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KJR

R-973953

- The Commission granted PECO Energy \$5.0248 billion in stranded costs. Although the Joint Partial Settlement places the request at \$5.461 billion for stranded costs, PECO Energy witnesses state that the amount to be calculated is between \$5.9 and \$6.05 billion.
- The Motion approved today provides for stranded cost recovery over 8.5 years. The Joint Partial Settlement provides for stranded cost recovery over 10 years. This change represents savings to customers of approximately \$1 billion.
- The Motion approved today provides for stranded cost reconciliation. The Joint Partial Settlement did not contain a true up for stranded costs which is required by law.
- The Motion approved today sets a shopping credit for PECO residential customers at 5.2¢ per KWH. If the price of energy on the PJM system is 3¢ per KWH, the savings achieved is more than 15%. The Joint Partial Settlement provided for only a 7% decrease in rates for 28 months.
- One third of the customers will get to choose their electric supplier on January 1, 1999, one third on January 2, 1999 and the final one third on January 1, 2000. Under the Motion approved today, it is recommended that customers who cannot shop until January 1, 2000 are granted a rate reduction of 7% by January 1, 1999. The Joint Partial Settlement provides for a phase in beginning September 1998. The Commission cannot order, but recommends, that the September 1998 phase in be continued.
- The Motion provides that the first two thirds will be determined through open enrollment which will begin March 1, 1998.
- The Motion approved today puts the Transmission and Distribution (T&D) rate at 2.93¢ on a systemwide basis. The Transmission and Distribution (T&D) rate in the Partial Settlement was 3.11¢ per KWH.
- The Motion approved today provides for \$25 million for consumer education and defines the parameters of both a statewide and local education effort. The Joint Partial Settlement provides for \$25 million for consumer education including a statewide fund.
- The Motion approved today increases the Customer Assistance Program to at least 80,000 accounts with no limit on the number who may enroll. The Joint Partial Settlement increases the customer assistance program to 80,000 with a cap at 100,000.
- The Motion approved today increases LIURP funding to \$5.6 million and includes a pilot program for renewable energy. The Joint Partial Settlement proposes \$2.8 million for a low income usage reduction program (LIURP).

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January 20, 1998

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

DOCKETED
FEB 05 1998

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

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Dear Secretary McNulty:

On January 23, 1998, the Harrisburg Office of Wolf, Block, Schorr and Solis-Cohen will move from its present location to Suite 300 of the Locust Court Building at 212 Locust Street. Our mailing address will be:

Wolf, Block, Schorr and Solis-Cohen LLP
Locust Court Building, Suite 300
212 Locust Street
Harrisburg, PA 17101

Please note, our telephone and fax numbers will not change.

Very truly yours,

Daniel Clearfield *cd*

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

cc: All Parties of Record

DSH:10848.1

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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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REFER TO OUR FILE

R-00973953

January 23, 1998

DOCKETED
FEB 6 1998

PECO ENERGY COMPANY
2301 MARKET STREET
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ATTENTION: Mr. Alfred A. Miller

Re: Compliance Filing of PECO Energy Company

Dear Mr. Miller:

KJR

In order for us to complete our analysis of the PECO Energy Company compliance filing, answers to the enclosed data requests are required by the Energy Section. This information is necessary for the completion of our recommendation to the Commission.

An early and expeditious conclusion of your requested filing is dependent upon full and responsive answers to the enclosed data requests which should be received no later than five (5) calendar days from the date of this letter. Answers to these data requests need not be typed. It is requested that each answer be numbered to correspond to the appropriate data request and four copies be provided to:

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pa. 17105-3265

DOCUMENT
FOLDER

Attention: Thomas P. Maher, Analyst III
Energy Industry
Bureau of Fixed Utility Services

If any clarification of these data requests is required, please contact the above staff person.

Thank you for your cooperation in the foregoing matter.

Sincerely,

Robert J. Bennett, Manager
Energy Section
Bureau of Fixed Utility Services

PECO Energy Company
Bureau of Fixed Utility Services
Data Requests Regarding
R-00973953 Compliance

Analyst: T. Maher
January 23, 1998

- FUS-1. Please refer to the Stranded Investment Recovery Schedule/Calculations section of the Compliance Filing and provide the following additional information:
- a. Regarding the calculation of accumulated deferred taxes please explain the relationship of 43.43% to 1) the net (market value) subject to tax/book timing difference. of \$572,096 and 2) the estimated accumulated deferred tax of \$248,465.
 - b. Please provide all calculations and assumptions used to develop the 43.43%.
 - c. Please provide the rationale for including this adjustment for deferred taxes of \$176,685,481 as an additional stranded cost.
 - d. Please explain and demonstrate how T&D rates have been reduced to reflect the shift of accumulated deferred taxes of \$176,685,481.
 - e. Please provide a detailed schedule to support and reconcile the \$5,146,508,000 stranded investment presented on page one of nine, to the Commission allowance of \$4.935 billion as stated in the Appendix to the Commission's January 16, 1998, Order.
 - f. Regarding the calculation of return on unrecovered stranded investment, please explain in detail why 10.31% is utilized while the Commission's Order states 7.47% as the appropriate interest rate.
- FUS-2. Refer to the proof of revenue regarding the system CTC of 2.77¢ and the Rate R CTC, of 3.365¢ [$\$259,152 / 7,699,431 \text{ MWh} = 3.365\text{¢}$] and explain why the Rate R CTC exceeds the system CTC by 21.48% $\%, [(3.365\text{¢} - 2.77\text{¢}) / 2.77\text{¢} = 21.48\%]$, in lieu of being no greater than 12.57% as stated within the Commission's Order at page 25.
- FUS-3. Refer to the Stranded Investment Recovery Schedule/Calculations section of the compliance filing and provide an amortization table to support PECO's 1999 annual CTC revenue of \$929,760,000. Also, please provide an

amortization table to show the annual CTC revenue using the 7.47% as directed by the Commission's January 16, 1998, Order.

- FUS-4. Please provide a detailed calculation of shopping credits as required by the Commission's December 23, 1997, Order at page 44.
- FUS-5. Please explain in detail and provide supporting calculations to demonstrate the transition of the average T&D rate from 2.93¢ to 2.97¢
- FUS-6. Refer to Original Page No. 54 of Tariff No. 3. Provide an explanation/calculation to support each of the following charges:
- a. Variable Distribution Charge
 - b. Competitive Transition Charge
 - c. Energy and Capacity Charge
- FUS-7. Refer to Original Page No. 55 of Tariff No. 3. Provide an explanation/calculation to support each of the following charges:
- a. Variable Distribution Charge
 - b. Competitive Transition Charge
 - c. Energy and Capacity Charge
- FUS-8. Refer to Original Page No. 56 of Tariff No. 3. Provide a detailed explanation to justify all discrepancies between the riders and the rates to which the riders apply under Tariff No. 3 as compared to the riders and the rates to which the riders apply under Tariff No 2.
- FUS-9. Refer to Original Page 58 of Tariff No. 3. Provide an explanation/calculation to justify each rate under Firm Back-Up Power and Interruptible Back-Up Power.
- FUS-10. Refer to Original Page 64 of Tariff No. 3. Provide an explanation to support the new language under the Curtailment HT Rider which restricts this rider to customers under contract on or before April 1, 1998.
- FUS-11. Refer to Original Page 64 of Tariff No. 3. Provide an explanation to support the \$24.00 penalty for failure to curtail. Why is there no penalty in Tariff No. 2?
- FUS-12. Provide an explanation as to why the Electric Vehicle Charging Rider is not included in Tariff No. 3.

- FUS-13. Refer to Original Page No. 70 of Tariff No. 3. Provide explanation/calculation to support each of the rate reductions indicated under Variable Distribution Service, CTC and Energy and Capacity.
- FUS-14. Refer to Original Page No. 75. Explain why the load requirement under Option 2 was decreased from 7,500 kW to 1,000 kW.
- FUS-15. Are the proposed rates in the Retail Transmission Services Rider identical to those in the PJM Open Access Tariffs? If not, provide a detailed explanation of the differences, along with any pertinent calculations / reconciliations.
- FUS-16. Provide the basis for the following statement: "The Commission, however, apparently has concluded that under the Competition Act it does have jurisdiction over unbundled, end-use transmission rates, or that PECO must have tariffed transmission rates on file with the Commission in order to charge retail customers for transmission service."

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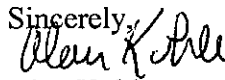
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RE: Application of PECO Energy Company
for Approve of its Restructuring Plan Under
Section 2806 of the Public Utility Code and
Joint Petition for Partial Settlement
Docket No. R-00973953

Dear Mr. McNulty:

Enclosed for filing please find an original and 10 copies of Enron's Comments to PECO Energy Company's Compliance Tariff in the above-captioned action. As indicated on the attached Certificate of Service, copies of this document is being served this day on the parties in the manner indicated.

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

Sincerely,

Alan Kohler

For WOLF, BLOCK, SCHORR and SOLIS- COHEN LLP

AK/cln
Enclosure

cc: All Parties of Record w/enc.
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Hon. Nora Mead Brownell, w/enc.
Hon. John Hanger, w/enc.
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company :
for Approval of its Restructuring Plan :
Under Section 2806 of the Public :
Utility Code :

Docket No. R-00973953

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PA PUBLIC UTILITY COMMISSION
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**ENRON'S COMMENTS TO
PECO ENERGY COMPANY'S COMPLIANCE TARIFF**

I. INTRODUCTION

Enron Energy Services Power, Inc. and Enron Power Marketing, Inc. (jointly referred to as "Enron") respectfully submit the following Comments to the compliance filing of PECO Energy Company ("PECO") filed with the Commission on January 20, 1998. PECO's compliance filing purports to comply with the Commission's Opinion and Order entered on December 23, 1997, as modified by the Commission's Reconsideration Order entered on January 16, 1998, in the above captioned matter. Through these Comments, Enron opposes Commission approval of the compliance filing on the grounds that the filing fails to comply with the Commission's Orders in many material respects. Enron requests that the Commission require PECO to modify its compliance filing as fully set forth below.

Summarily, Enron agrees with the Commission that the "successful implementation of the approved restructuring plan requires well written tariffs and company rules and procedures." Reconsideration Order, p.24. PECO, however, has failed to file the necessary tariffs and procedures to allow for a successful implementation, and, unnecessarily and improperly, has failed to comply with a variety of specific Commission directives which, if left uncorrected, will frustrate the Commission's goal of bringing a robust competitive market, and

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its associated consumer benefits, to customers in Southeastern Pennsylvania. In fact, in many respects PECO's filing should more properly be classified as a "non-compliance filing."

The goal of restructuring PECO was to "initiate... a competitive retail market in the PECO service territory by unbundling rates and by creating transition rules to eliminate rate regulation of generation starting January 1, 1999." Opinion and Order, p. 42. Unless the Commission approves the modifications recommended by Enron in this pleading, the significant and bold step taken by the Commission in deciding PECO's restructuring case will have been for naught.

II. GENERAL ISSUES

1. Application of Impermissible Tax Gross-up to CTC Recovery Rate of Return.

One of the most significant and egregious errors in PECO's Compliance Tariff Filing is the attempt by PECO to impermissibly increase its CTC recovery from customers by **\$827 million** more than the Commission allowed in the Restructuring Reconsideration Order at 25. See, Original Page No. 28 of the Compliance Tariff. PECO attempts to do this by grossing-up the 7.47% rate of return permitted by the Commission for stranded cost recovery to reflect federal income taxes. PECO also improperly deducts the Pennsylvania gross receipts tax ("GRT") from the total CTC recovery. This is a clear violation of the Reconsideration Order wherein the Commission stated:

The compliance filing shall calculate the CTC in the manner described in the Order *and restated for clarification as follows*: . . .
(2) The CTC is to be calculated using a 7.47 percent rate of return, *inclusive of all revenue requirements*. . . .

Restructuring Reconsideration Order, p. 25 (emphasis added). Federal income taxes as well as the GRT are cost of service expenses that traditionally are subsumed within and are taken into account in establishing a utility's cost of service and resulting revenue requirements.¹ They are not "add-ons" to the revenue requirement determined by the Commission.

The Commission fully recognized that due to, among other things, the number of PECO's customers and the inclusion of the CTC true-up provision, the risk of PECO not recovering all of the CTC to which it is entitled is minimal. Opinion and Order at 28. Thus, the Commission determined that the rate of return used to compute the revenue requirement for CTC recovery should equate to PECO's long-term debt rate of 7.47% and that included within such rate, i.e., without additional adjustment, was the recovery of all items associated with the CTC recovery, which includes, but is not limited to, federal income taxes and the GRT. Restructuring Reconsideration Order, p. 25.

In computing the appropriate T&D rate of 2.93 cents/kWh (determined on a system-wide average basis), the Commission was aware that such rate was inclusive of all cost of service tax expenses of PECO associated with the T&D function, consistent with traditional ratemaking principles. In estimating the CTC in the Order at 2.56 cents/kWh on a system-wide

¹ Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 613 A.2d 74, 81 at n. 3 (Pa.Cmwlth. 1992); Bell Telephone Company of Pennsylvania v. Pennsylvania Public Utility Commission, 524 A.2d 1009 (Pa. Cmwlth. 1987), *aff'd*, 636 A.2d 627 (Pa. 1994); *see also*, Continental Telephone Company of Pennsylvania v. Pennsylvania Public Utility Commission, 548 A.2d 344, 349 (Pa.Cmwlth. 1988), *alloc. den.* 557 A.2d 345 (Pa. 1988).

average basis (see Opinion and Order at 41), the Commission did not state or intimate that such figure needed to be increased to reflect any tax expenses; that is, the Commission clearly indicated that such rate is all-inclusive for CTC recovery purposes. Any other conclusion would render the above-referenced italicized language from the Commission's Reconsideration Order meaningless. Indeed, the Commission's statement that the 7.47% rate was *inclusive* of all revenue requirements was providing *clarification* of the Order with respect to the application of the 7.47% rate of return on the amount of PECO's stranded costs, as determined by the Commission.

The Commission's view that the 7.47% reflected an "all-in" rate of return is also evidenced in other parts of its Order. For example, taking into account the applicable rate caps, to add such tax expenses to the CTC, as proposed by PECO, would have the effect of "squeezing down" the shopping credit available to consumers to amounts that are significantly less than those propounded by the Commission, the effect of which would be to reduce the savings that customers may realize by shopping for the best power price from alternative generation suppliers. Indeed, instead of a shopping credit for residential consumers of 5.20 cents/kWh as stated in the Order (see Opinion and Order at 44), adding such taxes to the CTC would result in a shopping credit of only 4.71 cents/kWh (Compliance Tariff, Original page 30). At such a reduced shopping credit, it is highly unlikely that consumers will see the 10-15% savings originally envisioned by the Commission. There simply is no support in the original Opinion and Order or the Reconsideration Order for the approach taken by PECO in its Compliance Filing. Moreover, PECO at no point requested rehearing or clarification on the rate of return issue; PECO is now attempting to recover an additional \$827 million from consumers that is not permitted under the Restructuring Order.

Although Enron firmly believes that this issue has already been clearly determined by the Order and the Reconsideration Order, if the Commission were ever to reconsider this part of its ruling, at a minimum the Commission should reconsider PECO's entire stranded cost award,² and/or exercise its discretion to extend the CTC recovery period so as to mitigate, to the extent possible, the reduction in the shopping credit effected by the Compliance filing.

2. Effective Date.

The Tariff as filed states that each and every section will be effective on January 1, 1999, the date when the first phase-in of direct access actually begins. However, many of the provisions must take effect at an earlier date in order to enable the implementation of direct access on January 1, 1999. These sections, which should become effective immediately, include:

- a. Rule 22. Direct Access Phase-In Procedures (Original Page 24).
- b. Rule 23. EGS switching (Original Pages 24-25).
- c. Rule 24. Provision of Load Data (Original Page 25).
- d. Interim Code of Conduct (Original Page 90).
- e. EGS Obligations (Original Page 91).
- f. Supplier Operational Rules (Annex A).

3. PECO Claim for Addition to Stranded Costs for A&G Expenses

There are at least two problems with PECO's proposed compliance on this issue.

First, also with respect to the reallocation of certain A&G expenses, PECO appears to have

² Indeed PECO's reluctance to comply with the clear direction in the Order - or even to ask for clarification - could cause the Commission to reconsider its decision to allow PECO to recover some \$8 million it has claimed as costs associated with preparing and litigating its restructuring case. See, Opinion and Order at 92-93.

improperly increased its stranded cost amount by approximately \$177 million to reflect, according to PECO, a reallocation of a certain portion of its deferred taxes. At page 24 of the Reconsideration Order, the Commission was very clear as to the methodology that PECO was to use to compute the stranded cost amount resulting from the reallocation of A&G expenses to the production function: Nowhere in the Reconsideration Order or the Opinion and Order is there a directive that PECO make adjustments in this respect for deferred taxes. Applying the methodology prescribed by the Commission results in a resulting stranded cost of approximately \$407 million. PECO's attempt to significantly increase such figure -- by \$177 million -- thereby bringing the total stranded cost amount associated with the reallocation of A&G expenses to approximately \$584 million, appears to be inconsistent with the Commission's directive. At a minimum, PECO needs to provide a detailed explanation as to its justification for adding deferred taxes in the amount stated to the stranded cost amount resulting from the A&G adjustment.

Second, in its Reconsideration Order, the Commission ordered PECO to adjust the functionalization of administrative and general expenses in accordance with the recommendation of OCA witness Lee Smith. The result of this ordered adjustment was to increase the total of A&G expenses assigned to the production function by approximately \$38.7 million with offsetting reductions in A&G expenses assigned to the transmission and distribution functions of \$5.9 million and \$32.8 million, respectively. In assigning these adjusted functional amounts of A&G expenses to each of the existing rate classes, PECO allocated these functional adjustments to each customer class on the basis of its allocator "E1." Allocator E1 is total company O&M expenses less fuel expense, rental expenses, purchased power expenses and uncollectible accounts.

PECO's allocation by class is incorrect. The correct allocation of these functional amounts by class of service would be to allocate on the basis of functional O&M expenses i.e., in the same proportion as each class' allocation of those O&M expenses allocated to the production function, as adjusted to remove purchased power, rental expenses, fuel expenses and uncollectible accounts. Attachments A and B to these Objections provide an appropriate allocation of the adjusted functional amounts of A&G expenses by class of service and provide the development of the functional O&M expense allocators by class of service. The results shown on Attachment A indicate that PECO has substantially overallocated A&G expenses to residential and lighting classes, while substantially underallocating administrative expenses to commercial and industrial classes. PECO's Compliance Filing compounds the impact of this error through its calculation of the additional stranded costs and CTC associated with the portion of the A&G expense adjustment assigned to the production function.

4. Failure to Unbundle Ancillary Service Charges

PECO's compliance cost of service and unbundled rate design fails to take a very important step: removal of revenue requirements associated with transmission related ancillary services from the unbundled charges it proposes in this proceeding. Failure to make this adjustment results in a substantial overstatement of fixed production-related revenue requirements and, correspondingly, PECO's proposed CTC charge.³

³ This issue is properly raised in response to PECO's compliance tariff because the Company's alternative "Retail Transmission Services Rider" filed as part of its Compliance package contained no corresponding allocation of costs from production to recognizes that the Company would be recovering ancillary service costs through these rates or its PJM-FERC tariff. To the extent that the Commission views the issue as one most properly raised in a Petition for Reconsideration Enron respectfully requests such reconsideration pursuant to 66 Pa. C.S. § 703(g).

Ancillary Services are primarily generation support services that are needed along with transmission service to maintain reliability within and among control areas. The Federal Energy Regulatory Commission in its Order Nos. 888 and 888-A and the pro forma open access tariff appended to those orders define six ancillary services. These include (1) Scheduling, System Control and Dispatch, (2) Reactive Supply and Voltage Control from Generation Sources, (3) Regulation and Frequency Response Service, (4) Energy Imbalance Service, (5) Operating Reserve Service – Spinning, and (6) Operating Reserve Service – Supplemental.⁴ These charges are FERC regulated and their level and nature will be determined by FERC's ultimate disposition of the tariff proposed by PJM for such charges. PECO acknowledged the need to unbundle ancillary services, first in its response to Interrogatory Allegheny I-8. There it acknowledged that:

PECO will have to make an adjustment to its proposed unbundled rates to account for this FERC-mandated requirement. That is these costs will not be included in those costs that PECO will recover through its jurisdictional unbundled distribution and CTC charges and will therefore be collected from customers separately.

Further, in its rebuttal testimony in this proceeding PECO witness Pratzon stated that PECO intends to completely remove ancillary services charges from bundled retail rates. (PECO Statement 21-R at Page 12.)

Accordingly, PECO should be required to identify the costs associated with transmission ancillary services to be recovered via PECO's FERC authorized rates. Since these costs are now included as "production" related, this further unbundling should result in a corresponding reduction to the Company's stranded cost claim.

⁴ For a more complete definition and description of these six ancillary services, see Enron Statement 3, Exhibit 3, PDR-1.

PECO's PaPUC tariff does not propose to charge suppliers any distribution related ancillary services or line losses and, therefore, Enron presumes that no charges will be proposed. The requirement to remove ancillary service revenue requirements in the rate unbundling process was recognized by the Commission in its preliminary Order and Opinion related to PECO's Retail Access Pilot Program. In that Order, the Commission stated that "if PECO Energy provides 'retail' ancillary service, and charges for these services, it shall file the rates with the Commission as retail tariff rates and include such supporting data as necessary to demonstrate that these costs are not already covered in base rates."⁵ If PECO intends to attempt to impose such charges, it should be required to file and obtain approval of such rates pursuant to Chapter 13 of the Public Utility Code.

5. Supplier Tariff

Even through the Commission Order indicated that PECO's compliance filing was to include "a separate tariff for alternative generation suppliers" (Order at 162, ¶17(b)), and then again indicated that PECO was to file "[a] new supplier tariff providing procedures for competitive generation supply" (Order at 163, ¶20(c)), PECO's proposed compliance filing contains no such tariff but merely a single sheet generally requiring an EGS to "enter into agreements" with respect to agency for transmission services, allocations for installed capacity obligations, and an unspecified "Practices & Procedures agreement," which apparently PECO planned to draft unilaterally and present to Suppliers as a condition of serving customers using PECO's distribution facilities. The Commission obviously anticipated that PECO would file as part of its compliance tariff for PUC approval the policies and procedures it anticipates

⁵ Petition of PECO Energy Company for Approval of a Retail Pilot Program, P-00971170 (May 9, 1997), p.24.

attempting to impose upon EGSs. Moreover, the experience in the Pilots supports the Commission's direction to PECO to file as a tariff the rules that will set forth an EGS's rights and obligations with respect to PECO, and vice versa. An EGS should not have to agree to a set of rules unilaterally proposed by PECO on a "take it or leave it" basis, such as those to which EGSs were subjected in the Pilot. Accordingly, Enron has drafted a set of supplier rules which could be attached to Tariff No. 3 as a rider or annex. They are attached to these comments as Annex A" to the EGS Rights and Obligations page (Original page 91) proposed by PECO. The proposed annex sets forth specific, balanced and fair provisions to govern the operational interactions between PECO and an EGS using PECO's distribution system. In the absence of any PECO proposed rules, the Commission should order their adoption. If PECO wishes to add, change, or supplement these proposed rules, it may do so by filing a proposed tariff change pursuant to Chapter 13 of the Public Utility Code.

Enron's proposed changes also reflect the fact that unbundled retail transmission service rates, terms and conditions are exclusively the jurisdiction of the FERC because these operational rules apply to distribution services regulated by the Pennsylvania Commission only: Enron agrees with PECO that unbundled retail transmission rates, terms and conditions are properly regulated by the FERC, and believes that this is the appropriate interpretation of both the Act and the PUC's Order in this regard.⁶

⁶ The Act states that the Commission shall establish rates for jurisdictional transmission and distribution services. . . ." 66 Pa.C.S. §2804(10) (emphasis added). The Order's reference to the establishment of "transmission and distribution rates that meet the requirements of Chapter 13" (Order at 137), undoubtedly was made with the same limitation, i.e., that regulation would only apply to those portions of the transmission system that are not regulated by FERC -- which presently appears to apply only to what PECO characterizes as the distribution system.

The Commission's role with respect to transmission rates is twofold: First, as the PUC has done, transmission related costs must be separated from production and distribution so that rates for those jurisdictional aspects may be appropriately established by FERC. (as noted above this separation should also include costs associated with ancillary services now included as "production"). Second, the Commission has a legitimate role before FERC in advocating the Commonwealth's interests in the establishment of just and reasonable transmission tariffs and rules, a role that, to date, it has pursued diligently. The rates and rules themselves, however, must be established by FERC, and the PUC should assume that the PECO tariff reflects this clear delineation. The proposed modification to PECO's proposed EGS Rights and Obligations (Original page 91) reflect this jurisdictional fact which, in order to avoid confusion, should be clearly acknowledged.

6. PECO's Proposed Interim Code of Conduct Is Not In Compliance With The Commission's Order In Many Important Material Respects

In its Opinion and Order, the Commission appropriately dedicated a significant amount of attention towards designing a Code of Conduct to govern the relationship between the PECO EDC, PECO affiliated suppliers and unaffiliated suppliers during the implementation and early stages of direct access. In considering what competitive safeguards should be established for PECO, the Commission recognized the necessity of adopting reasonable rules to assure that PECO does not leverage its monopoly position to advantage affiliate suppliers over non-affiliated suppliers. As the Commission conclusively stated:

As we enter the era of generation competition, this Commission must ensure that competition can occur on a level playing field without discrimination or inappropriate competitive advantage to any market participant. As discussed previously throughout this Opinion and Order, ensuring fair economic terms during the

transition period through stranded cost recovery and regulated rates is a crucial component of our efforts to assure that a competitive market can develop in which all market participants have a full and fair opportunity to compete successfully. In addition, there many more subtle ways in which one market participant might receive an inappropriate advantage over another.

Opinion and Order at 125.

The Commission went on in great detail to review PECO's proposed code of conduct as sponsored by PECO witness Gregory Cucchi in Exhibit GAC-2 and in consideration of the evidence of record, including the testimony of Enron witness Dirmeier, carefully evaluated each proposed rule for its adequacy. As to virtually every proposed rule, the Commission required PECO to make specific modifications to be incorporated into the Code of Conduct to be included into its Compliance Tariff. While PECO has addressed the Commission's concerns in several areas, PECO has also selectively ignored the Commission's required modifications in many key respects. Enron will address the adequacy of PECO's response to the Commission's discussion addressing each proposed rule below.⁷

Rule 1:

PECO's proposed Rule 1 required comparable treatment by PECO as between affiliated and unaffiliated suppliers. However, as proposed, the Rule narrowly applied only to the processing of requests for customer service and did not address other EDC activities.⁸

⁷ In the Tariff portion of these objections (Original page 90), a proposed tariff sheet of Enron's complete proposed Code of Conduct, in compliance with the Opinion and Order, is provided in legislative format to allow easy review of the changes being proposed by Enron.

⁸ In recognizing that PECO's proposed Rule 1 was overly narrow, the Commission stated as follows in its Opinion and Order:

(continued...)

The Commission's position is that PECO must treat affiliated and non-affiliated suppliers, and all customers, regardless of their supplier, in a non-discriminatory manner in all areas of its business and shall not provide any preference to any company's customer. In this regard, the Commission expressly required PECO to expand Rule 1 beyond processing of customer requests to the provision "of all goods and services" offered by PECO, including but not limited to, "requests for information, complaints, and responses to service interruptions."

In its Compliance Tariff, PECO has ignored the Commission's instructions to expand Rule 1 beyond requests for service by suppliers and supplier customers to any PECO dealings with suppliers or supplier customers. Instead, the language of Rule 1 included in the Compliance Tariff continues to apply only to the processing of requests for service and describes the examples of goods and services to which the Rule should be superficially expanded (i.e., requests for information, complaints and responses to service interruptions) as types of service request processing. Moreover, PECO has not clearly provided for "an assurance of comparable treatment." Accordingly, PECO has attempted to distort completely the Commission's clear directive that the rule be expanded to apply to the "provision of all customer goods and services" and provide comparable treatment, and its attempt to be rejected.

⁸(...continued)

Rule 1 should not be limited to processing requests for generation service. It must be expanded to apply to the provision of all customer goods and services, such as requests for information, complaints, and responses to service interruptions. It not only should apply only to PECO's dealings with its affiliated competitive (sic), but also provide an assurance of comparable treatment without regard to the customer's chosen supplier.

Opinion and Order at 131 (emphasis added).

In order to bring Rule 1 into compliance, Enron requests that Rule 1 be modified to read as follows:

The Company, in its role as the Electric Distribution Company ("PECO EDC"), shall not give a PECO Supplier, or the customer of a PECO Supplier, preference in either the provision of any goods or services, or in supplier or customer contacts that PECO EDC is required to provide for Direct Access. The prohibition against preferences shall include, but not be limited to, the processing of requests for generation service, requests for information, complaint processing and responses to service interruptions. PECO EDC shall also provide comparable rates, terms, and conditions to all suppliers for all requested services.

Rule 2:

PECO's proposed Rule 2 requires PECO to supply services and apply its tariff to unaffiliated suppliers in the same manner as it does for affiliated suppliers. In its Opinion and Order, the Commission discusses Rule 2 and Rule 4 (regarding the availability of market information) together. Enron has incorporated the Commission's discussion in its proposed modifications to Rule 4. Enron has no objection to Commission approval of Rule 2 as submitted by PECO in its Compliance Tariff.

Rule 3:

PECO's proposed Rule 3 prohibited PECO and its affiliated suppliers from exchanging goods or services at below cost or below market prices. However, the Rule failed to address potential cross-subsidies between PECO and its affiliated suppliers nor did it address the scope and nature of Commission review of such affiliate transactions.⁹

⁹ In evaluating and requiring modification of Rule 3, the Commission stated as follows:

(continued...)

Undeterred by a clear mandate from the Commission to "supplement" Rule 3, PECO made no substantive modifications to Rule 3 in its Compliance Tariff. Enron proposes that the Commission direct PECO to modify Rule 3 to read as follows:

PECO EDC shall not sell non-power goods or services to a PECO supplier at a price below the cost or market price, whichever is higher, for said goods or services. PECO EDC will not purchase non-power goods or services from a PECO Supplier at a price above the market price for said goods or services. In no case shall any goods or services, including power, sold to or purchased from a PECO Supplier by PECO EDC, be transacted in a manner which results in a cross-subsidy in favor of PECO EDC or PECO Suppliers. All proposed transactions between PECO EDC and PECO suppliers shall be subject to Commission review to assure that the transactions are competitively neutral. All goods or services involving the competitive generation industry shall be made available to non-affiliated Suppliers at comparable terms and conditions as those offered to PECO Suppliers.

Rule 4:

PECO's proposed Rule 4 requires PECO to make market information simultaneously available to affiliated and unaffiliated suppliers which is not otherwise publicly

⁹(...continued)

PECO's rule is useful, but it requires supplementation. Any transaction between PECO and an affiliate must be approved pursuant to Chapter 21 of the Public Utility Code. In order to ensure a "level playing field," proposed affiliate contracts for all goods and services, including power, must not involve any anti-competitive cross-subsidy. We presume that transactions with affiliates that relate to specific corporate matters such as accounting, financial, shareholder or personnel and payroll services can be approved according to established standards. PECO should not engage in any transactions concerning the competitive generation industry unless it is for goods or services made available to competitors.

Opinion and Order at 130. Furthermore, in the previous section of the Order on Corporate Structure, the Commission stated that "The Commission must assert the same level of review of transactions between an EDC and its competitive entity, whether it is separately incorporated or not." Opinion and Order at 128.

available. However, the Rule was overly narrow and did not require PECO to make all information available under comparable terms, conditions and access. Overall, the Commission declared that PECO's rules should be interpreted very broadly and should apply to all information.¹⁰ Nevertheless, PECO did not include any modifications to Rule 4 in its Compliance Tariff to reflect the Commission's broader interpretation. Enron submits that while the timing of information disclosure is important, the comparability of the means of disclosure and access is equally important. Furthermore, there is no justifiable reason why PECO should provide its supplier affiliate preference regarding the disclosure of "public" information. Unaffiliated Suppliers should not have to search for information that is handed over in an easily accessible format by PECO EDC. Enron proposes the following language for adoption as PECO

Rule 4:

PECO EDC shall simultaneously make available to all EGSs any market information that it provides to a PECO Supplier. Regarding the provision of information, PECO EDC will treat all competitive suppliers in a comparable, non-discriminatory manner as it treats PECO Suppliers and will provide information to all Suppliers on similar terms, conditions and access.

Rule 5:

PECO's original proposed Rule 5 imposed restrictions applicable to the sharing of employees and facilities between PECO and its affiliated suppliers. However, the Rule failed to

¹⁰ In evaluating Rules 2 and 4 jointly, the Commission stated as follows:

We believe that Rules 2 and 4 are intended to meet the standard that we adopt: PECO will treat all competitive suppliers in a comparable, non-discriminatory manner with similar terms, conditions and access to information.

Opinion and Order at 131.

address the separation of supervisors with management responsibility over such employees. Furthermore, the Rule permitted the transfer of such employees between PECO and affiliated suppliers.

The Commission ordered a modification to strengthen the protections,¹¹ but in its Compliance Tariff, PECO ignored the Commission's discussion of management responsibility complying with the functional separation requirement. Furthermore, it addressed employee transfers without proposing any meaningful restrictions on such transfers; instead it permitted transfers as long as they were not "intended" to "circumvent this Interim Code of Conduct." In order to comply with the Commission's directives, however, the Commission's insistence on strict functional separation applicable to both management sharing and employee transfers should be incorporated into Rule 5. Enron proposes the following language:

Employees of PECO EDC who have responsibility for operating the distribution system or performing the PLR role, such as receiving requests for power, purchasing power, scheduling delivery, or billing and metering, or have management responsibility over such employees, shall not be shared with a PECO Supplier, and their offices shall be physically separated from the office(s) used by those working for the PECO Supplier. Such employees of PECO EDC shall not be transferred to PECO Suppliers under any circumstances. Any PECO Supplier shall have its own direct line management. Any shared facilities shall be fully and transparently allocated between the PECO EDC function and the PECO Supplier function. PECO EDC accounts

¹¹ In evaluating this rule, the Commission stated as follows:

We interpret Rule 5 to mean that all PECO EDC functions shall be separately staffed from all competitive supplier functions, except for approved affiliated transactions described above. PECO must ensure that any management responsibility over both the EDC and a competitive division or affiliate, or employee transfers, complies with the functional separation requirements.

Opinion and Order at 130.

and records shall be maintained such that the costs a PECO supplier incurs may be clearly identified.

