



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
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December 2, 1997

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Re: PECO Energy Company  
PECO Application For Approval Of Its Restructuring  
Plan And Joint Petition For Partial Settlement  
Docket No. R-00973953

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

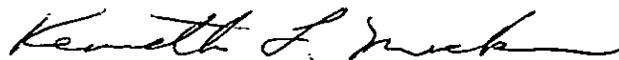
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Dear Secretary McNulty:

Enclosed please find an original and two (2) hard copies plus a diskette of  
the **Main Brief of the Office of Trial Staff** for filing in the above-captioned proceedings.  
Copies are being served on all active parties of record.

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Sincerely,



Kenneth L. Mickens  
Senior Prosecutor  
Office of Trial Staff

KLM/sjh

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

v.

PECO ENERGY COMPANY

PECO APPLICATION FOR APPROVAL  
OF ITS RESTRUCTURING PLAN AND  
JOINT PETITION FOR PARTIAL  
SETTLEMENT

AND

PETITION OF ENRON ENERGY SERVICES  
POWER, INC. FOR APPROVAL OF AN  
ELECTRIC COMPETITION 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

Docket No.  
R-00973953

Docket No.  
P-00971265

MAIN BRIEF OF THE  
OFFICE OF TRIAL STAFF

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Charles D. Shields  
Prosecutor  
Kenneth L. Mickens  
Senior Prosecutor  
Office of Trial Staff

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Harrisburg, PA 17105-3265

Dated: December 2, 1997

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## I. INTRODUCTION

On December 3, 1996, Gov. Thomas J. Ridge signed into law Act 138. Act 138, entitled “The Electricity Generation Customer Choice and Competition Act,”<sup>1</sup> is reduced to law in the Pennsylvania Public Utility Code at 66 Pa.C.S. § 2801 et. seq. The Competition Act provides a detailed legislative scheme for the restructuring of Pennsylvania’s electric utilities. Section 2806 provides that “the generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter at the conclusion of a transition and phase-in period ... ending, consistent with the Commission’s discretion under this section [on] January 1, 2001.” A provision of the Act at 66 Pa.C.S. §2806(D) requires that all electric utilities in the Commonwealth submit to the Commission a restructuring plan between April 1, 1997 and September 30, 1997. Such plan will, in effect, restructure the rates, rules, regulations and practices of all jurisdictional utilities in accordance with the purposes of the Act and to meet the new market structure. The ultimate goal of the restructuring is to deregulate the generation function of electric service.

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<sup>1</sup> Hereinafter referred to as the “Competition Act”, the “Act” or “Chapter 28.”

## **II. BACKGROUND AND HISTORY OF PROCEEDING**

On April 1, 1997, PECO Energy Company ("PECO") filed an Application For Approval of its Restructuring Plan at Docket No. R-00973953. In its Restructuring Plan, PECO requested the Commission to approve: (1) the imposition of *unbundled rates*, *Competitive Transition Charges* ("CTCs") and specific tariff provisions to ensure customers direct access to all licensed electric generation suppliers; (2) the recovery of \$6.8 billion of transition and stranded costs; (3) the implementation of a plan to meet its universal service obligations, including a mechanism to recover the costs of those obligations; and, (4) the implementation of a proposed Consumer Education Program.

PECO's Restructuring Plan was immediately assigned to the presiding administrative law judges and a Prehearing Conference was convened in Harrisburg on April 15, 1997. A second Prehearing Conference, also in Harrisburg, was held on May 21, 1997. Either at the Prehearing Conferences or following the filing of formal motions, thirty parties were allowed to intervene in this proceeding. Of that group, twenty-five intervenors have maintained active party status. An informal Technical Conference was held in Harrisburg on April 23, 1997, at which PECO made available a number of its witnesses to answer

questions and further explain their respective proposals. The Office of Trial Staff (“OTS”) filed a Notice of Appearance on April 8, 1997.

On or about June 20, 1997, the intervenors submitted extensive direct testimony addressing virtually every aspect of PECO’s proposed Restructuring Plan. In total, thirty-seven prepared statements were submitted by thirteen different parties. PECO responded to the intervenor’s testimony on July 18, 1997, by filing rebuttal statements and exhibits sponsored by twenty-two witnesses. Additional rebuttal statements were submitted by OSBA, PAIEUG and the Mid-Atlantic Power Supply Association. Direct and Surrebuttal statements were distributed by OTS. Hearings on the PECO Restructuring case were postponed at the request of several parties who were discussing possible settlement of the proceeding.

On August 27, 1997, several, but not all, parties to the proceeding submitted a Joint Petition For Partial Settlement of the Restructuring case<sup>2</sup> (“Joint Petition”). The Joint Petition assumes (but does not require) that PECO will be the provider of last resort in its service territory. Public Input proceedings on the Joint Petition were held on October 9, 1997 in Media and October 10, 1997 in Philadelphia.

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<sup>2</sup> The Joint Petitioners to the Partial Settlement are: the Philadelphia Area Industrial Energy Users Group (“PAIEUG”); the Hon. Vincent J. Fumo, Lance Haver, the American Association of Retired Persons (“AARP”); Consumers Education and Protective Association (“CEPA”); OTS; the Office of Small Business Advocate (“OSBA”); and the Office of Consumer Advocate.

Evidentiary hearings on the Joint Petition were held in Philadelphia October 14 - 16, 1997.

On October 7, 1997, Enron Energy Services Power, Inc. ("Enron"),<sup>3</sup> a non-signatory to the Joint Petition, filed a Petition for Approval of an Electric Competition and Customer 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 PECO's Service Territory ("Enron Plan") at Docket No. P-00971265. The Enron Plan purportedly provides an alternative to the resolution proposed under the Joint Petition and would, among other things, insert Enron as the Provider of Last Resort. Also on October 7, 1997, Enron filed a motion to Consolidate its Plan with the Commission's consideration of the Joint Petition. On October 8, 1997, Enron filed a Motion for Expedited Establishment of a Procedural Schedule in relation to Enron's October 7, 1997 filings. On October 9, 1997, the Commission entered an Opinion and Order granting Enron's Motion to Consolidate ("October 9 Order").

On October 21, 1997, PECO filed a Petition for Clarification or Reconsideration ("*PECO's Reconsideration Petition*") and the Joint Petitioners filed a Joint Petition for Clarification or Reconsideration ("*Joint Petition for Reconsideration*") of the Commission's October 9 Order. PECO and the Joint Petitioners were primarily concerned that the Commission's October 9 Order

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<sup>3</sup> On October 7, 1997, Enron filed an application at Docket No. A-110059 for authority to provide service as a licensed electric supplier.

seemed to imply that the Commission wanted the parties to the PECO Restructuring proceeding to brief both their settlement positions (as demonstrated in the Joint Petition and the Enron Plan) and their litigation positions on December 2, 1997, so that the Commission could issue a final decision on all matters on December 11, 1997, even if neither the Joint Petition nor Enron's Plan were adopted. In an Opinion and Order entered November 6, 1997, the Commission granted in part and denied in part the relief sought by PECO and the Joint Petitioners. The Commission determined that it would issue a decision on December 11, 1997, accepting or rejecting the Joint Petition and Enron Plan. Order at p. 8. However, the Commission stated that if the proposed settlements are rejected, it would defer ruling upon all outstanding matters in the case until January 30, 1998, if PECO were to indicate that it accepts the January 30 deadline for a decision, by 5:00 P.M. November 10, 1997. Id. PECO filed the approval letter with the Commission on November 10, 1997. On November 17 - 19, 1997, evidentiary hearings were held in Philadelphia on the Enron Plan.

