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December 2, 1997

Via Hand Delivery

James J. McNulty, Esquire
Acting Secretary
Pennsylvania Public Utility Commission
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Harrisburg, Pennsylvania 17105-3265

Re: Application of PECO Energy Company for Approval of its Restructuring Plan Docket No. R-00973953 and Petition of Enron Energy Services Power, Inc., Docket No. P-00971265

Dear Mr. McNulty:

Enclosed for filing with the Commission in the above captioned matter are an original, two copies, and one 3.5" diskette of the Brief of GPU Energy. Copies of this Brief have been served in accordance with the attached Certificate of Service.

Please contact me if you require anything further in regard to this matter.

Very truly yours,

Terrance J. Fitzpatrick

Terrance J. Fitzpatrick

TJF/cc

Enclosures

c: Honorable Marlane R. Chestnut
Honorable Charles E. Rainey, Jr.
Chairman Quain
Commissioner Bloom
Commissioner Hanger
Commissioner Rolka
Commissioner Brownell
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Office of Special Assistants
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Pennsylvania Public Utility Commission
Law Bureau
(2 copies and one diskette)

All parties of record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS RESTRUCTURING PLAN AND JOINT PETITION FOR PARTIAL SETTLEMENT	:	DOCKET NO. R-00973953
PETITION OF ENRON ENERGY SERVICES POWER, INC.	:	DOCKET NO. P-00971265

MAIN BRIEF OF GPU ENERGY

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Dated: December 2, 1997

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I. STATEMENT OF THE CASE

On April 1, 1997, PECO Energy Company ("PECO") filed its restructuring plan pursuant to § 2806 of the Electricity Generation Customer Choice and Competition Act, ("Customer Choice Act" or the "Act") 66 Pa. C.S. § 2806. PECO's filing was referred to the Office of Administrative Law Judge, and the parties conducted discovery and filed written testimony.

On August 27, 1997, prior to the beginning of hearings, a Joint Petition for Partial Settlement of PECO's restructuring plan ("Joint Petition") was filed by PECO, State Senator Vincent Fumo, Lance Haver, The Consumer's Education and Protection Association, et al. ("CEPA"), The Office of Trial Staff, The Office of Consumer Advocate, The Office of Small Business Advocate, The Philadelphia Area Industrial Energy Users Group, The American Association of Retired Persons, and the Department of the Navy (collectively, "Joint Petitioners"). Under the Joint Petition, PECO agreed, among other things, to a 10% across-the-board reduction in its bundled rates effective September 1, 1998, and to guaranteed reductions of lesser amounts in later years. Under this proposal, PECO would recover roughly $5.5 billion of its estimated $7.5 billion of stranded costs. PECO would also be authorized to securitize $4 billion of its stranded costs. The Joint Petitioners also agreed upon certain other provisions, and left some issues open pending

further proceedings. Certain parties, including some electric generation suppliers and the Environmentalists, objected to the Joint Petition.

On October 7, 1997 Enron Energy Services Power, Inc.("Enron") filed the "Petition of Enron Energy Services Power Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority pursuant to § 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company." This Petition was assigned Docket No. P-00971265, and was consolidated with the PECO restructuring proceeding.

In its Customer Choice Petition, Enron sought Commission approval to (1) replace PECO as the "supplier of last resort" within the service area historically served by PECO, (2) double the amount of rate discounts proposed in the Joint Petition for Partial Settlement, (3) force PECO to file a tariff that would unbundle, and make competitive, "revenue cycle services" including billing, collection, metering, and customer services, (4) force PECO to file a distribution tariff that would contain so-called "competitive safeguards" such as precluding any affiliated electricity supplier from using PECO's name or logo and (5) pay PECO's stranded costs amounting to $5.461 billion, which would be made possible by PECO's issuance of transition bonds in this amount following issuance of

an irrevocable Qualified Rate Order by the Commission, which PECO would then be compelled to sell to Enron at an interest rate of 9.66%.

Following the filing of Enron's petition, the Commission consolidated it with PECO's restructuring proceeding. Hearings were conducted on the Joint Petition and the Enron Petition in Philadelphia in October and November, 1997.