Rule 6:

PECO's proposed Rule 6 prohibited the tying of PECO's distribution services with the services provided by affiliated suppliers. However, the Rule was very broad and subject to divergent interpretations. While the Commission provided no specific discussion of Rule 6, it appears that part of the Commission's discussion pertaining to Rule 7 actually applies to Rule 6.

That sentence reads as follows:

In addition, the proscriptions [against certain marketing activity] should include suggesting that any competitor or customer must contract or refrain from contracting for any goods or services in order to receive any EDC service on the same terms and conditions as any other supplier or customer.

Opinion and Order at 131.

To accommodate the Commission's discussion and to provide further clarity,

Enron proposes that Rule 6 be modified to read as follows:

PECO EDC shall not condition or tie the provision of any PaPUC jurisdictional regulated services on the purchase of power from a PECO Supplier. PECO EDC shall not condition or tie the availability of terms and conditions associated with the purchase of any goods or services on the purchase of power from a PECO Supplier.

Rule 7:

PECO's proposed Rule 7 placed restrictions on the use of PECO's name by an affiliated supplier. However, the Rule did not go far enough and did not apply the proposed restrictions to PECO, did not go beyond the use of the name and did not address the potential for preferential promotion of PECO's affiliated suppliers.

In evaluating Rule 7, the Commission agreed that the Rule did not go far enough:

PECO's Proposed Rule 7 indicates that PECO shall not allow its competitive affiliate to use PECO's name to suggest that PECO will provide better distribution services if power is purchased from a PECO affiliate or that supply purchased from other competitors may be less reliable, or that the generation services are in fact being provided by the EDC.

Rule 7 is appropriate in concept but should not be limited to the use of PECO's name by its competitive affiliate. The competitive affiliate must not suggest that any of the proscribed items in any manner, either directly or indirectly. In addition, the same standards must apply to PECO as an EDC. The EDC must not promote its competitive affiliate any differently than non-affiliated suppliers. (Emphasis added).

In its Compliance Tariff, PECO modified the language of Rule 7 to expand the restrictions on the use of the name to itself and to include all representations to customers. However, PECO completely ignored the Commission's directive that "the EDC must not promote its competitive affiliate any differently than non-affiliated suppliers." Such a restriction on the promotion of affiliates through joint marketing or packaging of EDC and affiliate supplier products and services in a manner that is not made available to unaffiliated suppliers is a critical provision of any Code of Conduct applicable to a monopoly, and is a provision which Enron spent a great deal of time and effort advocating in the underlying proceedings. Moreover, PECO's proposed Rule 7 does not incorporate the Commission directive that PECO should not even suggest, directly or indirectly, that its affiliated supplier will have an advantage over or can provide better service because of its affiliation. Thus PECO's attempt to limit the prohibition only to "unfair" or "false" representations must be rejected. Accordingly, Enron proposes the following language for inclusion in Rule 7:

- 7a. Neither PECO EDC nor a PECO Supplier may directly or by implication represent:

- that the PaPUC jurisdictional regulated services provided by PECO EDC are of a superior quality when power is purchased from a PECO Supplier; or
- that the merchant services (for power) are being provided by PECO EDC rather than a PECO Supplier;
- that the power purchased from an EGS that is not a PECO Supplier may not be reliably delivered;
- that power must be purchased from a PECO Supplier to receive PECO EDC PaPUC jurisdictional regulated services.

7b. PECO EDC shall not jointly market or jointly package its PaPUC jurisdictional regulated services with the services of PECO's Suppliers unless it offers the same promotion of services to non-affiliated Suppliers.

Rule 8:

PECO's Rule 8 requires the development of a dispute resolution procedure. The Commission provided no discussion of this Rule and inclusion of the Rule in the Compliance Tariff without modification is compliant with the Commission's Opinion and Order.

Blacklined Interim Code of Conduct

To allow the Commission to carefully consider these comments, Enron has included in the Tariff portion of these objections (Original page 90) a blacklined version of the entire Code of Conduct which, in Enron's view, fully complies with the Commission's Opinion and Order, and which directly replicates the changes proposed above. Enron requests that the Commission adopt this Code of Conduct for inclusion in PECO's final compliance tariff.

7. Nuclear Decommissioning Surcharge.

The Commission's Order adopts the "annuity" method of accounting for nuclear decommissioning charges (Opinion and Order at 79-80). But the Order also indicates that

because this amount “is already included in rates...” no rate increase will occur as a result of permitting this recovery (Id. at 80). While PECO has proposed the Rider, it does not appear that it has made the corresponding reduction to other rates to offset this charge. Unless PECO can clearly show that the Nuclear Decommissioning Rider has been properly offset with a rate reduction, it should be denied.

8. Necessary Tariff Rate Sheet Revisions.

a) No energy and capacity charges on rate sheets. PECO should no longer place charges for energy and capacity on the specific tariff rate sheets, but rather should provide all Provider of Last Resort (“PLR”) service according to the Energy Services Rider, which will be applicable to customers taking “PLR service.” Specific tariff schedules should simply identify the availability of the Rider to any consumer, and identify the charges associated with distribution and CTC/ITC charges to that consumer. As the Commission no doubt intended, all energy and capacity sales by PECO Energy acting as the PLR would occur through the Energy Services Rider (Original Page No. 72).

PECO, rather than completely reforming its tariff to promote Direct Access, has attempted to make “minor” changes to its existing tariff sheets by maintaining the energy and capacity rates within the individual rate schedules. While an administratively simple proposal, the restructuring process which concludes with the acceptance of this compliance tariff does fundamentally change the nature of PECO’s business and services, and the tariff rates should change accordingly.

Accordingly, each of PECO's rate schedules should be revised to remove the "energy and capacity" portion of the rate. The listing of those charges for each rate schedule should be added to the "Energy Services Rider." *See discussion in tariff section.*

b) PECO should not require Contract Terms for delivery service.

PECO should no longer place Contract Terms on the specific tariff schedules, as these requirements are no longer warranted in a Direct Access environment. If PECO intends to request distribution service customers to sign term contracts, the tariff language should indicate that Term of Contract is only for that service.

c) Minimum charges must not include charges for Energy and

Capacity. To the extent that the tariff schedules include minimum charges, those charges should exclude energy and capacity charges when PECO is not providing energy and capacity as part of PLR service.

II. TARIFF SECTIONS TO BE AMENDED

On the following pages are the sections of PECO's Compliance Tariff that require amendments. In each case, Enron has explained the necessity for the change and produced a blacklined amendment showing deletions and additions to PECO's proposed language.

Definitions of Terms and Explanation of Abbreviations (Original Page 6)

Customer

As the Act makes clear, a customer may utilize an “aggregator” or “broker” to obtain services (66 Pa.C.S. § 2803). The definition of customer must accommodate this definition and insure that suppliers will be able to utilize the billing consolidation provisions of the Commission’s Order (Order at 140). Since there is no legal impediment to this requirement, it should be reflected in PECO’s tariff. Enron therefore recommends that the definition of “customer” be amended to read as follows:

customer - Any person, partnership, association, or corporation, lawfully receiving service at a single meter location from the Company. The term customer shall also include an EGS duly authorized to act as agent on behalf of the customer. For purposes of billing for an Electric Generation Supplier (as defined below) and collecting CTC, the term customer may include all meter locations for which a summary or consolidated bill is provided.

Summary billing account

PECO has improperly restricted the application of summary billing accounts to “the same partnership, association, corporation, or governmental agency etc.” in complete disregard for the Commission’s Order (Order at 140). The Order states that the billing consolidation should apply to “customers with multiple sites”. (Id.) The language should be changed as follows:

summary billing account - An aggregate bill prepared for a customer or a group of customers with two or more meter locations on the same Tariff rate for: ~~two or more meter locations owned or legally controlled by the same partnership, association, corporation, or governmental agency etc.~~ (1) the Company’s charges for service and/or for the recovery of Transition or Stranded Costs, and/or (2) EGS ~~billing of its~~ charges for Competitive Energy Supply, as permitted by Rule 2.2.

Rule 4.6 Special Contracts (Original Page 11)

The Company has not complied with the Commission's Order regarding Special Contracts under Rule 4.6 or pursuant to the Economic Efficiency Rider ("EER"). First, in both cases, the Commission determined that PECO could continue to offer these rates to existing customers and to any new customer "who has not yet been phased-in to customer choice." Order at 119. "Phased-in" under the Competition Act and the Commission's Order takes place when a customer has the right to choose. This will occur for industrial customers on January 1 and 2, 1999, when all industrial customers will be "phased-in," pro rata, for 2/3 of their load. Reconsideration Order at 22. Accordingly, both the Rule 4.6 and EER provisions should specify that no new contracts will be available to customers after January 1, 1999. See comment to EER below.

Second, the Order specifically instructs PECO to unbundle Rule 4.6 contracts with respect to the rates and discounts associated with those contracts. Order at 118, 120. Yet, PECO's proposed tariff revision fails to state specifically that the discounts will be allocated to both the energy/capacity portion and the distribution/transmission portion of the rate.

Accordingly, the following changes are required to Rule 4.6:

4.6 SPECIAL CONTRACTS. Standard contracts shall be for terms as specified in the statement of the rate, but where large or special investment is necessary for the supply of service, or where service is to be used for an emergency or temporary replacement of another method of operation, contracts of longer term than specified in the rate, or with special guarantees of revenue, or both, may be required.

In addition, the Company may enter into long term contracts for firm service to customers or potential customers who: a) demonstrate that they are considering competitive alternatives (including self generation) to PECO Energy service; and b) who require in excess of 40,000 kW of monthly capacity supplied by PECO Energy; or in circumstances where the customer contributes to the significant economic well-being of the region, as evidenced by an award from the Commonwealth of Pennsylvania of an Opportunity Grant in the amount of \$250,000 or greater; and c) are not subject to existing contracts pursuant to this Rule for distribution services and energy and capacity services, provided that no customer or potential customer shall be eligible for such a contract if all or any portion of the load of the customer or potential customer qualifies for Direct Access pursuant to Rule 22. The terms and conditions of service and charges will be mutually agreed upon between the Company and the customer and will be reflected in a signed service agreement that will not become effective until approved by the Commission. Rates will be established on a case by case basis and will be sufficient to cover all appropriate incremental costs, including the costs of labor, materials, and overhead and a contribution to fixed costs.

For contracts that do not contain provisions governing the customer's rights upon the advent of Direct Access, the Company will unbundle the customer's contract effective as of January 1, 1999 in a manner that retains the customer's discount,

that allocates the discount to both the energy and capacity and the distribution and transmission portions of the rate and that reflects the amount of Transition and Stranded Costs presumptively embedded in the customer's contract. For contracts that do contain provisions governing the customer's rights upon the advent of Direct Access, the Company will unbundle the customer's contract in accordance with its terms and conditions.

A customer is entitled to the rates contained in its contract only for the duration of the term of the contract and only in accordance with its terms and conditions, even if the term of the contract expires before the end of the Transition Period.

Unless the customer's contract contains provisions concerning the customer's rights upon the advent of Direct Access, the customer may obtain Competitive Energy Supply and continue to pay the unbundled Distribution Charges and Competitive Transition Charges designed in accordance with this Rule for the duration of the term of the contract. For contracts that contain provisions governing the customer's rights upon the advent of Direct Access, the customer will be entitled to obtain Competitive Energy Supply only in accordance with the terms and conditions of the customer's contract.

**Rule 12.2 Additional Limitations on Liability in Connection With Direct Access
(Original Page 18)**

PECO continues to have a duty and potential liability with respect to its delivery obligation in the case of competitive supply. PECO should be liable if it fails to switch a customer, or is negligent in switching or not switching. PECO's proposal incorrectly makes it appear that a customer is assuming more liability with a competitive supplier (rather than staying with PECO), which is not the case. This Rule should thus be amended as follows:

12.2 ADDITIONAL LIMITATIONS ON LIABILITY IN CONNECTION WITH DIRECT ACCESS. Other than its duty to deliver electric energy and capacity to a customer, the ~~The~~ Company shall have no duty or liability to a customer receiving Competitive Energy Supply arising out of or related to a contract or other relationship between such a customer and an EGS.

The Company shall have no liability to a customer receiving Competitive Energy Supply arising out of or related to switching EGSs, unless the Company is negligent in switching or not switching, or failing to switch a customer.

The Company shall have no duty or liability with respect to electric energy before it is delivered by an EGS to a point of delivery on the PECO Energy distribution system. The Company shall have the same duty and liability or after its delivery to receipt of electric energy and capacity for a Direct Access customer receiving Competitive Energy Supply, as after its receipt of electric energy and capacity for customers receiving electric energy and capacity from the Company.

Rule 12.4 Emergency Energy Conservation (Original Page 18)

Consistent with the Order's direction to integrate suppliers into the distribution system, this section should be amended to notify and include EGSs in the conservation efforts whenever those measures affect the EGS's ability to meet customer energy requirements, as follows:

Rule 12.4 EMERGENCY ENERGY CONSERVATION. Pursuant to order of the Pennsylvania Public Utility Commission, the following provision is incorporated in this Tariff:

Whenever events occur which are actually resulting, or in the judgment of the Company threaten to result, in a restriction of the fuel supplies available to the Company or its energy vendors, such that the amount of electric energy which the Company is able to supply is or will be adversely affected, an emergency energy situation exists.

In the event of an emergency energy conservation situation, the Company shall take such reasonable measures as it believes necessary and proper to conserve available fuel supplies. Such measures may include, but shall not be limited to reduction, interruption, or suspension of service to one or more of its customers or classes of customers in accordance with the Company's procedure for emergency energy conservation.

The Company shall establish procedures for emergency energy conservation, including, if it deems necessary, schedules of service interruption and suspension priorities to be followed as prescribed by the foregoing paragraph. Those procedures shall include notification to, and inclusion in the conservation process of all EGSs whose ability to meet customer load obligations will be affected by the conservation measures.

The Company may revise such procedure from time to time, and shall revise them if so required by the Pennsylvania Public Utility Commission. A copy of such procedures or of the revision thereof currently in effect shall be kept available for public inspection at each office at which the Company maintains a copy of its Tariff for public inspection, and another such copy shall be kept on file with the Pennsylvania Public Utility Commission.

13.1 Resale Of Service (Original Page 18)

Consistent with the Order's direction to unbundle fully, this Rule should be modified to insure that the right to resell PECO's services will not be restricted if a customer procures supply from an EGS:

13.1 RESALE OF SERVICE. Pursuant to Section 1313 of the Public Utility Code, 66 Pa. C.S. § 1313, a customer may resell Energy and Capacity and/or service provided by PECO Energy, and pass on CTC charges, if: (1) the Company provides such service under a single contract at one application of an available Base Rate and is for the total requirements of the premises served, (2) the location, and (3) use of the service conforms to the availability requirements of this Tariff for provision to the customer for the customer's own account. The customer's resale opportunity pursuant to this paragraph applies to the Company's distribution and other non-bypassable charges when the customer purchases some or all of its requirements from an Electric Generation Supplier.

* * *

Rule 14. Metering (Original Page 19)

The Company's metering rule, especially Rule 14.3, does not incorporate the Commission's Order which requires that customers and EGSs be permitted to have installed Qualified Advanced Meters and to provide remote meter reading services.¹² The following changes are required:

14.1 SUPPLY OF METERS. Subject to 14.9 below, the ~~The~~ measurement of service for billing purposes shall be by meters furnished and installed by the Company. The Company will select the type and make of metering equipment, and may, from time to time, change or alter the equipment, its sole obligation being to supply meters that will accurately and adequately furnish records for billing purposes.

* * *

14.9 CUSTOMER SELECTED ADVANCED METERS. A customer or EGS on behalf of a customer may have a Qualified Advance Meter installed and have meter reading services provided pursuant to the interim rules established by the PaPUC Docket No. L-00970128.

¹² Although the Order at 140-41 inadvertently refers to Docket L-00970120, it adopts the provisions in Docket No. L-00970128 that permit the customer or EGS to choose a qualified advanced meter and to allow the EGS to perform remote meter reading.

Rule 16.2 Request Tests (Original Page 21)

This rule should permit an EGS, as well as a customer, to request a meter test or inspection and should therefore be amended to read:

16.2 REQUEST TESTS. The Company will make additional tests or inspections of its meters at the request of a customer or an EGS, but reserves the right to make the charge provided for in the Electric Regulations of the Pennsylvania Public Utility Commission, under conditions therein specified.

Rule 17.2 Billing Options (Original Page 21)

PECO's proposal assumes that where an EGS is providing electricity, the customer will choose either to have that EGS render its own bill or to require the EGS to appoint PECO as its billing agent. In the latter case, PECO proposes to charge 90 cents per bill. There is no basis for requiring appointment as "billing agent" under § 2807(c) or for a per bill fee. PECO as an EDC is obligated to render a bill on behalf of the EGS if the EGS requires PECO to do so under § 2807(c); it is the EGS's choice. Moreover, there is no basis for PECO to charge the EGS for this service since PECO's costs for billing are included in its bundled distribution rate.

This rule should therefore be amended to read:

17.2 BILLING OPTIONS. The Company will always bill the customer for the Company's Fixed and Variable Distribution Service Charges, CTCs, and Energy and Capacity Charges (when the Company is providing Default PLR Service). Where an EGS is providing electric energy and capacity, the EGS may (1) render its own bill for such service, or (2) require the Company to bill for the electric energy and capacity supplied by the EGS. A customer may request that its EGS: (1) provide a separate bill only for the electric energy and capacity the EGS supplies; or (2) require its EGS to appoint the Company as the EGS' billing agent. When PECO Energy acts as an EGS' billing agent, (1) the EGS must pay a per bill fee to the Company of \$0.90 (The State Tax Adjustment Clause applies to this charge), and (2) bills for an EGS, the Company will bill the customer not only for the Company's Fixed and Variable Distribution Service Charges, and CTCs, but also for the electric energy and capacity supplied by the EGS.

Rule 17.4 Payment Processing (Original Pages 21-22)

This rule erroneously includes PECO Energy supply charges, i.e., energy and capacity charges, in a higher priority than set forth in the Commission's Order at Docket M-00960890F.0011 (Order entered July 11, 1997) Appendix B, Item H(2). That Order did not distinguish between the priority of electric supply service offered competitively and that offered by PECO as a PLR. Accordingly, this section should be amended as follows:

17.4 PAYMENT PROCESSING.

(a) The Company must receive and process all payments for amounts reflected on the Company's bill.

(b) If a customer remits a partial payment to the Company, that payment will be posted to the customer's account in the following order:

1. Outstanding balance before Direct Access or the installment amount for a payment agreement on this balance.
2. Balance due or the installment amount for a payment agreement for CTCs and Fixed and Variable Distribution Service Charges ~~and Energy and Capacity Charges (when the Customer receives Default PLR Service).~~
3. Current CTCs and Fixed and Variable Distribution Service Charges ~~and Energy and Capacity Charges (if PECO Energy is providing Default PLR Service).~~
4. Balance due for prior charges for Competitive Energy Supply (if PECO Energy ~~is an EGS's billing agent bills for an EGS~~) or Energy and Capacity Charges (if PECO Energy is providing default PLR Service).
5. Current charges for Competitive Energy Supply (if PECO Energy ~~is an EGS's billing agent bills for an EGS~~) or Energy and Capacity Charges (if PECO Energy is providing default PLR Service).
6. Non-basic service charges.

Rule 17.5 Finance Charge and Collection Costs (Original Page 22)

PECO incorrectly attempts to relinquish all responsibility for collection of EGS charges, contrary to the requirements of the Competition Act. PECO's attempt to avoid this core customer service function is completely inconsistent with its assertions in other contexts that the EDC should retain exclusive authority for all billing and collection activities (see PECO's comments in Docket M-00960890F.0011). Since PECO's Distribution rates still include the cost of uncollectibles, PECO should be required to pay an EGS' charges immediately upon receipt of the bill from the EGS, and should assess all late fees in a non-discriminatory manner. See comment to Rule 18.2. This Rule should therefore be amended as follows to make it consistent with the revisions to 17.2 and 18.2:

Rule 17.5 FINANCE CHARGE AND COLLECTION COSTS. If payment is made at a Company office or authorized payment agency after the due date shown on the bill, a finance charge will be added to the unpaid balance until the entire bill is paid. If payment is made by mail, the finance charge will be added if the payment is received by the Company more than five days after the due date shown on the bill. For Rates R, RT, R-H, R-S, OP, POL and GS this finance charge will be 1-1/4% per month; for all other rates the finance charge will be 2% per month. If the Company files suit to collect a delinquent balance on an account (whether active or inactive) or to ensure payment of current bills, the customer will be required to pay the Company's out of pocket court costs (including filing, service, and witness fees) as ordered by the court and such costs will be added to commercial and industrial accounts. The Company ~~will not~~ shall also assess, ~~nor~~ and seek collection of, late payment charges on an EGS's charges in a non-discriminatory fashion as this is the responsibility of the EGS.

Rule 17.6 Budget Billing (Original page 32)

The language suggested by PECO appears to give customers complete control over whether they adopt the “budget billing” payment option even when they are availing themselves of competitive supply from an EGS. The EGS obviously should have the right to decline to have its charges included in the budget billing process if it so chooses (the customer can always shop for an EGS that does allow its charges to be included in budget billing.)

17.6 BUDGET BILLING.

(a) At the option of a customer receiving residential service under Rates R, RT, R-H, R-S, OP, POL and GS, an estimated total bill for all service to be received by the customer over a twelve-month period may be budgeted over the period and an average bill rendered monthly for payment each month and such monthly budget bill will not be subject to finance charges. Any difference between the budgeted amounts so paid and the actual charges for a twelve-month budget period will be adjusted in the twelfth month. If a monthly budget bill is not paid, the customer will be notified with the next monthly budget bill that budget billing will be terminated unless payment of the past due budget bill is made on or before the due date of the current budget bill. If budget billing is terminated, a finance charge of 1-1/4% per month will be added to the unpaid balance of actual charges on the next billing date in accordance with Rule 17.3. The Company may also arrange budget billing for creditworthy commercial and industrial customers.

(b) An EGS's charges will be included in the customer's Budget Billing Plan if the customer's EGS has ~~appointed the Company as its billing agent~~ agreed to include its charges in the Plan.

Rule 18.2 Payment Terms (Original Page 22)

This proposed Rule would allow PECO to shirk its responsibility as relates to collecting for an EGS from delinquent customers. In reality, PECO should be required to remit all charges to EGSs within a reasonable period of time from the billing date in view of the fact that PECO is already recovering any uncollectible amount through its distribution rate, since it has not been required to unbundle uncollectibles. PECO should thus be regarded as receiving payment for those services under § 2807(c)(3). This would obligate PECO to make payment to the EGS on the average date when payment is received by PECO. Since the due date for payment of the bill may be no less than 20 days from the date of transmittal (52 Pa. Code § 56.21), it is reasonable to require payment within 15 days of billing, until evidence of the average payment date is received from PECO. Accordingly, this section should be amended to read:

18.2 PAYMENT TERMS. The Company will negotiate payment arrangements on the portion of the past due amount attributable to its charges for: (1) service, (2) CTCs, and (3) Energy and Capacity, whether provided by the Company or by an EGS. [The Company will not negotiate payment arrangements on behalf of an EGS nor will the Company include on its bills any payment arrangements made by EGSs. The Company assumes no responsibility for assessing late payment charges for EGSs' charges or for collection from customers who are delinquent on their obligations to their EGSs. The Company shall have no liability for uncollected EGS charges. The Company will pay to each EGS any amount billed for the EGS within 15 days of the issuance of the bill. The Company shall assess late charges for the EGS's charges or for collection from customers who are delinquent on their obligations to their EGS and may retain such charges in a non-discriminatory manner.]

Rule 22. Direct Access Phase-In Procedures (Original Page 24)

This rule requires certain changes to be consistent with the Commission's Order on Reconsideration at 21-23. This Rule has been changed to include among the industrial users eligible for pro rata phase-in under the Commission's Reconsideration Order those industrial customers who take service under the GS rate. The change to Rule 22.2 is necessary because the implication of PECO's proposal is that only PECO's enrollment cards may be used to enroll either directly or through the EGS. The Reconsideration Order makes it clear that there is not only one type of enrollment form that can be used. Rule 22.3 is misleading in telling only one side of the story about the effect of enrollment. Changes to Rule 22.6 reflect the Commission's Reconsideration Order that certain steps be taken on or before July 15, 1998, not "as soon thereafter as is reasonably possible" as proposed by PECO. Rule 22.7 has been amended to include the Commission's requirements for the confirmation letter. The Rule should read as follows:

22. DIRECT ACCESS PHASE-IN PROCEDURES

22.1 PECO Energy will mail enrollment cards and information packets to all customers during the week of April 6-13, 1998.

22.2 To volunteer for enrollment, on or after April 27, 1998 customers shall either return enrollments cards to PECO Energy ~~either~~ directly or enroll through an EGS.

22.3 The An EGS' return of an enrollment card for by a customer to PECO Energy directly does not constitute the selection of PECO Energy by that customer, nor does enrollment through an EGS ~~does not~~ constitute selection of that EGS by that customer.

22.4 The first 33% of the peak load of each customer rate class to enroll, except for HT, PD and EP and industrial GS, shall be included, along with customers participating in the Pilot, in the first Phase-In group.

22.5 When the 33% peak load threshold is reached in any customer rate class, except HT, PD and EP and industrial GS, PECO Energy shall send a notification letter to all such ~~volunteers~~ enrollees advising them of their inclusion in the January 1, 1999 group.

22.6 As soon as reasonably practicable after July 1, 1998, PECO Energy shall calculate the peak load of each customer rate class that had, as of July 1, 1998, volunteered to enroll.

i. If as of July 1, 1998, less than 66% of the peak load of any customer rate class had volunteered to enroll, then on July 15, 1998, or as soon thereafter as is reasonably possible, PECO Energy will send a notification letter to all volunteers in such rate class that they will be enrolled in the January 2, 1999 Phase-In group.

ii. Enrollment will continue for each such under-subscribed rate class on a "first-come, first-served" basis until such time as the 66% peak load threshold is met. PECO Energy will send out notification letters to enrolled volunteers not less frequently than every two weeks.

iii. If greater than 66% of the peak load of any rate class, except HT, PD and EP and industrial GS, has, as of July 1, 1998, volunteered to enroll, PECO Energy shall have an independent party conduct a lottery to select which customers from any such oversubscribed class shall participate in Phase-In as of January 2, 1999.

iv. If greater than 66% of the peak load of the HT, PD or EP and industrial GS rate classes has, as of July 1, 1998, volunteered to enroll, PECO Energy shall not conduct a lottery, but shall allow all volunteers from each such oversubscribed rate class to participate on January 2, 1999 on a pro rata partial load basis as calculated by PECO Energy on or before July 15, 1998, along with customers participating in the Pilot on a full load basis.

v. By a letter sent on July 15, 1998, or as soon thereafter as is reasonably possible, PECO Energy shall notify all customers in all such oversubscribed classes of their status regarding participation in Phase-In.

22.7 After receiving a letter from PECO Energy advising them of their inclusion in Phase-In, participants shall notify the Company in writing, either directly or through an EGS, of their EGS selection. Within fifteen days after receipt of the participant's EGS choice, PECO Energy shall send the participant and the participant's designated EGS a letter confirming the participant's EGS selection. A confirmation letter shall indicate the date that the new supplier service will become effective and when the participating customer will receive the first bill.

22.8 To receive Competitive Energy Supply by the first billing cycle on or following January 1, or January 2, 1999, a participant must, by November 1, 1998, notify, or have its chosen EGS notify, the Company in writing of its EGS selection and complete or have its chosen EGS complete the required paperwork. If the Company is notified and/or the required paperwork is completed after November 1, 1998, the participant will receive Competitive Energy Supply from their selected EGS as soon thereafter as is reasonably practicable.

Rule 23 EGS Switching (Original Pages 24-25)

This Rule should be revised to make the Rule consistent with the letter and intent of the PUC's Customer Service Guidelines (M-00960890F.0011). A customer's ability to take advantage of direct access should not be delayed by PECO's meter reading. The PECO language could also be read to limit the ability of an EGS customer to switch for any reason. PECO's tariff should not unreasonably affect the EGS/customer relationship. The revisions to Rule 23.5 and Rule 23.6 accomplish these goals.

In addition, proposed Rule 23.7 -- which proposes a \$6.00 switching fee -- must be deleted in toto because it violates the Commission's Opinion and Order on Reconsideration at 17. The Commission clearly stated that switching fees are inappropriate during the early stages of customer choice as set forth in OCA Statement No. 5S at 10-11. The OCA testimony clearly provides that a switching fee is inappropriate during the early stages of customer choice. This should be understood to require that there be a moratorium on switching fees until after January 1, 2001, when statutory phase-in is complete, or at least until July 1, 2000, which is 6 months after the final phase-in will have taken place under the Commission's Order. At that time, any proposed switching fee must be cost justified. This moratorium would completely moot Rule 23.7, which should be inapplicable until that time and would give PECO Energy the opportunity to review more carefully the OCA recommendation to include such items as PLR service and customers who are willing to consent to a pro-rated bill without the necessity of physical meter reading.

The following changes should be made:

* * *

23.5 Switches will be effective on the customer's next regularly scheduled PECO Energy meter reading date. A customer or an EGS authorized to act for the customer, may request a special meter reading. The Company may assess a fee for such a special reading reflecting the actual additional costs of the special reading.

23.6 If and when a customer's EGS discontinues its supply in the event of bankruptcy, loss of license, or similar occurrence, or if a customer's service is cancelled ~~Customer is dropped~~ by its EGS for non-payment or other reason or if the Customer elects to do so at the end of a term, then the customer may select a new EGS. The customer will receive its energy supply from PECO Energy until the switch becomes effective.

~~23.7 When a customer switches from one EGS to another EGS, chooses to return to PECO Energy for Default PLR Service, or switches from Default PLR Service to an EGS, PECO Energy will charge a fee of \$6.00 per switch (the State Tax Adjustment Clause applies to this charge). PECO Energy will not impose this fee to customer's taking service, or switching to service under the CAP Rate. PECO Energy will also waive this fee for a 90 day period for a new distribution customer and not impose this fee on a customer whose EGS goes bankrupt, thereby necessitating a switch to either a new EGS or to Default PLR Service.~~

* * *

Rule 24 Provision of Load Data (Original Page 25)

PECO Energy has failed to provide consumers, and EGSs attempting to serve those consumers, with the data necessary to implement Direct Access. Moreover, given that PECO has not developed cost justification for charging a fee for this service, Enron submits that it is inappropriate at this time to charge any fee. At such a time as PECO is able to demonstrate to the Commission that a fee is appropriate, Enron would be willing to pay such a fee.

Finally, Enron submits that the Commission intended PECO to provide a list of “enrolled” customers in Direct Access, in accordance with the earlier process on pilot customer lists. Not only will this reduce the cost of serving customers, but will ensure that all market participants, including PECO’s marketing divisions and affiliates, are provided with equal access to critical market information.

Enron submits the following language additions, deletions, and/or modifications as replacement for PECO Energy’s compliance filing tariff proposal relating to this issue:

24. PROVISION OF CUSTOMER LOAD DATA

24.1 At the request of an EGS, and to the extent such information is available or can be produced, PECO Energy will provide generic load profile information for customer and rate classes, and/or subclasses in the format requested by the EGS. At the request of an EGS, PECO Energy shall also provide any models and algorithms it uses to construct such information. Subject to 24.2, PECO Energy will not provide any information which could be identified with any specific customer. PECO Energy may charge a fee for actual costs incurred to provide the requested information, based on a schedule of such fees on file with and approved by the Commission. PECO Energy will provide 12 months of historic load data to a customer that has telemetric continuous hourly metering, or to the customer’s designated EGS or authorized consultant, for a fee of \$24 per request. PECO Energy will provide to a customer with non-telemetric continuous hourly metering, or to the customer’s designated EGS or authorized consultant, all available data from the meter for a fee per request based on the Company’s actual cost of obtaining the data from the meter.

24.2 At the request of an EGS, and with the authorization of the customer, PECO Energy will provide 12 months of historic load data in the format requested by the EGS, if available. PECO Energy may charge a fee for actual costs incurred to provide the requested information, based on a schedule of such fees on file with and approved by the Commission.

24.3 PECO Energy will provide all EGSs who have complied with the Company’s EGS Obligations with an electronic list of all customers, their addresses and their account numbers, who are enrolled in Direct Access under Rule 22.4 and/or Rule 22.6.

Economic Efficiency Rider (Original Page 65)

For the reasons stated in the discussion concerning Rule 4.6, Economic Efficiency Rider (“EER”) contracts should be available only to new customers who are not eligible for direct access. Even though the Commission’s Order is quite clear on this point (Order at 119-20), the proposed EER Rider language makes no such restriction. Accordingly, the following change to the “Availability” section should be added:

ECONOMIC EFFICIENCY RIDER (EER)

AVAILABILITY. To any High Tension Power (Rate HT) or General Service (Rate GS) customer that satisfies all of the following eligibility requirements:

1. The customer must agree to purchase at least 5,000 kW of On-Peak demand during each billing month.
2. The customer must provide documentation of a viable, currently available competitive alternative to service under Rate HT or Rate GS including any applicable riders. The customer must provide a written description of the competitive alternative and any further information that the Company requires in order to document the cost and demonstrate the viability of the customer’s competitive alternative. The Company shall be the sole judge of whether the customer is eligible for a rate negotiated pursuant to this rider based upon the information provided by the customer. The Company may require that the information that the customer must provide include: (1) an engineering study that contains information regarding site suitability, space requirements, equipment lists, vendor quotes, and a detailed construction schedule with clearly identified milestones, and (2) a study containing a minimum five-year life cycle evaluation of the competitive alternative that includes capital, installation, fuel, operating and maintenance, and any other anticipated costs. The Company need not require all, or any, of the preceding information if the customer already has in place a competitive alternative, in which case the Company will require such written proof of the existence and nature of the alternative as the Company deems appropriate and necessary.
3. The customer must demonstrate, to the satisfaction of the Company, that the customer is financially capable and willing to implement its viable, currently available competitive alternative.
4. The customer does not have any of its load qualified for Direct Access pursuant to Rule 22.

Employment and Economic Recovery Rider (Original Page 68)

The Employment and Economic Recovery Rider as proposed by the Company proposes discounts to all portions of its unbundled rates for qualifying customers. The Commission's Order makes clear that "it is no longer necessary to provide such 'competitively priced' services pursuant to 'regulated rates' approved by the Commission..." (Order at 119). While this discussion was directed at Rule 4.6 and EER contracts, it applies equally to the discounts available under this Rider as well. Accordingly, the following should be added:

EMPLOYMENT AND ECONOMIC RECOVERY RIDER

AVAILABILITY/APPLICABILITY. This rider is available to customers taking service under Rate HT or PD, and to those customers taking service under Rate GS at Service Locations in an Enterprise Development Area as defined in Title 16, Chapter 23 of the Pennsylvania Code, for service provided to Qualifying Service Locations, as defined below. The Company will not begin to apply the rider until at least 30 days after the customer provides to the Company written notice of its desire to be placed on the rider.

