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January 7, 1998

KJR

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ORIGINAL

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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, Docket No. P-00971265.

Dear Mr. McNulty:

Enclosed, for filing with the Commission, are the original and three (3) copies of the Petition of CEPA, TAG, ACORN and John W. Long for Reconsideration or Clarification in the above-captioned matter.

Thank you for your attention to this matter.

Very truly yours,

Philip A. Bertocci

STEVEN P. HERSHEY
PHILIP A. BERTOCCI

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Enclosures

cc: Service List

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

APPLICATION OF PECO ENERGY
COMPANY FOR APPROVAL OF ITS
RESTRUCTURING PLAN UNDER
SECTION 2806 OF THE PUBLIC
UTILITY CODE

: Docket No. R-00933953

PETITION OF ENRON ENERGY SERVICES
POWER, INC., FOR APPROVAL OF AN
ELECTRIC COMPETITION AND CHOICE
PLAN AND FOR AUTHORITY PURSUANT
TO SECTION 2807(e)(3) OF THE PUBLIC
UTILITY CODE TO SERVE AS THE
PROVIDER OF LAST RESORT IN THE
SERVICE TERRITORY OF PECO ENERGY
COMPANY

: Docket No. P-00971265

**PETITION OF CEPA, TAG, ACORN AND JOHN W. LONG
FOR RECONSIDERATION OR CLARIFICATION**

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PROTHONOTARY'S OFFICE

CEPA, TAG, ACORN and John W. Long, Jr. (CEPA, et al.) hereby submit this Petition for Reconsideration or Clarification of the Commission's December 23, 1997 final Order in the above-captioned proceeding.

I. INTRODUCTION

Petitioners are Consumers Education and Protective Association (CEPA), Tenant Action Group (TAG), and Association of Community Organizations for Reform Now (ACORN) whose members include low income and senior citizen customers of PECO Energy Company. Petitioner John W. Long, Jr. is a low income person and a customer of PECO.

The most pressing purpose of this Petition is to seek clarification, and/or reconsideration of those parts of the Opinion and Order which appear to address the rate for generation which will be

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charged to those residential customers who after January 2, 2000, cannot choose or do not choose an alternative generation supplier. Petitioners anticipate that this customer class will include in disproportionate number southeastern Pennsylvania's senior citizens and low income persons, persons who have historically for reasons of culture or poverty experienced difficulty in actively pursuing economic advantage, whether that advantage derives from government programs like LIHEAP or from competitive markets. This vulnerable population must not be subjected to above-market rates for electricity generation.

However, parts of the Opinion and Order suggest to the contrary that such customers will be required to pay 4.46 cents/kWh for generation, as part of their existing unbundled rate which also includes CTC and T&D costs, through June 30, 2007. Petitioners question whether either the Legislature, in passing the Act, or the Commission in issuing this decision, intended this result, which in effect would impose a Commission authorized penalty on customers who do not actively participate in the competitive generation market.

Petitioners further seek reconsideration because the restructuring plan reflected in the Commission's Opinion and Order puts consumers -- particularly residential and small business customers -- at risk by failing to recognize and control PECO's ability to exercise dominant market power, which will drive prevailing market rates up to the rate caps.

Petitioners also seek reconsideration on several other issues. They seek reconsideration to the extent that the Commission's decision requires that the costs associated with the maintenance of universal service under competition be paid solely by the residential class. They seek reconsideration to the extent that the decision requires that \$15.6 million, 65% of PECO's consumer education budget, be allocated to a state-wide consumer education media campaign, without regard to whether this sum represents a proportionate share of the total costs of that campaign. They seek

clarification and reconsideration to the extent that the decision does not address PECO's proposed Credit and Collection guidelines which indicated that PECO will terminate a customer from the electricity grid for failure to pay charges billed by an alternative generation supplier.

II. REQUESTS FOR CLARIFICATION OR RECONSIDERATION

- A. CEPA, et al. Seek Clarification And /Or Reconsideration Of The Commission Decision Concerning The Generation Rate To Be Charged By PECO To Customers Who Cannot Or Do Not Choose An Alternative Supplier.

Paragraphs 10 and 20 of the Order, and pages 46, 132-136 of the Opinion make reference to the generation charges applicable to customers who can not or do not obtain an alternative generation supplier between January 1, 1999 and June 30, 2007. From the chart on page 46, it appears that the "Customer Not Shopping" will be charged the CTC amount (2.52 cents/kWh) and the "Shopping Credit" amount (4.46 cents/kWh) for a total "unbundled G" of 7.02 cents/kWh. The Opinion states that customers "who do not yet have the opportunity to shop ... will remain on regulated rates...." Opinion, at 133. The same is true, at least during the phase-in period, for "phased-in customers who do not have a competitive supplier." Opinion, at 134. The Opinion does not explicitly state that regulated rates will continue to be in effect for these customers after the end of the phase-in period, when all customers have access to choice, until June 30, 2007. However, there is no mention of any alternative means for setting generation rates for PECO's generation customers until "the rate caps and duty to serve have expired." Opinion, at 134. At that time, June, 2007, the Commission "will adopt regulations defining the terms and conditions of service for the provision of PLR service at market prices." Opinion, at 134.

Under this reading of the Opinion and Order, it seems most likely that the Commission has not only authorized but required PECO to charge customers who do not or can not shop the

unbundled or "rate cap" rate for generation until June 30, 2007. This reading is inconsistent with the suggestion by Commissioner Brownell that PECO may voluntarily grant a rate cut to customers who will not be permitted to choose an alternative supplier until January 2, 2000. And it is also inconsistent with the explicit recognition that the rate caps defined in Section 2804(4) of the Competition Act are not "floors," but "caps." Opinion, at 50.

The effect of this aspect of the Commission's Order, if it has been interpreted correctly, would be to place unjustifiable burdens on low income consumers, including many senior citizens, who are likely to be unable to exercise choices available to them as consumers or who due to their credit history, will not be able to obtain alternative electric generation. As Roger Colton testified in this proceeding, the competitive market has tended to impede rather than to promote universal service, and "it tends to be the poor and minority consumers who are charged higher rates, provided lesser service or excluded from the market altogether." Environmentalists' Statement No. 1, at 3.

This portion of the Commission's decision, as interpreted here, also is inconsistent with the provisions of the Competition Act. Section 2806(a) states that "[t]he generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter at the conclusion of a transition and phase-in period beginning on the effective date of this chapter and ending, consistent with the commission's discretion under this section, January 1, 2001."

66 Pa. C.S.A. § 2806(a). In this case, the Commission has accelerated the conclusion of the transition and phase-in period, by providing that all customers shall have access to an alternative supplier by January 2, 2000. Section 2807 (e)(3) establishes the standards for determining how the generation price for customers who can not or do not shop will be established after the end of the phase-in period. This provision states that if "a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric

distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs." 66 Pa. C.S.A. § 2807(e)(3).

Thus, the Act provides that customers who cannot or do not shop shall be able to obtain generation from the provider of last resort at prevailing market prices. These prices are to be available not when the rate caps and duty to serve have expired, as the Opinion states (Opinion, at 134), but rather, at the end of the phase-in period.

B. CEPA, et al. Seek Reconsideration Of The Commission's Opinion And Order To The Extent That The Restructuring Plan Does Not Adequately Protect Consumers Against PECO's Market Power.

The deregulation of PECO's generating assets establishes PECO as a dominant provider of generation supply in the Philadelphia region. As Enron recognized in structuring its proposal to assume responsibility as the provider of last resort, "... because of the location of PECO's generation and the capability of the transmission system, it is not reasonable to assume that Enron could purchase, on the market, the quantity of generation it would need to be the PLR, without buying from PECO." FUMO-V-2. If, as Enron has indicated, it is impossible to serve PECO's existing customer base without accessing PECO's generating assets, PECO will be able to use its dominant market position to increase the prevailing market rate for generation to the detriment of all customers. Even if the Commission should determine that PECO's PLR customers will not be required to pay the bundled generation rate, they will be negatively effected to the extent that their rate will be determined by a prevailing market rate established by PECO itself.

The Commission Order may sanction or ratify PECO's use of its dominant market position even further by establishing as "reasonable" a generation credit (or retail price of electricity) equal

to 4.46 cents/kWh. This price is well above any estimate of market price submitted by parties in this case, yet may become the price paid by many customers.

The declared goal of electricity restructuring is the creation of a competitive market for generated electricity. The Act is based upon the premise that "[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa. C.S.A. § 2802(5). The purpose of requiring electric utilities to unbundle their rates and services is "to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth." 66 Pa. C.S.A. § 2802(14). The goal of the transition period is a "competitive generation market." 66 Pa. C.S.A. § 2804(14). Moreover, Section 2811 explicitly recognizes the threat to the purposes of the Act posed by "anticompetitive or discriminatory conduct and the unlawful exercise of market power." 66 Pa. C.S.A. § 2811(a). As the Commission itself acknowledges, in considering a restructuring plan, the Commission "must ensure that competition can occur on a level playing field without discrimination or inappropriate competitive advantage to any market participant." Opinion, at 125.

The restructuring plan contained in the Opinion and Order is not supported by the record in this case, in that the Commission has undertaken no analysis of whether the market for generation will be competitive at the time its Order takes effect, and thus whether PECO's unregulated generation affiliate or subsidiary will be able to exercise market power. Because of this insufficiency in the record, the Commission should, prior to implementation of its Order, conduct a thorough review of the generation supply market pursuant to Sections 2811(a) and (b) of the Act. 66 Pa. C.S.A. § 2811(a), (b).

C. CEPA, et al. Seek Reconsideration of the Commission's Allocation of 100% of Universal Service Costs To Residential Customers.

Paragraph 15 of the Order states that "PECO Energy Company's proposed Universal Service and Energy Conservation Programs are approved as modified by this Opinion and Order." The Opinion directs PECO to implement several universal service initiatives and approves PECO's proposal for a universal service fund mechanism that will allow deferral of universal service costs incurred until a subsequent transmission and distribution (T&D) base rate case that can be filed in the year 2001. At that time, the Commission states that PECO can seek recovery of any such deferred costs and must allocate 100% of those costs to residential consumers. Opinion, at 141-148.

CEPA, et al. urge the Commission to reconsider that portion of its Order that allocates 100% of universal service costs to be incurred pursuant to PECO's restructuring plan to residential consumers.

Since it is likely that under deregulation, significant numbers of the poor and the elderly will continue to pay more for electricity generation than other residential customers, it is especially important that universal service customer assistance programs ("CAPs") be funded at adequate levels to meet the need. As the Commission notes, in declining to set an arbitrary ceiling on the number of persons to be served by CAPs in the PECO service territory, "[p]articipation of 80,000 customers may not be sufficient." Opinion, at 146. In light of the undiminished need for CAP programs under competition, sound public policy requires the establishment of a broad base of financial support for these programs. The Commission has recently recognized that "all customer classes should share in providing funding of universal service consistent with sound rate design principles and in accordance with the Act's prohibitions against the interclass and intraclass cost transfer and the Act's rate cap." Final Order on Universal Service and Energy Conservation Programs, Docket No. M-

00960890F0010, Order of July 11, 1997 at 41. The Act contains no provision which would prohibit the sharing of universal service costs by all customer classes.

CEPA, et al. therefore request that the Commission reconsider its determination that any incremental universal service costs will be allocated 100% to residential classes, adopt the position that universal service costs are to be shared by all customer classes, and in the alternative, defer resolving this issue, as OCA suggests, until PECO's next base rate case.

- D. CEPA, et al. Seek Reconsideration of the Commission's Opinion and Order Directing That \$15.6 Million From PECO's Customer Funded Consumer Education Budget Be Allocated To A Statewide Consumer Education Media Campaign.

