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December 2, 1997

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James J. McNulty, Prothonotary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of PECO Energy for Approval of its Restructuring
Plan Under Section 2806 of the Public Utility Code
Docket No. R-00973953, et al.

Dear Prothonotary McNulty:

Enclosed please find for filing an original and one copy of the Office of Consumer Advocate's Main Brief in the above-captioned proceeding. Also enclosed pursuant to Prehearing Order #6, please find a 3.5" diskette which contains the OCA's Main Brief in Word 6.0.

One copy will be served upon all parties of record as evidenced by the attached Certificate of Service.

Sincerely,

Steven K. Steinmetz
Assistant Consumer Advocate

ORIGINAL

Enclosures

cc: Hon. Marlane R. Chestnut (One copy via Federal Express)
Hon. Charles E. Rainey, Jr. (One copy via Federal Express)
Cheryl Walker Davis, OSA (Two copies, one diskette)
John M. Quain, Chairman (Two copies, one diskette)
Robert K. Bloom, Vice Chairman (Two copies, one diskette)
John Hanger, Commissioner (Two copies, one diskette)
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All parties of record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY FOR :
APPROVAL OF ITS RESTRUCTURING :
PLAN UNDER SECTION 2806 OF THE : Docket No. R-00973953
PUBLIC UTILITY CODE :

PETITION OF ENRON ENERGY SERVICES :
POWER, INC., FOR APPROVAL OF AN :
ELECTRIC COMPETITION AND CHOICE :
PLAN AND FOR AUTHORITY PURSUANT : Docket No. P-00971265
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 :

MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

Almost exactly one year ago this day, Governor Ridge signed into law the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. Chapter 28. The Act is intended to allow retail customers to obtain direct access to the developing competitive generation market so long as safe and affordable transmission and distribution service remains available at levels of reliability currently enjoyed by the residents and businesses of this Commonwealth. 66 Pa.C.S. §§2802(3) and 2802(12). The Act, however, has several other important goals that it seeks to accomplish, most notably the assurance that electric service is available on reasonable terms and conditions (§2802(9)); that customers' rates should be capped for a period of time so that customers are no worse off at the onset of competition (§2804(4)); that protections for low-income customers continue at least at their existing levels (§2802(10)); and that utilities be provided a fair opportunity to recover the level of stranded and transition costs that the Commission finds to be just and reasonable (§2802(15)). Additionally, it is clear from the debate in the General Assembly that the General Assembly expects that this Act will provide near term rate relief for customers, thus improving the lives of Pennsylvania's residents and increasing the competitiveness of the Commonwealth's businesses and industries. See 66 Pa.C.S. §§2802 (4),(6),(7), (9).

The General Assembly, however, recognized that many of these fundamental goals of the Act were competing goals and could not be achieved simultaneously and instantaneously on January 1, 1997. Thus, the Act provides for a transition to competition that will likely extend up to nine years or more from the date of enactment. The OCA submits that the task facing the Commission, and all of the parties to these proceedings, is how to balance the competing goals of the statute while transitioning to a competitive generation market.

The OCA, throughout these proceedings, has wrestled with these competing goals and mandates of the Act. The OCA recognizes the need to develop a vigorous, competitive market, but also recognizes that it will take some time to achieve this goal. During this proceeding, the OCA has sought, through its positions, to ensure that while this market is developing, ratepayers are provided adequate protections and adequate near term rate relief to reflect the benefits of the developing market. Based on the record evidence presented by the OCA's witnesses, it was the OCA's final litigation position that PECO should be permitted to charge its ratepayers no more than \$4.35 billion in stranded costs, with no return on the portion of stranded costs related to utility-owned generating plant. When added to the OCA's projected market prices and unbundled transmission and distribution rates, the competitive transition charge necessary to recover the OCA's proposed level of stranded costs over seven years would produce a 12% overall rate reduction throughout the period 1999-2005. The OCA's litigation position is summarized in the last section of this Brief.

As this Commission well knows, however, the OCA has joined in a Partial Settlement of the major issues of this case with PECO and a number of other parties representing virtually every segment of the PECO customer base. As set forth in Section II of this Brief, the OCA fully supports this Partial Settlement as a just and reasonable resolution that will provide immediate benefits to ratepayers in the form of lower rates, greater universal service protection, and stronger and longer rate caps, while also allowing long-term benefits to ratepayers through a rational transition to a competitive retail generation market.

The proposed settlement is only "partial" in the sense that some issues remain unresolved among the settling parties and also in the sense that some parties, particularly PECO's prospective competitors, have not joined in and are indeed actively opposing the settlement. The so-called "unresolved issues"

will be addressed in Section IV of this Brief. The primary principled objection to the Partial Settlement, meanwhile, revolves around the early-year generation rate caps that are imposed on PECO. The competitors contend that the PECO generation rate caps are so low that competitors will not be able to “beat” the prices that serve as the ceiling under which PECO must sell generation in the early years of the transition to competition. The OCA submits that there is a trade-off between the guaranteed rate savings in the early years of the settlement and the increased market price caps and reduced stranded cost charges in the subsequent years, as consumers become better equipped to take advantage of competitive electricity markets. The OCA submits that the balance struck in the Partial Settlement is a reasonable one and is certainly preferable to the opposite approach in which consumer benefits are delayed and competition is restricted in the future.

Finally, as the Commission also well knows, in addition to objecting to the Partial Settlement, one prospective competitor, Enron Energy Services Power, Inc., has submitted an alternative proposal to the Commission, the Enron Plan. While the OCA would certainly be pleased to see the larger rate reductions that purportedly would occur under the Enron Plan, the OCA does not consider the Enron Plan to be a credible or feasible proposal. Without even reaching the relative merits of Enron’s specific proposals, the Commission must recognize that the entire plan is built on a series of “agreements” between Enron and PECO that PECO could not possibly enter into and that this Commission lacks the authority to order. The rate reductions under the Enron Plan do not come from Enron; they come from PECO. The power supplied by the Provider of Last Resort in the Enron Plan does not come from Enron; it comes from PECO.

In OCA’s view, this Commission has the power to reject PECO’s stranded cost claim and reduce PECO’s unbundled rates in a manner that can produce 20% rate reductions or more. The Commission,

however, does not have the power to order PECO to securitize \$5.5 billion of stranded costs as demanded by Enron, and the Commission does not have the authority to order PECO to enter into a long-term power supply agreement with Enron at non-compensatory rates. This Commission does not have the power to order PECO to turn over the keys to its Company to Enron. Even if the Enron Plan were legally feasible, it has a number of significant deficiencies that must be corrected in order to protect consumers.

In summary, the OCA recognizes that the Commission has stated its intention to review the entire record of this case and reach its own conclusions. The OCA submits that upon a review of this record, the Commission will conclude that the Partial Settlement represents a just and reasonable result that will provide benefits to consumers and will begin to put Pennsylvania on the path toward a competitive retail electricity market as contemplated by the Act. If the Commission does not accept the Partial Settlement in whole or in part, however, the Commission should still disregard the legally implausible Enron Plan and consider the litigation positions presented by the OCA in Section V of this Brief.

II. THE PARTIAL SETTLEMENT.

After the filing of direct and rebuttal testimony, and just prior to the filing of surrebuttal testimony and hearings, PECO and the major consumer parties representing nearly all segments of the Company's ratepayer classes reached a Partial Settlement. The OCA was a signatory to that Settlement and urges its adoption by the PUC. As set forth in the OCA's Statement in Support of the Partial Settlement, the OCA submits that the Partial Settlement provides substantial near term rate benefits to consumers while making it possible to bring about greater long-term savings through the transition to a viable retail competitive generation market.

The Partial Settlement provides approximately \$1 billion dollars of rate reductions in the first few years of the Settlement and provides the opportunity for even greater savings in later years because it features a declining Competitive Transition Charge, with an increasing generation market cap. In addition, the Partial Settlement provides a greater degree of ratepayer protection than is required under the Electric Choice Act, because it extends from 2001 to 2004 the cap on regulated transmission and distribution rates, and it extends the statutory generation rate cap (albeit at a somewhat higher level) from 2005 through 2008. Moreover, the Settlement provides even greater potential rate relief -- discounts of 25 to 50 percent off of the already lowered Settlement rates -- to as many as 100,000 PECO customers living at or near the poverty level. In deciding whether to approve the Partial Settlement, the Commission must recognize that some of the benefits achieved here by consumers could only have been obtained through Settlement rather than through litigation and Commission mandate.

The primary objection to the Settlement, that the early year market generation caps might not be high enough to create substantial immediate competition for all customer classes, does not justify rejecting the Settlement or altering it in such a way that would jeopardize the Settlement's consumer benefits. The Settlement properly focuses on achieving immediate near-term assured rate reductions for consumers by reducing the effective rate cap in the early years, while permitting the development of greater retail competition through lower Competitive Transition Charges and higher market generation caps as the transition to competition is completed. It is the end of this transition period, when the protections of traditional regulation disappear, which is most critical. At that time, only a vigorous competitive market is capable of substituting for regulation in providing reasonable protection to consumers from monopoly abuse. Only the Partial Settlement provides for vigorous competition

during this critical phase while also providing rate relief and significant consumer protections throughout the transition period.

A. The Partial Settlement Provides Guaranteed Rate Relief To PECO's Customers.

The Partial Settlement provides for a 10% rate reduction for all PECO customers for 28 months.¹ Rate reductions of at least 5% and 2% would follow in the years 2001 and 2002 respectively. *Id.* Customers receive these rate reductions regardless of whether they choose to shop for electricity. Thus, while PECO customers who sign up for alternative providers in the current pilot program can expect savings of 10%, under the Partial Settlement all PECO customers will receive 10% rate cuts on September 1, 1998, automatically. Depending upon how the market price of electricity develops, PECO customers could save even more. Additional savings could result either from a customer shopping, or, as will be discussed later, by the generation caps contained in the Partial Settlement being decreased to the market rate of electricity. Significantly, the risk that all customers might not benefit immediately from this transition to competitive electric generation is eliminated. Indeed, the 10% rate reductions provided for by the Partial Settlement commence four months prior to the implementation of retail competition and the unbundling of rates on January 1, 1999, and thus four months earlier than would have been possible through litigation under the Electric Choice Act.² The value to ratepayers and the

¹ "Table A" of the Partial Settlement (pg. 8) in column 5 shows a class-wide total bill cap of 8.95 ¢/kwh from September 1, 1998 through December 31, 2000. PECO's current class-wide price per kwh is 9.95 ¢.