I. QUALIFYING SERVICE LOCATIONS.

A. QUALIFYING EXISTING SERVICE LOCATION. A Service location will be considered a Qualifying Existing Service Location if the customer can satisfy all of the following conditions:

1. The customer files with the Company, before the effective date of the rider for the Service Location, a Manufacturing Sales Tax Exemption Certificate, as defined below, for the Service Location. This condition is waived for Stevedoring Operations located within a Port Enterprise Development Area as defined in Title 16, Chapter 23 of the Pennsylvania Code.
2. The customer files with the Company copies of the Base Period Employment Reports as defined below, for the Service Location.
3. The customer does not have an unpaid balance that includes a finance charge for service previously provided to the Service Location before the effective date of the rider for the Service Location.
4. The arithmetic mean of the sum of the number of employees as determined from the Current Employment Report and the total Investment Units on record, as defined below, must be greater than the Base Period Employees, as defined below, by at least six (6).

B. QUALIFYING NEW SERVICE LOCATION. A Service Location will be considered a Qualifying New Service Location if the customer can satisfy all of the following conditions:

1. The customer files with the Company before the effective date of the rider for the Service Location a Manufacturing Sales Tax Exemption Certificate, as defined below, for the Service Location. This condition is waived for Stevedoring Operations located within a Port Enterprise Development Area as defined in Title 16, Chapter 23 of the Pennsylvania Code.
2. The customer does not have an unpaid balance that includes a finance charge for service provided to the Service Location before the effective date of the rider for the Service Location.
3. The Company has not previously provided service to the Service Location, or the service previously provided by the Company to the Service Location was not used for substantially the same type of operation or that was terminated at least twelve (12) months before the customer's contractually specified effective date for service under this rider. This condition is waived for existing service locations where an entity has assumed operation of

a service location from a customer which has ceased operations as a result of dissolution, so long as the formation of the entity did not occur as a result of merger, joint venture, acquisition and/or any other variation of combined business structures with the former customer at the service location.

C. LIMITATION ON EXISTING AND NEW SERVICE LOCATIONS. No existing or new service location may qualify for energy and capacity discounts pursuant to this Rider if all or a portion of the load of the service location may avail itself of direct access pursuant to Rule 22.

Energy Services Rider (Original Page 72)

The Opinion and Order at 132-34 make clear that customers desiring to return to the EDC for generation service shall be treated exactly the same as any new applicant for service so long as the rate caps are in effect, as required by 66 Pa. C.S. § 2807(e). PECO's proposal, which would allow it to sell such service at a "market-based" retail generation service price that is not subject to any PUC regulation, violates the Commission's directive in this regard and must be deleted. In addition, and as discussed in Part II, supra, the Rider should be amended to incorporate the various rate schedules. The Rider should be amended as follows:

ENERGY SERVICES RIDER

AVAILABILITY/APPLICABILITY. To any customer served under any Base Rate. Customers that are not yet eligible for Competitive Energy Supply pursuant to Rule 22 of this Tariff, or are eligible but have never chosen to obtain Competitive Energy Supply, or that return to PECO Energy Default PLR Service after having obtained Competitive Energy Supply.

NATURE OF SERVICE. Default PLR Service.

RATES FOR ENERGY AND CAPACITY/TERM OF SERVICE.

~~(a) Customers that are not yet eligible for Competitive Energy Supply pursuant to Rule 22 of this Tariff, or are eligible but have never chosen to obtain Competitive Energy Supply, shall pay the Energy and Capacity Charges set forth in the customer's applicable Base Rate.~~

~~(b) Customers that return to PECO Energy Default PLR Service after having obtained Competitive Energy Supply shall have the following two options:~~

~~(b)(1): A market-based retail generation service price that is not subject to any PaPUC regulation, including, but not limited to, any prudence review of PECO Energy's purchases of Energy and Capacity.*~~

~~(b)(2): Service for a term of one full year (12 consecutive PECO Energy billing months) at the Energy and Capacity Charges contained in the customer's applicable Base Rate.~~

[The Energy and Capacity Charges from the various Rate Schedules should be incorporated here]

TRANSMISSION SERVICE. ~~Unless a customer is able to obtain transmission service on its own,~~ PECO Energy will procure transmission service from PJM, and from outside PJM as necessary, to enable the supply of Energy and Capacity to a customer served under this rider, and will impose charges on customers for such transmission service as such charges are approved by the Federal Energy Regulatory Commission.

PAYMENT TERMS. Standard.

STATE TAX ADJUSTMENT CLAUSE, NUCLEAR DECOMMISSIONING COST ADJUSTMENT, AND UNIVERSAL SERVICE FUND CHARGE APPLY TO THIS RATE.

~~*Except as provided under the CAP Rate.~~

Code of Conduct (Original Page 90)

As explained above, PECO's proposed Interim Code of Conduct is seriously deficient. A proper Code of Conduct, as discussed in Part II, supra, as follows:

The Company and its divisional and/or affiliated EGSs ("PECO Supplier") shall comply with the following Interim Code of Conduct:

1. The Company, in its role as the Electric Distribution Company ("PECO EDC"), shall not give a PECO Supplier ~~preference over a non-affiliate in processing a request, or the customer of a PECO Supplier, preference~~ in either the provision of any goods or services, or in supplier or customer contacts that PECO EDC is required to provide for Direct Access ~~including, for example, The prohibition against preferences shall include, but not be limited to, the processing of requests for generation service, requests for information, complaint processing and responses to service interruptions. PECO EDC shall also provide comparable rates, terms and conditions to all suppliers for all requested services.~~
2. PECO EDC shall supply services and apply the rules and other provisions of its Tariffs to non-affiliates in the same manner it applies them to a PECO Supplier.
3. PECO EDC shall not sell non-power goods or services to a PECO supplier at a price below the cost or market price, whichever is higher, for said goods or services. PECO EDC will not purchase non-power goods or services from a PECO Supplier at a price above the market price for said goods or services. In no case shall any goods or services, including power, sold to or purchased from a PECO Supplier by PECO EDC, be transacted in a manner which results in a cross-subsidy in favor of PECO EDC or PECO Suppliers. All proposed transactions between PECO EDC and PECO suppliers shall be subject to Commission review to assure that the transactions are competitively neutral. All goods or services involving the competitive generation industry shall be made available to non-affiliated Suppliers at comparable terms and conditions as those offered to PECO Suppliers.
4. PECO EDC shall simultaneously make available to all EGSs any market information, ~~not in the public domain,~~ that it provides to a PECO Supplier. Regarding the provision of information, PECO EDC will treat all competitive suppliers in a comparable, non-discriminatory manner as it treats PECO Suppliers and will provide information to all Suppliers on similar terms, conditions and using similar modes of access.
5. Employees of PECO EDC who have responsibility for operating the distribution system or performing the PLR role, such as receiving requests for power, purchasing power, scheduling delivery, or billing and metering, or have management responsibility over such employees, shall not be shared with a PECO Supplier, and their offices shall be physically separated from the office(s) used by those working for the PECO Supplier. Such employees of PECO EDC ~~may transfer~~ shall not be transferred to PECO Suppliers ~~provided such transfer is not used as a means to circumvent this Interim Code of Conduct under any circumstances.~~ Any PECO Supplier shall have its own direct line management. Any shared facilities shall be fully and transparently allocated between the PECO EDC function and the PECO Supplier function. PECO EDC accounts and records shall be maintained such that the costs a PECO supplier incurs may be clearly identified.
6. PECO EDC shall ~~not condition or tie~~ or tie the provision of any PaPUC jurisdictional regulated services on the purchase of power from a PECO Supplier. PECO EDC shall not condition or tie the availability of terms and conditions associated with the purchase of any goods or services on the purchase of power from a PECO Supplier.
- 7a. Neither PECO EDC nor a PECO Supplier may directly or by implication ~~falsely and unfairly~~ represent:
 - that the PaPUC jurisdictional regulated services provided by PECO EDC are of a superior quality when power is purchased from a PECO Supplier; or
 - that the merchant services (for power) are being provided by PECO EDC rather than a PECO Supplier;
 - that the power purchased from an EGS that is not a PECO Supplier may not be reliably delivered;
 - that power must be purchased from a PECO Supplier to receive PECO EDC PaPUC jurisdictional regulated services.
- 7b. PECO EDC shall not jointly market or jointly package its PaPUC jurisdictional regulated services with the services of PECO's Suppliers unless it offers the same promotion of services to non-affiliated Suppliers.
8. PECO EDC shall establish and file with the Commission a dispute resolution procedure to address complaints alleging violations of these rules.

EGS Rights and Obligations (Original Page 91)

As noted above PECO's proposed EGS "Rights and Obligations" are deficient because they fail to set forth operational rules to apply to interactions between PECO and EGSs using PECO's distribution system. They also fail clearly to delineate Commission and FERC jurisdictional issues. Moreover, because there are no EGS rights within this language, the term "Rights" has been deleted. Accordingly, the following modifications are suggested:

EGS OBLIGATIONS

To provide Competitive Energy Supply, EGSs must do the following:

1. Obtain a license from the Commission. Demonstrate at least annually that it has obtained and possesses a valid license from the Commission.
2. Enter into an agreement with the Company, that complies with applicable FERC Rules and Orders, under which the Company agrees to act as agent for the EGS with respect to transmission service within the PJM System needed to serve the loads of the EGS' customers. [Note: if PJM rules change to enable EGSs and qualifying customers to obtain transmission service directly from PJM, then this requirement may be eliminated]. Transmission Service. (a) Indicate to the Company that the EGS will obtain all transmission service necessary to serve the EGS' retail load directly from PJM, or (b) Enter into an agreement with the Company that complies with applicable FERC Rules and Orders, under which the Company agrees to act as agent for the EGS with respect to transmission service within the PJM System needed to serve the loads of the EGS' customers. The specific rules, rights and obligations with respect to transmission service are governed by FERC and in the event of a discrepancy, those rates, rules and obligations apply.
3. ~~Obtain any necessary transmission service to deliver power from any point of generation outside of the PJM System to a point of receipt on the PJM System.~~
4. Sign an agreement form, which the Company will also sign, indicating the agreement of both the EGS and the Company to abide by the Company's EGS "Policies and Procedures" Supplier Operational Rules, as set forth as Annex "A" to this Tariff," and,
5. (a) Indicate to the Company that the EGS will directly satisfy with PJM the installed capacity obligation associated with their loads, or (b) Enter into an agreement with the Company setting forth the respective rights and obligations of the Company and the EGS with regard to an EGS' installed capacity obligation attributable to the load of the EGS' customers, which agreement shall comply with applicable FERC Rules and Orders. [Note: if PJM rules change to enable EGSs and qualifying customers to directly satisfy with PJM the installed capacity obligation associated with their loads, then this requirement may be eliminated]. Installed Capacity.
6. The Company's divisional or affiliated EGSs must also comply with the Code of Conduct contained in this Tariff.

Supplier Operational Rules:

AVAILABILITY/APPLICABILITY. This tariff is applicable to EGSs that are responsible for supplying all or a portion of the electric power and energy requirements of customers connected to the Company and set forth the procedures to be used by the Company and EGSs for load forecasting, load scheduling, and reconciliation of the difference between load obligation and the amounts of actual energy use by end users.

I. EGS CLASSIFICATIONS. Each EGS shall be classified as one or more of the following:

- A. **Scheduling EGS:** A Scheduling EGS provides a day ahead pre-schedule for its aggregate load and can provide hourly revisions to its pre-schedule during the day of flow according to PJM rules. The Scheduling EGS may perform the function of Scheduling Coordinator with PJM and the Company for a Non-Scheduling EGS.
- B. **Non-scheduling EGS:** A Non-scheduling EGS does not act as a scheduling coordinator with PJM and the Company and includes its energy to meet load with that of a Scheduling Coordinator.
- C. **Load Following EGS:** A Load Following EGS has the capability to receive and provide the Company with a real time load and power factor signal of end users. A Load Following EGS may be either a Scheduling EGS or a Non-Scheduling EGS.

II. EGS COMMUNICATIONS REQUIREMENTS. An EGS shall be equipped with the following communications capabilities:

- A. Internet e-mail, including the capability to receive ASCII file attachments;
- B. Internet browser capability sufficient to access the Company's SUCCESS web-site, and for file uploads and downloads to and from the Company.

III. LOAD FORECASTING. The load forecasting process shall provide an estimate of an EGS' anticipated aggregate hourly load. The aggregate hourly load forecast shall define the hourly energy values for EGS' energy deliveries to the Company.

A. Forecasting Methodology

- 1. **Monthly Metered End User Forecasts.** The EGS will provide hourly load forecasts for end users with monthly metering equipment. The weather-sensitive load curves provided in Section III.A.3. will provide the basis for preparing the forecasts for the aggregate of an EGS' monthly metered end users in each rate class/usage strata, using typical hourly weather forecast data.
- 2. **Hourly Metered End User Forecast.** The EGS shall provide hourly load forecasts for its end users with hourly or subhourly metering equipment, meaning metering equipment that supplies hourly or half-hourly readings of kW and power factor via remote communications, and not metering equipment from which hourly or half-hourly demand readings may be obtained through on-site querying of the metering equipment.
- 3. **Typical Load Curve Data.** The Company will make available to EGSs the typical load curves (including weather sensitivity) that will be used for the daily forecasting process unless a superior technique is developed. This information will be available on an ongoing basis for EGS download from the SUCCESS web-site and will permit an EGS to develop forecasts for any future period using the same methodology as the Company will use.

B. Daily Forecasting Process

- 1. **Business Days and Scheduling Window -** The daily forecasting process shall be performed on each business day. A business day is a weekday excepting holidays. The daily forecasting process shall be performed on each business day for a scheduling window consisting of all following days through the next business day.
 - a. Monday through Thursday (except holidays) for a scheduling window that covers the following day (midnight to midnight). If the following day is a holiday, then the scheduling window shall include the holiday and be extended to include the first business day following the holiday.
 - b. Friday for a scheduling window consisting of the following Saturday, Sunday, and Monday. If the Monday is a holiday, then the scheduling window shall include the holiday and extend through the first business day following the holiday.
- 2. **Process Description -** The following process shall be followed on each business day:

- a. Step 1 - The EGS will calculate the scheduling load forecast for each monthly metered rate class and strata by multiplying the weather-adjusted load curve for the appropriate day type by the number of the EGS' end users (including end users of any non-scheduling EGSs that have designated the scheduling EGS as their Scheduling Coordinator) in that rate class and strata and adjusting the hourly values upward by an amount necessary to cover line losses based on standard line loss percentages for the customer class to which each end user belongs. The EGS will post these load forecast values on the SUCCESS web-site by 10:00 a.m. of each scheduling day.
- b. Optional Step 1- At its option, a Scheduling EGS may calculate its scheduling load forecast based on a mutually agreed-to superior technique to that described in Step 1 above. Such EGS will post these values to the SUCCESS web-site by 10:00 a.m. of each scheduling day.
- c. Step 2 - By 10:00 a.m. of the business day the EGS shall enter via the SUCCESS web site the load forecast covering the scheduling window for each of EGS hourly metered end user and for each hourly metered end user of any non-scheduling EGS that have designated the EGS as their Scheduling EGS Forecast for hourly metered end users should include estimated losses based on Company furnished loss factor for each rate class.

If an EGS fails to enter a load forecast for required by 10:00 a.m., the Company will use the EGS' previously entered values for the most recent day of the same day type. If no previous values exist for the appropriate similar day, the load forecast for that end user will be set to zero.
- d. Step 3 - The Company will accept or reject the EGS load forecast via the SUCCESS web-site by 11:00 a.m. If the Company determines that a forecast is going to be rejected and conditions permit, then the Company will attempt to contact the EGS to explain the reason for rejection and resolve forecast problems. If the reason for rejecting the EGS load forecast values or changes cannot be resolved by 12:00 noon, the scheduling process will continue using the Company forecast values.

C. Real-Time Load Following. To the extent an EGS has installed and paid for the necessary metering and telecommunications equipment for actual load following, the EGS may follow such end user's load. To the extent that the EGS' total supply is for such end users, the EGS shall be obligated to follow such end users' load on a real-time basis. The EGS may become a Load Following EGS when all loads are covered by such metering. For real-time load following, an EGS will have special obligations with respect to both the Company and PJM that must be dealt with on a case-by-case basis to ensure operational integrity. The EGS and Company shall work cooperatively to address the technical and operational issues posed by real-time load following as the need arises.

D. Adequacy of Forecast. The EGS's forecast for monthly metered end users will be used for scheduling and will be adequate for this purpose. EGS remedies for any claimed deficiency in the Company's forecast for monthly metered end users shall be:

- 1. Install or arrange for the Company to install hourly metering equipment at the end user's premises at the EGS' expense in order that the end user can subsequently be forecast and reconciled as an hourly metered end user.
- 2. Enter into a joint load study with the Company at the EGS' expense to develop new load curves.
- 3. Seek relief under the Dispute Resolution provisions of this tariff.

IV. **LOAD SCHEDULING.** The net load schedule for the EGS shall be equal to the aggregate forecast value for all the monthly metered and hourly metered end users of the EGS and any non-scheduling EGS that have designated the EGS as their scheduling EGS. In accordance with PJM requirements, which require the scheduling and delivery of power only in whole MW, the Company will round the aggregate forecast value for each hour to a whole MW value for load scheduling purposes according to the following rules:

- 1. If the aggregate forecast value for an hour is less than 1.0 MW, the value will be rounded to 1 MW.
- 2. If the aggregate forecast value for an hour is greater than 1.0 MW, the value will be rounded downward to the nearest whole MW if the decimal portion is less than 0.5.
- 3. If the aggregate forecast value for an hour is greater than 1.0 MW, the value will be rounded upward to the nearest whole MW if the decimal portion is greater than or equal to 0.5.

- A. First through the Meter. The EGS will be obligated to supply first through the meter power.
- B. Daily Load Scheduling Process. The Company will upload the load schedule for the scheduling window to PJM by 12:00 noon on each business day. Each EGS is responsible for confirming the load schedule using the PJM Scheduler system.
- C. Load Schedule Changes. The EGS may initiate changes to the load schedule using the PJM Scheduler function. It is the responsibility of the EGS to make any necessary changes and notify the Company via telephone that changes have been made and the reason for the changes. The Company will review and, if the reason for the changes are determined by the Company to be operationally valid, confirm the load schedule changes using the PJM Scheduler function within one hour of the time that the EGS notifies the Company of the change. In the absence of confirmation by the Company, the prior load schedule value will remain in effect.

Because PJM has imposed a cut-off time for accepting load schedule changes, an EGS is encouraged to initiate any necessary changes and notify the Company well before the cut-off time to increase the likelihood that the changes will be accepted.

- D. Load Scheduling through a Scheduling EGS. Load schedules will not be submitted to PJM independently for a non-scheduling EGS. The load schedules submitted to PJM by an EGS serving as a scheduling EGS shall satisfy the load requirements for the EGS and any of its non-scheduling EGSs. Changes to such load schedules may be initiated only by the EGS serving as the scheduling EGS.

V. RECONCILIATION.

- A. General. The reconciliation process shall account for differences between the load obligation that was scheduled for an EGS' end users (including any schedule changes per Section II. B. above) and the energy that was actually used by those end users. Calculation of reconciliation values will be performed after-the-fact by the Company for all EGSs (except non-scheduling EGSs) with end users in the Company service territory. The Company and EGS shall recover their costs for the reconciliation of energy at the prevailing PJM Wholesale Hourly Market Clearing Price (MCP). PJM will perform calculations to determine the monetary value of reconciliation values and will bill for the monetary value through the PJM grid accounting system. Reconciliation is distinguished from energy imbalance service, a related process that will be managed and accounted for by PJM. Energy imbalance service results in the development of charges or credits for which EGSs will be responsible within the PJM grid accounting system due to the difference between an EGS' scheduled energy obligation and that EGS' scheduled supply. Energy imbalance service will be provided in real-time and accounted for after-the-fact by PJM for all EGSs (except non-scheduling EGSs).

- B. Daily Reconciliation. Each business day there will be a new date from monthly-metered end users (from the Company's 21 different billing cycles) and from the hourly-metered end users. The Company will determine hourly reconciliation values for that portion of the previous month's values that has updated data. This information will be posted on the SUCCESS web-site to enable the EGS and the Company to track the day-by-day buildup toward the monthly reconciliation billing that will be performed by PJM. The following calculations will be used to determine the reconciliation amounts:

1. Step 1 - Monthly-metered end users' actual usage (the billing usage reported by the Company) will be spread over each hour in the usage period based on each end user's weather-adjusted hourly usage curve using actual hourly weather data for the usage period. The monthly-metered end user's weather-adjusted usage by hour will be multiplied by the loss factor determined by end user rate class to determine the end user's gross usage by hour. Each hourly-metered end user's hourly usage will be multiplied by a loss factor determined by end user rate class to determine the end user's gross usage by hour.
2. Step 2 - The gross hourly usage amount for each end user will be aggregated by an EGS to arrive at a total gross end user usage amount by hour by EGS. This aggregation will account for usage of non-scheduling EGS' end users.
3. Step 3 - The hourly reconciliation value for each hour will be calculated by subtracting the EGS hourly total gross end user usage amount from the hourly load schedule submitted to PJM by that EGS, including the effect of any confirmed changes to the load schedule entered before the PJM accounting deadline.
4. Step 4 - The hourly reconciliation values will be posted on the SUCCESS web-site.

- C. Monthly Reconciliation. By the third business day after a calendar month becomes fully metered, the Company will compute and post the complete hourly reconciliation mismatch data the entire month to the SUCCESS web-site. By the third business day after a calendar month becomes fully metered, the Company will also transfer the monthly reconciliation mismatch data to PJM. PJM will multiply the EGS hourly reconciliation energy amount by the corresponding hourly MCP to calculate the EGS reconciliation dollar amounts for each hour. PJM will include the EGS reconciliation dollar amounts in the monthly PJM bills to the EGS.

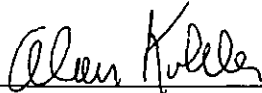
VI. BILLING. At the request of an EGS, the Company will offer billing services for an EGS's charges pursuant to Rule 17 and pursuant to a written billing agreement. The agreement shall specify payment terms for the remittance by the Company of customer charges collected on the EGS's behalf, including the requirement that such charges will be remitted to the EGS no later than fifteen (15) days after receipt of such charges by the Company.

- A. Disputes. If PECO Energy and an EGS have not successfully entered into a billing or agreement by ninety (90) days prior to January 1, 1999, the EGS may request that the PaPUC shall arbitrate the disputed terms of such an agreement, and the Company and the EGS shall request resolution of the dispute within thirty (30) days of its submission.

III. CONCLUSION

For the reasons stated above, the Commission is urged to accept Enron's Objections and make all the changes and modifications to PECO's Compliance Tariff set forth herein.

Respectfully submitted,



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Dated: January 27, 1998

PECO Energy Company
Allocation of A&G Adjustment

Attachment A.

			Class of Service ->	TOTAL	HT	EP	PD	GS	RH	R	OP
			Allocator								
<u>Allocation of A&G Adjustment per PECO Compliance Filing</u>											
Prod	COMPLIANCE A&G ADJUSTMENT	\$000	E1	38,701	10,803	534	1,007	8,255	2,827	14,495	238
Trans	COMPLIANCE A&G ADJUSTMENT	\$000	E1	(5,907)	(1,649)	(82)	(154)	(1,260)	(431)	(2,212)	(36)
Distr	COMPLIANCE A&G ADJUSTMENT	\$000	E1	(32,794)	(9,154)	(453)	(854)	(6,995)	(2,395)	(12,282)	(202)
Total	COMPLIANCE A&G ADJUSTMENT			-	-	(0)	-	-	-	-	-
Prod	Allocation Factor		E1		0.27913	0.01381	0.02803	0.21331	0.07304	0.37453	0.00816
Trans	Allocation Factor		E1		0.27913	0.01381	0.02803	0.21331	0.07304	0.37453	0.00816
Distr	Allocation Factor		E1		0.27913	0.01381	0.02803	0.21331	0.07304	0.37453	0.00816
<u>Allocation of A&G Adjustment Based on Function O&M Expenses (Allocator E1)</u>											
Prod	COMPLIANCE A&G ADJUSTMENT	\$000	E1-Prod. Portion	38,701	14,073	579	1,222	9,441	2,401	10,880	30
Trans	COMPLIANCE A&G ADJUSTMENT	\$000	E1-Trans. Portion	(5,907)	(2,133)	(87)	(188)	(1,458)	(358)	(1,675)	
Distr	COMPLIANCE A&G ADJUSTMENT	\$000	E1-Distr. Portion	(32,794)	(2,598)	(384)	(422)	(4,589)	(3,250)	(19,587)	
Total	COMPLIANCE A&G ADJUSTMENT			-	9,342	128	614	3,384	(1,214)	(10,383)	
<u>Difference from PECO Compliance Calculation</u>											
Prod	COMPLIANCE A&G ADJUSTMENT	\$000		-	(3,271)	(45)	(215)	(1,186)	426	3,635	208
Trans	COMPLIANCE A&G ADJUSTMENT	\$000		-	484	5	32	198	(76)	(537)	(36)
Distr	COMPLIANCE A&G ADJUSTMENT	\$000		-	(6,555)	(89)	(431)	(2,398)	884	7,285	422
Total	COMPLIANCE A&G ADJUSTMENT	\$000		-	(9,342)	(128)	(614)	(3,384)	1,214	10,383	594

PECO Energy Company
Allocation of A&G Adjustment

SLP	SLS	SLE	OTHER	INTERDEP
234	136	101	11	60
(36)	(21)	(15)	(2)	(9)
(199)	(115)	(86)	(9)	(51)
-	-	(0)	(0)	0
0.00805	0.00351	0.00261	0.00027	0.00155
0.00805	0.00351	0.00261	0.00027	0.00155
0.00805	0.00351	0.00261	0.00027	0.00155
9	2	5	1	78
(0)	(0)	(0)	(0)	(12)
(651)	(384)	(280)	(29)	(15)
(842)	(383)	(275)	(28)	51
225	134	96	10	(18)
(35)	(21)	(15)	(2)	3
453	269	194	20	(36)
642	383	275	28	(51)

PECO Energy Company
PECO Allocator E1

Attachment D

PECO Allocator E1:

Line Item	Function	Class of Service >	TOTAL	IIT	BP	PD	GS	RH	R
T 17	Production		883,010	334,881	14,618	28,405	200,096	64,604	231,509
T 20	Transmission		39,534	14,273	581	1,245	9,757	2,382	11,213
T 37	Distribution		132,635	11,838	2,255	2,157	20,382	13,426	72,788
T 38	Distribution		116,095	3,893	9	1,800	5,778	16,221	83,957
T 39	Distribution		24,844	3,680	176	395	4,083	2,382	13,923
T 40	Distribution		12,269	1,817	87	195	2,017	1,187	8,876
-5010	Production		207,621	83,092	3,868	6,829	42,378	18,093	49,462
-5070	Production		1,512	546	22	48	373	91	429
-5180	Production		128,991	51,824	2,403	4,243	26,329	11,241	30,730
-5250	Production		17,928	6,473	284	565	4,425	1,080	5,085
-5470	Production		14,392	5,780	268	473	2,938	1,254	3,428
-5500	Production		-	-	-	-	-	-	-
-5550	Production		-	-	-	-	-	-	-
-5551	Production		69,857	27,958	1,301	2,298	14,259	6,088	16,642
-5570	Production		(31,106)	(12,872)	(599)	(1,014)	(6,187)	(2,642)	(7,221)
-5670	Transmission		5,113	1,846	75	161	1,282	308	1,450
-5881	Distribution		6,013	759	147	101	1,063	589	3,019
-9040	Distribution		65,400	3,479	-	1,683	1,125	11,275	48,582
E1	Total		722,666	201,718	9,978	18,811	154,149	52,785	270,661
-----			1.00000	0.27913	0.01381	0.02603	0.21331	0.07304	0.37453

Allocator E1 Computed by Function

E1 - Production Portion	473,815	172,300	7,091	14,964	115,583	29,399	132,955
	1.000000	0.383645	0.014967	0.031583	0.243942	0.082047	0.280804
E1 -- Transmission Portion	34,421	12,427	506	1,084	8,495	2,074	9,783
	1.000000	0.381028	0.014705	0.031489	0.246793	0.080250	0.283837
E1 - Distribution Portion	214,430	16,991	2,380	2,762	30,071	21,312	127,944
	1.000000	0.079238	0.011099	0.012882	0.140238	0.099391	0.596888

PECO Energy Company
PECO Allocator E1

Attachment B

OP	SLP	SLS	SLB	OTHER	INTERDEP
4,909	1,189	225	625	118	1,830
-	2	0	1	0	78
839	4,319	2,553	1,834	174	89
4,409	0	11	8	9	1
94	48	18	33	8	23
46	24	9	16	4	11
2,414	570	109	302	58	446
-	0	0	0	0	3
1,500	354	67	188	36	277
-	1	0	0	0	36
167	40	8	21	4	31
-	-	-	-	-	-
-	-	-	-	-	-
812	192	37	102	19	150
(352)	(83)	(16)	(44)	(8)	(87)
-	0	0	0	0	10
55	132	78	83	4	4
1,252	-	-	-	3	-
4,449	4,376	2,533	1,886	198	1,122
0.00616	0.00605	0.00351	0.00261	0.00027	0.00155
388	115	20	58	9	954
0.000777	0.000242	0.000043	0.000119	0.000019	0.002013
-	2	0	1	0	69
-	0.000083	0.000009	0.000023	0.000001	0.002003
4,081	4,259	2,513	1,829	189	99
0.019031	0.019861	0.011718	0.008531	0.000879	0.000462

** TOTAL PAGE.05.**

ORIGINAL

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January 27, 1998

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17120

VIA HAND DELIVERY

Re: 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


Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of the Comments of the Philadelphia Area Industrial Energy Users Group to the Compliance Filing of PECO Energy Company 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 
Derrick P. Williamson

Counsel to the Philadelphia Area
Industrial Energy Users Group

DPW/aeh
Enclosures

DOCUMENT
FOLDER

16

James J. McNulty, Secretary

January 27, 1998

Page 2

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Robert Bennett, Bureau of Fixed Utility Services (via hand delivery)
Chairman John M. Quain (via hand delivery)
Vice Chairman Robert K. Bloom (via hand delivery)
Commissioner John Hanger (via hand delivery)
Commissioner David W. Rolka (via hand delivery)
Commissioner Nora Mead Brownell (via hand delivery)
Certificate of Service

K:\146\08115\MCNULTY9.LTR

ORIGINAL

**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 and :
Joint Petition for Partial Settlement :**

**COMMENTS OF THE PHILADELPHIA AREA
INDUSTRIAL ENERGY USERS GROUP TO THE
COMPLIANCE FILING OF PECO ENERGY COMPANY**

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DOCKETED
JAN 27 1998

Counsel to the Philadelphia Area
Industrial Energy Users Group

Dated: January 27, 1998

**DOCUMENT
FOLDER**

I. INTRODUCTION

By Opinion and Order entered in this proceeding January 16, 1998, the Pennsylvania Public Utility Commission ("PUC" or "Commission") ordered that PECO Energy Company ("PECO" or "the Company") make its tariff compliance filing (together with necessary data and analyses) on or before January 20, 1998. Opinion and Order on Reconsideration ("Reconsideration Order"), pp. 26-27, Ordering ¶ 3. Pursuant to this directive, PECO made its compliance filing with the Commission and served that filing on the participants to the restructuring proceeding.

By way of its Reconsideration Order, the Commission also directed that comments in response to PECO's compliance filing are due to the Commission on or before January 27, 1998. Reconsideration Order, p. 27, Ordering ¶ 4.

Consistent with that directive, the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), an active participant in this proceeding, provides these comments in response to PECO's compliance filing.¹ As the Commission is well aware, PAIEUG members consume enormous quantities of electricity pursuant to tariffs, rules, and riders provided by PECO Energy Company. In fact, PAIEUG members purchase electricity from PECO through contracts pursuant to PECO's Rule 4.6, Economic Efficiency Rider ("EER"), Incremental Process Rider ("IPR"), and Large Interruptible Load Rider ("LILR"), as well as under various other rate and rider offerings. Accordingly, it is of critical importance to PAIEUG members (as well as the greater economy of the Philadelphia area) that PECO's compliance filing reflect an unbundling of the currently applied

¹Current members of PAIEUG are listed on the cover page of these comments.

charges in a manner that ensures that the anti-cost shifting and rate cap provisions of the Competition Act (66 Pa. C.S. §§ 2801 et seq.) are properly applied.

PECO, however, through its compliance filing, has failed to reflect an unbundling of the EER, LILR, IPR, and Rule 4.6 service offerings in a manner that is consistent with the rate cap and anti-cost shifting provisions of the Act and the Commission's Order. Therefore, PAIEUG files these responsive comments and respectfully requests that the Commission order PECO to correct and refile those aspects of its Compliance Tariff to ensure consistency with the Competition Act and the Commission's Order. PAIEUG also requests that the PUC order PECO to modify its compliance filing to reflect the proper rate of return for calculating the CTC.

II. COMMENTS

A. **PECO's Compliance Filing Must Be Corrected To Ensure Compliance With The Rate Cap And Anti-Cost Shifting Provisions Of The Competition Act.**

Section 2804(4)(i)(A) provides that any customer purchasing generation from the utility shall maintain total charges that are capped as of January 1, 1997, for a period of 54 months. Likewise, Section 2804(4)(i)(B) provides that for any customer purchasing generation from a supplier other than the electric distribution utility, the charges for any non-generation services shall not exceed the level of those charges as of January 1, 1997. Likewise, the generation component of the utility's charges to any customer purchasing generation from the utility (inclusive of the competitive transition charge or intangible transition charge) shall not exceed the generation charge to the customer as of January 1, 1997, for a period of nine years or until the utility is no longer recovering stranded costs (whichever is shorter). 66 Pa. C.S. § 2804(4)(ii). In short, a customer's total charges and a customer's charge for generation are capped for an extended period, to the extent that the customer continues to receive generation service from the utility; all other non-generation charges are to be capped, in the event that the customer received generation service from an entity other than the utility.

The Act also sets forth that restructuring must not unreasonably discriminate against one customer class to the benefit of another; i.e., there must be no cost shifting among customers or customer classes. 66 Pa. C.S. § 2804(7). Indeed, the Competition Act specifically recognizes that in allocating the CTC and unbundling all component charges, the allocation must occur in a manner

that does not shift inter-class or intra-class costs. 66 Pa. C.S. § 2808(a); see also Reconsideration Order, p. 25.

