PUC-77

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Uniform Cover and Calendar Sheet

1. **REPORT DATE:** December 5, 1997	2. **BUREAU AGENDA NO.** DEC-97-ALJ-116*
3. **BUREAU:** ALJ	
4. **SECTION(S):**	5. **PUBLIC MEETING DATE:** December 11, 1997
6. **APPROVED BY:** Chief ALJ: Robert A. Christianson Supervisor:	
7. **PERSON IN CHARGE:** ALJ Marlane R. Chestnut ALJ Charles E. Rainey, Jr.	DOCKETED DEC 15 1997
8. **DOCKET NO.:** R-00973953, [redacted]	

9. (a) **CAPTION** (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) PECO Energy Company; Petition of ENRON Energy Services Power, Inc.

(b) PECO Energy Company filed its restructuring plan on April 1, 1997, as directed. A joint petition for partial settlement was filed by various parties on August 27, 1997. By Order dated October 2, 1997, the Commission provided for elimination of a Recommended Decision and certification of the record. On October 7, 1997, ENRON Energy Services Power, Inc. filed a petition proposing an ENRON plan. This petition was consolidated with the basic PECO filing. Hearings have been held and a record has been made. The matter was certified by order dated December 2, 1997 and briefs were filed the same day.

(c) The Office of Administrative Law Judge recommends that appropriate action be taken concerning the matter.

CONTINUED

CONTINUED - R-00973953; P-00971265

10. **MOTION BY: Commissioner** Hanger
SECONDED: Commissioner Rolka

Commissioner Chm. Quain - No
Commissioner Bloom - No
Commissioner Brownell - Yes

CONTENT OF MOTION:

1) The Joint Petition for Settlement of PECO Energy Company's Proposed Restructuring Plan and Application for a Qualified Rate Order is denied;

2) The 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 is denied;

3) The Application of PECO Energy Company for Approval of Its Restructuring Plan under Section 2806 of the Public Utility Code is modified as provided herein and accepted to the extent consistent with this Motion;

4) PECO shall file, 20 days after entry of an Order, a Compliance filing consistent with this Motion, and serve all Parties of Record; and

5) OSA shall prepare an appropriate Order consistent with this Motion.

Joint Statement and Dissent of Chairman John M. Quain and Vice Chairman Robert K. Bloom attached.

Statement of Commissioner David W. Rolka attached.

Statement of Commissioner Nora Mead Brownell attached.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

PENNSYLVANIA PUBLIC UTILITY COMMISSION
v.
PECO ENERGY COMPANY

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

and

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

PUBLIC MEETING-
DECEMBER 11, 1997
DEC-97-ALJ-116*
R-00973953

P-00971265

JOINT STATEMENT AND DISSENT OF
CHAIRMAN JOHN M. QUAIN AND VICE CHAIRMAN ROBERT K. BLOOM

The matter before the Commission for resolution is the PECO Energy Company (PECO) restructuring case. Two plans are offered for consideration: the Joint Petition for Partial Settlement of the PECO restructuring case (Partial Settlement), and the Enron Provider of Last Resort Plan (Enron Plan). For the reasons that will be set forth in this dissent, we must take issue with the approach and results adopted by the majority today.

The Partial Settlement is the latest iteration of the PECO restructuring plan minus certain generic issues.[1] The Settlement.

[1] With respect to unresolved "generic" issues, on October 2, 1997, we entered a Tentative Order in this proceeding, made final by our Order of November 6, 1997, in which we stated that issues identified as "generic" are best treated on a state-wide basis in the context of various Commission rulemakings already pending or anticipated as a result of Commission work groups. The Commission declined in those orders to open a new proceeding dedicated to

is not offered subject to modification. It is offered as a whole document. Given the balance of interests and guaranteed public benefits contained in the Partial Settlement, it is inappropriate for this Commission to construct a different outcome for this case. This is particularly true where so many adverse parties have worked diligently and in good faith to reach an amicable resolution of the major issues in this case. We must candidly ask whom the majority serves by its actions today when every litigant representing residential, commercial and industrial consumers, as well as the utility itself, has endorsed the Partial Settlement.

The Enron Plan

We reject the Enron Plan. It is unacceptable because it asks this Commission to exceed its lawful authority. The Enron Plan is conditioned upon this Commission directing PECO to take a series of actions which the Commission cannot order. The Commission would be required to order PECO to enter into a Power Purchase Agreement, and a Metering, Billing and Collection Services Agreement. PECO has unequivocally stated that it will not enter into such contractual arrangements. The Commission has no legal authority to compel PECO, or any incumbent electric utility, to enter into such agreements.

As such, the Enron Plan is not consistent with the public interest. As the Office of Consumer Advocate (OCA) pointed out in its brief, " . . . the Enron Plan is no more than a series of one-sided contractual agreements that PECO will never voluntarily sign and that the Commission has no authority to order."[2]

Assuming *arguendo*, that the Commission has the requisite authority to order the implementation of its key provisions, the Enron Plan still suffers from other serious flaws. The primary financial deficiency of Enron's approach is in its securitization proposal and associated cost recovery. Simply put, that proposal does not appear to be practical because it is unlikely that bond counsel and analysts will support securitization at the required level. Most importantly, and most troubling, is the fact that even if the Commission approves the plan, Enron may still withdraw from its proposal for reasons not articulated in the

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generic issues. With the approval of the Partial Settlement, we could also await the resolution of generic issues in those proceedings.

[2] *Main Brief of the Office of Consumer Advocate*, p. 23.

record. This Commission would be utterly remiss in its duty if it approved such an open-ended arrangement.

We agree with the majority's rejection of the Enron Plan as not in the public interest.

The Partial Settlement

In our view, the Partial Settlement represents an equitable, achievable, and satisfactory resolution as fully explained by the signatories in their respective Briefs.[3] The over-riding concern of this Commission should be with an outcome that best serves the public interest and leads to the most effective implementation of the *Declaration of Policy* and legislative intent in the Electricity Generation Customer Choice and Competition Act.[4] After expressly declaring the need to begin the transition to competition in a manner which benefits all classes of customers, the Legislature listed the affected parties who must be treated fairly during the transition process:

> In moving toward greater competition in the electricity generation market, the Commonwealth must resolve certain transitional issues in a manner that is fair to customers, electric utilities, investors, the employees of the electric utilities, local communities, nonutility generators of electricity and other affected parties.[5]

The Partial Settlement offers a framework in which the objectives of the Act are fulfilled while customer guarantees are enhanced and provided earlier than they otherwise would be, absent the Partial Settlement.

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[3] The signatories to the Partial Settlement are: PECO Energy, Senator Vincent Fumo, the Consumer Education and Protective Association (on behalf of itself, the Tenant Action Group, the Association of Community Organizations for Reform Now, and Mr. John W. Long, Jr.), Mr. Lance Haver, the PAPUC Office of Trial Staff, the OCA, the Office of Small Business Advocate, the Philadelphia Area Industrial Energy Users Group, the American Association of Retired Persons, and the United States Navy.

[4] 66 Pa. C.S. §2802.

[5] 66 Pa. C.S. §2802(8)

As the OCA states in its highly persuasive Brief:

> . . . the wide range of consumer interests--senior citizens, low income, residential, small business, industrial and the U.S. Government-- were the ones who crafted a final agreement which serves the public interest. As stated by Philadelphia Area Industrial Energy Users' Group witness Baron:
>
> > The interests of these customers, and the value conferred on these customers, should be the primary consideration of the Commission in evaluating the reasonableness of the proposed settlement.[6]

We agree with the philosophical approach so cogently explained by the OCA. This Commission should not institute a restructuring plan which totally ignores the expressed preference of consumers.

The portion of the Act directly relevant to the content of utility restructuring plans is Section 2806(E) which states:

> Contents of Restructuring Plans.-- A restructuring plan under subsection (D) must include, consistent with the determinations of the Commission, unbundled prices or rates for generation, jurisdictional transmission, distribution and other services; a proposed competitive transition charge; a proposed universal service and energy conservation cost recovery mechanism; procedure for ensuring direct access to all licensed electric generation suppliers; a discussion of the impacts of the proposed plan on the utility's employees; and revised tariff and rate schedules implementing the above.

The Partial Settlement meets the requirements of this section of the Act. The fact that a broad spectrum of customer groups, representing the vast majority of PECO's ratepayers, have endorsed the Partial Settlement is a compelling argument for its justness and reasonableness.

The Partial Settlement provides an acceptable and timely transition to a competitive market. It establishes market rates for generation that can be matched at the present time by suppliers who have surplus generation. The Partial Settlement

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[6] Main Brief of the Office of Consumer Advocate, p. 15, citing PAIEUG St. 1.SS at 2-3.

also provides for a viable, sustainable competitive market by establishing generation rates that are sufficient to protect new entrants while competition develops. As Dr. Cooper testified:

> The [Partial] Settlement is structured in such a way as to give the consumers the best chance of increasing their gains because stranded cost recovery is highest when the market is softest and in the early years when customers are least likely to be effective shoppers. The high CTC would be offset by low market prices in the early years. In the later years, when supply and demand are more likely to be in balance in the market place, the CTC is smallest. That is when shopping will be the most beneficial and competitive market structures are best developed.[7]

The American Association of Retired People (AARP) sees the Partial Settlement as a clear balance of the positions of the parties consistent with the public interest. The Office of Small Business Advocate (OSBA) likewise supports the Partial Settlement and correctly points out that the Settlement provides for movement towards retail choice in the electric market while resolving many complex transitional issues in a manner that balances the interests of the parties. The OSBA argues, and we agree, that the Partial Settlement enhances the inherent benefits of competition while expediting the delivery of those benefits to PECO's customers. OSBA maintains that the combination of rate relief, rate protection and freedom to shop assures that customers will derive significant benefits despite the vagaries of market development. Again, we agree that this is a compelling consumer argument in favor of approving the Partial Settlement.

Senator Vincent Fumo, *et al.*, argue in their Brief that the Partial Settlement is in the ratepayers' best interest in that it resolves the specter of protracted litigation. The Partial Settlement would prevent needless delay of rate relief and other benefits to consumers.

The Partial Settlement locks in rate relief and economic benefits for *all* consumers while encouraging the development of customer choice. It adequately balances the interests of all parties while shifting risks away from the consumer. The risk of adverse market uncertainties rests with PECO. The other reasons as to why we should adopt the Partial Settlement may be summarized as follows:

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[7] AARP Brief, St. 2 at 13.

- The majority of customers have arrived at an acceptable agreement with the utility, and it is inappropriate for this Commission to impose its judgment which results in an outcome that totally ignores the preferences of the parties.

- Customers will receive a guaranteed 7% rate reduction effective September 1, 1998. An additional 3% reduction will occur when securitization is perfected. This highly desirable result can only be achieved through a settlement such as this one.

- The transmission and distribution (T&D) rate cap will be extended until 2004. This extension of the rate cap will yield estimated savings of $100,000,000 per year in the post 2001 time frame. Again, this provision could not be ordered absent the Partial Settlement because the rate cap ends on June 30, 2001, under the provisions of the Act.

- The phase in of competition will be accelerated. The first two thirds of retail customers will have access by January 2, 1999, with full access on January 2, 2000.

- The CTC will decline over time with an inclining Energy CAP over the transition period. These two features interact in a manner which will encourage the continual expansion of a robust competitive market.

- The Customer Assistance program will expand in advance of restructuring from 35,000 to permit 100,000 customers.

- Customer risk is limited. The schedule of rates offered by the Partial Settlement for the next 10 years provides a level of rate certainty which is unavailable in a standard schedule.

- PECO has agreed to serve as the provider of last resort, without seeking to create an option of withdrawal, through December 31, 2008.

- Renewable energy development will be encouraged through new tariff offering.

- The utility will write-off $2.0 billion of stranded assets/stranded costs which equates to approximately twenty-six percent of the company's stranded investment claim.

- Functional unbundling, which is an end result of restructuring mandated by the Act, is accomplished.

Finally, and perhaps most importantly, there are a number of uncertainties in the transition to competition which PECO voluntarily accepts under this Partial Settlement. Many of the risks would have been borne by the consumer but for the terms of this Partial Settlement. Among the risks PECO accepts are:

Risk of adverse tax rulings on securitization

Risk of either inflation or recession

Risk of fuel price escalation (noting rate cap exceptions at 66 Pa. C.S. §2804)

Risk of Transmission and Distribution Property growth needs

Risk of wage, salary and benefit changes

Risk of environmental requirements changes, including NOx changes in 2003

Risk of changes in spent nuclear fuel payments

Risk of expansion of the costs of of low income universal service program

Unquestionably, the industrial, residential, and commercial consumers involved in this proceeding established as a principal goal of their negotiations the ability to limit or eliminate certain risks to which they may be exposed during the transition period. In exchange for this risk reallocation, the customers have clearly stated their willingness to limit their potential benefits of competition during the same period. We conclude that this stated preference for risk avoidance to be a reasonable goal and one which this Commission cannot treat lightly, or worse yet, ignore.

The PaPUC Rejection of the Partial Settlement and Adoption of a Commission-Devised Restructuring Plan

Having stated our reasons why we would adopt the Partial Settlement, and having indicated our dissent, generally, from the actions of the majority, we feel compelled to briefly articulate the reasons why we do not support their alternative Restructuring

Plan. At the most basic level, that Plan sacrifices protections and guarantees to consumers secured by the Partial Settlement-- guarantees that were already in-hand and which could not have been ordered by this Commission-- in favor of the possible creation of a suppliers' market at some point in the future. It is not acceptable to us to trade off significant consumer guarantees, which the utility is willing to provide and assure, against the mere possibilities of an untested economic model.

We believe that the majority have too limited a view of the Act's legislative intent. They focus on Section 2802(12), which speaks of direct access, while sacrificing important consumer protections secured by the Partial Settlement. We conclude that one goal need not be promoted to the exclusion of the other. Both objectives could have been easily accomplished by adoption of the Partial Settlement.