### III. ARGUMENT

#### A. OTS LITIGATION POSITION

OTS fully supports the Partial Settlement that has been filed in this proceeding. However, a careful reading of the Commission's Opinion and Order entered November 6, 1997, indicates that it would be prudent for the parties to provide their full litigation position for the record. Accordingly, the OTS litigation position in this proceeding is described below.

##### 1. Market Value

PECO developed its litigation stranded cost claim in this proceeding on the basis of the results from PECO witness Dr. Hieronymus' analysis of future market prices. The market value of the Company's generating facilities, as set forth in PECO Ex. TPH-5, approximates \$2.863 billion.<sup>4</sup> See PECO St. 1, p. 14. When the \$2.863 billion is subtracted from PECO's depreciated investment in generation plant of \$6.688 billion, the result produces a stranded cost of generation plant of \$3.825 billion. See PECO St. 1, p. 15.

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<sup>4</sup> In fact, PECO has submitted two (2) other market value studies. The second study is PECO Ex. TPH-3 which was performed by PECO witness Mr. Bustard. The third study was performed by Dr. Venkateshwara and is shown in PECO Ex. TPH-4. Mr. Bustard's study produces a stranded cost of generation plant of \$3.038 billion. Dr. Venkateshwara's study produces a stranded cost of generation plant of \$3.200 billion.

OTS witness Mr. Metro has testified that PECO witness Mr. Hill has acknowledged that there is uncertainty regarding the future market prices. PECO St. 1, p. 14. Mr. Metro has further testified that this uncertainty can be minimized by including a range of market prices that are included in the three separate market value studies shown in PECO Exhibits TPH-3 through TPH-5. By averaging the results of the three market value studies, the Commission would be measuring the center of a range of projected market prices. Id.

The averaging of PECO's Exhibits TPH-3 through TPH-5 reduces PECO's stranded cost claim by approximately \$470,748,000. See OTS Ex. 1, Sched. 1. However, using the discount rate recommended by OTS witness Mr. Deardorff of 7.53 % (OTS Ex. SR-2, Sched. 5 (Revised)), in combination with the averaging of the market value studies, results in an OTS recommended reduction to PECO's stranded costs of \$648,150,000. See OTS Ex. 1, Sched. 1, p. 1.

## 2. Post-Regulation Decommissioning

PECO avers that the Competition Act allows for the recovery of projected nuclear decommissioning costs and retirement costs attributable to fossil stations. See OTS Ex. 1, Sched. 2. The Company is claiming decommissioning expense for its nuclear and fossil fuel generating plants from January 1, 1999 through the year

2029. The amount claimed is \$909,724,902. See PECO Ex. ABC, Scheds. 4 & 5. This amount includes \$887,574,902 for nuclear and \$22,150,902 for fossil fuel.<sup>5</sup>

OTS witness Mr. Metro has testified that PECO's position concerning post-regulation decommissioning should be rejected by the Commission. In this regard, Mr. Metro maintains that the Competition Act requires deregulation to begin January 1, 1999. PECO is requesting to collect from the regulated customers, through stranded cost recovery, decommissioning expenses that will commence January 1, 1999. These decommissioning expenses are associated with generating plants that will be deregulated starting in the year 1999. Current regulated customers should not have to pay decommissioning expenses, via stranded cost, for generating plants that the customers may or may not be purchasing energy from in the future. OTS St. 1, pp. 8-9.

Moreover, if the Commission were to allow PECO to recover decommissioning expenses after December 31, 1998, PECO would achieve a competitive advantage in the deregulated energy market. PECO will be competing with energy providers who own generating plants that may have a decommissioning liability. If PECO's current customers pay for decommissioning

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<sup>5</sup> OTS witness Mr. Metro states that the post-regulation decommissioning amount shown in the market value studies (PECO Exhibits TPH-3 through TPH-5) is different from the amounts shown in PECO Ex. ABC, Schedules 4 & 5. The difference is caused by the market studies including the proposed life extensions for various fossil plants and PECO Ex. ABC Schedules 4 & 5 not including life extensions. OTS St. 1, p. 8.

expenses that are incurred commencing January 1, 1999, PECO's affiliate, which owns the generating units, will have a price advantage in the energy market place. OTS St. 1, pp. 9-10. OTS Ex. 1, Sched. 5, shows the impact to PECO's claimed stranded costs. Schedule 5 shows that removing the decommissioning expenses incurred from January 1, 1999 through the year 2029, reduces PECO's stranded cost claim by \$322,377,333. This adjustment was based on the averaging of the three (3) market studies.<sup>6</sup>

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<sup>6</sup> OTS witness Mr. Gill has provided related testimony on the subject of decommissioning expense. First, Mr. Gill has stated that the Commission should require PECO to place any funds it receives for fossil decommissioning in a non-qualified trust fund to ensure that the funds are available when they are needed. OTS St. 4, pp. 18-19. Second, Mr. Gill recommends that the Commission allow a projection of \$1.36 billion in total for nuclear decommissioning costs. As components of this figure, he recommends that PECO receive \$181.7 million in stranded costs to bring the nuclear decommissioning fund up to its projected December 31, 1998 level. Moreover, should the Commission not accept OTS witness Mr. Metro's recommendation to remove \$887.6 million in nuclear decommissioning expense from the calculation of the market value of the Company's nuclear generating assets, Mr. Gill recommends that the Commission at least reduce the figure to \$806.9 million with annual payments into a qualified trust fund over the lives of the plants since, among other things, PECO improperly included a 10% contingency factor. OTS St. 4, pp. 3-10. Third, Mr. Gill recommends that the Commission allow a projection of \$124.9 million in total for fossil decommissioning costs. As components of the figure, he recommends that PECO receive \$87.6 million in stranded costs to bring the fund up to its projected December 31, 1998 level. In addition, should the Commission not accept OTS witness Mr. Metro's recommendation to remove \$22.2 million in fossil decommissioning expense from the calculation of the market value of the Company's fossil-fired generating assets, the Commission should increase that figure to \$37.3 million, with annual payments over the lives of the plants based on the extended service lives projected in the market value

### 3. OTS Sharing Recommendation

PECO has proposed to recover 100% of its stranded costs through a CTC per Kwh from each customer. OTS witness Mr. Metro has testified that PECO should not be allowed to recover 100% of its stranded costs because PECO's stranded cost claim is not known and measurable and such recovery would result in a windfall to PECO's stockholders. Mr. Metro has stated that PECO's claim is not known and measurable because "PECO's calculation of the market value of its existing generating assets is based on projections of the market price rate, anticipated generation, and fixed and variable costs." OTS St. 1, p. 13. An analysis of the method PECO employed to calculate its generating units market value is speculative and should be rejected by the Commission. OTS St. 1, pp. 13-18.

Instead, OTS has recommended that the Commission order a sharing of any qualified stranded costs. Mr. Metro has testified that stranded costs associated with net generating plant and CWIP be shared 70% to 30% (ratepayer/stockholder). OTS St. 1, p. 19. He offers five reasons in support of OTS's sharing recommendation: (1) PECO's thirty (30) projections of the market rate are too speculative to be defined as known and measurable; (2) The Competition Act does not guarantee 100% recovery of PECO's claimed stranded

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models used in PECO Exhibits TPH-3 through TPH-5. Use of the extended service lives reduces the annual expense from \$2.8 million to \$1.7 million.

costs, but only 100% of the Commission approved stranded costs. See 66 Pa.C.S. §2808 (C); (3) PECO should share in the recovery of stranded costs since the CTC is reconciled every year, guaranteeing 100% recovery of its Commission approved stranded cost; (4) The Commission is granted specific authority at 66 Pa.C.S. §2802 (15) to determine the “level” of stranded costs; and, (5) PECO incorrectly assessed the advantages of certain types of generating units and, as a result, has non-competitive rates; it should not be allowed to correct this condition in a manner that places the company that currently has competitive rates at a disadvantage. See OTS St. 1, pp. 19-21.