Despite this clear legislative directive to ensure that restructuring and unbundling of rates does not result in an increase to the unbundled charges of any customer and a shift of costs from one customer or customer class to another customer or customer class, PECO's compliance filing fails to ensure compliance with the rate cap and anti-cost shifting provisions of the Act.

1. Customers with EER, IPR, and Rule 4.6 Contracts Expiring Prior to the Conclusion of the Transition Period Must Be Assured That Their Charges Remain Capped Consistent with the Competition Act.

In its compliance filing, PECO states in its Rule 4.6 that a customer is entitled to the rates contained in its contract only for the duration of the term of the contract, even if the term of the contract expires before the end of the transition period. Similarly, PECO's Rule 4.6 provides that if the customer accesses competitive supplies, the customer will pay the unbundled distribution charges and CTC associated with its contract for the duration of the term of the contract, not for the entire duration of the transition period. PECO's filing also limits application of the rate cap for EER customers to the term of the contract or the duration of the transition period, whichever is shorter. PECO places identical limitations on its IPR customer contracts and their associated unbundling. PECO's filing in this respect clearly violates the rate cap provision of the Competition Act.

As detailed above, the Competition Act requires that a customer's generation rates be capped for nine years or the duration of the transition period, whichever is shorter, to the extent that the customer continues to receive its generation service from PECO Energy Company. That generation

component also includes, for customers continuing to receive generation service from PECO, the customer's CTC (again, a customer's CTC responsibility must be consistent with the current cost responsibility that the customer has in rates today, such that no intra-class or inter-class cost shifting will be effected in allocating that CTC). The Act also requires that a customer's total charges be capped at levels in effect on January 1, 1997.

PECO's proclamation that a customer is entitled to the rates contained in its contract only for the term of the contract, even if the term of the contract expires before the end of the transition period, clearly defies the Act. The Act provides unequivocally that the generation rate cap is to be applied for nine years or the duration of the transition period, whichever is shorter. Should a customer's contract expire before the end of the transition period or before the end of nine years, the generation charge (including the CTC) inherent in that contract must be extended. PECO's compliance filing fails to reflect this statutory requirement.

The Commission must order that PECO correct this flaw in its proposed language for Rule 4.6 and its EER and IPR. If a Rule 4.6, EER, or IPR customer remains on PECO's system, the customer's total charges must remain capped consistent with the statute, and the customer's generation charge (in effect as of January 1, 1997), including the customer's CTC, must be capped for nine years or the duration of the transition period, regardless of when the contract would have otherwise expired for that customer. In other words, PECO must revise its Rule 4.6, EER, and IPR language to state: a customer is entitled to the rates contained in its contract for the duration of the term of the contract or for the duration of the transition period, whichever is longer.

In addition, PECO's attempt to limit the period during which EER, Rule 4.6, and IPR customers pay capped unbundled distribution charges and CTCs must be rejected. As noted above, PECO's compliance filing proposes that EER, Rule 4.6, and IPR customers that shop will pay unbundled distribution charges and CTCs based on their contracts only for the duration of the contracts. Thus, if the contract expires prior to the end of the distribution rate cap period or the transition period, PECO could increase the customer's unbundled distribution charge and CTC. This is clearly at odds with the intent and requirements of the Act, which provide that for a customer that shops, the customer's distribution charge is to be capped at the level inherent as of January 1, 1997. Therefore, even if an EER, Rule 4.6, or IPR customer's contract expires prior to the end of the distribution rate cap period, PECO is required by statute to charge that customer (who shops) the distribution charge inherent in that contract for the duration of the cap period.

Similarly, the CTC applicable to the EER, Rule 4.6, or IPR customer that shops must reflect the customer's CTC responsibility as inherent in its contract rate as of January 1, 1997, consistent with the Act.

Accordingly, PECO must revise the applicable language in Rule 4.6 and its EER and IPR to state: if the customer obtains competitive energy supply, the customer will pay the unbundled distribution charges and CTCs as designed in accordance with the . . . unbundling section above, until their contract expires or until the transition period ends, whichever is longer.

Absent language in PECO's compliance filing reflecting the statutory requirements, PECO's filing is violative of the Act. If PECO were entitled to maintain the tariff language it has proposed,

it could effectuate a cost shift in violation of both the statute and the Commission's Order. In addition, the language as proposed would create uncertainty for customers and would undoubtedly force litigation. Most importantly, the statutory rate cap does not differentiate between customer classes and special contract customers; therefore, the cap must be maintained for Rule 4.6, EER, and IPR customers. The current language reflected in PECO's compliance filing does not reflect this requirement.

2. The Company's Proposal to Use 1998 Demand and Energy Data to Calculate Application of the EER Discount for Unbundling the EER May Violate the Rate Cap.

PECO has proposed in its compliance filing that for EER contracts that do not address the right to direct access and that contain discount factors applicable to the capacity charge and first two energy blocks of the bundled Rate HT (or to some subset of those three charges), PECO will design new discount factors to apply to applicable components of the unbundled Rate HT or GS charges. PECO states that to design these new factors for application in the unbundling process, PECO will calculate a new discount percentage using the customer's previously negotiated percentage discount and calendar year 1998 demand and energy usage data.

As detailed above, the statute provides that charges for each customer are to be capped. It appears, therefore, that PECO's proposal to utilize 1998 demand and energy usage data for purposes of calculating EER discounts that are to apply to the EER customers' unbundled component charges may violate the rate cap. PECO must be required to ensure that its calculation and application of the discount to apply to the unbundled components of the EER rate does not violate the rate cap; i.e.,

neither the unbundled component charges (generation and non-generation) nor the total charge levied against the EER customer may exceed the level of charges applicable and effective on January 1, 1997. Given that PECO's proposal to use 1998 demand and energy usage data is not accompanied by any such assurance, the Commission must direct PECO to either revise its compliance tariff or amend it to ensure rate cap compliance in unbundling.

3. PECO Must Ensure That Its Unbundling of LILR is Rate Cap Compliant.

PECO has made a proposal setting forth the terms by which it will effect unbundling of its LILR service offering. It is not evident, however, from a review of PECO's LILR tariff, that PECO's unbundling proposal is rate cap compliant. This is particularly so given the addition of the nuclear decommissioning cost adjustment that is applied by PECO to LILR. Therefore, PECO must be required to amend the LILR tariff language to reflect that PECO's unbundling of LILR will not produce charges to the LILR customer that are greater than those in effect as of January 1, 1997 (on a total and unbundled component charge basis).

B. PECO's Filing Must Be Revised To Reflect A Debt-Only Rate Of Return Of 7.47%.

As the Commission indicated in its Reconsideration Order, the CTC is to be calculated by PECO using a 7.47% rate of return, which is PECO's debt-only rate of return. Reconsideration Order, p. 25.

As part of its compliance filing, PECO provided a packet entitled "Stranded Investment Recovery Schedule/Calculations." Within that packet, PECO provides a schedule entitled

“Calculation of Revenue Requirement on 7.47% Weighted Average Cost of Capital.” Within that schedule, PECO allegedly reflects the 7.47% rate of return ordered by the Commission in calculating the CTC. However, PECO has improperly manipulated the 7.47% return, by grossing up the preferred and common categories for income tax, thereby grossing up the applicable rate of return to be utilized to 10.31%.

PECO’s gross-up of the cost of capital to 10.31% for purposes of calculating the CTC is clearly contrary to the Commission’s Reconsideration Order, which establishes that a 7.47% rate of return is to be utilized. PECO must recalculate the CTC revenue requirement based on the 7.47% cost of capital ordered by the Commission and recalculate the applicable CTCs, inclusive of all revenue requirements. Absent that recalculation, PECO’s compliance filing must be rejected.

III. CONCLUSION

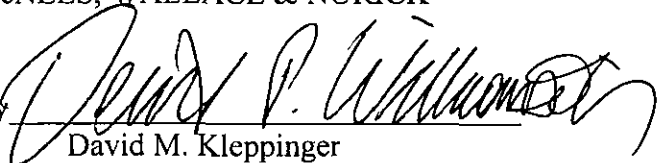
WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Commission order PECO to revise or amend its compliance filing as follows:

- (1) Revise language regarding EER, Rule 4.6, and IPR contracts to acknowledge that even if those contracts expire prior to conclusion of the transition period, the total charges for those customers will remain capped for the duration of the transition period (or otherwise consistent with the Competition Act);
- (2) Revise the filing to reflect that if EER, Rule 4.6, and IPR customers choose an alternative supplier, their unbundled distribution charge and their CTC obligation will remain capped for the duration of the transition period (or otherwise consistent with the Competition Act);
- (3) Revise the filing to ensure that the EER discount is applied in such a manner that the applicable unbundled charges are no greater than those in effect for EER customers as of January 1, 1997;
- (4) Revise the filing to reflect that unbundling of LILR will not produce unbundled components or total charges that exceed those in effect for LILR customers as of January 1, 1997; and,
- (5) Require PECO to recalculate the CTC revenue requirements and CTCs based on a 7.47% cost of capital, without any gross-up to the preferred and common categories.

Respectfully submitted,

McNEES, WALLACE & NURICK

By



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Counsel to the Philadelphia Area
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Dated: January 27, 1998

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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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CERTIFICATE OF SERVICE

Page 4

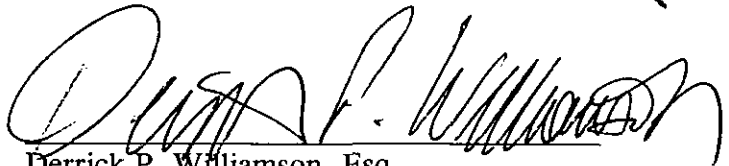
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Dated this 27th day of January, 1998, in Harrisburg, Pennsylvania.

* VIA FEDERAL EXPRESS

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January 27, 1998

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Re: Application of PECO Energy
For Approval Of Its Restructuring Plan Under
Section 2806 the Public Utility Code
Docket No. R-00973953

Dear Mr. McNulty:

Enclosed for filing are the original and three (3) copies of the Comments to the PECO Compliance filing on behalf of the Office of Small Business Advocate in the above-docketed proceeding. A computer diskette (in WordPerfect 6.1 format) is also enclosed.

As evidenced by the enclosed certificate of service, a copy has been served on all active parties in this case. If you have any questions, please do not hesitate to contact me.

Sincerely,

Bernard A. Ryan, Jr.
Bernard A. Ryan, Jr.
Small Business Advocate

Enclosures

- cc: John J. Quain, Chairman
- Robert K. Bloom, Vice-Chairman
- John Hanger, Commissioner
- David W. Rolka, Commissioner
- Nora Mead Brownell, Commissioner
- Cheryl Walker Davis, OSA
- Donald Muth, FUS
- Hon. Marlane R. Chestnut
- Hon. Charles E. Rainey, Jr.
- Parties of Record
- Mr. Brian Kalcic

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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 : Docket No. P-00971265
Services Power, Inc. :

OFFICE OF SMALL BUSINESS ADVOCATE
COMMENTS ON COMPLIANCE FILING OF
PECO ENERGY COMPANY

Pursuant to Ordering Paragraph 4 of the Opinion and Order (Restructuring Reconsideration Order) entered January 16, 1998, the Office of Small Business Advocate ["OSBA"] files the following comments relative to the compliance filing made by PECO Energy Company ["PECO"] on January 20, 1998.

I. Revenue Issues

The OSBA calls the attention of the Public Utility Commission ["Commission" or "PUC"] to two discrepancies between the Commission's Opinion and Order entered on December 23, 1997 approving a restructuring plan for PECO [the "PECO Restructuring Order"] or the Commission's Opinion and Order (Restructuring Reconsideration Order) entered January 16, 1998 [the "PECO Reconsideration Order"] on the one hand and the compliance filing that PECO submitted to the Commission on January 20, 1998 on the other hand.

A. Overstatement of Stranded Costs Allowed by Commission

In the PECO Reconsideration Order, the Commission adjusted PECO's total recoverable stranded costs downward from \$5.024 billion to \$4.935 billion, a decrease of \$89.0 million. Included in the \$4.935 billion was an estimate of \$460.7 million of stranded costs associated with the reallocation of A&G expense to generation. The Commission directed that the precise amount of stranded costs

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associated with the A&G expense reallocation be established within PECO's compliance filing.

In place of the Commission's \$460.7 million A&G expense estimate PECO calculated a total A&G expense adjustment of \$583.5 million when it made the compliance filing, for an increase of \$122.8 million above the Commission's estimate. Accepting for purposes of argument only that PECO's higher A&G expense figure is correct, the total amount of recoverable stranded costs allowed by the Commission would then become \$5.058 billion (\$4.935 billion plus \$0.123 billion). Instead of \$5.058 billion, however, the rates contained in PECO's compliance filing are designed to recover \$5.147 billion of stranded costs (see PECO's Stranded Investment Recovery Schedule, page 1 of 9). As a result of that error, PECO's system-average compliance filing CTC of \$0.0277 per kWh is too high because it would over collect approximately \$89.0 million of stranded costs on a net present value basis.

The OSBA estimates that correcting PECO's compliance filing to eliminate that \$89.0 million overcollection would reduce the system average CTC from \$0.0277 (per PECO) to \$0.0272 per kWh.

B. Inconsistent CTC Methodologies

Independent of the above problem pertaining to the overall level of stranded costs, the OSBA notes that the methodology used by PECO to determine the system-average CTC does not appear to comport with that which underlies the Commission's own CTC estimate. PECO in the compliance filing calculates that a system-average CTC of \$0.0277 per kWh is necessary to recover \$5.147 billion in stranded costs on a present value basis. By contrast, at page 46 of the PECO Restructuring Order the system-average CTC necessary to recover \$5.024 billion of stranded costs is estimated by the Commission to be only \$0.0256 per kWh.

If the methodologies used by PECO and the Commission to determine the required system-average CTCs in the above instances were identical, the difference in the two CTC values would be explainable simply by the difference in the total stranded costs levels under consideration. That is not the case here. PECO's CTC reflects a total stranded cost level of \$5.147 billion, or 2.45% greater than the stranded cost recovery initially approved (but later reduced) by the Commission (\$5.147 divided by \$5.024 or 1.0245). Assuming the same underlying methodology, the system-average CTC should be linear with respect to the level of recoverable stranded costs. Multiplying the Commission's CTC of \$0.0256 by 1.0245 results in a CTC estimate of \$0.0262 per kWh to recover \$5.147 billion. Since \$0.0262 is considerably less than PECO's value of \$0.0277, the OSBA concludes that PECO's CTC methodology deviates from that which underlies the Commission's Order, and produces a system-average CTC that is biased upward.

As the OSBA has not been able to replicate the Commission's \$0.0256 CTC estimate, it cannot determine the exact number of methodological issues that may be involved in this incongruity. Nevertheless, it is clear that one reason for the difference is that PECO has grossed-up the allowed 7.47% return on unrecovered stranded costs for income taxes to arrive at an effective carrying charge of 10.31%. The Commission's two orders in this case make it abundantly clear that such an increase in the return component of the CTC is not authorized.

The PECO Restructuring Order specifies (on page 108) that "... the record in this proceeding supports adopting PECO's revised long-term debt rate of 7.47% to calculate the revenue requirements for the recovery of the CTC over the 8 ½ year transition period." The PECO Reconsideration Order subsequently confirmed that determination, and specified that the compliance filing should include a CTC that is "... calculated using a 7.47 percent rate of return, inclusive of all revenue requirements ..." PECO Reconsideration Order at p. 25 (emphasis added).

The \$0.0277 per KWH total company CTC called for in PECO's compliance filing should be reduced to conform to the 7.47% return authorized in the PECO Restructuring Order (as later confirmed by the PECO Reconsideration Order).

II. Rate Design Issues

In the Partial Settlement that the Commission rejected when it adopted the PECO Restructuring Order, the OSBA had bargained for a segmentation of the GS class at the 40 KW of demand level for purposes of implementing the phase-in to competition. That division of the very large GS class was intended to protect the interests of the smaller volume customers included in PECO's GS class. Unfortunately, that GS segmentation proposal was not specifically included (or even mentioned) in the Commission's discussion of the phase-in to customer choice under the approved restructuring plan set forth in the PECO Restructuring Order (see pages 46 through 49). The PECO compliance filing also does not call for such a segmentation of the GS class for that purpose.

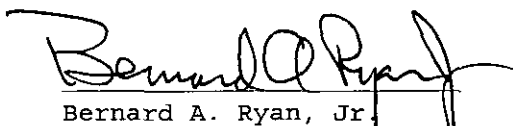
While the OSBA continues to fear that some of the smaller volume members of the GS class could be competitively disadvantaged by being lumped in with the much larger volume GS customers for phase-in purposes, we recognize that the accelerated phase-in that was approved by the PUC has essentially reduced that risk from a two-year problem to a one-year one. Moreover, the use of an open enrollment period during which all commercial customers will have the opportunity to volunteer to become shoppers for generation service (with a lottery to be used for selection in the event of oversubscription) should also reduce the prospects for small businesses to be competitively disadvantaged during the transition to full customer access to competitively-priced generation service. For those reasons, the OSBA does not object to the phase-in procedures outlined in Exhibit CE-4 of PECO's compliance filing.

III. Conclusion

The PECO compliance filing should be revised in at least the following respects:

1. The over-collection of \$89 million in stranded costs outlined in Comment I A above should be eliminated; and
2. The average CTC should be reduced from \$0.0277 per KWH to reflect an all-inclusive rate of return of 7.47% on allowable stranded costs.

Respectfully submitted,


Bernard A. Ryan, Jr.
Small Business Advocate

Dated: January 27, 1998

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company For Approval Of Its Restructuring Plan Under Section 2806 Of The Public Utility Code	:	
	:	Docket No. R-00973953
Petition of Enron Energy Services Power, Inc.	:	
	:	Docket No. P-00971265

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Comments to the Compliance Filing on behalf of the Office of Small Business Advocate by first class mail (unless otherwise indicated) upon the persons addressed below:

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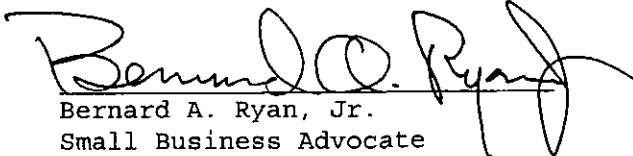
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Date: January 27, 1998

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility
Commission)

v.)

PECO Energy Company)

PECO Application for Approval of its Restructuring
Plan and Joint Petition for Partial Settlement)

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)

KJR
Docket No.
R-00973953

Docket No.
P-00971265

COMMENTS OF THE
SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY ON
PECO ENERGY COMPANY'S
COMPLIANCE FILING

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I.
INTRODUCTION

Pursuant to the Commission's Opinion and Order entered January 16, 1998 (the "Opinion and Order"), the Southeastern Pennsylvania Transportation Authority ("SEPTA") respectfully files its comments on the compliance filing ("Compliance

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Filing”) made by PECO Energy Company (“PECO”) on January 20, 1998 pursuant to the Opinion and Order.

On December 2, 1997, SEPTA^{1/} filed a brief that addressed Paragraph 13 of the *Joint Petition for Partial Settlement*^{2/} (“the *Partial Settlement*”), which dealt with the critical issue of recovery of the competitive transition charge (“CTC”) and the intangible transition charge (“ITC”) from those industrial and commercial customers who “significantly reduce” their purchases of electricity through installation of on-site generation. SEPTA asked the Commission to rule that neither Section 2808(a) of the Public Utility Code,^{3/} nor the language contained in Paragraph 13 of the *Partial Settlement*, requires that customers who install on-site generation and cease taking any services from their former utility provider, but remain physically connected to the utility’s transmission and distribution network, must pay a CTC.

On January 7, 1998, the Philadelphia Area Industrial Energy User’s Group (“PAIEUG”) filed a Petition for Reconsideration and Clarification (“Petition for Reconsideration”) in response to the Commission’s entry, on December 23, 1997, of an Opinion and Order denying approval of both the *Partial Settlement* and the Petition of

^{1/} SEPTA filed a Motion to Intervene in these proceedings on November 13, 1997, which was granted on November 20, 1997.

^{2/} Joint Petition for Partial Settlement of PECO Energy Company’s Proposed Restructuring Plan and Application for a Qualified Rate Order, Docket No. R-00973952, August 25, 1997.

^{3/} Title 66 of the Pennsylvania Consolidated Statutes, as added by the Electricity Generation Customer Choice and Competition Act.

Enron Energy Services, Inc.^{4/} In its Petition for Reconsideration (pp. 13-14), PAIEUG stated that the Commission failed to address, overlooked or otherwise ignored the treatment of several issues addressed in the *Partial Settlement*, including an issue addressed in Paragraph 13 thereof, *i.e.*, the level of CTCs imposed as a result of new self-generation.

On January 13, 1998, SEPTA filed an Answer to PAIEUG's Petition for Reconsideration in which it requested that, if the Commission reconsidered the issues raised in Paragraph 13 of the *Partial Settlement*, it also should rule on the related issue raised in SEPTA's brief.

On January 16, 1998, the Commission entered the Opinion and Order. The Commission addressed neither PAIEUG's arguments regarding the issues addressed in Paragraph 13 of the *Partial Settlement* nor SEPTA's Answer thereto. Pursuant to the Opinion and Order, PECO filed the Compliance Filing on January 20, 1998.

II. COMMENTS

Original Page No. 27 Does Not Permit PECO To Impose an Exit Fee On A Customer Who Elects to Cease Taking All Services From PECO.

SEPTA's comments focus on Original Page No. 27 of PECO's Tariff Electric Pa.P.U.C. No. 3 ("Page 27") contained in the Compliance Filing. Page 27, which

^{4/} Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, Docket No. P-00971265, October 7, 1997.

implements the CTC, states as follows:

Each customer will be charged their full CTC allocable to their use of the transmission and distribution system. As an alternative means of collecting the CTC, individual customers and PECO Energy may mutually agree to a payment schedule that fully collects the present value without bypass by the customer or overcollection by PECO Energy.

Taken either together or individually, the above-quoted statements in the proposed tariff cannot be interpreted as permitting PECO to impose an exit fee on a customer who elects to cease taking all services from PECO, including transmission and distribution services. By “exit fee,” SEPTA means a fee or fees calculated to recover the present value of the transition costs that such customer would have borne if it had continued to take transmission and distribution services from PECO over the entire CTC collection period.

- A. **The first sentence quoted above refers to the mechanics of applying the CTC charge to the customer’s current usage and billing demand, and neither directly nor indirectly imposes on any customer any ongoing liability for future transition costs.**

The first sentence quoted above states: “Each customer will be charged their full CTC allocable to their use of the transmission and distribution system.” This sentence reflects PECO’s intention to apply the CTC charges (which are levied as per kWh and/or per kW charges) to each customer’s “full” use of the transmission and distribution system. As elucidated in the Compliance Filing, calculating CTC charges based on a customer’s “full” use of PECO’s transmission and distribution system simply means applying the per kWh and/or per kW charges to the customer’s usage and/or billing demand for the monthly period for which the CTC is calculated, subject to the annual reconciliation process on a rate class-specific basis.

The first sentence quoted above clearly refers to the mechanics of applying the various CTC charges to a customer's electricity consumption patterns for a given period. It does not purport either to fix a customer's CTC liability for any future periods or to establish a customer's ultimate total transition cost liability. As such, PECO cannot point to the quoted language as creating transition cost liability associated with future periods (which would be required in order to impose an exit fee), particularly with respect to a customer who would be making *no* electricity purchases through use of the transmission and distribution system during such future periods.

Page 27 also sets forth a "Special Rule" addressing a narrow situation involving on-site generation in which a customer may be liable for additional CTC amounts based on his usage and billing demand during a prior, higher-usage base year, if he reduces his usage by 10 percent or more. While the "Special Rule" allows PECO to issue a separate bill to such a customer, the separate bill recovers only the deficiency in CTC payments associated with the customer's reduced usage, and it does so only on a running, year-by-year basis. Plainly, neither the Special Rule, nor the first sentence quoted above, fixes the customer's liability for future billing periods. As such, neither the Special Rule nor the quoted language can be interpreted as enabling PECO to impose on a customer any ongoing liability for future transition costs, in the nature of an exit fee.

B. The second sentence addresses only mutual agreements between PECO and a customer on alternative payment schedules, and does not allow for unilateral imposition of a CTC.

Page 27 states: "As an alternative means of collecting the CTC, individual customers and PECO Energy may mutually agree to a payment schedule that fully

collects the present value without bypass by the customer or overcollection by PECO Energy.”^{5/} If PECO were to attempt to unilaterally impose an exit fee on a departing customer, it might cite this provision of Page 27 for support. The quoted sentence, however, provides only for an *optional* payment schedule that is *mutually agreed* upon by PECO and the customer, and does not confer on PECO any right to unilaterally deviate from the CTC payment provisions for any customer, departing or not.

Consequently, under no reading of this provision could PECO claim the right unilaterally to impose an exit fee on a departing customer who will cease taking all services from PECO. SEPTA’s view is that the quoted provision was intended simply to allow the utility and its customer to consensually vary the *timing* of the customer’s payment of CTC charges for which he is responsible under other provisions of the proposed compliance tariff. The quoted provision does not vest in PECO any *additional* rights, nor obligate customers to pay, any *additional* transition cost charges, such as an exit fee.

^{5/} This sentence of the quoted text from the Compliance Filing derives from the Commission’s Opinion and Order entered December 23, 1997, which states (pp. 110 - 111) as follows: “Section 2808(b) also provides that the utility and customer may mutually agree on an alternative payment methodology. Individual customers and PECO may mutually agree to any payment schedule that fully collects the same present value without bypass by the customer or overcollection by PECO.”

III.

CONCLUSION

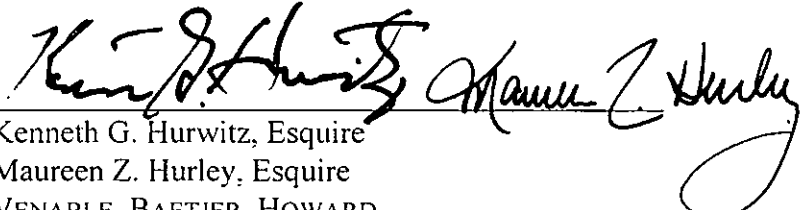
In its Brief and its Answer, SEPTA invoked the example of a customer self-generating all of its power requirements and ceasing purchases of *all* services from the utility, including transmission and distribution. The Commission elected not to address the implications of this example for such departing customer's transition cost liability. Thus, the Commission has not interpreted the Act to allow, nor did it otherwise explicitly authorize, PECO to impose an exit fee or any other type of transition cost liability on a departing customer who ceases to use its transmission and distribution system.

Accordingly, PECO cannot be permitted now or in the future to utilize the Compliance Filing as a vehicle for imposing an exit fee. Furthermore, the language utilized in the compliance tariff to address transition costs cannot be interpreted as conferring such authority on PECO. SEPTA submits, however, that the Commission should take this opportunity to confirm SEPTA's interpretation of the compliance tariff discussed herein.

Doing so would accomplish two key goals. First, it would prevent PECO from implementing the tariff in a manner inconsistent with the Commission's orders in this proceeding and with the plain language of the tariff itself. Second, it would afford

customers a measure of certainty as they plan for their future in a competitive marketplace.

Respectfully submitted,



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Dated: January 27, 1998

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Comments of the Southeastern Pennsylvania Transportation Authority on PECO Energy Company's Compliance Filing* was served in the manner indicated, this 27th day of January, 1998, upon the following:

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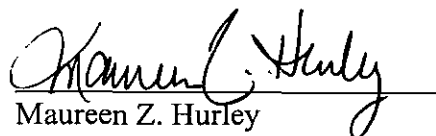
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January 27, 1998

KJR

James McNulty, Secretary
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Re: Application of PECO Energy Company :
for Approval of Its Restructuring Plan : Docket No. R-00973953

Petition of Enron Energy Services Power :
Inc. for Approval of an Electric Competition : Docket No. P-00971265
and Customer Choice Plan : (Consolidated)

Dear Mr. McNulty:

Enclosed please find eight copies of the Comments of the Environmentalists to the PECO Energy Compliance Filing in the above-captioned proceeding.

Sincerely,



Roger E. Clark
Attorney for The Environmentalists

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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 :

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**Comments of the Environmentalists
to the PECO Energy Compliance Filing**

The Environmentalists¹ have reviewed the Compliance Filing submitted by PECO Energy on January 20, 1998 and would like to make the following comments on the topics of self-generation, universal service and consumer education.

Self-Generation

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The Commission's Opinion and Order entered on December 23, 1997 in the PECO Energy restructuring proceeding ("the Commission Order") devoted several pages to the subject of self-generation and directed PECO to modify its policies and

¹The Environmentalists consist of the Clean Air Council, the Sierra Club, the Pennsylvania Solar Energy Industries Association, the Pennsylvania Public Interest Research Group, the Energy Coordinating Agency, the Grass Roots Alliance for a Solar Pennsylvania and the Nonprofits Energy Savings Investment Program.

JAN 27 1998

tariffs in several respects. The Environmentalists have three issues to raise regarding this topic in the PECO Compliance filing.

1. **The PECO Compliance Filing should be amended to address interconnection by small self-generators.**

The Commission Order recognizes the difference between large industrial self-generators which operate under the Auxiliary Service Rider and the small self-generators which are the subject of PECO's Renewable Energy Service rate (Rate R-S). The Order acknowledges that while the interconnection standards contained in PECO's Gray Book may be appropriate for large projects, these same rules are "not particularly useful to enable small generators, such as residential customers with rooftop photovoltaic panels, to interconnect."²

The Environmentalists' witness David Schoengold recommended numerous changes to PECO's interconnection rules for small self-generators, including making the technical requirements consistent with the current IEEE standards, substantially reducing PECO's administrative fees for project review and having PECO absorb the first \$1,000 of any necessary local distribution system upgrades.³ The Commission Order stated "[w]e also agree with Mr. Schoengold's recommendation that a reasonable interconnection opportunity for such customers may not impose unnecessary barriers such as complex or technical standards above national norms or expensive inspections standards."⁴ The Order stated that "PECO's compliance filing should include one or

²Order, p. 123.

³These changes were contained in David Schoengold's Exhibit DS-4.

⁴Order, pp., 123-124.

more proposals to provide such reasonable interconnection standards for all types of self-generating customers.”⁵

The Environmentalists have heard from a photovoltaic installer that, at least for one installation, PECO has modified its interconnection rules. We ask, however, that the Compliance Filing be amended to include a new interconnection policy for small self-generators under Rate R-S which is consistent with the Commission’s Order.

2. The PECO Compliance Filing should be amended to make the Renewable Energy Service rate (Rate R-S) available to Residential Time-of-Use customers (Rate R-T).

According to the Rate R-S tariff sheet included in the Compliance Filing, the Renewable Energy Service rate (Rate R-S) is available for residential customers served under the residential rate (Rate R) and the residential heating rate (Rate R-H) and for commercial customers on Rate GS. The Environmentalists see no valid reasons from excluding residential time-of-use customers (Rate R-T) from the renewable energy service rate and ask that PECO be directed to amend their Compliance Filing to include Rate R-T in the “Availability” section the Rate R-S tariff.

By expanding Rate R-S to include all residential customers, we are asking for a reasonable and minor change to the tariff⁶ which has the potential to improve the economics of photovoltaic systems by recognizing the true economic value of their on-peak electrical output.

⁵Order, p. 123

⁶We are told by PECO that at this time only a dozen ratepayers are under the Rate R-T tariff.

3. The PECO Compliance Filing should be amended to allow small self-generators to use two additional metering options.

The Commission Order stated that “PECO has the duty as an EDC to provide a ‘qualified meter’ ...” and noted that “[m]eters that support net metering, such as non-ratcheted, bi-directional meters, and two meter or smart meter systems should be considered.”⁷

The Rate R-S tariff included in the PECO Compliance Filing has two metering options: a ratcheted meter and a two meter system. The ratcheted meter works fine if a customer’s load occurs at the same time and always exceeds the on-site generation. However, whenever the on-site generation is higher than the on-site consumption, the customer is giving the excess generation to PECO without any compensation for it whatsoever. Examples when this is likely to occur are a household who is gone during the day when the photovoltaic systems generates electricity or a GS customer who is closed during the week-end.

PECO’s second metering option is a two-meter system, but this entails an additional monthly metering cost (and possibly an additional initial meter installation fee).

The Commission was correct is listing two additional metering alternatives which should be available for small self-generation. The non-ratcheted, bi-directional meter option is important because it allows the Rate R-S customer to continue to use the existing meter without the initial and on-going expense of a two meter system. The second option listed by the Commission is a smart meter, and there may be customers who would benefit from such an alternative. Both options should be available to Rate R-S customers.

⁷Order, p. 124.

Universal Service and Energy Conservation

The Commission's Order addressed several aspects of PECO universal service and energy conservation program and the Environmentalists have identified five aspects of the PECO Compliance Filing which fail to comply with the Order.

- 1. The PECO Compliance Filing fails to address how community-based organizations will participate in universal service program design, education and service delivery.**

The Commission's Order directed PECO to "expand the participation of community based organizations with relevant expertise in program design, education and service delivery pursuant to Section 2804(9)."⁸ The Commission Order also addressed various administrative standards for participating community based organizations to ensure that the program is operated in a cost-effective manner.⁹

PECO's Compliance Filing failed to address these topics. The only information in the Compliance Filing relating to universal service is the explanation of the Universal Service Fund Charge and the description of the CAP Rate. The Environmentalists therefore request that the Commission direct PECO to amend its Compliance Filing to address its plans to involve community based organizations in the design and delivery of its universal service programs. The revised Filing should also include a proposal for financial and managerial controls which are fair and appropriate but not oppressive and punitive.

⁸Order, p. 144-145.

⁹Order, p. 148.

2. The PECO Compliance Filing fails to address all universal service program costs, expenses and avoided costs.

The Commission Order concluded that "PECO's initial filing does not properly identify all program costs affecting expenditures on universal service issues by considering many non-low income expenses and omitting consideration of avoided collection and administrative costs."¹⁰ The Commission referred to the Guidelines for Universal Service and Energy Conservation Programs for the proper accounting of program costs.

PECO's Compliance Filing is totally silent on this subject. The Environmentalists therefore request that the Commission direct PECO to amend its Compliance Filing to include a universal service program budget that is consistent with the Commission's Order.

3. The PECO Compliance Filing fails to comply with the Commission's directive for a review of the CAP Rate evaluation and a follow-up proceeding involving the parties to this proceeding.

The Commission's Order expressly requires PECO to share the results of the CAP program evaluation prior to moving forward on the CAP Rate.¹¹ The PECO Compliance Filing ignores the Commission's call for further proceedings before implementation of CAP Rate program and simply includes a tariff sheet for the new CAP Rate.

The Environmentalists therefore request that the Commission direct PECO to amend its Compliance Filing to address its plans to include the parties in this

¹⁰Order, p. 145.