It is disconcerting to recognize that the Restructuring Plan proposed by the majority does not provide rate reductions of existing rates to *all* customers as was negotiated in the Partial Settlement. The Act, as a whole, is not just about the creation of an optimal economic model. In their impatience to reach an economic model, the majority is willing to sacrifice immediate rate relief for all customers in exchange for the mere possibility of future rate relief for some customers. With the aforementioned guarantees in hand, this strikes us as bad public policy. By its action today, the majority effectively tells the consumer that their choice is wrong, and that they must accept and live with the majority's vision of competition in its place, because in their judgment government knows what is "best" for them. We believe that the consumers have exercised "customer choice" by endorsing the Partial Settlement.

Beyond the foregoing concerns, we would summarize other deficiencies in the majority's approach as follows:

- The action of the majority sacrifices the indisputable consumer protection of an extension of the transmission and distribution rate cap from June, 2001, through January, 2004.

- The majority has set the T&D revenue requirement at a level which is not sufficient to maintain reliable service or to compensate utility stockholders.

- Similarly, while the majority would extend the CTC recovery period, they have given up the consumer protection of a firm

rate cap in the post-2005 period, a cap which was available in the Partial Settlement.

- The majority's Restructuring Plan re-inserts annual reconciliation into PECO's restructuring.

With respect to the latter point, the majority contends that the lack of annual reconciliation violates Section 2808(F) of the Act. Removal of the CTC reconciliation as expressed in the Settlement was a matter negotiated by the various consumer representatives. The consumers insisted on non-reconciliation in order to protect themselves against a predicted decline in utility sales during the transition period. Thus, reinstating a reconciliation provision removes an important consumer protection as envisioned by the joint petitioners.

Finally, we are constrained to point out that rejection of the Partial Settlement in the manner adopted by the majority, (wherein the very terms of the Partial Settlement are turned against the parties) sends a potentially ruinous signal to all who would come before us in an attempt to settle their cases. The action taken by the majority will have a chilling effect on future settlements.

For all of the foregoing reasons, we must respectfully but emphatically dissent from the action of the majority today.

12-11-97
DATE

JOHN M. QUAIN
CHAIRMAN

12-11-97
DATE

ROBERT K. BLOOM
VICE CHAIRMAN

Pennsylvania Public Utility Commission
Harrisburg, Pennsylvania 17105-3265

Pennsylvania
Public Utility Commission
v.
PECO Energy Company
Petition of ENRON Energy
Services Power, Inc.

Public Meeting Dec. 11, 1997
Dec-97-ALJ-116
Docket No. R-973953
Docket No. P-971265

STATEMENT OF COMMISSIONER DAVID W. ROLKA

The massive proceeding before us today contains three distinct pieces: the Joint Petition for Partial Settlement, a Petition by Enron Energy Services, and PECO Energy's Restructuring Plan.

The Joint Petition for Partial Settlement includes a request that we either approve it without modification or reject it. A careful review of the Act and evidentiary record does not permit us to approve the Petition for Partial Settlement in its entirety, and therefore, we must reject it. An identical review forces us to deny the Petition of Enron Energy Services Incorporated. PECO Energy's Restructuring Plan, however, can be approved subject to modifications. As Shakespeare wrote, "Better a little chiding than a great deal of heartbreak."

I The Joint Petition for Partial Settlement

Our inability to accept the Petition for Partial Settlement without modification is based on concerns that it provides inadequate rate cuts, grants an excessive stranded investment recovery, and hinders development of a competitive retail electric market.

- Inadequate Rate Cuts:

The 10% rate reduction promised in the Partial Settlement is contingent upon an absence of legal challenges to securitization. Without a doubt such challenges will be brought by parties that do not support the Partial Settlement. These challenges would prevent the 10% reduction and permit an average 7% residential rate reduction during the ten-year transition period.

- Excessive Stranded Investment Recovery:

The Partial Settlement also provides an amount of stranded investment recovery that exceeds the $5.461 billion book value of PECO Energy's stranded assets. This is because the Partial Settlement grants PECO Energy a return on

these stranded assets, in addition to their book value. The total amount paid by ratepayers would be somewhere between $5.89 billion and $6.02 billion, not $5.461 billion. Assigning excessive stranded cost recovery to fund inadequate rate reductions is like being forced to buy yourself a birthday present with your own money.

- Hindrance of Competition:

Finally, the Partial Settlement contains Energy and Capacity Credits that are set below market prices for electricity. This makes it economically impossible to compete for electric customers in PECO Energy's service territory. The absence of competition is especially acute for residential customers with low load factors. The Partial Settlement has the unintended result of establishing PECO Energy as a de facto monopoly.

II The Enron Petition

The Petition filed by Enron Energy Services Power Incorporated hinges on a Power Purchase Agreement and a Meter, Billing, and Collection Contract that must be executed with PECO Energy. These contracts are not concluded and, in our judgment, cannot be concluded. This, coupled with the expected legal challenges to securitization, means that Enron can neither cut rates by 20% nor securitize PECO's stranded investment in a timely manner. Enron also offered a contingency plan. It not only contains the same infirmities but additionally provides inadequate generation credits and overstates PECO Energy's recoverable stranded assets. For these reasons, Enron's Petition must be denied.

III Modification of PECO Energy's Restructuring Plan

I believe the evidentiary record demonstrates that neither the Partial Settlement nor the Enron Petition meets the requirements of the Act. Having said this, I turn attention to PECO Energy's Restructuring Plan, as filed April 1, 1997. This Plan, modified to address concerns regarding inadequate rate cuts, excessive stranded investment recovery and the absence of robust retail competition, forms the basis of Commissioner Hanger's motion today.

With the modifications directed by the motion, residential customers will receive shopping credits designed to deliver real and sustainable rate reductions during the transition period. Residential customers could realize total bill reductions of 15% in 1999. The total amount of stranded and transition costs is reduced to $5.024 billion and pulls improper expenses out of the company's proposed transmission and distribution rate. These modifications create tangible incentives for electric suppliers to compete for customers in PECO Energy's service territory.

Finally, the modifications make substantial improvements to universal service protections for the less fortunate among us. Customer Assistance Program eligibility is not limited to 100,000 customers and the Low-Income Usage Reduction Program is doubled. These expanded programs are funded from existing revenues, without a rate increase, and accept the company's proposed cost recovery mechanism. In a debate that focused so much attention on stranded costs, I am pleased to support improved benefits to stranded customers.

The modifications alter the company's Restructuring Plan and make it more like an improved Partial Settlement. The modified Restructuring Plan contains real rate reductions, enhances development of a truly competitive retail market, and expands universal service programs with existing revenues. In short, it accomplishes the Act's goals consistent with the evidentiary record.

Dec 11, 1997
Date

David W. Rolka, Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania

Application of PECO Energy Company
Petition of Enron Services Power, Inc.

December 11, 1997
ALJ-116*
R-00973953
P-00971265

STATEMENT OF COMMISSIONER NORA MEAD BROWNELL

This has been an enormously challenging process for all of us. Candidly, it has not been made easier by the rhetoric and the hyperbole. The public deserves better.

Having said that, I want to commend all of the participants in this case. They have given their considerable talent and resources to represent their points of view with passion and substance. I appreciate their commitment to their respective causes.

More importantly, I want to thank my colleagues. My fellow Commissioners and their staffs have essentially given up their lives for the last several months to delve into every aspect of this case so that they could make an informed decision. I am certain that each of us has reached our respective positions with full regard for the law, the extensive record developed by the parties and the public interest. I admire and respect the expertise and integrity that each of my colleagues brings to the review of the merits of this case. That we could not come to a unanimous decision is nothing less than painful, but it does not change the fact that these are five individuals trying to do the right thing.

And what is the right thing? It is to fulfill the mandate of the law and bring competition to Pennsylvania as quickly as possible in an orderly transition. The legislature provided very clear guideposts, but the path is new and therefore not always easy to define.

In reviewing the Joint Petition for Partial Settlement, I determined that several of its provisions simply did not comply with the law by which I am bound. In addition, my review of the Joint Petition indicated that it provided short lived, minimal benefits at the expense of a competitive market which will provide long term consumer savings and promote economic growth for the Commonwealth. I also determined, based upon the record before me, that the amount of stranded investment claimed did not meet the test of the statute. Accordingly, I could not adopt the Partial Settlement.

The Petition of Enron had similar infirmities. Among other concerns, it is clear that Enron's proposal is predicated on voluntary participation in several agreements by PECO. PECO has indicated it has no intention of participating in those transactions. It is equally clear that we cannot order PECO to enter into those agreements. Given that the benefits of the Enron proposal are premised on PECO's agreements, the proposal simply would not have been viable. In addition, the Enron proposal adopted the amount of stranded investment set forth in the Joint Petition for Settlement. Therefore, I must reject both proposals and reach my decision based on the record presented to us in a fashion which meets the obligations of the statute and balances the interests of all parties.

By our action today, we provide real savings to the consumers in Pennsylvania. We also provide a real competitive edge to the Commonwealth which promises an improved climate for economic development. Just one example of the additional consumer benefits provided by our order is a savings of approximately $1 billion on a nominal basis by providing for a shorter time period for collection of the Competitive Transition Charge.

Our decision today abides by the statute and provides for a first come, first serve implementation process. This necessarily provides that a full one third of PECO's customers will not receive the benefits of competition until January 1, 2000. It is truly unfortunate that we cannot require PECO to provide a rate reduction to those customers

on the basis of the record before us. However, I encourage PECO to provide at least a 7% rate cut to that sector of customers who will not have direct access until January 1, 2000. This can be readily accomplished in PECO's compliance filing and provides PECO with the opportunity to give substance to its passionate advocacy of the Joint Petition for Partial Settlement.

We now have a very brief moment in time to give Pennsylvania a competitive edge and give ratepayers the opportunity to save money. I implore everyone to put aside dissension and move down the path of full competition before we lose this opportunity. The public deserves nothing less.

12/11/97
DATED:

Nora Mead Brownell
NORA MEAD BROWNELL
COMMISSIONER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

December 23, 1997

IN REPLY PLEASE
REFER TO OUR FILE
R-00973953
P-00971265

KJR

DOCUMENT
FOLDER

DOCKETED
DEC 29 1997

ROBIN L KRONGOLD PARALEGAL
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R-00973953 - 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

P-00971265 - Petition of Enron Energy Services Power, Inc., for Approval of an Electric Competition and Choice Plan and for Authority Pursuant to Section 2807(E)(C) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company

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To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on December 11, 1997 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Enclosure
Certified Mail
JEP

DOCUMENT
FOLDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 11, 1997

Commissioners Present:

John M. Quain, Chairman, Joint Statement and Dissent attached
Robert Bloom, Vice Chairman , Joint Statement and Dissent attached
John Hanger
David W. Rolka, Statement attached
Nora Mead Brownell, Statement attached

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

R-00973953

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

P-00971265

OPINION AND ORDER

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I. HISTORY OF THE PROCEEDINGS

Before this Commission for review is a proposed Restructuring Plan filed April 1, 1997 (Restructuring Plan), by PECO Energy Company (PECO). In addition, PECO and some of the other parties (Joint Petitioners) to this proceeding, reached a partial compromise and signed a Partial Settlement. The Joint Petitioners, include PECO, the Hon. Vincent J. Fumo, Jr., Senator, 1st State Senatorial District (Sen. Fumo), the Consumer Education and Protective Association (CEPA) (on behalf of itself, the Tenant Action Group (TAG), the Association of Community Organizations for Reform Now (ACORN), and John W. Long), Lance Haver, the Commission's Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Philadelphia Area Industrial Energy Users Group (PAIEUG), the American Association of Retired Persons (AARP), and the Department of the Navy (Navy). On August 27, 1997, the Joint Petitioners filed the instant Joint Petition for Partial Settlement of PECO's Proposed Restructuring Plan and Application for a Qualified Rate Order (Joint Petition) in support of the Partial Settlement.

Enron Energy Services Power, Inc., (Enron) subsequently filed a Petition 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 (PLR) in PECO's Service Territory (Enron's Petition) at Docket No. P-00971265. Enron's Petition proposed an alternative contingency plan (Enron's Contingency Plan) for resolution of the same issues in PECO's Restructuring case as are presented for resolution in the Partial Settlement. Enron's filings were consolidated with this proceeding. To facilitate review of the proposed Restructuring Plan, the Partial Settlement, and Enron's Contingency Plan, a brief history of these proceedings follows.

On December 3, 1996, the Electricity Generation Customer Choice and Competition Act (Act), 66 Pa. C.S. §§2801, et seq., was enacted with an effective date of January 1, 1997. The Act amends the Public Utility Code (Code), 66 Pa. C.S. §§101, et seq., by adding Chapter 28 which restructured the provision of retail electric service within the Commonwealth. Customer choice of generation suppliers (EGSs) will be phased in, commencing January 1, 1999, following a period of Pilot Programs. Section 2806 of the Act requires all jurisdictional electric utilities (EDCs) in Pennsylvania to file restructuring plans for review and approval by the Commission. The Act established a nine-month review process for this Commission to consider an EDC's restructuring plan.

On January 24, 1997, at Docket No. M-00960890, F0005, this Commission established a schedule for filing of the restructuring plans. On April 1, 1997, PECO filed an Application for Approval of its Restructuring Plan at Docket No. R-00973953. On February 13, 1997, the Commission directed that all restructuring plan filings be accompanied by specific data. (Retail Access Pilot Program - Guidelines, Docket No. M-00960890, F0003). Pursuant to Section 2806(f)(a) of the Act, a Commission Opinion and Order accepting, modifying or rejecting PECO's Restructuring Plan must be issued not later than January 2, 1998. PECO's Restructuring Plan requested that this Commission approve its proposed unbundling of rates, competitive transition charges (CTCs), and specific tariff provisions to ensure customers have direct access to all licensed electric generation suppliers. Further, PECO requested recovery of $6.8 billion of transition and stranded costs. Finally, PECO asked for approval of a plan to meet its universal service obligations, of a mechanism to recover the costs of its universal service obligations, and of a proposed consumer education program.