4. Regulatory Assets

OTS witness Mr. Weakley testified concerning issues involving regulatory assets and other transition costs. He has recommended that PECO’s stranded regulatory assets for which there is a claim of a return of capital but not a return on capital, be included in the CTC on a net present value basis as opposed to the book value basis proposed by the Company. Mr. Weakley maintains that his approach is appropriate since under the Act, by definition, stranded costs are to be determined on a net present value basis. See 66 Pa.C.S. §2803. The rationale for including these regulatory assets on a net present value basis in the CTC is that the

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OTS St. 4, pp. 12-19.

balances would have been recovered by a continuing amortization under the existing regulatory framework. OTS St. 3, pp. 4-5. The results of Mr. Weakley's net present value calculations are shown on OTS Ex. 3, Sched. 1. In total, the adjustment will reduce PECO's claimed stranded costs by \$91,915,000.

For reasons similar to those discussed above with regard to regulatory assets, Mr. Weakley has also recommended that PECO's claim for Other Transition Costs be reduced. He has testified that both the estimated filing and litigation costs and the customer choice consumer education program costs, be included in the CTC on a net present value basis. OTS St. 3, pp. 8-10. This will reduce the Company's stranded cost claim by \$8.2 million, as shown on OTS Ex. 3, Sched. 2.

5. Burden of Proof

The Competition Act at 66 Pa.C.S. §2804 (VI) (13) provides that (consistent with Section 2808) the Commission "has the power and duty to approve a competitive transition charge for the recovery of transition or stranded costs it determines to be just and reasonable to recover from ratepayers." The standard to be met by PECO is set forth at Section 315 (a) of the Public Utility Code:

Reasonableness of rates. In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding

upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. Pa.C.S. §315 (a)

Section 315 (a) evinces a legislative intent that the utility carry the burden of proving the justness and reasonableness of proposed and existing rates. This burden of proof extends to justifying every accounting entry questioned during the investigation. See, Popowsky v. Pennsylvania Public Utility Commission, \_\_ Pa. Commonwealth Ct. \_\_, 674 A.2d 1149 (1996). In another case, the Commonwealth Court in reviewing Section 315 (a) interpreted the utility's burden of proof in rate proceedings as follows "[s]ection 315 (a) of the Public Utility Code, 66 Pa.C.S. §315 (a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial." Lower Frederick Township v. Pennsylvania Public Utility Commission, 48 Pa. Commonwealth Ct. 222, 226-227, 409 A.2d 505, 507 (1980). See also, Brockway Glass v. Pennsylvania Public Utility Commission, 63 Pa. Commonwealth Ct. 238, 437 A.2d 1067 (1981). The legislative intent regarding the extent of a utility's burden of proof is further supported by the pronouncements of the Pennsylvania Supreme Court in Burleson v. Pennsylvania Public Utility

Commission, 501 Pa. 433, 461 A.2d 1234 (1983), which clearly defined the dimensions of this obligation.<sup>7</sup>

OTS's litigation position is that PECO has failed to carry its burden in demonstrating that it is entitled to establish a CTC that will provide it with \$6,805,404 in stranded costs in this proceeding.

#### 6. Summary of OTS Litigation Position

OTS's litigation position is summarized as follows:

Market Value Increases:

\$648,150,000 - Averaging Market Studies & Changing the

Discount Rate - Metro, Deardorff (OTS Ex. 1, Sched.4).

\$322,377,000 - Average Market Values without Going

Forward Decommissioning Expenses - Metro (OTS Ex. 1, Sched.5).

Regulatory Assets:

\$91,915,000 - Weakley (OTS Ex. 3, Sched. 1).

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<sup>7</sup> Moreover, the requirement that utility rates be just and reasonable mandates that rates do not unreasonably benefit a utility's investors at the expense of a utility's ratepayers. See, Popowsky v. Pennsylvania Public Utility Commission, \_\_ Pa. Commonwealth Ct. \_\_, 669 A.2d 1029 (1995); National Fuel Gas Distribution Corporation v. Pennsylvania Public Utility Commission, 76 Pa. Commonwealth Ct. 102, 464 A.2d 546 (1983).

Other Transition Costs:

\$8,203,000 - Weakley (OTS Ex. 3, Sched. 2).

Decommissioning:

\$55,221,000 - Nuclear - Gill (OTS Ex. 4, Sched. 2).

\$39,051,000 - Fossil - Gill (OTS Ex. 4, Sched. 4).

OTS Ex. 1, Sched. 3 shows the OTS recommended maximum amount of stranded cost recoverable from PECO's ratepayers (\$4,784,004,000).

## **B. OTS SUPPORTED PARTIAL SETTLEMENT**

OTS fully supports the Partial Settlement filed by certain of the parties to this proceeding on August 27, 1997. OTS submits that the terms of the Partial Settlement are in the public interest and represent a fair, just, reasonable and equitable balance of the interest of PECO and its customers. In support of the Partial Settlement, OTS submits that the following points should be considered by the Commission.

## **SUMMARY OF PARTIAL SETTLEMENT**

### **Rate Reduction, Rate Unbundling, Securitization and Phase-In**

1. On September 1, 1998, PECO will reduce its retail electric rates by 10% from the levels that existed as of December 31, 1996. The September 1, 1998, rate decrease will be achieved through an across-the-board reduction to all billing determinants and will apply to all retail rate classifications and all customers within those rate classifications that are affected by the application of the CTC as set forth in PECO's Restructuring Plan filing.

2. On January 1, 1999, PECO will functionally unbundle its retail electric rates into the following components: (1) distribution charges, (2) transmission charges, (3) a Competitive Transition Charge ("CTC") and, if applicable, an Intangible Transition Charge ("ITC") and (4) a maximum market price for energy and capacity. The system-wide average values for these components are set forth in the Table A of the Joint Petition for Partial Settlement in this proceeding.

Adjustments will be made in the following years on the dates and in the amounts, on average, as set forth in Table A of the Partial Settlement. The rate reductions in Table A apply to all customer classes. The Partial Settlement does not address or resolve whether metering or billing shall be unbundled for rate purposes or made subject to competition. The 10.0% overall rate reduction made effective September 1, 1998, has been reflected in the calculation of the initial CTC which becomes effective on January 1, 1999.

These total bill and generation rate cap figures are set in this settlement for certain years at a level lower than the caps would be under Section 2804(4) of the Electric Competition Act (66 Pa. C.S. §2804(4)) in order to provide savings for customers. The generation rate cap is extended from 2005 to 2008, three years beyond the statutory rate cap period (and at somewhat higher levels) than provided in the Electric Competition Act. Customer savings may be greater than provided by the rate caps in Table A if, for example, competitive energy and capacity prices are less than the maximum figures set forth in column 4. The Joint Petitioners agree that the rate cap exceptions set forth in Section 2804(F) of the Electric Competition Act shall apply to the rates set forth in the Partial Settlement, except as otherwise specifically set forth in the Partial Settlement and except that the CTC/CITC values shall be fixed, on average, at the levels set forth in Table A of the Partial Settlement.