² Representatives of PECO's industrial customers as well as representatives of AARP pointed to this early rate reduction as an example of the kind of benefits consumers obtained in the Partial Settlement. *See* Tr. 2009, PAIEUG St. 1.55 at 2. When PAIEUG witness Baron filed his responsive testimony to those arguing against adoption of the Partial Settlement, he correctly noted that all of the opposing parties had focused only upon the benefits achieved by PECO. *Id.* Speaking (continued...)

cost to PECO of these 1998 rate reductions alone amounts to approximately \$110 million dollars. PECO St. 3-RJ at 7.

The schedule of rate reductions provided by the Partial Settlement are guaranteed for consumers, and are only reduced to a lower guaranteed level if securitization is totally precluded on legal grounds. Partial Settlement at ¶ 10, n.4. See also, AARP St. 2 at 9. The OCA submits that it is significant that the provision allowing for a reduction in the rate decreases due to a failure to securitize is strictly limited to legal and not market impediments. In other words, no matter how the interest rates in the asset backed securities market develop, the ratepayers under the Partial Settlement will be held harmless. Similarly, even adverse tax rulings of the Internal Revenue Service or adverse accounting rulings by the Securities and Exchange Commission do not trigger a reduction in ratepayer benefits under the Partial Settlement. Partial Settlement at ¶10, n. 4.

Unlike the Enron proposal currently before the Commission, the Partial Settlement only places a portion of the rate reductions at risk in the event that a legal impediment to securitization exists.³

²(...continued)

“from the perspective of the customers who actually will be paying for the electricity provided by PECO or the alternative suppliers,” Mr. Baron stated that, although dismissed by the opposing parties, the 1998 rate reductions are “a substantial benefit to PECO’s customers” which represent “real cost savings to these customer as a result of the implementation of retail competition.” Id. at 5. The 1998 10% rate reductions are a prime example of the “give and take” negotiations which developed the Partial Settlement and are not the type of ratepayer benefit which could be ordered by the Commission pursuant to the Act.

³ As will be described in a later section of this Brief, the primary proposal of the Enron Plan will be wholly contingent on the legal ability to issue transition bonds and, unlike the Partial Settlement, partially contingent upon the market interest rates for such bonds. In the event that securitization is legally precluded, the Small Business Advocate demonstrated on cross-examination that Enron’s contingency plan is only able to promise its greater rate reductions by reducing PECO’s transmission and distribution rates by a concomitant amount. See Tr. at 1399-1410.

Moreover, as can be seen from this provision in the Partial Settlement, strict standards govern the ability of PECO to claim such a legal preclusion. Id. Accordingly, under the Partial Settlement, PECO has agreed to bear many of the risks of securitization, both market and quasi-legal or regulatory. The OCA submits that only a concession by PECO made pursuant to a settlement is capable of requiring PECO to bear these significant risks. In other words, because all discretion to issue transition bonds pursuant to the Act remains with the electric utility, any Commission Order assuming savings through securitization must place both the legal and market risks of securitization on ratepayers. 66 Pa C.S. § 2812(A)(1). In the event that either legal or market conditions preclude securitization or make it uneconomical, all rate reductions premised upon a successful securitization of stranded costs under a Commission Order will disappear. In contrast, by strictly limiting the circumstances in which PECO could claim a legal impediment, and eliminating the possibility of any rate reduction offsets due to market factors, the Partial Settlement has shifted much of the uncertainty and risk of the securitization transaction onto the Company. The OCA submits that shifting much of the risks of securitization from the ratepayers to the Company is an important feature of the Partial Settlement which should not be overlooked. It provides value and a sense of certainty to ratepayers and is, practically speaking, incapable of duplication.

B. The Partial Settlement Will Allow Customers To Benefit From Any Decreases In The Market Price Of Electricity While The Generation Rate Caps Protect Customers From Unanticipated Increases In The Market Price Of Electricity.

The OCA submits that the generation credits set out for the transition period within Table A of the Partial Settlement are in the public interest and will benefit the customers of PECO because they

represent a generation rate cap and not a generation rate floor.⁴ In other words, if the market price for electric generation falls below the caps contained within the Partial Settlement, those customers who do not choose, choose not to choose, or cannot choose an alternative generation provider can still achieve the benefits of any overall decline in market prices. This feature is especially attractive further into the transition period where the Partial Settlement contains relatively high generation caps. The OCA submits that the ability of the generation credit to decline to a lower market price, should the market price fall below the Partial Settlement's estimated generation caps, is a critical and beneficial component of the Partial Settlement. Whether it be a customer with credit problems unable to contract with an alternate supplier, a senior citizen too confused or afraid to shop for electricity, or just somebody not chosen in the initial phase-in year to be eligible to shop, these "default" customers should not be excluded from the benefits of a lower market price. Of course, if any customer chooses an alternate supplier who beats PECO's price, or chooses an alternate supplier which is quicker at responding to declining market prices, they could also achieve additional savings over those provided for in the Partial Settlement.⁵

⁴ See Partial Settlement at ¶33 "PECO's distribution company will satisfy this obligation by purchasing required amounts of energy and capacity at wholesale from other generation suppliers, including its affiliated generation entity, and reselling that energy and capacity at standard market rates determined by PECO and covering all hours in a given year; provided, however, that PECO will not resell such energy and capacity at prices that exceed the rate cap prices set forth in the tariffs contained in Appendix C for each rate classification for the period from 1999 to 2008."

⁵ See Partial Settlement at ¶9, pg. 9 "Customer savings may be greater than provided by the rate caps above if, for example, competitive energy and capacity prices are less than the maximum figures set forth in column 4."

The Partial Settlement complies with the Act's generation rate cap and expands upon those provisions providing significant additional protections to PECO's ratepayers. The OCA submits that the levels at which the generation rate cap are set within the Partial Settlement and the extension of the statutory generation rate cap are significant consumer protections which could not be achieved through litigation.

The development of an increasing market generation cap in the Partial Settlement protects ratepayers when that protection is most needed. As Fumo/CEPA witness Dr. Richard Silkman concluded:

I believe that the generation rate caps represent a critical insurance policy for ratepayers that offer substantial protections against potential abuses of market power in the generation market and potential rapid increases in energy prices.

Fumo/CEPA St. 2 at 9. By forcing PECO and potential competitors to compete against a lower generation rate cap in the earlier years of the transition period, higher CTCs may be collected while still providing substantial savings to ratepayers. It is important to provide guaranteed savings in the first portion of the transition period while customers are still learning to shop and the competitive retail market is still in a state of development. AARP St. 2 at 13. It is because of the initial aggressive collection of CTCs that, as the transition period progresses, the Partial Settlement is capable of providing a lower CTC in the out-years, allowing significant increases in generation credits, providing for vigorous competition while remaining within the generation rate cap. Customers are protected via the rate cap while the out-year generation caps are increased to a level which is high enough that customers are further protected from unforeseen increases in the retail market price of electricity.⁶ If,

⁶ On cross-examination Dr. Silkman discussed the risks of lower out-year generation
(continued...)

however, market price is lower in those out-years, PECO will only charge its customers those lower prices -- not the full capped rate. The OCA submits that the Partial Settlement's increasing generation rate caps and declining CTCs provide for a gradual but effective transition to full and vigorous competition while also protecting ratepayers from the uncertainties of the newly emerging competitive retail market for electricity.

In response to the demands of many parties and as part of the inherent trade-off associated with the negotiation of any settlement agreement, the Partial Settlement included an extension of the generation rate cap from December 31, 2005 to December 31, 2008.⁷ Even at the higher levels set forth in the Partial Settlement, these additional generation caps will have provided those customers who remain with PECO a remarkable degree of rate stability for virtually two decades. More importantly, as stated by Dr. Silkman, "[t]his 3 year extension represents a potentially valuable insurance policy for ratepayers, as it provides protection against significant energy price increases." Fumo/CEPA St. 2 at 15.

C. The Partial Settlement Provides Consumer Protections Beyond Those Contained Within The Act By Also Extending The Rate Cap On PECO's Transmission And Distribution Charges.

⁶(...continued)

credits explaining how market prices significantly higher than generation credits could jeopardize the generation rate cap for ratepayers. Tr. 603-606.

⁷ "Table A" of the Partial Settlement (pg. 8) in column 6 shows a class-wide total unbundled generation rate cap of 6.84 ¢/kwh on January 1, 2003. This represents the unbundled "generation component" under the Act "as of the effective date of this chapter." 66 Pa. C.S. § 2804(4)(II). This rate is further capped, albeit at higher levels, in 2006, 2007 and 2008. The higher level of capped rates of 5%, 10% and 10% for 2006 through 2008, respectively, reflect exactly the mirror image of the lower capped rates of 10%, 10% and 5% provided by the Partial Settlement in 1999, 2000 and 2001.

Again, through the mutual trade-offs made by all parties to the Partial Settlement, PECO's ratepayers are further protected under the Partial Settlement by an extension of the statutory rate cap on PECO's transmission and distribution services from June 30, 2001 through January 1, 2004. Partial Settlement at ¶9, p.9. The OCA submits that this aspect of the Partial Settlement provides significant value to PECO's ratepayers protecting them from potential transmission and distribution rate increases and providing additional stability in their overall electric rates. With this rate cap included in the Partial Settlement, ratepayers are assured of the continuity of this portion of their rates regardless of inflationary pressures. Commenting on the Partial Settlement's transmission and distribution rate cap extension, Dr. Silkman concluded:

This means that PECO's rates for transmission and distribution will be frozen for 7 years at their 1996 levels. I know of no other state that has imposed this lengthy stay-out term on any of its utilities.