Notice of the proposed Restructuring Plan was provided to PECO's customers via bill inserts and in newspapers of general circulation in PECO's service

territory. Copies of the filing were served on all parties to PECO's securitization proceeding at Docket No. R-00973877 and on all active participants in PECO's last general base rate proceeding at Docket No. R-00891364. The proposed Restructuring Plan also was posted on PECO's Internet website.

The proceeding was assigned to Administrative Law Judges (ALJs) Marlane Chestnut and Charles Rainey. Rate protests were filed by various parties. The OCA, OSBA, and the OTS entered appearances. Formal Complaints were filed by the CEPA, TAG, the Action Alliance of Senior Citizens (AASC), Mr. Long, PAIEUG, and ACORN. The AASC subsequently withdrew its Complaint.

Timely Intervenors include Sen., Indianapolis Power and Light Co. (IPL), the Environmentalists,[1] Delmarva Power and Light Co. t/d/b/a Conectiv Energy (Conectiv), Enron Corp. (an affiliate of Enron), DuPont Power Marketing (DuPont),the Mid-Atlantic Power Supply Association (MAPSA), the Delaware Valley Schools Energy/Utility Consortium (DVSEUC), Allegheny Power Company (APC), American Energy Solutions (AES), the Navy, and Mr. Haver. Filing for leave to intervene out of time were CNG Energy Services (CNG), the Municipal Intervenors Group (MIG), New Energy Ventures (NEV), the Pennsylvania Petroleum Association (PPA), Ethan Giddings, the Center for Energy and Economic Development (CEED), Duke Energy Trading Market, LLC, (Duke), the Pennsylvania Retailers' Association (PRA), NorAm Energy Management, Inc., (NorAm), Vastar Power Marketing, Inc., (Vastar), Electric Clearinghouse, Inc., (ECI), ERI Services, Inc., (ERI), the Pennsylvania Association of Plumbing, Heating, and Cooling Contractors (PAPHCC), Albert M. Benincasa, and QST

[1] The Environmentalists consist of the Delaware Valley Citizens' Clean Air Council (Clean Air Council), the Sierra Club, Citizen Action, Pennsylvania Public Interest Research Group (PennPIRG), Grass Roots Alliance for a Solar Pennsylvania (GRASP), Nonprofit Energy Savings Investment Program (NESIP), and the Philadelphia Solar Energy Association (PSEA).

Energy, Inc., (QST). CNG ultimately withdrew as an individual participant but continued to participate through MAPSA. Comments were filed by the Hon. Stewart Greenleaf, Senator, 12th District, Rufus L. Miley, and Nicholas J. DiMarino.

With its proposed Restructuring Plan, PECO submitted the direct testimony and exhibits of seventeen witnesses. Pursuant to the litigation schedule set forth in Prehearing Order No. 2, thirteen parties submitted the direct testimony and exhibits of thirty-seven witnesses on June 20, 1997. On July 18, 1997, PECO filed rebuttal testimony and exhibits of twenty-two witnesses. Surrebuttal testimony was filed by the OTS, the OSBA, PAIEUG, and MAPSA. Various Prehearing Conferences were held on April 15, 1997, May 21, 1997, and September 10, 1997. The various parties filed Prehearing Memoranda.

Discovery ensued with multiple Interrogatories and Data Requests being served among the parties. Various parties filed prepared testimony and rebuttal testimony. Several Prehearing Orders were entered. On May 27, 1997, PECO agreed to the OCA's request for a voluntary extension until January 8, 1998, for Commission issuance of an Order concerning PECO's Restructuring Plan.

On June 4, 1997, PECO filed a Stipulation relative to the dates, times, and locations of the Public Input Hearings. As a result of on-going settlement discussions among PECO and various parties, the litigation and briefing schedule was suspended by the issuance of the following Orders: (a) an Order Granting Continuance dated July 31, 1997; (b) an Order Granting Motion for Suspension of Administrative Schedule dated August 14, 1997; (c) an Order Granting Request for Extension of Time dated August 12, 1997; and (d) Prehearing Order No. 3 dated August 28, 1997.

As noted earlier herein, on August 27, 1997, the Joint Petitioners filed the instant Joint Petition for Partial Settlement. The Partial Settlement addresses, among other things, the following issues: (1) stranded investment and securitization; (2) the CTC/intangible transition costs (ITC) recovery method, recovery from self generators, and reconciliation; (3) rate unbundling, cost of service, and treatment of special contracts; (4) universal service, cost recovery for universal service, and suppliers of last resort obligations; (5) impact on community and economic development; as well as (6) consumer education.

Statements in support of the Partial Settlement were filed by Lance Haver, Sen. Fumo, CEPA, TAG, ACORN, Mr. Long, PAIEUG, the Navy, and IPL. Comments were filed by APC, the Building Owners and Managers Association of Pittsburgh (BOMA Pittsburgh), Edward B. Cannon, Brian Rider, the Hon. Connie Williams, Representative, 149th District, the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus (IBEWPUC), Allegheny Electric Cooperative (AEC), and the Pennsylvania Rural Electric Association (PREA).

Opposition to the Partial Settlement was filed by the Building Owners and Managers Association of Philadelphia (BOMA Philadelphia). On September 29, 1997, Enron Power Marketing, Inc., (EPMI) (another affiliate of Enron and Enron Corp.), in conjunction with the Pennsylvania Electric Competition Coalition (PECC), filed testimony critical of the proposed Partial Settlement. Answers to the Partial Settlement were filed by NEV, Enron Corp., Conectiv, PECC, APC, and MAPSA. On October 10, 1997, PRA withdrew as a Joint Signatory, urging that hearings be held.

On September 10, 1997, the Joint Signatories filed a request to forego a Recommended Decision and, instead, to have the record certified to this Commission for a decision. Also on September 10, 1997, the Joint Signatories filed a Petition to Suspend

Consideration of Certain Issues Pending a Determination. Specifically, the September 10 Petition to Suspend requested deferral until after Commission action on the Partial Settlement of the following issues: (1) competitive metering and billing; (2) standards and codes of conduct; (3) Federal Energy Regulatory Commission (FERC) jurisdictional issues and their impact on Commission jurisdictional matters; (4) generation, transmission, and generation reliability; (5) environmental issues; and (6) bill formats, customer service, and interaction with supplier issues. The September 10 Petition to Suspend further requested that the issues be addressed as generic state-wide issues. On September 29, 1997, APC filed an Answer to the September 10 Petition to Suspend, urging that certain issues unresolved by the Partial Settlement be treated generically.

On October 2, 1997, a Tentative Order was entered, providing that issues identified as "generic" should be treated on a state-wide basis and would be addressed in the various Commission rulemakings already pending or anticipated as a result of Commission work groups. This Commission declined to open a new proceeding dedicated to the generic issues. Comments were due by October 6, 1997.

Designation of previously filed testimony which supported the Partial Settlement were filed by PECO, the OTS, the OCA, the OSBA, AARP, and PAIEUG. In addition, further testimony intended to support or address terms of the Partial Settlement was filed by PECO. IPL designated testimony in this proceeding, which was the same as that filed in PECO's securitization proceeding at Docket No. R-00973877 as well as the entire record of that proceeding. Testimony in opposition to all or part of the proposed settlement was filed by PECC, MAPSA, MIG, and the Environmentalists on September 29, 1997.

On October 7, 1997, Enron[2] filed its Petition 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 (PLR) in PECO's Service Territory at Docket No. P-00971265. The Enron Petition includes Enron's contingency plan for resolution of the same issues in PECO's Restructuring case as are presented in the Partial Settlement. Enron simultaneously filed a Motion to Consolidate its Petition and the Partial Settlement. On October 8, 1997, Enron filed its Schedule Motion concerning the October 7 filings.

On October 9, 1997, Sen. Fumo filed notice that he did not oppose Enron's Motion to Consolidate to the extent that consolidation would not further delay the Commission's scheduled consideration of the Partial Settlement. Also on October 9, 1997, PECO filed notice that PECO opposed the Enron Petition, Enron's Motion to Consolidate, and Enron's Schedule Motion. Additionally, on October 9, 1997, PAIEUG filed notice that PAIEUG opposed the Enron Petition, Enron's Motion to Consolidate, and Enron's Schedule Motion.

Public Input Hearings were held on October 9, 1997, in Media, and on October 10, 1997, in Philadelphia. Twenty-three witnesses presented sworn testimony in Media, and approximately 40 witnesses testified in Philadelphia.

By Opinion and Order entered on October 9, 1997, this Commission consolidated PECO's Restructuring Plan and the Enron Petition. PECO was offered the option of delaying final Commission action until not later than January 30, 1998, to facilitate full consideration of PECO's Restructuring Plan and the Enron Petition. The October 9 Order specified that all issues related to the Restructuring Plan initially filed,

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[2] On October 7, 1997, Enron filed an application at Docket No. A-110059 for authority to provide service as a licensed electric supplier.

the Partial Settlement, the Enron Petition, or any other issues raised in these dockets, were to be addressed in the ensuing hearing and briefing schedules.

On October 14, 1997, PECO notified this Commission that it would not extend the time for Commission action until January 30, 1998. PECO offered instead to defer the matter to full hearings with Commission action slated for not later than March 12, 1998.

PECO, Sen. Fumo, the OSBA, and PAIEUG filed Answers in opposition to the Enron Petition. MAPSA filed an Answer in support of the Enron Petition. NorAm (in conjunction with Duke), the OCA, and CNG, CEPA, and ECI, filed Answers, suggesting, generally, that they did not have enough information upon which to formulate definitive positions.

Hearings on the Partial Settlement were held in Philadelphia on October 14 - 16, 1997. Preliminarily, on October 14, 1997, the Presiding Officers covered extensively this Commission's instructions relative to the establishment of a complete record, noting in particular that there would be one decision addressing the proposed Partial Settlement, the Enron Petition, and all unresolved issues. (Tr., pp. 415-458). Witnesses were presented by PECO, MAPSA , PECC, CEPA and PAIEUG. In addition, Mr. Haver testified. Also, on October 16, 1997, the testimony and exhibits identified on revised Appendix H to the proposed Partial Settlement were admitted into the record by stipulation.

On October 21, 1997, PECO filed a Petition for Reconsideration of the October 9 Order. On that same date, PAIEUG Sen. Fumo, Mr. Haver, AARP, CEPA, TAG, ACORN, Mr. Long, the OCA, the OSBA, and the OTS also filed a Joint Petition for Reconsideration of the October 9 Order. PECO offered, inter alia, to extend the date

for Commission action on its Restructuring Plan until March 12, 1998, in order to develop a complete record on the Partial Settlement.

On November 6, 1997, this Commission entered an Opinion and Order denying the relief requested in the October 21 Petitions for Reconsideration and offering, instead, an option to extend the date for Commission action until January 30, 1998. The November 6 Opinion and Order reiterated and clarified that the scope of the issues to be addressed included the Restructuring Plan, the proposed Partial Settlement, the Enron Petition, and all unresolved issues. It also proposed an extended schedule as set forth in the October 9 Order.

On November 10,1997, PECO responded by letter to the Commission's November 6 Order. The schedule was not extended, however, due to the filing of timely objections by Conectiv, NEV, and MAPSA. Briefs were to be filed and the record certified to this Commission on December 2, 1997.

Further hearings were held on November 17 - 19, 1997, in Philadelphia. Testimony was admitted into the record on behalf of PECO, the OCA, Enron, PAIEUG, the Environmentalists, NEV, CEPA, et al., and AARP. NEV's Motion for release of certain financial analysis performed by PECO in connection with the Partial Settlement was granted by the Presiding Officers, rejecting PECO's claim that the sought-after data was privileged. The Presiding Officers, however, recognized that the documents contained extremely sensitive financial information and directed NEV, PECO, and Enron to work together to develop a means of placing the information into the record.[3] Enron filed brief financial impact testimony on November 25, 1997.

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[3] PECO provided some information to Enron, but neither Enron nor NEV was satisfied. NEV renewed its Motion on November 24, 1997. The Presiding Officers again rejected PECO's claim of privilege but held that the data provided, along with

By Prehearing Order No. 6, dated November 20, 1997, the Petition to Intervene of Southeastern Pennsylvania Transportation Authority (SEPTA) was granted, and PECO's Motion to Strike the testimony submitted by NEV and the Environmentalists was denied.

Surrebuttal testimony was filed by the OCA, NEV, PAIEUG, the OTS, the OCA, and the Navy. By agreement of the parties to waive cross-examination, these documents were admitted into the record by stipulation. Three sets of Commission data requests were served on the parties, with instructions that responses were to be made part of the record in this proceeding. The responses were admitted into the record.

In accordance with the Commission's November 6, 1997 Order, briefs were due (both hard copy and electronically) on December 2, 1997. No reply briefs were permitted. The record in this proceeding closed on December 2, 1997. By Order entered December 9, 1997, at R-00973953, we directed that PECO Exhibits 1 and 2, which are PECO's Application for Approval of its Restructuring Plan and its responses to the Commission's filing requirement, respectively, be included in the evidentiary record of this proceeding. The record in this proceeding contains a transcript of 2280 pages, as well as the statements and exhibits admitted into the record and the briefs of the parties.

On December 11, 1997, the Commission denied both the Partial Settlement and the Enron Petition. In so doing, the Commission rejected Enron's contingency plan as well as the Partial Settlement. PECO was directed to make a compliance filing within twenty (20) days of the date of entry of this Opinion and Order, consistent with the Opinion and Order.

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certain stipulations, constituted sufficient compliance in light of the sensitive nature of the data.

One last procedural note is important. Before discussing the merits of the Partial Settlement, some clarification is in order about how this Commission treats agreements among some but not all parties compared to settlements supported, or not opposed, by all parties. This Commission actively encourages all parties to settle every case. In this case, members of this Commission have encouraged settlement. And, in this case, the Joint Signatories to the Partial Settlement made a significant effort to produce a document that could be supported by all parties. This Commission recognizes and appreciates this effort.

When a settlement document is filed with this Commission that is supported, or not opposed, by all parties, evidentiary hearings or adversarial processes are generally not utilized. In such cases, this Commission's practice is to review the proposed settlement to ensure that it is in the public interest and does not violate applicable laws.