Metropolitan Edison Company and Pennsylvania Electric Company, doing business as "GPU Energy," filed a timely Petition to Intervene on April 30, 1997, no objections were raised in connection therewith.

II. CONCLUSIONS OF LAW*

1. A Commission decision approving a settlement does not constitute a precedent that may be applied to other cases.

2. The Customer Choice Act requires the Commission to adopt a case-by-case approach in rendering decisions on electric utility restructuring plans.

3. The Customer Choice Act does not authorize an electricity supplier to file a "choice plan" as an alternative to an electric utility's restructuring plan.

4. The Customer Choice Act does not authorize the Commission to oust on electric distribution company as the supplier of last resort.

5. The Customer Choice Act reserves control of metering, billing, and customer services to electric distribution companies.

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* This Brief does not contain findings of fact because it addresses legal issues only.

III. SUMMARY OF ARGUMENT

GPU Energy neither endorses nor opposes the Joint Petition submitted by PECO and several of the parties to this proceeding. However, a Commission decision approving this partial settlement would not constitute a precedent applicable to other restructuring proceedings before the Commission in part because the Customer Choice Act requires the Commission to take a case-by-case approach in deciding each electric utility's restructuring proceeding. Consequently, the Commission's decision in this proceeding is irrelevant to the Commission's decision in any other electric restructuring proceedings.

The Commission should reject Enron's petition setting forth its "choice plan". The Act neither authorizes electric suppliers to file such plans nor permits the Commission to dictate an involuntary transfer of PECO's supplier of last resort rights to Enron. Finally, Enron's proposal to require PECO to involuntarily open metering and billing services to competition contravenes the Act.

IV. ARGUMENT

A. If the Commission Approves the Joint Petition, Such Decision Should Not Have a Precedential Impact on GPU Energy's Restructuring Proceedings.

GPU Energy neither endorses nor opposes the Joint Petition. GPU Energy notes, however, that, a Commission decision approving the Joint Petition does not constitute a precedent that would bind the Commission in future adjudications. See, Pa. PUC v. The Bell Telephone Company of Pennsylvania, 1988 Pa. PUC Lexis 572 (Dkt. No. R-811819), Order entered November 10, 1988). ("We vigorously, and without equivocation, reject considering a settlement as precedent, as to any subsequent issue, in any proceeding.") Accordingly, a Commission decision approving the Joint Petition would not have any precedential impact upon the Commission's decision in GPU Energy's restructuring proceedings, and it would be appropriate for the Commission to state this in its Opinion and Order.

In addition to the legal principle that decisions on settlements do not constitute Commission precedents, there are additional reasons why a Commission decision approving the Joint Petition - or even a Commission decision on the merits of PECO's restructuring plan - should not "set the tone" for future Commission decisions on restructuring cases.

One of the cornerstones of the Customer Choice Act, 66 Pa. C.S. § 2801 et seq., is its requirement that the Commission treat each electric utility according to its particular circumstances when making decisions on utility restructuring plans. Indeed, the Senate expressly rejected an amendment (A 7963) that called for a 10% across-the-board rate cut for all ratepayers in the Commonwealth. 180 Sen. Leg. J. 2684-2695. Instead, as set forth below, the General Assembly required the Commission to examine the particular circumstances of each utility in making decisions on restructuring plans.

This case-by-case approach is borne out by several sections of the Act. First, the standards for recovery of stranded costs in the Act distinguish between different types of stranded costs. The Act provides that the Commission "shall allow" recovery of utility costs related to contracts with non-utility generators (including both payments to operating projects and payments to buy-out, etc. NUG projects). 66 Pa. C.S. § 2808(c)(1),(2). In contrast, for costs related to utility-owned generation facilities, the Act provides that the Commission shall determine the amount of such costs that it is "just and reasonable" for the utility to recover from ratepayers. 66 Pa. C.S. §§ 2804 (13), 2808(c)(3). Accordingly, a company such as GPU Energy whose stranded costs consist largely of NUG costs must be treated differently under the

Act than a company such as PECO whose stranded costs consist primarily of costs related to utility-owned generating facilities.

