

VERNER · LIFFERT
BERNHARD · McPHERSON & HAND
CHARTERED

901 - 15TH STREET, N.W.
WASHINGTON, D.C. 20005-2301
(202) 371-6000
FAX: (202) 371-6279

ORIGINAL

Paul E. Nordstrom
(202) 371-6096

December 2, 1997

VIA HAND DELIVERY

James J. McNulty
Acting Prothonotary
Pennsylvania Public Utility Commission
North Office Building
North Street and Commonwealth Avenue
Harrisburg, PA 17105-3265

RECEIVED
97 DEC -2 PM 3:25
P.A.P.U.S.
PROTHONOTARY'S OFFICE

Re: Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00973953 and Petition of 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 Provider of Last Resort in the Service Territory of PECO Energy Company, Docket No. P-00971265

Dear Mr. McNulty:

Enclosed for filing in the captioned proceeding are the original, two hard copies and a Word diskette copy of the "Brief of Allegheny Power." An additional hard copy is enclosed; we ask that you stamp it and return it in the enclosed self-addressed envelope.

By copy of this letter, we also are filing with each of the Commissioners, the Office of Special Assistants and the Law Bureau and serving the Presiding Judges and the parties of record.

**DOCUMENT
FOLDER**

HOUSTON, TEXAS
1111 BAGBY, SUITE 4700
HOUSTON, TEXAS 77002
(713) 225-7200
FAX: (713) 752-2199

AUSTIN, TEXAS
SAN JACINTO CENTER
98 SAN JACINTO BLVD, SUITE 1440
AUSTIN, TEXAS 78701
(512) 703-6000
FAX: (512) 703-6003

HONOLULU, HAWAII
HAWAII TOWER-AMPAC CENTER
745 FORT STREET, SUITE 600
HONOLULU, HAWAII 96813
(808) 566-0999
FAX: (808) 566-0995

MCLEAN, VIRGINIA
8280 GREENSBORO DRIVE
SUITE 601
MCLEAN, VIRGINIA 22102
(703) 749-6000
FAX: (703) 749-6027

James J. McNulty
December 2, 1997
Page 2

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul E. Nordstrom". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul E. Nordstrom

Attorney for Allegheny Power

cc: Chairman Quain
Vice Chairman Bloom
Commissioner Rolka
Commissioner Brownell
Commissioner Hanger
Office of Special Assistants
Law Bureau
The Honorable Charles E. Rainey, Jr.
The Honorable Marlane R. Chestnut
Service List

BEFORE THE
PENNSYLVANIA PUBLIC UTILITIES COMMISSION

Application of PECO Energy Company)
For Approval of Its Restructuring)
Plan Under Section 2806 of the)
Public Utility Code)

Docket No. R-00973953

Petition of Enron Energy Services Power,)
Inc. for Approval of an Electric Competition)
and Customer Choice Plan and for Authority)
Pursuant to Section 2807(e)(3) of the Public)
Utility Code to Serve as Provider of Last)
Resort in the Service Territory of PECO)
Energy Company)

Docket No. P-00971265

RECEIVED
97 DEC -2 PM 3:25
PATTUCO
PROTHONOTARY'S OFFICE

BRIEF OF ALLEGHENY POWER

Pursuant to the Commission's orders of October 2 and November 6, 1997, and the Presiding Judges' order of November 20, 1997, Allegheny Power submits this brief regarding: (1) the application of PECO Energy Company ("PECO") for approval of its restructuring plan ("PECO Restructuring Plan" or "filed Restructuring Plan")^{1/}; the Joint Petition for Partial Settlement ("Partial Settlement") of PECO and several other parties (together, with PECO, the "Joint Signatories"^{2/}); and (3) the Petition of Enron Energy

ORIGINAL

^{1/} "Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code," Docket No. R-00973953 (April 1, 1997).

^{2/} "Joint Petition for Partial Settlement," Docket No. R-00973953 (August 27, 1997). The parties consist of Senator Vincent J. Fumo, CEPA, et al., Lance S. Haver, the Office of Consumer Advocate, the Office of Trial Staff, the Office of Small Business Advocate, the Philadelphia Area Industrial Users Group, the American Association of Retired Persons and the Department of the Navy.