3. The rate reductions described in the Partial Settlement are intended to include the anticipated benefits of securitization and are conditioned upon PECO's having the legal right to securitize up to \$4.0 billion of the stranded assets and costs which the Joint Petition authorizes it to recover from its retail electric customers. If any legal impediment<sup>8</sup> precludes PECO from securitizing its

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<sup>8</sup> The meaning of the term "legal impediment" is defined in Footnote 5 of the Joint Petition.

stranded assets and costs, the average CTCs and rate caps set forth in Table A will be increased by 0.3¢ /kwh and the actual CTCs and rate caps for each customer class will be adjusted consistent with the mechanics set forth in the proof of revenue (and the September 1, 1998 rate reduction will become 7.0%). The full effectiveness of the Partial Settlement is contingent upon the issuance by the Commission of an irrevocable Qualified Rate Order under Section 2812 of the Electric Competition Act (66 Pa. C.S. §2812) authorizing the issuance of up to \$4.0 billion of Transition Bonds at any time after the issuance of such Qualified Rate Order to recover the total stranded assets and costs, provided that the ITC charges to its customers terminate no later than December 31, 2008. The Joint Petitioners support PECO's application for a Qualified Rate Order. The Joint Petitioners agree that, to the extent necessary, the testimony, exhibits, applications and other documents submitted by the parties to this proceeding and to PECO Energy's securitization proceeding at Docket No. R-00973877 form the basis for the Partial Settlement and PECO's Application for a Qualified Rate Order.

4. The CTCs contained in Appendix C of the Partial Settlement shall not be subject to reconciliation or true-up. As such, PECO bears the risk and is entitled to the benefits of changes in sales. The Joint Petitioners expressly acknowledge that these countervailing risks and potential benefits were taken into account and have been fully reflected in the rates in the Partial Settlement. As required by the

Electric Competition Act, the ITC will be subject to periodic adjustment to provide adequate debt service of the transition bonds. Any increase in the ITC pursuant to a periodic adjustment will result in a corresponding reduction in the CTC or the Company's other regulated revenues.

### **Transfer of Generation Assets**

5. PECO agrees to transfer all of its generating functions, as set forth in its Restructuring Plan filing, from its regulated transmission and distribution functions by establishing a separate corporate entity or entities. The entity may, at PECO's discretion, be an affiliate or subsidiary of PECO. The generating facilities shall be valued for transfer purposes at a market value of \$2.303 billion. Once the transfer is completed the generation entity will be regulated by the Commission as an Electric General Supplier only. The Joint Petitioners acknowledge that such transfer will require various regulatory approvals, including, without limitation, the authorization of this Commission, the FERC, the Nuclear Regulatory Commission ("NRC") and perhaps other agencies, and therefore the Joint Petitioners will neither oppose, nor support any opposition to, PECO's efforts to obtain such approvals, subject to the rights to express non-economic issues including safety, health, environmental and similar concerns. If such authorizations are not obtained, PECO will separate its generating functions from its regulated transmission and distribution functions by organizing into a functionally separate

business unit or units. Failure to obtain such authorization will not affect any other aspects of this settlement.

**Recovery of Stranded Costs and Associated Write-Offs**

6. Subject to the rate reduction and the nonreconciliation provisions discussed in the Partial Settlement, PECO shall be permitted to recovery from its retail electric customers the following categories and amounts of stranded assets and costs through either a CTC (to remain in effect from January 1, 1999 to December 31, 2008) or, at the Company's discretion, an ITC (to be put in place any time after the effective date of this Partial Settlement and to remain in effect up to December 31, 2008. The Joint Petitions agree that, and ask the Commission to declare that, good cause has been shown under Section 2808 of the Electric Competition Act to permit PECO to recover the stranded assets and costs through a CTC and ITC extending to December 31, 2008. As set forth in PECO's submissions in the Restructuring Proceeding, PECO claims that it will have total stranded assets and costs of \$7.461 billion. Under the terms of the Partial Settlement, PECO shall be permitted to recover \$5.461 billion of these total stranded assets and costs through a CTC or, at PECO's discretion, at ITC. PECO agrees not to seek recovery of at least \$2.0 billion of its total stranded assets and costs, which shall be treated as a disallowance of regulatory assets in that amount. The Joint Petitioners agree, and request that the Commission expressly find, that the level of CTC charges

provided herein is just and reasonable. The Joint Petitioners agree that PECO will, for accounting purposes, commence amortization of its stranded assets and costs upon Commission approval of the Joint Petition.

**Generation Assets.**

7. As set forth in PECO's submissions in the Restructuring Proceeding, as of January 1, 1999, PECO estimates that it will have \$6.787 billion of total generation assets, of which \$4.484 billion represents stranded generation assets and \$2.303 billion represents the remaining market value of these assets. Of the \$4.484 billion of stranded generation assets, approximately \$607 million was previously approved for recovery by the Commission in its May 22, 1997 Order at Docket No. R-00973877.

**Regulatory Assets (Excluding Nuclear Decommissioning).**

8. As set forth in PECO's submissions in the Restructuring Proceeding, PECO estimates that as of January 1, 1999, it will have \$2,272 billion of stranded regulatory assets (net of regulatory liabilities), of which approximately \$373 million was previously approved for recovery by the Commission in its May 22, 1997 Order at Docket No. R-00973877.

**Nuclear Decommissioning Costs.**

9. As set forth in PECO's submissions in the Restructuring Proceeding and incorporated as a part of this Partial Settlement, PECO estimates that as of January

1, 1999, it will have \$234 million of nuclear decommissioning costs, representing the projected funding deficiency in its nuclear decommissioning trust as of December 31, 1998. PECO agrees to fund through the CTC/ITC revenue stream the \$234 million of projected funding deficiency in equal annual amounts over the period of time stranded costs are recovered. In addition, the PECO generation entity shall place into external trust funds the \$36.7 million annual expense accrued on and after January 1, 1999, less any income taxes paid on such amount. Nuclear decommissioning costs accrued on and after January 1, 1999, will be recovered through market sales of nuclear generation. However, to ensure adequate funding levels, PECO will also be permitted to establish a single-issue, sliding scale of rates pursuant to Section 1307(a) of the Public Utility Code solely intended to (I) capture future increases and decreases in the total estimated costs of decommissioning to recover annual decommissioning expenses accruing on and after January 1, 1999, that PECO can demonstrate the PECO generation entity is financially unable to pay, from any resources or assets whatsoever, to the decommissioning trust fund. To the extent that any proposed adjustments in the mechanism established in this paragraph would increase the rates of PECO customers, the Commission shall require notice to all customers and an opportunity for hearings upon complaint of any customer or upon the Commission's own motion. The Company shall have the burden of proving the

justness and reasonableness of any such increase. The Commission shall have the discretion to suspend the effectiveness of any such increase pending a final determination of the justness and reasonableness of the proposed increase. The acceptance of the Company's method of calculating decommissioning costs and funding requirements in the Partial Settlement shall not be binding or precedential upon any party in any future case under this paragraph. Nuclear decommissioning trust fund shall accrue interest on both the existing balance and additions, and such interest shall be included in determining any future increases or decreases in total decommissioning costs and recovery from customers. The provisions of this paragraph apply only to PECO's share of the Limerick, Peach Bottom and Salem plants, but for no other nuclear plants. PECO shall not file for an increase in nuclear decommissioning costs which would become effective before January 1, 2004.