Fumo/CEPA St. 2 at 15. Accordingly, the OCA submits that this concession by PECO made as part of the overall trade-off of the Partial Settlement provides significant value and protection to PECO's ratepayers that could not be achieved through litigation and should not be overlooked by the Commission in its resolution of this matter.

D. The Partial Settlement Provides For A Significant Expansion Of The Universal Service Program Within PECO's Service Territory.

The OCA submits that another substantial benefit achieved pursuant to the Partial Settlement is a large increase in PECO's Customer Assistance Program ("CAP") to serve up to 100,000 customers. Partial Settlement ¶¶ 22-26. This increase will be accomplished without any increase in revenues collected from PECO's distribution customers at this time. *Id.* Characterizing this component of the Partial Settlement as a "major victory," AARP witness Dr. Cooper explained:

As part of the negotiations, PECO agreed to triple the size of the program and bring all customers into the largest benefits program. In essence, PECO agreed to a 65,000 increase in households and an average benefit level of \$650 per year.

AARP St. 2 at 16. For purposes of the Partial Settlement, PECO has agreed to assume that \$50 million of Universal Service costs are currently reflected in rates even though that is well in excess of amounts actually included in their last rate case Order. Partial Settlement at ¶ 25. By the end of the transition period, Dr. Cooper estimates that “the value we would realize for low income residential ratepayers would be around \$500 million.” AARP St. 2 at 16.

Although this CAP Rate expansion provides significant benefits to those who are recipients of this assistance, the OCA would submit that all ratepayers benefit from such a program. As Fumo/CEPA witness Dr. Silkman testified:

[A]n improved program that will reduce the total amount of uncollectible revenues and lower the administrative costs of the program in general provides an important indirect benefit to all ratepayers.

Fumo/CEPA St. 2 at 15. This expanded CAP Rate program is another example of how concessions made by all parties to the Partial Settlement achieved a balanced and fair resolution to many of the difficult and complex issues arising out of this proceeding. As a result of this expansion of the CAP Rate program, tens of thousands of additional customers in PECO service territory will be able to maintain vital in-home electric service. Consumers living below the poverty level will be eligible to receive discounts of 50% off of the already reduced Settlement rates. Customers between 100% and 150% of poverty will be able to receive 25% discounts. Furthermore, under the Partial Settlement, these CAP Rate customers will also be able to fully participate in the emerging competitive retail market for electric services via a specific provision of the Partial Settlement which provides that:

Customers' access to the benefits of universal service programs shall not be affected by whom the customer selects as its generation supplier.

Partial Settlement at ¶ 24. Again, this critical expansion of the universal service program is substantially greater than the result that might have been reached through litigation.

E. The Partial Settlement Accelerates The Statutory Phase-In For Providing Customers With Direct Access To Alternative Generation Suppliers.

The Partial Settlement provides for an acceleration of the schedule provided within the Act for customer access to competitive alternative generation suppliers. Partial Settlement at ¶ 15. By January 2, 1999, two thirds of PECO's customers will have the ability to shop for an alternative generation supplier. *Id.* The OCA submits that this is an important benefit of the Partial Settlement in that it will allow twice as many PECO customers to shop in 1999 than originally contemplated by PECO's proposals or the Act.⁸

F. The Partial Settlement Provides For Consumer Education.

In its Direct Testimony, the OCA recommended that PECO participate and help fund a Commission-led Statewide Consumer Education Initiative designed to motivate customers to learn about the competitive market and to convert ratepayers to informed shoppers for electricity and electricity services. *See*, OCA St. 5 at 4-23. The OCA noted that sole reliance on distribution companies or alternative suppliers for education efforts could result in inefficient and inadequate education of consumers. OCA At. 5 at 17-18.

⁸ Under the Partial Settlement, PECO takes the risk that portions of an additional one third of its customer base may leave its generation service earlier than they otherwise would or could have under PECO's phase-in proposal. The OCA submits that it is unclear whether such a concession could be ordered by the Commission. Only through the negotiations resulting in the Partial Settlement has PECO agreed to allow an additional third of all of its customers to shop, and potentially save money, one year earlier than they otherwise could have.

The Partial Settlement is generally consistent with the OCA's proposed approach to consumer education and provides for the cooperation of all Joint Petitioners in developing and implementing PECO's consumer education program. In addition, Appendix G of the Partial Settlement sets forth a series of steps that are necessary for a successful Consumer Education Program. The OCA submits that PECO's commitment to this approach in the Partial Settlement is significant, and should greatly enhance efforts to properly educate consumers.

G. The Criticisms Of The Partial Settlement Are Misplaced And Should Be Rejected By The Commission.

From primarily alternative generation suppliers, opposition to the Partial Settlement has centered around two basic themes. These are that the Partial Settlement will allow PECO to overrecover its stranded costs and that the generation rate caps contained in the Partial Settlement will stifle competition. The OCA submits that these arguments are erroneous.

The OCA submits that the wide range of consumer interests -- senior citizens, low income, residential, small business, industrial and the U.S. Government -- were the ones who crafted a final agreement which serves the public interest. As stated by PAIEUG witness Baron:

The interests of these customers, and the value conferred on these customers, should be the primary consideration of the Commission in evaluating the reasonableness of the proposed settlement.

The fact that these customer groups, representing the vast majority of PECO's customers have agreed to the settlement is substantial evidence as to the justness and reasonableness of the settlement. To the best of my knowledge, negotiations took place on an arms-length basis among the various parties and between each party and PECO, and therefore represents a reasonable outcome with respect to the sharing of costs and benefits that would inure to each party, compared to the parties' litigation positions. Speaking for the members of PAIEUG, we believe that the settlement agreement confers substantial value on all customers, and, in particular, the PAIEUG membership. This is particularly significant in light of the fact that PAIEUG submitted substantial direct

testimony in opposition to many aspects of PECO's filed restructuring case, including, but not limited to, PECO's market price assumptions and stranded cost quantifications.

PAIEUG St. 1.SS at 2-3.

1. The Non-Reconcilable CTC Of The Partial Settlement Provides Protection To PECO's Customers.

Many opponents to the Partial Settlement argue that a failure to include a "true-up" mechanism for PECO's CTC collections will cause PECO to over-recover the amount of stranded costs it was designed to recover. The OCA submits that the effect of the non-reconciliation feature of the CTC in the Partial Settlement may, in fact, benefit PECO's ratepayers. Indeed, it is this potential benefit, and the stability of the rates it produces, which prompted consumer parties to support this aspect of the Partial Settlement.

The OCA is seriously concerned about the potential that at least some customers might have to pay higher CTCs if a reconcilable CTC is ordered. Under the Partial Settlement, PECO is forced to bear the risk of any decline in sales by individual customers or consumers as a whole. Conversely, PECO will get the benefit of any increase in sales. This represents another trade-off made within the Partial Settlement among the various signatory parties and the OCA submits that it is in the public interest.

As Dr. Silkman explained:

The original consumer parties to the negotiations that resulted in the Partial Settlement Agreement established as an important objective the creation of near-term certain rate reductions for ratepayers. These parties sought guarantees from PECO that retail rates would be fixed at levels below current rates. This certainty could only be accomplished by allocating the risk of reconciliation adjustments to PECO, that is, by holding ratepayers harmless to changes in revenue requirements resulting from changes in either the total or relative mix of billing units. By shifting sales risk to PECO, the consumer parties acknowledged that PECO could receive a larger or smaller amount of total transition costs than the amount identified as "expected" in the actual Partial Settlement Agreement. This was a conscious decision that made rate reduction levels certain, and

at the same time eliminated ratepayer exposure to higher rates than would otherwise result from sales declines. The consumer parties deliberately sought to avoid both of these consequences and were successful in their negotiation of such an agreement.

Fumo/CEPA St. 3 at 15.

Parties opposing the Partial Settlement have claimed that this feature of the Settlement will cause PECO to overrecover its stranded costs because previous projections such as those contained in the Company's 1997 Annual Resource Planning Report ("IRP") had projected sales increases. The OCA submits that both the Company and Dr. Silkman have effectively rebutted these allegations and would encourage the Commission to review the actual level of sales growth experienced by PECO over the last ten years as contained in PECO Exh. ABC-11 and SILKMAN-1. Responding to PECC witness Mitnick's use of the IRP, Dr. Silkman concluded as follows:

[B]ased on the most recent ten years of history, it is difficult to believe that the IRP forecast numbers will be correct. As shown in Exhibit SILKMAN-1, PECO has experienced a net growth in retail sales over the past ten years of effectively zero. While this does not prove that the IRP forecast is wrong, it does raise serious questions about its accuracy.

Fumo/CEPA St. 2 at 7. Regardless of historical sales or sales projections made years ago in the regulated generation environment, the OCA submits that the future of retail competitive generation will challenge everything we currently know about the sales levels of electricity. With numerous entrants into the competitive market for retail electric services, individual suppliers will be forced to compete with a limited ability to distinguish their individual services based upon price, no matter what the generation credit. Most likely, they will offer an array of bundled services which promise lower overall bills, achieved, in part, through energy conservation services. Dr. Silkman discussed how the Partial Settlement could stimulate competitive conservation technology as follows:

The Settlement Agreement eliminates a considerable amount of uncertainty regarding the path electricity rates will take over the next decade and demonstrates that the most significant opportunities for reducing electric costs come not from the competitive generation market but rather from avoiding T&D and CTC/ITC charges. For example, for the residential consumer these charges total over \$.10 per kwh, and remain at this level for 10 years. As a result, I believe that the Settlement Agreement may provide the single most important marketing opportunity for energy service companies in over a decade and will re-invigorate the market for energy conservation technologies.

Fumo/CEPA St. 2 at 8. At least initially, it can be expected that the primary beneficiaries of a vigorous competitive market for energy conservation services will be large users who will see great returns on investment in such services. Dr. Silkman described how large companies may take advantage of such services as follows:

A Fortune 500, retail grocery company that is an acknowledged leader in its industry in terms of overall profit margin and energy efficiency has reduced its per square foot consumption of electricity by over 30% during the past 6 years. This has been accomplished through the installation of improved building automation systems, high-efficiency lighting, variable speed motors, refrigeration case controls, and a variety of other programs. And, this company is not resting on its accomplishments. It believes that additional savings are possible through the development and installation of improved systems monitoring incorporating artificial intelligence principles. As the rest of the industry catches up with this company, overall electricity use in the industry will fall. This same scenario is being played out in every industry. As technology permits the market leaders to establish new benchmarks, these benchmarks become the industry norm. In addition, these industry norms get incorporated into new facilities, which over time replace existing facilities further improving industry efficiencies, a process that is likely to occur faster in areas with relatively high retail electric rates.