¹¹Order, p. 146.

proceeding in the review the independent evaluation of the program and the design for implementing the new CAP program.

4. The PECO Compliance Filing fails to modify LIURP as directed by the Commission.

The Commission Order state that "LIURP is a cost-effective program that should be continued, as modified by the proposals of OCA witness Nancy Brockway ..."¹²

The PECO Compliance Filing contains no revised LIURP plan, so it is impossible to determine if PECO has complied with the Commission's Order. The Environmentalists therefore request that the Commission direct PECO to amend its Compliance Filing to include its revisions to its LIURP plan to make it consistent with the Commission's Order.

5. The PECO Compliance Filing fails to address the renewables pilot program.

As part of the universal service program, the Commission directed PECO to establish a renewable energy pilot program¹³ with a budget of \$250,000. Nowhere in the Compliance Filing is there any mention of this new program. The Environmentalists therefore request that the Commission direct PECO to amend its Compliance Filing to include a plan for designing and implementing a renewable energy pilot program. The Environmentalists that as with LIURP, the renewables pilot will be most effective if local organizations and solar firms are involved in the program design and implementation.

¹²Order, p. 147.

¹³Order, p. 147.

Consumer Education

Consumer education was an important component of the Commission's Order and the Environmentalists believe that the PECO Compliance Filing falls short in three important aspects.

1. The PECO Compliance Filing fails to include a budget for the Local Consumer Education Plan.

The Commission's Order directed PECO to submit "a complete budget including personnel, operating, and fixed costs and periodic reporting requirements" for its Local Consumer Education Program.¹⁴ PECO's Compliance Filing presents no such budget.

Instead, the Compliance Filing simply states that the Company has already expended \$4,689,433.50 in 1997 for consumer education. A quick review of Compliance Filing Exhibit CE-1 by the Environmentalists indicates that many of the expenditures (*specifically the numerous legal notices*) should not be considered an educational expenditure but rather a restructuring proceeding cost. The Environmentalists recommend that Commission staff carefully review Exhibit CE-1 to determine the accurate level of education expenditures.

Because the Compliance Filing contains no budget for future local consumer education program expenditures, the Environmentalists request that the Commission direct PECO to amend its Compliance Filing to provide such a detailed budget.

¹⁴Order, p. 155.

2. The PECO Compliance Filing fails to present a sound Local Consumer Education Plan.

The Commission directed PECO to present a plan for its local consumer education program, addressing such issues as the functions responsibilities of the CBOs and vendors and specific information about who will be served.¹⁵ In its Compliance Filing, PECO provides virtually no description of program design except to state that PECO will prepare pamphlets, brochures, presentation scripts and other education material. There is no discussion about market research and market segmentation analysis, no listing of program goals, objective, strategies and tactics, no mention of the content of the educational message and no plan for program monitoring and feedback. All PECO provides is a statement that they will prepare pamphlets, brochures, presentation scripts and other education material.

The PECO strategy to rely on written materials will not serve all consumers. Such materials are inappropriate for audiences with literacy and/or language problems. It will be absolutely essential to communicate through a number of means other than print in order to adequately educate these diverse audiences. In-person workshops (which are participatory, not lecture style), video, television talk shows, radio (particularly call-in shows) will all be important in reaching these hard to reach audiences.

Because the Compliance Filing contains no serious plan for the local consumer education program, the Environmentalists request that the Commission direct PECO to amend its Compliance Filing to provide such a program plan.

¹⁵Order, p. 155.

3. The PECO Compliance Filing plan to involve community-based organizations in the local consumer education effort is flawed.

The centerpiece of the PECO education filing, at least the topic which receives the most attention, is the process to enlist community-based organizations (CBOs). This element of the plan is flawed in three important respects.

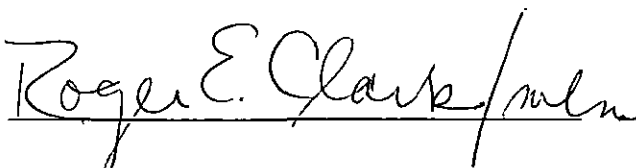
The first problem is that PECO offers only a very passive role for the CBOs which does not take advantage of the educational experience and skills which are present in its service territory. PECO proposes to prepare pamphlets, brochures, presentation scripts and other education material for the CBOs without the input of the CBOs. The CBOs have only the responsibility to passively disseminate the materials to their members. They should have a much more active role in the program.

The second problem involves the list of CBOs which have been selected to participate in the education program. Most of the CBOs named by PECO do not provide energy services and do not have a context to conduct consumer education on electric restructuring. Conspicuously missing from this list are the organizations in Philadelphia which provide the vast majority of energy services in low income communities, namely the Energy Coordinating Agency and the Neighborhood Energy Centers.¹⁶ Also conspicuously absent are the senior centers and organizations which work with disabled individuals. These organizations are ideally suited to reach these audiences because they are already in touch with them on an on-going basis and have achieved a very high level of trust with these audiences.

¹⁶Collectively the NECs and the Energy Coordinating Agency provide more than 70,000 energy services to more than 28,000 low income households every year. Each of these organizations has highly skilled energy educators, and energy counselors who are already very knowledgeable about these issues. In fact, several of these organizations have already become proficient in providing workshops on this subject in order to respond to questions from their clients. The Energy Coordinating Agency has done more consumer education on electric competition over the last year than all of these other organizations combined. To exclude them, particularly when the Commission's Order recognizes ECA's expertise in this area by naming it to the Statewide Education Advisory Committee, is clearly a move motivated not by the best interests of PECO customers but by other less-lofty purposes.

The third serious flaw in the CBO discussion is that the draft letter soliciting CBO involvement is quite confusing. It does not state what services the CBOs are being asked to perform. For example, is the education to be performed through workshops, or one-on-one, through media, or in-person? Which are the audiences PECO is trying to reach? Which media are most effective in reaching each of the different types of audiences? The letter needs to be converted into a draft Request for Proposal, which clearly describes PECO's goals and objectives and the audiences it is attempting to reach, and asks both for the respondent's ideas on how to accomplish the goals, as well as the organization's qualifications to perform these services. Samples of any educational material produced by the organization should also be requested. Given the fact that this education effort needs to begin immediately, there will be a very real need for PECO to identify organizations which have educators who already understand electric restructuring in place. The qualifications and years of experience of the educators themselves should be requested by the RFP.

Respectfully submitted,
by:



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RE: PECO Energy Compliance Filing, Docket # R-00973953, Docket # P-00971265


Dear Secretary McNulty:

New Energy Ventures appreciates the opportunity to present comments and 15 copies for consideration in regard to PECO Energy's Restructuring Compliance Filing.

NEV is commenting on concepts and issues that have not been fully or adequately addressed in PECO Energy's Restructuring Compliance Filing. NEV submits these comments to identify areas where PECO Energy must implement change that is designed to bear out the commission's clear and precise intent to create a fully competitive market, without impediment to or favorable treatment for any entrant in the marketplace.

The attached comments are respectfully submitted.

Sincerely,


David Magnus Boonin
Executive Vice-President

DOCUMENT
FOLDER

cc: w/enclosures

The Honorable John M. Quain, Chairman
The Honorable Robert K. Bloom, Commissioner
The Honorable John R. Hanger, Commissioner
The Honorable David W. Rolka, Commissioner
The Honorable Nora Mead Brownell, Commissioner
Bureau of Fixed Utility Services
Office of Special Assistants

INTRODUCTION

In its Order of December 23, 1997, the Pennsylvania Public Utility Commission (PAPUC) took a major step in the development of a robust competitive electricity marketplace. In its compliance filing of January 20, 1998, PECO Energy failed in several key areas to comply with the commission's order. New Energy Ventures East (NEV), in this filing, identifies the critical areas where PECO has deviated from the Commission's Order. PECO Energy is not in compliance regarding:

- Accurate CTC rate calculation
- Accurate Transmission & Distribution Rates
- Imposition of Service Fees upon Customers/EGS
- Consolidated Billing
- Metering
- Code of Conduct

DOCKETED
JAN 28 1998

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CALCULATION OF CTC

PECO Energy has made several fundamental errors in calculating the CTC. These include:

- designing a CTC to recover \$5.147 rather than the \$4.935 billion approved by the Commission;
- using a discount rate of 10.31% rather than the 7.47% ordered by the Commission and which NEV believes needs to be adjusted to an after-tax discount rate of 4.385%;
- Miscalculating the monthly discount rate to be applied.

NEV has suggested the adjustments needed to correct these deficiencies and calculated a CTC of 2.328 cents/kWh using the pre-tax discount rate of 7.47% or 2.104 cents/kWh using the after-tax discount rate of 4.385%. Both of these results are significantly less than PECO's filed number of 2.77 cents/kWh.

Use of the Appropriate Stranded Cost: PECO starts its analysis with an unrecovered stranded cost of \$5.147 billion dollars. In the Commission's order regarding reconsideration in this case, the Commission set stranded cost at \$4.935 billion. NEV has used this number as the appropriate total dollar amount to be recovered in all of the revised calculations of CTC.

Discount Rate: The Commission expressly set the discount rate at 7.47% for the calculation of the CTC in its Order. PECO has used a discount rate of 10.31% to true up for taxes. This adjustment is a wholly inappropriate. There are no additional revenues, let alone income, to cause an income tax true up. PECO is attempting to assign taxes in the unbundling process to revenues that are unprofitable. This approach is without merit.

NEV believes that PECO not only erred in making their proposed upward adjustment, but instead should make a tax adjustment which reduces the discount rate to 4.385%. Throughout this case, the parties have always used the after-tax cost of capital as the appropriate discount rate. NEV has advocated this position throughout, a position upon which the Commission seems to have relied on in its determination of an appropriate discount rate. NEV believes that the Commission made a reasonable decision in establishing the discount rate at 7.47%, reflecting the low risk associated with the recovery of these dollars. The 7.47% was based upon PECO's cost of long-term debt. Interest on debt is both taxable to the recipient and tax deductible to the payer. NEV believes that an appropriate discount rate in this case is the after-tax cost of debt.

Calculation Error: In calculating the monthly discount rate, PECO took the annual discount rate and divided it by 12. This methodology is completely inappropriate as a way to convert an annual discount rate to a monthly one. It results in an overstatement due to compounding. The appropriate calculation is that one plus the annual rate equals one plus the monthly rate to the twelfth power. NEV has recalculated the monthly discount rates for both the pre-tax (7.47% annual) and the after-tax (4.385% annual) discount rates. The pre-tax monthly rate is 0.6024% and the after-tax monthly rate is 0.35825%.

Calculations and Results: NEV has submitted two sets of tables (appendix I) – one based upon the pre-tax discount rate of 7.47% (Table 1) and the other based upon the after tax discount rate of 4.385% (Table 2). The tables reflect NEV's recalculations of PECO's stranded cost recovery over the 8 1/2 year period. Both tables zero-out the unrecovered stranded costs in June 2007.

The CTC rates shown in the body of each table are then increased by the Gross Receipt Tax (GRT adjustment is $CTC/(1-GRT)$). After adjusted for GRT, the CTC calculated is 2.328/kWh using the pre-tax discount rate. **NEV's recommended CTC is based upon the after-tax discount rate and is 2.104 cents/kWh.**

TRANSMISSION & DISTRIBUTION RATES

PECO Energy is not in compliance with regard to its proposed charges for transmission and distribution. On Page 1 of its Proof of Revenue, Summary of Unbundled Revenue document, the sum of the transmission and distribution charges equals 2.97 cents/kWh. In the Order, the PAPUC on page 62 states:

"Our adoption of the OCA methodology and adjustments results in a reduction of the T&D rate from the PECO revised number of 3.11 cents/kWh, to the OCA adjusted figure of 2.93 cents/kWh."

PECO must comply with the PAPUC order and set Transmission and Distribution rates at sums that total 2.93 cents/kWh.

FEES

The PAPUC did not grant PECO the right to impose fees in addition to granted rates, other than the CTC, upon the customer or electric generation suppliers. Fees for

such products as combined billing and load history were not substantiated in the case and were not granted by the Order of the Commission. PECO's attempt to impose such fees is another example of its effort to subvert competition through raising the cost unnecessarily. In the case of switching fees, the PAPUC reconsideration order stated explicitly: "We shall adopt the recommendation of the OCA witness Alexander that a switching fee is inappropriate...."

In its filing, PECO is not in compliance by proposing numerous specific fees. The effect of these fees is to make it more difficult and/or expensive for consumers to participate in the competitive market place. NEV suggests the Commission eliminate the imposition of the noted fees.

- \$6 (each occurrence) to switch electric generation supplier.
- \$24 (each request) to receive 12 months of historic load data for telemetric hourly meters. For other types of meters, a fee based on the cost to the company per request.
- \$.90 per month for customers receiving a single bill from PECO for both generation and T&D.

Services such as historic load data history can be easily provided as part of the routine data provided to customers. PECO has been given no special exemption from the commission to separately bill for this service apart from its set rates. Worth noting, is that PECO currently provides the vast majority of its customers the previous 12 months consumption history on each and every bill. This being the case, the information is clearly readily available and included in the costs of billing at this time. No additional surcharge is warranted.

CONSOLIDATED BILLING

At page 140 of the Commission's Opinion and Order, the Commission addresses the issue of the definition of a customer that NEV raised in these proceedings. The Commission approved of billing consolidation such that aggregated customers would be billed upon the load they place on the system. The Commission stated, in part:

(T)ransmission and CTC related charges would not change with the number of installations or meters, as they currently do, but with the amount of load placed on the system.

PECO's restriction is inappropriate in a competitive generation market because it makes it more difficult for customers with multiple sites to aggregate their load with a single EGS. Accordingly, we shall permit billing consolidation. For administrative ease, billing consolidation should only apply to customers who have multiple meters on the same tariff. This change shall not apply to distribution charges because customers with multiple meters may impose a cost on the system that is different than a similar load from a single location associated with the distribution of service.

PECO's response to this finding is wholly inadequate. PECO defines a "customer" to be:

Any person, partnership, association, or corporation lawfully receiving service at a single meter location from the Company. For purposes of billing for an Electric Generation Supplier (as defined below) and collecting the CTC, the term customer may include all meter locations for which a summary or consolidated bill is provided.

A "summary billing account" is defined as:

An aggregate bill for two or more meter locations owned or legally controlled by the same partnership, association, corporation, or governmental agency etc. for: (1) the Company's charges for service and/or for the recovery of Transition or Stranded Costs, and/or (2) EGS billing of its charges for Competitive Energy Supply, as Permitted by Rule 2.2.

Rule 2.2 is entitled Single-Point Delivery and states:

Unless otherwise stated therein, the Base Rates in this Tariff for each class of service are based upon the Company's distribution and/or supply

through a single delivery point for the total requirements at each separate premises of the customer. Separate distribution and/or supply for the same customer at other points shall be separately metered and billed, except that the company will provide summary billing of its charges for service and for recovery of Transition or Stranded Costs and/or for an EGS' charges for Competitive Supply at the EGS' request.

PECO has confused and entangled the notion of a summary bill with the concept of consolidated billing approved by the Commission. Although PECO defines summary billing it never defines billing consolidation. PECO has also totally ignored the distinction between CTC-related charges and transmission charges that can be aggregated versus distribution where consolidation is not allowed.

Several changes are necessary to bring the proposed tariff into compliance with the Commission's Opinion and Order.

It is recommended that the second sentence of the definition of the customer be replaced by the following:

A customer is also defined as multiple meters locations owned or legally controlled by the same partnership, association, corporation, or governmental agency, etc., and eligible for consolidated billing (as defined herein) and subject to the restrictions set forth in Rule 14.9.

Although NEV does not object to PECO offering a summary billing service, distinct from consolidated billing, it is important to keep these two concepts separate. The definition for Summary Billing Account should be changed, accordingly. The definition should read:

Summary bills shall be based upon the individual meter reads and tariffs of all applicable accounts. At the customers request the Company shall issue a summary bill for multiple meter locations owned or legally controlled by the same partnership, association, corporation or

governmental agency, etc. for any or all of these meters which have not otherwise elected consolidated billing.

The term consolidated billing needs to be defined and should be defined as:

When a customer has multiple metering locations, the customer may elect to consolidate the bills for any or all of its meters served under the same rate subject to the following conditions. The customer will be billed for customer charges and distribution charges as though each meter was an individual customer. The customer will be billed for transmission and competitive transition charges based upon the consolidation of the customer's usage such that the customer is billed based upon the coincident demand of all eligible meters. Only meter locations that elect to receive generation service through an EGS are eligible for consolidated billing.

Rule 2.2 also needs to be amended by the following.

Unless otherwise stated therein or where consolidated billing is elected by the customer, the Base Rates in this Tariff for each class of service are based upon the Company's distribution and/or supply through a single delivery point for the total requirements at each separate premises of the customer.

Rule 14.9 should be added entitled Consolidated Billing and stated:

For purposes of consolidated metering, the customer may install or have install an interval meter at the customer's expense which allows the customer to aggregate its demand into coincident demand needed by the Company to determine transmission, and CTC charges for the customer. The Company shall establish a requirement for the customer to report this information once a month on a designated schedule. These meters will not replace the meters installed by the company and shall only be used to calculate the customer's coincident demand and/or validate its load profile. These interval meters must meet industry standards and may be subject to inspection by the PUC.

This last change places the metering responsibility of load aggregation and billing consolidation on the customer. This is appropriate as it is supplemental metering necessary to allow a customer to aggregate its load. PECO's meter is still in place and can be used by the Company to check the data received by the customer. The issue of an

EGS providing metering and billing services in total is left open, consistent with this Opinion and Order.

METERING

PECO's compliance proposal for the purchase, installation, and maintenance of the customer meters does not comply with the PAPUC Order that encourages the implementation of advanced metering having the potential to provide economic benefit to the customer. For customers to take advantage of the economic benefits of services such as consolidated billing which the PAPUC has recognized in its order, customers must have access to competitively priced installation and meters capable of meeting the demands of these types of services.

"The right to choose a competitive EGS is inherently related to the ability to choose alternative generation services and products made possible by advanced metering. Customers must have a reasonable choice of advanced meters in conjunction with the services offered by their chosen EGS. In our rulemaking, we have outlined the standards and procedures to ensure that customers have real options for competitive metering while retaining all physical work related to metering as a regulated EDC function." (PAPUC Order, pg. 140)

PECO does not guarantee either availability or competitive pricing with regard to purchasing and installing advanced meters. PECO only agrees to furnish a list of meters from which customers may choose. The commission stated in its order "...all customers may, in conjunction with their EGS, request use of a 'qualified meter' that has been approved by this Commission based on the recommendations of a working committee composed of interested parties."

NEV submits that customers should have to option to choose any meter currently available that conforms to industry standards for compatibility unless demonstrably incompatible with the PECO system. Any meters that meet this level of compatibility should be easily added to the list compiled by the PAPUC working committee. If that meter has the potential to deliver economic benefit to the customer through services rendered by a generation supplier such as consolidated billing, then it should be an option. The commission directed PECO to charge only the "net incremental cost" for installation and purchase of meters. It is important that the incremental cost mechanism receives significant scrutiny to ensure that consumers are paying a rate not out of line with the prevailing market rate. Unfortunately, utilities have all too often charge more than a least cost price in providing services. NEV submits that customers need to be assured that PECO is selling and installing the meters at competitive/efficient rates or allow customers to purchase from vendors who will. The Electric Distribution Company's position in the market with regard to metering should not be used as an excuse to prevent generation suppliers from implementing the types of technologically advanced services envisioned by the PAPUC in its orders.

CODE OF CONDUCT

It is NEV's view that a robust Code of Conduct for the Electric Distribution Company is critical for enabling the development of a truly competitive market. Any Code should, at a minimum, prevent any advantages to particular suppliers based on their affiliation with the EDC.

NEV has provided (Appendix II) a copy of the code of conduct adopted as part of the California Electric restructuring process as an example of the type of code that encompasses many of the issues with which we are concerned. The California Code also represents a comprehensive approach that is in line with the recommendations of the PAPUC in regard to the development of a code of conduct.

One specific clause in the PECO proposed code of conduct is explicitly out of line with the PAPUC order. In clause 3 of the PECO code, the company excludes power transactions from the non-discriminatory prohibition called for by the clause. This is not in compliance with the PAPUC Order which states:

"Any transaction between PECO and an affiliate must be approved pursuant to Chapter 21 of the Public Utility Code. In order to ensure a "level playing field," proposed affiliate contracts for all goods and services, including power, must not involve any anti-competitive cross-subsidy."

PECO provided, in the compliance filing, a Code of Conduct that lacks the depth and specificity necessary to adequately deal with the potential market power issues. Even an interim code of conduct requires better direction about transfer of employees, record keeping, the meaning of preferences, and sharing of information regarding customers, none of which are mentioned in PECO's submission. NEV suggests that the California Code adequately addresses many of these issues and could be adapted to Pennsylvania. The most glaring omission in PECO's filing regards corporate identification and advertising. Although NEV will provide more information in our filing on the Pilot (Docket # P-00971170) , NEV believes strongly that the following language must be included in any interim Standards of Conduct.

-
1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:
 - a. the affiliate "is not the same company as PECO, the utility,";
 - b. the affiliate is not regulated by the Pennsylvania Public Utility Commission; and
 - c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

Other glaring omissions from the PECO code of conduct are:

- No guarantee to sell and make available installed capacity to all EGS at the same rate and in an equal manner. Clause 3 refers only to "non-power" goods and services. This has been a significant problem during the Pilot.
- No EGS should be allowed to trade on the name or trademark of the EDC. The PECO code does not address the use on the name and/or trademark of the parent EDC by the affiliated EGS.
- The PECO code does not address access to regulated EDC communications (including the ability to place bill inserts). PECO makes no mention of equal access to such crucial communication channels. If open to one, they should be open to all at the same cost.

Submitted by:



David Magnus Boonin
Executive Vice-President

Table 1
CTC Calculation - Pre Tax Discount Rate

	CTC Trued up tax (GRT) \$0.0236	CTC \$0.0226	Discount Rate (APR) 7.4700%	Monthly Rate 0.6024%
month	Sales(Mwh)	CTC Rate	=CTC x Sales Total CTC Revenue	=Prev Mth Strd + Return on Unrecovered - CTC Rev Unrecovered Stranded Return on Unrecovered
Day 0				4,935,000
Jan-99	3,053,778	0.022595348	69,001.18	4,895,726
Feb-99	2,699,276	0.022595348	60,991.07	4,864,226
Mar-99	2,979,165	0.022595348	67,315.26	4,826,211
Apr-99	2,386,988	0.022595348	53,934.82	4,801,348
May-99	2,564,695	0.022595348	57,950.19	4,772,320
Jun-99	2,888,708	0.022595348	65,271.36	4,735,796
Jul-99	3,066,988	0.022595348	69,299.65	4,695,024
Aug-99	3,146,492	0.022595348	71,096.08	4,652,209
Sep-99	2,744,532	0.022595348	62,013.66	4,618,219
Oct-99	2,535,713	0.022595348	57,295.33	4,588,743
Nov-99	2,677,977	0.022595348	60,509.82	4,555,875
Dec-99	2,825,046	0.022595348	63,832.89	4,519,485
	33,569,357			
Jan-00	3,078,209	0.022595348	69,553.19	4,477,156
Feb-00	2,720,870	0.022595348	61,479.00	4,442,647
Mar-00	3,002,998	0.022595348	67,853.78	4,401,554
Apr-00	2,406,084	0.022595348	54,366.30	4,373,702
May-00	2,585,213	0.022595348	58,413.79	4,341,634
Jun-00	2,911,818	0.022595348	65,793.53	4,301,993
Jul-00	3,091,523	0.022595348	69,854.05	4,258,053
Aug-00	3,171,664	0.022595348	71,664.85	4,212,038
Sep-00	2,766,489	0.022595348	62,509.77	4,174,901
Oct-00	2,555,999	0.022595348	57,753.69	4,142,295
Nov-00	2,699,401	0.022595348	60,993.90	4,106,254
Dec-00	2,847,646	0.022595348	64,343.55	4,066,645
	33,837,912			
Jan-01	3,102,834	0.022595348	70,109.62	4,021,032
Feb-01	2,742,637	0.022595348	61,970.83	3,983,283
Mar-01	3,027,022	0.022595348	68,396.61	3,938,881
Apr-01	2,425,332	0.022595348	54,801.23	3,907,806
May-01	2,605,895	0.022595348	58,881.10	3,872,465
Jun-01	2,935,112	0.022595348	66,319.88	3,829,472
Jul-01	3,116,256	0.022595348	70,412.88	3,782,126
Aug-01	3,197,037	0.022595348	72,238.16	3,732,671
Sep-01	2,788,620	0.022595348	63,009.85	3,692,146
Oct-01	2,576,447	0.022595348	58,215.72	3,656,171
Nov-01	2,720,996	0.022595348	61,481.85	3,616,713
Dec-01	2,870,427	0.022595348	64,858.30	3,573,640
	34,108,616			
Jan-02	3,127,657	0.022595348	70,670.50	3,524,497
Feb-02	2,764,578	0.022595348	62,466.60	3,483,261
Mar-02	3,051,238	0.022595348	68,943.79	3,435,299
Apr-02	2,444,735	0.022595348	55,239.64	3,400,753
May-02	2,626,742	0.022595348	59,352.15	3,361,886
Jun-02	2,958,593	0.022595348	66,850.44	3,315,287
Jul-02	3,141,186	0.022595348	70,976.18	3,264,281
Aug-02	3,222,613	0.022595348	72,816.07	3,211,128
Sep-02	2,810,929	0.022595348	63,513.93	3,166,957
Oct-02	2,597,059	0.022595348	58,681.44	3,127,353
Nov-02	2,742,764	0.022595348	61,973.70	3,084,218

Table 1
CTC Calculation - Pre Tax Discount Rate

	CTC Trued up tax (GRT) \$0.0236	CTC \$0.0226	Discount Rate (APR) 7.4700%		Monthly Rate 0.6024%
				=Prev Mth Strd + Return on Unrecovered - CTC Rev Unrecovered Stranded	=Disc Rate/Mth x Curnt Mth Unrecovered stranded Return on Unrecovered
month	Sales(Mwh)	CTC Rate	=CTC x Sales Total CTC Revenue		
Dec-02	2,893,391	0.022595348	65,377.17	3,037,419	18,578.56
	34,381,484				
Jan-03	3,152,678	0.022595348	71,235.86	2,984,480	18,296.65
Feb-03	2,786,694	0.022595348	62,966.33	2,939,491	17,977.76
Mar-03	3,075,648	0.022595348	69,495.34	2,887,703	17,706.76
Apr-03	2,464,293	0.022595348	55,681.56	2,849,416	17,394.80
May-03	2,647,756	0.022595348	59,826.96	2,806,753	17,164.17
Jun-03	2,982,262	0.022595348	67,385.25	2,756,275	16,907.18
Jul-03	3,166,315	0.022595348	71,543.99	2,701,334	16,603.11
Aug-03	3,248,394	0.022595348	73,398.60	2,644,208	16,272.16
Sep-03	2,833,417	0.022595348	64,022.04	2,596,114	15,928.05
Oct-03	2,617,835	0.022595348	59,150.90	2,552,601	15,638.34
Nov-03	2,764,706	0.022595348	62,469.49	2,505,508	15,376.23
Dec-03	2,916,538	0.022595348	65,900.19	2,454,700	15,092.55
	34,656,536				
Jan-04	3,177,900	0.022595348	71,805.75	2,397,681	14,786.50
Feb-04	2,808,988	0.022595348	63,470.06	2,348,654	14,443.03
Mar-04	3,100,253	0.022595348	70,051.30	2,292,750	14,147.70
Apr-04	2,484,007	0.022595348	56,127.01	2,250,434	13,810.96
May-04	2,668,938	0.022595348	60,305.58	2,203,685	13,556.05
Jun-04	3,006,120	0.022595348	67,924.33	2,149,035	13,274.45
Jul-04	3,191,646	0.022595348	72,116.34	2,089,864	12,945.25
Aug-04	3,274,381	0.022595348	73,985.79	2,028,467	12,588.82
Sep-04	2,856,084	0.022595348	64,534.22	1,976,152	12,218.98
Oct-04	2,638,778	0.022595348	59,624.10	1,928,431	11,903.84
Nov-04	2,786,824	0.022595348	62,969.25	1,877,079	11,616.39
Dec-04	2,939,870	0.022595348	66,427.39	1,821,958	11,307.05
	34,933,789				
Jan-05	3,203,323	0.022595348	72,380.19	1,760,553	10,975.02
Feb-05	2,831,460	0.022595348	63,977.82	1,707,180	10,605.13
Mar-05	3,125,055	0.022595348	70,611.71	1,646,852	10,283.63
Apr-05	2,503,879	0.022595348	56,576.03	1,600,196	9,920.23
May-05	2,690,289	0.022595348	60,788.03	1,549,048	9,639.18
Jun-05	3,030,169	0.022595348	68,467.72	1,489,911	9,331.08
Jul-05	3,217,179	0.022595348	72,693.27	1,426,193	8,974.85
Aug-05	3,300,576	0.022595348	74,577.67	1,360,206	8,591.03
Sep-05	2,878,933	0.022595348	65,050.49	1,303,349	8,193.54
Oct-05	2,659,888	0.022595348	60,101.10	1,251,099	7,851.05
Nov-05	2,809,118	0.022595348	63,473.00	1,195,162	7,536.31
Dec-05	2,963,389	0.022595348	66,958.81	1,135,403	7,199.36
	35,213,259				
Jan-06	3,228,949	0.022595348	72,959.23	1,069,283	6,839.38
Feb-06	2,854,112	0.022595348	64,489.64	1,011,234	6,441.09
Mar-06	3,150,056	0.022595348	71,176.60	946,149	6,091.42
Apr-06	2,523,910	0.022595348	57,028.63	894,820	5,699.37
May-06	2,711,812	0.022595348	61,274.33	838,936	5,390.17
Jun-06	3,054,410	0.022595348	69,015.46	774,974	5,053.54
Jul-06	3,242,916	0.022595348	73,274.82	706,367	4,668.25
Aug-06	3,326,981	0.022595348	75,174.29	635,448	4,254.98
Sep-06	2,901,964	0.022595348	65,570.89	573,705	3,827.78

Table 1.
CTC Calculation - Pre Tax Discount Rate

CTC Trued up tax (GRT)		CTC	Discount Rate (APR)	Monthly Rate		
\$0.0236		\$0.0226	7.4700%	0.6024%		
month	Sales(Mwh)	CTC Rate	=CTC x Sales Total CTC Revenue	=Prev Mth Strd + Return on Unrecovered - CTC Rev Unrecovered Stranded	=Disc Rate/Mth x Curnt Mth Unrecovered stranded Return on Unrecovered	
Oct-06	2,681,167	0.022595348	60,581.91	516,579	3,455.85	
Nov-06	2,831,591	0.022595348	63,980.79	455,710	3,111.74	
Dec-06	2,987,096	0.022595348	67,494.48	390,960	2,745.08	
	35,494,965					
Jan-07	3,254,781	0.022595348	73,542.91	319,772	2,355.05	
Feb-07	2,876,944	0.022595348	65,005.56	256,693	1,926.23	
Mar-07	3,175,256	0.022595348	71,746.02	186,493	1,546.26	
Apr-07	2,544,102	0.022595348	57,484.86	130,132	1,123.39	
May-07	2,733,506	0.022595348	61,764.52	69,151	783.88	
Jun-07	3,078,846	0.022595348	69,567.59	0	416.55	
	17,663,435					

Table 2
CTC Calculation- After Tax Discount Rate

	CTC Trued up tax (GRT) \$0.02104	CTC \$0.02011	Discount Rate (APR) 4.2990%	Monthly Rate 0.3583%	
			=CTC x Sales	=Prev Mth Strd + Return on Unrecovered - CTC Rev	=Disc Rate/Mth x Curmt Mth Unrecovered stranded Return on Unrecovered
month	Sales(Mwh)	CTC Rate	Total CTC Revenue	Unrecovered Stranded	
Jan-99	3,053,778	0.020114605	61,425.54	4,935,000	17,679.64
Feb-99	2,699,276	0.020114605	54,294.86	4,891,254	17,522.92
Mar-99	2,979,165	0.020114605	59,924.72	4,854,482	17,391.18
Apr-99	2,386,988	0.020114605	48,013.32	4,811,949	17,238.81
May-99	2,564,695	0.020114605	51,587.84	4,781,174	17,128.56
Jun-99	2,888,708	0.020114605	58,105.22	4,746,715	17,005.11
Jul-99	3,066,988	0.020114605	61,691.24	4,705,615	16,857.86
Aug-99	3,146,492	0.020114605	63,290.44	4,660,781	16,697.25
Sep-99	2,744,532	0.020114605	55,205.18	4,614,188	16,530.33
Oct-99	2,535,713	0.020114605	51,004.87	4,575,513	16,391.78
Nov-99	2,677,977	0.020114605	53,866.45	4,540,900	16,267.77
Dec-99	2,825,046	0.020114605	56,824.68	4,503,302	16,133.08
	33,569,357				
Jan-00	3,078,209	0.020114605	61,916.95	4,462,610	15,987.30
Feb-00	2,720,870	0.020114605	54,729.22	4,416,680	15,822.76
Mar-00	3,002,998	0.020114605	60,404.12	4,377,774	15,683.37
Apr-00	2,406,084	0.020114605	48,397.42	4,333,053	15,523.16
May-00	2,585,213	0.020114605	52,000.54	4,300,179	15,405.39
Jun-00	2,911,818	0.020114605	58,570.06	4,263,584	15,274.29
Jul-00	3,091,523	0.020114605	62,184.77	4,220,288	15,119.18
Aug-00	3,171,664	0.020114605	63,796.76	4,173,222	14,950.57
Sep-00	2,766,489	0.020114605	55,646.82	4,124,376	14,775.58
Oct-00	2,555,999	0.020114605	51,412.91	4,083,505	14,629.16
Nov-00	2,699,401	0.020114605	54,297.38	4,046,721	14,497.38
Dec-00	2,847,646	0.020114605	57,279.28	4,006,921	14,354.79
	33,837,912				
Jan-01	3,102,834	0.020114605	62,412.28	3,963,997	14,201.02
Feb-01	2,742,637	0.020114605	55,167.05	3,915,785	14,028.30
Mar-01	3,027,022	0.020114605	60,887.35	3,874,647	13,880.92
Apr-01	2,425,332	0.020114605	48,784.60	3,827,640	13,712.52
May-01	2,605,895	0.020114605	52,416.54	3,792,568	13,586.88
Jun-01	2,935,112	0.020114605	59,038.62	3,753,738	13,447.77
Jul-01	3,116,256	0.020114605	62,682.25	3,708,148	13,284.44
Aug-01	3,197,037	0.020114605	64,307.14	3,658,750	13,107.47
Sep-01	2,788,620	0.020114605	56,092.00	3,607,550	12,924.05
Oct-01	2,576,447	0.020114605	51,824.22	3,564,382	12,769.40
Nov-01	2,720,996	0.020114605	54,731.76	3,525,327	12,629.49
Dec-01	2,870,427	0.020114605	57,737.51	3,483,225	12,478.65
	34,108,616			3,437,966	
Jan-02	3,127,657	0.020114605	62,911.58	3,387,371	12,316.51
Feb-02	2,764,578	0.020114605	55,608.39	3,343,898	12,135.26
Mar-02	3,051,238	0.020114605	61,374.45	3,294,503	11,979.51
Apr-02	2,444,735	0.020114605	49,174.88	3,257,131	11,802.56
May-02	2,626,742	0.020114605	52,835.88	3,215,964	11,668.67
Jun-02	2,958,593	0.020114605	59,510.93	3,167,974	11,521.19
Jul-02	3,141,186	0.020114605	63,183.71	3,116,139	11,349.27
Aug-02	3,222,613	0.020114605	64,821.59	3,062,481	11,163.57