The Joint Petitioners agree that the nuclear decommissioning costs estimates and funding requirements will serve as baseline values and that future changes in those projected cost levels and funding requirements shall be recovered or refunded through the separate tracking mechanism. The mechanism itself would be a component of PECO's regulated distribution rates and would be reconciled at periodic intervals (e.g., every five years) established by the Commission.

Although PECO's distribution company would be responsible for collecting nuclear decommissioning funds under the CTC and the separate tracking mechanism, PECO's generation company, as a licensee or co-owner of the Limerick, Peach Bottom and Salem plants, would be liable for the ultimate decommissioning of its share of those facilities. Accordingly, PECO agrees to prepare and submit for the Commission's approval an affiliated interest agreement setting forth procedures by which: (i) its interest in the nuclear decommissioning trust fund would be transferred to the generation company and (ii) nuclear decommissioning dollars collected under the CTC and the separate tracking mechanism would be deposited directly into the fund.

Consistent with and subject to NRC regulations, low-level radioactive waste disposal must occur in a timely manner such that it does not become a significant addition to the ultimate costs of decommissioning for purposes of this Partial Settlement. Costs associated with temporary and permanent disposal of spent nuclear fuel are not included as a cost of decommissioning.

**Other Stranded Transition Costs.**

10. As set forth in PECO's submission in the Restructuring Proceeding, PECO estimates that as of January 1, 1999, it will have \$310.8 million of unrecovered deferred fuel costs, of which \$96.8 million was previously approved for recovery by the Commission in its May 22, 1997 Order at Docket No. R-00973877.

As set forth in PECO's submissions in the Restructuring Proceeding, PECO estimates that as of January 1, 1999, it will have \$127 million of fossil decommissioning costs, representing the projected unfunded amount which will have accrued by December 31, 1998. Fossil decommissioning costs accruing on and after January 1, 1999 will be recovered through market sales of generation. Any increases or decreases in the cost of fossil decommissioning, relative to the recoveries in this settlement, will not be reconciled and will not be the responsibility of transmission and distribution customers.

As set forth in PECO's submissions in the Restructuring Proceeding, PECO estimates that as of January 1, 1999, it will have \$33 million (\$25 million for Customer Education and \$8 million for PECO's transition expenses) of other transition costs.

11. Additional terms apply to Industrial and Commercial customers and extensive arrangements are provided to ensure PECO's Universal Service obligations are met.

The Partial Settlement is not determinative or conclusive of issues not addressed in the document. In addition, the Partial Settlement is conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission should fail to grant such approval, or should modify any of the terms and conditions herein, the Partial Settlement will terminate and be of no force and effect. The Joint Petitions will make best efforts to support the Partial Settlement and to secure its approval by the Commission and, as required, by other regulatory agencies and the Courts.

#### **BENEFITS OF PARTIAL SETTLEMENT**

OTS submits that this Partial Settlement is in the public interest and should be approved in full for the following reasons:

a. **Customers Will Receive Rate Reductions.**

The Partial Settlement enables customers to receive significant rate reductions, with the possibility of further rate reductions over the settlement term as a result of market forces. Customers will further benefit because the initial 10% rate reduction is scheduled to become effective on September 1, 1998, or four months prior to the advent of retail competition in Pennsylvania. CEPA witness Dr. Silkman has testified that based on the model he employed, the 10% rate

reduction would add approximately \$110 million to disposable income for residential customers and the equivalent of 2,200 jobs. Tr. 578.

b. **Transmission And Distribution Charges Will Be Capped For An Additional Two and One-Half Years.**

The Partial Settlement provides that the cap on PECO's transmission and distribution charges, which otherwise would expire on June 30, 2001, will be extended until January 1, 2004. This provision provides 2 1/2 years of additional transmission and distribution rate stability for ratepayers. Tr. 587-588.

c. **Generation Rates Will Be Capped For An Additional Three Years.**

The Partial Settlement provides that a cap on PECO's generation rates, which otherwise would expire on December 31, 2005, will be in place, at somewhat higher levels than provided in the Electric Competition Act (66 P.C.S. §2804(4)), until January 1, 2009. This provides tangible benefits to ratepayers. Tr. 601-602.

d. **Economic Development Will Benefit.**

The rate reductions will be of benefit to business and industry as well as to residential consumers. Tr. 578.

e. **The Funding Of Nuclear Decommissioning Obligations Will Be Assured.**

The Partial Settlement enables PECO to recover a current deficiency in nuclear decommissioning funds and establishes a tracking mechanism which will ensure that sufficient funds are collected in the future should just and reasonable projected decommissioning cost levels exceed current estimates.

f. **Substantial Litigation And Associated Costs Will Be Avoided.**

The Partial Settlement amicably resolves a number of important and contentious issues raised in the proceeding and, at the same time, provides for the withdrawal of various actions currently pending before the Commonwealth Court. The administrative and appellate burden and costs to litigate these matters, including likely future appeals, to conclusion would be substantial. Moreover, the Partial Settlement frees up the Joint Petitioners to explore additional areas of potential compromise. In this regard, CEPA witness Dr. Silkman has testified that a settlement provides potential for future protection of ratepayers that a Commission Order would not. Tr. 609-610.

g. **The Partial Settlement Is Consistent With Commission Policies Promoting Negotiated Settlements.**

The Joint Petitioners arrived at the settlement terms after conducting extensive discovery, submitting comprehensive testimony and engaging in in-depth discussions. The settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues

addressed herein. Thus, the Partial Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements.

**C. ENRON CHOICE PLAN**

**1. Background To The Enron Petition**

On October 7, 1997, Enron Energy Services Power, Inc. ("Enron") filed a Petition entitled "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 Company" ("Enron Petition") that was Docketed at P-00971265. Enron's petition requested the Commission to reject the previously submitted Partial Settlement signed by PECO and a substantial number of the active parties and approve a "plan" proposed by Enron. In the petition, Enron also asked that the Commission designate Enron as the provider of last resort ("PLR") for customers in PECO's service territory and that the Commission order PECO to issue transition bonds in the amount of \$5,460,000,000. Enron Petition, pp. 20-26.

On October 20, 1997, PECO filed an Answer to the Enron Petition. On October 24, 1997, Enron distributed prepared written testimony supporting its proposal. On October 9, 1997, the Commission issued an Order that consolidated the Petition with this proceeding. On November 7, 1997, PECO and a number of

other active parties distributed prepared testimony regarding the Enron proposal.

On November 17-19, 1997, evidentiary hearings were held in Philadelphia, for the presentation of testimony by Enron, PECO and other active parties on the petition.

2. The Commission Should Deny Enron's Petition Because Implementation Of The Enron Plan Is Not In The Public Interest.

As a result of the Commission's consolidation of the Enron petition with the instant PECO restructuring proceeding, various active parties presented testimony in support or opposition to the plan proposed by Enron. OTS conducted cross-examination of the Enron witness who provided the prepared direct testimony on this particular issue at the evidentiary hearings held November 17-19, 1997, in Philadelphia. Based upon its review of the Enron proposal and in consideration of the existence in this record of the vastly superior and workable Partial Settlement negotiated by many of the active parties, OTS would respectfully assert that implementation of the Enron proposal is not in the public interest. OTS generally supports the arguments against the feasibility and legality of Enron's proposal that

were presented in the testimony submitted by other active parties.<sup>9</sup> These arguments clearly disclose the weaknesses in Enron's proposal. Rather than fully reiterate PECO's identification of the Enron plan's (as modified) many fatal flaws<sup>10</sup>, OTS will offer its contentions that: (a) this Commission need not address the Enron Plan as a separate and distinct "plan" (as defined by the Electric Competition Act); and, (b) a possible unfavorable outcome exists in the event the Commission chooses to modify (and thereby accept) the Enron proposal.