The Opinion and Order directs that \$15.6 million, 65% of PECO's customer funded consumer education budget, be allocated to a statewide mass media campaign. Opinion, at 153. CEPA, et al. urge reconsideration of this portion of the Commission's Opinion and Order because the Competition Act does not authorize the Commission to order or direct that monies raised through the Universal Service Fund surcharge for consumer education be spent to subsidize the costs of consumer education for customers outside its jurisdictional territory. Although PECO customers may be required to pay their proportional share for a statewide mass media campaign, their fair share can not be determined until the scope of the campaign, the participants in the campaign, and the costs of the campaign have been determined.

As the Commission itself recognizes, the scope and participants in the campaign cannot now be determined because such a campaign "cannot be directed for all EDC's without an opportunity to be heard." Opinion, at 17. There is therefore no basis in the record for the Commission's allocation of \$15.6 million from PECO's consumer education budget to this campaign.

CEPA, et al. also request that the Commission reconsider the composition of the mass media campaign committee, which should include specific consumer representatives from the PECO service territory.

- E. CEPA, et al. Seek Clarification or Reconsideration To The Extent That The Commission Opinion and Order Fails To Address The Issue Whether PECO May Terminate A Customer From The Electricity Grid For Failure To Pay Charges Billed By An Alternative Generation Supplier.

The Commission Opinion and Order has failed to deal with a key termination of service issue for customers of alternative generation suppliers which CEPA, et al. consider necessary for consumer protection.

In its original filing, PECO took the position that under competition, it was permitted to terminate customers from the electricity grid for failure to pay the bill of an alternative generation supplier. See, e.g., PECO Statement 17, Exh. GSK-3 and PECO Statement 16R, Exh. MCK-7. Although PECO agreed to modify this position as part of the Partial Settlement, it is not clear, now that the Partial Settlement has been rejected, whether PECO has reverted to its original position.

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-00960890F0004, Order entered February 13, 1997, Slip op. at 5. That position, as adopted by the Commission was that: "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."

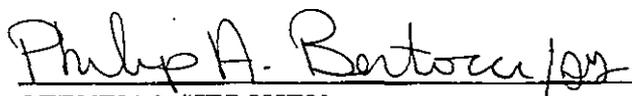
Like OCA, CEPA, et al. believe that PECO must be required to modify its brochures and procedures to clearly comply with the Commission's directives. See, OCA Statement 5 at 39; OCA Statement 5-S at 5. Petitioners therefore request that the Commission direct PECO to revise Section

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. See OCA recommended language for Section 7 of PECO's Guidelines at OCA Statement 5-S, pp. 5-6.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, CEPA, et al. respectfully request that the Commission clarify and reconsider its Opinion and Order in the above-captioned proceeding as requested above.

Respectfully submitted,



STEVEN P. HERSHEY
PHILIP A. BERTOCCI

Counsel for CEPA, et al.

COMMUNITY LEGAL SERVICES, INC.
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Date: January 7, 1998

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In re the Application of PECO Energy
Company for Approval of its Restructuring
Plan Under Section 2806 of the Pennsylvania
Public Utility Code**

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Docket No. R-00973953

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing document has been served in person or by first class mail at the addresses indicated below. I further certify that the manner of service satisfied the requirements of 52 PA.Code §§ 5.75 and 1.54.

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PA PUBLIC UTILITY COMMISSION
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January 7, 1998

VIA HAND DELIVERY

James McNulty, Acting Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

171053265

RE: Pennsylvania Public Utility Commission v.
PECO Energy Company, Docket No. R-00973953;

Petition of Enron Energy Services Power, Inc.,
Docket No. P-00971265

Dear Mr. McNulty:

Enclosed for filing please find an original and three copies of Petition for Reconsideration of Enron Energy Services Power, Inc. and Enron Power Marketing, Inc. with regard to the above action.

As indicated on the attached Certificate of Service, copies of these documents are being served this day on the parties in the manner indicated.

Please contact me if you have any questions with respect to the enclosed.

Very truly yours,
Daniel Clearfield
Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosure

cc: Hon. Marlane Chestnut w/enc.
Hon. Charles Rainey w/enc.
All Parties of Record w/enc.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF ENRON ENERGY SERVICES
POWER, INC. FOR APPROVAL OF AN
ELECTRIC COMPETITION AND CUSTOMER
CHOICE PLAN AND FOR AUTHORITY
PURSUANT TO SECTION 2807(e)(3) OF THE
PUBLIC UTILITY CODE TO SERVE AS THE
PROVIDER OF LAST RESORT IN THE
SERVICE TERRITORY OF PECO ENERGY
COMPANY

DOCKET NO. P-00971265

APPLICATION OF PECO ENERGY
COMPANY FOR APPROVAL OF ITS
RESTRUCTURING PLAN UNDER SECTION
2806 OF THE PUBLIC UTILITY CODE

DOCKET NO. R-00973953

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**PETITION FOR RECONSIDERATION OF ENRON ENERGY
SERVICES POWER, INC. AND ENRON POWER MARKETING, INC.**

I. Introduction and Background.

1. Enron Energy Services Power, Inc. and Enron Power Marketing, Inc. (collectively "Enron"), pursuant to 52 Pa. Code § 5.572, hereby submit this Petition for Reconsideration of the Opinion and Order of the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered on December 23, 1997 in the above captioned dockets. Through this Petition, Enron requests the Commission to reconsider certain determinations associated with the restructuring of the rates and service for PECO Energy Company ("PECO") pursuant to the Commission's obligations and authority set forth in the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 et seq. (the "Competition Act").

2. The Commission's Order rejected two competing proposals, one offered by PECO along with several other litigants and one offered by Enron, for the restructuring of PECO and the development of a competitive market for the generation supply of electricity in

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PECO's service territory. Instead, the Commission crafted an alternative plan using an independent approach for implementing competition and customer choice based upon the record in the proceeding. In doing so, the Commission attempted to strike a fair balance between the varying and, in many cases, competing interests affected by PECO's restructuring, including those of PECO's shareholders, present customers and future market competitors, in the interest of enabling and promoting a competitive market consistent with the requirements of the Competition Act.

3. Notwithstanding the fact that several aspects of Enron's restructuring proposals were rejected by the Commission, to enhance the chances that implementation of PECO's restructuring will proceed in a timely fashion so that the benefits of competition can be made available to consumers in PECO's service territory as soon as possible, Enron accepts in principle the restructuring plan crafted by the Commission for PECO. Notwithstanding this overall acceptance, Enron believes that a few aspects of the Commission's Order must be revised to make it consistent with the specific requirements of the Competition Act and the policy determinations set forth in the Commission's Order, considerations which the Commission appears to have overlooked or failed to address.¹ Specifically, Enron requests the Commission to reconsider its determinations in the three following respects:

A. The Commission ordered a downward revision of Transmission and Distribution charges in an attempt to reflect a fairer allocation of administrative and general costs than had been proposed by PECO. The reallocation ordered by the Commission, however,

¹ Duick v PG & W, 56 Pa. PUC 553 (1982); Retail Access Pilot Program, P-00971168 Opinion and Order at 3 (November 21, 1997).

does not reflect the full reallocation to PECO's generation functions necessary to effect the proper allocation of all costs clearly associated with the provision of generation service.

Moreover, the Commission erroneously granted PECO an additional stranded cost recovery allowance to correspond to the reallocation of administrative and general expenses from the distribution function to the production or generation portion of PECO's unbundled costs;

B. The Commission's decision to permit PECO full stranded cost recovery notwithstanding the PUC's factual and legal finding that PECO's efforts to mitigate its stranded costs have been inadequate is inconsistent with the requirements of the Competition Act; and

C. The Commission's decision to decline to require, at this time, requiring the unbundling and competitive provision of non-wire services is inconsistent with the Commission's overall policy decision to create the opportunity for competitive markets and the realization of savings by customers.

II. Level of Allocation of Administrative & General Costs, Sales and Uncollectibles and Stranded Cost Recovery of Administrative & General Overhead Costs Reallocated from Transmission & Distribution to Generation.

4. The Commission's Order adopted the recommendation of Enron, the OCA and the Department of the Navy and rejected PECO's revised cost of service study which allocated substantially all of its administrative and general ("A&G") "overhead" expenses to the Transmission and Distribution ("T&D") functions. Instead, the PUC directed the adoption of the OCA proposed allocation of A&G expenses, which it believed resulted in a 18 mill/kWh

reduction from the T&D rates set forth in the partial settlement² to a total average T&D rate of 2.93 ¢/kWh.³ The Commission committed three errors which it should reconsider and correct through modification of its Order:

(A) The OCA study adopted by the Commission incorrectly relied on PECO's study in reallocating certain A&G accounts.⁴ In so doing, many accounts, containing costs which are virtually identical to those that were reallocated, improperly remain allocated 100% to T&D. To maintain consistency with its overall approach — namely, that there should be a proper allocation of costs that pertain to and benefit aspects of PECO's participating business functions — the Commission should have utilized Enron witness Reising's allocation analysis. Unlike the PECO and OCA studies, that approach reallocates all accounts that cannot be reasonably allocated 100% to T&D on the basis of some rational allocator, such as labor or non-fuel O&M.⁵ The PUC's failure to allocate all these costs improperly and unfairly results in

² The OCA's revised T&D rates, as shown in its Surrebuttal testimony are actually 2.94 ¢/kWh. OCA Exh. LS-9 lns. 39-40. Further, the Commission's Order incorrectly refers to the 3.11 ¢/kWh T&D rate in the partial settlement as the "PECO revised number." Order at 62. The T&D rates reflected by PECO in its revised cost of service study are actually lower than those proposed in the partial settlement by 4 mills or 9 mills, depending on the load assumptions utilized. See, Main Brief of Enron at 27, especially n. 46 and n. 47. The level of the reduction will have an effect upon the calculation of "stranded" costs that PECO would be permitted to include in its CTC calculation if the PUC's decision remains unchanged, in this respect. As noted, however, Enron objects to the inclusion of any properly reallocated costs as stranded costs.

³ Order at 46.

⁴ OCA Exh. LS-8.

⁵ See, Enron Main Brief at 29.

T&D rates which are too high and understates the generation shopping credit in violation of the unbundled T&D cap in the Competition Act.⁶

(B) In addition, although the Commission acknowledged that a consistent application of its allocation methodology could also require a reallocation of other items, it did not allocate portions of uncollectibles, nor did it remove any sales and customer service expenses from T&D costs.⁷ In light of the PUC's acknowledgment that a portion of such overhead type costs will be associated with PECO's generation-related activities, the Commission's failure to reduce T&D rates to reflect such a reallocation was legal error.⁸ PECO will not have any sales expense associated with its monopoly T&D operation, and its customer service expense clearly will be reduced. Further, uncollectibles will continue to arise from generation services as well as from T&D, justifying an allocation of these costs since there is no rational or supportable reason for burdening T&D rates with 100% of these costs.⁹ The PUC should revise its decision to order the unbundling and allocation of all of these costs in accordance with Mr. Reising's testimony.¹⁰

5. Having admitted that these costs should be allocated to generation, irrespective of the amount of the adjustment, the Commission made an additional fundamental

⁶ 66 Pa. C.S. § 2804(3), (4)(i)(B).

⁷ Order at 61.

⁸ This also violates 66 Pa. C.S. § 2804(3), (4)(i)(B).

⁹ Enron Main Brief at 29. This is particularly true in light of the fact that, currently, the Commission has authorized EDCs to place supplier generation charges last in the priority list when partial payments are received and the EDC is providing all billing.