DOCKETED
DEC 04 1997

DOCUMENT
FOLDER

Services Power, Inc. ("Enron" or "EESP") for approval of its Electric Competition and Customer Choice Plan ("Choice Plan")^{3/} in these consolidated proceedings.

I. SUMMARY OF POSITION

Allegheny Power takes the following positions herein:

1. The Commission should reject the Enron Choice Plan because the Choice Plan would violate the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801, et. seq., (the "Act" or "Competition Act").
2. The Commission should restrict PECO's use of the proceeds of securitization consistent with the restrictions the Commission approved in the PECO securitization proceeding.^{4/}
3. The Commission should determine Code of Conduct standards in a generic proceeding in which all utilities may fully present their concerns.
4. The Commission should not permit alternative suppliers to provide metering and billing services because the Competition Act does not contemplate that such services be provided by entities other than electric distribution companies ("EDCs").

^{3/} "Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company," Docket No. P-00971265 (October 7, 1997).

^{4/} Application of PECO Energy Company for Issuance of a Qualified Rate Order Under Sections 2808 and 2812 of the Public Utility Code, Opinion and Qualified Rate Order, Docket No. R-00973877, p. 5 (May 22, 1997).

5. The Commission's decision in this case should be sufficiently flexible to permit different outcomes in the restructuring proceedings of the other Pennsylvania utilities.

II. STATEMENT OF THE CASE

A history of the case is being prepared by the Presiding Judges (see Tr. 2155) and will not be repeated here.

III. ARGUMENT

A. The Enron Choice Plan Would Violate the Competition Act and Should be Rejected

In its Choice Plan, Enron seeks authority to become the provider of last resort ("PLR") in PECO's service territory under Section 2807(e)(3) of the Competition Act. Enron provides no analysis of the application of Section 2807(e)(3) to its proposal, but merely asserts that "Section 2807(e)(3) of the Act authorizes this Commission to designate other entities to serve as PLR." Choice Plan, p. 24. A review of Section 2807, including its paragraph (e)(3), however, reveals no such authority. Rather, Section 2807 demonstrates the Legislature's intent that the utilities remain the providers of last resort in their service territories, at least through the period in which they are collecting CTCs or ITCs. The Choice Plan would violate Section 2807, as well as other provisions of the Competition Act, as discussed below.

Section 2807(e)(1) provides as follows:

(e) *Obligation To Serve.* -- An electric distribution company's obligation to provide electric service following implementation of restructuring and the choice of alternative generation by a customer is revised as follows:

(1) *While an electric distribution company collects either a competitive transition charge or an intangible transition charge or until 100% of its customers have choice, whichever is longer, the electric distribution company shall continue to have the full obligation to serve, including the connection of customers, the delivery of electric energy and the production or acquisition of electric energy for customers.*

(Emphasis added). Thus, the Competition Act explicitly imposes on EDCs the "*full obligation to serve.*" *Id.* That obligation extends until all customers have choice or until the EDC has recovered its CTC or ITC, "*whichever is longer.*" *Id.* No mention is made of an alternative provider fulfilling the obligation during this transition period.

Section 2807(e) goes on to provide:

(2) *At the end of the transition period, the Commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.*

Section 2807(e)(2) (emphasis added). The new regulations contemplated in paragraph (2) are to be promulgated at the end of the transition period when all customers have choice and the utility has collected its CTC or ITC. Those regulations may for the first time convey a provider of last resort role to alternative suppliers, as indicated in Paragraph (3) of Section 2807(e). Paragraph (3) provides:

(3) *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 recover fully all reasonable costs.*

Section 2807(e)(3) (emphasis added). No provision in the Act confers authority to the Commission to grant provider of last resort status to alternative suppliers before the end of the transition period, as Enron seeks in this proceeding.

Enron's position appears to be based on a reading of paragraph (3) of Section 2807(e) standing alone and devoid of its temporal context. Such interpretation is in error. Contrary to accepted rules of statutory interpretation, Enron's interpretation would render meaningless the express requirement in paragraph (1) that EDCs retain their "full obligation to serve" through the transition period. Moreover, such interpretation ignores paragraph (2)'s explicit linkage with paragraph (3), and the future time frame ("at the end of the transition period") which controls both paragraphs.