This Commission, however, distinguishes between those settlements that enjoy the support of all parties and those agreements among some parties that are opposed by other parties. Despite the hard work of the Joint Signatories, the Partial Settlement is actively opposed by some parties to this case. Consequently, this Commission's review of the Partial Settlement must be consistent with processes and standards for deciding a contested case.

II. JOINT PETITION FOR PARTIAL SETTLEMENT

A. Summary

On August 27, 1997, PECO and the other Joint Signatories filed the Partial Settlement. The Partial Settlement is "partial" in the sense that it does not include all parties to the proceeding or address all of the issues raised as part of PECO's restructuring proceeding, or in the context of ongoing Commission working group/rulemaking initiatives. Thus, the Commission must resolve a contested case in which several parties have proposed a resolution opposed by others.

By its terms, the Partial Settlement purports to provide for an across-the-board rate reduction of 10% to become effective September 1, 1998. The Partial Settlement also provides for a varying CTC beginning January 1, 1999, and extending through December 31, 2008.

Pursuant to the Partial Settlement, PECO agreed, inter alia, to take the following actions: 1) write off $2.0 billion of stranded assets and costs; 2) transfer its generating operations to a separate corporate affiliate; 3) expand its current universal service programs; 4) accelerate the phase-in to customer choice for all classes; 5) to educate consumers about restructuring; 6) to encourage small renewable energy technologies and 7) not to seek recovery of increases in nuclear decommissioning costs before January 1, 2004.

The Joint Petitioners, in turn, agree to resolve various objections to PECO's Restructuring Plan, and to withdraw cases pending before Commonwealth Court regarding the constitutionality of the Act, and our Opinion and Order entered May 22,

1997, in PECO's securitization proceeding. The Joint Petitioners submit that the Partial Settlement is in the public interest. In support of their position that the Partial Settlement should be approved without modification by this Commission, the Joint Petitioners proffered a list of considerations including the following:

1. Customers will receive significant rate reductions beginning September 1, 1998, four months prior to the beginning of retail competition in Pennsylvania.

2. PECO's transmission and distribution charge cap which would have expired on June 30, 2001, would be extended to January 1, 2004.

3. PECO's generation rate cap would be extended from December 31, 2005 to January 1, 2009.

4. The funding of nuclear decommissioning obligations would be assured.

5. The securitization of Stranded Assets would be facilitated.

6. Substantial litigation and associated costs would be avoided.

(Partial Settlement, pp. 31-33; paragraphs 44-52).

The Joint Petitioners request that the Commission approve the Partial Settlement in its entirety or reject it. The supporters of the Petition state that they will not accept Commission modifications to the Partial Settlement and that this Commission has no authority to compel settlement.

B. Disposition

After careful review of the Act and the evidentiary record, we cannot approve the Partial Settlement in its entirety. Therefore, we deny the Petition.

Our general concern is that the Partial Settlement trades temporary, inadequate rate cuts and other concessions for a delay in competition, and de facto monopoly status for PECO Energy. In addition to this general concern, the Commission denies the Petition for Partial Settlement for five, specific reasons. The record demonstrates that: (1) the Partial Settlement hinders a competitive retail electric market and makes competition for many residential and other low-load factor customers economically impossible until 2003 at the earliest; (2) the Partial Settlement would reduce rates on September 1, 1998 by 7%, and not by 10%, as a result of existing "legal impediments" to securitization ; (3) the Partial Settlement would require PECO's ratepayers to pay more than $5.461 billion in stranded costs, an amount of stranded cost recovery that is not just and reasonable; (4) the Partial Settlement violates legal requirements of the Act ; and (5) the Partial Settlement's Energy and Capacity Credits may deter new and necessary investment in generation plant.

1. The Partial Settlement Hinders a Competitive Retail Market

The energy and capacity price caps of the Partial Settlement are:

Year	Price Cap
1999	2.80
2000	2.80
2001	3.20
2002	3.50
2003	3.70
2004	3.97
2005	4.07
2006	4.77
2007	5.37
2008	5.57

(Partial Settlement, p. 8)

The price caps or the energy and capacity credits ("ECC") are a major government intrusion into the competitive market, just as are CTCs that recover approved amounts of stranded investment. In the Partial Settlement, the ECC are price limits that are established by the government that would exist for the 10 year transition period. It is vital to remember that the level of the ECC was a negotiated figure and neither the product of a free market nor based upon regulated cost of service analysis. Indeed, once the transition is complete and the generation market is truly free, the ECC would no longer exist.

Given the Partial Settlement, from January 1, 1999, to December 31, 2008, the level of its ECC would determine whether all customers in the PECO service territory have real choices, real competitors competing for their business, and real competition. The level of the ECC impacts whether the Act is a success or failure.

If the ECC in any year is too low, competition will be harmed or even destroyed. "There are many ways in which a restructuring plan can result in a de facto monopoly in the electric supply market. Perhaps, the most important of these is the establishment of generation credits that are set below market prices for electricity."[4] The Commission agrees with witness Silkman on this key point.

Setting the ECC below price levels at which even the most efficient competitors could sell electricity or below market prices strangles competition by making it economically impossible to compete for retail customers. Simply put, if set too low, the ECC will mean that electric customers in PECO's service territory will have few or no competitors competing for their business. To use witness Silkman's term, PECO would be a "de facto monopoly." As will be explained next, the Partial Settlement makes this danger especially acute for small customers with low load factors.

At the very least, the record establishes that the Partial Settlement's energy and capacity credits are below even the lowest, forecasted prices in this case for customers with 60 per cent load factors in the years 2000-2003. This finding is based on the testimony of PECO witness Hieronymus, who testified for PECO in support of the Partial Settlement and admitted that the generation credits of the Partial Settlement are below his price forecast for customers with load factors less than 60% in some years. Witness Hieronymus stated: "For the 60 percent load factor aggregations, the market price exceeds the ECC in 2000-2003 in amounts ranging from 0.02 to 0.29 cents in the EIA case and by 0.13 to 0.33 cents in the DRI case. The market price also exceeds the ECC by 0.07 cents in 2005 in the DRI case."[5] Interestingly, witness Hieronymus did not testify about how the ECC

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[4] Responsive Testimony of witness Silkman to the Enron Choice Proposal at 9.

[5] Rejoinder Testimony of witness Hieronymus at 6.

compares to retail prices that he projects will be charged to customers with load factors lower than 60%.

Witness Silkman, who also testified in support of the Partial Settlement, conceded that: "In contrast [to Enron's Choice Plan], the generation credits contained in the Partial Settlement Agreement may be below market in the early years, but are above market in the later years." [6] Later he said:

> Assuming that the estimated retail market prices submitted by Mr. Mitnick on behalf of the PECC and Enron are correct, the two options present an interesting tradeoff for the Commission. Focusing only on this one dimension of the two proposals, the Partial Settlement Agreement may result in a delay of competition in the PECO service territory, but potential marketers that do decide to compete can be reasonably certain that the market will become increasingly competitive over the transition period and fully competitive by the end of the transition period. [7]

Not surprisingly, witnesses opposing the Partial Settlement uniformly argued that the Partial Settlement's ECCs are below reasonable retail market price forecasts during the first years of the 10 year transition period[8]. Yet, even without the testimony of these opposing witnesses, we must at least conclude that the Partial Settlement's ECC will be below the market prices available to many customers from 2000 to 2003 and is therefore at odds with the record in this case.

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6 Responsive Testimony of Witness Silkman to Enron Choice Proposal at 10.

7 Responsive Testimony of witness Silkman to the Enron Choice Proposal at 10; Brief of State Senator Fumo/CEPA at 6.

8 Supplemental Testimony of witness Hull at 6; Direct testimony, Rebuttal Testimony and Exhibits of witness Slater; Direct and Rebuttal Testimony of witness Bohi; and Supplemental Testimony of witness Mitnick, p.26-28.

We must so conclude on the basis of PECO witness Hieronymus' testimony. Witness Hieronymus provided the lowest price forecast of any witness in this case. If the ECC of the Partial Settlement were going to be consistently above any retail market price forecast in this case, it should be above the prices forecast by witness Hieronymus. But witness Hieronymus admitted that the Partial Settlement's ECC does not even consistently clear this lowest of hurdles.

Given the testimony of witness Hieronymus and other witnesses, the record can only support the conclusion that the Partial Settlement's ECCs will protect PECO's present monopoly position at least for the period 2000 to 2003. As such, the Partial Settlement's Energy and Capacity Credits hinder creating a competitive retail electric generation market, a major purpose of the Act. This is a conservative finding that is supported by testimony of witnesses who support the Partial Settlement as well as those who oppose it.

2. The Partial Settlement Does Not Guarantee a 10% Rate Cut As A Result Of Legal Impediments To Securitization

If no "legal impediments" to securitization exist, the Partial Settlement would cut rates by 10% from September 1, 1998 to December 31, 2000. In 2001, rates could increase but must still be 5% less than rates in effect prior to September 1, 1998. In 2002, rates could increase but must still be 2.5% less than rates in effect prior to September 1, 1998. From 2003 to 2008, no rate cut from current levels is required and rates could rise to present levels or higher than present levels starting in 2006 to 2008.[9]

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[9] Partial Settlement at 6-7, and Appendix B.

The Partial Settlement expressly conditions the 10%, 5%, and 2.5% rate cuts. Those rate cuts would not occur if legal impediments to securitization exist.[10] As such, the Partial Settlement does not guarantee a 10% rate cut.

If "legal impediments" to securitization exist, the Partial Settlement would cut rates by 7% from September 1, 1998 to December 31, 2000. This 7% rate cut is "guaranteed."[11] In 2001, rates could increase but must be 2.5% lower than rates in effect prior to September 1, 1998. From 2002 to 2008, no rate cut is required, and rates could rise to current levels or higher than current levels during 2006 to 2008.

Consequently, both the amount and duration of rate cuts in the Partial Settlement depend on whether "legal impediments" exist to securitization. The parties supporting the Partial Settlement define the term legal impediments as follows:

> For purposes of this settlement, legal impediments shall include only those events which would render PECO unable to issue any transition bonds. Such legal impediments shall include statutory changes and state or federal court actions or decisions that preclude securitization.[12]

In response to Commission Interrogatory 16 that inquired whether any "legal impediments" existed currently, PECO stated that: "At this time, legal impediments to securitization would be created by, at a minimum, the Union case referred to in Commission Interrogatory No. 9 (COMM-I-9), and the appeal of its securitization order by IPALCO and the Environmentalists." Filed in August 1997, the union lawsuit mentioned in PECO's response is Utility Workers Union of America, AFL-CIO System Local No. 102, et al. v.

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[10] Partial Settlement at 10-11.

[11] Since the Partial Settlement is not in compliance with the Act there can be no "guarantee" that it could be implemented. Thus, the Partial Settlement "guarantees" nothing.

[12] Partial Settlement at 10, footnote 4.

The Pennsylvania Public Utility Commission, 760 M.D. 1997 (Cmwlth. Ct.). The IPALCO filing references the matter of Indianapolis Power and Light Co. v. Pennsylvania Public Utility Commission, No. 1597 C.D. 1997 (Cmwlth. Ct.). The third appellate action is The Environmentalists v. The Pennsylvania Public Utility Commission, No. 1622 C.D. 1997 (Cmwlth Ct.).

The Commission agrees with PECO that legal actions brought by parties that do not support the Partial Settlement now exist. These legal actions constitute a "legal impediment" to securitization. Consequently, based on the information available now and the terms of the Partial Settlement, the Commission must conclude that the Partial Settlement if approved would not cut rates by 10% on September 1, 1998.

Furthermore, it certainly is possible that one or more parties will appeal future Qualified Rate Orders ("QRO") that this Commission may issue. Before transition bonds could be sold, such possible future lawsuits may have to be finally judged.

The Commission finds that legal impediments to securitization do now exist. These legal impediments reduce the Partial Settlement's rate cut to 7%. This 7% rate cut would last from September 1, 1998 to December 31, 2000. During the year 2001, rates could increase but would have to be 2.5% less than present levels. Starting in the year 2002 no rate cut would be required, and rates could rise and return to present levels.

3. The Partial Settlement Provides an Amount of Stranded Investment Recovery that Is Not Just and Reasonable

Table A of the Partial Settlement shows that PECO allegedly would receive $5.461 billion of stranded cost recovery under the terms of the Partial Settlement. Yet, in the October 8th rejoinder testimony of Alan B. Cohn at pages 8-9, PECO states that

> ...the Company will recover approximately $6.02 billion in present value revenue, which is virtually the same as the revenue requirement associated with the $5.461 billion in stranded costs mentioned in the Joint Petition...The primary reason that it [the revenue requirement of $6.02 billion] is higher is that revenue requirement includes a return on investment (i.e., the unamortized balance of stranded costs) at a pre-tax level (i.e., what has to be collected to recover return and associated income taxes).

Later, PECO witness Hill testifies that ratepayers would pay $5.89 billion of competitive transition charges under the Partial Settlement[13].

Consequently, PECO witnesses testify variously that the Partial Settlement would require ratepayers to pay $5.89 billion or $6.02 billion in stranded cost charges. These payments would pay PECO not only for the book value of the stranded assets but also a return on these stranded assets. No PECO witness testifies that ratepayers will pay in stranded cost charges a total of only the $5.461 billion that appears in the Partial Settlement.

PECO testifies that another reason to allow recovery from ratepayers of at least hundreds of millions of dollars more than the $5.461 billion stated in the Partial Settlement is that this overrecovery of stranded costs pays for other parts of the Partial Settlement. PECO specifically states the overrecovery of stranded costs would fund: (1) expansion of the CAP rate for universal service; (2) elimination of certain EER and LILR-related charges; (3) extension of the T&D Rate cap and more.[14] The Commission finds this justification for overrecovery of stranded costs to raise more questions about the reasonableness of the Partial Settlement as well as its legality.

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[13] Testimony Regarding the Enron Proposal at 17, PECO Stmt. 1-E.

[14] Rejoinder Testimony of witness Cohn at 9-10; Rejoinder Testimony of witness Hill at 17.