¹⁰ See, EPMI St. 4 at 10-12; PECC St. 3 at 6-7, 12-13.

error. After adopting OCA's adjustment and directing the reduction in PECO's T&D rates in the amount identified above, the Commission concurrently directed a corresponding increase in PECO's allowed stranded cost recovery claim and estimated that amount to be \$460,691,00.¹¹ The Commission's Order contains no analysis or explanation why the properly reallocated expenses should result in additional stranded costs for PECO and, indeed, it is contrary to the OCA's recommendation otherwise adopted by the Commission.¹² The Commission's determination in this regard is also plainly contrary to the Competition Act for reasons that may not have been properly considered by the Commission in its Order. Accordingly, the Commission should reconsider this issue and revise its determination in this respect.

6. The Commission's finding apparently was based on a PECO argument that any reduction to PECO's proposed T&D rates to reflect a reallocation of generation-related overheads to the generation component of PECO's unbundled costs would simply add to PECO's "stranded costs." This argument is based on the assumption that if these overhead costs are allocated to the generation portion of the rate for unbundling purposes, PECO will be incapable of recovering them in a competitive environment, and thus, they should be considered "stranded."¹³

7. PECO's analysis improperly identifies these costs as A&G costs associated with actually running PECO's generation units and producing PECO's electric sales in a wholesale market. In fact, a significant portion of these common overheads clearly are and

¹¹ Order at 62. The Company will calculate the precise amount in its compliance tariff. See, footnote 2, to this Petition, supra.

¹² OCA St. No. 4S at 5.

¹³ PECO St. 6-RJ at 12-14.

will continue to be associated with PECO's efforts to provide retail generation services to customers in a competitive environment — either as part of its duties as a provider of last resort or as part of its efforts to market power to customers through affiliates or divisions.¹⁴

8. Accordingly, PECO's overheads in question are identical to the types of overheads that will have to be incurred by other suppliers when they attempt to compete with PECO to provide competitive generation services.

9. The Commission's determination to reallocate the portion of A&G overhead expenses improperly allocated by PECO to T&D services to PECO's generation function, but at the same time to allow PECO to recover the discounted present value of that addition as a "stranded" generation cost, violates the Competition Act because the costs at issue do not satisfy the definition of "transition costs" as set forth therein. The Competition Act defines "transition or stranded costs" generally as costs that are recoverable in a regulated "rate base/rate of return" environment but which may not be recoverable in a competitive electric generation market.¹⁵ The A&G overhead costs here at issue are, by definition, costs that all marketers and generation suppliers, including PECO, will have to incur in order to deliver power to customers in a competitive retail market. As such, these costs will have to be recovered by

¹⁴ See, PECC St. 3 at 11-12; Tr. 852-53.

¹⁵ 66 Pa. C.S. § 2803. The specific definition is as follows:

"Transition or stranded costs." An electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market and which the Commission determines will remain following mitigation by the electric utility.

suppliers, including PECO affiliated suppliers; that is, such costs will be reflected in the prices charged by all suppliers on an ongoing basis. Since these costs can and should be recovered by PECO in a competitive environment, by their very nature these costs cannot meet the definition of stranded or transition costs and, therefore, the Commission may not lawfully add them to the allowable level of stranded costs authorized to be recovered by PECO.

10. In addition, the Competition Act specifically prohibits the establishment of rates which permit unlawful or unreasonable cross subsidies between the incumbent provider of service and competing suppliers.¹⁶ The Commission's action in reallocating portions of A&G overhead expenses to the generation portion of PECO's unbundled rate properly assigns a portion of these costs — necessary for the provision of retail generation services — to be recovered in the generation portion of PECO's unbundled rates. But, by failing to fully allocate these overheads or to allocate any sales or uncollectible expense to generation, the Commission's decision improperly subsidizes PECO's retail generation activities. Further, by then permitting the value of the portion of A&G that the Commission did determine to allocate to generation to be removed as a stranded cost, the Commission effectively reversed the allocation that it did make and required all customers, including those who elect to take service from competitive suppliers, to compensate PECO for essentially all of its common A&G overheads. Since competitive suppliers have no similar ability to receive a subsidy from all customers for their general overhead and retail sales-related costs, suppliers other than PECO will be unfairly burdened by this subsidy to the detriment of competition and consumers.

¹⁶ See, 66 Pa. C.S. §§ 2804(6), 2811(a). These provisions impose a duty on the PUC to require EDCs to provide T&D service to suppliers on rates, terms and conditions comparable to the EDC's own use of the system.

III. Recognition of Mitigation Efforts in Determining Allowable Stranded Costs.

11. The Commission carefully and comprehensively discussed the evidence presented by PECO related to PECO's past efforts and future plans to mitigate its claim to stranded costs.¹⁷ In summary, it found that while PECO had undertaken some efforts in the past and had some plans for the future, its overall plans to mitigate costs to the greatest extent possible were inadequate and not consistent with the clear intent of the Competition Act.¹⁸ The Commission further found that PECO has had and will continue to have available the time period prior to the advent of competition on January 1, 1999 and 8-1/2 years thereafter to mitigate its stranded costs.¹⁹ Notwithstanding those findings, however, the Commission elected not to make any adjustment to or reduction of PECO's stranded cost recovery levels, even though the Commission's determination of the amount of stranded cost appears to be irrevocable, whether or not PECO makes any future efforts to mitigate its stranded costs.

12. The Commission's finding PECO's mitigation efforts to be inadequate while at the same time failing to make an adjustment to PECO's stranded cost recovery claim is in violation of the Competition Act which states clearly that the Commission has a duty to

consider the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs by appropriate means in a manner that is reasonable under all of the circumstances During the transition period, electric utilities shall have the duty to mitigate

¹⁷ Order at 94-100.

¹⁸ Id. at 98.

¹⁹ Id. at 98-99.

generation-related transition or stranded costs to the extent practicable.²⁰

The duty to undertake ongoing mitigation efforts is, pursuant to the statute, a mandatory requirement that must be considered in determining a reasonable level of stranded costs.²¹

13. The Commission's finding that PECO failed to make sufficient efforts to mitigate its stranded cost levels is buttressed by the fact that PECO had (and continues to have) available to it the ability fully to mitigate its stranded generation assets by auctioning the affected assets. Such a sale is the surest, most complete way in which to mitigate the burden of stranded costs and at the same time to advance the development of a competitive market. While not required by the Competition Act, PECO certainly had the authority to do so and PECO's failure even to propose this approach increases the need for an adjustment in light of the Commission's findings.

14. Accordingly, having found that PECO's restructuring plan does not contain sufficient plans for ongoing mitigation, the Commission must make an adjustment to PECO's stranded cost recovery. By failing to do so, the Commission violated the Competition Act and diminishes the incentive for compliance by other electric utilities subject to these

²⁰ 66 Pa. C.S. § 2808(c)(4). The Competition Act lists a number of efforts that should be included in the utility's duty to mitigate stranded costs, including acceleration of depreciation and amortization of existing generation assets, the minimization of new capital spending, reallocation of depreciation reserves, reduction of book assets by application of proceeds from the sale of idle or underutilized rate base generation assets, maximization of market revenues from existing rate base generation assets, and the issuance of securitized debt pursuant to Section 2812 of the Act. Id.

²¹ The Competition Act states: "In determining the level of transition or stranded costs that an electric utility may recover through the competitive transition charge, the Commission **shall apply the following principles.**" 66 Pa. C.S. § 2808(c) (emphasis added).

provisions. A requirement that has no consequence for failure to comply is rendered ineffective. The Commission therefore should revise the amount of stranded cost recovery to reflect an adjustment in accordance with its own finding. The adjustment should reflect the fact that PECO has failed to propose full mitigation via the market sale of its stranded assets.

IV. Unbundling and Competitive Provision of Metering & Billing Services.

15. The Commission's Order declined either to allow for the full competitive provisioning of metering, billing or customer services²² or to require that the costs of these services be separately unbundled from the overall distribution charge so that a credit can be given when they are competitively provided.²³ In each instance, the result is plainly inconsistent with the weight of the evidence in the record and the Commission's clear policy decision to open markets and increase choice as fully as possible in order to maximize consumer benefits.

16. The Commission determined to allow only the EDC to provide a comprehensive "single bill," acknowledging no more than its legal obligation to permit customers to elect to obtain a separate EGS bill for generation services alone.²⁴ With respect to metering, the Commission recognized that "advanced metering offers substantial opportunities for the development of competitive generation products and that this Commission must facilitate development of those products and services."²⁵ But, instead of generally permitting EGSs to offer and provide such services to customers in PECO's service territory, the PUC provided only

²² Order at 138-41.

²³ Id. at 52, n. 49.

²⁴ Id. at 139.

²⁵ Id. at 140.

that the customer or EGS can direct that a “qualified” advanced meter be purchased, owned, controlled and installed by PECO and that all “physical work” (including, presumably, physical meter reading) would continue to be PECO’s responsibility.²⁶

17. Notwithstanding the limited competitive opportunities permitted by the Commission’s Order (i.e., the provision of a separate generation bill at the customer’s request and remote metering reading using a PECO purchased and maintained meter), the Commission declined to order the identification of the costs associated with these activities embedded in PECO’s distribution rates and to order the unbundling of such charges, despite its acknowledgment that it “expect[s] those services will be unbundled in the foreseeable future.”²⁷

18. For the following reasons, the Commission should reconsider its decision to limit so severely at this time the nature and extent of unbundling and competitive provisioning of the “non-wire” services of metering, billing and customer services:

A. The Commission’s decision is clearly inconsistent with the “market” paradigm underlying its overall decision to use a competitive market, rather than artificial regulatory controls, to deliver benefits to consumers. For example, the Commission forcefully rejected reliance on “changing rate tariffs to deliver price benefits to ratepayers,” because such an approach “will not foster the competitive retail electric market that the Act requires for all customers, not just the largest users.”²⁸ The Commission forcefully and clearly recognized that “a competitive market . . . is [the customers’] only real protection under the

²⁶ Id. at 141.

²⁷ Order at 52 n. 49.

²⁸ Id. at 43.

Act."²⁹ Further, in declining to establish the temporary rate decreases sought in the partial settlement, the Commission established the generation shopping credit as the residual amount after removing charges for T&D and CTC in order to “empower customers”³⁰ and to

provide a competitive market. Again, it is only genuine competition that will deliver long term price benefits to the customers of the PECO service territory. The Commission’s approach avoids creating a de facto monopoly It creates real incentives for electric suppliers to compete for customers and for customers to shop for electricity. As such, this decision will create a market featuring both many buyers of electricity and many sellers of electricity.³¹

The forces of “genuine competition” that will “empower” customers for generation services will produce identical benefits for metering and billing services. The record is replete with testimony supporting the view that full competitive provisioning will result in greater savings and more innovative products and services for consumers.³²

Limiting the competitive provision of metering and billing in the manner proposed by the PUC simply creates a de jure (not just a de facto) monopoly for these services and robs consumers of the enormous benefits that accrue when there are “many buyers . . . and . . . many sellers,” for products and services. The record overwhelmingly reflects the strong

²⁹ Id.

³⁰ Id. at 44.

³¹ Id. (emphasis added).

³² See, EESPI Main Brief at 22-23, Proposed Findings of Fact at xi; Proposed Conclusions at iv-v.

potential of developing “non-wire services” in the same manner and degree as generation services if they are allowed to develop without the artificial restraints proposed.

Unfortunately, the failure to permit a single bill option for suppliers robs consumers of their ability to receive a single bill from their EGS for all services — T&D, non-wire services and generation — and eliminates the potential competitive offering of a variety of innovative and desirable billing formats and services. Similarly, the Commission’s metering decision eliminates the ability of the EGS itself to purchase and supply advanced meters (potentially at lower cost), potentially limits the types of innovations that might be offered, prevents EGSs from providing savings by offering lower cost meter maintenance and repair and reduces an EGS’s incentive to offer new revenue generating services (such as outage protection or appliance control) because of unanswered questions about which entity (the EDC or EGS) would have claim to such revenues or even whether the EGS would have the ability to offer the service in the first place.