Even assuming, arguendo, that paragraph (3) could be read alone to suggest that the Commission could designate an alternative PLR for a portion of the PLR load during the transition period, neither paragraph (3) nor any provision of the Competition Act indicate that the Legislature contemplated a development as radical as Commission appointment of a competitor to completely *displace* a utility that is otherwise willing and able to serve as PLR in its own territory, as the Choice Plan would do. Enron cites the Legislature's declaration of policy in Section 2802(16), which reads *in full*:

It is in the public interest for the transmission and distribution of electricity *to continue* to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the Commission. Electric distribution companies *should 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 2802(16) (emphasis added). While this declaration of policy must be read in the context of the specific authorizing provisions of Section 2807 (which, as discussed, authorize the Commission to designate an alternative PLR after the transition period), the declaration, as well as numerous other provisions of the Act, express a policy favoring continuation of the wires and PLR functions by the existing utilities. Important considerations underscore this policy, including the need to "ensure the availability of universal electric service" (Section 2802(16)), the need to permit the utility a fair opportunity to recover its stranded costs (Section 2807(e)(1)), and fairness to all interested parties (Section 2802(8)). Surely, if the Legislature had meant to authorize the incumbent utility to be stripped of the vital PLR function at the outset of the transition to competition, it would have granted this authority expressly and written into such grant both procedures to effect the change and protections necessary for the safeguard of the public interest -- all of which are absent from the Competition Act as enacted.

As a separate legal consideration, the Enron Choice Plan requests Commission issuance of a Qualified Rate Order ("QRO") to PECO for authorization to issue \$5.461 billion of transition bonds. Section 2812(a)(1) of the Competition Act makes unmistakably clear, however, that a QRO may be adopted "*only* upon application of an *electric utility*." (Emphasis added). Moreover, Section 2812(a)(2) provides that the filing of such application is to be in the discretion of the utility ("an electric utility may file an application. . . .") Nothing in the Act contemplates the filing of a QRO application by a competitor of the utility and nothing authorizes the Commission to approve such an

application. Thus, this important element of the Enron Choice Plan is null and void and cannot be approved by the Commission.

B. The Commission Should Restrict PECO's Use of the Proceeds of Securitization Consistent with Such Restrictions Approved in the PECO Securitization Proceeding, Docket No. R-00973877

The Competition Act was intended to deregulate generation at the retail level and foster a new competitive era of electric service in Pennsylvania. Allegheny Power welcomes this new competitive era. As Allegheny Power's West Penn Power Co. ("West Penn") is the lowest cost utility supplier in Pennsylvania, Allegheny Power should be well positioned to compete in the new competitive electric markets if competition is allowed to proceed in a fair and equitable manner.

In order for Pennsylvania competitive markets to function properly and bring to consumers the full benefits of competition, the rules of the market must not arbitrarily confer favor or advantage to one player over another. Several of the proposals in the instant proceeding, however, raise serious concerns as to the manner in which competition will proceed, as they confer competitive advantages on PECO vis a vis the other Pennsylvania utilities in connection with stranded cost recovery. Such advantages include:

- **Securitization.** The PECO Restructuring Plan, the Partial Settlement and the Choice Plan each propose authorization for securitization of a massive portion of PECO's stranded costs. The Partial Settlement, for instance, would permit PECO to securitize \$4.0 billion of a total \$5.461 billion of stranded costs. The Choice Plan would permit securitization of the entire

\$5.461 billion amount. Upon completion of the sale of its transition property under any of these proposals, PECO would receive an enormous amount of cash which it could use for competitive purposes, such as to subsidize its expansion into the markets of West Penn and the other Pennsylvania utilities.

- **Below Market Generation Rates.** Both the Restructuring Plan and the Partial Settlement would permit PECO to impose (1) a high fixed CTC to recover its massive stranded costs and (2) a generation charge calculated as the residual between the PECO's generation rate cap and the CTC. Extensive record evidence suggests that in many instances, PECO's generation charge may be below prevailing market rates. Thus, these proposals will inhibit competitors, such as Allegheny Power, from entering PECO's market because they would have to charge below market rates to make sales, and these rates may be below their costs of production. PECO is unlikely to face such a large hurdle when it attempts to enter the markets of the other Pennsylvania utilities.
- **CTC Extension.** The Partial Settlement would permit PECO to extend the period of its CTC collection beyond the statutory period to the year 2008.