Table 2
CTC Calculation- After Tax Discount Rate

	CTC Trued up tax (GRT) \$0.02104	CTC \$0.02011	Discount Rate (APR) 4.2990%		Monthly Rate 0.3583%
				=Prev Mth Strd + Return on Unrecovered - CTC Rev	=Disc Rate/Mth x Curnt Mth Unrecovered stranded
month	Sales(Mwh)	CTC Rate	=CTC x Sales Total CTC Revenue	Unrecovered Stranded	Return on Unrecovered
Sep-02	2,810,929	0.020114605	56,540.73	3,016,912	10,971.34
Oct-02	2,597,059	0.020114605	52,238.81	2,975,481	10,808.09
Nov-02	2,742,764	0.020114605	55,169.61	2,930,971	10,659.66
Dec-02	2,893,391	0.020114605	58,199.41	2,883,272	10,500.20
	34,381,484				
Jan-03	3,152,678	0.020114605	63,414.87	2,830,186	10,329.32
Feb-03	2,786,694	0.020114605	56,053.26	2,784,272	10,139.14
Mar-03	3,075,648	0.020114605	61,865.44	2,732,382	9,974.66
Apr-03	2,464,293	0.020114605	49,568.28	2,692,602	9,788.76
May-03	2,647,756	0.020114605	53,258.56	2,648,990	9,646.25
Jun-03	2,982,262	0.020114605	59,987.02	2,598,493	9,490.01
Jul-03	3,166,315	0.020114605	63,689.18	2,544,113	9,309.10
Aug-03	3,248,394	0.020114605	65,340.17	2,487,887	9,114.28
Sep-03	2,833,417	0.020114605	56,993.06	2,439,807	8,912.85
Oct-03	2,617,835	0.020114605	52,656.72	2,395,890	8,740.61
Nov-03	2,764,706	0.020114605	55,610.97	2,348,863	8,583.28
Dec-03	2,916,538	0.020114605	58,665.01	2,298,613	8,414.80
	34,656,536				
Jan-04	3,177,900	0.020114605	63,922.19	2,242,925	8,234.78
Feb-04	2,808,988	0.020114605	56,501.68	2,194,459	8,035.28
Mar-04	3,100,253	0.020114605	62,360.37	2,139,960	7,861.65
Apr-04	2,484,007	0.020114605	49,964.83	2,097,662	7,666.41
May-04	2,668,938	0.020114605	53,684.63	2,051,492	7,514.87
Jun-04	3,006,120	0.020114605	60,466.92	1,998,374	7,349.47
Jul-04	3,191,646	0.020114605	64,198.69	1,941,335	7,159.18
Aug-04	3,274,381	0.020114605	65,862.89	1,882,427	6,954.83
Sep-04	2,856,084	0.020114605	57,449.00	1,831,722	6,743.79
Oct-04	2,638,778	0.020114605	53,077.97	1,785,206	6,562.14
Nov-04	2,786,824	0.020114605	56,055.86	1,735,545	6,395.50
Dec-04	2,939,870	0.020114605	59,134.33	1,682,629	6,217.59
	34,933,789				
Jan-05	3,203,323	0.020114605	64,433.57	1,624,223	6,028.02
Feb-05	2,831,460	0.020114605	56,953.70	1,573,088	5,818.78
Mar-05	3,125,055	0.020114605	62,859.25	1,515,865	5,635.59
Apr-05	2,503,879	0.020114605	50,364.54	1,470,931	5,430.58
May-05	2,690,289	0.020114605	54,114.11	1,422,086	5,269.61
Jun-05	3,030,169	0.020114605	60,950.65	1,366,230	5,094.62
Jul-05	3,217,179	0.020114605	64,712.28	1,306,412	4,894.52
Aug-05	3,300,576	0.020114605	66,389.79	1,244,703	4,680.22
Sep-05	2,878,933	0.020114605	57,908.60	1,191,253	4,459.15
Oct-05	2,659,888	0.020114605	53,502.60	1,142,018	4,267.66
Nov-05	2,809,118	0.020114605	56,504.30	1,089,605	4,091.28
Dec-05	2,963,389	0.020114605	59,607.40	1,033,901	3,903.51
	35,213,259				
Jan-06	3,228,949	0.020114605	64,949.04	972,656	3,703.95
Feb-06	2,854,112	0.020114605	57,409.33	918,732	3,484.54
Mar-06	3,150,056	0.020114605	63,362.13	858,661	3,291.36

Table 2
CTC Calculation- After Tax Discount Rate

CTC Trued up tax (GRT) CTC Discount Rate (APR) Monthly Rate
 \$0.02104 \$0.02011 4.2990% 0.3583%

month	Sales(Mwh)	CTC Rate	=CTC x Sales Total CTC Revenue	=Prev Mth Strd + Return on Unrecovered - CTC Rev	=Disc Rate/Mth x Curnt Mth Unrecovered stranded
				Unrecovered	Stranded Return on Unrecovered
Apr-06	2,523,910	0.020114605	50,767.46	810,969	3,076.15
May-06	2,711,812	0.020114605	54,547.02	759,328	2,905.30
Jun-06	3,054,410	0.020114605	61,438.26	700,610	2,720.29
Jul-06	3,242,916	0.020114605	65,229.98	637,890	2,509.93
Aug-06	3,326,981	0.020114605	66,920.91	573,254	2,285.24
Sep-06	2,901,964	0.020114605	58,371.87	516,936	2,053.68
Oct-06	2,681,167	0.020114605	53,930.62	464,857	1,851.92
Nov-06	2,831,591	0.020114605	56,956.34	409,566	1,665.35
Dec-06	2,987,096	0.020114605	60,084.26	350,949	1,467.27
	35,494,965				
Jan-07	3,254,781	0.020114605	65,468.63	286,738	1,257.28
Feb-07	2,876,944	0.020114605	57,868.60	229,896	1,027.24
Mar-07	3,175,256	0.020114605	63,869.02	166,851	823.60
Apr-07	2,544,102	0.020114605	51,173.60	116,275	597.74
May-07	2,733,506	0.020114605	54,983.40	61,708	416.56
Jun-07	3,078,846	0.020114605	61,929.76	0	221.07
	17,663,435				

Affiliate Transaction Rules

I. Definitions

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

- A. “Affiliate” means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility’s controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility’s affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, “substantial control” includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity’s company creates a rebuttable presumption of control.

For purposes of this Rule, “affiliate” shall include the utility’s parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

- B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.
- C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.
- D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.
- E. "FERC" means the Federal Energy Regulatory Commission.
- F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.
- G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

II. Applicability

- A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission.
- B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that

relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas.

- C. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.
- D. These rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.
- E. **Existing Rules:** Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.
- F. **Civil Relief:** These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.
- G. **Exemption (Advice Letter):** A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall serve it on all parties to this proceeding. In the advice letter filing, the utility shall:
 - 1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and
 - 2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:
 - a. Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a

letter to the Executive Director, served on all parties to this proceeding; and

b. Agree in this notice to comply with the Rules in their entirety.

H. **Limited Exemption (Application):** A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.

I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

III. Nondiscrimination

A. **No Preferential Treatment Regarding Services Provided by the Utility:** Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or
2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

B. **Affiliate Transactions:** Transactions between a utility and its affiliates shall be limited to tariffed products and services, the sale or purchase of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, or as provided for in Sections V D and V E (joint purchases and corporate support) and Section VII (new products and services) below, provided the transactions provided for in Section VII comply with all of the other adopted Rules.

1. **Provision of Supply, Capacity, Services or Information:** Except as provided for in Sections V D, V E, and VII, provided the transactions provided for in Section VII comply with all of the other adopted Rules, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.
 2. **Offering of Discounts:** Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. The utilities should not use the "similarly situated" qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility's affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.
 3. **Tariff Discretion:** If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.
 4. **No Tariff Discretion:** If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.
 5. **Processing Requests for Services Provided by the Utility:** A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.
- C. **Tying of Services Provided by a Utility Prohibited:** A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

- D. **No Assignment of Customers:** A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.
- E. **Business Development and Customer Relations:** Except as otherwise provided by these Rules, a utility shall not:
1. provide leads to its affiliates;
 2. solicit business on behalf of its affiliates;
 3. acquire information on behalf of or to provide to its affiliates;
 4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;
 5. request authorization from its customers to pass on customer information exclusively to its affiliates;
 6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or
 7. give any appearance that the affiliate speaks on behalf of the utility.
- F. **Affiliate Discount Reports:** If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:
1. the name of the affiliate involved in the transaction;
 2. the rate charged;
 3. the maximum rate;
 4. the time period for which the discount or waiver applies;

5. the quantities involved in the transaction;
6. the delivery points involved in the transaction;
7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and
8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;
10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);
11. the duration of the discount or waiver;
12. the maximum rate;
13. the rate or fee actually charged during the billing period; and
14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

IV. Disclosure and Information

- A. **Customer Information:** A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent.
- B. **Non-Customer Specific Non-Public Information:** A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or

operations or about the utility's gas-related goods or services, electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. Utilities are also permitted to exchange proprietary information on an exclusive basis with their affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

C. Service Provider Information:

1. Except upon request by a customer or as otherwise authorized by the Commission, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities.
2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

- D. Supplier Information:** A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.

- E. **Affiliate-Related Advice or Assistance:** Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.

- F. **Record-Keeping:** A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

- G. **Maintenance of Affiliate Contracts and Related Bids:** A utility shall maintain a record of all contracts and related bids for the provision of work, products or services to and from the utility to its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

- H. **FERC Reporting Requirements:** To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

V. Separation

- A. **Corporate Entities:** A utility and its affiliates shall be separate corporate entities.

- B. Books and Records:** A utility and its affiliates shall keep separate books and records.
1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).
 2. The books and records of affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Section 314.
- C. Sharing of Plant, Facilities, Equipment or Costs:** A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).
- D. Joint Purchases:** To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

- E. **Corporate Support:** As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

F. **Corporate Identification and Advertising:**

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:
 - a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";
 - b. the affiliate is not regulated by the California Public Utilities Commission; and
 - c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

The application of the name/logo disclaimer is limited to the use of the name or logo in California.

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.
3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.
4. A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:
 - a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;
 - b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;
 - c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

G. Employees:

1. Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall verify in the utility's compliance plan the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules.
2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:
 - a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).
 - b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the

benefit of the affiliate or to the detriment of other unaffiliated service providers.

- c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.
- d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.
- e. A utility shall not make temporary or intermittent assignments, or rotations to its affiliates.

H. Transfer of Goods and Services: To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, all such transfers shall be subject to the following pricing provisions:

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.

2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.
3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.
4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.
5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.
6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

VI. Regulatory Oversight

- A. **Compliance Plans:** No later than December 31, 1997, each utility shall file a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its affiliates that is prohibited by these Rules. The utility should file its compliance plan as an advice letter with the Commission's Energy Division and serve it on the parties to this proceeding. The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter served on all parties to this proceeding where there is some change in the compliance plan (i.e., when a new affiliate has been created, or the utility has changed the compliance plan for any other reason).
- B. **New Affiliate Compliance Plans:** Upon the creation of a new affiliate which is addressed by these Rules, the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter shall

demonstrate how the utility will implement these Rules with respect to the new affiliate.

- C. **Affiliate Audit:** No later than December 31, 1998, and every year thereafter, the utility shall have audits prepared by independent auditors that verify that the utility is in compliance with the Rules set forth herein. The utilities shall file this audit with the Commission's Energy Division beginning no later than December 31, 1998, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.
- D. **Witness Availability:** Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Section 314.

VII. Utility Products and Services

- A. **General Rule:** Except as provided for in these Rules, new products and services shall be offered through affiliates.
- B. **Definitions:** The following definitions apply for the purposes of this section (Section VII) of these Rules:
 - 1. "Category" refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product or service category.
 - 2. "Existing" products and services are those which a utility is offering on the effective date of these Rules.
 - 3. "Products" include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.
 - 4. "Tariff" or "tariffed" refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.
- C. **Utility Products and Services:** Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility

offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:

1. Existing products and services offered by the utility pursuant to tariff;
2. Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;
3. New products and services that are offered on a tariffed basis; and
4. Products and services which are offered on a nontariffed basis and which meet the following conditions:
 - a. The nontariffed product or service utilizes a portion of a utility asset or capacity;
 - b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
 - c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;
 - d. the products and services can be marketed with minimal or no incremental capital, minimal or no new forms of liability or business risk being incurred by the utility, and minimal or no direct management control; and
 - e. the utility offering is restricted to less than 1% of the number of customers in its customer base.

D. Conditions Precedent to Offering New Products and Services: This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed products and services only if the Commission has adopted and the utility has established:

1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;
2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.

3. Periodic reporting requirements regarding pertinent information related to nontariffed products and services; and
4. Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.

E. **Requirement to File an Advice Letter:** Prior to offering a new category of nontariffed products or services as set forth in Section VII C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.

1. The advice letter shall:
 - a. demonstrate compliance with these rules;
 - b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;
 - c. demonstrate that the utility has not received recovery in the Transition Cost Proceeding, A.96-08-001, or other applicable Commission proceeding, for the portion of the utility asset dedicated to the non-utility venture; and
 - d. address the potential impact of the new product or service on competition in the relevant market.
2. In the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after submission of the advice letter.
3. A protest of an advice letter filed in accordance with this paragraph shall include:
 - a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or
 - b. An explanation of the specific harm the protestant will allegedly suffer.
4. If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.

5. The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of products and services only after Commission approval through the normal advice letter process.
- F. **Existing Offerings:** Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements in this rule. No later than January 30, 1998, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.
- G. **Section 851 Application:** A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those

items which would otherwise appear in the advice letter as required in this Rule.

- H. **Periodic Reporting of Nontariffed Products and Services:** Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:
1. A description of each existing or new category of nontariffed products and services and the authority under which it is offered;
 2. A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);
 3. The costs allocated to and revenues derived from each category; and
 4. Current information on the proportion of relevant utility assets used to offer each category of product and service.
- I. **Offering of Nontariffed Products and Services to Affiliates:** Nontariffed products and services which are allowed by this Rule may be offered to utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

(END OF APPENDIX A)



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OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

IRWIN A. POPOWSKY
Consumer Advocate

January 27, 1998

(717) 783-5048

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

Re: Application of Peco Energy Company for
Approval of its Restructuring Plan Under
Section 2806 of the Public Utility Code
Docket No. R-00973953

Dear Secretary McNulty:

Enclosed please find for filing an original and ten copies of the Office of Consumer Advocate's Comments to the Compliance Filing of Peco Energy Company in the above-captioned proceeding.

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
- Hon. Charles E. Rainey, Jr.
- John M. Quain, Chairman
- Nora Mead Brownell, Commissioner
- Robert K. Bloom, Commissioner
- John R. Hanger, Commissioner
- David W. Rolka, Commissioner

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. R-00973953

COMMENTS
OF THE OFFICE OF CONSUMER ADVOCATE
TO THE COMPLIANCE FILING OF PECO ENERGY COMPANY

DOCUMENT
FOLDER

Tanya J. McCloskey
Steven K. Steinmetz
Assistant Consumer Advocates

Counsel for:
Irwin A. Popowsky
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Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
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January 27, 1997

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits the following Comments to the Compliance Filing of PECO Energy in the above-captioned matter. In the short time that the OCA has had to review this massive filing, the OCA has identified a number of concerns that are listed below. While the OCA has identified several problems with the Company's compliance filing, the OCA has not been able in all cases to present alternative calculations and proposals that it believes are consistent with the Commissions Orders in this case. In some other cases, the OCA is not sure of the Commission's intent and therefore cannot determine whether or not the Company's positions are in compliance with the Commission's Orders.

By way of introduction, however, the OCA would note as a general matter that the overall results produced by PECO's Compliance filing are a far cry from the results that the Commission apparently anticipated at the time of its December 23, 1997 Order. Most importantly, in rejecting the Partial Settlement and adopting its own plan, the Commission concluded that PECO should be required to offer an average "shopping credit" of 4.46 cents per kilowatt hour, with a credit of 5.2 cents per kilowatt hour for residential customers. Order at 44. Based on these credits, the Commission apparently concluded that ratepayers who shop for power could expect savings of more than 15 percent on their total bill. It should be noted that those savings were estimated on the basis of the Commission's December 23, 1997 stranded cost calculation, and theoretically should have increased slightly in light of the further stranded cost reduction ordered in the Commission's Reconsideration Order of January 16, 1998.

In contrast to the Commission's expectations, however, the PECO Compliance Tariff would produce an overall shopping credit of 4.16 cents per kwh and a residential credit for most

usage of 4.63 cents per kwh.¹ With that credit, a Rate R customer using 500 kwh per month would have to purchase capacity and energy for approximately 2.5 cents per kwh in order to save more than 15 percent on their monthly bill. A 500 kwh per month residential customer would have to pay no more than 3.2 cents per kwh in order to achieve overall bill savings of more than 10 percent.²

As set forth below, the OCA believes that it has uncovered some of the reasons for the discrepancies between the Commission's expected savings and the results that are produced by the Company's compliance filing. The OCA urges the Commission to require the Company to correct these calculations to the extent that the Commission agrees with OCA that these calculations are contrary to the Commission's Orders. The OCA would also respectfully urge the Commission to review all aspects of the Company's filing to determine whether there are other discrepancies that give rise to the differences between its own calculations at the time of its Order and the Company's calculations. As the OCA is not privy to the Commission calculations that produced the 5.2 cent residential shopping credit and 15 percent savings estimate, the OCA does not know whether there are other errors in the Company's computations that may have given rise to these discrepancies and that could have an important effect on the actual impacts on consumers of the Commission's Orders.

Additionally, the OCA would note that during the course of the proceeding, many important issues regarding Tariff provisions and implementation were set to be reviewed in the Company's Compliance Filing after the Commission had resolved disputed issues and concluded

¹ The 4.63 cent credit would apply on the first 500 kwh per month of Rate R customers in June through September and on all kwh in the other eight months of the year.

² With a \$5.10 monthly customer charge and a 13.05 cent per kwh bundled charge for the first 500 kwh of usage, the current overall effective per kwh rate for a 500 kwh per month PECO Rate R customer is approximately 14.07 cents.

some of its rulemakings. At this time, many of these issues remain unresolved and the Commission should recognize that PECO's Tariff language may have to change to reflect compliance with future Commission Orders and Rulemakings. The OCA, however, has attempted to identify certain tariff provisions that may not comply with the Commission Order, or may impede the development of a competitive market if in place on January 1, 1999.

II. SPECIFIC ISSUES

A. Nuclear Decommissioning Cost Adjustment

The Company, in its Compliance Filing, has sought to implement a nuclear decommissioning cost adjustment mechanism in accordance with the Commission's Order. Original Tariff Page No. 28; Commission Order at 78-80. The Nuclear Decommissioning Cost Adjustment (NDCA) applies to all customers taking service under the Tariff. Original Tariff Page No. 28. In its Proof of Revenues schedule, Summary of Unbundled Revenue, the Company identifies the current NDCA as 0.07¢/kwh, based on annual decommissioning costs of \$22,694,485. It is the OCA's understanding that the \$22,694,485 represents the annual amount, to be collected over the remaining lives of these plants, that is necessary to fully fund PECO's obligation. It is also the OCA's understanding that the NDCA collection under PECO's proposal remains in effect for the remainder of the plant lives, or beyond the 8 and one-half year CTC recovery period.

The OCA does not dispute the Company's calculation of the NDCA based on the decommissioning costs approved by the Commission. The OCA submits, however, that in establishing a *separate decommissioning* funding mechanism, the Company failed to make the corresponding adjustment to remove the decommissioning costs from the stranded cost calculation. This results in a double counting of the nuclear decommissioning costs.

The Commission, at page 88 of its Order, adopted the OCA's market value for PECO's generating units as the basis for determining PECO's allowed utility-owned generation stranded costs. The market value presented by the OCA was calculated by determining the market revenue that each unit would earn after accounting for certain going-forward operating costs.

Among the operating costs for nuclear plants was the decommissioning costs for each nuclear unit.

OCA witness La Capra explained the OCA analysis as follows:

A dispatch model estimates both the amount of generation that will be produced by each of the Company's generating units and also the market price of energy in each year of the analysis. To the energy revenues are added the capacity revenues for each unit to produce the market revenues. The energy prices are specific to each unit, reflecting the different hours in which they are producing energy. The going-forward costs of operating each unit are subtracted from the market revenue in each year to produce the annual net margins.

* * *

The going forward costs also include the full amount of nuclear decommissioning, as recommended by Mr. Catlin.

OCA St. 1 at 5-6; See also, OCA St. 1, Exh. RLC-2, p.1 of 10, fn. 2. Thus, the OCA's net market value already included nuclear decommissioning costs as an operating expense. This expense was reflected in calculating the market value of the units.

The Commission apparently recognized the same concept in its Order when it stated:

Similarly, we agree with PECO's proposal that it, or its affiliate or future owner of each plant, should be responsible for that portion of decommissioning cost related to its remaining useful life. Post-1998 decommissioning expenses are properly reflected as future operating expenses that affects the market value of the plants.

Commission Order at 78.

The Commission concluded, however, that it would approve PECO's proposal which accounted for all nuclear decommissioning costs separately through an adjustment mechanism in order to preserve the tax benefits associated with having such costs reflected in the regulated cost of service. Commission Order at 79; PECO St. 3 at 16; PECO St. 3-R at 70. Under this approach, however, the decommissioning costs must be removed from the going-forward operating costs to

arrive at the proper market value for PECO's nuclear plants. Otherwise, decommissioning expense will be recovered twice. This adjustment would raise the market value of the plants, and result in a correspondingly lower stranded cost for PECO's owned nuclear generating units.

In its determination of the \$3.96 billion of market value for all of PECO's units, which the Commission adopted in its Order at page 88, the OCA included in its operating costs an annual decommissioning cost of \$29,162,000 for PECO's units. On a net present value basis, the decommissioning costs which the OCA's analysis included in determining market value is \$305,720,985.³ As such, under the methodology which treats these costs through a separate mechanism recovered in regulated rates, the market value of PECO's plants should have been increased by \$305,720,985 to avoid double counting the collection of nuclear decommissioning costs. This results in a corresponding reduction in PECO's stranded cost of \$305,720,985. The OCA submits that PECO should be directed to recalculate its CTC to correct for this error.

B. CTC Issues and CTC Rider

1. Introduction

The OCA has identified several possible calculational errors related to PECO's determination of its CTC that have the effect of overstating the CTC. From its review, the OCA has identified the double counting of nuclear decommissioning costs discussed above; an apparent error in the initial stranded cost amount utilized in the schedules, discussed below; and the use of a higher return component for the recovery of stranded costs than apparently intended by the Commission, discussed below. The OCA has had only a short time to review the detailed calculations resulting

³ This is based on the 7.53% after-tax discount rate utilized by the OCA in its market value analysis.

in PECO's CTC for each class. The OCA believes, however, that it has identified these possible calculational errors that should be resolved before finalizing PECO's CTC.

In addition, the OCA has determined that in the Company's Proof of Revenue, a discrepancy exists between the sales (Mwh) for the individual classes appearing on the Summary Schedule, and the sales levels, or billing determinants used in the supporting Proof of Revenue Schedules. For example, for Rate RH, the Summary Schedule shows sales of 2,816,47 Mwh while the supporting schedule for the Proof of Revenue for the class is based on sales of 2,876,256 Mwh (2,876,255,689 kwh) or a difference of about 2%. For Rate GS, the Summary shows sales of 6,557,040 Mwh, while the supporting schedule uses sales of 6,172,321 Mwh (6,172,321,314 kwh) or a difference of about 6%. For Rate HT, the Summary shows sales of 14,198,713 Mwh while the supporting schedule uses sales of 12,459,777 Mwh (12,459,976,727 kwh) or a difference of about 12.25%. The OCA has not been unable to determine the source of these differences or the impact of the differences on individual class rates in the time allowed for review.

2. Stranded Cost Allowance For Calculating The CTC.

In reviewing the Company's computerized spread sheets that were used to prepare its schedules, it appears from the spread sheets that the schedules were prepared using the Commission's original stranded cost allowance of \$5.024 billion, rather than the amount determined on reconsideration of \$4.935 billion. As such, in the Company's Stranded Investment Recovery Schedules/Calculations, on page 1 of 9, the starting figure of unrecovered stranded cost of \$5,146,508 appears to be produced from the incorrect base of stranded cost. The OCA would ask the Commission to direct PECO to review the spread sheets underlying its schedules to determine whether the correct stranded cost amount was inserted for the starting point of the calculation.

3. Return Component On The CTC.

An additional apparent discrepancy between the Commission's Orders and the Company's Compliance Filing lies in the difference in the rate of return that is applied to the Company's stranded cost recovery. At page 108 of its December 23, 1997 Order, the Commission adopts PECO's long-term debt rate of 7.47% "to calculate the revenue requirement for the recovery of the CTC over the 8 ½ year transition period." As shown on its Compliance Filing work papers, however, the Company applied a 10.31% rate of return, which was derived by adding income taxes to the equity components of its overall weighted cost of capital.⁴ While the OCA understands the arithmetic basis for the Company's use of a 10.31% pre-tax weighted cost of capital for purposes of this calculation, the question remains whether that is consistent with the Commission's intention.

In its lengthy discussion of this issue at pages 104-109, the Commission suggests that it intended to treat the amortization of stranded costs as if it were fully supported by long-term debt. Thus, at page 106-107, the Commission states:

What previously was a cost of capital based on debt and equity necessary to finance investment or expenses over a period of up to 30 years or more has been converted into a new regulatory asset, the CTC, to be recovered over a much shorter period. The capital at issue is fundamentally low risk, and the cost of that capital is more analogous to low cost debt or an "interest rate" based on the delayed receipt of CTC revenues.

In addition, the OCA would note that, to the extent that the present value of regulatory assets and Administrative and General expense were calculated on the basis of an after-tax discount rate, the

⁴ The derivation of the 10.31% rate is shown on the last page of the portion of the PECO Workpapers entitled "Stranded Investment Recovery Schedule/Calculations."

use of the higher pre-tax return to collect these costs in the CTC would appear to result in an overrecovery of these costs.

Again, the OCA is not privy to the Commission's calculations that gave rise to its estimated market credit and does not know what cost of capital the Commission used -- or intended for the Company to use -- in its calculations. The OCA would urge the Commission to ensure that whatever rate the Company uses in its final tariff calculations is consistent with the Commission's intent in its Orders.

C. Universal Service Fund Charge and CAP Rate

1. Universal Service Fund Charge

In its Compliance Filing, the Company sought to implement the Commission's direction to establish a Universal Service Fund Charge (USFC) to be assessed to the residential ratepayer classes to collect the costs of universal service. Original Tariff Page No. 29; Commission Order at 141-148. For Rate Schedules R, RH, OP, RT and R-S, the charge is 0.46¢/kwh. For CAP Rate I and CAP Rate II, the charge is 0.23¢/kwh and 0.35¢/kwh, respectively, on the first 500 kwh of usage and 0.46¢/kwh for usage above 500 kwh per month. From the language of the Tariff, it appears that these charges are already included in the tariffed distribution charges of these classes. Initially, the OCA would ask that the Commission clarify that these USFC amounts are included in the distribution charges and are not intended to be a separate, additional charge at this time. Additionally, the OCA would ask that the Company specify, in dollar amounts, the total costs included in rates as part of the USFC. A preliminary calculation by the OCA indicates that approximately \$50 million is utilized as the base amount for designing the USFC charge.

Next, the OCA submits that PECO's tariff language defining Universal Service Fund Cost is either unclear or improperly includes costs that should not be included in the universal service fund charge. Specifically, the Tariff provides the following language:

Universal Service Fund Cost: (a) Uncollectible Account expense for the Customer Assistance Program (CAP) and CAP Rate, including discounts and costs associated with special payment agreements over 48 months, (b) Low Income Usage Reduction Program (LIURP) costs, (c) administrative and general expenses associated with the CAP and CAP Rate determined using the cost assignment methodology approved at R-00973953, and (d) increases or (decreases) in Uncollectible Accounts over 90 days compared to those levels allowed at R-00973953.

Original Tariff Page No. 29.

The OCA is particularly concerned with the inclusion of "special payment arrangements over 48 months" in subpart (a) and "Uncollectible Accounts over 90 days" in subpart (d) without a clear recognition in the Tariff language that it is only those costs associated with the CAP customers that should be included in such calculations.

The OCA expressed this very concern in the Surrebuttal Testimony of OCA witness Nancy Brockway in response to the Company's proposal in Rebuttal to adopt some of the OCA's recommended modifications to the USFC. In that Rebuttal, however, the Company added the 48-month special payment arrangements and the uncollectibles accounts over 90 days without clearly indicating that these categories of costs are limited to costs associated with CAP participants. In her Surrebuttal Testimony, Ms. Brockway explained her concern:

Further, this proposal does not meet the concern I raised about reflecting offsetting improvements in credit and collection costs in a reconciling universal service cost recovery method. It is true that to the extent the Company ramps up its universal service efforts (whether to its proposed levels or the higher levels that may be

appropriate once the impact evaluation is completed), the uncollectible amounts Mr. Xander proposes to include in the reconciling universal service factor should recede to that extent. However, Mr. Xander proposes to include uncollectibles from **all** residential customers, not just low-income customers, or CAP participants. As a result, the impact of the CAP or LIURP program expansions will be masked. Improvements associated with CAP or LIURP expansion may be overcome by greater uncollectibles among other residential customers. The latter should not be reflected in a universal service fund.

OCA St. 6S at 17-18. Indeed, in the Company's proposed Compliance Tariff, it appears that the Company will include changes in all uncollectible accounts (not just CAP or even residential accounts) in its deferral calculation.

As set forth above, the OCA submits that it would be improper to include all uncollectible accounts--for all customer classes--through a universal service fund charge that is intended to specifically collect costs associated with the Company's programs for low income customers. In addition, including all uncollectible expense in a reconcilable universal service charge improperly shifts the risk of uncollectibles from the Company to residential customers. It is clear that the universal service fund costs are to reflect specific programs to reach low-income customers and the charge should not be used as a mechanism to isolate the Company from risks associated with traditional uncollectible expenses.

The OCA submits that the Company should be directed to clarify its Tariff language to clearly indicate that the special payment arrangements and Uncollectible Accounts over 90 days which will be part of this automatically adjusting clause are only those associated with customers participating in its CAP or LIURP programs. Alternatively, these issues and others may need to be

resolved in the subsequent proceeding that will be necessary to implement this charge and the CAP Rate Programs as set forth in the Commission's Order. Commission Order at 145-146.

2. CAP Rates

The Commission, in its Order, has indicated that the details regarding the development of the Company's CAP Programs and LIURP Program should be addressed in a proceeding following the receipt of the on-going evaluation of PECO's programs, due in 1998. Commission Order at 145-146. In light of this discussion, the Company provided no additional details on the development of its CAP Programs with its Compliance Filing other than the development of its Universal Service Cost Fund mechanism. The OCA does not object to this procedure but would ask that PECO continue its dialogue with the parties to this proceeding in reviewing the evaluation and in preparing its proposal to comply with the Commission's Order.

D. Transmission Rates

In its Letter accompanying the Compliance Tariff, the Company indicates that the Compliance Filing does not contain unbundled rates for transmission service because FERC has claimed exclusive jurisdiction over the rates terms and conditions of retail transmission service. Letter, p. 2. PECO then indicates that it will procure transmission service for default customers, but implies that alternative suppliers will have to obtain transmission for the energy the supplier is providing to the customer. The effect of this discussion, particularly in light of the rate cap for all non-generation charges contained in the statute, is unclear. Moreover, it is unclear to the OCA that competitive suppliers will be separately providing transmission service through PJM, particularly for residential customers.

The OCA requests that the Commission require PECO to clarify this issue. In particular, PECO should be required to demonstrate that total non-generation charges to all customers will remain within the statutory rate caps, even under PECO's proposal.

E. Total T&D Rates

In its Proof of Revenue, Summary of Unbundled Rates, the Company's transmission and distribution rates are 2.97¢/kwh rather than the 2.93¢/kwh approved in the Commission's Order. Commission Order at 62. In the short time allowed for review, the OCA has been unable to ascertain the reason for this difference in the transmission and distribution rates. The OCA would urge the Commission to require PECO to provide an explanation for this discrepancy.

F. Energy Services Rider--Original Tariff Page No. 72

On Original Page No. 72 of PECO's proposed Tariff, PECO's Energy Services Rider identifies the terms of service associated with the provision of Default PLR Service. At subpart (b)(1), customers who return to PECO Default PLR Service after having obtained service from an EGS are required to accept such service for a minimum of one full year in order to receive the Energy and Capacity Charges contained in the customer's applicable base rate. These base rate charges are those protected by the generation rate cap contained in the Act, and a customer's refusal to accept a one year term will result in application of a market-based generation rate "not subject to any PaPUC regulation, including, but not limited to, any prudence review."⁵

This twelve month requirement was not addressed in the Commission's Order in this proceeding and the OCA submits that it is unreasonably long. The OCA understands PECO's

⁵ See Original Page No. 72 at subpart (b)(1).

concern about customers taking advantage of seasonal changes in the price of power and attempting to “game” the system. However, there will be many requests for PECO Default PLR Service which are unrelated to a “gaming” of the system such as customers caught in a transition between two suppliers or following a cancellation of one service prior to the selection of another. Regardless of the reason for a customer's temporary reliance on PECO Default PLR Service, there are less restrictive means to ensure that this service is not abused.