The Commission’s Order does not account for the fundamental inconsistency reflected in its determinations with respect to its “market opening” approach to setting a competitive generation credit and its simultaneous imposition of artificial regulatory limitations with respect to non-wire services. Most importantly, the Commission has impeded customer choice by barring the provision of these services by suppliers even when the customer specifically demands or desires one or more of these services from his or her chosen supplier. Such a restriction on customer choice is inconsistent with the Competition Act’s underlying policy objectives.

B. Unfortunately, the Commission's Order also impedes the development of a competitive market for non-wire services by refusing to order the unbundling of the costs associated with the few metering and billing functions that the Commission's Order does permit to be offered on a competitive basis (i.e. a separate bill for generation provided by the EGS and meter reading and other non-physical meter services). The PUC's failure to unbundle means that PECO customers choosing any of these competitive options will be forced to "pay twice" for the privilege. For example, a customer choosing to receive a separate bill for generation from an EGS will pay for the service twice — once to the EGS and once as part of PECO's T&D rates approved by the PUC. This is not only unfair to customers who will be subject to the double charge, but is inconsistent with traditional ratemaking principles which require, at the very least, that utility rates reflect costs that the utility actually has or will incur. As noted, there will also be a negative effect on the development of a competitive market. Even for the alternative billing and meter reading services that suppliers are permitted to offer, they will be faced with the unenviable task of attempting to attract customers to their alternative services even though the T&D rates charged by PECO will not be reduced even if PECO does not provide the service. Conversely, PECO will benefit because its billing and metering services will be subsidized by all distribution customers.

19. For all of the foregoing reasons, the Commission should reconsider its decision to delay its allowance of the unbundling and competitive provision of non-wire services.

WHEREFORE, Enron respectfully requests that the Pennsylvania Public Utility Commission reconsider its Opinion and Order in the PECO restructuring proceeding and modify its Opinion and Order as set forth above.

Respectfully submitted,



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Dated: January 7, 1998

CERTIFICATE OF SERVICE

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

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January 7, 1998

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ORIGINAL

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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

Dear Secretary McNulty:

Enclosed please find for filing an original and three copies of the Office of Consumer Advocate's Petition for Reconsideration or Clarification in the above-captioned proceeding.

DOCUMENT
FOLDER

Page 2

January 7, 1998

Copies have been served upon all parties of record this date as evidenced by the attached Certificate of Service.

Sincerely,



Steven K. Steinmetz
Assistant Consumer Advocate

Enclosures

cc: All parties of record
Hon. Marlane R. Chestnut (by fax & FC mail)
Hon. Charles E. Rainey, Jr. (by fax & FC mail)
John M. Quain, Chairman
Nora Mead Brownell, Commissioner
Robert K. Bloom, Commissioner
John R. Hanger, Commissioner
David W. Rolka, Commissioner

41431

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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PETITION FOR RECONSIDERATION OR
CLARIFICATION OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate ("OCA") hereby submits this Petition pursuant to Public Utility Commission ("PUC" or "Commission") regulations at 52 Pa. Code §§ 5.41 and 5.572, and requests timely clarification and/or, reconsideration and amendment of the Commission's December 23, 1997 final Order in the above-captioned proceeding.

I. INTRODUCTION

On December 23, 1997, the Pennsylvania Public Utility Commission entered its Order in the above-captioned case. In its Order, the Commission rejected both the Partial

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Settlement of the Joint Petitioners, and the Enron Plan. The Commission then turned to the litigation record in the proceeding and resolved numerous issues regarding PECO's Restructuring Plan. The Commission set forth its own comprehensive structure to bring about a transition to a competitive market structure for the sale of electric generation in the PECO service territory.

While the OCA was a signatory to the Partial Settlement and fully supported its terms, the purpose of this Petition for Reconsideration is **not** to seek reconsideration of the rejection of that Settlement by the Commission. Rather, the OCA seeks reconsideration or clarification of certain critical determinations made within the context of the Commission's Final Order. The OCA seeks such reconsideration or clarification due to their impact on PECO customers as well as the likely precedential impact of this case on the other pending restructuring proceedings in Pennsylvania. The OCA submits that such reconsideration and clarification will assist in the development of the vigorous competitive market that the Commission seeks to have in place by January 1, 1999.

The standard for reconsideration before this Commission is clearly met in this proceeding. As set forth in Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553, December 17, 1985, the standards for granting a petition for reconsideration are as follows:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties...cannot be permitted by a second motion to

review and reconsider, to raise the same questions which were specifically decided against them...what we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.

56 Pa. PUC at 559.

Given the enormity of the task that faced all five Commissioners in reaching this landmark decision in an extremely short time period, it would indeed be remarkable if the Commission had **not** overlooked or failed to consider any relevant argument made by the numerous parties to this case. The OCA therefore respectfully submits that the Commission should grant timely reconsideration and retain jurisdiction over this matter in order to address the issues raised in this Petition.

Finally, the OCA would note that it is filing this Petition without the benefit of PECO's compliance filing, which is not due until five days after the due date for this Petition. The OCA does not know how PECO will interpret and implement many of the critical provisions of the Commission Order. Through this Petition, the OCA seeks to raise and preserve certain issues that might also be addressed in any further litigation regarding the PECO compliance filing.

II. REQUESTS FOR RECONSIDERATION OR CLARIFICATION

A. The OCA Seeks Reconsideration Of The Commission's Stranded Cost Decision To The Extent That It Allows Overrecovery Through The Allowance Of A Return On Costs Associated With SFAS 109.

In its Order, the Commission approves PECO's request for recovery of "the nominal balance" of \$1.687 billion of stranded costs related to SFAS 109, to be amortized over

seven years. Order at 69-70. While the OCA strongly disagreed with PECO's calculation of this claim during this proceeding, the OCA does not seek reconsideration of this decision at this time.

The OCA does seek reconsideration, however, of the Commission's apparent inclusion of the full \$1.687 billion in SFAS 109 recovery in the amount of stranded costs that are permitted to earn a return at pages 101-102 of the Order. As a review of PECO's original filing reveals, PECO never claimed a return on its SFAS-109 claim. In fact, no party to this proceeding suggested that a return on this SFAS 109 claim would be necessary or appropriate. That is because the \$1.687 billion requested by the Company was the nominal balance of tax payments that the Company said it would make over the seven-year transition period. There is no need for a return on that balance, since the \$1.687 billion is not a present value number, but is simply the sum of the seven year amortization of tax payments to be paid at a rate of \$241 million per year for seven years. This fact is clearly demonstrated in PECO's original filing at Exhibit ABC-1, Schedule 10, page 4 of 5. A copy of that page is attached, hereto, as Appendix 1. This Schedule clearly shows PECO's claim for recovery of, but no return on, its SFAS 109 claim.

To the extent the Commission's Order would allow PECO to charge an additional return on its \$1.687 billion of stranded SFAS 109 costs, it is clearly in error and would allow PECO to earn a return on amounts it had not yet even expended and on which PECO itself never even requested a return. This would result in PECO ratepayers paying substantially more than the \$1.687 billion in nominal dollars that is required to fully compensate PECO for this stranded cost claim.

- B. The OCA Seeks Reconsideration Of The Commission's Decision To Add Costs Reallocated From Transmission And Distribution Rates To The Company's Stranded Cost Recovery.

The OCA, as well as a number of other parties, in its direct and surrebuttal testimony, identified a misallocation of costs among the Company's unbundled services. Specifically, the OCA determined that PECO had improperly assigned too much of its Administrative and General Expense (A&G), its overhead expense and general plant expense to the T&D function, rather than properly allocating a portion of those costs to the generation function. The OCA recommended that a portion of PECO's A&G expense, its overhead expense and its general plant expense be allocated to the generation function. See OCA Statement No. 4S at 1-6 and Exhibits LS-7, 8, and 9. The Commission accepted OCA's adjustment to the Company's transmission and distribution (T&D) rates to reflect this allocation and thus reduced the Company's average T&D rate from 3.11 cents per kWh to 2.93 cents per kWh. OCA Exh. LS-12, Order at 62.

The Commission, however, then went on to tentatively conclude that this reallocation of costs from T&D to generation should result in an increase in PECO's recoverable stranded costs. The Commission stated: "Subject to receipt and review of PECO's compliance filing, we conclude that this will result in an increase to PECO's stranded costs of approximately \$460,691,000." Order at 62, emphasis added.

The OCA obviously does not yet have the benefit of PECO's compliance filing, but submits that based on the record produced in the proceeding, there is no justification to add these misallocated T&D costs to the Company's stranded cost claim. It is OCA's position that these A&G costs will be included and recovered in the market price of generation and that, indeed, not only PECO, but all of its competitors will reflect those types of costs in the price of

generation. The point of the reallocation proposed by OCA and a number of other parties in the case was to prevent the Company from recovering those costs twice -- once through its regulated T&D rates and again through its competitive generation rates. These costs are not stranded as a result of the reallocation adopted by the Commission, but should simply be reallocated to the generation portion of unbundled rates.¹

As stated by OCA witness Lee Smith: "These costs are all part of the avoidable cost of energy. Either PECO or alternative suppliers will provide the services that these costs represent to customers purchasing generation." OCA Statement No. 4 at 7. Any failure to properly allocate these costs to the competitive generation function results in an improper subsidy of PECO's competitive generation rates, whether those costs are included in T&D rates as proposed by PECO or added to the CTC as proposed by the Commission.

Upon review of this Petition for Reconsideration as well as the Company's compliance filing, the Commission should reconsider this ruling and ensure that the cost misallocation recognized by the Commission is properly remedied.

- C. In Light Of Commissioner Brownell's Statement Encouraging PECO To Reduce Its Rates To Customers Who Lack Direct Access, The OCA Seeks Clarification On Whether Or Not PECO Has The Discretion To Charge Its Default Customers A Generation Rate That Is Less Than The Generation Shopping Credit Established In The Commission's Order.

As the Statement of Commissioner Brownell recognizes, under the Commission Order, fully one third of PECO's customers will receive none of the benefits of competition until

¹ Even if PECO sells less generation in the future competitive generation market, these types of A&G costs would not be stranded. Rather, those costs could be reduced by PECO to reflect lower ongoing generation A&G expenses.

January 1, 2000. This is in contrast to the Partial Settlement in which 100% of PECO customers would have received 10% rate reductions on September 1, 1998.² Commissioner Brownell then goes on to suggest that PECO provide at least a seven percent rate cut to its non-shopping customers until January 1, 2000.

The OCA supports Commissioner Brownell's suggestion, but questions whether the Commission Order allows PECO to reduce its generation rate below the level of the shopping credit for any of its customers either in 1999 or through the rest of the transition period. As the OCA understands the Commission's Order, given the Competitive Transition Charge estimated by the Commission, PECO must offer customers an average shopping credit of 4.46 cents per kilowatt hour below its statutorily capped rate through the end of the year 2005. The question that requires clarification, however, is whether PECO is **permitted** to reduce its own generation rates below 4.46 cents, either in response to Commissioner Brownell's request for a voluntary rate reduction in 1999 or, in the future, as a means of retaining or attracting customers to its own generation service.

