upon by PECO must be rejected for the same reasons that they were rejected by the Commission in PECO's securitization proceeding. Notably, the market studies performed for PECO by ICF - Keiser ("ICF"), EDS - Utilities Division ("EDS"), and Putnam, Hayes & Bartlett ("PHB") (and testified to respectively by PECO witnesses Bustard, Hieronymus, and Vankeshwara) all suffer from various errors (some common, some not), which lead to an understatement of market prices. Mr. Falkenberg has established definitively (yet again) that the methods and market price forecasts presented by PECO are unreliable and must be rejected by the Commission in ascertaining PECO's stranded generation costs. See PAIEUG Statement No. 2, pp. 9, 12-90; PAIEUG Statement No. 2S, pp. 2-71.²³

²³In fact, PAIEUG witness Falkenberg details that PECO has continued many of the same errors that its market price experts made in its Securitization proceeding, and to the extent that those errors have been corrected, they have compensated for increases in market values by changing other assumptions unrelated to the original errors. PAIEUG Statement No. 2, pp. 13-17.

The PECO evidence is no more compelling or reliable in this proceeding than it was in the securitization case, and it should be rejected. See PAIEUG Statement No. 2, pp. 18-90. Conversely, witness Falkenberg's total stranded generation cost quantification of approximately \$1.877 billion is reliable and reasonable.²⁴ See, PAIEUG Statement No. 2S.

c. PECO has total quantifiable stranded and transition costs of no more than \$2.682 billion.

PAIEUG has presented evidence establishing that PECO has quantified stranded and transition costs of approximately \$2.682 billion. That calculation is determined as follows:

Net generating plant & CWIP	\$6.688 billion
Less PAIEUG market value	<u>\$4.811 billion</u>
Net stranded generation plant	\$1.877 billion
Plus regulatory assets, other	<u>\$0.805 billion</u>
Total stranded costs	<u>\$2.682 billion</u>

3. PECO should be entitled to recover no more than \$2.209 billion in stranded costs from ratepayers through a CTC or ITC.

In identifying a just and reasonable amount to recover from ratepayers, the Commission should impose an equity return disallowance on the recovery of the stranded generation costs (the \$1.87 billion figure identified by Mr. Falkenberg), assuming a seven-year recovery period. This equity disallowance operates as a sharing of the cost

²⁴In fact, PAIEUG witness Falkenberg establishes the reasonableness of his projection through various benchmarks and through computation of stranded costs using the ICF fuel forecast and through correcting the most obvious errors in the PHB study. See PAIEUG Statement No. 2, pp. 10, 100-11; PAIEUG Statement No. 2S, pp. 14-15.

responsibility between ratepayers and shareholders.²⁵ PAIEUG's proposal is set forth fully at PAIEUG Statement No. 1, pp. 16-23 (see also PAIEUG Statement No. 1S, pp. 19-20).

The PAIEUG adjustment results in a reduction of \$473 million to PECO's total stranded costs (of \$2.682 billion), representing an 18% reduction to the overall stranded cost calculation. This represents an equitable sharing of generation stranded costs, and it is fully consistent with the requirements of the Act regarding the Commission's responsibility to identify a level of quantified transition or stranded costs that is appropriate for recovery from ratepayers through a CTC. See 66 Pa.C.S. §§ 2802(15), 2804(13)&(14), and 2808(c)(3)&(4).

In sum, PAIEUG's recommendation for recoverable stranded costs is as follows:

Net generating plant & CWIP	\$6.688 billion
Less PAIEUG market value	<u>\$4.811 billion</u>
Net stranded generation plant	\$1.877 billion
Plus regulatory assets, other	<u>\$0.805 billion</u>
Total stranded costs	\$2.682 billion
Less equity return disallowance	<u>\$0.473 billion</u>
Total <u>recoverable</u> stranded costs	<u>\$2.209 billion</u>

C. The Commission Should Reject PECO's Market Price Residual Approach For Tracking CTC Revenue Collection And Adopt The PAIEUG "CTC - Residual" Approach.