Second, the Act requires a case-by-case review of the adequacy of the mitigation efforts of electric utilities. The Act specifically provides that "the Commission shall consider [in determining the level of stranded costs that may be recovered via the Competitive Transition Charge] the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs by appropriate means in a manner that is reasonable under all of the circumstances, including consideration of whether mitigation has been commensurate with the magnitude of the electric utility's generation-related transition or stranded costs." 66 Pa. C.S. § 2808(c)(4).

Finally, the Act provides that "[o]f equal importance to the mitigation efforts under paragraph (4), the Commission shall consider efforts undertaken over time, prior to the enactment of this chapter, to reduce or moderate customer rate levels while maintaining safe and efficient operations." 66 Pa. C.S. § 2808(c)(5). This provision is particularly important in highlighting differences between PECO and GPU Energy. As the Commission's 1996 Annual Report (pp. 50-52) shows, PECO has the highest electric rates in the Commonwealth, while the rates of the GPU Energy companies are in the low to mid-range among the rates of

all Pennsylvania electric utilities. [2] This information alone demonstrates why the Commission's decision in this proceeding should have no bearing on GPU Energy's restructuring proceeding.

B. The Enron Choice Plan Is Not Authorized By The Customer Choice Act

However well-intended, Enron's "choice plan" petition cannot be legally supported. Simply put, the Customer Choice Act neither authorizes electric generation suppliers to file such a plan nor empowers the Commission to approve one. Rather, the Act modifies the terms of the Public Utility Code to allow retail customers direct access to the competitive market of electricity generation. Nowhere does the Act authorize an electricity supplier to file a "choice plan" which the Commission could consider as an alternative to an electric utility restructuring plan filed pursuant to 66 Pa. C.S. § 2806(d).

Enron apparently believes that its Customer Choice Plan is authorized by §§ 2802(16) and 2807(e)(3) of the Act that, according to Enron, empower the Commission to oust an electric distribution company as the "supplier of last resort" of electricity to customers in its service territory and to replace it with an alternate supplier. (Petition, p.11, note 24). Section 2802(16) of the Act provides: "Electric distribution companies should

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[2] The Commission may take official notice of this Report. 52 Pa. Code § 5.406(a)(2).

continue to be the provider of last resort in order to ensure the availability of universal electric service in this Commonwealth unless another provider of last resort is approved by the Commission." Section 2807(e)(3)of the Act provides: "If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternate electric generation supplier, the electric distribution company or Commission-approved alternative supplier shall acquire electric energy at prevailing market-prices to serve that customer and shall fully recover all reasonable costs."

Enron's argument and reliance upon §§ 2802(16) and 2807(e)(3) of the Act are not persuasive. First, § 2802 is the "Declaration of policy" section of the Act which sets forth the legislative intent of the Act, but does not contain any operative provisions. Consequently, § 2802 does not confer rights or obligations, and cannot be construed as doing so.

Second, Enron's reliance on § 2807(e)(3) is misplaced. Section 2807(e), as its title indicates, sets forth the obligations of an electric distribution company ("EDC"), mandating that the EDC is obligated to continue providing service to customers until such time as the EDC is no longer collecting either a competitive transition charge or an intangible transition charge, or until all EDC customers have choice, whichever is longer. **At the end of the**

transition period, the Commission is directed to promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity. If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or Commission-approved alternative supplier shall acquire electric energy at prevailing market-prices to serve that customer and shall fully recover all reasonable costs. 66 Pa. C.S. § 2807(e)(1)-(3) (emphasis added).

The plain language of the § 2807(e)(1) leaves no doubt that during the transition period, only the electric distribution company has the right to serve as the supplier of last resort. Furthermore, as §§ 2807(e)(2) and (3) make clear, changes relative to an EDC's duties will only take effect by Commission regulation "[a]t the end of the transition period". Therefore, under the plain language of the Act, there can be no doubt that Enron's proposal to involuntarily supplant PECO as the supplier of last resort during the transition period must be rejected. [3]

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[3] This is not intended to suggest that at the end of the transition period the Commission has authority to supplant, at will, an electric distribution company as supplier of last resort. The language in §§ 2802 and 2807 of the Act regarding alternative suppliers serving as suppliers of last resort was simply intended to clarify that electric distribution companies simply could voluntarily transfer their supplier of last resort rights to other suppliers. This interpretation is supported by two factors. First, the Act is silent as to the standards

The Enron Choice Plan also contravenes the Customer Choice Act to the extent that it would mandate that metering, billing, and collection services be opened to competition. With regard to metering, § 2807(d) of the Act provides that "the electric distribution company shall continue to provide customer service functions consistent with the regulations of the Commission including meter reading, complaint resolution and collections." 66 Pa. C.S. § 2807(d). There is no similar language in the Act authorizing electricity suppliers to provide such services.