It was the intent of the Partial Settlement that PECO not only be permitted, but in

² While the Commission concluded that PECO would have been legally precluded from securitizing any of its stranded costs because of pending appeals and therefore would have provided only a seven percent rate reduction in 1998 and thereafter, the OCA would note that California's electric utilities apparently were able to market over \$5 billion of securitized bonds even while an appeal of the securitization order was pending before the California Supreme Court. See Electric Utility Week of December 1, 1997 at 1-2; December 8, 1997 at 2; and December 15, 1997 at 13-14. While the point is now moot, under the terms of the Partial Settlement, PECO could only have reduced its proposed rate decrease from 10% to 7% if it had been able to demonstrate through an opinion by "qualified and reputable bond counsel" that PECO was legally precluded from issuing **any** transition bonds at **any** interest rate. Partial Settlement Paragraph 10, footnote 4.

fact be obligated, to charge no more than a market-based generation price to those customers who either cannot or do not obtain generation service from an alternative competitive provider, as long as that rate is less than the Settlement rate cap. See Partial Settlement Paragraphs 33 and 36. This provision was particularly important as a means of trying to ensure that at least some of the benefits of competition are received by those customers who are most likely to have difficulty in entering the competitive market, either because of inadequate information or other factors. Those customers may be the very ones who are most in need of rate relief. Moreover, this provision of the Partial Settlement is consistent with the principles of Section 2807 of the Act, which states that the Commission shall establish regulations at the end of the phase-in period which specify that:

If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

66 Pa. C.S. § 2807(E)(3)(emphasis added).

The OCA recognizes that there is a competitive trade-off between allowing PECO to reduce its generation rates to customers who do not shop and forcing PECO to charge the highest possible capped rate in order to encourage shopping. Nevertheless, the OCA submits that the Commission must clarify this issue since it is fundamental to the future competitive market in which PECO and its competitors (including PECO's own affiliates) are expected to operate.

D. The OCA Seeks Reconsideration Of The Commission's Allocation Of 100% Of Universal Service Costs To Residential Customers.

At pages 141-148 of the Commission Order, the Commission directs PECO to

implement several universal service initiatives and approves PECO's proposal for a universal service fund mechanism that will allow deferral of universal service costs incurred until a subsequent transmission and distribution (T&D) base rate case that can be filed in the year 2001. At that time, the Commission states that PECO can seek recovery of any such deferred costs and must allocate 100% of those costs to residential consumers. Order at 146.

The OCA seeks reconsideration of the portion of the Order that allocates 100% of any incremental universal service costs to residential consumers. The OCA would note in this regard that on July 11, 1997, after a lengthy Working Group and Comment process, the Commission issued a Final Order on Universal Service and Energy Conservation Programs in which it concluded that: "All customer classes should share in providing funding of universal service consistent with sound rate design principles and in accordance with the Act's prohibitions against the interclass and intraclass cost transfer and the Act's rate cap." Docket No. M-00960890F0010, Order of July 11, 1997 at 41 (emphasis added). The commission made it clear in that Order that it would not accept an allocation of universal service costs on a kilowatt hour basis, but it agreed that the "nonbypassable" universal service rate mechanism envisioned in the Electric Choice Act should not be bypassable by any customer classes, as long as it did not produce impermissible cost shifting or violate the rate cap.

In light of the Commission's Generic Order rejecting a kWh allocation, OCA's expert witness on this issue, Nancy Brockway, presented in Surrebuttal Testimony an alternative allocation based on non-production revenues. OCA Statement 6S at 26-28, Exh. NB-Sur- 1. Under that methodology residential customers bear nearly 60% of universal service costs, as compared to approximately one third of such costs under the kWh allocator.

To the extent the costs that PECO will defer to a future rate case are incremental to the costs already reflected in residential rates, these incremental costs are not being “shifted” because they did not even exist at the time of the last rate case. Moreover, under the Commission’s Order, the T&D rate cap will have expired by the time PECO is permitted to claim these costs.

It is, of course, not yet clear what incremental costs PECO will claim in any future T&D rate case in 2001. Indeed, to the extent that PECO is simply being allowed to defer these costs at this time, it is not necessary to make a final determination of how these costs will be allocated in any such future case. The OCA therefore urges the Commission to reconsider and reverse its ruling that all universal service costs allowed to PECO in any future rate proceeding will be allocated to residential customers. The Commission either should approve the non-production revenue allocation proposed by OCA witness Brockway or should refrain from establishing the appropriate allocation of any deferred costs until PECO actually seeks recovery of those costs in any future rate proceeding. At that time, the amount of any claimed deferred costs will be known and it can be determined whether a particular cost allocation is just and reasonable and consistent with the terms of the Act.

E. The Commission Should Reconsider Or Clarify Its Order on Consumer Education In Order To Ensure Statewide Consumer Representation.

The OCA commends the Commission on its statewide consumer education initiative and looks forward to serving on the Committee that will direct this effort. The OCA would like to express one concern, however, regarding the composition of the Committee as set forth at page 153 of the Order. That is, the Committee does not include specific consumer

representatives who live outside the PECO service territory. Although recognizing that this effort arises from the PECO case, the OCA submits that other groups from around the state who have actively participated in the restructuring proceedings on consumer education issues should not be precluded from serving on this Committee as a result of this Order. The OCA would simply urge the Commission to leave open the possibility that the Committee can be expanded in the future to provide a regionally diverse membership that is able to respond to the specific education needs of all of Pennsylvania's consumers.

F. The OCA Seeks Reconsideration To the Extent That The Commission Order Fails To Address Certain Consumer Protection Issues.

The Commission, in its Order, has failed to deal with several key issues that the OCA believes are necessary for consumer protection and for a full and fairly operating competitive market. These issues were directly presented by PECO's tariff provisions which governed its interactions with alternative suppliers and customers, particularly customers who shopped. The OCA extensively discussed these issues in the direct and surrebuttal testimony of Barbara Alexander, and addressed certain of these issues in its Main Brief at pages 33-39.

Of particular concern to the OCA is PECO's original position regarding the termination of customers from the electricity grid for failure to pay the bill of an alternative generation supplier. PECO had agreed to modify its position as part of the Partial Settlement, but until the Company files its Compliance Tariff, the OCA does not know whether the Company intends to revert to its original position. The OCA therefore must file this Petition for Reconsideration at this time.

PECO's customer brochures and its originally proposed Credit and Collection

Guidelines indicated that PECO will disconnect 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 OCA's position as adopted in the Commission's generic order 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 was 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.

In addition, the Commission has not addressed PECO's proposal to charge customers a "switching fee" every time a customer switches suppliers or returns to default service. As set forth in the testimony of OCA witness Alexander, such fees, if set too high, can impede the development of the market by deterring customers from switching suppliers, or eating into any savings projected from the change in suppliers. 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.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the OCA respectfully requests that the Commission clarify and reconsider its Opinion and Order in the above-captioned proceeding as requested above.

Respectfully submitted,



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Dated: January 7, 1998
45172

APPENDIX 1

PECO Energy Company
Annual CTC Revenue Requirement
For Components With Only A Return Of
(\$1000)

Year	Nuclear Decom (a)	Fossil Decom (b)	PB/Lim Water Chemistry (c)	SFAS 106 (c)	SFAS 109 (c)	Comp Absences (c)	Lim 1 Decl Order (c)	Lim 2 Decl Order (c)	Other Transition Costs (d)	Total Annual Rev Req
Beginning Balance	\$ 236,929	\$ 128,605	\$ 6,692	\$ 100,580	\$ 1,687,069	\$ 16,587	\$ 18,301	\$ 67,985	\$ 32,661	\$ 329,629
1999	\$ 33,847	\$ 18,086	\$ 956	\$ 14,369	\$ 241,010	\$ 2,370	\$ 2,614	\$ 9,712	\$ 4,666	\$ 329,629
2000	\$ 33,847	\$ 18,086	\$ 956	\$ 14,369	\$ 241,010	\$ 2,370	\$ 2,614	\$ 9,712	\$ 4,666	\$ 329,630
2001	\$ 33,847	\$ 18,086	\$ 956	\$ 14,369	\$ 241,010	\$ 2,370	\$ 2,614	\$ 9,712	\$ 4,666	\$ 329,631
2002	\$ 33,847	\$ 18,086	\$ 956	\$ 14,369	\$ 241,010	\$ 2,370	\$ 2,614	\$ 9,712	\$ 4,666	\$ 329,632
2003	\$ 33,847	\$ 18,086	\$ 956	\$ 14,369	\$ 241,010	\$ 2,370	\$ 2,614	\$ 9,712	\$ 4,666	\$ 329,633
2004	\$ 33,847	\$ 18,086	\$ 956	\$ 14,369	\$ 241,010	\$ 2,370	\$ 2,614	\$ 9,712	\$ 4,666	\$ 329,634
2005	\$ 33,847	\$ 18,086	\$ 956	\$ 14,369	\$ 241,010	\$ 2,370	\$ 2,614	\$ 9,712	\$ 4,666	\$ 329,635

- (a) Refer to Schedule 4, page 1
- (b) Refer to Schedule 5, page 1
- (c) Refer to Schedule 6, page 1
- (d) Refer to Schedule 7

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

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PA. PUBLIC UTILITY COMMISSION
HARRISBURG, PA

I hereby certify that I have this day served a true copy of the foregoing document,
OCA's Petition for Reconsideration or Clarification, 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 below:

Dated this 7th day of January, 1998.

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January 7, 1998

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, PA 17120

VIA HAND DELIVERY

Re: Pennsylvania Public Utility Commission v. PECO Energy Company - Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement; Docket No. R-00973953

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

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of the Philadelphia Area Industrial Energy Users Group's Petition for Reconsideration and Clarification in the above-referenced proceeding.

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

Very truly yours,

MCNEES, WALLACE & NURICK

By


Susan E. Bruce

SEB

Enclosures

- c: Certificate of Service
- Honorable John M. Quain (via hand delivery)
- Honorable Robert K. Bloom
- Honorable John Hanger
- Honorable David W. Rolka
- Honorable Nora Mead Brownell

DOCUMENT
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.U.C.
PROTHONOTARY'S OFFICE

Application of PECO Energy Company for
Approval of its Restructuring Plan Under
Section 2806 of the Public Utility Code and
Joint Petition for Partial Settlement

: Docket No.
: R-00973953

ORIGINAL

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

: Docket No.
: P-00971265

PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP'S
PETITION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to 52 Pa. Code § 5.572, the Philadelphia Area Industrial Energy Users Group ("PAIEUG")¹ submits this Petition and respectfully requests that the Pennsylvania Public Utility Commission ("PUC" or "Commission") reconsider and clarify its Order, entered December 23, 1997, in the above-captioned, consolidated proceeding. In support thereof, PAIEUG states as follows:

I. INTRODUCTION

1. On December 3, 1996, the Electricity Generation Customer Choice and Competition Act (the "Electric Competition Act"), 66 Pa. C.S. §§ 2801, et seq., was enacted. The Electric

¹ PAIEUG is an ad hoc association of large, energy-intensive industrial and institutional consumers of electricity currently receiving service from PECO Energy Company ("PECO" or "the Company"). A membership list is attached hereto as Appendix A.

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Competition Act fundamentally restructures the manner in which retail electric service is provided in Pennsylvania by mandating the phase-in of customer choice of generation supplier, commencing January 1, 1999.

2. Section 2806 of the Electric Competition Act requires all jurisdictional electric utilities ("EDCs") in Pennsylvania to file restructuring plans for review and approval by the Commission. By Order entered January 24, 1997, at Docket No. M-00960890.F005, the Commission directed PECO to file its Restructuring Plan on April 1, 1997.

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

4. A formal Complaint was filed by PAIEUG. Numerous other parties filed Complaints or otherwise intervened in this proceeding. Twenty-five intervenors/complainants have maintained active party status.

5. With its proposed Restructuring Plan, PECO submitted the direct testimony and exhibits of seventeen witnesses. Pursuant to the litigation schedule set forth in Prehearing Order No.

2, thirteen intervening parties, including PAIEUG, submitted the direct testimony and exhibits of thirty-seven witnesses on June 20, 1997. On July 18, 1997, PECO filed rebuttal testimony and exhibits of twenty-two witnesses. PAIEUG, the Office of Trial Staff ("OTS"), the Office of the Small Business Advocate ("OSBA"), and the Mid-Atlantic Power Supply Association ("MAPSA") also filed rebuttal testimony. The Parties' testimony was supplemented by interrogatories, data requests, and informal information exchanges among the parties.