PECO has proposed an unbundling wherein it removes transmission and distribution costs and then removes an allocated CTC revenue requirement from each rate schedule based on a fixed "production demand revenue requirement" assignment of overall stranded costs (on a levelized annual basis). Therefore, under the PECO methodology, the residual

²⁵This sharing does not affect PECO's entitlement to recover 100% of quantified regulatory assets under Section 2808(c)(1).

component of the unbundling process is a value that represents the market generation component of PECO's embedded cost-based rates, not the actual expected market price. PAIEUG Statement No. 1, pp. 27-28. The residual market prices embodied in the PECO proposal are identical for each of the seven years of the CTC recovery period, which is inconsistent with the very assumptions that PECO itself makes with respect to market prices. Id. at 29. The result is that the development of a competitive market during the transition period will be severely impinged because the residual market prices identified by PECO will be lower than actual forecasted market prices. Id. at 30-32.

This aspect of PECO's unbundling approach should be rejected, and the methodology utilized by PP&L in its restructuring proceeding be adopted by the Commission. Under this alternative approach, embedded transmission and distribution costs are removed from the current bundled rate leaving a generation component. However, rather than remove the allocated CTC from each rate schedule's bundled generation rate (leaving a residual component that purports to represent the market generation price), projected market prices identified in this proceeding in calculating PECO's stranded generation costs are subtracted from the unbundled generation component, leaving a residual value that would then become the CTC for each year. These market prices, of course, increase over the CTC recovery period and the residual CTC will decrease over the same period. The market rate component of the unbundled rate schedules will reflect expectations for market prices in each year of the transition period and increase the likelihood that PECO's customers will actually have an opportunity to participate in a competitive market. Id. at 32-34. There is no basis for any

of PECO's opposition to the CTC residual approach, and it should be adopted by the Commission. PAIEUG Statement No. 1S, pp. 8-12.

D. The Commission Must Track CTC Revenue Accumulation Over The Transition Period To Determine When The Company Has Fully Collected Its Stranded Costs.

To ensure that PECO does not over-recover revenues through its CTC, the Company must be required to accumulate, on a monthly basis, all CTC revenues produced by each class. CTC revenues should produce an unamortized stranded cost balance each month, and collection will terminate when the stranded cost balance is fully amortized. *Id.* at 24-25.

E. If PECO Seeks To Extend The Seven-Year CTC Recovery Period, The Generation Rate Cap Also Must Be Extended.

Although PAIEUG would likely oppose such a request, if PECO were granted a request to extend its CTC (or ITC) beyond the recovery period identified in the Act, the generation rate cap required by the statute must be extended to run concurrently with any extended CTC (or ITC) recovery period. PAIEUG Statement No. 1, pp. 26-27.

F. Unbundling Of PECO's Rate Schedules Must Correct PECO's Overassignment Of Costs To The Distribution Component Of Rate Schedule HT.

Although PAIEUG agrees with the basic unbundling methodology utilized by PECO to unbundle its rate schedules,²⁶ it appears that PECO arbitrarily assigned 100% of administrative and general ("A&G") expenses and A&G plant to distribution and transmission costs in its functionalization analysis, while assigning no A&G expenses to the production

²⁶Of course, PAIEUG proposes the CTC residual approach as opposed to PECO's market price residual approach.

portion of the HT revenue requirements. The arbitrary assignment of all A&G expenses to the delivery function for Schedule HT substantially increases the distribution unit costs and thus the distribution unbundled rate for HT. PAIEUG St. No. 1, pp. 36-37 (see also PAIEUG St. No. 1S, pp. 3-7). This arbitrary assignment must be corrected in the manner described by PAIEUG witness Baron. See id. at 37-39. A failure to adopt Mr. Baron's proposal would lead to cost shifting that is impermissible under the Act (charges for non-generated services as of the effective date of the Act shall not exceed the non-generation charges that have been approved by the Commission).²⁷ 66 Pa.C.S. § 2804(4)(b).