With regard to billing, the Act provides:

> Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customers for all electric services, consistent with the regulations of the Commission, regardless of the identity of the provider of those services.

66 Pa. C.S. § 2807(c). This language leaves no doubt that a

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governing when the Commission could involuntarily transfer these rights to another supplier; it is inconceivable that the Act would be silent on this point if such an involuntary transfer were intended. Second, the right to serve as supplier of last resort is simply a continuation of each electric utility's pre-existing right (before passage of the Customer Choice Act) to provide all aspects of electric service within its service territory. There is case law supporting a utility's ability to voluntarily transfer its certified rights. See, In Re: Byerly, 279 A.2d 186 (Pa. 1970). An involuntary transfer of these rights, however, would amount to a revocation of the rights, which requires a showing of just cause. See, Fusaro v. Pa. PUC, 382 A2.d 794 (Pa. Commw. 1978).

customer that purchases energy from an alternate supplier has two options regarding billing: (1) the customer may receive separate bills from the supplier and its electric distribution company, or (2) the customer may choose to receive one bill from the electric distribution company. The Act could have, but clearly did not, provide the option of allowing a customer to receive one bill from its electric supplier, which demonstrates that this option was not intended.

Any reliance upon § 2804(3) of the Act to support unbundling of metering, billing, and customer services is also misplaced. That section provides: "The Commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transition and distribution. The Commission may require the unbundling of other services." This general language, authorizing the Commission to unbundle "other services", must yield to the specific language referred to above that expressly authorizes electric distribution companies, and not electricity suppliers, to provide metering, billing, and customer services. This interpretation is consistent with the canon of construction that specific language controls language when the two are in conflict. 1 Pa. C.S. § 1933.

Accordingly, it is clear that the Act reserves control of metering, billing, and customer services to electric distribution

companies. These utility functions cannot be usurped involuntarily from the local distribution company in the manner chosen by Enron in its Choice Plan.

V. CONCLUSION

For the foregoing reasons, GPU Energy respectfully requests that, if the Commission approves the Joint Petition for Partial Settlement, the Commission state in its Order that this decision does not constitute a precedent for other restructuring proceedings. GPU Energy further requests that Enron's "Choice Plan" petition be rejected.

Respectfully submitted,

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Dated: December 2, 1997

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS RESTRUCTURING PLAN AND JOINT PETITION FOR PARTIAL SETTLEMENT	:	DOCKET NO. R-00973953
PETITION OF ENRON ENERGY SERVICES POWER, INC.	:	DOCKET NO. R-00971265

CERTIFICATE OF SERVICE

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

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

PECO ENERGY COMPANY

Docket Nos. R-00973953 and P-00971265

INITIAL BRIEF OF

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Dated: December 2, 1997
Washington, D.C.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO Energy Company, R-00973953

INITIAL BRIEF OF
THE INDICATED PARTIES

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Petition of Enron Energy Services Power, Inc.	)	**P-00971265**
for Approval of an Electric Competition and	)	**(consolidated)**
Choice Plan and for Authority Pursuant to	)	
Section 2807 (e)(c) of the Public Utility Code	)	
to Serve as the Provider of Last Resort in the	)	
Service Territory of PECO Energy Company	)	

INITIAL BRIEF OF ELECTRIC CLEARINGHOUSE, INC. AND DUKE ENERGY TRADING AND MARKETING, L.L.C.

To: Pennsylvania Public Utility Commission

Pursuant to the Prehearing Order dated November 20, 1997, as confirmed during the hearings, Electric Clearinghouse, Inc. and Duke Energy Trading and Marketing, L.L.C. (referred to collectively as ECI/Duke) file with the Pennsylvania Public Utility Commission (the Commission) their initial brief in the above-styled retail electric restructuring proceeding involving PECO Energy Company (PECO).