3. The Commission Should Deny Enron's Petition Because  
The Enron Plan Does Not Require Formal Commission Action.

OTS contends that the Commission may properly deny Enron's petition because Enron lacks any legal basis to insist that this Commission either accept, modify or reject the Enron plan. A reading of the provision of the Act concerning the filing of restructuring plans, Section 2806 (D), (E) and (F), 66 Pa.C.S.A. §

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<sup>9</sup> PECO has filed an answer to the petition and has introduced extensive testimony that demonstrate its staunch opposition to the granting of Enron's petition. See PECO Sts. 1-E, 6-E, 10-E, 13-E, 20-E, 21-E, 23-E, 26-E, 27-E, 28-E and 29-E. PECO also introduced several rejoinder statements. In addition, CEPA St. 3, the testimony of Dr. Richard H. Silkman and AARP St. 2, the testimony of Dr. Mark N. Cooper, criticize the Enron Choice Plan. Several other active parties have conducted cross examination which indicates that their briefs will also oppose all or part of Enron's proposal. To the extent that other parties have made certain assertions of fact in support of their arguments, OTS has relied on said parties representations as to the validity of such assertions.

<sup>10</sup> See, Testimony of Thomas P. Hill Regarding the Enron Plan, PECO Stmt. No. 1-E; Testimony of J. Gregory Sidak Regarding the Enron Choice Plan,

2806(D), (E) and (F), discloses that the responsibility to submit plans to the Commission is imposed solely upon “electric utilities.” A reasonable interpretation of the statute’s language is that the Legislature intended that the Commission only entertain plans submitted by electric utilities.<sup>11</sup> Given the short period for Commission review of plans submitted by electric utilities, it is reasonable to conclude that the Legislature intended to have the Commission focus on the respective electric utility’s submission and not be otherwise required to allocate Commission resources towards addressing any and all plans that might be developed by other entities. Under cross examination, Enron Witness Mr. Kean discussed how the Commission would have attempted to address the submission of a substantial number of non-electric utility plans, as follows:

Q. Hypothetically, there could have been 14, 15, 18, 20 similar plans similar to Enron’s that the Commission would have had to entertain in addition to the partial settlement; isn’t that correct?

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PECO Stmt. No. 10-E; Testimony of Brian D. Crowe Regarding the Enron Plan, PECO Stmt. No. 29-E.

<sup>11</sup> OTS contends that the Legislature realized that the Commission’s jurisdiction over electric distribution companies was the basis of authority that would enable the Commission to ensure proper implementation of any approved plan. See, definition of “electric distribution company” at 66 Pa. C.S. §2803. *Enron does not satisfy the requirements of this definition.*

A. Well, the Commission had the discretion whether to consolidate our plan with the partial settlement proceeding. I guess I can't say what the Commission would have done if it had multiple offers.

Tr. 1421

OTS submits that, as a matter of law, the Commission is not required to specifically address or rule upon a plan not submitted by an electric utility.<sup>12</sup> OTS further submits that the statute provides for a proceeding (the instant restructuring proceeding) whereby interested parties (such as Enron) may formally participate and provide comments and suggestions to the Commission regarding the plan submitted by the electric utility. However, the right to participate does not include the right to submit a plan similar to the electric utility's that must be addressed by this Commission in a similar manner. Rather, the Commission can simply choose to incorporate or not incorporate any party's suggestion(s). For this reason, OTS recommends that the Commission determine that Enron's plan need not be formally addressed as a separate plan within the context of this restructuring

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<sup>12</sup> The mere fact that the Commission consolidated the Enron petition with the instant proceeding does not require that the Commission address the merits of the Enron plan. Consolidation is a procedural matter and does not reflect or otherwise affect the Commission's ultimate decision on whether the subject matter of the petition is properly before the Commission for adjudication .

proceeding. For this and other good reasons, OTS recommends that the Commission reject the Enron plan and deny the Enron petition.

4. The Commission Should Decline to Modify Enron's Plan Because Enron May Simply Withdraw Its Proposal And Leave PECO And Its Customers Without An Approved Restructuring Plan.

For the reasons stated herein, OTS asserts that ample justification exists for the Commission to deny the Enron plan as proposed. OTS further contends that good reasons exist for the Commission to refrain from modifying Enron's proposal.<sup>13</sup>

Specifically, OTS submits that if the Commission rejects the Partial Settlement and grants the Enron petition with modifications, the possibility exists that the Commission would be left without an authorized method to implement the Electric Competition Act within PECO's service territory. This is possible because Enron is under no obligation to perform or otherwise implement its plan in the event the Commission makes modifications that Enron considers unacceptable. This Enron position is established in the testimony of Enron Witness Mr. Kean, which provides, in pertinent part:

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<sup>13</sup> The OTS argument in this section is offered only if the Commission chooses to address the merits (if any) of the Enron plan despite the fact that the Electric Competition Act apparently only allows electric utilities to file restructuring plans.

The conditions and contingencies have been included to ensure that the Choice Plan which is adopted is the same plan which Enron has offered. The provisions of the Choice Plan are interrelated and interdependent and cannot be changed or eliminated without jeopardizing the integrity of the plan as a whole and subjecting Enron and PECO's customers to unforeseen risks. These conditions and contingencies are simply necessary to protect Enron in the event that changes are forced on the Choice Plan that will render it unworkable.

Enron St. 1, p. 28.

Significantly, the Electric Competition Act empowers this Commission to determine the components of restructuring plans in the various electric utility service territories. Specifically, Section 2806(F) of the Act, 66 Pa.C.S.A. § 2806(F) empowers the Commission to issue an order accepting, modifying or rejecting any plan. However, as clearly stated by Enron, the Commission has no "choice" but to either accept or reject the "Choice Plan" as constructed. The record reflects that the Enron Plan itself provides for nine (9) separate "CONDITIONS AND CONTINGENCIES" that must be expressly met before Enron would agree to implement its plan. Enron Petition, pp. 28-30.

The unilateral nature of Enron's proposal was further revealed during cross-examination of Enron Witness Mr. Kean, as follows:

Q. So one of the possibilities of Enron's response to a hypothetical denial of its plan would be not to participate and provide electric service in Pennsylvania, isn't that correct?

A. Not necessarily. I mean if the Commission denied Enron's plan but, nevertheless, there were a set of terms and conditions -- let's say it picked up the terms and conditions for the plan relating to a competitive marketplace -- that would create an environment in which we could compete. Then we have other elements of our plan. If it's rejected, it's just not possible to --

Q. If, hypothetically, those particular terms and conditions that you just referenced, whatever they may be, were not included, doesn't the possibility exist that Enron may just pick up its briefcases and head out of Pennsylvania; isn't that correct?

A. If the rules are set so that competitors can't enter, then Enron may not enter.

Tr. 1428

The meaning of the aforementioned phrase "Enron may not enter" is clear -- Enron may simply choose not to become involved in electric competition in the Commonwealth.