Fumo/Silkman St. 2 at 7-8. The OCA submits that Dr. Silkman's conclusion that "I believe it is more likely that sales growth will be negative than positive" has been supported by recent events such as a recently reported agreement between Enron and a hospital group in southeastern Pennsylvania. Dr. Silkman testified how Enron expected "to be able to reduce energy consumption at those facilities by 20 percent." Tr. at 1975 (emphasis added). See also, Tr. at 1279.

Asked whether “the whole industry will probably move in this type of direction for commercial and industrial accounts over the next decade,” Enron witness Kean agreed:

I do believe there will be, particularly as markets are opened up and become more competitive, part of what is going to be offered is not simply the commodity, but also investments in energy efficiency equipment and the like. There will be an effort, I believe, to conserve on bills, not just on rates, which is part of the reason why it is important.

Tr. at 1289. Accordingly, the OCA submits that the non-reconcilable CTC provision of the Partial Settlement is not some automatic windfall provided to PECO as claimed by opponents to the Partial Settlement. Rather, it is a trade-off the signatory parties made to protect ratepayers from potential declines or shifts in electric sales and corresponding increases in CTC rates. Whether right or wrong on projections of sales growth or decline, this was a risk many consumer groups chose not to bear and, therefore, this provision provides value to those parties.

If, however, the Commission determines that a reconcilable CTC is required for PECO’s collection of stranded costs, then the OCA submits that such reconciliation must be done on a class-specific basis. As described above, the OCA believes that a new era of competitive energy providers may create a vigorous market in demand side management services, coupling such service with generation sales. The OCA anticipates that the early beneficiaries of such service are likely to be large consumers and the lost sales and corresponding undercollection of CTCs could be significant. If the CTC underrecoveries of such customers are to be continually reconciled on a company-wide basis, then small users will see ever increasing CTC rates potentially increasing their overall bills or eliminating whatever rate decreases are afforded them. Similarly, if the CTC recovery period were to be extended for small users or all users because of declining sales to large users that would be equally unfair.

Accordingly, if the Commission rejects the Partial Settlement's non-reconcilable CTC provision, it should require that any reconciliation be performed on a class-specific basis.

2. The Generation Credits Contained In The Partial Settlement Are Reasonable And Will Provide For The Orderly Transition To A Vigorous Competitive Market.

The OCA submits that the yearly generation credits provided within the Partial Settlement are reasonable in that they effectively provide for the transition to a vigorous competitive market while also providing benefits and protecting consumers and compensating PECO for an agreed upon portion of its stranded costs. The Commission must recognize that it may not be possible to achieve every final goal the Act contemplates simultaneously and immediately. That is why the Act provides for a transition period to begin "moving toward greater competition in the electricity generation market ..." 66 Pa. C.S. § 2802(8) (emphasis added). The OCA submits that it simply may not be possible to provide large stranded cost recovery, rate reductions to consumers and vigorous competition all on January 1, 1999. Although the OCA does submit that competition is possible under the 1999 and 2000 generation caps set forth in the Partial Settlement, as will be discussed below, the OCA submits that the generation caps in effect toward the end of the transition period are far more important than the caps in effect during the initial phase-in when many customers aren't even allowed to shop. As aptly noted by Dr. Silkman, the "Act recognizes that it is not possible to flash-cut the existing regulatory system and monopoly industrial structure to a competitive market." Fumo/CEPA St. No. 3 at 12.

The OCA submits that the generation caps contained within the Partial Settlement are reasonable and will allow a reasonable transition to competition. The claimed "tight" generation caps provided by the Partial Settlement for the first few years of the transition to competition serve to protect

ratepayers from potential market power abuse in those early years as competition begins to develop.

As explained by Dr. Silkman:

I believe that the most important factor, especially in the near-term as competition develops in the industry, is the potential for the abuse of market power.

Fumo/CEPA St. 2 at 10-11. Dr. Silkman's solution to this potential for market power abuse is consistent with the results of Table A of the Partial Settlement where he recommends that:

I believe that the best solution to this problem is to set the generation rate caps aggressively in the early years as has been done in the Settlement Agreement in order to squeeze potential profit margins. This will make it more difficult for PECO to abuse its initial market power by raising prices above market. Over time, as the competitive market begins to function more smoothly and PECO's market share falls, this concern, while always present, is diminished.

Id. As explained by Dr. Silkman, there is a serious concern that if market prices are set too high initially, competitive pressure may not succeed in bringing these prices down.

Furthermore, by maintaining market prices at lower levels in the early years of the transition period, more room exists under the lowered generation cap for early rate reductions in spite of higher stranded cost collection. In the first twenty eight months, the Partial Settlement caps the generation portion of the consumer's bill at 5.84¢ instead of the 6.84¢ which represents the unbundled generation portion of PECO's rates as of January 1, 1999. It is this lower generation rate cap which guarantees PECO's ratepayers the 10% savings provided for in the Partial Settlement. To stay within the lower rate cap, any increase in the market price would require a concomitant decrease in the CTC rate. If a choice must be made between lower market caps (and higher stranded cost recovery) sooner or later, the OCA would emphasize that development of a competitive market is better served by an inclining market cap and a declining CTC. See AARP St. 2 at 13.

The OCA submits that the importance of establishing a vigorous competitive market in the last years of the transition period dwarfs the importance of such a requirement during the phase-in. There must be full and fair electric generation competition at the end of the transition period to take the place of economic regulation. Without the protection of continued regulation of generation services, and without any statutory rate caps, PECO's customers will be forced to rely totally on the competitive market for their protection. That competitive market must be vigorous to provide that protection. As explained by Dr. Silkman, "[I]f this does not happen, and in fact the electric supply market is a monopoly at the end of the transition period, the entire purpose of the Act would be thwarted and consumers would be worse off than they are currently." Fumo/CEPA St. No. 3 at 13.

III. THE ENRON PLAN

In addition to the objections raised by Enron Power Marketing, Inc. about the Partial Settlement, an Enron affiliate, Enron Energy Services Power, Inc., filed its own proposal that it claimed would provide greater savings to consumers and would provide a greater likelihood of vigorous retail competition than the Partial Settlement.

The OCA acknowledges that Enron and other potential competitors have raised a number of legitimate questions about the Partial Settlement--particularly the question of whether the market generation caps in the Settlement are high enough to produce vigorous competition in the early years of the Settlement--and that these objections must be given serious consideration by the Commission. The OCA submits, however, that the Enron Plan, either as originally filed, or as revised, cannot be adopted by the Commission and therefore is not entitled to any substantive consideration by the Commission at this time. If the Commission concludes that the Partial Settlement is not in the public interest in any respect, then the OCA respectfully submits that the Commission's time would be better

spent by turning directly to the litigation positions of the parties--including the Company, the consumer representatives, and the competitors--rather than wasting time ruling on specific elements of the Enron Plan.

As set forth below, the Enron Plan is nothing more than a series of one-sided contractual agreements that PECO will never voluntarily sign and that this Commission has no authority to order. Moreover, even if the Commission had the authority to approve the Enron Plan, the Plan raises a host of consumer protection concerns that would have to be addressed before the Plan could be adopted.

A. The Enron Plan Promises Savings Which Are Illusory Because The Plan Is Based Entirely Upon A Series Of Agreements With PECO Which PECO Must Reject.

The Enron Plan cannot work because it is predicated upon PECO entering into a series of contracts with Enron which PECO will never agree to and which this Commission cannot order PECO to enter. In essence, this Plan would have Enron virtually take over the service territory of PECO Energy without any formal "buy out" of PECO, but rather through forcing PECO into a series of one-sided contracts. Enron would become the Provider of Last Resort ("PLR") in PECO's service territory but would achieve this status only by forcing PECO to sign a contract for generation services, as well as other services such as metering, billing and collections. Under Enron's proposed tariff, PECO would, for all practical purposes, cease to exist as an entity recognized by its historic ratepayers even though it continued to provide all services under the contracts at prices dictated by Enron. Even PECO's transmission and distribution service would be billed and collected by an entity other than PECO; either Enron or another alternative generation supplier.

1. Enron's Request To Become The PLR Depends Upon The Willingness Of PECO To Enter Into A Purchase Power Agreement Which Is Unacceptable To PECO.

Enron's request to become the Provider of Last Resort (PLR) in PECO's service territory is based upon the assumption that PECO will enter into a comprehensive contract entitled the Firm Energy & Capacity Purchase and Sale Agreement (Purchase Power Agreement or PPA).⁹ Enron Plan at Exh.

2. In PECO's opinion:

The terms and conditions of the Power Purchase Agreement are so one-sided, oppressive and confiscatory that such an agreement would never arise through freely negotiated dealings between parties of equal bargaining position, and no reasonably prudent utility manager would agree to such terms and conditions.

PECO St. 21-E at 3. Accordingly, PECO will not enter into such an agreement unless the Commission orders PECO to do so. The OCA submits that no provision of the Act or the Public Utility Code in general would appear to give the Commission the power to force an incumbent electric utility to enter into a third party "all requirements" contract such as this.¹⁰

⁹ The Enron Plan "is expressly conditioned" upon "PECO enter[ing] into the Power Purchase Agreement." Enron Plan at ¶ 35(c).

¹⁰ Like Enron's proposed PPA, Enron's initial Plan is "expressly conditioned" upon PECO entering into another type of contract known as a metering, billing and collections ("MBC") agreement. Enron Plan at ¶ 35(c). Again, like the PPA, the OCA submits that the same problems of relying on the Commission's ability to order PECO to enter into this agreement exist here, since "PECO would not enter into the Agreement offered by Enron for numerous reasons." PECO St. 29-E at 11. PECO's testimony describes the problems associated with this contract in detail; however, the OCA would simply note that PECO considers that "the Agreement is grossly one-sided, insulating Enron from all financial risks and shifting those risks to PECO." *Id.* Equally important is how Enron's MBC proposal would affect PECO's ratepayers. Since Enron is unwilling to be considered a public utility, the OCA submits that it is unclear what continuing authority the Commission would retain as Enron becomes responsible for these vital services.