According to PECO, it is not PECO's shareholders that are paying for many of the Partial Settlement's concessions or consumer benefits. PECO admits that it is PECO's customers that are paying for many of the consumer benefits of the Partial Settlement by paying more in stranded cost charges than the $5.461 billion that appears in the Partial Settlement.

PECO's assertion that overrecovery of stranded costs is justified, because it will pay for other benefits to which PECO agreed also raises legal questions. Pursuant to Sections 2803 and 2808 of the Public Utility Code, (Code), §§ 2803 2808, funds collected from ratepayers to pay for stranded costs must not be used to finance other costs or expenses that have nothing to do with stranded costs. Section 2803 of the Code reads in pertinent part as follows:

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

Furthermore, funds collected from ratepayers to pay stranded costs must be limited to the amount of stranded cost recovery that the Commission approves. See 66 Pa. C.S. §2808(d).

While PECO offers various justifications for why it should be permitted to recover more than $5.461 billion that the Partial Settlement ostensibly allows, PECO does not deny that the Partial Settlement requires ratepayers to make stranded cost payments of

more than $5.461 billion. Again, PECO's own witnesses testify that those payments would equal either $5.89 billion or $6.02 billion. The Commission, therefore, finds that ratepayers will pay stranded costs at least $500 to $600 million in excess of $5.461 billion net present value dollars.

Indeed, the Pennsylvania Electric Competition Coalition claims that that the Partial Settlement with securitization "would allow PECO to recover stranded costs through ITC and CTC customer charges which are at least $2 billion in excess of the agreed to level of $5.461 billion.[15] Enron witness Bruce Oliver states "PECO could easily be looking at a present value overrecovery of at least $1.2 billion..."[16] New Energy Ventures (NEV) argues that "Instead of a recovery of roughly $5.461 as stated in its public notice, PECO will actually recover benefits of $8.2 billion."[17]

Though the opposing parties point to many ways by which they believe the Partial Settlement allows PECO to overrecover stranded investment, they all assert that the Partial Settlement's provision that prevents an annual reconciliation of the CTC would allow PECO to reap a windfall as sales of electricity grow in the PECO service territory. According to Mr. Oliver, assuming sales growth equal to that forecasted by PECO in its 1997 Annual Resource Planning Report, the no-annual-reconciliation-of-the-CTC provision at paragraph 11 on page 11 of the Partial Settlement will allow PECO to overrecover stranded costs by $1.3 billion on a nominal basis and $700 million on a net present value basis.

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[15] Supplemental Testimony, of witness Mitnick, at 5; 17-18. (Emphasis in original)

[16] In his Rebuttal testimony at 16-18 and Exhibit.

[17] Brief of New Energy Ventures at 20.

The CTC in the Partial Settlement is calculated on the assumption that PECO will sell exactly 33,569,358 MWHs every year from 1999 to 2008. If sales increase beyond these levels, PECO would still collect and keep the CTC on each new kwh sold over and above the level of 33,569,358 MWHs. On the other hand, if sales of electricity in the PECO service territory declined during the transition period, PECO would absorb the loss caused by less kilowatt-hours on which the CTC could be levied.

The opposing parties argue that it is unreasonable to project that total sales of electricity in the PECO service territory will not grow from 1999 to 2008. They point out that, in a confidential, internal analysis for the board of PECO Energy about the Partial Settlement, witness Hill projected that sales would grow at a 0.8% annual rate during the transition period.[18] They show that PECO projects a 0.8% annual demand growth in its most recent FERC Form 714. They quote PECO witness Cucchi in PECO Statement No. 15 attached to PECO's original filing who states:

> PECO has used a load growth scenario that reflects the Company's most likely assumptions regarding economic variables such as household and employment growth. This scenario has been the base load growth scenario. This base load growth scenario for the years 1997 through 2006 is shown in Exhibit GAC-3 to my testimony. The base load growth forecast incorporated both end-use and econometric forecasts.[19]

Mr. Cucchi's Exhibit GAC-3 shows peak demand rising from 8107 Mw in 1997 to 9095 Mw in 2006, an increase of approximately 1.2% annually. They note that PECO itself in its 1997 Annual Resource Planning Report (ARPR) filed with this Commission forecasts that

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[18] Id. at 18 and 25.

[19] Brief of Conectiv Energy at 9.

it will increase electric sales over the next 10 years. According to PECO's 1997 ARPR, sales will increase to 40,057,000 in 2008.[20]

According to witness Oliver, any electricity price decreases that result from competition are a further factor that makes an overrecovery of stranded investment likely as a result of the Partial Settlement's no reconciliation provision. Witness Oliver testifies:

> The basic principles of price elasticity suggest that a decrease in the price of electricity should stimulate an increase in its use. Although the strength of price elasticity responses can be expected to vary by rate class, rate decreases in the range of 10% to 20% should have a noticeable affect on sales growth. Although some responses to changes in electricity prices may be lagged, a reasonably conservative short-run price elasticity would be in the range of -.2 to -.4.[21]

Witness Silkman responds to this criticism by asserting that he does not find PECO's 1997 ARPR filing to be convincing and states that electric usage in the PECO service territory is more likely to decrease than increase.[22] Yet, earlier in the proceeding, before the Partial Settlement had been filed, witness Silkman says this about the effect of price reductions:

> Residential customers will use more electricity as a result of being less concerned about the price they must pay per unit of consumption. They may turn up thermostats, leave lights on for longer periods, install additional lighting, purchase additional electric appliances or switch from non-electric to electric technologies for such things as space or water heating.[23]

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20 Rebuttal testimony of witness Oliver, at Exhibit A-R

21 Oliver Direct, at 13. See also Tr. at 1611

22 Silkman Rebuttal testimony at 7.

23 CEPA Stmt. 1 at 7-8.

Witness Silkman also testifies that those who represent various consumer interests understood and wanted the no-reconciliation provision.

In response to criticisms of its no load growth position, PECO essentially disavows its earlier testimony, arguing that it now believes that its earlier testimony or its various filings with this Commission and other agencies are not reliable projections. We find PECO's response distinctly unpersuasive.

The weight of the evidence requires a finding that sales of electricity will grow in the PECO service territory from 1999 to 2008. The most reasonable growth rate assumption is 0.8%.

Consequently, the exclusion of a reconciliation clause from the Partial Settlement would indeed allow PECO to overrecover stranded investment costs. The overrecovery as a result of the exclusion of a reconciliation clause alone would be up to $700 million on a net present value basis.

Finally, we conclude that PECO's real stranded costs are less than $5.461 billion. Even if the Partial Settlement actually required ratepayers to make payments totaling $5.461 billion, payment of that amount would not be in the public interest as they exceed 100% of PECO's real stranded costs, and therefore violate the Act.

4. The Partial Settlement Contains Provisions That Violate The Act

The Partial Settlement provides that "The CTCs contained in Appendix C hereto shall not be subject to reconciliation or true up. As such, PECO bears the risk and is

entitled to the benefits of changes in sales."[24] For reasons already explained, this provision is not in the public interest. It also violates Section 2808(f) of the Act. Section 2808(f) reads as follows:

> Consistent with section 1307(e) (relating to sliding scale of rates; adjustments), the commission shall establish procedures for the annual review of the competitive transition charge. The review shall reconcile the annual revenues received from the charge with the annual amortization of transition or stranded costs approved by the commission under this section. The commission shall adjust the competitive transition charge based upon underrecovery or overrecovery of the annual amortization amount.

The first sentence of Section 2808(f) requires us to establish procedures that are consistent with Section 1307(e) of the Code, 66 Pa. C.S. §1307(e) for an annual review of the CTC. The required procedures of Section 1307(e) are (1) filing of a report by the public utility containing certain information within 30 days of the end of the 12 month period under review; (2) holding a public hearing on the report within 60 days of the submission; and (3) directing within 60 days of the public hearing refunds or surcharges over an appropriate 12 month period to compensate for underrecoveries or overrecoveries, "absent good reason being shown to the contrary."

PECO argues that the language in Section 1307(e) that says "absent a good reason being shown to the contrary" makes lawful the Partial Settlement's deliberate refusal to perform an annual reconciliation of the CTC. This argument is in error.

The "absent good cause being shown to the contrary" language merely allows us to refrain from ordering action to correct underrecoveries or overrecoveries for reasons demonstrated in the mandated annual report and during the mandated annual public

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[24] Partial Settlement at 11, paragraph 11.

hearing. The §1307(e) requirement that a report be filed with this Commission cannot be waived. The §1307(e) requirement of an annual reconciliation proceeding itself cannot be waived. We must require both the filing of the report and the annual reconciliation proceeding under §1307(e). Yet, PECO argues that "absent good reason" means that the report and the hearing themselves can be waived. Only after the required report and hearing and only if that report and hearing provide a good reason not to correct an overrecovery or underrecovery can we, in a Section 1307 proceeding, decide not to order correction of an overrecovery or underrecovery.

The weakness in PECO's argument, however, is not that it misinterprets §1307(e), but the failure properly to construe the second and third sentences of §2808(f). The second sentence says the Commission "shall reconcile the annual revenues received from the charge with the annual amortization of transition or stranded costs..." The third sentence says that: "The Commission shall adjust the competitive transition charge based upon underrecovery or overrecovery of the annual amortization amount." This language is mandatory and makes it plain that the law requires an annual reconciliation proceeding for the CTC. Yet, PECO would have us interpret Section 2808(f) in a manner that guts Section 2808(f) on the strength of language not directly even in Section 2808(f) and on the strength of language that does not even do in Section 1307(e) what PECO says it does in Section 2808(f).

For these reasons the failure of the Partial Settlement to provide for an annual reconciliation proceeding violates the Act.

We also conclude that the transmission and distribution rates contained in the Partial Settlement are not just and reasonable and violate provisions of the Act.

Section 2804(3) of the Act states: "The commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution." Furthermore, Section 2803 defines transmission and distribution costs as: "All costs directly or indirectly incurred to provide transmission and distribution services to retail electric customers." Additionally, Section 2804(10) directs that: "The commission shall establish rates for jurisdictional transmission and distribution services and shall continue to regulate distribution services for new and existing customers in accordance with this chapter and Chapter 13 (relating to rates and rate making)."

The foregoing sections require separating charges for generation from transmission and distribution, defining transmission and distribution costs to include those costs directly or indirectly incurred to provide transmission and distribution services, and establishing transmission and distribution rates that meet the requirements of Chapter 13 that include the just and reasonable standard.

The record in this case shows that the Partial Settlement's system transmission and distribution rate of 3.11 cents does not meet these legal standards. Specifically, the rate violates the Act, because the proposed T&D rate of 3.11 cents per kwh includes generation costs of PECO.

5. Partial Settlement's ECCs Effect on New Plant Investment

We note that our decision affects more than the amount of stranded investment recovery that PECO receives or how much of the total price benefits produced by competition that customers will enjoy during the transition period. Our decisions could affect reliability.

During the transition period, the ECC will determine whether constructing new capacity to serve load in the PECO service territory is economically possible. In fact, the Energy and Capacity Credits could either attract or deter investment in new generation plant construction during the transition period, depending on whether the ECCs are above or below the Long Run Marginal Cost (LRMC) of new capacity.[25] This is so because investors in new generation plant will receive no more than the ECC during the transition period for sales of electricity.

In a free market, prices would eventually move to LRMC of new generation and building new plants would be economic. This is a point on which both Enron witness Slater and PECO witness Hieronymus agree. Though he believes new capacity will be needed by 2001, witness Hieronymus says:

> I agree that, in the long run, prices will approximate long-run marginal costs...The theory that price must approximate long-run marginal cost is based on the simple notion that new capacity will not be built unless it is economic to do so. Hence, once new capacity is needed, prices in a competitive market will have to rise to a level high enough that new suppliers will reasonably anticipate market revenues that are high enough to justify building the needed capacity.[26]

Yet, during the transition period that the Partial Settlement would extend to 12 years, the market for generation is anything but a free market where prices can freely reach levels that insure supply and demand are in equilibrium. It would be perilous to forget that this interim market includes temporary government intrusion in market pricing.

That intrusion takes the form of substantial competitive transition charges that flow from ratepayers to former generation monopolies. Even more importantly, that

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25 Direct testimony of witness Slater at 5-6.

26 PECO Stmt. No. 6-E at 3.

government intrusion would take the form of government set energy and capacity credits (the ECC) or generation credits that establish the price limit that investors in new generation can expect for their investment.

In his Rebuttal testimony at pages 3 to 4, witness Bohi states:

> ...the Generation Credit acts as the upper limit of the price for generation services. As long as the Generation Credit is above the LRMC [long run marginal cost], new entrants can come into the market, if necessary, and it is possible for the market to work competitively...In contrast, if the Generation Credit is below the LRMC, the market clearing price could rise above the Generation Credit because competitors will not be willing to enter the market as long as they fail to receive a price that covers their LRMC. At this point the competitive market breaks down and the price no longer clears the market. Consumers will not be able to buy all of the electricity they want, unless existing suppliers are subsidized to cover the additional costs. (Emphasis added).

The possibility that consumers "would not be able to buy all of the electricity that they want" is not something this Commission that is charged with insuring reliable electric service can take lightly.

Yet, if we approve an ECC that is below the LRMC of new supply, we create the risk that new investment in generation will not be attracted, even if it is necessary to preserve reliability and to insure that consumers are able to buy all the electricity that they want. This risk is not merely theoretical.

New capacity to serve load will be necessary no later than 2001 in the Pennsylvania-Jersey-Maryland (PJM) power pool and market of which PECO is a part.[27] Yet, despite this need for new capacity, witnesses Bohi and Slater testify that the Partial Settlement's ECCs are below the LRMC of generation until 2004.[28] This testimony raises questions about whether the Partial Settlement's ECCs establish price signals that are consistent with long-term supply reliability. It cannot be forgotten that the Act directs that, "The transition to a competitive generation market shall be orderly, protect electric system reliability..." and that "The Commission shall ensure continuation of safe and reliable electric service to all consumers in the Commonwealth..."[29]

Although we deny the Petition for Partial Settlement, it is illustrative to address its terms concerning universal service, since they are considered to have contained substantial benefits not otherwise achievable. Significant among those benefits are the level of expenditures without an increase in collections from customers, and an increase in the number of participants to be enrolled in the CAP Rate program and an increase in the allocation to LIURP.