6. In accordance with the Commission's rules of practice, numerous settlement discussions were held, both in person and telephonically. As a result of these discussions, a Joint Petition for Partial Settlement ("Partial Settlement") was reached by PAIEUG, PECO, Senator Fumo, Mr. Haver, CEPA, the OTS, the Office of Consumer Advocate ("OCA"), the OSBA, the "Environmentalists," the American Association of Retired Persons ("AARP"), and the Department of the Navy ("Navy")(collectively, "Joint Petitioners"). The Partial Settlement addresses, among other issues: (1) stranded investment and securitization; (2) the CTC/intangible transition costs ("ITC") recovery method, recovery from self generators, and reconciliation; (3) rate unbundling, cost of service, and treatment of special contracts; (4) universal service, cost recovery for universal service, and suppliers of last resort obligations; (5) impact on community and economic development; as well as (6) consumer education.

7. Hearings on the Partial Settlement were held in Philadelphia on October 14 through 16, 1997. Additional pre-filed testimony was admitted into the record on behalf of PAIEUG, PECO, the OCA, Enron Energy Services Power, Inc. ("Enron"), the Environmentalists, New Energy

Ventures ("NEV"), CEPA, and AARP.

8. Surrebuttal testimony regarding PECO's rebuttal testimony was filed by a number of parties, including PAIEUG, OCA, NEV, the OTS, the OCA, and the Navy. By agreement of the parties to waive cross-examination, these documents were admitted into the record by stipulation.

9. Pursuant to the Commission's Order dated November 6, 1997, briefs were due on December 2, 1997, thereby closing the record in the instant proceeding. Numerous parties to the proceeding, including PAIEUG, filed briefs regarding PECO's Restructuring Plan, the Partial Settlement, and an Enron proposal.

10. On December 23, 1997, the Commission entered an Opinion and Order that denies approval of the Joint Petition for Partial Settlement and Application for a Qualified Rate Order. The Commission's Order further denies approval of the Petition of Enron Energy Services, Inc., for Approval of an Electric Competition and Customer Choice Plan and for Authority To Serve As the Provider of Last Resort. Instead, the Commission approved, as modified by the Commission, the Application of PECO for Approval of its Restructuring Plan.

11. PAIEUG seeks reconsideration and clarification of the Commission's Order approving, as modified, PECO's Restructuring Plan for the reasons set forth below, primarily because the Order implicitly rejects several issues negotiated by PAIEUG and addressed in the Partial Settlement for the benefit of its members and all consumers, and the Order unnecessarily creates additional uncertainty by failing to clarify or specifically addressing these same issues in approving the PECO Restructuring Plan with modifications.

II. LEGAL STANDARD

12. The Commission delineated its standard for reconsidering Orders in Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553, 559 (1982). In relevant part, the Commission stated that “[a] petition for reconsideration, under the provisions of 66 Pa C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part,” and that the Commission “expect[s] to see raised in such petitions ... new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.” Duick, 56 Pa. P.U.C. at 559.

13. PAIEUG submits that each and every argument or consideration asserted in this Petition has been overlooked or not addressed by the Commission in rendering its Order. Therefore, the standards of Duick have been met, and PAIEUG respectfully requests that the Commission exercise its discretion to grant this Petition for Reconsideration.

III. BASES FOR RECONSIDERATION

14. The Commission has failed to address, overlooked, or otherwise ignored, the treatment of specific issues that were addressed by the Partial Settlement.

a. The Commission Has Failed To Address, Overlooked, Or Ignored The Need To Specify The CTC Calculation For Special Customer Classes.

The Commission’s Order fails to specify a methodology by which PECO will calculate the CTC applicable to Special Contract Classes. As required by the Electric Competition Act, the

Commission's Order provides that all existing tariffs must remain available through the transition period and all special contracts must remain in force to permit customers under these rates to continue receiving the economic benefit. However, the Commission qualified the continued availability of existing tariffs and special contracts: "to the extent that such benefits can be applied to the regulated portion of the bill." Order, p. 117. The Commission's tag line may cause confusion and, therefore, must be clarified as set forth below.

According to the Commission's Order, PECO must file with the Commission unbundled transmission and distribution tariffs that retain the benefit of any discount properly allocated to distribution and transmission service, even if the customer chooses to purchase generation service separately. The Commission's Order, however, fails to specify the methodology by which PECO would allocate the negotiated discount among the distribution, transmission, and generation components of the service. The Commission must clarify that after PECO unbundles "special contract classes," as defined by the Commission at pages 116-125 of its Order, customers who choose an alternate supplier must pay an identical CTC/ITC produced by the unbundling of the particular "special contract class." That particular customer class may be the Large Interruptible Load Rider ("LILR"), specific Economic Efficiency Rider ("EER") contracts, or specific Rate 4.6 contracts. The Commission must provide for specific special contract unbundling to assure that special contract customers will not be penalized with a greater CTC/ITC if that customer chooses an alternate supplier.

By not specifying any methodology to determine unbundled charges, the Commission failed

to address, overlooked, or otherwise ignored the clear methodology as was set forth in the Partial Settlement. Furthermore, the Order's vagueness with respect to prescribing a method to determine unbundled charges could easily result in a violation of the Electric Competition Act's rate cap and anti-cost-shifting provisions. 66 Pa. C.S. §§ 2804(4), 2808(a).

Unlike the Commission's Order, the Partial Settlement delineates a clear methodology by which LILR, Economic Efficiency Rider ("EER"), and Rule 4.6 customers' unbundled charges and CTC/ITC responsibility are derived. Partial Settlement, ¶ 12. PAIEUG submits that the methodology proposed by the Partial Settlement would eliminate any uncertainty with respect to calculating unbundled charges and CTC/ITC responsibility and the potential of a customer paying a greater CTC by choosing an alternate supplier rather than remaining with its respective electric distribution company, which discourages the development of a robust competitive market.

Thus, PAIEUG respectfully requests the Commission to clarify the stranded cost collection methodology for Rate LILR, EER, and Rule 4.6 contract customers in a manner consistent with the intent of paragraph 12 of the Partial Settlement.

b. The Commission's Order Has Overlooked Or Ignored The Benefit Of Extending The Generation Rate Cap, As Provided in the Partial Settlement.

By approving the expiration of PECO's generation rate cap on December 31, 2005, Order, p. 110, the Commission overlooked the clear benefit of extending the generation rate cap to December 31, 2008, as provided in the Partial Settlement. Partial Settlement, ¶ 9. The Partial Settlement extended the rate cap to coincide with the CTC/ITC collection period. Capping

generation rates for a longer period ensures lower maximum rates for all of the Commonwealth's electricity customers, including the Commonwealth's industrial customers. In drafting the Electric Competition Act, the legislature clearly recognized the importance of containing the cost of electricity: "[t]he cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth." 66 Pa. C.S. § 2802(6).

In addition to containing electricity costs, extending the generation rate cap facilitates a more orderly transition to a competitive generation market. Section 2804(14) of the Electric Competition Act specifically directs that "[t]he transition to a competitive generation market shall be orderly [and] ... fair to ratepayers." Generation rate caps merely impose a rate ceiling to protect ratepayers while a competitive generation market is born. As the competitive generation market develops, a rate ceiling will eventually become unnecessary as competitive forces drive down the price of generation. Nevertheless, neither the Commission, nor any other party, can realistically anticipate the timing for a truly competitive generation market; therefore, consumer protections are essential to ensure an orderly transition to a competitive marketplace and fairness to ratepayers during that transition.

By failing to address, and summarily dismissing, the Partial Settlement's proposal to extend the generation rate cap to December 31, 2008, consistent with the CTC/ITC collection period, the Commission has overlooked the benefits to the Commonwealth's ratepayers of extending the generation rate cap. Given that the rate cap is intended to facilitate an orderly transition to a competitive generation market, it is logical to continue to cap rates for at least the entirety of the

CTC/ITC collection period. The Commission's failure to address the propriety of extending the transition to a competitive generation market by extending the generation rate cap until December 31, 2008, consistent with the CTC/ITC collection period, therefore wholly contravenes the legislature's intent to lower the cost of electricity and the Commission's responsibility to provide for an orderly transition to a competitive market while ensuring fairness to ratepayers.

Thus, PAIEUG respectfully requests the Commission to reconsider its Order with respect to PECO's generation rate cap in light of the benefit of extending the generation rate cap for the duration of the CTC/ITC collection period, as provided in the Partial Settlement. Based on the Commission's Order, the rate cap should be extended to June 30, 2007.

c. The Commission Has Overlooked Or Ignored The Need To Assure The Continued Availability At Current Rate Levels Of The Large Interruptible Load Rider.

The Commission's Order overlooks the negative impact of its limitation on the continued availability of the LILR at January 1, 1997, rate levels. While the Partial Settlement assured the LILR's continued availability at current rate levels through at least December 31, 2008, the Commission's Order fails to guarantee the availability of the LILR after June 30, 2007 and, even worse, eliminates the *LILR rate cap* on December 31, 2005, instead of December 31, 2008. As set forth above, that rate cap should extend at least until June 30, 2007.

In its Order, the Commission expressly recognized the importance of interruptible service. The Commission noted that interruptible service provides customers "with an opportunity to save because they do not contribute to more expensive peak loads." Additionally, interruptible service,

as stated by the Commission, “provides an important reliability benefit to all consumers because it provides an organized way to reduce load under peak demand.” Order, p. 118.

Although the Commission acknowledged the clear benefits of LILR service, especially with respect to the opportunity for LILR customers, such as the members of PAIEUG, to conserve energy costs, the Commission failed to address the Partial Settlement’s proposal, which assures the availability of LILR service and rate levels at least through December 31, 2008. By not addressing the Partial Settlement’s proposal guaranteeing the continued availability of LILR service and rate levels through at least December 31, 2008, the Commission ignored the Electric Competition Act’s intent to ensure lower electricity costs throughout the transition period and the Act’s awareness that high electricity costs severely impact the Commonwealth’s industrial customers.

Thus, PAIEUG respectfully requests the Commission to reconsider its Order with respect to the availability at current rate levels of the LILR in light of the benefit of continuing the availability of the LILR at current rate levels, as provided in the Partial Settlement, for the duration of the CTC/ITC collection period, until June 30, 1997.

d. The Commission Has Failed To Address, Overlooked, Or Otherwise Ignored The Ratepayer Benefits Of Extending The Transmission And Distribution Rate Cap.

The Commission failed to address, overlooked, or otherwise ignored the benefit to ratepayers of the Partial Settlement’s proposal to extend the transmission and distribution rate cap through January 1, 2004. Partial Settlement, ¶ 9. The Commission’s Order does not extend the transmission and distribution rate cap beyond mid-2001. Order, p. 49. As a result, PECO can, and most likely

will, seek a transmission and distribution rate increase in 2001 whereas the Partial Settlement would prohibit such a rate increase until 2004. Therefore, the Commission's Order lacks the price certainty guaranteed by the Partial Settlement.

Thus, PAIEUG respectfully requests the Commission to reconsider its ordered expiration date of PECO's transmission and distribution rate cap in light of the advantage of price certainty, as provided in the Partial Settlement, and extend the transmission and distribution rate cap to January 1, 2004.

e. The Commission Has Failed To Address, Overlooked, Or Otherwise Ignored The Competitive Advantages Of The Partial Settlement's Manner Of Phasing In Retail Access.