G. The Unbundling Analysis Must Properly Reflect Market Prices.

In unbundling rates for each schedule, specific attention must be given to market price assumptions. The assumptions relied upon by PECO witness Sundermeir do not produce reasonable market price assumptions. Conversely, PAIEUG witness Baron has detailed a proposal that accurately reflects market prices in unbundling. PAIEUG Statement No. 1, pp. 39-44, Exhibits SJB-6, SJB-7, & SJB-8; PAIEUG Statement No. 1S, pp. 17-19.

H. PECO's Proposed Rate Design For LILR, EER, And Rule 4.6 Customers Must Be Corrected.

1. PECO's rate design for LILR customers must be corrected.

LILR customers are large customers willing to be interrupted by PECO. These customers purchase supplemental energy at PJM market rates plus ten mills/kWh. During off-peak periods, LILR customers purchase energy from Rate Schedule HT.

²⁷The effect of the PECO proposal is to increase Schedule HT rates for distribution, in violation of this provision of the Act.

PECO clarified on rebuttal that for a customer who remains on LILR during the transition, delivery charges will be assessed on the customer's on-peak, peak registered demands as well as on the customer's total energy consumption. PECO Statement No. 2-R, p. 8. PECO proposed that LILR customers pay a CTC for on-peak consumption (based on the difference between the ten-mill adder and the sum of unbundled delivery charges); for off-peak consumption, PECO proposed that the CTC for the LILR customer would be based on billed demand as well as the customer's off-peak energy consumption. Id. at 8-9. PECO also proposed that if an LILR customer accesses competitive supplies, that customer would pay the unbundled LILR rates other than generation. Id. at 9. However, PECO proposed that an additional CTC be imposed on the LILR customer that shops. Id.

First, PAIEUG reiterates that LILR customers should not pay stranded costs as though they had been firm Rate Schedule HT customers. PAIEUG Statement No. 1, pp. at 46-47.²⁸ However, LILR customers should be responsible for the CTC associated with their historic HT usage (the CTC associated with their off-peak purchases and on-peak HT billing demand).²⁹ PAIEUG Statement No. 1, pp.48-49; PAIEUG Statement No. 1S, p. 14.

²⁸To do so would create a cost shift (i.e., increase the LILR customer's cost responsibility for stranded costs inherent in rates today) in violation of the requirements of the Act. 66 Pa.C.S. § 2808(a).

²⁹This would be consistent with the production demand allocation and cost shifting protection contained in the Act, but PAIEUG opposes PECO's proposal under certain circumstances. See PAIEUG Statement No. 1S, p. 13.

Second, PAIEUG accepts PECO's proposal to unbundle the ten-mill adder; the on-peak CTC would be the difference between the ten-mill adder and the sum of unbundled delivery charges. Id. at 14.

Third, PAIEUG opposes PECO's proposal to impose an additional CTC on LILR customers that shop. The PECO proposal is unreasonable, would impose a competitive hurdle for LILR customers, and is otherwise violative of the Act. Id. at 15. The LILR customer that shops should pay the same CTC as that paid by an LILR customer continuing to purchase from PECO. (For a full discussion, see PAIEUG Statement No. 1, pp. 45-50; PAIEUG Statement No. 1S, pp. 12-16.)

2. PECO's rate design for EER and Rule 4.6 must be corrected.

EER customers are those customers contracting for service with PECO under their Economic Efficiency Rider. Rule 4.6 customers contract under a similar tariff rule. If an EER customer (or Rule 4.6 customer) leaves the PECO system and seeks alternative generation supplies, such a customer should pay the appropriate unbundled transmission distribution charges associated with the customer's specific contract rate and a CTC charge that utilizes the methodology recommended by PAIEUG for Rate Schedule HT. It would be entirely inappropriate, and a violation of the cost shifting and rate cap provisions of the Act, to charge an EER or Rule 4.6 customer unbundled transmission and distribution costs or a CTC based on the full Schedule HT rate. See PAIEUG Statement No. 1, pp. 51-52; PAIEUG Statement No. 1S, pp. 16-17.

I. To Account For Voltage Differentiation, PECO Must Be Required To Further Unbundle Its Distribution Delivery Charge Within Schedule HT.