As a minimum safeguard to protect against some of the competitive advantages that PECO would receive, Allegheny Power requests that the Commission impose upon PECO's use of its securitization proceeds the same restrictions as were agreed to between PECO and Allegheny Power and approved by the Commission in the PECO

securitization case, Docket No. R-00973877. In its settlement with Allegheny Power in that proceeding, PECO agreed that it would use its securitization funds only for the following purposes:

(1) to pay expenses related to the issuance of the Transition Bonds and the costs associated with using the proceeds; (2) to apply to its deferred fuel accounts; (3) to retire existing debt through calls, open market purchases, tender offers and/or defeasance; (4) to retire existing preferred stock through redemption and/or tender offers; and (5) for stock buy backs or dividends related to PECO Energy's common equity.

PECO-Allegheny Settlement at 2. As indicated, the Commission approved these restrictions in its QRO. Slip Op. at 5.

In this proceeding, PECO has only committed to use its securitization proceeds "principally" for the above listed purposes, which it is already bound to do by the Competition Act. Section 2812(B)(2) of the Act provides:

The qualified rate order shall require that the proceeds . . . shall be used *principally* to reduce the electric utility's transition or stranded costs and to reduce the related capitalization, pursuant to a plan submitted by the electric utility

(Emphasis added). In his hearing testimony, PECO's lead witness Hill made clear PECO's belief that the proceeds of securitization need not be used *exclusively* for such purposes, but may be used for other purposes. Tr. 536. He further testified that in the *Partial Settlement* PECO was not committing to use the proceeds *exclusively* for those purposes. Tr. 537. Presumably, PECO would take the same position with respect to securitization proceeds arising from its filed Restructuring Plan.

Good reasons exist to require PECO to use the funds exclusively for the listed purposes. The only purpose for use of securitization proceeds affirmatively cited by the Act is the reduction of transition or stranded costs and related capitalization.

Sec. 2812 (B)(2). Nothing in the Act suggests that such proceeds may be used by utilities to subsidize competitive ventures. Moreover, while the Act permits some flexibility with the term "principally," it nevertheless requires that the proceeds shall be used "pursuant to a plan submitted by the utility." *Id.* PECO has submitted to the Commission no plan for utilization of its securitization proceeds for any purpose other than to reduce its stranded costs and related capitalization. Further, Mr. Hill disclosed no specific alternative uses for the proceeds upon cross-examination. *See* Tr. 538. Given the multi-billion dollar size of PECO's proposed securitization claim and the vagaries of the term "principally", reliance on PECO's commitment to use the proceeds "principally" to reduce stranded costs would permit PECO unrestricted use of hundreds of millions of dollars of cash for competitive purposes. No other Pennsylvania utility can or will receive a comparable competitive advantage. PECO should not be permitted such an advantage here.

C. The Commission Should Determine Code of Conduct Standards in a Generic Hearing in Which All Utilities May Fully Present Their Concerns

Several codes of conduct have been proposed by the parties to the instant proceeding which contain restrictions that depart from those of the code of conduct which was developed by the Pennsylvania Electric Association and approved by the Commission in the Pilot Program proceedings.^{5/} Allegheny Power does not believe that

^{5/} Pilot Program filings by Metropolitan-Edison Company, Dkt. No. P-00971168, Pennsylvania Electric Company, Dkt. No. P-0097169, Pennsylvania Power Company, Dkt. No. P-00971173, PECO Energy Company, Dkt. No. P-00971170, Allegheny Power Company, Dkt. No. P-00971172, Duquesne Light Company, Dkt. No. P-00971175, Pennsylvania Power & Light Company, Dkt. No. P-00971183, and UGI Utilities, Inc., Dkt. No. P-00971171 (Aug. 21, 1997, with errata issued September 22, 1997).

the Commission should adopt any of these proposed codes of conduct at this time if, in so doing, the Commission intends to establish standards that would be binding on Pennsylvania's other utilities. Such standards would unduly restrict the utilities' ability to operate efficiently and compete effectively in the competitive marketplace.