The Joint Petitioners agreed that the current level of universal service costs reflected in residential distribution rates is $50.0 million; that PECO would recover its costs in excess of $50.0 million through a separate mechanism that will adjust distribution rates applicable to customers. It did not address or resolve the manner in which universal service costs will be allocated to customer classes if and when PECO incurs, and seeks recovery of universal service costs in excess of $50.0 million.[30] The Partial Settlement proposes to increase the universal service cost measure from the filed level of

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27 PECO Stmt. No. 6-E at 4.

28 Direct testimony of witness Bohi at 7.

29 Sections 2804(14) and (1).

30 Partial Settlement at para. 25.

$35.7 million to $50.0 million. The increase in this measure of universal service support of nearly $15 million is of considerable value to the public interest required to be considered by the Act. Additionally this level of funding is targeted to support enrollment of 80,000 rather than 100,000 customers. The Partial Settlement provides that participation in the CAP Rate would be administered on an open enrollment basis for all eligible customers, with a maximum participation level of 100,000 customers subject to various revisions and adjustments.[31] Our disposition of this issue will be resolved below in our discussion of PECO's restructuring plan.

[31] Partial Settlement at para. 26

III. THE PETITION OF ENRON ENERGY SERVICES POWER, INC.

A. Summary

Enron petitions this Commission 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." Assuming securitization is possible, Enron's proposal would provide PECO ratepayers with a 20% rate cut from present levels for September 1, 1998 to December 31, 2000. Starting in 2001 rates could increase every year but must be 12.44% below current levels in 2001; 9.44% below current levels in 2002; and 7.44% below current rates in 2003. By 2004 rates could return to current levels.[32]

If securitization is not possible, Enron proposes a contingency plan. The Enron contingency plan would cut rates by 14.45% from current levels from September 1, 1998 to December 31, 2000. Starting in 2001 rates could increase but must be 9.42% below present rates in 2001; 7.43% rate below present rates in 2002; and 7.44% below present rates in 2003. By 2004 rates could return to current levels.[33]

Whether securitization is possible or not, the Enron Petition states that PECO would receive $5.461 billion for stranded costs. An annual reconciliation of revenues collected from ratepayers through the CTC would be performed. If securitization is possible, Enron proposes paying PECO $5.461 billion in a lump sum that would be raised through the sale of transition bonds. If securitization is not possible, PECO would receive payments from the CTC proposed by Enron in its contingency plan.

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32 Rebuttal testimony of witness Kean at Attachment A.

33 Id., Attachment B.

Enron's Petition also provides for a generation credit that differs from the Partial Settlement's ECC. Starting at a system credit of 3.48 cents per kilowatt-hour as compared to the Partial Settlement's starting generation system credit of 2.80 cents per kilowatt-hour, the Enron system generation credit is higher than the Partial Settlement from September 1, 1998 to December 31, 2003. It, however, is lower than the Partial Settlement's system generation credit from January 1, 2004 to December 31, 2008.

Enron argues its higher ECC in the first 5 years of the transition will foster a truly competitive retail generation market. State Senator Vincent Fumo/CEPA, however, argues that Enron's proposed ECC would make it a de facto monopoly if it were the provider of last resort, because Enron's ECC is too low in the last years of the transition period.

The competitive transition charge of the Enron proposal also differs from the Partial Settlement. Enron specifically proposes a system CTC that starts in 1999 at 2.11 cents per kilowatt-hour and rises in 2007 and 2008 to 3.32 cents per kilowatt-hour, if securitization is possible.

If securitization is not possible, Enron supports a CTC that begins at 2.66 cents per kilowatt-hour and increases to 3.32 cents per kilowatt-hour in 2007 and 2008. By comparison the Partial Settlement CTC commences at 3.04 cents per kilowatt-hour, rises to 3.14 cents per kilowatt-hour in 2001 to 2003 and falls to 2.27 cents per kilowatt-hour in 2008.

Enron's Petition hinges on a Power Purchase Agreement ("PPA") and a Meter, Billing, and Collection ("MBC") contract being signed by Enron and PECO. The

Power Purchase Agreement is described by Enron as a full requirements contract under which Enron would purchase from "PECO the energy and capacity necessary to provide Default Service to PLR customers in PECO's service territory. The price paid by Enron to PECO under the Power Purchase Agreement will be passed through without a mark-up, i.e., Enron will not make a margin on energy sales to Default Customers.[34]

The Meter, Billing, and Collection contract would require PECO to "provide metering, billing, collection and certain other services with respect to Default Customers at the costs established for such services in PECO's existing distribution tariffs."[35] The initial term of the MBC contract would be until December 31, 2003.

In the event that securitization is not possible, Enron offers its contingency plan in which Enron does not seek to be the provider of last resort. Consequently, its contingency plan does not require the signing of the PPA or MBC contracts.[36]

B. Disposition

The Commission denies Enron's Petition.

The Commission must do so, because PECO Energy Company opposes the PPA and the MBC contracts. Enron cannot serve as the provider of last resort without signed contracts. Moreover, Enron is not asking this Commission to force PECO to sign these contracts, because Enron believes that this Commission does not have the legal authority to do so. Enron witness Kenneth Slater says: "...the Commission cannot order

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34 Petition of Enron Energy Services Power, Inc. at 21.

35 Id.

36 Rebuttal testimony of witness Kean at 25.

PECO to enter into a wholesale contract for energy and capacity, or, indeed, even order PECO to file for such a contract with the Federal Energy Regulatory Commission.[37]

Beyond the fact that the necessary contracts are not concluded, the Commission again notes that "legal impediments" to securitization do now exist in the form of already pending lawsuits brought by parties who are other than signatories to the Partial Settlement or Enron. Consequently, the Commission concludes that the Enron proposal could not cut rates by 20% on September 1, 1998 and nor could it securitize $5.461 billion of stranded investment by that date.

The Commission notes that it is reluctant to designate an alternative supplier as the provider of last resort until the Commission promulgates the regulations required by sections 2807(e)(2) and (3). Once that rulemaking is finished, issues involved in a change in the provider of last resort will have been resolved after comment and due deliberation.

The Enron contingency plan avoids the main problems of Enron's primary proposal by not seeking PLR status and by not requiring securitization. The Commission, nonetheless, denies Enron's contingency plan.

New Energy Ventures captures well the Commission's concern with the Enron proposal when NEV says:

> Enron's proposed generation credits are also inadequate...Under Enron's proposal the rate decreases are given on the front end and evaporate quickly. All things being equal, the Commission should look for sustained rate decreases rather than here today gone tomorrow rate decreases.[38]

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37 Direct testimony at 7; Direct testimony of witness Kean at 24-25.

38 Brief of New Energy Ventures at 28.

A major problem with the proposal is that its competitive transition charge increases by 0.67 cents per kilowatt-hour from 1999 to 2008 in the contingency plan. Since the CTC increases, the CTC puts upward pressure on rates as the transition period progresses and makes achieving price cuts from the competitive market marginally more difficult with the passing of each year in the 10 year transition period.

Moreover, in the Enron contingency plan, the CTC is designed to collect $5.461 billion of stranded costs. Parties challenge the claim that the Enron CTC would collect $5.461 billion. The Commission, nonetheless, concludes that $5.461 billion of stranded costs overstates PECO's recoverable stranded costs under the Act.

Since the Commission denies the Enron Petition, PECO Energy Company will remain the provider of last resort in the PECO service territory. Though the Commission denies this Petition, the Commission does not wish that its decision be interpreted as general hostility to proposals for new suppliers of last resort. Section 2807(e)(3) reflects the Legislature's will that all parts of the electric generation business in Pennsylvania should be subject to competition, including the supplier of last resort function. The Commission also believes that subjecting this piece of the electric generation industry to competition will benefit customers and the Commonwealth.

IV. APPLICATION OF PECO ENERGY FOR APPROVAL OF ITS RESTRUCTURING PLAN

Since both the Partial Settlement and the Enron Petition are denied, the Commission must render a decision on the Application of PECO Energy for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code that was filed on April 1, 1997 (the "Application"). This Commission must weigh carefully the evidence to render an independent, reasoned decision. The Commission has reached a decision that will insure: (1) the creation of a competitive retail electric generation market in PECO's service territory; (2) the just and reasonable treatment of PECO's shareholders and customers; and (3) the preservation of reliability. These goals or policies, as well as others, are specified in Sections 2802 and 2804 of the Act.

Section 2802(12) states:

> The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system for all parties. Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.

Section 2804(2) further says:

> Consistent with the time line set forth in section 2806..., the commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access. Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources, including reasonable and fair opportunities to self-generate and interconnect. These alternatives may be provided by different electric generation suppliers.

Among other things, the Act requires a reliable, competitive retail electric generation market in PECO's service territory. The Commission's decision, therefore, must replace government price regulation of a generation monopoly with a reliable, competitive electric generation market that allows electric customers to choose from competing electric suppliers. The Commission, furthermore, must do this by resolving "certain transitional issues in a manner that is fair to customers, electric utilities, local communities, nonutility generators of electricity and other affected parties."

In its Restructuring Plan, PECO originally sought permission to recover $6.8 billion of stranded costs. During the rebuttal phase of this case, PECO revised its estimate of stranded costs to $7.5 billion, although it did not increase its claim.[39] PECO proposed ending stranded cost recovery on December 31, 2005.

In the April 1, 1997 Restructuring Plan, PECO proposed to securitize $3.6 billion of its stranded claim, "while reducing rates to customers by 3.4%."[40] PECO noted that its petition to securitize $3.6 billion was then pending at Docket No. R-00973877. The Commission's decision in that docket allows PECO to securitize $1.1 billion. No request for a QRO to authorize the issuance of additional transition bonds is pending before the Commission.

In response to PECO's Restructuring Plan, numerous parties filed protests. Parties such as the Philadelphia Area Industrial Users Energy Group (PAIEUG), the Office of Consumer Advocate (OCA), the Office of Trial Staff (OTS), Senator Fumo and CEPA et al, the Environmentalists, New Energy Ventures and others have all presented evidence that

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39 Rebuttal testimony of witness Hill, PECO Stmt. 1-R at 19.

40 PECO Stmt. No. 1 at 20.

challenge major parts of this Restructuring Plan. Intervening parties argue that PECO should be allowed to recover stranded costs that range from $2.209 to $5.461 billion.

A. Summary of Commission's Decision on the PECO Energy Restructuring Plan

1. The Competitive Transition Charge (CTC).

The Commission permits PECO Energy Company to impose on ratepayers a Competitive Transition Charge (CTC) that will allow recovery of $5.024 billion of transition and stranded costs from January 1, 1999 to June 30, 2007.[41] The Commission notes that the transition to competition began with the effective date of the Act, January 1, 1997. By January 1, 1999, the transition period will be two years long. By January 1, 1999, PECO Energy will have had two years to satisfy the requirement in Section 2808(c)(4) that PECO Energy mitigate its stranded costs. Consequently, the recovery of $5.024 billion from January 1, 1999 to June 30, 2007, is in addition to whatever stranded cost recovery or mitigation PECO Energy realizes prior to January 1, 1999.

The authorized CTC may be collected for an 8 1/2 year period from January 1, 1999 to June 30, 2007 in the amount of approximately 2.56¢ per kWh. The Commission will not set a final starting CTC until the compliance filing is approved.

As initially calculated, the CTC must be flat. The initial CTC may be modified to the extent that annual reconciliation proceedings required by section 2808(f)

[41] The precise dollar amount recoverable may vary slightly based upon the compliance filing accepted by the Commission.

subsequently modify the CTC. Any subsequent reconciliation and modification of the CTC shall be done on a customer class basis.[42]

This Opinion and Order establishes for the first time an unbundled T&D rate for consumers of PECO. This Opinion and Order also establishes a CTC that consumers are obligated to pay PECO for every kwh consumed. The shopping consumer pays only the T&D rate and the CTC to the EDC when purchasing generation in the competitive market. The addition of the T&D rate and the CTC produces a total sum of charges that when compared to the customer's rate in effect as of January 1, 1997, gives rise to the concept of a "shopping credit." The shopping credit is not a selected number. It is the number that results from the difference between a particular customer's total rate as of January 1, 1997 and the sum of T&D and CTC rates established pursuant to this order.

After June 30, 2007, all CTC charges shall be removed from customers' bills. After June 30, 2007 all customers will pay only the competitive cost for generation plus a regulated rate for transmission and distribution.

2. Shopping Credits for Electric Customers

If this were a traditional rate case, the Commission could translate its decision on stranded costs into a new rate tariff that captive ratepayers would be required to pay. To state the obvious, although this is a rate case, it is not a traditional rate case. Instead, this case initiates 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.

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[42] In the event that transition bonds are successfully issued, an ITC will be established and there will be a corresponding reduction in the CTC.

Relying principally on changing rate tariffs to deliver price benefits to ratepayers will not foster the competitive retail electric market that the Act requires for all customers, not just the largest users. In fact, providing temporary rate cuts through tariffed generation rate reductions will leave the customers without a competitive market that is their only real protection under the Act. Indeed, once the temporary rate cuts expire, customers would experience the equivalent of a horrible hangover if little or no competition exists to provide the competitive benefits the Act intends.

Nevertheless, the process by which the Commission is obligated to unbundle the company's rates into generation, transmission and distribution components is fundamentally a ratemaking process, a process in which the Commission is called upon to determine the company's total cost of service (including capital costs), to properly allocate those costs among the generation, transmission and distribution portions of the company's operations, and to translate those total costs into individual rates. The Commission is also called upon to determine, based upon expert witness testimony, what portion of the company's assets will become uneconomic (or stranded) in the new unregulated market for generation and to develop an appropriate rate, known as the CTC, that will permit the company to recover those stranded costs over a reasonable period of time. These are traditional ratemaking functions as exercised by the Commission since its inception in 1913.