Customers receiving service under PECO's Schedule HT are served at varying voltages; therefore, if a customer takes service at a high voltage (e.g., 69 kV or above) and that customer chooses an alternative generation provider and elects to purchase transmission services directly, that customer should not continue to be charged a distribution delivery charge since it will not be utilizing PECO's distribution facilities (except perhaps for metering in some service line facilities). Accordingly, it would be appropriate for PECO to develop separate distribution rates associated with HT customers taking service at various service voltages.³⁰ PAIEUG Statement No. 1, pp. 53-55.

J. PECO's Proposed Self-Generation "Test" Must Be Rejected.

PECO has proposed a test that would flag customers whose usage drops by 10% or more in a calendar year as a means of identifying customers who install self-generation and thereby bypass the CTC. A 10% reduction in a test-year level of usage does not represent a "significant" reduction in purchases of electricity as required by the statute. 66 Pa.C.S. § 2808(a). A more reasonable threshold would be 25%. PAIEUG Statement No. 1, p. 56.

K. Selection Of Customers For Participation In The Phase-In Of Retail Access Must Be On A First-Come, First-Served Basis.

PECO should select customers for the phase-in on the basis of a first-come, first-served approach. To the extent that there is an over-subscription of customer-nominated loads for large commercial and industrial customers, there should be a pro-rata reduction to each subscriber's nominated load amount. Thus, if all customers in a class nominate 100%

³⁰PAIEUG would also oppose any PECO proposal to charge customers for ancillary service costs if the customer is utilizing PECO's T&D services; ancillary service costs are included within the full delivery service. PAIEUG Statement No. 1, pp. 52-53.

of their load, all customers are assured of at least 33% of their load for participation in the first stage of the phase-in, thereby alleviating competitive concerns within the commercial and industrial classes. PAIEUG Statement No. 1, pp. 57-58.

In addition, to further alleviate competitive concerns within a class, the Commission should require that PECO begin selection of customers for the second phase and actually implement that selection process to permit retail access for 66% of peak load beginning on January 2, 1999, and 100% on January 2, 2000. *Id.* at 58-59.

L. PECO's Proposed Mechanism For Recovery And Assignment Of Universal Service Fund Costs Should Be Approved.

PECO has assigned universal service fund costs to the residential class and has proposed a tariff that would adjust the universal service fund costs annually. PECO properly recognizes that universal service costs are associated with, and provide benefits to, residential customers and therefore should be assigned to that class, with no allocation to the industrial or commercial classes.³¹ PAIEUG Statement No. 1R, p. 3. PECO's rationale is reasonable and follows sound cost-of-service ratemaking principles. *Id.* at 4.

Despite this, several parties have proposed that universal service costs be allocated across all classes and, further, that these costs be assigned to these customer classes on a per-kWh basis. PECO's current bundled rates do not reflect any allocation of these costs to the industrial and commercial classes, thus a change in the cost allocation method for universal

³¹In fact, the definition of "universal service" at 66 Pa.C.S. § 2803 states only that universal service programs benefit low-income consumers.

service costs would violate the component rate cap provisions in the Act, as well as cost shifting restrictions. See 66 Pa.C.S. §§2804(i)(B) & 2804(7); PAIEUG St. No. 1R, pp.5-6.

Moreover, arguments that the Act requires that all customers pay universal service charges because of language regarding a "non-bypassable rate mechanism," are unfounded. The language at issue, found in Section 2802(17) of the Act provides merely that recovery of costs is "permitted" through a non-bypassable rate mechanism, not that assignment of costs to all rate classes is "required." Section 2802(17) establishes only that if a universal service charge is allocated to a customer or customer class, then the charge cannot be by-passed. In fact, given the rate cap requirements of the Act, the statute clearly sets forth that cost responsibility for any non-generation charge, such as a universal service charge, cannot be increased. 66 Pa.C.S. § 2804(4)(i)(B).