The Commission's Order fails to address, overlooks, or otherwise ignores the competitive disadvantages of its method of phasing-in customer choice. The Commission properly accelerated the phase-in of customer choice such that one-third of the peak load of each class will have access January 1, 1999, two-thirds will have access on January 2, 1999, and all customers will have access on January 2, 2000. However, the Commission Order utilizes a first-come-first-serve approach; if the percentages are exceeded in the sign-up period, a lottery will be conducted. The Commission's methodology may prevent customers from directly accessing competitive generation until January 2, 2000. In such cases, the Commission's approach will result in competitive disadvantages to industrial customers unable to shop for competitive electric generation with respect to similarly situated customers with direct access who are able to purchase generation service from a competitive supplier and use those savings to lower prices and take market share from a competitor.

Unlike the Commission's first-come-first-serve approach, the Partial Settlement guarantees each customer in the industrial rate class direct access for at least the above percentages of their load on each respective date. Specifically, the Partial Settlement provides that "[w]ith respect to Rate HT and PD customers ..., if the individual customer peak load subscriptions exceed the class peak load limitation for one or more of these steps, then each customer's subscription will be reduced pro rata to meet the class peak load limitation." Partial Settlement, ¶ 15. The Commission has failed to address, overlooked, or otherwise ignored that the Partial Settlement's approach would foreclose any competitive disadvantages among similarly situated industrial customers.

Thus, PAIEUG respectfully requests the Commission to reconsider its methodology of phasing in retail access in light of the competitive advantage of the Partial Settlement's methodology of phasing in retail access by adopting the language cited above from the Partial Settlement.

f. The Commission Has Failed To Address, Overlooked, Or Otherwise Ignored The Billing Determinants And The Discount Rate Contained In The Partial Settlement.

The Commission's Order fails to specify the billing determinants or discount rate necessary to quantify the present value of the CTC stream. The Commission's Order retains a concept from the Partial Settlement that permits individual customers to agree to a payment schedule that would fully collect the present value of the CTC stream. Order, p. 120. However, the Commission's Order does not specify any billing determinants or the discount rate as the Partial Settlement does. Specifically, the Partial Settlement provided that all rate HT, LILR, Rule 4.6, EER customers may pay applicable CTC charges in one mutually acceptable lump sum, using the

customer's most recent twelve (12) months of demand and energy usage as billing determinants. The Partial Settlement further provides that the discount rate is PECO's after-tax cost of capital. Partial Settlement, ¶ 12. By not specifying the billing determinants nor the discount rate, the Commission has failed to address or overlooked the manner in which the present value of the CTC can be determined.

Thus, PAIEUG respectfully requests the Commission to clarify the proper billing determinants or discount rate to quantify the present value of the CTC stream in a manner consistent with the Partial Settlement as described above.

g. The Commission Has Failed To Address, Overlooked, Or Otherwise Ignored The Partial Settlement's Benefit Of Assuring Payment Of One-Third Of An Applicable CTC For New Self-Generation.

The Commission failed to address, overlooked, or otherwise ignored a substantial benefit of the Partial Settlement, which assured payment of only one-third of the otherwise applicable CTC for new on-site generation that was being considered prior to December 31, 1996. Section 2808(a) of the Electric Competition Act specifies that "if a customer installs on-site generation which operates in parallel with other generation on the public utility's system and which significantly reduces the customer's purchases of electricity through the transmission and distribution network, the customer's fully allocated share of transition or stranded costs shall be recovered from a customer through a competitive transition charge." By limiting the imposition of CTCs where on-site generation facilities have been newly installed, the Partial Settlement encourages the construction of efficient generation facilities that were under serious consideration on December 31,

1996, or before the Electric Competition Act was passed. Joint Petition, ¶ 13. The Commission's failure to adopt the Partial Settlement's reduction in stranded cost collection for on-site generation facilities therefore ignores the benefit of the Partial Settlement's encouragement of efficient generation facilities.

Thus, PAIEUG respectfully requests the Commission to reconsider the level of CTCs imposed as a result of new self-generation in light of the benefit of reducing the CTC obligation, as was provided for in the Partial Settlement.

h. The Commission Has Failed To Address, Overlooked, Or Otherwise Ignored The Guaranteed Benefits Of The Partial Settlement's Assured Rate Reductions.

The Commission's Order fails to address, overlooks, or otherwise ignores the reality that the competitive market will not develop immediately. The Commission's Order establishes a system average "shopping credit," to vary by customer class, of approximately 4.46¢/kWh, which the Commission posits will permit customers to realize a 15% rate reductions in 1999 assuming a market price of 3.0¢/kWh. Order, p. 46. Notably, the Commission's Order does not guarantee any rate reduction to consumers. In fact, given that the market prices generated by the OCA, which produced the stranded generation cost reduction, are substantially less than the 4.46¢/kWh shopping credit, the 4.46¢/kWh will likely become the market standard, and customer rate reductions will be substantially below the 15%, and probably below the 10%, guaranteed in the Partial Settlement with securitization, and the 7% guaranteed in the Partial Settlement without securitization. The Commission has failed, therefore, to address, overlooked, or otherwise ignored, the benefits of the

Partial Settlement's proposal which guarantees a 10% customer rate reduction for all customers.

Thus, PAIEUG respectfully requests the Commission to reconsider its failure to guarantee rate reductions, as provided in the Partial Settlement.

i. The Commission Has Failed To Address, Overlooked, Or Otherwise Ignored The Effect of Applying A Return To The Recovery Of The Net Present Value Of SFAS 109 Amounts.

The Commission failed to address, overlooked, or otherwise ignored the impact of allowing a return on PECO's recovery of deferred SFAS 109 regulatory assets. In its Order, the Commission correctly concludes that the SFAS 109 taxes are a regulatory asset that should be quantified on a net present value ("NPV") basis, as required by section 2808 of the Electric Competition Act. Order, p. 69. However, as with other stranded costs, the Commission provided PECO with a return on the SFAS 109 amount. Order, p. 104. All parties to the proceeding agree, however, that no return should be applied to the SFAS 109 amount because applying a return to the SFAS 109 NPV amount negates the discounting effect of the NPV calculation. The quantification of the NPV of the SFAS 109 regulatory asset already considers the future amounts and pattern of recovery to which PECO is entitled. PAIEUG St. No. 3, p. 14. Consequently, applying a return to the NPV amount would negate the discount inherent in the NPV calculation.

Thus, PAIEUG respectfully requests the Commission to reconsider its Order, which allows a return on PECO's recovery of deferred SFAS 109 taxes, because such a return negates the discounting inherent in the calculation of the SFAS 109's net present value.

j. The Commission Has Failed To Address, Overlooked, Or Ignored The Specification Of The Proper Time Period To Use To Determine Net Present Value For The SFAS 109 Regulatory Asset.

The Commission failed to address, overlooked, or otherwise ignored the necessity of specifying the proper time period to determine NPV. Although PECO submitted that the NPV should be a function of the CTC recovery period, PAIEUG recommended that the NPV should be a function of the life of the asset. As expressed by PAIEUG witness Mr. Lane Kollen, the “net present value cannot and should not be a function of the CTC recovery period, but rather independently should be computed based upon its entitlement under traditional regulation.” PAIEUG St. No. 3, p. 14. The PAIEUG position is in accordance with traditional regulation of SFAS 109 costs. Mr. Kollen notes that traditional regulation provides for recovery of the SFAS 109 asset over the underlying service lives of the physical assets.

To compute the NPV of the SFAS asset over the seven year transition period would also “impose severe economic harm on customers, a result that could not reasonably have been intended under the Act.” PAIEUG St. No. 3S, p. 4 The imposition of such economic hardship was clearly not the intent of the Electric Competition Act. The Act specifically recognizes electricity costs as being an important factor for businesses to remain in, or migrate from, Pennsylvania. 2802(6). Furthermore, the Act directs the Commission to be fair to Commonwealth ratepayers during the transition to a competitive market. To compute NPV over the CTC recovery period would therefore wholly contravene the Act’s intent of promoting industry in the Commonwealth by lowering electric costs and being fair to the Commonwealth’s ratepayers.

Thus, PAIEUG respectfully requests the Commission to clarify that the proper time period to use to determine the net present value of the SFAS 109 regulatory asset is the remaining service life of the underlying asset.

IV. CONCLUSION

15. This Petition for Reconsideration and Clarification should be granted as the Commission failed to address, overlooked, or ignored arguments material to the Commission's duty to protect the public interest and, specifically, PECO's ratepayers. The Commission's decision creates greater uncertainty with respect to implementation of PECO's Restructuring Plan. Customers have less certainty with rate reductions, less certainty with CTC/ITC levels, less certainty with rate caps on transmission and distribution, and less certainty with rate caps throughout the transition period for generation.

PAIEUG respectfully requests that the Commission reconsider its Order in light of the guaranteed customer benefits that were contained in the Partial Settlement. Whereas the Commission's action depends heavily upon a robust retail generation market developing immediately, the above mentioned provisions of the Partial Settlement guarantee rate reductions to retail customers while providing for an orderly transition to a robust competitive generation market. Consequently, the above-mentioned provisions of the Partial Settlement can be incorporated into the Commission's Order and promote the express purposes of the Electric Competition Act: rate reductions and an orderly transition to a competitive generation market. These provisions should be incorporated into the Commission's Order as set forth in this Petition to serve consumer desires

as expressed throughout this proceeding.

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission reconsider and clarify its Order entered on December 23, 1997, in this proceeding as follows:

- (1) Clarify the stranded cost collection methodology for Rate LILR, EER, and Rule 4.6 contract customers in a manner consistent with the intent of paragraph 12 of the Partial Settlement;
- (2) Reconsider its ordered expiration date of PECO's generation rate cap in light of the benefit of extending the generation rate cap for the duration of the CTC/ITC collection period;
- (3) Reconsider continuing the LILR at current rate levels in light of the benefits of continuing the availability of the LILR at current rate levels for the duration of the CTC/ITC collection period, as provided in the Partial Settlement;
- (4) Reconsider its ordered expiration date of PECO's transmission and distribution rate cap in light of the benefit of price certainty, as provided in the Partial Settlement, and extend the transmission and distribution rate cap to January 1, 2004;
- (5) Reconsider its methodology of phasing in retail access in light of the competitive advantages of the Partial Settlement's methodology of phasing in retail access by adopting language from the Partial Settlement;
- (6) Clarify the proper billing determinants or discount rate necessary to quantify the

- present value of the CTC stream consistent with the Partial Settlement;
- (7) Reconsider the level of CTCs imposed as a result of new self-generation in light of the benefit of reducing the CTC obligation for newly installed cogeneration, as provided in the Partial Settlement;
 - (8) Reconsider its failure to guarantee rate reductions as provided in the Partial Settlement;
 - (9) Reconsider its Order allowing a return on PECO's recovery of deferred SFAS 109 taxes because such a return negates the discounting inherent in the calculation of the SFAS 109's net present value; and
 - (10) Clarify that the proper time period to use to determine the net present value of the SFAS 109 regulatory asset is the remaining service life of the underlying asset.

Respectfully submitted,

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APPENDIX "A"

CERTIFICATE OF SERVICE

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

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Page 2

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Page 4

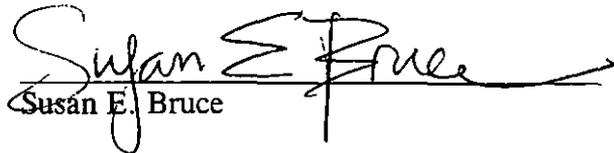
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JAN 7 1998

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PROTHONOTARY'S OFFICE

Direct Dial:

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ORIGINAL

January 7, 1998

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

FEDERAL EXPRESS

KJR

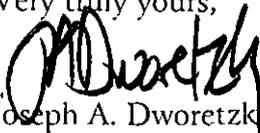
Re: PECO Energy Company's Application for Approval of its Restructuring Plan and Joint Petition for Partial Settlement, R-00973953; Petition of Enron Energy Services Power, Inc., for Approval of an Electric Competition and Choice Plan and for Authority Pursuant to Section 2807(e)(c) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, P-00971265

Dear Mr. McNulty:

Kindly accept for filing the original plus three copies of New Energy Ventures' Petition for Reconsideration of Order Approving Modified Restructuring Plan for PECO Energy to be filed in the above proceedings. We have enclosed an extra copy of this document to be time-stamped and returned to us in the enclosed, self-addressed stamped envelope.