The major difference in this process is that once the generation-related costs and rates are developed, the company's customers will be able to choose alternative suppliers for the generation portion of their electric service. If the customer can contract with a supplier in the competitive market which can provide generation at less than the

generation rate determined by the traditional ratemaking process, less the CTC, the customer will experience rate savings.

Based upon our review of the record and our findings herein, the Commission's order will empower customers with a "shopping credit" of approximately 4.46 cents per kilowatt-hour. This number is the result of our decision on transmission and distribution rates, total stranded cost allowance, and the annual sales in the record. A customer who is now a residential rate R customer will receive a shopping credit of approximately 5.20 cents per kilowatt-hour. The compliance filing proceeding will determine the exact shopping credit.

The Commission is convinced from the record testimony that these shopping credits and the mechanism of the shopping credits will provide a competitive market. Again, it is only genuine competition that will deliver long term price benefits to the customers of the PECO service territory. The Commission's approach avoids creating a de facto monopoly that delivers temporary and short-term rate cuts.

It creates real incentives for electric suppliers to compete for customers and for customers to shop for electricity. As such, this decision will create a market featuring both many buyers of electricity and many sellers of electricity.

Additionally, the shopping credits of this decision are large enough to insure that it will be economic to build new generation plant that could be necessary to protect reliability. Consequently, the Commission's approach is also consistent with its duty under the Act to preserve reliability.

To provide as many customers as possible with the shopping credits as soon as possible, the Commission orders that 33% of the peak load of each customer class shall have the opportunity for direct access as of January 1, 1999 and that 66% of the peak load of each class shall have direct access as of January 2, 1999. All customers shall have direct access as of January 2, 2000.

PECO is directed to conduct an open enrollment period beginning March 1, 1998, to identify customers that will be able to shop as of January 2, 1999. As of January 2, 2000, all customers shall have the opportunity to shop.

The Commission recognizes that the Act's approach to customer choice makes consumer education crucial. As a result, the Commission is ordering a substantial consumer education effort as a part of this Opinion and Order.

We find that the Act intends that universal service protections of the act focus not on historical numbers of program participants or historical dollars expended, but upon a continuation of the quality of such protections. As 66 Pa.C.S. §2802 (17) states:

> The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

The level of such policies, protections and services is not to be tied to number of program participants, nor is it pegged at a specific dollar level based upon previously litigated rate cases. Instead, we find, as discussed below, that universal service and energy conservation levels of service are to be continued, and funded, as appropriate, by a non-bypassable rate mechanism that makes PECO whole for whatever levels of expenditure are required by the Act, consistent with rate cap provisions of the Act.

3. Summary of Unbundling, CTC, and Shopping Credits[43]

For Customer Not Shopping:		System Average
a.	Existing Bundled Rate	9.95 cents/kWh
b.	Unbundled T&D	2.93
c.	Unbundled G	7.02
d.	Total Price Paid to PECO (d=a=b+c)	9.95

For Shopping Customer		
a.	Existing Bundled Rate	9.95
b.	Unbundled T&D	2.93
c.	Unbundled G	7.02
d.	CTC	2.56
e.	"Shopping Credit" (e=a-b-d)	4.46

B. Phase-in of Customer Choice

Section 2806(b) establishes a phase-in of customer choice:

> Recognizing that approximately 5% of the peak load will have retail access through pilot programs, the following schedule of phased implementation of retail access shall be adhered to...
>
> (1) As of January 1, 1999, a maximum of 33% of the peak load of each customer class shall have the opportunity for direct access.

[43] The precise numbers may vary slightly upon review and acceptance of the compliance filing.

(2) As of January 1, 2000, a maximum of 66% of the peak load of each customer class shall have the opportunity for direct access.

(3) As of January 1, 2001, all customers of the electric distribution companies in this Commonwealth shall have the opportunity for direct access.

(4) The commission shall establish regulations specifying that, within each customer class, the customers that are eligible for direct access prior to full direct access shall be determined on a first-come, first-served basis unless otherwise determined by the commission through regulation, in the context of restructuring plans, or in other appropriate administrative proceedings, to prevent competitive disadvantages among similarly situated customers within a customer class.

PECO proposed to phase-in 33% of customers on January 1, 1999, 33% on January 1, 2000 and that all customers would have choice by January 1, 2001. PECO proposes to select residential customers randomly and use a first-come, first-served basis for commercial and industrial customers.[44]

The language in the Act quoted above permits the Commission to adopt a more rapid phase-in schedule than proposed by PECO. We conclude that the most rapid phase-in permitted under the Act is in the public interest and should be adopted. PECO is directed to conduct an open enrollment period beginning March 1, 1998. The first 33% of customers to volunteer from each tariff class may shop on January 1, 1999. PECO shall notify such customers through a Commission approved letter.[45] Up to 66% may volunteer to shop as of January 2, 1999. All percentages shall be calculated based on the non-coincidental peak load of each tariff class.

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[44] Cucchi Direct, PECO Stmt. No. 15 at 8.

[45] PECO's Pilot Implementation Order requires that all customer load in the pilot is automatically included in the first phase-in group.

If fewer than 66% of customers in any tariff class are enrolled as of July 1, 1998, PECO shall notify all customers that have volunteered as of that date that they can shop as of January 2, 1999.

If more than 66% of customers in any tariff class have volunteered as of July 1, 1998, PECO shall have an independent party conduct a lottery to determine which customers may shop as of January 2, 1999. Customers who notify PECO of their choice of supplier no later than November 1, 1998 will receive power from their chosen supplier on January 1 or 2, 1999. Customers not submitting a suppler choice by November 1, 1998 will not lose the opportunity to shop. However, due to processing requirements, such customers may not be able to receive power through their chosen supplier by January 2, 1998. Power will be supplied by PECO until a customer choice is implemented.

All customers will have the opportunity to shop as of January 2, 2000. The enrollment period for this group will begin March 1, 1999.

Customers included within each phase-in group shall have the opportunity to receive generation from its chosen supplier on the phase-in date. Any customer so selecting will receive unbundled distribution and transmission service from PECO, pay the CTC, and receive a "shopping credit." Any customer shall have the option to remain on bundled rates through the end of the transition period.

We find that the most rapid phase-in schedule is appropriate in order to provide the benefits of competition and complete the transition process as early as possible. The response to the pilot enrollment opportunity was overwhelming throughout

Pennsylvania, especially in PECO's service territory. In our approach we have considered the competitive disadvantage to those customers not permitted to shop until after other similarly situated customers. We conclude that the most rapid phase-in schedule permitted under the Act and open enrollment is an appropriate, reasonable way to accommodate the statutory concerns.

C. PECO Transmission & Distribution Rates

1. Introduction

One of the primary issues in this proceeding involves the requirement that PECO "unbundle", or separate, services, tariffs and customer bills to provide separate charges for generation, transmission and distribution. 66 Pa. C.S. §2804(3). As we review the unbundling of PECO's rates, we are also guided by the overarching requirement that the unbundled rates must be capped at the levels approved as of January 1, 1997 (the effective date of the Act). That rate cap must be in place for a period of 54 months or until an EDC is no longer recovering its transition or stranded costs through a CTC or ITC and all customers of the EDC can select an alternate generation supplier, whichever is shorter. 66 Pa. C.S. §2804(4).

When we refer to the unbundling of PECO's rates, we are splitting the existing and approved single rate which encompasses all of PECO's services into its separate components of generation, transmission and distribution. As we discuss the different components of PECO's service, references to generation will mean that sector of PECO's operations related to the production of energy. Contrasted to this is PECO's transmission and distribution function which encompasses those services used to transport and deliver the energy produced. This has been referred to as the "wires" side of an

EDC.[46] The generation component of PECO's rates are discussed elsewhere in this order. Here, we will focus on the transmission and distribution ("T&D") portion of PECO's proposal.

In order to derive an accurate, unbundled T&D rate, costs must be properly assigned to the generation and T&D functions of PECO. Of particular concern in this phase of the proceeding are those costs and expenses which are not clearly generation (or energy production), nor clearly related to the T&D (or "wires") portion of this case. Those costs are generically referred to as Administrative & General expenses.

Although some parties have made suggestions regarding PECO's claimed level of expenses (most notably Enron), no party has presented any competing evidence relating to those cost levels.[47] Accordingly, although we are certainly permitted by the Act to examine the level of expenses claimed (the Act speaks of a "cap", not a floor), the record dictates that we accept the claimed levels. We note, however, that nothing precludes any person from later challenging PECO's T&D rates under any applicable section of the Public Utility Code. We also recognize that PECO itself, subject to the rate cap provisions, may seek adjustment to its T&D rates if and when justified.[48]

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[46] In order to avoid confusion, we specifically note that we are not unbundling PECO's T&D rates as far as witness Reising suggests. See Enron St. No. 3.0, p. 6. Our reference to the "wires" side of PECO's operations encompasses all services related to distribution, including those referred to by Mr. Reising as "Revenue Cycle Services".

[47] We note that the Municipal Intervenors have argued strenuously regarding the rate SL-E and PECO's location charge and rate design. We acknowledge that they have provided a substantial argument regarding their rate schedule. However, the record as a whole does not support actual adjustments to PECO's cost levels based on their arguments.

[48] We specifically note Section 2804(4)(iii)(A) of the Act which provides that PECO may seek extraordinary rate relief if it meets the standards for relief in Section 1308(e) of the Public Utility Code, 66 Pa. C.S. §1308(e). That Section provides for extraordinarily rate relief if such relief can be shown to "be immediately necessary for

While the parties in this case have largely accepted (or not rebutted) PECO's cost levels as accurately reflecting rates in effect as of January 1, 1997, the allocation of those expenses is an entirely different issue. At some point in the proceeding, almost every party (including those participating in the Joint Settlement) has questioned PECO's cost allocation method for general expense categories which encompass both generation and T&D. Accordingly, we will first examine the statutory standards relating to unbundling, and then review PECO's proposed allocations.

2. The Act

The Act sets forth several specific provisions regarding an EDC's transmission and distribution services and rates. First, Section 2804(1)(ii) provides that this Commission must ensure the continuation of safe and reliable electric service to all consumers including "[t]he installation and maintenance of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the National Electric Safety Code."

Next, the Commission is directed to unbundle electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. The Commission is also permitted to require the unbundling of "other services." 66 Pa. C.S. §2804(3). Having provided the foregoing directives regarding reliability and unbundling, the Act next discusses the T&D rates which should come out of a restructuring proceeding:

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the maintenance of financial stability in order to enable the utility to continue providing normal services to its customers, avoid reductions in its normal maintenance programs, ..., and which will provide no more than the rate of return on the utility's common equity established by the commission in consideration of the utility's preceding rate filing, ..."

For a period of 54 months from the effective date of this chapter or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive distribution charge or intangible transition charge and all the customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter:

> (A) The total charges of an electric distribution utility for service to any customer who purchases generation from that utility shall not exceed the total charges that have been approved by the commission for such service as of the effective date of this chapter; and
>
> (B) For customers who purchase generation from a supplier other than the electric distribution utility, the charges of the utility for non-generation services that are regulated as of the effective date of this chapter, exclusive of the competitive transition charge and intangible transition charge, shall not exceed the non-generation charges that have been approved by the commission for such service as of the effective date of this chapter.

(66 Pa. C. S. §2804(4)(i)).

The above standards provided by the Act require that we properly separate the charges for transmission and distribution from generation.[49] Of equal importance, those standards clearly provide that the charges for generation, transmission and distribution which result from this proceeding may not rise above those levels which have been approved by the Commission as of January 1, 1997.

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[49] As we will discuss below, we will not further unbundle PECO's services to separate its metering, billing and collections at this time, subject to the provisions of Section 2807(c) relating to customer billing. However, we expect those services will be unbundled in the foreseeable future. In this context, note the Commission's Notice of Proposed Rulemaking regarding deployment of advanced metering at L-00970128 (Order entered November 24, 1997).

The Act also speaks in terms of rate levels per customer, customers or customer classes; not system wide averages. See 66 Pa. C. S. §§2804(4) and (7). We note that Section 2804(7) expressly provides that the Commission may not approve restructuring plans which provide for cost shifting among customer classes which unreasonably discriminate against one class to the benefit of another. We interpret these provisions of the Act to require that the rate caps as well as cost shifting concerns must be reviewed in the context of rate classes and/or rate schedules, not system wide averages.

3. PECO's Allocation of Costs

Both PECO's original filing as revised and the Partial Settlement fail to meet the Act's requirements in several respects. The cost allocation methodology used by PECO in its initial filing fails to properly assign certain general costs to generation and allocates 100% of those costs to T&D. Although PECO revised this approach, the revisions only partially addressed the issue. The effect of PECO's misallocation drives the T&D rates above those levels which were in force on January 1, 1997. In addition to the misallocation of expenses, PECO's use (initially) of an artificially low kwh sales figure results in an incorrect revenue requirement which also has the effect of overstating the rate.

The record in this matter indicates that PECO has misallocated costs among the three unbundled services. Simply put, in its original filing, PECO assigned the vast majority of Administrative and General (A&G), Overhead and general plant expense to its T&D rates. This assignment occurred without regard to whether there is a continuing generation component in that cost.

PECO's Statement No. 12, Exh. RAC-1, pp. 56, 62, by Mr. Clemmer, includes the following costs as having been allocated 100% to T&D:

		(000)
Account 920	Administrative and General Salaries	72,808
Account 921	Office Supplies and Expenses	84,562
Account 923	Outside Services Employed	17,162
Account 935	Maintenance of General Plant	875

Several similar accounts were also included as having been allocated 100% to T&D. PECO's allocations were revised subsequent to the original filing, and revised again in rebuttal testimony. See, e.g., PECO St. No. 12-R and the Exhibits attached thereto. Despite the revisions, PECO's allocations still improperly allocate costs to its T&D services rather than properly reflecting that a generation component exists in those costs.

The basic failing in PECO's T&D cost allocation is determined by its approach. PECO's "new" approach to cost allocation is set forth in PECO Statement No. 12-R which described the revised allocation methodology. Witness Clemmer stated:

> When logic and reason suggest that a current A&G function will still need to be performed by PECO even when all customers can choose their electricity supplier and PECO has become a regulated electric distribution company (EDC), then all of the associated A&G costs are distribution-related costs to be recovered through PECO's regulated distribution rates, or transmission-related costs to be recovered in accordance with FERC rules and requirements.