Enron argues that despite PECO's unwillingness to enter into the PPA, the promises contained in its Plan are not illusory because the Commission can make PECO's recovery of stranded costs contingent upon PECO's entering into the PPA, thereby forcing PECO into this Agreement. The OCA submits that this theory is based upon a strained reading of the Act which makes unsupported assumptions regarding the Commission's power to authorize the recovery of stranded costs.

With regard to regulatory assets, recovery of which is governed by Section 2808(c)(1), the Commission must allow recovery of these costs if they meet the requirements of the Act. With regard to PECO's claims for its owned stranded generation plant, the Commission clearly has more discretion to disallow such claims in whole or in part. As Section 2808(C)(3) of the Act states, "[t]he Commission shall determine the level of other generation related transition or stranded costs that may be recovered through the competitive transition charge." 66 Pa.C.S. § 2808(C)(3)(emphasis added). This amount is to be that portion which the Commission deems to be "just and reasonable" as recoverable from ratepayers. 66 Pa.C.S. §§2804(13). Nowhere within the Act would there appear to be anything linking this "just and reasonable" determination with the requirement that an incumbent electric utility enter into a comprehensive and oppressive Purchase Power Agreement with a third party provider. Even if that PPA was favorable to PECO, and the Commission determined that making Enron the PER was in the public interest, it is still doubtful that the "just and reasonable" determination on stranded costs could be linked to PECO's acceptance of the terms of such a PPA. The OCA does not dispute--and indeed fully supports the argument--that this Commission may disallow any or all of PECO's owned generation stranded cost claim if the Commission concludes that such disallowance is just and reasonable. The OCA submits, however, that this just and reasonable standard is far different from

conditioning such recovery on an involuntary commitment of virtually all of PECO's corporate resources for the benefit of another private competitor.

2. Enron's Reliance On The PPA With PECO Will Put Consumers At Risk.

The OCA submits that Enron's proposed Purchase Power Agreement (PPA) is not only bad for PECO, but it also increases the risks to ratepayers of potential rate increases or possible diminution of any promised rate decreases. As discussed previously, under the Partial Settlement, ratepayers are provided guaranteed rate reductions for the first 28 months. Firm generation rate cap ceilings apply in every year of the transition period and PECO retains only certain, limited statutory exceptions to those caps.

Now, under the Enron Plan, Enron proposes to add PECO's non-compliance with the terms of the PPA as, essentially, another exception to the rate cap. Regardless of the strict exceptions to the generation rate cap provided for within the Act, if for any reason:

PECO fails to perform under the terms of the Power Purchase Agreement, Enron will be entitled to obtain alternative energy supplies at market prices and to collect the cost of such supplies from Default Customers under the Distribution Tariff for the duration of PECO's non-performance (subject to a subsequent credit, rebate for other true-up to reflect the recovery of any cover or other damages from PECO).

Enron Plan ¶ 23(j). The OCA submits that Enron's proposed PPA circumvents a primary protection of the Act, the applicability of the generation rate caps, with only certain listed exceptions, to end use customers. Under the Enron Plan, any non-compliance by PECO with the PPA would seem to allow Enron to breach the rate cap. The OCA submits that Enron's PPA inappropriately shifts additional risk onto end-use customers in ways not consistent with the Act. Accordingly, this PPA request, upon which all of the proposed rate reductions of the initial Enron Plan are based, must be rejected.

B. All Of The Rate Reductions In Enron's Initial Plan Are Dependent Upon The Successful Securitization Of \$5.46 Billion Of Stranded Costs.

Unlike the Partial Settlement, under the original Enron Plan all promised rate reductions are contingent upon the successful securitization of \$5.46 billion. Any legal impediment to the issuance of transition bonds would eliminate all of the rate reductions contained within the primary Enron Plan. Enron Plan at ¶ 35(g). Accordingly, the rate reductions contained within Enron's proposal are far from guaranteed and, unlike the Partial Settlement, PECO's ratepayers assume many more of the risks associated with basing rate reductions on securitization. As explained by Dr. Cooper, Enron's proposal places all of the risk of securitization on ratepayers. AARP St. 2 at 9-10.

In addition to the host of legal and regulatory risks shifted to ratepayers under the Enron Plan, risks associated with the asset backed securities market (securitization) have been shifted to ratepayers as well.¹¹ Moreover, other transactional risks also exist.¹² Again, the OCA submits that under the Partial Settlement, the risk of such uncertainties are borne by PECO and not its ratepayers. As Dr. Silkman concluded:

¹¹ The Enron Plan, again unlike the Partial Settlement, also places a portion of the market risks onto ratepayers. In the event that "[a]ctual Index Interest Rate rises above 7%," the Enron Plan "proposes that, at that time, PECO make a filing with the Commission to increase ITC rates and decrease the generation credit without raising the bill cap." Enron St. 8 at 16. Enron then admits that "the costs of such a change will likely be borne in the form of reduced competition in the market due to the reduced generation credits." *Id.* Although the OCA supports the concept that ratepayers would be spared an overall rate increase due to this contingency, the OCA would emphasize that this potential market risk would not, under the Partial Settlement, change any rates by one penny.

¹² As Enron's testimony makes clear, there are numerous uncertainties in the securitization transaction and additional "structural modifications may be required to address any further legal and rating agency concerns." *Id.* at 12. Enron, of course, anticipates that these concerns will be resolved in a favorable manner; but admits that "if those uncertainties are resolved with an unexpected outcome, certain modifications to the proposal may be required." *Id.*

The Commission should be very concerned that 100% of the potential savings to ratepayers under the Enron Choice Plan are dependent upon the resolution of uncertainties, some of which are apparently unknown at the present time, and that Enron will not assume the risk that these will be resolved favorably.

CEPA/Fumo St. No. 3 at 6. Thus, the OCA submits that the ratepayer savings promised under the Enron Plan are based upon a securitization scheme that is filled with uncertainty.¹³ Any adverse circumstance regarding this securitization scheme will eliminate the promised savings to ratepayers.

C. Enron's Proposed Contingency Plan Is Also Flawed.

In the last stages of this proceeding, and in response to the criticism of many parties, Enron has introduced a Contingency Plan in the event that securitization is not possible. See Enron St. 1-R, Exh.

B. This alternative continues to promise larger rate reductions than those provided for in the Partial Settlement, but accomplishes this goal in large part by reducing PECO's regulated transmission and distribution rates. See Tr. at 1399-1410.

Enron's Contingency Plan also contains several of the same flaws as those contained in its primary securitization Plan. One fundamental flaw is that of an increasing CTC throughout the transition period. This increasing CTC provides less room under the overall generation rate cap for

¹³ The OCA would also note that ratepayers may be potentially at risk of higher ITCs due to a decline in sales. Although Enron claims that its "ITC Shortfall Agreement" would prevent such a result, Enron was unable to answer numerous questions about the limitations of such an Agreement because this Agreement had not been drafted yet. See Tr. 1277-1279 and Tr. 2182-2188. Now, the OCA has learned that Enron has admitted this Agreement into the record of this case. As of the time of this writing (approximately 3 days before the due date for this Brief) the OCA has yet to receive a copy of this Agreement. Accordingly, the OCA can only assume that limitations continue to exist regarding the ability of the Agreement Guarantor to pay any shortfall amount without any impact on the ratepayer's bill. Under the Partial Settlement ratepayers bear no such risk. Without being able to examine and question the limitations of Enron's proposed Agreement, the OCA is unable to determine exactly what level of "catastrophic decline in energy usage" would place ratepayers at risk. See Enron St. 8 at 20.

higher market prices in the later years of the transition period. As mentioned previously, the OCA submits that vigorous competition is most important at the end of the transition period when the protections of regulation and the rate cap are scheduled to expire and such protections must be gained from the market.

Additionally, while Enron has argued vociferously that PECO would overrecover stranded costs because of a non-reconcilable CTC, Enron has itself failed to include a reconciliation mechanism in its Contingency Plan. Tr. at 1274-1277. When the OCA specifically asked whether Enron's Contingency Plan contained a "CTC reconciliation provision" Enron's overall policy witness Kean clearly indicated that it did not. Id.¹⁴

D. The Unbundled Rates In The Enron Plan As Originally Filed And As Revised Do Not Promote Greater Competition And Can Harm Consumers In The Critical Later Years Of The Plan.

One of the major criticisms of the Partial Settlement was the concern that the market generation price ceilings in Table A of the Settlement were set too low to permit substantial competition. This was the thrust of criticisms filed in the initial set of hearings by witnesses such as PECC witness Mitnick and MAPSA witness Johnstone. When Enron filed its initial Enron choice Plan, however, it became apparent that at least some of the marketers' objections to the Partial Settlement actually apply only to the early years. As shown on page 20 of the original Enron Petition, the initial Enron Plan had higher

¹⁴ Further, under its Contingency Plan, Enron would no longer be the PER and it would not require PECO to enter agreements to provide services. Enron, however, maintains that its proposed tariff, which changes the relationship between ratepayers and the utility, would continue to apply. Enron St. 1-R at 25. As the OCA will argue below, this tariff presents numerous consumer protection problems--many of which explicitly violate the Act or other Commission Orders. Accordingly, in numerous respects, Enron's proposed Contingency Plan is as unacceptable as its primary position.

market generation credits than those contained in the Partial Settlement only in the years 1999-2002. In 2003, the Partial Settlement and Enron Plan had nearly identical market generation prices, and in the years 2004-2008, the Enron prices were significantly lower.