INTRODUCTION

On January 24, 1997, the Commission issued an order in Docket No. M-00960890 which ordered the jurisdictional electric utilities to file restructuring plans pursuant to the Electricity Generation Customer Choice and Competition Act. On April 1, 1997, PECO filed its restructuring plan. On August 25, 1997, PECO along with several other parties[1], jointly

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[1] The other parties include Senator Vincent J. Fumo, Lance S. Haver, the Consumers Education and Protective Association *et. al.*, the Office of Trial Staff, the Office of Consumer

sponsored a settlement agreement (the Partial Settlement) intended to resolve a number of issues raised by PECO's April 1 filing. The Partial Settlement provides not only for the unbundling of transmission, distribution, and generation, but also to some degree, for retail consumer choice. ECI/Duke recognize that retail unbundling and the transition to customer choice is a complex process, and that the ultimate goal of bringing the benefits of open competition to the retail consumer must be attained within the context of legitimate local policies and unique regional characteristics. Nevertheless, ECI/Duke are concerned that some of the Partial Settlement's provisions may unduly hamper fair and open competition for retail sales.

On October 7, 1997, Enron Energy Services Power, Inc. (Enron) filed an alternative electric competition and customer choice plan (the Choice Plan) in response to the Partial Settlement. As part of the Choice Plan, Enron requested the authority to serve as the Provider of Last Resort (PLR) in PECO's service territory. ECI/Duke have a number of concerns regarding the Choice Plan, too.

OVERVIEW

In their Initial Brief, ECI/Duke will focus on two of the principal issues affecting development of a competitive and functional retail market for power generation and true consumer choice; those being: (i) the level of the energy and capacity price cap offered by PECO to consumers who do not switch to alternative suppliers, and (ii) who should be allowed or required to assume Provider of Last Resort service responsibilities. The energy and capacity price cap (referred to hereinafter as the generation credit or generation price cap) is the price

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

against which competitive suppliers must compete in order to induce customers to switch, and given the structure of Pennsylvania's industry, is an essential component in the creation of the kind of vigorous, competitive marketplace envisioned in the Competition Act[2].

ARGUMENT

- THE PARTIAL SETTLEMENT'S GENERATION CREDIT IS TOO LOW.

Under the Partial Settlement, the parties agreed to generation price caps for 1999 through 2008. The generation price cap for 1999 and 2000 is 2.80 cents. (Partial Settlement at Page 8, Table A). ECI/Duke share the concerns of the Pennsylvania Electric Competition Coalition (PECC), the Mid-Atlantic Power Supply Association (MAPSA), and Enron that the generation credit's artificially depressed caps will make it extremely difficult for competitive suppliers to enter the market during the early years of the Partial Settlement. (Partial Settlement at 8, Table A; MAPSA Statement 1; PECC Statement 1 at 21-22). The Partial Settlement's proposed generation pricing will impair competition in the short-term and potentially long-term; indeed, the generation credit may well be a significant barrier to entry. ECI/Duke believe that the Partial Settlement's generation pricing is artificial and contrived and, as such, cannot realistically be expected to lead to healthy competition in the generation sector. (See PECC Statement 1 at 19-21; MAPSA Statement 1 at 9).

While ECI/Duke support the Partial Settlement's ten percent total rate reduction (and, thus, the Enron Choice Plan's rate reductions of up to 20 percent), ECI/Duke, like the PECC, are concerned that too little of the revised rates are earmarked for generation costs. As PECC

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[2] The properly calculated generation credit is only an essential component if the Commission chooses to use generation credits instead of unbundled cost of service studies.

Witness Hull testified, the market price for delivered power in 1999 through 2003 is measurably higher than the Partial Settlement's proposed generation credit. (PECC Statement 2 at 6, 9; see MAPSA Statement 1 at 7-8). In 1999, testified Witness Hull, the market price for delivered power will be 3.40 cents and will continue to increase in 2000 through 2003. (PECC Statement 2 at 13, Table 1; Transcript at 774). In these circumstances, with its ability to allocate generation-related costs to other services, PECO will be able to offer generation service at a price significantly below that which can be provided by third-party suppliers, who generally must acquire power at the market price. As such, the Partial Settlement's proposed generation cap will act as a barrier to entry for competing, third-party suppliers.