Enron may attempt to argue that PECO has essentially presented the Commission with the same "take-it-or-leave-it" proposal in the Partial Settlement and that the same criticism of Enron is therefore valid for PECO. However, such an argument would be misplaced. A careful review of the requirements placed upon PECO (as a jurisdictional electric utility) in the Electric Competition Act, indicates that the Commission maintains the express authority to order PECO to ultimately submit a plan acceptable to the Commission. Enron is under no such statutory requirement. The Commission's authority regarding this matter is found at Section 2806(F) of the Act, 66 Pa.C.S.A. § 2806(F), which provides, in full:

**(F) Commission review.** -- The commission shall review the restructuring plan filed by each electric utility and shall, after open evidentiary hearings with proper notice and opportunity for all parties to cross-examine witnesses, issue an order accepting, modifying or rejecting such plan at the earliest date possible, but no later than nine months from the filing of such restructuring plan. If the commission rejects a restructuring plan, it shall state the specific reasons for rejection and **direct the electric utility to file an alternative plan** addressing these objections within 30 days of the entry date of the commission order rejecting the plan. The commission shall review the alternative plan, solicit comments from interested parties and **issue a final order** within 45 days of the filing of the revised plan.

66 Pa.C.S.A. § 2806(F) [Emphasis Added]

The clear intention of this section is to ensure that a final plan exists at the end of the statutory period. In the event the Commission were to attempt to modify the Partial Settlement, PECO could withdraw from the settlement and revert to its litigation position. However, at that point, PECO (unlike Enron) would be required by the above-cited Section 2806(F) to eventually submit a plan acceptable to the Commission. Again, the inescapable fact remains that this Commission simply has no authority over Enron to ensure that any Commission modifications to the now-modified “Enron Plan” would ever be

implemented.<sup>14</sup> Thus, as described herein, the possibility of an Enron withdrawal would leave PECO and its customers without any viable plan approved by this Commission.

For the foregoing reasons, OTS respectfully submits that the Commission should deny the Enron petition and reject or decline to specifically address the Enron Plan in its entirety.

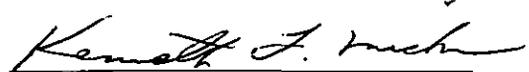
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<sup>14</sup> In this regard, Enron's petition clearly states that it is not to be construed as a "public utility" for purposes of Pennsylvania jurisdiction. Enron Petition, p. 30. It is also unclear what authority the Commission would have over Enron once the plan was in operation.

#### IV. CONCLUSION

For the reasons set forth above, the Office of Trial Staff respectfully submits that the terms of the Partial Settlement are in the public interest and represent a fair, just, reasonable and equitable balance of the interest of PECO Energy Company and its customers. Accordingly, the Commission should adopt the Partial Settlement and order that PECO be restructured in accordance with its terms. Accordingly, the Enron Plan should be rejected.

Respectfully Submitted,



Charles D. Shields

Prosecutor

Kenneth L. Mickens

Senior Prosecutor

Pennsylvania Public Utility  
Commission

December 2, 1997

**APPENDIX A**

## Appendix A

### OTS's PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

OTS respectfully requests that the Commission adopt the following Findings of Fact and Conclusions of Law, and grant such additional or further relief as may be necessary or appropriate:<sup>1</sup>

#### A. Proposed Findings of Fact - Issues Addressed in Partial Settlement

1. The record fully supports the facts referenced in the Joint Petition for Partial Settlement, submitted pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S.A. §§ 2801 et seq.
2. The facts referenced in the Partial Settlement fully support a Commission determination that the granting of the Petition for Partial Settlement is in the public interest and represents a fair, just, reasonable and equitable balance of the interests of Peco Energy Company and its customers.
3. The facts referenced in the Partial Settlement fully support a Commission determination that the legal issues addressed in that document have been fully resolved.
4. The Partial Settlement enables PECO's customers to receive significant rate reductions, with the possibility of further rate reductions over the settlement term as a result of market forces.
5. The Partial Settlement provides that the cap on PECO's transmission and distribution charges, which otherwise would expire on June 30, 2001, will be extended until January 1, 2004.
6. The rate reduction provided for in the Partial Settlement will be of benefit to business, industry and residential customers.

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<sup>1</sup> These proposals are consistent with the OTS position that the Commission should accept the Partial Settlement. All proposed findings of fact and conclusions of law contained herein are premised upon this assumption.

7. The Partial Settlement enables PECO to recover a current deficiency in nuclear decommissioning funds and establishes a tracking mechanism which will ensure that sufficient funds are collected in the future should just and reasonable projected decommissioning cost levels exceed current estimates.

8. The Partial Settlement avoids administrative and appellate burden by resolving contentious issues and by providing for the withdrawal of various actions currently pending before the Commonwealth Court.

9. The Partial Settlement is consistent with Commission Policies Promoting Negotiated Settlements.

B. Proposed Findings of Fact - Issues Not Addressed in Partial Settlement

1. The Commission hereby determines that certain issues not addressed in the Partial Settlement are generic in nature and are to be resolved in actual and anticipated Commission rulemaking dockets. As such, said issues will not be resolved in this PECO restructuring proceeding.

2. The Commission hereby determines that three issues in this proceeding are generic issues that will not be presently resolved but rather will be addressed by subsequent rulemaking: (a) Competitive Metering and Billing; (b) Standards and Code of Conduct; and (3) Environmental Issues.

3. The Commission hereby identifies three issues not addressed in the Partial Settlement that are fully addressed in this Order: (a) FERC Jurisdictional Issues and Their Impact on PUC Jurisdictional Issues; (b) Procedures for Ensuring Direct Access to All Licensed Electric Generation Suppliers; and (c) the Impact of the Partial Settlement on PECO's employees.<sup>2</sup>

C. Proposed Conclusions of Law - Issues Addressed in Partial Settlement

1. The Commission's approval of the Joint Petition for Partial Settlement is consistent with the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S.A. §§ 2801 et seq.

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<sup>2</sup> The Commission's Tentative Order of October 2, 1997, specifically identified these three issues and ordered that they be addressed in the instant proceeding.

2. The Partial Settlement is in the public interest and represents a fair, just, reasonable and equitable balance of the interests of Peco Energy Company and its customers.

3. The Partial Settlement is determinative and conclusive as to the legal issues addressed in that document.

4. The Partial Settlement serves the public interest by avoiding administrative and appellate burden and by providing for the withdrawal of various actions currently pending before the Commonwealth Court.

D. Proposed Conclusions of Law - Issues Not Addressed in Partial Settlement

1. The Commission's direction that the issues of: (a) Competitive Metering and Billing; (b) Standards and Code of Conduct; and (3) Environmental Issues are generic and will be addressed in rulemakings is consistent with the provisions of the Electric Competition Act.

2. The Commission has addressed and resolved all matters concerning the unbundling of rates and the establishment of the CTC identified in the Partial Settlement consistent with this Commission's jurisdiction. The Commission's action on these issues, embodied in this Order, satisfies the requirements of the Electric Competition Act.

3. The Commission has addressed and resolved all matters concerning whether PECO has properly implemented the necessary procedures to ensure that all licensed electric generation suppliers will have the proper direct access. The Commission's action on this issue, embodied in this Order, satisfies the requirements of the Electric Competition Act.

4. The Commission has addressed and resolved the issue of whether PECO has taken the necessary steps to minimize the impact of the Partial Settlement on its employees. The Commission's action on this issue, embodied in this Order, satisfies the requirements of the Electric Competition Act.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility  
Commission**

v.