OCA witness Alexander identified a potential solution which may be used to discourage possible customer abuse of PECO Default PLR Service, without punishing those honestly relying on this service and impeding the transition to a vigorous market in electric generation. OCA St. No. 5 at 40-41. Ms. Alexander suggested that PECO “impose a reasonable fee ... on customers who make use of this service more than twice in any 12 monthly period to at least establish a price signal and prevent the switch merely to avoid market price seasonal variability or short term fluctuation.” *Id.* Coupled with any early termination fees which presumably will be assessed by many EGSs, the OCA submits that such a combination of charges may be quite effective at preventing the “gaming” PECO is seeking to avoid.

If the Commission finds that a second short-term market-based rate free of any time commitment restrictions is also required, the OCA submits that PECO's suggested provision in subsection (b)(1) should be modified. Specifically, the language which would preclude any prudence review by the Commission should be deleted and should be replaced by language which states that this rate must be consistent with Commission regulations regarding the provision of PLR service at the prevailing market rate.

G. Specific Tariff Definitions and Rules

1. Definitions--Original Tariff Page No. 6

a. Default Service--Original Tariff Page No. 6

The PECO Tariff's section on "Definition of Terms and Explanation of Abbreviations," at Original page No. 6, includes a definition of default service which the OCA submits is incomplete, in that it does not clearly include a service scenario which the Act contemplates as being applicable to default service. As currently written, the PECO Tariff contains three situations where, as the provider-of-last resort, PECO would supply the energy and capacity known as "Default PLR Service." This service is listed as applicable to customers who are not eligible to shop, choose not to shop, or return from shopping elsewhere. The OCA would urge that this three-part definition either be clarified or specifically include a fourth default service situation concerning those customers who contract for electric energy from an alternative supplier which then fails to deliver that energy to the end-use customer. This additional scenario where default PLR service should apply is specifically referenced in Section 2807(e)(3) of the Act, entitled "Obligation to Serve," wherein it states that "[i]f a customer contracts for electric energy and it is not delivered ... the electric distribution company ... shall acquire electric energy at prevailing market prices to serve that customer..." 66 Pa. C.S. §2807(e)(3). While this situation will hopefully be infrequent, the OCA submits that PECO's Tariff should be modified so as to protect customers who contract for, but do not receive, electric energy from an alternative electric generation supplier. Inclusion of this contingency within the definition section of PECO's Tariff will help ensure the safety and reliability of electric service to all customers as competition develops in the electricity generation market in this Commonwealth. See Declaration of Policy, 66 Pa. C.S. §§2802(3),(9),(12) and (16).

b. Transition Period--Original Tariff Page No. 8.

The definition of "Transition Period" at Original page No. 8 of the PECO tariff is erroneous and contrary to the meaning intended by the Act. The definition in the Tariff reads "the period of time which PECO Energy will collect CTCs." The OCA submits, however, that the transition period referenced throughout the Act is that period of time from the beginning of the effective date of the Act through the start of the phase-in period on January 1, 1999. The Act designates the years following its passage and prior to actual phase-in of direct access as a transition period to prepare for implementation of full retail competitive electric generation in the Commonwealth. This definition of transition period is consistent with the Act which states that "[t]he time line for the transition to and phase in of direct access to competitive electric generation shall be in accordance with Section 2806." 66 Pa. C.S. §2804(11)(emphasis added). Throughout Section 2806, the Act repeatedly identifies the relationship between the transition period and the phase-in period and clearly supports the concept that the transition period is merely the initial stage of preparation for retail competition and not the entire period of stranded cost recovery. For example, Section 2806(a) of the Act begins:

General Rule. -- The generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter at the conclusion of a transition and phase-in period 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. §2806(a)(emphasis added). Additionally, more support for this interpretation of the "transition period" can be gleaned from Section 2806(c) of the Act entitled "Additional Time" wherein the Act permits that "[t]he Commission may determine that an additional six month

transition period is necessary prior to the January 1, 1999, implementation date.” 66 Pa. C.S. §2806(c)(1).

Although seemingly a small point, the OCA submits that the term “transition period,” as defined within PECO’s Tariff, must be properly limited to the initial years following the effective date of the Act so as to be consistent with the above provisions of the Act as well as several other provisions. Any other definition of this term would render other provisions of the Act illogical, inconsistent and unworkable. For example, Section 2807(e)(2) states that “[a]t the end of the transition period, the commission shall promulgate regulations to define the electric distribution company’s obligation to connect and deliver and acquire electricity under paragraph (3) that shall exist at the end of the phase-in period.” 66 Pa. C.S. §2807(e)(3). If the transition period concluded at the termination of PECO’s collection of CTCs, as currently defined by PECO’s Tariff, how can the Commission promulgate regulations at that time which would “exist at the end of the phase-in period”? Accordingly, the OCA submits that the proper definition of the transition period is that period of time immediately following the effective date of the Act and ending prior to implementation of the phase-in period. PECO’s tariff should therefore be modified accordingly.

2. Rule 4--Application for Service

The OCA has identified two concerns with the Company’s Tariff regarding Applications for Service, Rule 4. First, in Rule 4.2--Service Contract, the Company retains the discretion to require a written contract with a customer. Although this language existed in the Company’s previous Tariffs, it is the OCA’s understanding that residential customers have not been required to sign a written contract to receive service for PECO. Given competitive direct access, the OCA is concerned with tariff language that might require a residential default customer to sign a

written contract with PECO for the provision of default service. The terms of default service should be clearly established in the Tariff and the terms contained in the Tariff should be the only terms that apply to such service. A residential customer should not be required to sign a separate written contract, perhaps including additional terms, for the provision of default service.

The OCA is also concerned with Rule 4.4--Right to Reject. This Rule allows the Company to place limitations on the amount and character of service, or to reject applications for service for certain specified reasons. Among those reasons is bad credit. Although this language also existed in the Company's previous Tariff, the OCA submits that further clarification of this language is needed given direct access. Specifically, the language regarding "bad credit" should be clarified to indicate that a customer cannot be denied default service for failure to pay an alternative generation supplier's charges. If a customer can be denied default service by PECO for failure to pay an alternative generation supplier's charges, this has the same effect as terminating a customer for failure to pay supplier's charges, a result clearly prohibited by the Commission's Orders. See e.g., Final Order Re: Guidelines For Maintaining Customer Services, Docket No. M-00960890F.011, Order at 38-39. As such, PECO's language regarding "bad credit" should be clarified and limited.

3. Rule 12.2--Limitation of Liability In Connection With Direct Access

At Rule 12.2, PECO's Tariff disclaims any liability to a customer receiving competitive electric service or with regard to switching EGSs. The OCA submits that this Tariff language is overly broad and should identify more specifically the type of liability PECO is trying to avoid. Although the OCA agrees that PECO should not be held liable for problems caused by alternative electric generation suppliers, PECO should not be held immune from its own negligence related to the provision of direct access nor should PECO be protected from liability attaching to any

violations of PUC rules governing interactions with customers or the switching of customers. For example, in a recent Pilot Program Order, the Commission addressed customer complaints over delays in the processing of pilot customer selections.⁶ That Order indicated that such complaints “could result in the Commission ordering the utility or supplier not only to correct the problem process, but also pay a fine, pursuant to Section 3301 of the Public Utility Code, 66 Pa. C.S. §3301, and provide compensation to its customers.” *Id.* at 2(emphasis added). Accordingly, the OCA submits that certain situations could arise where PECO’s overly broad language attempting to limit its liability in connection with direct access could be used to impede the justifiable provision of compensation to customers as a result of PECO’s negligence or violation of Commission rules. PECO’s Tariff therefore should be modified to remove its overly broad limitations on liability and replace it with more specific language identifying appropriate liability limitations.

4. Rule 14--Metering

At Rule 14.3, PECO’s Tariff sets out the policy for those customers who request a special meter. PECO indicates that although it will “offer, provide and support” such meters including installation, the customer or customer’s EGS must pay for the metering equipment. The OCA does not dispute that it may be reasonable for customers or their suppliers to pay for new advanced meters and the related services. However, the OCA submits that if such payments are made, the payments should be the “net incremental cost incurred to provide the advance metering” as required by the Commission’s Draft Rules and not “any such metering equipment” as stated in

⁶ Electric Distribution Company Procedures for Processing Pilot Customer Supplier Selections, Docket No. M-00960890 F0008, Tentative Order entered December 18, 1997.

Rule 14.3 of PECO's Tariff.⁷ Adoption of language requiring the payment of net incremental cost for new meters would resolve the related issue that customers are currently paying for their existing meters in their current rates, and PECO's Tariff contains no provision for any credit following a customer's purchase of new metering equipment. As it currently exists, PECO's tariff would charge customers twice if they chose to purchase new metering equipment. Moreover, as noted by the Commission in its Order, although the acquisition of an advanced meter involves additional expense, such expenses may be at least in part offset by reduced EDC expenses. *Id.* The OCA submits that PECO's Tariff should therefore be modified accordingly.

5. Rule 17--Billing/Rule 18--Payment Terms and Termination of Service.

a. Rules 17.2, 17.5, 17.7, 18.2 and 18.7

In Rule 17.2 of PECO's Tariff, PECO sets out the two billing options from which a customer choosing an EGS may select. When a customer selects the single bill option, PECO will issue one bill which includes both EDC and EGS charges for "electric energy and capacity supplied." This one bill option is described as PECO operating "as an EGS' billing agent" yet PECO would seemingly refuse to assess or collect late fees or reflect payment arrangements on the bill for the EGS. The OCA submits that PECO's Tariff raises concerns about its role as a billing agent for an EGS. At Rule 17.5, PECO indicates that "it will not assess, nor seek collection of, late payment charges on an EGS's charges." Furthermore, at Rule 18.2, PECO reiterates this policy and adds that "nor will the Company include on its bills any payment arrangements made by EGSs." At a minimum, the OCA submits that if PECO is billing on behalf of an EGS, it should be prepared

⁷ See Re Advanced Meter Deployment for Electricity Providers; 52 Pa. Code §57.250-57.257, Docket No. L-00970128, Order entered November 24, 1997 at 16.

to include on its bills those late fees that appear in the contract between the EGS and its customer. Moreover, PECO's refusal to include any payment arrangements made by EGSs on its bill is unjustified, discriminatory and inconsistent with the position PECO takes in Rule 17.6 on Budget Billing. At Rule 17.6(b), PECO indicates that EGS charges will be included in the customer's Budget Billing Plan if PECO is operating as the "billing agent" for the customer's EGS, yet other payment arrangements made between a customer and their EGS are precluded from PECO's unified bill pursuant to Rule 18.2. The OCA submits that PECO's Budget Billing Plan is a form of payment arrangement and alternative arrangements between a customer and their EGS should be treated similarly. As stated by OCA witness Barbara Alexander, PECO's late fee and billing arrangement restrictions operate as "an impediment to the development of the full range of customer choices that will presumably be offered by retail electric competition." OCA St. No. 5 at 35.

The OCA also submits that all references to finance charges in Rule 17.5 and 17.7 should be changed to late payment charges. The correct term is "late fee" because this charge is not a finance charge and this assessment is not a credit transaction as that term is used in the Truth in Lending Act.

At Rule 18.7 of its proposed Tariff, PECO sets out its policy regarding reconnection charges for customers seeking a restoration of service following termination. This Rule appears to be the same Rule currently contained within PECO's existing Tariff. The OCA submits that this Rule should make clear what requirements are necessary to initiate a restoration of service. More specifically, the OCA submits that it would be inappropriate for PECO to refuse service reconnection because of the failure to pay EGS charges. As stated by OCA witness Alexander, an "EDC may not condition restoration or reconnection of service to a customer based on any unpaid charges owed to

a supplier, except for the supplier of last resort service.” OCA St. No. 5 at 41. PECO’s Rules governing reconnection should be linked to satisfactory payment or payment arrangements of those same charges which led to the original termination; those charges listed in Rule 18.1, entitled “Non-Payment Termination.”

b. Billing Formats

On a related topic, the OCA would note that the Company did not provide any billing formats with its Compliance Filing demonstrating how charges will be presented on the bill, or whether the bill will include the key disclosures required by the Commission’s Order on Customer Information. As OCA witness Barbara Alexander testified, undue restrictions on billing options or failure to include key disclosures on the bill, may impede the development of the competitive market. OCA St. 5 at 35-36. The OCA submits that the Company should be directed to continue to work with the Commission, its Bureau of Consumer Services, and other interested parties to develop a bill format that complies with all Commission requirements and enables consumers to properly participate in the developing competitive market.

6. Rule 19--Unfulfilled Contracts

At page 23 of its Tariff, in Rule 19, the Company includes language that was previously included in its Tariff regarding Unfulfilled Contracts. In practical terms, this language previously applied only to large, mostly industrial, customers who entered into contracts with the Company. The Tariff Rule provides that a notice to discontinue service under a contract will not relieve a customer from any minimum, or guaranteed payment under any contract or rate. The OCA is concerned that this language, if not clarified, could present problems for residential customers who

remain with the Company, particularly those who may receive default service if the Company's minimum 12 month term for such service is approved.

The OCA submits that the Tariff language on Unfulfilled Contracts should be clarified to ensure that this Tariff provision is not applied to residential default service customers. The OCA submits that this language should be clarified to apply only to a residential customer where the customer signs an actual contract with the Company for service other than default service that clearly sets forth such a term, and such term is clearly explained to the customer and agreed to by the customer.

7. Rule 22--Direct Access Phase-In Procedures

At Rule 22.7, PECO's Tariff describes the process necessary for a customer to select an alternative generation supplier following notification of their inclusion in the phase-in process. The OCA is concerned about the writing requirement and submits that this requirement, particularly as it relates to the term "through an EGS," should be further clarified. Moreover, the Commission should direct that this section of PECO's Tariff comport with whatever Rules are issued by the Commission in any future Rulemakings or Orders on this subject, like the language currently set out in Rule 23.1.⁸

Similarly, at Rule 22.8, PECO designates further EGS selection requirements and specifies the need for "required paperwork." The OCA submits that this term needs further clarification. Additional details concerning the nature of this "required paperwork" should be

⁸ Rule 23.1 currently reads "PECO Energy will accommodate requests by customers to switch EGSs in accordance with this Rule 23, and any applicable Commission Orders."

included within the Tariff so that disputes relating to delayed or improper switch orders may be minimized.

8. Rule 23--EGS Switching

The OCA submits that numerous problems exist in this section of PECO's Tariff. Most importantly, contrary to the express Commission Order on this point, PECO includes a \$6.00 switching fee. At Rule 23.7, PECO violates the Commission's specific ruling that "[w]e shall adopt the recommendation of OCA witness Alexander that a switching fee is inappropriate during the early stages of customer choice."⁹ In her Surrebuttal Testimony, OCA witness Alexander recommended to the Commission that switching fees "be waived for a certain time period after the onset of competition to stimulate customers to select suppliers." OCA St. No. 5-S at 11. Given that the whole thrust of the Commission's Order in this proceeding was to stimulate a rapid move to electric competition, it is not surprising that the Commission specifically adopted this recommendation of Ms. Alexander. However, despite adoption of many other OCA suggestions in this Rule, PECO's Tariff, as currently written, would require a fee "of \$6.00 per switch," with no exception provided for customer switching during the early stages of customer choice. The OCA submits that PECO should be required to modify this Rule so as to provide a period during the early stages of customer choice where switching fees will not apply.

In addition, at Rule 23.5, PECO requires that switches be effective on the customer's next regularly scheduled meter reading date. The OCA submits that such a requirement should be

⁹ 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, Restructuring Reconsideration Order entered January 16, 1998 at 17.

unnecessary if a customer is willing to accept a pro-rated bill. PECO's Tariff should provide this option to its customers. Even more preferable would be for PECO to make this option the default assumption.

The OCA also finds Rule 23.6 to be unacceptable, in that it would appear to place limitations on a customer's ability to change EGSs. A customer may change his or her EGS for any reason, not just because of supplier bankruptcy, loss of license or customer termination. The OCA agrees that it is appropriate for this Rule to make clear that if a customer does not have a supplier of record, then PECO will provide the Default Service at this time. However, the rest of this Rule appears unnecessary and overly restrictive of a customer's right to choose alternative generation providers.

9. Rule 24--Provision of Load Data

In Rule 24, at Original Tariff Page No. 25, the Company establishes a fee for the provision of load data of \$24 for customers with telemetric continuous hourly metering and provides that for customers with non-telemetric continuous metering, the data will be provided for a fee based on the cost of obtaining the data from the meter. Rule 24. The OCA submits that the latter portion of this language is inconsistent with the Commission's Customer Information Order of July 11, 1997 at Docket No. M-00960890F.008, Order at 29-30 and the Draft Rule contained in the Commission's November 6, 1997 Proposed Rulemaking. See, Rulemaking Re: Customer Information Disclosure For Electricity Providers, Docket No. L-00970126, Proposed Section 54.9(d).

The OCA submits that customers with non-telemetric continuous metering will most likely be residential and small commercial customers. The Commission's Customer Information Order requires EDCs to provide customer load data to residential and small commercial customers

once per year without charge. See, Customer Information Order, Docket M-0096890F.008, Order at page 29-30. See also, Proposed 52 Pa. Code Section 54.9(d). As such, the OCA submits that the Tariff language authorizing a fee for the provision of such data to residential and small commercial customers is inconsistent with the Commission's Order and must be modified. At a minimum, the language should be modified to reflect the Commission requirement that such information be provided once per year without fee. The OCA recommends the following language, with the additional language underlined:

PECO Energy will provide to a customer with non-telemetric continuous hourly metering, or the customer's designated EGS or authorized consultant, all available data from the meter once each calendar year for no fee, with a fee based on the Company's actual cost of obtaining data from the meter for additional requests in a calendar year.

The OCA submits that this language more accurately reflects the Commission's Orders on this subject. As such, this language, or similar language should be included in PECO's Tariff.

H. Interim Code of Conduct

At page 90 of its Compliance Tariff, PECO provides its Interim Code of Conduct in accordance with the Commission's Order. The OCA submits, however, that the Interim Code of Conduct may not fully comply with the Commission's Order, which directed PECO to supplement its Code of Conduct in certain respects. Of particular concern is Rule 3 of PECO's Interim Code of Conduct. In addition, the OCA submits that the Commission should direct PECO to file a dispute resolution procedure in accordance with its Rule 8 no later than April 1, 1998 so that such procedure is in place prior to the beginning of the Open Enrollment period.

In regard to Rule 3, it is the OCA's understanding that the Commission's Order required PECO to supplement Rule 3 to state that any transaction between PECO and an affiliate for all goods and services, including power, must be approved pursuant to Chapter 21 of the Public Utility Code. Commission Order at 130. PECO's Rule 3 does not include such supplemental language.

As such, the OCA submits that PECO's Interim Code of Conduct should be further clarified in accordance with the Commission's Order, and an appropriate time frame for the filing of a dispute resolution procedure should be established by the Commission prior to the onset of the open enrollment period.

I. EGS Rights and Obligations

The Company, in its Compliance Tariff at Original Tariff Page No. 91, sets forth the EGS' Rights and Obligations to provide Competitive Energy Supply in PECO's service territory. During the course of the proceeding, PECO had indicated that it would develop a Supplier Services Tariff, but that approach has apparently been replaced by this Tariff provision which calls for separate agreements between each supplier and PECO. In these supplier-specific agreements, the EGS is to agree to PECO's Policies and Procedures, a copy of which was not provided with the Compliance Filing.

The OCA is concerned with the lack of detail regarding such a fundamental issue for the proper operation of the competitive market. Although the OCA anticipates that the marketers and suppliers participating in this proceeding will provide comments on this Tariff provision and whether it ensures comparable direct access, the OCA is concerned that inadequate detail makes it difficult, if not impossible, to evaluate the impact of this provision on the developing competitive

market. This is of particular concern since under the Commission's Order, ratepayers are to receive savings only from the market. Any barriers to the development of this market might impede the ability of ratepayers, particularly residential ratepayers, to receive any benefits or savings from competition. As such, the OCA submits that the details of such provisions must be carefully reviewed to ensure the proper operation of the market. PECO's current compliance filing provides inadequate detail to evaluate this Tariff provision.

J. Consumer Education Material

1. Customer Choice Brochure--PECO Exh. CE-4.

In its Compliance filing, PECO includes several Exhibits regarding its Consumer Education Program. Specifically, PECO provides a narrative explanation, and Exhibits CE-1 through CE-4 with budget information, proposed letters, and a proposed brochure for distribution to customers. The OCA submits that the materials presented by PECO raise several concerns that should be addressed by the Commission. In particular, the OCA is concerned with PECO's Exhibit CE-4, a brochure intended for customers, that contains a bold-faced "Important Note" setting forth PECO's corporate position regarding the Commission's Order. As set forth below, the OCA submits that the presentation of the Company's corporate position on what is intended to be a neutral consumer education brochure, prepared at ratepayer's expense, is improper.

PECO Exhibit CE-4 is a Customer Brochure, apparently intended to be distributed to all customers, that begins with a large-type, bold paragraph entitled "Important Note." The note expresses PECO's corporate position that it disagrees with the Commission's order, and expresses PECO's views regarding the potential tax implications of this Order. In its entirety, the note reads as follows:

Important Note: The information in this document is based on Orders issued by the Pennsylvania Public Utility Commission. PECO energy disagrees with these Orders and believes they violate state and federal law. PECO Energy further believes that the Orders expose Pennsylvania taxpayers to potentially massive liabilities. It therefore believes that the Orders will be invalidated before implementation and that much of the information contained here will change in the future.

Compliance Filing, Exhibit CE-4.

The OCA submits that the Company's corporate position regarding the Commission's Order should not be distributed as consumer education materials at ratepayers' expense. PECO should not be permitted to distribute such material as part of any consumer education plan funded by ratepayers. If PECO will not distribute materials that lack this disclaimer, the OCA submits that it may be necessary for a neutral third party, such as the Consumer Education Committee, to develop these initial consumer education materials for mailing. The initial brochures should be clearly identified as being provided by the Pennsylvania PUC or the Consumer Education Committee. The substance of PECO's brochure can provide a good starting point for this endeavor, although the brochure may include more detail than necessary for an initial mailing.

Recognizing, however, that the Consumer Education Committee is in the initial stages of development, and may not have sufficient time to produce an initial brochure by the April time frame for mailing, the OCA recommends that if PECO continues to refuse to send an educational brochure without the disclaimer, then the Commission Staff, in conjunction with other interested parties, should develop initial informational materials for an April mailing. PECO should be directed to mail of these materials to its customers. PECO need not identify the mailing as being from PECO Energy, but may designate the materials as being sent by the Public Utility Commission.

The OCA hopes that consumer education can continue to move forward on a timely basis given the importance of consumer education in the rapid development of a competitive market, and consumers' ability to participate in that market to obtain the projected savings.

2. Participation of CBOs--PECO Exh. CE-2.

In response to the Commission's Order requiring a plan to include community-based organizations (CBOs) in the consumer education effort, PECO submitted a letter that it intends to send to the CBOs regarding their involvement in this effort. PECO Exh. CE-2. The letter, however, raises several significant questions regarding PECO's proposal to include CBOs in the consumer education process.

Notably, the letter does not indicate a willingness on PECO's part to include the CBOs in the development of local outreach vehicles or communication vehicles. Although the letter requests the CBO to comment on how it would address certain issues, it does not present any information as to how the CBOs will be involved in the development of the consumer education program or its implementation. Additionally, PECO's discussion of its efforts with CBOs contained in the document entitled Consumer Education, suggests that PECO will prepare all educational materials, brochures and scripts for the CBOs to use in their efforts. See, Consumer Education, p.2. The OCA submits that PECO's letter, and its approach, does not comport with the Commission's directive to include CBOs in the consumer education process.

As such, the OCA submits that PECO should be directed to invite all CBOs to a meeting to discuss opportunities for full participation in these local efforts. Also in attendance at this meeting should be the Chairman's appointee to the Consumer Education Committee to assist in coordinating and facilitating these efforts. Subsequent to this meeting, PECO should through a

letter or request for proposals, solicit the involvement of these CBOs in the consumer education process, as required by the Commission's Order.

3. Consumer Enrollment Letter--PECO Exhibit CE-3

As Exhibit CE-3, the Company includes a letter it intends to send to consumers soliciting enrollment in the initial phases of customer choice. The OCA has preliminarily reviewed the letter and is concerned that the letter does not contain simple explanations of the process and is not as helpful to consumers as it could be. Much of the language in the letter is in the negative rather than positively stating actions required by consumers. For example, the letter reads:

Original: "To receive generation service from an alternative supplier beginning in January, 1999, you must select an electric generation supplier by November 1, 1998. Failure to choose by November 1 does not terminate your right to participate. If you select an alternate supplier after November 1, 1998, however, the actual date you will receive generation service from that supplier will depend on your scheduled meter reading date."

Exh. CE-3. Although this information is accurate, the same information can be conveyed in a more consumer friendly manner. For example:

Suggested rewrite: Choose your supplier by November 1, 1998 and you can start receiving generation services from your new supplier beginning with your January, 1999 bill, If you choose later, your choice may appear on a later month's bill.

The OCA submits that a letter drafted in a manner that conveys accurate information in a more positive light should be utilized in the consumer education efforts.

4. Budget--PECO Exhibit CE-1.

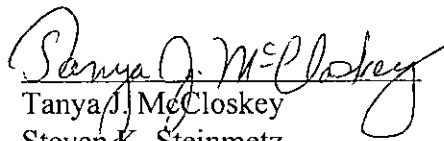
In its Compliance Filing, PECO provides its Consumer Education budget and its expenditures for 1997. Exh. CE-1. PECO's Exhibit indicates that it spent \$4.69 million for

consumer education in 1997, leaving \$19.29 million for the 1998-2000 time period. In addition, the Company indicates that it has spent funds in 1998 prior to the issuance of the Commission's Consumer Education Order on January 16, 1998. The OCA submits that PECO should be directed to continue accounting for its expenditures prior to the issuance of the Commission's Final Order in the Consumer Education Proceeding. PECO should not be permitted to spend these funds in 1998 prior to the resolution of that proceeding without a full accounting by the Commission.

III. CONCLUSION

For the reasons set forth above, the OCA respectfully urges the Commission to order modifications to PECO's Compliance Tariff consistent with the positions set forth within these Comments and to make any further modifications deemed necessary upon any further review conducted by the Commission.

Respectfully submitted,


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(717) 783-5048

Dated: January 27, 1998
45373 -

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

I hereby certify that I have this day served a true copy of the foregoing document, OCA's Comments to the Compliance Filing of Peco Energy Company, 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 27th day of January, 1998.

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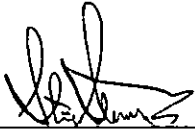
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January 27, 1998

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James J. McNulty, Secretary/Prothonotary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

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)(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)

COMMENTS OF MID-ATLANTIC POWER SUPPLY ASSOCIATION IN RESPONSE TO PECO ENERGY COMPANY'S COMPLIANCE FILING

Dear Mr. McNulty:

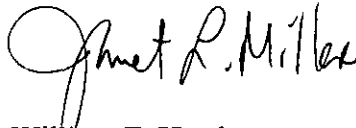
Enclosed are the original and fifteen (15) copies of the Comments of Mid-Atlantic Power Supply Association to PECO Energy Company's Compliance Filing (Electric Service Tariff Pa. P.U.C. No. 3). A copy of this document has been served in accordance with the attached Certificate of Service.

DOCUMENT
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James J. McNulty, Acting Secretary
Pennsylvania Public Utility Commission
January 27, 1998
Page 2

If you have any questions, please feel free to call.

Very truly yours,



William T. Hawke
Janet L. Miller
Todd S. Stewart

Counsel for Mid-Atlantic Power
Supply Association

JLM/kmg
Enclosures

cc: All Parties of Record

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PROTHONOTARY'S OFFICE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company : R-00973953
for Approval of its Restructuring Plan :
Under Section 2806 of the Public Utility :
Code 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 :

COMMENTS OF
MID-ATLANTIC POWER SUPPLY ASSOCIATION
TO PECO ENERGY COMPANY'S COMPLIANCE FILING
(ELECTRIC SERVICE TARIFF PA. P.U.C. NO. 3)

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PROTHONOTARY'S OFFICE

Mid-Atlantic Power Supply Association ("MAPSA")¹, by its counsel, offers the following comments to the Pennsylvania Public Utility Commission ("Commission") in response to the filing of Electric Service Tariff - Pa. P.U.C. No. 3 ("Tariff") made by PECO Energy Company ("PECO"). This Tariff was filed by PECO in compliance with the directives contained in the Commission's Orders entered December 23, 1997 and January 16, 1998 in connection with PECO's restructuring plan ("Order" or "Orders"). MAPSA respectfully recommends that the Commission direct PECO to make changes to the Tariff as set forth below in these Comments.

¹ MAPSA is an association of power marketers, independent power producers and a broad range of companies who support the electric services industry with an interest in the emerging electric power supply market within the Commonwealth of Pennsylvania and the Mid-Atlantic region. MAPSA's current Board of Directors includes representatives of Air Products and Chemicals, Inc.; Atlantic Generation, Inc.; CNG Energy Services Corporation; Cogen Technologies, Inc.; DuPont Power Marketing, Inc.; The Eastern Group; Energy Investment Advisors; Enron Capital & Trade Resources; Edison Source; MC2, Inc.; NGC Destec; Odyssey Strategies, Inc.; and U.S. Generating Company. The comments contained in this filing represent the position of MAPSA as an organization, but not necessarily the view of any particular member with respect to any specific issue.

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JAN 28 1998

DOCUMENT
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1. **Introduction.**

The Commission's December 23, 1997 Order directed, at Ordering Paragraph Nos. 17 and 20, that PECO was to file, as part of its compliance filing, a separate tariff for alternative generation suppliers. (December 23, 1997 Order at pages 162-163.) MAPSA notes that such a tariff was not included in the documentation filed by PECO on January 20, 1998 and respectfully requests that the Commission order PECO to fully comply with this directive. MAPSA firmly believes that the current tariff structure used by electric utilities and the Commission is not applicable to the provision of competitive electric services and direct retail access. MAPSA believes that it is necessary to develop a new "tariff" structure to be used for those services that will be provided on a competitive basis. MAPSA realizes that the separation of regulated and competitive services into separate filings is a large undertaking that will require a substantial effort on behalf of both the electric utilities and the Commission; however, MAPSA believes that such an effort is required in order for a successful competitive marketplace to exist in Pennsylvania.

2. **Specific Changes That Should Be Made to PECO's January 20, 1998 Filing.**

In addition to its general comments set forth above, MAPSA believes that certain specific changes should be made to the Tariff filed by PECO on January 20, 1998. The inclusion in these Comments of certain provisions of the Tariff, while excluding other provisions, does not mean that MAPSA agrees with all of the provisions included in PECO's compliance tariff filing that are not identified in these Comments.

a. **Original Page No. 6 - Definition of Customer.** An additional sentence should be added to the end of the definition that reads "In addition, unless explicitly prohibited by the Public Utility Code or the Commission's Rules and Regulations, an Electric Generation Supplier may act as agent for an end use customer."

b. **Original Page No. 8 - Definition of Summary Billing Account.** The definition as written is not in full compliance with the Commission's December 23, 1997 Order which stated:

PECO has defined "customer" to include a single point of delivery. . . .

PECO's restriction is inappropriate in a competitive generation market because it makes it more difficult for customers with multiple sites to aggregate their load with a single EGS. Accordingly, we shall permit billing consolidation. For administrative ease, billing consolidation should only apply to customers who have multiple meters on the same rate tariff. This change shall not apply to distribution charges because customers with multiple meters may impose a cost on the system that is different than a similar load from a single location associated with the distribution of the service.

December 23, 1997 Order at page 140.

c. **Original Page No. 11 - Rule 4.6: Special Contracts.** Under the terms of the Commission's December 23, 1997 Order, special contracts must be unbundled and these customers should have the option to seek the best price for service that is available in the marketplace. Specifically, the Order stated:

Now that all customers will have competitive choices, it is no longer necessary to provide such "competitively priced" services pursuant to "regulated rates" approved by the Commission

through the EER and Rule 4.6. Customers will be able to obtain competitive rates from any supplier in the market and PECO is free to provide competitive rates through its competitive affiliates or divisions.

We conclude that PECO should unbundle existing contracts for customers not prohibited from shopping based on the same guidelines as we have provided for interruptible customers.