Even assuming that costs could be allocated to other classes (and they cannot), parties suggesting that those costs be allocated on a kWh or energy basis must be rejected. Not only would these proposals, if implemented, violate the component rate cap provisions of 2804(4)(i), they would amount to nothing more than gross and inequitable taxes on energy usage. PAIEUG Statement No. 1R, pp. 7-9. Any proposal to allocate universal service costs across classes on a kWh basis must be soundly rejected. This is fully consistent with the Commission's recent Order on the issue of universal service funding mechanisms and cost recovery. Guidelines for Universal Service and Energy Conservation Programs, Docket No. M-00960890, Final Order entered July 11, 1997, p. 20.

M. Proposals To Change The Allocation Of Stranded Costs Must Be Rejected As Violative Of The Act.

Various parties have proposed allocation of CTC costs to rate classes on bases that vary substantially from the current allocation methodology for the utility's production plant, in violation of the express provisions of section 2808(a)³². These proposals must be rejected as violative of the Act. PAIEUG Statement Nos. 1R, pp. 9-11, and 1S, pp. 21-24.

N. Enron's Proposal To Prohibit PECO From Continuing To Offer Competitive Alternatives Must Be Rejected.

Enron witness Dirmeir has recommended that PECO not be permitted to enter into market-priced contracts unless PECO first offers to competitive suppliers the opportunity to bid to provide the service to customers. The contracts that witness Dirmeir apparently is referring to are those currently permitted under PECO's Electric Tariff Rule 4.6 and EER.

PECO should not be precluded from continuing to offer these contracts to its customers. It is patently unreasonable (and antithetical to the purpose of this proceeding -- to foster choice) to restrict customers from discussions with PECO, or any other supplier, regarding future contracts. PAIEUG Statement No. 1R, pp. 11-13. In fact, the Enron proposal runs counter to the Act, which specifically provides the Commission's authority to continue flexible pricing and flexible rate options, "including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives." 66 Pa.C.S. § 2806(h). Enron's proposal must be rejected.

³² Section 2808 provides that stranded costs to be recovered through a CTC (or ITC) "shall be allocated to customer classes in a manner that does not shift interclass or intraclass costs and maintains consistency with the allocation methodology for utility production plant accepted by the Commission in the electric utility's most recent base rate proceeding." 66 Pa.C.S. § 2808(a).

VI. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Commission conclude:

- (1) that the Joint Petition for Partial Settlement is in the public interest and should be approved without modification;
- (2) that the Enron Petition must be rejected with prejudice; and,
- (3) in the alternative, that the recommendations set forth by PAIEUG in this Main Brief and its supporting testimony must be adopted in approving, with modification, PECO's restructuring plan.

Respectfully submitted,

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APPENDIX A

FINDINGS OF FACT REGARDING THE PARTIAL SETTLEMENT³³

- The Partial Settlement provides substantial benefits to customers and market participants in PECO's service territory. PAIEUG St. No. 1SS.
- The Joint Petition for Partial Settlement provides extra statutory benefits (acceleration of customer choice, extension of rate caps, rate reductions, etc.). Id.
- The Partial Settlement reasonably resolves PECO's stranded cost claim and recovery of stranded costs. Id.
- The Partial Settlement amicably resolves any dispute regarding universal service cost recovery. See PAIEUG St. No. 1R, pp. 3-9.
- The Partial Settlement reflects reasonable market price projections and residual CTCs over the term of the recovery period given the settlement as a whole. PAIEUG St. No. 1SS.
- The Partial Settlement fairly disposes of complicated unbundling and access issues regarding large industrial/institutional and commercial customers. Id.
- The Partial Settlement continues and/or makes available to prospective customers LILR, Rule 4.6, and EER service offerings, in addition to other flexible rate options and riders. Id.; see also PAIEUG St. Nos. 1, 1S.
- The Partial Settlement reasonably resolves issues related to self-generation and CTC application. See PAIEUG St. No. 1, pp. 55-56, PAIEUG St. No. 1SS, p. 7.

³³PAIEUG provides this limited list of proposed findings but is general agreement with virtually all of PECO's proposed findings of fact on this issue.