A copy of this document has been served on all known parties in these proceedings

Very truly yours,


Joseph A. Dworetzky

JAD:kbs

encl.

cc: Certificate of Service (w/encl.)

DOCUMENT
FOLDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

PECO Energy Company's Application :
for Approval of its Restructuring Plan :
and Joint Petition for Partial Settlement :

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 :

P-00971265

RECEIVED

JAN 7 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

**NEW ENERGY VENTURES'
PETITION FOR RECONSIDERATION OF ORDER
APPROVING MODIFIED RESTRUCTURING PLAN FOR PECO ENERGY**

NEV East, LLC ("NEV") respectfully requests the Commission to reconsider its Opinion and Order entered on December 23, 1997 (the "Opinion") and in support thereof states as follows:

BACKGROUND

1. In its Order, the Commission rejected a proposed Partial Settlement by and among PECO Energy Company ("PECO") and various parties in its restructuring case (the "Partial Settlement"). The Commission also rejected a petition by Enron Energy Services Power, Inc. ("Enron") to serve as provider of last resort. NEV does not seek reconsideration with respect to either of these determinations.

DOCKETED
JAN 08 1998

**DOCUMENT
FOLDER**

2. After rejecting the Partial Settlement and Enron's petition, the Commission considered PECO's original restructuring proposal. The Commission then exercised its power to modify PECO's original restructuring plan and approved the plan as so modified. While NEV believes the Commission acted properly determining to modify the restructuring plan, it believes that there are several specific areas in which the Commission's modifications are inconsistent with the Competition Act or with other provisions of the Order and should be reconsidered.

SPECIFIC PROVISIONS

3. NEV requests the Commission to reconsider the following provisions of the Order:

A. Discount Rate. The Commission properly determined that an appropriate discount rate was not PECO's own cost of capital but rather a rate reflective of the cost of debt. Based on that determination, the Commission used PECO's long term debt rate as the appropriate discount rate. The Commission, however, referenced PECO's pre-tax cost of debt without specifically noting the adjustment necessary to adjust for the tax benefits PECO would enjoy from interest deductions on long term debt.

PECO has a combined Federal and state effective income tax rate of 41.493%. PECO Statement 11-R, Exhibit JFBr-1 Schedule 1 note (3). Because PECO

benefits by deducting interest paid on its long term debt, it is appropriate to use PECO's after tax cost of long term debt. The Commission should explicitly require the 7.47% rate be adjusted to reflect the tax benefits PECO would receive from deducting interest payments. After such adjustment, the after tax cost would be approximately 4.37%.¹ This rate should be used as the appropriate discount rate, particularly if the Commission provides PECO with 100% recovery of stranded costs as the Order currently permits.

B. Transmission And Distribution. NEV joins in and adopts Enron's position in its Petition for Reconsideration with respect to the portions of the Commission's Order relating to (i) reallocation of generation costs included in transmission and distribution; and (ii) allowance of additional stranded costs resulting from reallocation of administrative and general expenses.

C. Mitigation. NEV joins in and adopts Enron's position in its Petition for Reconsideration with respect to a downward adjustment to PECO's stranded costs because of its inadequate mitigation efforts.

D. Metering and Billing. NEV joins in and adopts Enron's position in its Petition for Reconsideration with respect to metering and billing (except to the extent that the issues are resolved in the pending Rulemaking).

¹ $7.47\% \times .58507 = 4.37\%$

CONCLUSION

For the reasons set forth above, NEV respectfully requests the Commission to reconsider and modify its Order as described above.

Dated: January 7, 1998



Joseph A. Dworetzky
John P. Lavelle, Jr.
Luke E. Dembosky
Hangley Aronchick Segal & Pudlin
One Logan Square, Twelfth Floor
Philadelphia, PA 19103

Counsel for New Energy Ventures

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

PECO Energy Company's Application : R-00973953
for Approval of its Restructuring Plan :
and Joint Petition for Partial Settlement :

Petition of Enron Energy Services Power, Inc., : P-00971265
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 :

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 1998, I caused a true and correct copy of New Energy Ventures' Petition for Reconsideration of Order Approving Modified Restructuring Plan for PECO Energy via telecopy and regular mail, upon the following counsel as noted. I further certify that the manner of service satisfied the requirements of 52 PA. Code §§ 5.75 and 1.54.

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

The Honorable Marlane R. Chestnut
Administrative Law Judge
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Democratic Committee on
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Vice President, General Counsel
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Alexandria, VA 22314

Sam DeFrawi, Esquire
United States Navy Rate
Intervention
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Stephanie Sugrue, Esquire
Mary Ann Ralls, Esquire
Duane, Morris & Heckscher L.L.P.
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Washington, DC 20006

Date: January 7, 1998



Joseph A. Dworetzky

**Alan J. Barak,
Attorney at Law**

1417 Blue Mtn Pkwy
Harrisburg PA 17112

717-540-5106 v.
717-652-6899 f. short
717-541-1970 f. long
barak@igc.apc.org

KJR

KJP

ORIGINAL

January 7, 1998

Prothonotary
Pennsylvania Public Utility Commission
North Office Building
P O Box 3265
Harrisburg PA 17105-3265

By hand delivery

RECEIVED
98 JAN - 7 PM 4: 10
PA P.U.C.
PROTHONOTARY'S OFFICE

RE: The PECO Energy Co. Restructuring Application
Docket No. R-00973953, P-00971265 (consolidated)

Environmentalists' Appearance, Substitution and Withdrawal of counsel

Dear Sir:

Enclosed please find the: (1) appearance of Roger E. Clark; (2) substitution of Mr. Clark as counsel for the Environmentalists in the above-cited case; and (3) withdrawal of Mr. Barak as counsel.

The document requests that, for the service list, you: (a) remove from the service list Mr. Barak's service address of 1417 Blue Mtn Pkwy; (b) maintain and/or add as a service address "Attorney of Record, Environmental Energy Project", 3700 Vartan Way, Harrisburg PA 17110; and (c) add Mr. Clark's service address of Roger E. Clark, 905 Denston Drive, Ambler, PA 19002 (215-643-2364 phone; 215-628-2630 fax; rclark@libertynet.org).

Please stamp as filed the enclosed office copy and return it to us. We are serving each of the active parties to the case, per the service list.

Very truly yours,

Alan J. Barak,
Attorney at Law

DOCUMENT
FOLDER

cc: All parties identified for the long service list
C:\PENNRG\LITIGWITHDRAWRTW11P.WPD

17

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY :
COMPANY FOR APPROVAL OF :
ITS RESTRUCTURING PLAN :

DOCKET NO. R-00923953

PETITION OF ENRON ENERGY :
SERVICES POWER, INC. FOR :
APPROVAL OF AN ELECTRIC :
COMPETITION AND CUSTOMER :
CHOICE PLAN :

DOCKET NO. P-0097265
(consolidated)

RECEIVED
99 JAN -7 PM 4:10
P.A.P.C.'S OFFICE
PENNSYLVANIA

ENVIRONMENTALISTS' APPEARANCE,
SUBSTITUTION AND WITHDRAWAL OF COUNSEL

PLEASE TAKE NOTICE OF THIS RESTATED APPEARANCE of Roger E. Clark as counsel for the Environmentalists parties in the above-captioned docket. Mr. Clark is licensed to practice law in the Commonwealth of Pennsylvania, was the Chief Counsel of the Pennsylvania Energy Office, and has practiced before the Commission since 1980. Mr. Clark has served as lead counsel for the Environmentalists parties in the above-listed dockets throughout this restructuring case.

PLEASE TAKE NOTICE OF THIS SUBSTITUTION of Mr. Clark as counsel for the Environmentalists parties in the above-captioned docket. Counsel Barak and Clark hereby state that they have informed the Environmentalists clients of the proposed substitution of counsel and that there is no objection to this substitution.

PLEASE TAKE NOTICE THAT ALAN J. BARAK HEREBY WITHDRAWS as counsel herein for the Environmentalists parties.

The Environmentalists parties hereby request that, for the service list, this Honorable Commission:: (a) remove from the service list Mr. Barak's service address of 1417 Blue Mtn Pkwy, Harrisburg PA 17112; **(b) maintain and/or add** as a service

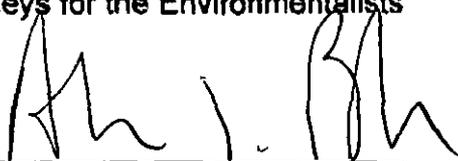
LOCKETED
JAN 13 1998

DOCUMENT
FOLDER

Environmentalists' appearance, substitution and withdrawal of counsel
page 2

address "Attorney of Record, Environmental Energy Project", 3700 Vartan Way,
Harrisburg PA 17110; and (c) add Mr. Clark's service address of Roger E. Clark, 905
Denston Drive, Ambler, PA 19002-3901 (215-643-2364 phone; 215-628-2630 fax;
rclark@libertynet.org).

Respectfully submitted,
Attorneys for the Environmentalists



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Alan J. Barak, Atty at Law

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Pa. Sup Ct. 67886

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717-652-6899 (fax short)

717-541-1970 (fax long)

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Roger E. Clark, Atty at Law

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Pa. Sup Ct. 24852

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Dated: January 7, 1998

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF PECO ENERGY :
COMPANY FOR APPROVAL OF : Docket No. R-00973953
ITS RESTRUCTURING PLAN :

PETITION OF ENRON ENERGY :
SERVICES POWER, INC. FOR : Docket No. P-00971265
APPROVAL OF AN ELECTRIC : (consolidated)
COMPETITION AND CUSTOMER :
CHOICE PLAN :

CERTIFICATE OF SERVICE

I hereby certify that I did on this 7th day of January, 1998 cause to be served the foregoing document in the above-captioned proceedings upon the following persons and in the manner outlined below:

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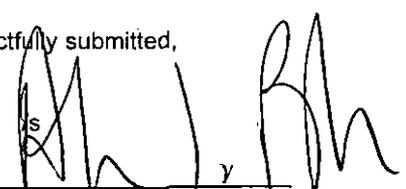
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Respectfully submitted,


Alan J. Barak (Sup. Ct. 67886)
Attorney for the Environmentalists
Penn Energy Project
1417 Blue Mountain Parkway
Harrisburg, PA 17112

v. 717-540-5106
f. 717-541-1970

DATE: January 8, 1998

KJR

SUBJECT: Petitions for Rehearing, Reconsideration,
Clarification and/or Amendment of the
Commission's Order Entered December 23, 1997
Docket No. R-00973953

TO: Office of Special Assistants

FROM: *WJZ* James J. McNulty, Secretary

DOCUMENT
FOLDER

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

Copies of Petitions for Reconsideration,
Clarification, etc., filed in connection with the above
docketed proceeding have already been forwarded to your
Office and the Offices listed below, filed by the
following parties:

PECO ENERGY COMPANY;
CEPA, TAG, ACORN AND JOHN W. LONG;
ENRON ENERGY SERVICES POWER, INC.;
OFFICE OF CONSUMER ADVOCATE;
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP;
AND NEW ENERGY VENTURES'

This matter is assigned to your Office for
appropriate action.

cc: Chairman and Commissioners
Bureau of Fixed Utility Services
Communications - Kevin Cadden
Law Bureau
Office of Administrative Law Judge

DOCKETED
JAN 08 1998

wjz