Allegheny Power agrees with the Commission's approach to code of conduct issues outlined in its Order of November 6, 1997 concerning the issues that were not resolved by the Partial Settlement. Therein, the Commission stated:

The Commission believes that the Code of Conduct governing interactions between utilities and their affiliates is a generic issue and is best left to a rulemaking proceeding. The Commission anticipates that a rulemaking on competitive safeguards, that will address "code of conduct" issues will be initiated before the end of the year.

Order at 6. Although the Commission left for resolution in the instant proceeding the issue of "the specific structural and operational relationship between PECO and its affiliates" (*id.*), it should not now rule comprehensively on code of conduct issues in this proceeding. Rather, consistent with the November 6 Order, the Commission should permit those issues to be fully aired in the generic proceeding in which each of the interested Pennsylvania utilities will be allowed to raise their particular concerns. Allegheny Power urges prompt institution of such a rulemaking proceeding.

D. The Commission Should Not Permit Alternative Suppliers to Provide Metering and Billing At this Time

In its Order of November 6 concerning issues unresolved by the Partial Settlement, the Commission determined that the issue of whether an entity other than a utility may perform metering and billing services "involves an interpretation of the

meaning of the statute by the rules of statutory construction and legislative intent" and that record evidence need not be presented. Order at 5. Allegheny agrees that the issue is one that may be resolved by the language of the Competition Act, and urges herein that the Commission find, with one exception, that the Act does not contemplate metering and billing by entities other than the utility.

Two principal provisions of the Competition Act deal directly with this issue.

Section 2807(d), the most explicit of the two, provides:

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. Customer service functions shall, at a minimum, be maintained at the same level of quality under retail competition.

(Emphasis added.) Thus, the Legislature squarely placed on EDCs the responsibility for metering and the other customer service functions of complaint resolution and collections. The Legislature linked EDC responsibility with the maintenance of quality of service. Similarly, in Section 2807(a), the Legislature directed that the EDC maintain the quality of its distribution system and granted the EDC authority, subject to Commission approval, to require that customers install enhanced metering capability to match the energy delivered by the supplier with the consumption of the customer.

With respect to billing, Section 2807(c) 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.

While some ambiguity arguably arises with the Legislature's unusual choice of the word "may," rather than "shall," it is clear that the Legislature generally envisioned billing to

be a continuing responsibility of the EDC. The Legislature provided one exception to that general rule, i.e., that a customer receiving generation service from an alternative supplier may elect to receive a bill for that service directly from the supplier. No other exceptions are provided for. To the extent that an ambiguity exists as to whether all billing (except for billing provided at the customer's election by the alternative supplier) must be done by the EDC, that issue is resolved in favor of exclusive EDC responsibility by the succeeding paragraphs of Section 2807(c). Those paragraphs direct other entities providing service to a customer to furnish the EDC billing data "sufficient to enable the electric distribution company to bill customers" (paragraph (2)), and permit the EDC to withhold payment for services provided by other suppliers for which the EDC is billing customers until the EDC receives payment (paragraph (3)). Moreover, given the close relationship between billing and the customer services of meter reading, complaint resolution and collections, as well as the Legislature's unequivocal assignment of responsibility for the latter to EDCs in Section 2807(d), one would expect the Legislature to have explicitly provided for billing by other entities if that was its intent. No such explicit provision exists in the Act.

Finally, it should be noted that the Legislature, in enacting the Competition Act, intended to create a competitive *generation* market. Section 2802 (12); see also Section 2802 (3), (5), (7), (8), (13) and (14). The Act declares that the "*generation of electricity shall no longer be regulated as a public utility service. . . .*" Section 2806(A) (emphasis added). It directs the Commission to "allow customers to choose among electric *generation* suppliers . . ." Section 2804(2) (emphasis added). Indeed, the very title of the Act is the "Electricity *Generation* Customer Choice and Competition Act,"