CONCLUSIONS OF LAW REGARDING THE PARTIAL SETTLEMENT

- The Commission is required to review the Partial Settlement in its entirety in assessing whether it is reasonable and in the public interest.
- The Partial Settlement is in the public interest.
- Objections to the Partial Settlement are without merit.

APPENDIX B

FINDINGS OF FACT REGARDING THE ENRON PETITION³⁴

- The Enron Petition (and its proposed "Choice" Plan) is anti-competitive and not in the public interest. PAIEUG St. No. 1E.
- The Enron Petition requests relief that the Commission is without authority to grant regarding, inter alia, designation of a provider of last resort, issuance of a QRO to PECO, requiring PECO to sell or transfer any transition bonds, and requiring PECO to enter into contractual arrangements required by the Enron plan. See Enron Petition & 66 Pa. C.S. § 2801, et seq.
- The market price estimates upon which Enron relies are not based on any written analyses or market price studies. See, e.g., tr. at 1355-57.
- The market price estimates upon which Enron relies are unsubstantiated, unreasonable, and may constrain customers ability and desire to exercise choice. PAIEUG St. No. 1E; PECO St. No. 6-E.
- The CTCs upon which Enron's proposal is based escalate during the term of the transition period and are unreasonable. Id.
- Adoption of the Enron proposal (and rejection of the Partial Settlement) would deprive customers of substantial benefits, to include extended rate caps, accelerated customer choice and direct access, and ongoing flexible rate and pricing options (which includes Enron's proposal to eliminate, modify, or revise various riders and offerings currently available to large industrial/institutional consumers). PECO St. No. 1-E.
- Enron's proposed unbundling, elimination/modification of various riders, and refusal to provide customers served under these rates default service, would violate the statutory rate cap. PAIEUG St. No. 1E.
- Enron/EESPI are not willing to commit to public utility status. Tr. at 1297.
- EESPI has not substantiated its financial integrity. Tr. at 1318-30.
- Enron's proposal creates cost savings through a reduction to the T & D rate component. Tr. at 1401-09.
- Enron refuses to agree to serve current EER and 4.6 customers (as well as customers served under various riders) as default customers. Tr. at 1430-31, 1728, 1732-33; EESPI St. No. 5-R, p. 15.

³⁴PAIEUG provides this limited list of proposed findings but is in general agreement with most of PECO's proposed findings of fact on this issue.

CONCLUSIONS OF LAW REGARDING THE ENRON PETITION

- The Commission is without authority to grant relief requested in the Enron Petition as a matter of law.
- The Commission is without the authority to require Enron to adhere to the rate cap provisions of the Competition Act if Enron is not designated a public utility.
- The Commission is without the authority to approve any plan that would require it to deviate from the conditions (expressed and implied) inherent in the Competition Act (particularly those regarding the total and unbundled element rate cap).
- Section 2806(h) of the Act contemplates continuation of flexible pricing options.
- The rate cap provisions of Section 2804(4) of the Act apply equally to all customers, to include those currently served under rate schedule riders and other flexible rate options.
- Enron's proposals to eliminate or modify certain service offerings and to refuse to provide default service to certain customers violate the Act as a matter of law.
- Enron's plan is not in the public interest as a matter of law.