December 23, 1997 Order at pages 119-120.

d. **Original Page No. 18 - Rule 12.2: Additional Limitations on Liability in Connection with Direct Access.** MAPSA's concern is with the third paragraph of this Rule which states: "The Company shall have no duty or liability with respect to electric energy before it is delivered by an EGS to a point of delivery on the PECO Energy distribution system, or after its delivery to a customer receiving Competitive Energy Supply." The point of delivery of electric energy from an EGS to the PECO distribution system should not be defined solely by PECO but should be a transfer point that is negotiated between PECO and the EGS and should be that point on the PECO distribution system that is most appropriate to deliver energy to the end use customer being served. MAPSA suggests that this paragraph of Rule 12.2 read as follows: "The Company shall have no duty or liability with respect to electric energy before it is delivered by an EGS to a point of delivery on the PECO Energy distribution system, or after its delivery to a customer receiving Competitive Energy Supply. For each customer, the point of delivery shall be negotiated between PECO and the EGS providing the electric energy into the PECO Energy distribution system."

e. **Original Page No. 18 - Rule 12.3: Emergency Load Control and Rule 12.4**

Emergency Energy Conservation. These provisions of the Tariff are included pursuant to prior orders issued by the Commission; however, they are not applicable in a direct retail access environment and should be removed. To the extent that the Commission believes these tariff rules must remain, they should specify that the provisions for emergency load control and emergency energy conservation will be applied in a non-discriminatory manner to both Electric Generation Suppliers and to PECO affiliated suppliers, and that EGSs will be notified if PECO invokes these rules.

f. **Original Page No. 18 - Rule 13.1: Resale of Service.** The use of the word “customer” in the first sentence of this Rule should also include an EGS, acting as the agent for an end use customer. Thus, this sentence should be changed to read as follows: “Pursuant to Section 1313 of the Public Utility Code, 66 Pa. C.S. 1313, a customer, or an EGS acting as an agent for an end use customer, may resell Energy and Capacity and/or service provided by PECO Energy”

g. **Original Page 19 - Rule 14.7: Meter Reading Intervals.** This Rule is inconsistent with the provisions of the Commission’s recent rulemaking which provides that a telemetric meter may be read by an EGS if the EGS is providing service to that customer. An additional sentence should be added to the end of this Rule which reads: “An EGS providing service to a customer with a telemetric meter shall read the meter at scheduled regular intervals of one month. The meter reading schedule of the EGS shall be coordinated with PECO so that

the information obtained from the telemetric meter by the EGS can be transmitted to PECO in a timely manner so that standard bills can be rendered to all customers.”

h. Original Page No. 21 - Rule 16.2: Request Tests. An EGS also should be permitted to request a meter test on behalf of a customer to whom it provides electric energy or on its own behalf if the EGS questions the accuracy of a meter serving a customer to whom the EGS provides electric energy. This Rule should be changed to read as follows: “The Company will make additional tests or inspections of its meters at the request of a customer, or at the request of an EGS in cases where the EGS provides that customer with electric energy. . . .”

i. Original Page No. 21 - Rule 17.2: Billing Options. The \$0.90 per bill fee to be charged to an EGS when PECO acts as the billing agent should be removed from this Rule as the amount of this fee has not been justified by PECO. The last sentence of this Rule should be changed to read as follows: “When PECO Energy acts as an EGS’s billing agent, the Company will bill the customer not only for the Company’s Fixed and Variable Distribution Service Charges, and CTCs, but also for the electric energy supplied by the EGS.”

j. Original Pages 21-22 - Rule 17.4: Payment Processing. In order to be consistent with prior Commission orders, the priority of application of partial customer payments set forth in subpart (b) of Rule 17.4 should read as follows:

1. Outstanding balance before Direct Access or the installment amount for a payment agreement on this balance.

2. Balance due or the installment amount for a payment agreement for CTCs and Fixed and Variable Distribution Service Charges, and Energy and Capacity Charges (when the Customer receives Default PLR Service).
3. Current CTCs and Fixed and Variable Distribution Service Charges.
4. Balance due for prior Energy and Capacity charges.
5. Current charges for Energy and Capacity.
6. Non-basic service charges.

k. **Original Page No. 22 - Rule 17.5: Finance Charge and Collection Costs.** If the EGS is acting as the billing agent for electric energy charges because the customer has selected to receive a separate bill from the EGS, then the last sentence of this Rule applies. However, if PECO is acting as the billing agent for an EGS because the customer has selected to receive a single bill which includes both PECO charges and charges for electric energy provided by an EGS, then PECO should be responsible for assessing and collecting finance and late payment charges on the entire bill, including that portion of the bill which represents the EGS's fees and those fees should be remitted to the EGS when collected. The last sentence of this Rule should be changed to read as follows: "In cases where PECO acts as the billing agent for an EGS's services, all actions taken pursuant to this Rule shall be taken on all outstanding balances, including those of the EGS. In cases where the EGS is separately billing charges for electric energy, the Company will not assess, nor seek collection of, financing or late payment charges on an EGS's charges, as this is the responsibility of the EGS."

l. **Original Page No. 22 - Rule 17.6: Budget Billing.** Subpart (b) of this Rule should be amended to read as follows: "An EGS's charges will be included in the customer's Budget Billing Plan if the customer's EGS agrees and appoints the Company as its billing agent."

m. **Original Page No. 22 - Rules 18.1-18.7: Payment Terms & Termination of Service.** These Rules contain no provisions for payment arrangements or termination of service for delinquencies of balances owed to EGSs, even though the EGS has no authority to single bill a customer for all charges. If PECO is acting as the billing agent for an EGS because the customer has selected to receive a single bill, PECO must be required to establish payment terms on the entire balance owed by the customer, including amounts owed for electric energy supplied by an EGS. In the alternative, in cases where PECO is rendering a single bill, and PECO does not wish to establish payment arrangements for EGS charges, then PECO should be required to pay the EGS for the balances owed by the customer for electric energy and should then recover these balances from the customer under a payment arrangement or through collection action taken after termination of service.

n. **Original Page No. 23 - Rule 21.7: Other Charges.** A specific designation of all services that can be provided and all charges that can be billed under this Rule should be included in the Tariff. As written, the Rule creates a potential for discrimination because it is too broad and leaves wide open the types of services and charges that PECO can offer in an attempt to keep customers from choosing an alternative energy supplier. In the alternative, the Rule should clearly state that any services provided to customers by PECO under this Rule also must be offered to EGSs on a non-discriminatory basis and that an EGS also may request special services under this Rule on behalf of its customers or potential customers.

o. **Original Page 24 - Rule 22.7: Direct Access Phase-In Procedures.** The last sentence of this Rule should be changed to read "Within fifteen days after receipt of the

participant's EGS choice, PECO Energy shall send the participant a letter confirming the participant's EGS selection, with a copy also sent to the chosen EGS."

p. **Original Page Nos. 24-25 - Rules 23.1-23.8: EGS Switching.** In order to prevent or discourage the slamming of electric energy customers, confirmation of a change in EGSs should be made or sent to both the old EGS and the new EGS. PECO should have the responsibility to notify both the old and new supplier that the customer has requested the change. In cases where either the customer or the old EGS alleges slamming, no change should take place until confirmed in writing by the customer. In addition, the \$6.00 switching fee set forth in Rule 23.7 to be charged for each EGS switch should be removed as the amount of this fee has not been justified by PECO.

q. **Original Page No. 25 - Rule 24.1: Provision of Load Data.** There should be no fee charged for the provision of load data information and the \$24.00 fee provision should be removed from this Rule. If fees are to be charged, PECO should be required to justify the amount of the fee imposed.

Also, PECO should be required to provide typical load shape data for a particular customer class to an EGS upon request. A sentence should be added to the end of Rule 24.1 which reads as follows: "Upon the request of an EGS, the Company shall provide to the EGS typical load shape data for specific customer classes."

r. **Original Page No. 27 - Competitive Transition Charge (CTC).** The Commission's Orders provided that PECO may recover \$4.935 Billion in stranded costs, plus a 7.47% rate of return. This provision of the Tariff, however, provides that PECO will recover "Transition or Stranded Costs plus a 7.47% return based on a weighted average cost of capital and applicable Pennsylvania Gross Receipts Tax." Under this definition, PECO will recover more than the amount of stranded costs authorized by the Commission. The inclusion of Pennsylvania Gross Receipts Tax should be removed from the calculation of PECO's return. Similarly, in its description of the "Reconciliation" process, PECO has provided that "[i]nterest on monthly over or under-recoveries shall reflect a 7.47% return plus applicable income taxes on the equity component (revenue requirement)." Again, the inclusion of income taxes in the calculation of PECO's recovery of interest to be paid on under-recoveries will allow PECO to recover more than permitted by the Commission's Order. The inclusion of income taxes should be removed from the calculation of interest to be collected and/or paid at reconciliation of the CTC.

s. **Original Page Nos. 31-87 - Minimum Contract Terms Identified for Individual Rate Classifications and Riders.** For each of the rate classifications and Riders listed below, PECO has specified a minimum term of the initial contract which must be entered into by the customer. These references should be removed from the Tariff.

- Rate RT Residence Time Of Use Service - Original Page No. 31; contract term specified: not less than twelve months.

- Rate R-S Renewable Energy Service - Original Page No. 36; contract term specified: not less than twelve months.
- Rate GS General Service - Original Page Nos. 37-39; contract term specified: at least one year.
- Rate PD Primary-Distribution Power - Original Page No. 40; contract term specified: at least three years.
- Rate HT High-Tension Power - Original Page Nos. 41-42; contract term specified: at least three years.
- Rate POL Private Outdoor Lighting - Original Page Nos. 43-44; contract term specified: at least three years.
- Rate SL-P Street Lighting in City of Philadelphia - Original Page Nos. 45-47; contract term specified: at least one year.
- Rate SL-S Street Lighting Suburban Counties - Original Page Nos. 48-49; contract term specified: at least three years.
- Rate SL-E Street Lighting Customer Owned Facilities - Original Page Nos. 50-51; contract term specified: at least one year.
- Rate TL Traffic Lighting Service - Original Page No. 52; contract term specified: at least one year.
- Rate BLI Borderline Interchange Service - Original Page No. 53; contract term specified: at least five years, then from year to year until terminated on 60 days' notice.
- Rate AL Alley Lighting in City of Philadelphia - Original Page No. 55; contract term specified: at least one year.
- Auxiliary Service Rider - Original Page Nos. 57-59; contract term specified: annual.
- Capacity Reservation Rider - Original Page No. 60; contract term specified: one to eight months.
- Curtailment HT Rider - Original Page No. 64; contract term specified: at least three years.

- Economic Efficiency Rider (EER) - Original Page Nos. 65-66; contract term specified: a minimum of five years.
- Employment and Economic Recovery Rider - Original Page Nos. 68-71; contract term specified: nine or four years.
- Incremental Process Rider (IPR) - Original Page Nos. 73-74; contract term specified: minimum of five years.
- Interruptible Rider 1 (IR-1) - Original Page Nos. 75-77; contract term specified: one, two or three years.
- Night Service GS Rider - Original Page No. 82; contract term specified: at least one year.
- Night Service HT Rider - Original Page No. 83; contract term specified: at least one year.
- Night Service PD Rider - Original Page No. 84; contract term specified: at least one year.
- Seasonal Capacity Charge Service Rider - Original Page No. 87; contract term specified: at least three years.

In a competitive environment, a minimum contract term restriction is inappropriate for the provision of unbundled services and all customers should have the right to switch suppliers as they choose and upon terms that are negotiated between the customer and the supplier. MAPSA assumes that the inclusion of minimum contract terms in the various customer rate classifications and riders listed above is the result of PECO's failure to reform its current tariff structure to reflect direct access and the provision of competitive services; however, there may be a reason (of which MAPSA is unaware) to allow PECO to require minimum contract terms for the provision of distribution service.

t. Original Page Nos. 65-72 - Economic Efficiency Rider (EER), Emergency Energy Conservation Rider, and Employment and Economic Recovery Rider. Initially, MAPSA points out that the Commission already has decided (December 23, 1997 Order at pages 199-120) that Rule 4.6 and EER contracts will no longer be available at such time as all customers have a right to choose. Due to the ability of industrial customers to choose alternative suppliers for a prorata share of their total load on January 1, 1999 and on January 2, 1999, PECO should no longer offer these Rule 4.6 and EER contracts to industrial customers (Rates HT, EP, PD, and applicable GS) as of January 1, 1999.

As a general observation, MAPSA questions if the Economic Efficiency Rider, Emergency Energy Conservation Rider, and Employment and Economic Recovery Riders are appropriately included in a competitive tariff and, as noted above, assumes they are remnants of PECO's fully bundled tariff in which it was necessary to provide customer rate incentives. Again MAPSA points out that the electric utilities and the Commission need to rethink a total reform of the existing tariff structure so as to accommodate the regulation of certain functions and the competitive nature of other functions. To the extent that provisions such as these Riders are to remain in PECO's Tariff, the provisions should be offered on a non-discriminatory basis and should be subject to the Code of Conduct.

u. Original Page No. 72 - Energy Services Rider. Subparagraph (b) should be removed from the Tariff for the following reasons:

1. PECO cannot treat customers in a discriminatory manner;

2. PECO cannot offer a rate to customers that is not tariffed; and
3. PECO cannot reduce the rates charged by PECO EDC to a level that is less than the tariffed rates.

The provisions of subparagraph (b) violate all of these prohibitions.

v. **Original Page No. 90 - Interim Code of Conduct.** The Interim Code of Conduct incorporated in the Tariff does not comply fully with the Commission's findings at pages 125-131 of the December 23, 1997 Order regarding competitive safeguards. To comply with the Order, the following additions and modifications must be made to the Interim Code of Conduct included in the Tariff (additions are underlined, deletions are in brackets):

2. PECO EDC shall supply services, information and goods and apply the rules and provisions of its Tariffs to non-affiliates in [the same] a comparable, non-discriminatory manner with similar rates, terms and conditions as it supplies such services, information and goods and applies the rules of its Tariffs to a PECO Supplier.
7. Neither PECO EDC nor a PECO Supplier may directly or by implication [falsely and unfairly] represent:
.....

SHOULD BE ADDED

9. All transactions between PECO EDC and an affiliate must be pursuant to a contract that is submitted for review and approval by the Public Utility Commission pursuant to Chapter 21 of the Public Utility Code. (See page 130 of the Commission's Order.)

SHOULD BE ADDED

10. PECO shall not engage in transactions concerning the competitive generation market unless it is for goods or services made available to competitors on comparable terms and conditions.

In addition, MAPSA strongly believes that all of PECO's EDC policies and procedures regarding the operation of the competitive generation market and customer direct access (including, but not limited to, load forecasting, scheduling and balancing) must be incorporated as part of a Commission approved Tariff and must be subject to the Interim Code of Conduct.

w. **Original Page No. 91 - EGS Rights and Obligations.** All agreements to be entered into between PECO and an EGS with respect to the provision of Competitive Energy Supply should be specifically subject to the Code of Conduct set forth in the Tariff.

The "EGS Policies and Procedures" referred to in Item No. 4 should be incorporated into the Tariff, together with all other operational requirements which an EGS will be required to meet in order to provide energy in PECO's service territory.

The requirement set forth in Item No. 3 that an EGS obtain transmission service for delivery of generation within or outside of the PJM System is within the FERC's jurisdiction and should not be controlled by a Commission-approved tariff. In addition, every EGS has an obligation to abide by FERC and PJM rules in order to maintain the reliability of the PJM System. However, because the Commission has an ongoing obligation to ensure that the total

rates charged to customers are just and reasonable, PECO's FERC tariffs should be filed with the Commission for informational purposes.

x. **Retail Transmission Services Rider.** Because transmission services are FERC jurisdictional and the terms under which unbundled transmission service is to be provided to customers have been or will be subsumed within PECO's PJM Tariff, MAPSA assumes that this Rider is included in the Tariff by PECO for informational purposes only. To the extent this was not PECO's intent, the direct correlation between the Retail Transmission Services Rider and the other provisions of the Tariff should be explicitly set forth in the Rider. To the extent PECO meant there to be a relationship between the Retail Transmission Services Rider and other provisions of the Tariff, MAPSA cautions that the Commission review those relationships to ensure that PECO is not creating an arrangement which "ties" a supplier's ability to use PECO's distribution system with a requirement to use PECO's transmission service, thus preventing a supplier from obtaining and bringing energy to its customers through PECO's distribution system from any source it chooses.

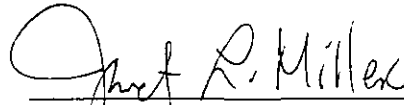
3. **General Comments on PECO's Compliance Tariff.** Because there does not appear to be any specific provisions included in the Tariff as to an EGS's responsibility for line losses and other ancillary services (i.e., penalties or requirement of additional delivery of generation), MAPSA assumes that there are none and that the transmission and distribution rates included within the Tariff are all that an EGS or an EGS's customer is expected to pay. If additional

charges are to be added for line losses and other ancillary services, PECO should be required to specifically list those items in an unbundled tariff with specific costs assigned.²

4. **Conclusion.**

For the reasons set forth above, MAPSA respectfully requests that the Commission direct PECO to make changes to its Electric Service Tariff Pa. P.U.C. No. 3 as set forth in these Comments.

Respectfully submitted,



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Counsel for Mid-Atlantic Power
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DATED: January 27, 1998

² MAPSA assumes that the costs related to line losses and ancillary services have been properly included in PECO's currently bundled distribution rates and that the total charges that may be assessed to include these items with distribution will not exceed the distribution charges currently stated in the Tariff.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing document upon the persons named and in the manner indicated below.

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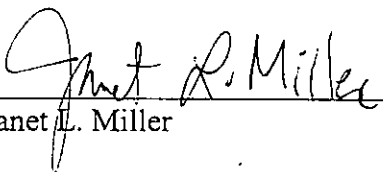
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Janet L. Miller

DATED: January 27, 1998

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

:
:
: DOCKET NO. R-00973953
:
:

KJR

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

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: DOCKET NO. P-00971265
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RECEIVED

JAN 27 1998

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**COMMENTS OF CONECTIV ENERGY ON THE
PECO ENERGY COMPLIANCE FILING**
=====

PA PUBLIC UTILITY COMMISSIO
PROTHONOTARY'S OFFICE

NOW COMES, Conectiv Energy, by and through its attorney, and pursuant to
Ordering Paragraph 4 of the Commission's Restructuring Reconsideration Order,
entered January 16, 1998, files these Comments to the Compliance Filing of PECO
Energy.

DOCKETED
JAN 28 1998

**DOCUMENT
FOLDER**

24

I. Background

Before the Commission for action is the Compliance Filing of PECO Energy, filed in response to the Commission's December 23, 1997 Restructuring Order and its Restructuring Reconsideration Order, entered January 16, 1998. Review of the filing reveals that certain of its preliminary provisions, rules, and supporting documentation do not comport with the various orders of the Commission or contain provisions that were not authorized by the Commission. Conectiv Energy submits that there exist sufficient discrepancies between the Commission's Orders and the Compliance Filing to warrant an order rejecting portions of the filing.

Conectiv also notes that the time from for review has been limited. The Commission should expressly reserve authority to make further refinements as necessary due to pending proceedings and rulemakings.

II. PECO's CTC Calculation is Excessive

In the context of its filing, PECO has proposed a CTC rate of 2.77¢/kwh¹ as opposed to the 2.56¢/kwh as set forth in the Commission's December Order. Pursuant to the Commission's December Order at page 46, the existing bundled rate is undisputedly 9.95¢/kwh, the unbundled T&D rate is 2.93¢/kwh, the shopping credit is 4.46¢/kwh and the CTC (for shopping customers) is tentatively established at

¹ Stranded Investment Recovery Schedule/Calculations appended to the filing.

2.56¢/kwh. Although the Commission in its Reconsideration Order did not represent the same table as contained in its original order, it would only be logical to assume that as the Commission decreased the amount to be recovered through the CTC, the CTC rate would **decrease**. Consequently, PECO's system average CTC of 2.77¢/kwh is untenable. There exists at least two primary problems with PECO's CTC calculation.

A. PECO Uses a Capital Cost of 10.31% Instead of the 7.47% Contained in the Orders

1. The Orders are Clear

Pursuant to the Commission's December Order, the Commission concluded that:

...the record in this proceeding supports adopting PECO's revised long-term debt rate of 7.47% to calculate the revenue requirement for the recovery of the CTC over the 8½ year transition period.

* * *

The CTC shall be calculated on a "per kwh" basis assuming annual sales of 33,569,358 MWH in 1999, escalating at 0.8% annually throughout the transition period. PECO shall calculate the CTC with a cost of capital of 7.47% on the unamortized balance.

December 1997 Order, pp. 108-109 (Footnotes omitted). In its discussion of adjustments in its Reconsideration Order, the Commission reiterated its previous decision, specifically providing that:

The compliance filing shall calculate the CTC in the manner described in the Order and restated for clarification as follows: (1) The CTC is to be calculated recognizing the monthly receipt of revenue by PECO; (2) the CTC is to be calculated using a 7.47 per cent rate of return, **inclusive of all revenue requirements**. . .

Reconsideration Order, p. 25, emphasis added. It would appear from PECO's compliance calculations that PECO utilized the 7.47% as directed but "grossed up" that percentage for income tax on alleged equity to arrive at its 10.31%. At the very least this raises the issue of the Commission's meaning of the phrase "inclusive of all revenue requirements." Conectiv Energy submits that income taxes are appropriately included within that phrase.

2. SFAS 109 Treatment Illustrates Why a 10.31% Cost Would Be Inconsistent

As noted in the SFAS 109 Deferred Taxes portion of the Reconsideration Order² the \$1,687 billion amount to be recovered was a nominal amount, which was converted to a net present value amount of \$1.216 billion. Appendix to Reconsideration Order.

If a 10.31% cost of capital is utilized, the \$1.216 billion amount becomes a \$1.921 billion nominal amount, \$234 million in excess of the nominal amount allowed.³ Clearly, the use of a 10.31% cost produces an unintended result.

² Restructuring Reconsideration Order, p. 15

³ The \$1.921 billion is calculated by utilizing the overall ratio of nominal value to net present value under PECO's approach. PECO derives nominal collections of \$7.781 billion (excluding GRT) from a net present value of \$4.935 billion -- a ratio of 1.58. Applying this ratio to \$1.216 billion equates to the \$1.921 billion set forth above.

B. PECO Does Not Calculate the CTC Based upon the Appropriate Sales Level

As stated previously, the Commission's order is quite clear - the CTC is to be calculated at an initial level of 33,569,358 MWh in 1999, escalating at 0.8% annually throughout the transition period. While a cursory glance at "Summary of Unbundled Revenue," the first page of the Proof of Revenue attachment to the filing, would lead one to believe that the Commission's sales level was utilized, the individual rate class volumes in that column do **not** tie in to the actual volumes used in the class specific proof of revenues. For example, in the Summary of Unbundled Revenue, Rate GS is shown to have sales of 6,557,040 MWh, yielding \$240,293,000 in CTC revenues. However, in the subsequent detailed analysis of Rate GS provided by PECO, the following usage is found:

First 80 hours	1,702,309 MWh
Next 80 hours - summer	595,665 MWh
Additional Use	3,268,471 MWh
Over 400 hours and 2000 kwh	143,310 MWh
Space Heating	<u>462,566 MWh</u>
Total sales	6,172,321 MWh

Thus, it would appear that PECO has designed the actual rates to be charged to customers utilizing sales volumes that are lower than those contained on its summary page.

Another apparent discrepancy involves Rate HT. The aforementioned Summary of Unbundled Revenues indicates sales of 14,198,713 MWh, yielding CTC revenues of

\$313,191,000. Returning to the detailed calculations utilized to support this summary, the actual charges to customers are based upon a sales level of 11,781,829 MWh.

First 150 hours use	3,728,210 MWh
Next 150 hours use	3,638,786 MWh
Additional Use	4,332,292 MWh
HT Auxiliary	46,820 MWh
Interruptible	<u>35,721 MWh</u>
Total	11,781,829 MWh

Thus, the actual CTC charges for HT customers are based upon sales volumes that are understated by 2,416,884 MWh.

PECO should be directed to develop the rates based upon the 33,569,357 MWh as set forth in the Commission's orders so that the actual rates to be charged properly reflect the Commission's sales volumes.

III. The Commission's Orders Do not Authorize a Nuclear Decommissioning Cost Adjustment Clause.

Within the context of its December 1997 Restructuring Order, the Commission adopted an annuity approach to nuclear decommissioning costs, adopting PECO's indication that annual contributions of \$22.7 million as an annuity payment to a trust fund would provide for full funding of decommissioning costs. The Commission did not provide for PECO to include within its tariff a Nuclear Decommissioning Cost Adjustment Clause which would be adjusted every 5 years and would be chargeable to all customers. In effect, PECO has established a pseudo sliding scale fuel cost adjustment clause without the sanction of this Commission. Even if such a proposal is

adopted by the Commission, Conectiv Energy would request that this adjustment clause be subject to the same reporting and review requirements of any other sliding scale of rates.

IV. Switching Fees Have Been Expressly Disallowed by The Commission.

The OCA raised, within its Petition for Reconsideration, the issue that the Commission had overlooked the issue of the proposed fee that PECO was to charge to customers for switching suppliers. As found in the Commission's Reconsideration Order:

We shall adopt the recommendation of OCA witness Alexander that a switching fee is inappropriate during the early stages of customer choice . . .

Reconsideration Order, p. 17. Despite this admonition, PECO has included within its **Rule 23.7** a \$6.00 switching fee.

V. PECO's Rules 3.4 and 14.1 are Contrary to the Commission's Order

In its Restructuring Order at page 140-141, the Commission makes it clear that the customer and/or the EGS may select and supply the meter to be utilized. The Commission states:

[W]e do believe 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. The right to choose a competitive EGS is inherently related to the ability to choose alternative generation services and products made possible be advanced

metering. Customers must have a reasonable choice of advanced meters in conjunction with the services offered by their chosen EGS.

* * *

While PECO, as a regulated EDC, shall be responsible for all physical work related to the meter, the customer and/or the EGS may select the qualified meter to be used.

Conectiv Energy submits that in order to promote and facilitate the development of competitive generation products and services, it is important the customer have the right to choose not only among the various potential offerings by PECO but those meters offered by an EGS as long as the meter that is chosen by the customer or the EGS complies with the Commission's qualifications.

In its Rules 3.4 and 14.1 it appears that PECO will be the sole supplier of metering equipment. Conectiv submits that this is contrary to the intent of the Commission's Order.

VI. Rule 22 Phase-In Procedures Need Flexibility

Rules 22.1 and 22.2 speak of an "enrollment card" and imply that this card is the exclusive means of volunteering for enrollment. It should be noted that in the pilots there were various means of enrollment used by EDCs and EGSs. PECO directly accepted only enrollment cards, which caused problems because of many instances of customers not receiving or misplacing the cards. In addition, Conectiv believes that EGSs should be able to accept enrollments in any form, and forward them to PECO, so

long as the customer is not required to select that EGS as its supplier as a condition of processing the enrollment. Absent this flexibility EGSs will not be able to participate in the enrollment process at all, and customers will not be exposed to the reasons that EGSs would be able to offer for customers to enroll.

Rule 22.7 imposes a requirement that EGS selection be “in writing, either directly or through an EGS.” Conectiv believes the written requirement is too inflexible, and would at a minimum suggest clarification that Internet sign-up and fax transmissions are acceptable.

In addition, Conectiv has concerns where PECO would accept an EGS selection “directly.” This caused problems in the pilot where EDCs accepted customer selection of an EGS without the EGS agreeing to provide service or even having knowledge of the selection. Just as an EGS cannot unilaterally select a customer, a customer cannot unilaterally select an EGS. Instead, both the EGS and the customer must agree to terms. Clarification to this effect would be appreciated.

Rule 22.8 states that to receive service a customer must “complete the required paperwork.” This open-ended provision is an invitation for abuse by allowing PECO to unilaterally impose obstacles and hassles. Instead, just like in the pilots, customers should receive service when the EGS certifies that the customer has made a selection in compliance with the rules.

VII. Billing and Collection

Several portions of PECO compliance filing have a direct bearing on billing and collection services. **Rule 17.2** would impose upon an EGS a charge of \$.90 per bill (presumably on a monthly basis) for the inclusion of EGS charges on a customer's unified bill. **Rule 17.4** states that PECO's charges are always deemed to be first and that an EGS's charges are always deemed to be last. **Rule 17.5** states that PECO will not place any finance or late payment charges due an EGS on the same unified bill. **Rule 18.2** prohibits an EGS's payment arrangements with a customer from being placed upon the unified bill. Both the December Restructuring Order and the Reconsideration Order are silent on these points, but they are vitally important because burdens on EGS's translate directly into higher business costs and higher prices to customers.

Regarding **Rule 17.2**, it should be noted that the Commission, in its August 29, 1997 Opinion and Order establishing a pilot program for PECO⁴, agreed with the OCA and Environmentalists that the imposition of a \$.90 billing fee was inappropriate as there was no cost justification for such a fee. Conectiv submits that in the PECO Energy restructuring proceeding, PECO did not justify such a fee. Instead, the fee merely reappears in the compliance filing as it did in the pilot filing. Conectiv submits that no billing fee has been justified or approved by the Commission.

⁴ *Petition for Approval of Retail Access Pilot Programs Pursuant to 66 Pa.C.S. §2806(G) - PECO Energy Company, P-00971170 (August 26, 1997)*

Regarding **Rule 17.4**, Conectiv objects to being forced, for all intents and purposes, into reliance on the EDC unified bill while being totally subordinate in payment. Underscoring the problem is the EGS's inability to effectuate service termination as a collection remedy (which PECO has imposed by agreeing with the OCA position). Other tariffs rules compound the problem, as well as the yet undefined scope of Chapter 56 burdens on the ability of EGSs to receive payment.

It is axiomatic that EGS cannot provide service if they cannot get paid. In addition, it is our understanding that none of PECO's uncollectible expense has been excluded from restructured rates, meaning that uncollectible expense incurred by EGS's and reflected in competitive rates is essentially a double dip on consumers.

Under these circumstances it is imperative that the Commission address payment priority. We believe that one of two alternatives should be adopted. Either partial payment should be split pro rata between PECO and the EGS, or an amount past due to an EGS should be higher priority than a current amount due PECO. Either of these alternatives would help ameliorate the untenable situation posed by PECO's proposed rule.

Regarding **Rules 17.5 and 18.2**, similarly, PECO has, again through its compliance filing, refused to include payment arrangements between an EGS and a customer on its bill and has refused to apply late payment charges on behalf of an EGS presumably even if the EGS supplies PECO with sufficient information regarding the payment arrangement or late payment charge. The Commission Order on the pilot

compliance filing⁵ is instructive. In that Order, the Commission, in response to such language contained in PECO's pilot program compliance filing stated:

The Commission believes that if the EDCs are engaged in billing for the suppliers' services, the EDCs must continue to provide collection activities as they currently do for their own billings, at no additional charges to suppliers.

PECO Compliance Order p. 26. Conectiv submits that if an EGS and a customer arrange a payment schedule for services, PECO as the renderer of the bill, should be required to reflect them on the unified bill. Similarly, PECO should be directed to reflect late payment charges on the unified bill in the same manner as they provide that service for their own billings.

VIII. Rule 24.1 Violates The Commission's Orders

Pursuant to PECO's Rule 24.1, an EGS would be required to pay PECO either \$24.00 for the load data for a customer that has telemetric continuous hourly metering, or an unspecified amount for load data for all other customers. Such a provision was included in PECO's Pilot Program filing and was rejected by the Commission. *Petition for Approval of Retail Access Pilot Program Pursuant to 66 Pa. C.S. §2806(G)*, P-00971170 (August 29, 1997), pp. 85-86. At the time of the Commission's disapproval of the load data fee in the pilot programs, the Commission stated that if there was to be any such fee, it should be based upon the true costs incurred by PECO to provide the

⁵ *Compliance Filing of PECO Energy Company For Approval of Its Retail Access Pilot Program*, P-00971170 (October 10, 1997)

service, and should be subject to the Commission's approval. The Commission did not approve such a charge in either the December Restructuring Order or its Reconsideration Order.

In addition to not receiving approval for these fees, and being the only company to suggest such fees, Conectiv submits that such a fee will only serve to hinder accurate deliveries of generation to customers from an EGS. It is simply illogical that an EGS should be forced to pay PECO an undetermined amount in order to prevent any under or over delivery of electricity to the PECO system. Indeed system reliability alone would justify the furnishing of load data at no additional cost to an EGS.

IX. The Proposed Energy Service Rider (Tariff Page 72) is Anti-Competitive and Violates the Commission's Orders

Through the proposing of its Energy Services Rider, PECO attempts to gain a competitive advantage. Pursuant to the terms of that Rider, any customer who returns to the PECO system as a default customer⁶ would be entitled to receive service either at the tariffed rate for a period of one year, or at a market rate, presumably set by PECO, on a month to month basis. Through these provisions it would be possible for PECO to tout the advantages of returning to PECO-EDC as they could meet or beat a price that was being offered by a customer's current supplier. The Commission has

⁶ A default customer is not defined within PECO's tariff. However, PECO will serve as a "Default PLR" to any customer who fails to choose an alternative supplier; chooses not to choose; or returns to default service after having chosen an alternative generation supplier. Tariff p. 6

addressed this issue in both its December Restructuring Order and its Order on Reconsideration.

In its December Restructuring Order, the Commission addressed the rates to be charged to those customer who do not have the opportunity to shop (pp. 132-133) and customers who do not have a competitive supplier.⁷ In both instances the Commission clearly stated that customers in these categories shall receive the bundled tariffed rates of PECO. The Commission provided additional clarification in its Reconsideration Order in commenting upon the questions raised by the OCA and CEPA. As stated by the Commission:

PECO, as an EDC, remains a regulated utility and may only offer Commission-approved, tariffed rates. In this proceeding, no party provided evidence that PECO's regulated rates should be reduced under traditional ratemaking. Protected by the statutory rate caps, customers who do not shop remain regulated rate customers of PECO on the same terms and conditions of service unless changed by Commission Order.

Reconsideration Order, p. 21. The Commission could not be clearer on this point. All customer who do not take service from an alternative generation supplier are to be served by PECO as the PLR **at regular tariffed rates**. Accordingly, Conectiv submits that the Energy Service Rider and all references to that Rider should be eliminated from PECO's tariff.

⁷ This later category includes customers who choose not to choose and those customers who return to the provider of last resort. Restructuring Order, pp. 133-134).

IX. Interim Code of Conduct (Tariff Page 95)

It does not appear that PECO has fully complied with the Interim Code of Conduct direction of the Commission. In those respects Conectiv relies on the comments of other parties.

Conectiv does believe that a general rule should be set forth in the Code, to the effect that PECO will treat its affiliated EGSs like nonaffiliated EGSs. A general rule would cover situations not necessarily addressed in a particular rule. For example, Conectiv has objected throughout the pilots that PECO's web site promotes its Horizon Group affiliate. This is clearly inappropriate but it has not been clear which specific rule of the pilot code of conduct this violates. A general rule would cover such a situation.

Conectiv notes that the Interim Code of Conduct should be given an effective date of the Commissioner's entry of Order on the Compliance Filing -- not January 1, 1999. Otherwise, conduct the Code is designed to prevent could occur through the entire phase-in process occurring this year.

X. EGS Rights and Obligations (Tariff Page 96)


Conectiv objects to the open-ended nature of items 2, 4, and 5. Any agreements that PECO would attempt to impose on EGSs as a condition of serving customers should be submitted to the Commission for review and approval months in advance of the commencement of service so as: (1) to avoid the EDC being able to coerce agreement from EGSs as a condition of providing timely service to customers (this

occurred in the pilots); and (2) to allow the Commission time to review and approve all the provisions. Material submitted would have to include all provision that are "incorporated by reference" such as PECO's "Policies and Procedures." These agreements also should include PECO's obligations to suppliers such as the required time period for PECO to remit customer payments to EGSs.

XI. Conclusion

In view of the foregoing, Conectiv Energy respectfully requests that the Commission require PECO to alter its Proposed Tariff Electric Pa. P.U.C. No. 3 to reflect Conectiv Energy's Comments. In addition, as the tariffs are not scheduled to become effective until January 1, 1999, and in light of the fact that some of the tariff provisions are the subject of various interpretations, Conectiv Energy respectfully requests that this Commission provide for a period of time prior to the tariffs becoming final within which the parties to the Restructuring proceeding can consult with PECO as to its interpretation of various provisions and bring any additional concerns to the Commission's attention.

Respectfully submitted,


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DATED: January 27, 1998

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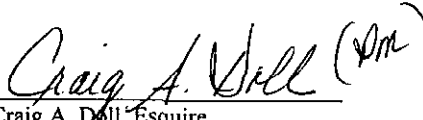
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January 28, 1998 ^{KJR}

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By FedEx and Fax

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Pennsylvania Public Utility Commission
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Attention: Thomas P. Maher, Analyst III
Energy Industry
Bureau of Fixed Utility Services

Dear Mr. McNulty:

Enclosed are PECO Energy Company's Answers to Bureau of Fixed Utility Service's Interrogatories:

Set I: 1 through 16.

Sincerely,

A. A. Miller

AAM/rmt
Enclosures

cc: w/enclosures
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James McNulty, Acting Prothonotary (Certificate of Service Only)

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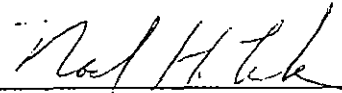
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