(Section 2801, emphasis added) and the Act is otherwise replete with references to a competitive generation market. In contrast, the Legislature did not place into that Act express indications of an intent to create a competitive market for metering and billing; it did not declare metering and billing to be no longer regulated; and it did not authorize the Commission to allow customers to choose among competitive metering and billing service providers. Rather, it clearly was the Commission's intent, as indicated in Sections 2807(c) and (d), to place full responsibility for those functions on the EDCs, with the limited exception noted.^{6/}

E. The Commission's Decision in This Case Should be Sufficiently Flexible to Permit Different Outcomes, Where Appropriate, in the Restructuring Proceedings of the Other Pennsylvania Utilities

The Commission should be mindful that in rendering a decision in this proceeding, it will be setting in place the "rules of the road" for a portion of the Pennsylvania retail electricity market. Pressure to apply the same rules to the

^{6/} The competitive provision of metering and billing would require that those services be "unbundled" and separate unbundled rates developed for their provision. Section 2804(3) of the Competition Act directs the Commission to require the unbundling of "generation, transmission and distribution" services, but contains no parallel mandate for metering and billing. Moreover, while the same section permits the Commission to require the unbundling of "other services," these "other services" are not specified and, by operation of Sections 2807(c) and (d), may not include metering and billing. In any event, the Commission declined to order the unbundling of metering and billing in its generic order of February 13, 1997, Re Electric Utility Restructuring Filings, Docket No. M-00960890, p. 20 (February 13, 1997), and it is difficult to imagine how such unbundling could be effected at this stage of the restructuring. Among other things, the competitive provision of unbundled metering and billing services would create the possibility of stranded utility costs incurred for the metering and billing functions and the need to develop mechanisms to compensate the utilities for such stranded costs.

remaining portions of the Pennsylvania markets likely will arise as the Commission reviews the transition plans of the other Pennsylvania utilities. Indeed, one participant in the Pennsylvania electric restructuring earlier proclaimed the temporary 10 percent PECO rate reduction in the Partial Settlement to be a benchmark for consumer support of the other utilities' restructuring proposals. See "PECO, Opponents Find Common Ground, Announce Settlement," Energy Daily, August 28, 1997, pp. 1-2 (quoted remarks of Sen. Vincent Fumo (D-Philadelphia)).

The Commission should be careful to ensure that its ruling with respect to the PECO settlement is limited to the PECO service territory and will not be binding on the other Pennsylvania utilities and the transactions that will occur within their territories. A "one size fits all" approach was not contemplated by the Legislature when it required the filing of individual implementation plans. And clearly, given the varying circumstances facing the respective Pennsylvania utilities -- including great differences in success in controlling costs, varying customer demographics, and even location in separate and distinct electricity markets -- the rules of the road will have to be tailored for each utility and its territory. The Commission's ruling should ensure such flexibility.

A prime example of the need to tailor the specific elements of restructuring to each utility's circumstances is raised by the suggestion, cited above, that a temporary 10 percent rate reduction become a benchmark. The strikingly different circumstances by which West Penn and PECO enter the transition to competition refute this suggestion. West Penn, through years of prudent and efficient management, provides residential service at rates 47 percent below PECO's. If PECO's rate levels are to be considered a benchmark for West Penn, logic would dictate that West Penn's

rates should be significantly increased, not decreased. Other considerations also bode against imposing a decrease in West Penn's rates. PECO currently is earning more than its authorized rate of return and, thus, has a substantial "cushion" with which it may offer such a rate concession. West Penn is earning less than its authorized rate of return,¹⁷ and simply has no comparable cushion with which to offer such a concession. Imposition of such a concession could have a devastating impact on West Penn's financial condition.

The different circumstances surrounding the Pennsylvania utilities was recognized by members of the Legislature when the Competition Act was being debated. For instance, Senator Fumo sponsored an amendment to the legislation for a ten percent rate reduction for all utilities, but included a provision by which West Penn could seek an exemption from such provision. He explained to the Legislature:

Mr. President, however, because we want to be fair about it, we recognize that there are some power companies in Pennsylvania that have extremely low rates. West Penn Power comes to mind. Their shareholders and management did not go on the foolhardy experiment of billions and billions of dollars for nuclear power plants. They said all we want to do is provide enough power for the people who use it and do it as cheaply as possible. Mr. President, we have no doubt that if we forced a 10-percent reduction on them, they could not sustain it.