APPENDIX C

FINDINGS OF FACT REGARDING PECO'S RESTRUCTURING PLAN

- PECO has net stranded costs of \$2.682 billion (net regulatory assets of \$805.177 million and stranded generation investment of \$1.877 billion). PAIEUG St. Nos. 2, p. 6, and 2, p. 109.
- An equity disallowance on stranded generation results in a reduction of \$473 million. PAIEUG St. No. 1, pp. 16-23.
- An appropriate amount of stranded costs for PECO to recover from ratepayers is \$2.209 billion (reflecting the equity disallowance). Id. at 9.
- PECO's market price residual approach for tracking CTC revenue collection results in an unreasonable unbundled market price component of generation. Id. at 30-34.
- The CTC residual approach for tracking revenue collection results in reasonable market price proxies. Id.; PAIEUG St. No. 1S, pp. 8-12.
- To insure only reasonable recovery of stranded costs, CTC revenue accumulation must be tracked over the transition period to determine when the Company has fully collected its stranded costs. PAIEUG St. No. 1, pp. 24-25.
- Ratepayers will be protected if any extension of the CTC recovery period is accompanied by an extension of the generation rate cap. Id. at 26-27.
- PECO's unbundling of rate schedules overassigns A&G costs to the Rate Schedule HT class. Id. at 36-39.
- PECO's original proposed rate design for LILR, EER, and Rule 4.6 customers would improperly allocate CTC charges and impinge upon customers' rights to access competitive supplies. Id. at 46-52; PAIEUG St. No. 1S, pp. 12-17.
- Customers receiving service under PECO's Schedule HT are served at varying voltages. PAIEUG St. No. 1, pp. 53-55.
- It is appropriate to develop separate distribution rates associated with HT customers taking service at various service voltages. Id.
- A 10% reduction in the test-year level of usage for a self-generator is not "significant." Id. at 56.
- To assuage intra-class competitive concerns, customer selection for participation in the phase-in of retail access could be on a first-come, first-served basis, with pro rata load reductions for any oversubscription of large industrial/institutional and commercial customers. Id. 57-59.

- Universal service programs and associated costs are associated with and provide benefits only to residential customers. PAIEUG St. No. 1R, pp. 3-4.
- PECO's allocation of universal service fund costs to the residential class is based on cost of service principles. Id.
- Assignment of universal service costs to classes other than the residential class would violate a rate cap on the non-generation related unbundled components of current rates and would result in cost shifting. Id. at 3-9.
- Proposals to employ a kWh or energy-based or other energy-based surcharge for recovery of universal service costs from all classes would constitute a tax on energy usage and would violate component rate caps and would lead to cost shifting. Proposals to allocate the CTC or ITC in a manner that deviates from the allocation methodology for utility production plant accepted by the Commission in the electric utility's most recent base rate proceeding could lead to interclass or intraclass cost shifts. Id.
- Proposals to prohibit PECO from continuing to offer flexible pricing alternatives would restrict current customers' opportunities for alternative pricing and negotiation. Id. at 11-13.

CONCLUSIONS OF LAW REGARDING PECO RESTRUCTURING PLAN

- The Act requires the Commission to first quantify PECO's total, net stranded costs and to then (second) identify an appropriate (i.e., just and reasonable) amount of such costs to recover from ratepayers.
- The Commission has the absolute discretion to allow less than 100% recovery of quantified transition and stranded costs from ratepayers. The utility is only entitled to seek recovery of alleged transition or stranded costs that are known and measurable, traditionally recoverable, electric generation-related, which will remain following mitigation, and which are stated on a net present value basis.
- PECO is not entitled to over-recover revenues through its CTC (or ITC).
- Rates must be unbundled and designed to ensure compliance with the cost shifting prohibitions and rate cap requirements of the Act.
- The Act contemplates selection of customers for participation in the phase-in on a first-come, first-served basis with the allowance for all customers in a class to participate in each stage of the phase-in (at least on a partial load basis).
- The Act contemplates allowing a phase-in of 66% of peak load beginning on January 2, 1999, and 100% on January 2, 2000.
- Universal service costs must be recovered from ratepayers in a manner that does not violate the cost shifting prohibitions and rate cap conditions required by the Act.
- A universal service energy surcharge imposed on all customers would violate rate cap and cost shifting restrictions as a matter of law.
- PECO's proposed allocation of universal service costs is just and reasonable as a matter of law.
- Section 2802(17) does not require that all customers pay universal service costs.
- Stranded costs are to be recovered through a CTC based on an allocation that does not shift interclass or intraclass costs.
- The Act provides that flexible based rates and other alternative rate options are to be maintained during restructuring.
- \$2.209 billion in stranded cost is a just and reasonable amount to allow PECO to recover from ratepayers.
- Section 2806(h) of the Act contemplates continuation of flexible pricing options.

- The rate cap provisions and cost shifting restrictions of the Act apply equally to all customers.
- Any proposals by PECO that shift CTC responsibility or exceed individual customer rate cap limitations are violative of the Act as a matter of law.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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