In response to criticisms that the market price credits in the latter years of its own plan produced the same problems that had caused objections to the Partial Settlement, Enron filed a new set of credits in its Rebuttal Testimony just prior to the last week of hearings. In this final version, Enron raised its generation credits in each of the years after 2000 to a high of 4.52¢ in the years 2007 and 2008. Enron Exhibits to St. 1-R, Attachment A. Under Enron's revised higher generation credits, however, Enron maintains the 20% rate reduction in the early years and the high CTC in the later years, but only by drastically reducing PECO's regulated transmission and distribution rates, from the 3.11¢ per kwh contained in the Partial Settlement and the original Enron Plan, to 2.37¢ per kwh. *Id.*

Like the rest of the Enron Plan, this reduction in PECO's T&D rates costs Enron nothing, but it gives the desired impression of making it appear that Enron has done something to double the rate reductions in the Partial Settlement. Obviously, the consumer parties to the Partial Settlement would have loved to see greater ratepayer savings through lower regulated T&D rates (indeed, as set forth in Section V of this Brief, the OCA's litigation position would reduce PECO's T&D rates from 3.11¢ to approximately 2.93¢ per kwh), but the Enron Plan itself does nothing to bring about this result.

For the reasons set forth most succinctly by AARP witness Cooper, the OCA submits that if tradeoffs must be made, the Commission should follow the path taken in the Partial Settlement, rather than that contained in the Enron Plan. As stated by Dr. Cooper:

The Settlement is structured in such a way as to give consumers the best chance of increasing their gains because stranded cost recovery is highest when the market is softest and in the early years when consumers are least likely to be effective shoppers.

The high CTC would be offset by low market prices in the early years. In the later years when supply and demand are more likely to be in balance in the marketplace, the CTC is smallest. That is when shopping will be most beneficial and the competitive market structures best developed.

Enron reverses this process. It has a low CTC in the near-term and a high CTC in the long-term. Therefore, at a time when the market is likely to be more in balance, consumers will be carrying a higher CTC. By increasing the generation credit and decreasing the CTC, Enron has a higher target price and gains easier market entry; in the early years, but consumers are placed at greater risk in the later years. We believe that generators will enter when the market price allows them and be there in the later years.

AARP St. 2 at 13(citations omitted). Fumo/CEPA witness Silkman similarly makes the point that presumed market prices are higher under the Enron plan at precisely the period when access to the competitive market is most restricted, and that presumed market prices are low (and CTC charges high) at precisely the period when competition ought to be most beneficial. Fumo/CEPA St. No. 3 at 9-13.

Of course, under the Enron Plan, Enron needn't worry about having to meet its own lower market price projections in the later years of its plan. That is because all of Enron's power needs under its Provider of Last Resort obligation are met by PECO under the terms of the Power Purchase Agreement. Again, since Enron is obligated to bring no power supplies to PECO consumers under the Enron Plan, it is not Enron, but PECO (and ultimately PECO customers) who are at risk if actual market prices rise under the Enron Plan.

Finally, it is important to distinguish between the market generation caps in the Partial Settlement and the market generation credits in the Enron plan. In the Partial Settlement, PECO is permitted, and indeed obligated in certain instances, to lower its default generation rates if the market-based rates it is charging through competitive subsidiaries are actually lower. In this way, PECO customers who cannot or do not choose an alternative provider can still benefit indirectly from competition. In the Enron Plan, however, customers who cannot choose -- such as customers not

selected for choice in the first year of the phase-in, or perhaps customers with credit problems -- must pay the generation credit even if market prices available to other customers are lower.

E. Enron's Proposed Tariff Violates The Act And Commission Orders While Eliminating Vital Consumer Protections From The PECO Tariff.

Enron's Proposed tariff has drastically changed the structure of PECO's Delivery Service Tariff. A review of that tariff demonstrates that all provisions which formerly addressed the relationship between PECO and its customers have now been changed to apply exclusively to the relationship between PECO and the alternative supplier. The OCA submits that such a significant change in the tariff and in fundamental consumer protections is unreasonable and cannot be justified at this time.¹⁵

No change to the PECO tariff better symbolizes the fundamental shift in consumer protections proposed by Enron than the elimination of the transmission and distribution rate cap protection to ratepayers. Enron has proposed that the transmission and distribution rate cap, like virtually every other relationship governed by the Enron proposed tariff, applies only between PECO and the alternative supplier, with no protection given to the end-use customer. On cross-examination by the OCA, Enron's tariff witness confirmed that only the price between PECO and the alternative supplier would be controlled by the rate cap. Tr. at 1690. Further questioning of Enron's witness by PAIEUG made it clear that under Enron's proposed tariff, an alternative supplier is under no obligation to charge "no more than" the capped transmission and distribution rates they pay to PECO for this service. Tr. at 1705-1706.

¹⁵ Enron's proposed tariff presents significant consumer protection problems. Due to page limitations, the OCA will highlight only one of these problems in this Brief. Among the other major issues raised by the tariff are concerns about the limitations on billing options and the potential for rebundling of rates by alternative suppliers. See, e.g., Tr. 1683-1685; Enron St. 5, Exh. A, Rule 17.2(b); Tr. 1686-1691.

The OCA submits that the Act's transmission and distribution rate cap protection clearly applies to end-use customers who purchase generation from an alternative supplier. This section of the Act specifically states that:

For **customers** who purchase generation from a supplier other than the electric distribution utility, the charges of the utility for **non generation services** that are regulated as of the effective date of this chapter, exclusive of the competitive transition charge and the intangible transition charge, shall **not exceed** the non-generation charges that have been approved by the commission for such service as of the effective date of this chapter.

66 Pa. C.S. § 2804(4)(I)(B) (emphasis added). The above referenced non-generation services rate cap is the transmission and distribution rate cap and, at a minimum, it will apply to "customers" who purchase from a "supplier other than the electric distribution utility" for "54 months from the effective date of this chapter or until" the EDC is no longer recovering any CTCs or ITCs, "whichever is shorter."

66 Pa. C.S. § 2804(4)(I). In contrast, PECO, in the Partial Settlement has agreed to extend this transmission and distribution rate cap another 30 months or until January 1, 2004.

IV. UNRESOLVED ISSUES

As set forth in Appendix H to the Partial Settlement, certain issues were unresolved by the Partial Settlement. The Commission has indicated that certain of these issues could be resolved in generic proceedings or rulemakings. The OCA submits, however, that certain of these issues must be resolved in this proceeding to provide adequate protections for consumers, and to provide appropriate interim procedures until the rulemakings are finally decided.

A. Termination Issues

PECO's current customer brochures and its Credit and Collection Guidelines indicate that PECO will terminate a customer from the electricity grid for failure to pay charges billed by an alternative

generation supplier. See, e.g., PECO St. 17, Exh. GSK-3 and PECO St. 16R, Exh. MCK-7. The OCA submits that PECO's customer brochures and Credit and Collection Guidelines must be revised to comport with the Commission's directives on this matter which prohibit a distribution company from disconnecting a customer from the grid for failure to pay alternative supplier charges. OCA St. 5 at 39, OCA St. 5-S at 4.

In its Final Order Regarding Licensing Requirements for Electric Generation Suppliers, the Commission adopted the OCA's position regarding termination of service. Licensing Requirements for Electric Generation Suppliers, M-00960890F.004, Order entered February 13, 1997, Slip op. at 5.

The OCA's position, as adopted by the Commission is as follows:

The customer would only be disconnected from the electricity grid pursuant to Chapter 56 if the customer failed to meet their obligations to the utility or provider of last resort.

February 13, 1997 Order at 5.

The OCA submits that PECO should be required to modify its brochures and procedures to clearly comply with the Commission's directives. See, OCA St. 5 at 39; OCA St. 5-S at 5. To implement the Commission's directives, the OCA submits that the Commission should direct PECO to revise Section 7 of its Termination of Service/Payment Agreement Guidelines and its customer brochure to make it clear that PECO will only terminate service for a customer's failure to meet the customer's obligation to the distribution utility or the provider of last resort. The OCA has provided recommended language for Section 7 of PECO's Guidelines at OCA St. 5-S, pp. 5-6.

B. Switching Fees

In its Rebuttal Testimony, the Company sought to impose a \$6.00 switching fee on all customers who switch their supplier. PECO St. 13R at 15-16. As OCA witness Barbara Alexander testified, "the

existence and the amount of a switching fee will have an impact on the development of the competitive market, particularly in the early days when customers must get used to the notion of customer choice.”

OCA St. 5-S at 10. The OCA submits that the Company’s proposal to impose switching fees, particularly in the early stages of market development, should be rejected.

The OCA is particularly concerned about the imposition of any additional fees on customers who receive Provider of Last Resort Service. OCA witness Barbara Alexander explained:

Many customers may receive this service temporarily and for short periods of time if their supplier cancels the contract or the customer is in-between suppliers. It would not be fair to charge this fee every time a customer makes use of this service for a short period of time. This is particularly true for low income customers.

OCA St. 5-S at 10-11.

The OCA does not disagree that a switching fee ultimately may be appropriate following a transition period. The OCA recommends that the Commission establish guidelines as set forth by OCA witness Alexander in OCA St. 5-S at 10-11 for such a fee. The OCA submits that the Commission should reject PECO’s proposed switching fee at this time. The Commission should direct PECO to adhere to the above-noted guidelines in developing a reasonable, appropriate and fully justified switching fee in the future. See, OCA St. 5-S at 10-11.

C. Bill Formats/Customer Disclosures

The Commission, in its Filing Requirements and its Order regarding Maintaining Customer Service At the Same Level of Quality, the Commission directed electric utilities to describe how it would comply with three billing options suggested by the Commission, and to provide sample bill formats for the unbundled bills for customers. See, e.g., Order of July 11, 1997, Docket M-00960890F.0011 at 26-30. In addition, the bill formats should have explained how certain customer

information, required by the Commission, was to be presented on the bill. Since PECO did not present these bill formats, the OCA has been unable to provide any substantive comments on this critical issue. The OCA submits that it will be important for consumers to receive a clearly presented unbundled bill if customers are to effectively participate in the market. For these reasons, the OCA recommends that PECO be directed to present bill formats with its Compliance Filing that meet the guidelines set forth in OCA St. 5 at 25-27.