**PECO Energy Company**

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**Docket No.  
R-00973953**

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing, the Main Brief of the Office of Trial Staff dated December 2, 1997, either personally, by first class mail or by fax upon the persons addressed below:

Paul R. Bonney, Esquire  
Noel H. Trask, Esquire  
Michael A. Carvin, Esquire  
PECO Energy Company  
2301 Market Street  
P. O. Box 8699  
Philadelphia, PA 19101-8699

Sharon Johnson  
Putnam, Hayes & Bartlett  
1776 Eye Street, NW  
Washington, DC 20006

Judah L. Rose  
ICF Resources, Inc.  
9300 Lee Highway  
Fairfax, VA 22031

Thomas S. LaGuardia  
TLG Services, Inc.  
148 New Milford Road East  
Bridgewater, CT 06752

James I. Warren  
Reid & Priest  
40 West 57th Street  
New York, NY 10019

J. Gregory Sidak  
American Enterprise Institute  
1150 17th Street, NW  
Washington, DC 20036

Joseph F. Brennan  
AUS Consultants  
155 Gaither Drive  
Mt. Laurel, NJ 08054

William F. Sundermeir  
2504 West Avenue  
Ocean City, NJ 08226

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

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

David Kleppinger, Esquire  
Derrick P. Williamson, Esquire  
Robert A. Weishaar, Jr., Esquire  
Robert A. Mills, Esquire  
McNees, Wallace and Nurick  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Terrence Fitzpatrick, Esquire  
David DeSalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street  
Suite 101  
Harrisburg, PA 17102

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101

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

Christopher B. Craig, Esquire  
Main Capital Building  
Room 545  
Harrisburg, PA 17120

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

Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
O'Bermayer Rebmann Maxwell Hippel, LLP  
204 State Street  
Harrisburg, PA 17101

Gerald Gornish, Esquire  
Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
305 North Front Street  
Suite 401  
Harrisburg, PA 17101

David Boonin  
New Energy Ventures  
200 South Broad Street  
Suite 800  
Philadelphia, PA 19107

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101

Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street  
Suite 403  
Harrisburg, PA 17101-1236

Bruce A. Connell, Esquire  
Legal Department  
600 North Dairy Ashford, ML-1034  
Houston, TX 77079

Mr. Sam DeFrawi  
Director, Navy Rate Intervention  
Washington Navy Yard  
Building 212, Code 00RI  
901 M Street, S.E.  
Washington, DC 20374-5018

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

Joseph J. Malatesta, Jr., Esquire  
Lillian Smith Harris, Esquire  
Janet Miller, Esquire  
Malatesta, Hawke & McKeon, LLP  
Harrisburg Energy Center  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105-1778

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
1 Columbia Place  
Albany, NY 12207

Susan Shanaman, Esquire  
212 North Third Street  
Suite 203  
Harrisburg, PA 17101-1505

Joseph A. Dworetzky, Esquire  
John P. Lavelle, Jr., Esquire  
Hangley, Aronchick, Segal & Pudlin  
One Logan Square  
12th Floor  
Philadelphia, PA 19103

John P. Zinkand  
Executive Vice President  
Pennsylvania Petroleum Association  
2001 North Front Street  
Suite 121, Building 2  
Harrisburg, PA 17102

Ethan Giddings  
217 Rodman Avenue  
Jenkintown, PA 19046

Steven B. Harris, Esquire  
Harris & Harris  
1760 Bristol Road  
Box 160  
Warrington, PA 18976

Peter Bradford  
Bradford Road-Route 11  
P. O. Box 497  
Peru, VT 05152

Richard Silkman  
163 Main Street  
Yarmouth, Maine 04096

Audrey VanDyke  
Associate Counsel (Litigation)  
Naval Facilities Engineering Command  
Washington Navy Yard  
Building 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018

Alan J. Barak, Esquire  
Pennsylvania Energy Project  
3700 Vartan Way  
Harrisburg, PA 17110

Jerry Mendl  
MSB Energy Associates  
7505 Hubbard Avenue  
Suite 200  
Middletown, WI 53562

Andrew Altman, Deputy Director  
Clean Air Council  
135 South 19th Street  
Suite 300  
Philadelphia, PA 19103

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899

Brian Kalcic  
Excel Consulting  
225 S. Meramec Avenue  
Suite 720-T  
St. Louis, MO 63105

H. Allan Knopp  
Director, Regulatory Affairs  
600 North Dairy Ashford  
Suite CH-1038  
Houston, TX 77079

Clinton A. Vince, Esquire  
Paul E. Nordstrom, Esquire  
Deborah A. Swanstrom, Esquire  
Joel D. Newton, Esquire  
Verner, Liipfert, Bernhard,  
McPherson & Hand  
901 15th Street, NW  
Washington, DC 20005-2301

Stephen J. Baron  
J. Kennedy & Associates, Inc.  
35 Glenlake Parkway  
Suite 475  
Atlanta, GA 30328

Michael G. Banta, Esquire  
Vice-President and  
Assistant General Counsel  
Indianapolis Power & Light Company  
One Monument Circle  
P. O. Box 1595  
Indianapolis, IN 46206-1595

Gordon Smith, Esquire  
John & Hengerer  
1200 17th Street, NW  
Suite 600  
Washington, DC 20036-3006

David L. Cruthirds  
Electric Clearinghouse, Inc.  
1000 Louisiana  
Suite 5800  
Houston, TX 77002-5050

John R. Orr, Esquire  
Duke Energy Trading and Marketing, LLC  
One Westchase Center  
10777 Westheimer  
Suite 650  
Houston, TX 77042

Brian A. Rider, President  
Pennsylvania Retailer's Association  
224 Pine Street  
Harrisburg, PA 17101-1325

Vickiren S. Aeshleman  
Director-Regulatory Policy  
QST Energy Inc.  
300 Hamilton Boulevard  
Suite 300  
Peoria, IL 61602

Sheila S. Hollis, Esquire  
Mary Ann Ralls, Esquire  
Duane, Morris & Heckscher, LLP  
1667 K Street, NW  
Suite 700  
Washington, DC 2006-1608

Norma J. Rosner, Esquire  
General Counsel  
Vastar Power Marketing, Inc.  
200 Westlake Park Boulevard  
Houston, TX 77079

Keith M. Sappenfield, II  
Director of Marketing Support  
Noram Energy Management Inc.  
P. O. Box 2628  
Houston, TX 77252-2628

Craig S. Goodman, Esquire  
Senior Vice-President  
Law, Regulations & Public Policy  
ERI Services, Inc.  
3333 K Street, NW  
Suite 425  
Washington, DC 20007

John Haucke, Executive Vice President  
Pennsylvania Association of Plumbing,  
Heating, Cooling Contractors, Inc.  
4015 Jonestown Road  
Harrisburg, PA 17109-9109

John Klauberg, Esquire  
Bruce Miller, Esquire  
LeBoeuf, Lamb, Greene and MacRae, LLP  
125 W. 55th Street  
New York, NY 10019-5389

Michael Klein, Esquire  
LeBoeuf, Lamb, Greene and MacRae, LLP  
200 North Market Street  
Suite 300  
Harrisburg, PA 17108-2105

Vincent J. Walsh, Jr., Esquire  
Assistant Deputy Counsel  
Southwestern Pennsylvania  
Transportation Authority  
1234 Market Street  
5th Floor  
Philadelphia, PA 19107-3780

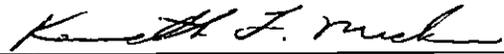
Kenneth G. Herwitz, Esquire  
Maureen Z. Hurley, Esquire  
Venable, Baetjer, Howard & Civiletti, LLP  
1201 New York Avenue, NW  
Suite 1100  
Washington, DC 20005-3917

Carl Robert Aron, Executive  
Vice President and COO  
Itron, Inc.  
2818 North Sullivan Road  
Spokane, WA 99216

Honorable Marlene R. Chestnut  
Administrative Law Judge  
PA Public Utility Commission  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

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

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F.A.P.U.C.  
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Kenneth L. Mickens  
Senior Prosecutor  
Office of Trial Staff

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