Legislative Journal-Senate at 2686 (Nov. 25, 1996). Accordingly, the Commission should resist attempts to selectively apply certain aspects of the Partial Settlement, which were negotiated in light of the many circumstances surrounding PECO, to the transition plans of the other Pennsylvania utilities, and otherwise should avoid setting

¹⁷ See Direct Testimony of Michael P. Morrell, West Penn Power Company, Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00973981, p. 15.

binding precedent in this case before the other utilities' restructuring plans come formally before it.

IV. CONCLUSION

WHEREFORE, Allegheny Power requests that the Commission reject the Enron Choice Plan, direct PECO to utilize the proceeds of securitization of its stranded costs solely for the non-competitive purposes listed above and provide such other relief as herein requested.

Respectfully submitted,



Clinton A. Vince
Paul E. Nordstrom
Deborah A. Swanstrom
Joel D. Newton
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 15th Street, NW
Suite 700
Washington, DC 20005

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

Attorneys for Allegheny Power

APPENDIX A

PROPOSED FINDINGS OF FACT

1. Various proposals for PECO stranded cost recovery in this proceeding, including proposals by which PECO would securitize several billions of dollars of stranded costs, would confer competitive advantages on PECO viz a viz other Pennsylvania utilities.
2. PECO has not agreed to refrain from using the proceeds of securitization for competitive purposes.
3. PECO has not disclosed to the Commission any plans to use the proceeds of securitization for purposes other than reducing stranded costs and related capitalization.
4. Competitive metering and billing (were it allowed under the Competition Act) would require the unbundling of metering and billing services and may create stranded costs and the need to develop a mechanism to recover those costs.
5. The Pennsylvania utilities are entering the electric industry restructuring with sharply differing circumstances, which may require the Commission to tailor its restructuring orders to those respective circumstances.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. The Enron Choice Plan would violate Section 2807 and related sections of the Competition Act.
2. The Enron Choice Plan would violate Section 2812 of the Competition Act.
3. Section 2812 of the Competition Act requires that securitization proceeds be used only in accordance with a plan submitted by the utility.
4. Code of conduct issues should be resolved in a generic proceeding, consistent with the Commission's directive in its November 6, 1997 order.
5. With the exception of the option for customers to elect to receive a bill for generation services from competitive generation suppliers, the Competition Act does not contemplate the provision of metering and billing services by entities other than the EDCs.
6. The Legislature did not envision a "one size fits all" approach to competition when it directed the individual utilities to file separate restructuring plans.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application Of PECO Energy Company)
For Approval Of Its Restructuring)
Plan Under Section 2806 Of The)
Public Utility Code)**

Docket No. R-00973953

**Petition of Enron Energy Services Power,)
Inc. for Approval of an Electric Competition)
and Customer Choice Plan and for Authority)
Pursuant to Section 2807(e)(3) of the Public)
Utility Code to Serve as Provider of Last)
Resort in the Service Territory of PECO)
Energy Company)**

Docket No. P-00971265

**RECEIVED
97 DEC -2 PM 3:25
P.A.U.C.
PROTHONOTARY'S OFFICE**

CERTIFICATE OF SERVICE

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

Office of Special Assistants
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(Hand Delivery)

Commissioner Rolka
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(Hand Delivery)

Chairman Quain
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(Hand Delivery)

Commissioner Brownell
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(Hand Delivery)

Vice Chairman Bloom
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(Hand Delivery)

Commissioner Hanger
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(Hand Delivery)

The Law Bureau
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(Hand Delivery)

Deputy Executive Director Hofmann
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Deputy Executive Director Smith
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

The Honorable Charles E. Rainey, Jr.
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
Philadelphia, PA 19130

The Honorable Marlane R. Chestnut
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
Philadelphia, PA 19130

The Honorable Robert A. Christianson
Chief Administrative Law Judge
Pennsylvania Public Utility Commission
North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17105

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

Robert A. Mills, Esq.
Derrick Williamson, Esq.
David Kleppinger, Esq.
McNees, Wallace & Nurick
100 Pine Street
Harrisburg, PA 17108-1166