In response to this barrier to entry, several parties have proposed alternative generation caps to replace the Partial Settlement's 2.8 cent per kilowatt hour cap. Under the MAPSA counter-proposal to the Partial Settlement, MAPSA used the total credits (market generation credit and customer participation credit) approved for PECO's pilot program and escalated the credit for inflation by three percent[3]. (Transcript at 687; MAPSA Statement 1-S at 11). For 1999, MAPSA proposed a Standard Offer (generation credit) of 4.01 cents per kilowatt hour. (MAPSA Statement 1-S at Exhibit DEJ-1S, Schedule A). Under the PECC's proposal, Witness Mitnick proposed 3.83 cents per kilowatt hour as the 1999 system-wide average generation credit. (PECC Statement 1 at Exhibit SAM-7). Under Enron's PLR proposal, Enron proposed a 3.48 per kilowatt hour generation credit for 1999. (Enron Statement 1-R at Attachment A and Attachment B). New Energy Ventures (NEV) recommended a system wide generation price of

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[3] MAPSA's proposed rates also take into account usage patterns, retail business costs and loss factors. (MAPSA Statement 1-S at 8).

3.745 cents per kilowatt hour for 1999, which is the average of the MAPSA proposal and Enron's generation prices under the revised Enron Choice Plan. (NEV Statement 1-SR at 3-4).

Although it is impossible to forecast with certainty what the future years' market-clearing prices will be for energy and capacity, ECI/Duke agree with PECC Witness Mitnick that the Partial Settlement's generation cap of 2.8 cents per kilowatt hour for 1999 and 2000 leads to a high probability that competitive suppliers will be impeded from entering the marketplace. (Transcript at 870, 920). The natural consequence of this will be that electricity consumers in southeastern Pennsylvania will be denied the benefits of fair competition that the state's retail access initiative was intended to afford. As stated in NEV Witness Boonin's Surrebuttal Testimony, unless the Commission adopts variable CTCs and generation credits which would adjust with the actual market prices, the Commission should adopt fixed, conservative CTCs and generation credits which overestimate market prices. (NEV Statement 1-SR at 2-3).

ECI/Duke endorse MAPSA's generation caps since they are likely to encourage real competition and maintain equity for customers already participating in the PECO pilot. (MAPSA Statement 1-S at 10). ECI/Duke encourage the Commission to modify the Partial Settlement to include MAPSA's proposed generation credits. However, if the Commission does not adopt MAPSA's generation credits, it should note that the numerous other generation price cap proposals and market price predictions discussed above show that the Partial Settlement's 2.80 cents generation credit is significantly inadequate and should be rejected as too low to foster sufficient competition. ECI/Duke strongly urge the Commission to consider the various generation rate cap proposals and approve a cap that will allow competitive suppliers to enter and develop a robust, competitive market for electricity. This is the only way to achieve the

overarching goal of the Competition Act to provide lower prices for consumers in the long-term.

Additionally, ECI/Duke strongly endorse removing all costs from the Partial Settlement's transmission and distribution costs that are incurred to support PECO's generation business, including, but not limited to Sales Expense, Generation Overhead and Uncollectible Accounts Expense. (PECC Statement 3 at 11). As stated by Witness Reising and Witness Mitnick, these costs should be reflected in the generation charges and should not be included in the stranded costs or transmission and distribution charges. (PECC Statement 3 at 11-12; PECC Statement 1 at 22-24).

- PROVISION OF LAST RESORT SERVICE SHOULD NOT BE LIMITED TO A SINGLE SUPPLIER.

In addition to determining the proper generation credit to encourage competition in the PECO service territory, the Commission must decide who should provide the PLR service to customers who either can not and/or do not choose a competitive supplier. ECI/Duke recommend that the Commission adopt an approach that will allow the PLR service to become a competitively bid for service. By allowing multiple suppliers to bid for the last resort/default services, the Commission will address the distribution company's (PECO) incumbency advantage as well as any monopolistic advantages naturally obtained by a single alternative provider, like Enron under the Enron Choice Plan. (See Environmentalists Statement 2-E at 8).