In addition, PECO is in the process of developing and implementing a new Customer Information System capable of performing billing functions required for direct access. PECO has testified that its new system is being set up for the purpose of the distribution company receiving data from the supplier so that the distribution company can issue a bill. PECO St. 15 at 67; OCA St. 5 at 34. In addition, PECO indicates that there may be limits on the pricing options available to suppliers for the bill. PECO St. 15 at 28. The OCA submits that PECO should be directed to incorporate all appropriate options into its new billing system that is under development. OCA St. 5 at 36. To limit billing options for customers and suppliers will unnecessarily restrict the development of a full range of customer choices. The OCA does recognize that suppliers, including PECO's affiliates, should be charged for this service based on the complexity of their price structure. Id. The OCA submits, however, that it would be improper to adopt PECO's proposals to limit billing options at this time. See, OCA St. 5 at 34-36.

D. Code of Conduct

In its Restructuring Filing, PECO submitted a proposed Code of Conduct to govern its interactions with its affiliates. PECO St. 15 at 13, Exh. GAC-2. The OCA responded to PECO's proposed Code of Conduct, recommending various additions to the Code of Conduct. The OCA is

aware that the Commission issued an Order indicating that Code of Conduct issues would best be resolved through a generic proposed rulemaking. The OCA is concerned, however, that an appropriate interim Code of Conduct be established for PECO while the Commission's rulemaking is pending. Thus, the OCA urges the Commission to adopt its proposed modifications to PECO's Code of Conduct so that an appropriate Code of Conduct is in place for PECO until the Commission finalizes its rules and regulations regarding this issue.

After a review of PECO's proposed Code of Conduct, Ms. Alexander recommended that the Commission adopt a Code of Conduct comparable to that adopted by the Massachusetts Department of Public Utilities. See, OCA St. 5-S at 9, Exh. BA-4. At a minimum, however, the OCA recommends the addition of the specific rules set forth in OCA St. 5 at 27-28 and 42-43 to PECO's proposed Code of Conduct. The OCA submits that its modifications to PECO's proposed Code of Conduct should be adopted in this proceeding to provide an appropriate interim Code of Conduct to guide PECO's interactions with its affiliates while the Commission's proposed rulemaking is pending.

E. Metering/Meter Reading

In its Restructuring Filing, PECO proposed certain procedures and policies that would retain metering and meter reading as services to be performed only by PECO. In its Enron Plan, Enron proposed a complete unbundling of all metering and billing services, with all such services to be provided competitively. The OCA submits that the Commission should not approve either PECO's proposed procedures and policies regarding metering and meter reading service or the Enron proposal at this time. Under PECO's procedures, only PECO would continue to own and maintain the meters, perform all upgrades, and bill the customer directly for the costs associated with obtaining, installing

and training PECO to use and maintain new meters. OCA St. 5 at 31. The OCA submits that PECO's approach is unnecessarily narrow at this time.¹⁶

On the other hand, Enron's Plan is unnecessarily broad at this time calling for complete and immediate unbundling and competition for these services. While the OCA agrees that these options should be fully explored, the OCA submits that there is no need for a complete move to competitive metering and billing services in this proceeding. The Commission has recently instituted a proposed rulemaking to continue its exploration of this issue. For these reasons, PECO's proposals regarding metering and meter reading and Enron's proposal should not be adopted at this time.

F. Default Provider/Provider of Last Resort

Particularly through the Enron Plan and the subsequent filing by the Environmentalists, the question was raised as to whether PECO should continue to serve as the "default" provider or "provider of last resort" for those customers who either do not choose an alternative provider or who are forced to leave their alternative service provider. The OCA submits that the Enron proposal to serve as provider of last resort is wholly inappropriate since it simply forces PECO to meet all of Enron's supplier obligations through a contract that is clearly and appropriately unacceptable to PECO. As to other potential ways of addressing this issue, the OCA would urge the Commission to consider these options in a generic or rulemaking proceeding whose results should be implemented at the end of the initial phase-in period. This approach is consistent with Section 2807(e)(2) of the Act, which states that

¹⁶ As OCA witness Alexander explained with the development of competitive metering and billing services in California by 1999, in Maine by 2002, and the recent initiation of a working group to explore this issue in Massachusetts, it would not be prudent to finalize a restructuring plan that simply assumes the continuation of a complete monopoly for these services in the long run. PECO's short term policies should be compatible with the possibility of increased competition in metering and metering services. OCA St. 5 at 31-32.

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.” Waiting to implement any such change until the end of the initial phase-in period, when all customers actually have choice, will also avoid additional, unnecessary confusion that might occur if these rules are changed at the beginning or middle of the phase-in period.

V. SUMMARY OF THE OCA’S LITIGATION POSITION

In response to the Company’s original filing, the OCA submitted a comprehensive alternative proposal by six leading experts in their respective fields. Testimony on market prices, stranded costs and unbundling were submitted by Richard LaCapra, Douglas Smith and Lee Smith of LaCapra Associates of Boston Massachusetts. Members of LaCapra Associates have a wide range of experience in electric restructuring proceedings, particularly in the New England area.¹⁷ In addition to LaCapra Associates, the OCA presented expert testimony on regulatory assets from Thomas Catlin of Exeter Associates, who has testified on utility regulation issues on more than 140 occasions before the Federal Energy Regulatory Commission and state public utility commissions across the Nation. The OCA also

¹⁷ In its landmark decision involving electric restructuring in New Hampshire, for example, the New Hampshire Public Utilities Commission relied substantially on the market price and stranded cost estimates proposed by Mr. LaCapra, declaring that: “On balance, we find Mr. LaCapra’s analysis to be superior to the models offered by PSNH (Public Service Company of New Hampshire) and GSEC (Granite State Electric Company), which contain approaches that we consider to be reflective of regulated market prices.” Restructuring New Hampshire’s Electric Utility Industry: Final Plan, DR96-150 (N.H. PUC February 28, 1997), Slip Opinion at 80. While the present case involves market prices in the PJM Power Pool, it is worth noting that the New Hampshire Commission found Mr. LaCapra’s analysis of the New England Power Pool (NEPOOL) to be “the only study which attempts to project the competitive market price of electricity using NEPOOL’s vision of a deregulated generation sector, its products and its pricing rules,” and found the LaCapra study to “produce what we believe to be a highly plausible set of market prices.” Id. at 79.

presented testimony on consumer education and protection and on universal service issues by two of the Nation's leading experts in these respective areas, Barbara Alexander and Nancy Brockway.

As noted in the first section of this Brief, the OCA submits that the Partial Settlement in which it has joined represents a reasonable compromise between its own litigation position in this case and the position that was initially presented by the Company. Nevertheless, in a series of procedural orders, the Commission has made it clear that it wants to decide this case on the basis of the entire record. As such, the OCA submitted Surrebuttal Testimony from all six of its expert witnesses, setting forth its final litigation position on a number of critical issues. A summary of those issues follows.

A. Market Price/ Stranded Cost/ Unbundling

Starting with a comprehensive long-term computer analysis of PJM market prices by Douglas Smith,¹⁸ OCA witness LaCapra concluded that PECO was likely to have approximately \$2.67 billion of stranded utility-owned generating plant as a result of the move to retail competition. OCA St. 1S, Exh. RLC-2, p.1 of 8 (Revised). This stranded plant calculation represents the difference between the estimated book value of PECO's owned generating plants of \$6.63 billion, and the projected market value of those plants which Mr. Smith and Mr. LaCapra estimated to be \$3.96 billion. When added to

¹⁸ The final estimates of PJM wholesale market prices were set forth in Mr. Smith's Surrebuttal Testimony, OCA St. 2S, as Exhibit DCS-7. As shown in that Exhibit, Mr. Smith projected that PJM market prices (including both capacity and energy) would increase from \$23.89 per megawatt hour in 1999 to \$41.50 per megawatt hour in 2008 and to \$54.99 per megawatt hour in the year 2015. These wholesale prices were converted to PECO-specific retail market prices by OCA witness Lee Smith and presented in OCA St. 4S, Exh. LS-10 and LS-12. The specific "multipliers" applied to the wholesale prices for such factors as line losses, load weighting, and gross receipts tax are set forth in OCA Exh. LS-13.

Mr. Catlin's estimates of regulatory assets and other transition costs,¹⁹ the OCA's final estimate of total stranded costs was \$4.35 billion. Id.

It should be noted that, in contrast to the Company's position, the OCA took the further position that the Company should not be permitted to charge a return on, but should only receive the recovery of the portion of stranded costs related to its own generating plant. As stated by OCA witness LaCapra, the allowance of a recovery of, but denial of a return on, utility-owned generating plant represents a reasonable sharing of the costs of stranded investment and is consistent with Pennsylvania precedent related to plant that is not used and useful such as excess capacity and canceled plant costs. OCA St. 1 at 16-18. Throughout this proceeding, the OCA has distinguished between its proposed treatment of regulatory assets, whose recovery is mandated under Section 2808(c)(1) of the Electric Choice Act, and utility-owned generation assets, whose recovery is permitted, but not guaranteed, under Section 2808(c)(3). With respect to stranded costs on utility-owned generation, it is up to the PUC to determine what level of recovery from ratepayers is just and reasonable. The OCA has argued that recovery of, with no return on, stranded utility-owned generating assets represents a just and reasonable sharing of these costs.