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

Alan J. Barak, Esq.
Penn Energy Project
Widener University School of Law
3700 Vartan Way
Harrisburg, PA 17110

Bernard Ryan, Esq.
Karen Oill Moury, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North 2nd Street
Harrisburg, PA 17101

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

Walter W. Cohen, Esq.
Andrew J. Giorgione, Esq.
Obermayer Rebmann Maxwell
Hippel, LLP
204 State Street
Harrisburg, PA 17102

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

Usher Fogel, Esq.
Roland, Fogel, Koblenz & Carr, LLP
One Columbia Place
Albany, NY 12207

Kenneth L. Mickens, Esq.
Charles D. Shields, Esq.
Pennsylvania Public Utility Commission
Office of Trial Staff
North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17105

Christopher B. Craig, Esq.
Counsel for Senator Vincent J. Fumo
Room 545, Main Capitol Building
Harrisburg, PA 17120

Joseph A. Dworetzky, Esq.
New Energy Ventures
Hangley Aronchick Segal & Pudlin
One Logan Square
Philadelphia, PA 19103

John L. Munsch, Esq.
Allegheny Power
800 Cabin Hill Drive
Greensburg, PA 15601-1689

Steven P. Hershey, Esq.
Petter Meadows, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102

Roger E. Clark, Esq.
NESIP
905 Denston Drive
Ambler, PA 19002-3901

Terrence Fitzpatrick, Esq.
David DeSalle, Esq.
Ryan Russell Ogden & Seltzer
1100 Berkshire Boulevard
Suite 301
Reading, PA 19610

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

Gordon J. Smith, Esq.
John & Hengerer
1200 17th Street, N.W., Suite 600
Washington, DC 20036-3006

Daniel Clearfield, Esq.
Alan Kohler, Esq.
Wolf, Block, Schorr and Solis-Cohen
305 North Front Street, Suite 401
Harrisburg, PA 17101

Gerald Gornish, Esq.
Wolf, Block, Schorr and Solis-Cohen
305 North Front Street, Suite 401
Harrisburg, PA 17101

Craig A. Doll, Esq.
Delmarva Power & Light Company
d/b/a Conectiv Energy
214 State Street
Harrisburg, PA 17101

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

Donald A. Kaplan, Esq.
Preston, Gates, et al.
1735 New York Avenue, NW
Suite 500
Washington, DC 20006-4759

Bruce A. Connell, Esq.
DuPont Power Marketing, Inc.
600 North Dairy Ashford
ML-1034
Houston, TX 77079

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

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

Michael L. Kessler, Esq.
Vice President, General Counsel
American Energy Solutions, Inc.
111 South Alfred Street
Alexandria, VA 22314

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

Richard Silkman
76 Main Street
Yarmouth, ME 04096

John J. Gallagher, Esq.
Zsuzsanna E. Benedek, Esq.
LeBoeuf, Lamb, Greene & MacRae
200 North Third Street, Suite 300
P.O. Box 12105
Harrisburg, PA 17108-2105

Ethan Giddings
217 Rodman Avenue
Jenkintown, PA 19046

Susan M. Shanaman, Esq.
Center for Energy & Economic
Development
212 North Third Street
Suite 203
Harrisburg, PA 17101-1505

Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141

Vincent J. Walsh, Jr., Esq.
Southeastern PA Transportation
Authority
1234 Market Street, Fifth Floor
Philadelphia, PA 19107-3780

Paul L. Zeigler, Esq.
Zeigler & Zimmerman, P.C.
355 North 21st Street
Camp Hill, PA 17011-3707

Stephanie A. Sugrue, Esq.
QST Energy, Inc.
Duane, Morris & Heckscher, LLP
1667 K Street, N.W., Suite 700
Washington, DC 20006-1608

Paul L. Ziegler, Esq.
Ziegler & Zimmerman, PC
355 North 21st Street, Suite 304
P.O. Box 1080
Camp Hill, PA 17011-3707

Dated this 2nd day of December, 1997.



Paul E. Nordstrom
Verner, Lipfert, Bernhard,
McPherson and Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, DC 20005

Attorney for Allegheny Power

RECEIVED
97 DEC -2 PM 3:26
F.A.P.U.C.
PROTHONOTARY'S OFFICE