In response to Enron's original Choice Plan proposal for Enron to assume the PLR role, the Environmentalists, NEV, and Enron in its Contingency Plan have addressed the possibility of multiple, competitive suppliers providing PLR service and/or bidding for the PLR role. ECI/Duke urge the Commission to reject Enron's unilateral proposal to serve as the PLR, instead

ECI/Duke recommend that the PLR role should be competitively bid for with the Commission assuming the role of umpire. Under Enron's Contingency Plan (if legal impediments prevent Enron's securitization plan), Enron proposed that the PLR be competitively selected. (Enron Statement 1-R at 10; Transcript at 1232, 1292). ECI/Duke support this concept regardless of whether securitization occurs. NEV proposed a pool approach to allocate the PLR services among suppliers. (NEV Statement DMB-2 at 10). At this juncture, ECI/Duke cannot support NEV's proposal. In particular, ECI/Duke oppose any **mandatory allocation** of customers to suppliers. The Environmentalists proposed a second alternative to the single default provider[4], which includes allocating default customers to suppliers (not including PECO or PECO affiliates) who fulfill certain requirements if more than 50 percent of PECO's customers do not switch to competitive suppliers. The number of default customers allocated to the suppliers would be based on the supplier's proportional market share in the PECO service territory. (Environmentalists Statement 2-E at 3-4). ECI/Duke do not support allocation based on the proportional market share of the competitive supplier. Although ECI/Duke do not agree that the competitively selected PLR should depend on whether securitization happens or that there should be any mandatory allocation and therefore, do not specifically agree with any of the proposals before the Commission, ECI/Duke believe that the Enron Contingency Plan and the NEV and Environmentalists proposals are moving in the right direction away from a single unilaterally-imposed default provider and toward competitive bidding for the role of supplier(s) of default

[4] The Environmentalists' proposal separates default customers from Provider of Last Resort customers. The Environmentalists consider default customers as customers who have a choice of generation options but do not chose any of them, while PLR customers do not have a choice of generation suppliers. Under the Environmentalists' plan, PECO would remain the PLR.

service.

- THE COMMISSION SHOULD MONITOR THE GENERATION SECTOR'S DEVELOPMENT.

ECI/Duke urge the Commission to modify the Partial Settlement by (i) adopting the MAPSA generation credits and (ii) allowing third-party suppliers to bid to provide PLR services. However, if the Commission decides instead to approve the Partial Settlement, ECI/Duke would still stress the Competition Act's ultimate restructuring goal: "to permit retail customers to obtain direct access to a competitive generation market".

In this vein, it would be prudent for the Commission: (1) to closely monitor the transition period; (2) to retain jurisdiction over PECO's generation assets in case competition in the generation sector does not develop fully; and (3) to intervene, if and when necessary, to make adjustments to assure retail choice. Regardless of whether the Commission adopts the Partial Settlement, the Enron Choice Plan, or parts of both, the Commission should oversee the transition period to make sure that transition and competition do occur. If competition remains absent, the Commission should not wait until after the transition period to intercede; otherwise it may find that PECO has established monopsony power at wholesale and retained monopoly power at retail, and would be about to embark on providing default sales services, conceivably at unregulated prices.

CONCLUSION

WHEREFORE, ECI/Duke respectfully request that the Commission condition its acceptance of the Partial Settlement to redress the concerns expressed hereinabove.

Respectfully submitted,

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I hereby certify that I have this day served the foregoing document upon all parties of record on the official service list compiled by the Prothonotary in this proceeding.

Dated at Washington, D.C.: December 2, 1997.

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APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Partial Settlement's energy and capacity credit is insufficient to stimulate competition. (See MAPSA Statement 1 at 6-8; PECC Statement 1 at 20-22; PECC Statement 2 at 6, 12).

3. The Standard Offer prices proposed by MAPSA in its Counter-proposal is sufficient to stimulate competition. (See MAPSA Statement 1-S at 8-11).

4. Enron did not provide a sufficient showing on why Enron should be rewarded the Provider of Last Resort role in the PECO service territory.

5. The Provider of Last Resort responsibility should be competitively determined.

6. The Partial Settlement is not just and reasonable, but the Enron Choice Plan on balance is just and reasonable subject to the modifications involving the Provider of Last Resort provisions.