Utilizing the stranded cost and market price estimates noted above, OCA witness Lee Smith presented an unbundled rate analysis that would produce significant rate reductions for PECO

¹⁹ The final schedule showing Mr. Catlin's proposed recovery of regulatory assets (prior to addition of return on the unamortized balances) is shown in OCA St.3S, Schedule TSC-1 (revised). As can be seen from that Schedule, the major difference between the OCA and PECO on regulatory assets was the calculation of recoverable taxes under SFAS No. 109. As set forth in Mr. Catlin's testimony, it is the OCA's position that the Company failed to properly calculate the net present value of its future tax obligations under SFAS 109 and thus overestimated the appropriate amount of this regulatory asset by more than \$900 million. OCA St. 3S at 3-8.

customers, while allowing recovery of the OCA estimate of stranded costs (without a return on utility-owned generation stranded costs) over a seven year period. Specifically, in her Surrebuttal Testimony at OCA St. 4S at Exh. LS-12, Ms. Smith presented a scenario that would result in a 12% reduction from current rates throughout the period 1999-2005 and the elimination of the CTC in 2006. For purposes of this schedule, Ms. Smith started with PECO-specific market generation prices ranging from 2.90 cents per kwh in 1999 to 4.53 cents per kwh in 2005, but these numbers were increased by 0.17 cents to 0.19 cents per kwh to reflect what Ms. Smith concluded to be a misallocation by the Company of administrative and general (A&G) expenses from transmission and distribution (T&D) to generation rates. The resulting generation retail market price per kilowatt hour, or “avoidable generation components,” calculated by Ms. Smith were as follows: 3.07¢ in 1999; 3.34¢ in 2000; 3.90¢ in 2001; 4.08¢ in 2002; 4.31¢ in 2003; 4.48¢ in 2004; 4.72¢ in 2005; and 5.04¢ in 2006. Id. As shown on Exhibit LS-12, Ms. Smith estimated the appropriate T&D rate to be 2.93 cents per kwh (after the removal of 0.17 to 0.19 cents per kwh of A&G expense) and proposed a declining competitive transition charge (CTC) that went from 2.70 cents per kwh in 1999 to 1.05 cents per kwh in 2005.

Utilizing the avoidable generation components and T&D rates set forth in Exhibit LS-12, the Commission can establish a CTC that would allow recovery of a greater or lesser amount of stranded costs than that proposed by the OCA, either with or without a return. Obviously, the greater the CTC level, the lower the rate reduction that would be received by ratepayers in a given year. In addition, if CTC increases are very substantial, it may be necessary to extend the CTC recovery period in order to allow some near-term rate reductions without exceeding the later year rate caps.²⁰ If the CTC period

²⁰ Because the OCA proposed the eliminations of the CTC in 2006, Ms. Smith’s Exh. LS-12
(continued...)

is extended, however, it remains the OCA's position that such an extension should be contingent on an equivalent extension of the generation rate cap.²¹

Finally, if the Commission decides to adopt a reconcilable CTC, which was assumed for the purposes of Exhibit LS-12, it is essential that the reconciliation be on a class-specific basis. OCA St. 4 at 11-12; OCA St. 4S at 10. If reconciliation is not performed on a class-specific basis, there is a substantial risk of cost-shifting from customer classes that are able to avoid future CTC charges onto customer classes that are not so fortunate.

B. Universal Service/Consumer Education

On universal service issues, OCA witness Nancy Brockway of the National Consumer Law Center submitted Direct Testimony urging that PECO's CAP program be expanded and provide for a more precise individualized assessment of customer needs. Ms. Brockway also urged an increase in the Company's LIURP commitment, and testified further that universal service benefits should be "portable" and that program costs should be borne by all customer classes. OCA St. 6 at 12-21, 26-29. As noted above, the OCA fully supports the universal service program in the Partial Settlement and indeed submits that this program is one of the major reasons for the Commission to approve the Partial Settlement. In order to complete the record, however, the OCA filed its Surrebuttal Testimony in which Ms. Brockway reiterated her suggestion that the PECO CAP Rate discounts be more precisely targeted.

²⁰(...continued)

only shows retail market generation prices (or avoidable generation credits) through the year 2006. Applying the methodologies in Exhibits LS-12 and LS-13 to the projected wholesale market prices in Exhibit DCS-7, the comparable retail market prices (including a 0.19 cent A&G adder) for the years 2007 and 2008 would be 5.25 cents and 5.52 cents respectively.

²¹ To the extent the Company is able to securitize some portion of any stranded costs on which a return is allowed, the CTC might be able to be reduced.

This could be accomplished by establishing more tiers in the discount levels. OCA St. 6S at 4. She also provided an alternative universal service cost allocation method in which all customers share in such costs based on a non-production revenue allocator. OCA St. 6S at 26-28 and Exh. NB-Surr-1.

In the Direct Testimony of Barbara Alexander, the OCA strongly urged PECO to participate and to help fund a Commission-led Statewide Consumer Education Initiative designed to motivate customers to learn about the competitive market and to convert ratepayers to informed shoppers for electricity and electricity services. See, OCA St. 5 at 4-23. The OCA noted that sole reliance on individual distribution companies or alternative suppliers for educational efforts would be inappropriate and could result in inefficient and inadequate education of consumers. OCA St. 5 at 17-18. The OCA argued that distribution companies do have a role to play in consumer education, but that the efforts of the distribution company are more properly focused on providing utility-specific information such as the specific nature of the pilot program, prices for distribution service, format of the bill, how to pick a supplier, and where to contact the utility for further information. Id. at 18. The OCA also noted its concerns with PECO's proposed consumer education program, and set forth its criticisms of this program at OCA St. 5, pp. 6-15. The OCA, however, supported PECO's level of funding for its program, and recommended that an appropriate amount of this funding be retargeted to the Commission-led Statewide Program. PECO, in its Rebuttal, generally supported the OCA's fundamental approach to consumer education and many of these principles were set forth in the Partial Settlement. The OCA's position was further clarified in the Surrebuttal Testimony of Ms. Alexander, OCA St. 5-SE. The OCA urges the Commission to adopt the consumer education principles set forth in the testimony of Barbara Alexander and embodied in the Partial Settlement and further submits that

these principles establish a useful framework for consumer education in all of the restructuring proceedings presently before the Commission.

VI. CONCLUSION

For the reasons set forth above, the OCA urges the Commission to adopt the Partial Settlement.

Respectfully submitted,



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Dated: December 2, 1997
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APPENDIX

FINDINGS OF FACT

CONCLUSIONS OF LAW

FINDINGS OF FACT

1. The overall terms of the Partial Settlement represent a reasonable balancing of all interests. Fumo/CEPA St. Nos. 2 and 3, AARP St. No. 2, PAIEUG St. 1SS.
2. The rates contained in the Partial Settlement are just and reasonable and are consistent with the rate caps contained in the Act. Fumo/CEPA St. Nos. 2 and 3, AARP St. No. 2, PAIEUG St. 1SS.
3. The consumer education plan contained in the Partial Settlement is reasonable and will help to promote greater consumer awareness of the issues surrounding electric competition. OCA St. No. 5 and 5SE.
4. The universal service program contained in the Partial Settlement is reasonable and will provide substantial benefits to low-income consumers in the PECO service territory. AARP St. No. 2, Fumo/CEPA St. No. 2, OCA St. No. 6 and 6S.
5. The extended rate cap for transmission and distribution service in the Partial Settlement will provide substantial additional benefits to consumer that go beyond the requirements of the Act. Fumo/CEPA St. No. 2, PAIEUG St. No. 1SS, AARP St. No. 2.

6. The extended rate cap on generation service in the Partial Settlement is reasonable and provides additional protection to consumers. Fumo/CEPA St. Nos. 2 and 3, PAIEUG St. No. 1SS, AARP St. No. 2.
7. The market generation prices contained in Table A in the Partial Settlement Agreement are caps, but are not floors, so consumers can benefit from lower generation prices in the future either from PECO or its competitors. Partial Settlement ¶33.
8. The stream of market prices in the original Enron Plan are not reasonable and would have an adverse impact on consumers and on competition in the later years of the Plan. Fumo/CEPA St. No. 2, AARP St. No. 2.
9. The tariff proposed by Enron would allow electric generation suppliers to violate the transmission and distribution rate caps contained in the Act and in the Partial Settlement. Tr. at 1690, 1705-1706, 66 Pa.C.S. §2804(4)(I)(B).
10. The tariff proposed by Enron would allow electric generation suppliers to rebundle transmission, distribution, and generation rates in violation of the unbundling requirements of the Act. Enron St. No. 5, Exh. A. Rule 17.2(b), Tr. at 1686.

11. The tariff proposed by Enron would not permit the customer billing option permitted under the Act. Enron St. No. 5, Exh. A at Rule 17.2, Tr. at 1683-1685.
12. Under the Enron Plan, the Commission would not be permitted to regulate Enron as a public utility. Enron Plan ¶35(H).
13. PECO has stated that it will not voluntarily securitize \$5.461 billion of stranded assets at this time as required under the Enron Plan PECO St. 21-E.
14. PECO has stated that it will not voluntarily enter into the Purchased Power Agreement required under the Enron Plan. PECO St. 21-E.
15. PECO has stated that it will not voluntarily enter into the Metering, Billing and Collection Agreement required under the Enron Plan. PECO St. 29-E at 11.

CONCLUSIONS OF LAW

1. The Public Utility Commission has the authority to accept, reject, or modify an electric utility's restructuring plan. 66 Pa.C.S. §2806(f).
2. The modifications to PECO's restructuring plan contained in the Partial Settlement are consistent with the Electric Choice Act and may be adopted by the Commission. 66 Pa.C.S. §§2801 et. seq.
3. The Commission has the authority to approve securitization of up to \$4 billion of stranded costs, as set forth in the Partial Settlement. 66 Pa.C.S. §2812.
4. The Commission has the authority to approve the unbundled rates that are set forth in Table A of the Settlement and the attached tariffs, including the proposed competitive transition charges. 66 Pa.C.S. §§2802, 2804 and 2808.
5. The rates set forth in the Partial Settlement are just and reasonable. 66 Pa.C.S. §2804 and §2812.
6. The Commission has no authority to order the securitization of stranded costs, as proposed in the Enron Plan. 66 Pa.C.S. §2812(1).

7. The Commission has no authority to order PECO to enter into a Power Purchase Agreement, as proposed in the Enron Plan. 66 Pa.C.S. §§2801 et. seq.

8. The Commission has no authority to order PECO to enter into the metering, billing and collections contract, as proposed in the Enron Plan. 66 Pa.C.S. §§2801 et. seq.

9. The Commission cannot lawfully approve the Enron Plan. 66 Pa.C.S. §§2801 et. seq.

CERTIFICATE OF SERVICE

Re: 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 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

I hereby certify that I have this day served a true copy of the foregoing document,
OCA's Main Brief, upon parties of record in this proceeding in accordance with the requirements of
52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed
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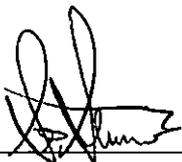
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