PECO Statement No. 12-R, p. 3.

Witness Clemmer further stated: "If the costs cannot be avoided as a result of the transition to competition, will still be incurred by the future EDC, and are properly allocable to the distribution function rather than the transmission function, then that future

company should be allowed to recover those costs through its regulated distribution rates." Id.

In an effort to address other parties' concerns, PECO revised its methodology on rebuttal. According to PECO, it followed a new procedure for Administrative and General expense allocation by reviewing separately tracked costs which were charged by "work centers." PECO identified work centers as small, single function work groups which are functionally aligned by production, transmission and distribution, corporate central services and corporate center. However, PECO examined these costs to determine the following:

> When all customers can choose their electricity supplier, would the function that resulted in the costs booked to the account still be required at the same overall cost levels for PECO as the EDC in fulfilling its obligation to deliver electricity? If the answer is yes, then the costs are transmission or distribution-related, and the distribution-related portion should be recovered through PECO's regulated charges for its distribution services.

Clemmer St. No. 12-R, p. 4.

PECO's recognition of the error in its initial filing resulted in the following adjustments noted by Mr. Clemmer: .

	Production	Transmission	Distribution
4/1/97 study	$63,251,000	$31,018,000	$226,618,000
Corrected 7/18/97	$94,335,000	$27,228,000	$199,323,000

Clemmer St. No. 12-R, p. 7.

However, despite the recognition of its initial error, PECO still failed to include other accounts in its allocation, or failed to properly allocate sums from accounts which were included.

One test of PECO's "revised" functional allocation methodology (the "work center" approach) was provided by Mr. Phillips on behalf of the United States Department of the Navy. Based upon his review of PECO's 1996 O&M expenses by function as set forth in PECO's 1996 FERC Form 1, as well as his analysis of the 1996 cost of service study submitted by PECO witness Clemmer, Mr. Phillips stated that the PECO revised approach yielded illogical results. According to Mr. Phillips, in the context of total operation and maintenance expense including fuel but excluding A&G, production expenses are more than 70% (close to 80% according to FERC Form 1) of the total operation and maintenance expenses booked by PECO. Subtracting fuel and purchased power results in an expense factor of approximately 59% of PECO's 1996 expenditures. However, using PECO's revised functional analysis as stated in Exhibit RAC-3, about 13% ($26.6 million /$202.9 million) of the assigned and allocated A&G expenses are related to production expenses. Phillips Surrebuttal, August 1997, p. 5.

Similarly, witness Reising reviewed Exhibits RAC-3 and RAC-4 and determined that PECO's revised functional analysis produced illogical results. For example, "Executive Department" and "CFO" functions were assigned 100% to T&D. Yet, as noted by Mr. Reising, those functions do not now limit their oversight to T&D.

Mr. Reising also stated that PECO's generation function will continue to require Executive Department and CFO attention after the onset of competition. Enron St. No. 3-SR, p. 10. We agree.

PECO's responses to criticisms of its allocation are, at best, weak. Clemmer St. No. 12-RJ merely states that the revised, new approach was justified. Therefore, according to Mr. Clemmer, its critics were in error. Also, Mr. Clemmer suggested that cross subsidization between PECO's generation and T&D functions could not occur because "PECO has not overstated transmission and distribution costs... ." Clemmer St. No. 12-RJ, p. 6. Clemmer argues that it would be false and illogical to suggest that PECO affiliates would intentionally sell below marginal cost. Id. Of course, the point of those arguing against PECO's allocations is that PECO would be covering its marginal costs, in part, through the improper cross-subsidy. Finally, Mr. Clemmer states that this Commission can scrutinize PECO's T&D rates to ensure cross-subsidization does not develop. We do not perceive any of these statements to be responsive to the criticisms of PECO's allocation of costs between T&D and generation.

Our review of the record in its entirety leads us to find that PECO's allocation of General and Administrative Costs requires significant adjustment. In order to comply with the Act's mandate that T&D rates remain capped at those levels in existence as of January 1, 1997, we must ensure that there is an appropriate allocation of all costs among generation and T&D. We must find that, based upon a preponderance of the evidence, PECO's allocation of general expenses will result in T&D rates which comply with the Act's rate cap provisions.

In reaching our determination on this issue, we are persuaded by the OCA witness who stated:

> Even if the Company does need the same number of people in the payroll department and other A&G accounts, their cost should be allocated to the functions that they support. It is simply incorrect to allocate these dollars entirely to T&D.
>
> Unbundling costs should produce results that should look like what functional costs would be if PECO were to separate itself into functionally separate divisions. Clearly the generation division would require administrative and general services.

OCA St. No. 4, p. 5.

We agree with the OCA, the Department of the Navy, Enron and the other parties who argued that the allocation methodology must be modified to correctly allocate costs.

4. Directed Allocation Methodology

As we determine the resulting allocation, we are extremely concerned that we not take any action which would jeopardize the continued reliability of PECO's T&D system. To that end, we have very carefully reviewed the methodology detailed below to ensure that it will provide for a continued efficient and reliable T&D system as required by the Act, while avoiding impermissible cost allocations prohibited by the Act. The resulting determination is a careful balancing of all factors in this record. A shift or change to one or more factors would require a reexamination of the whole and, quite possibly, dictate a different result. However, we have carefully reviewed this entire record in great detail and are satisfied that the methodology we have adopted strikes the appropriate and necessary balance among the varying interests and statutory requirements for this issue.

Based upon our review of the record, it appears that the methodology and adjustments advocated by the OCA in its surrebuttal testimony, OCA St. No. 4S, will provide a more accurate and appropriate T&D rate than that proposed by PECO. The resulting T&D rate satisfies the statutory rate cap while PECO's first, second or third iterations fail to do so by improperly assigning generation costs to T&D. We agree with OCA witness Lee Smith that PECO's general approach, while a reasonable effort in a very broad and general sense, did not ask the correct question. We also agree with Ms. Smith that PECO's proposal contains a significant error by failing to properly reconcile a credit account in the allocation. OCA St. No. 4S, pp. 4-5.

Our conclusion that this methodology will result in a rate which is closer to the statutory requirement than any of the rates suggested by PECO is born out by PECO's own testimony. PECO witness Cohn responded to a question of whether transmission and distribution rates were unlikely to rise above 2.63 cents per kwh over the next ten years as follows:

> No. First, the 2.63 cent per kwh figure, which is Mr. Reising's estimate, is incorrect. The proper level for T&D costs is 3.11 cents per kwh, as noted in Schedule A of the Partial Settlement and supported in Mr. Clemmer's rebuttal and rejoinder testimony. Second, a comparison of T&D costs included in the Company's initial pilot filing in February 1997 with the current restructuring estimate will provide a guide for expected growth in T&D costs. As shown in Exhibit ABC-12, the T&D cost in the February 1997 filing was 2.60 cents per kwh based upon a 1990 test year. This compares to the 3.11 cents per kwh in the restructuring filing based upon a 1996 test year.

(PECO St. No. 3-RJ, pp. 8-9).

If we can assume that the figure of 2.60 cents per kWh referenced by Mr. Cohn includes the award in PECO's base rate case determined in 1990[50] then that figure would represent the Commission's approved rate in effect on January 1, 1997, after considering any adjustments which have been approved since our order in 1990. Those adjustments would not increase the T&D rate to the level of 3.11 cents. However, after adjusting general and overhead expenses with a proper allocation method, the OCA figure on surrebuttal of 2.93 cents[51] is closer to the statutorily required rate than that proposed by PECO.

The OCA methodology was generally described in its direct testimony as follows:

> A substantial percentage of these costs [A&G] should be allocated to the production function as well. Costs in these accounts are not easily identifiable with particular operating functions. They include salaries and office supplies for personnel in administrative functions such as human resources, legal, or accounting. These activities contribute to the generation function as well as distribution and transmission. Generation planners and marketers make use of these administrative functions and expenses. An appropriate functionalization of these accounts is one based on the total labor costs in each utility function.

OCA St. No. 4, pp. 4-5.

The OCA adopted a labor allocation approach to A&G functions. In 1996, 66% of all directly functionalized labor was in the generation function. Accordingly, the

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[50] We are aware that PECO filed and was awarded an increase in base rates as a result of a single issue filing since 1990. See Order at Docket No. R-00922479 entered December 1, 1994. However, that proceeding did not result in a T&D rate of 3.11 cents. The 2.60 cent rate alluded to by Mr. Cohn is closer to the latest Commission approved T&D rate than 3.11.

[51] OCA Exh. LS-12.

OCA used a 66% allocation factor of A&G expense to generation. OCA St. No. 4, p. 6; OCA St. No. 4S, pp. 2-3.

In determining to adopt the OCA position on surrebuttal, we are mindful that we have not modified PECO's proposed allocations for uncollectibles, customer accounts, customer service and sales. Although several witnesses, notably Mr. Reising and Mr. Mitnik, make strong arguments for unbundling the customer accounts and customer services charges at this time, we will not do so. We also will not alter PECO's treatment of its sales expense. In this context we note that PECO's T&D rates continue to be subject to Chapter 13 of the Public Utility Code and, subject to the Act's rate caps, parties may challenge existing rates. Also, we would expect that as functions continue to be unbundled, PECO's rates may be reexamined to determine if they provide for charges which encompass generation or other unbundled services.

It is equally important to note that PECO's revised proposal has provided for the funding, in part, of its Universal Service program through its uncollectible expense. PECO St. No. 12-R, pp. 11-13; PECO St. No. 14-R. Although we are cognizant that consistent application of the methodology directed herein could also require allocation of a significant portion of the uncollectible expense, we believe that a careful balancing of the interests of the parties and the record in this case permit us to allow PECO's and the OCA's treatment of this expense. However, it is possible that a different result could occur if the balance were altered. At this time, however, we will accept PECO's treatment of the uncollectible expense given its role in the funding of the Universal Service program and the substantial public interest in that program. We are also mindful that Section 2804(9) of the Act, 66 Pa. C.S. §2804(9), requires appropriate funding of Universal Service mechanisms.

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. Exh. LS-12. Several parties assert that this reallocation of expense to generation does not increase PECO's stranded costs or should not be recovered. We disagree. See PECO St. No. 12-R, p. 9; PECO St. No. 1-R. Subject to receipt and review of PECO's compliance filing, we conclude that this will result in an increase to PECO's stranded costs of approximately $460,691,000.[52] This amount is to be included as part of PECO's stranded cost recovery.[53]

The compliance filing must include one final adjustment to the T&D rate resulting from the OCA methodology. Further below in this Opinion and Order, we discuss our adoption of PECO's proposed alternative for funding nuclear decommissioning costs. In that discussion, we provide for an annuity approach which will be collected through regulated rates.

5. Conclusion

In this Section, we have described why PECO's proposed plan must be modified regarding the treatment of Transmission and Distribution rates. We have also provided specific direction to PECO on its allocation methodology to assist PECO in addressing our modification. Accordingly, PECO's compliance tariff is expected to incorporate these modifications.

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[52] In its compliance filing, PECO is directed to remove all return dollars from the A&G expense allocated to production in this Order. OCA Stmt. 4S, Exhibit LS-8, contains items to be presented in PECO's compliance filing on an expense or capitalized basis.

[53] This adjustment of approximately $460,691,000 is included into the stated total of $5.024 billion recoverable stranded costs, but not in the subtotal of $2.679 for stranded generation assets. The accepted compliance filing will establish final numbers.

Finally, PECO's compliance filing must include a T&D revenue requirement and rate structure that will incorporate the adjustments directed herein and, on a rate class or rate schedule basis, provide for the rates directed herein. Transmission and distribution revenues shall be allocated consistent with the methodology for utility plant accepted by the Commission in the Company's 1990 general rate case proceeding, except as clarified in this Order. In this context we specifically note that this cannot be achieved by reference to a system-wide average. Accordingly, we caution PECO to avoid any impermissible cost shifting among and between classes and schedules as it provides for a rate design consistent with our adjustments herein.

D. TRANSITION OR STRANDED COSTS

1. Statutory Directives Concerning the Identification and Recoverability of Stranded Costs.

While the parties advocate various proposals, the Act requires the Commission to determine an amount of stranded cost recovery that is just and reasonable. Section 2804(13) grants the Commission, consistent with the standards in Section 2808, the "power and the duty to approve a Competitive Transition Charge (CTC) for the recovery of transition or stranded costs it determines to be just and reasonable to recover from ratepayers." Section 2804(14) requires the Commission to establish a transition to a competitive market that shall be "orderly, protect electric system reliability, be fair to ratepayers, and provide the investors in Pennsylvania electric utilities with a fair opportunity to fully recover the amount of transition or stranded costs that the

commission determines to be just and reasonable."[54] Thus, the "just and reasonable" standard is applicable to the total authorized stranded cost recovery.

The phrase "just and reasonable" in the provisions of the Act, addressing stranded costs is the same standard that has long been the benchmark in regulated utility ratemaking, provides a substantial body of prior decisions that offer guidance regarding that standard. The meaning of the term "just and reasonable" can be summarized as stated by the Pennsylvania Supreme Court:

> the term "just and reasonable" was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between the prices charged to utility consumers and returns on capital to utility investors consonant with constitutional protections applicable to both.

Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co., 492 Pa.326, 337; 424 A. 2d 1213, 1219 (1980) certiori denied, 454 U.S. 824, 102 S.Ct. 112, 70 L.Ed. 2d 97.

In order to determine the amount of recovery that the Commission finds "just and reasonable," the Commission first must identify the level of stranded costs that actually exist pursuant to the definition of "transition or stranded costs" in Section 2803:

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

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[54] In reaching its determinations of "just and reasonable" stranded cost recovery, the Commission also considers and balances the other "Standards for Restructuring of Electric Industry" in Section 2804 as well as the statutory "Declarations of Policy" included in Section 2802.

competitive electric generation market and which the commission determines will remain following mitigation by the electric utility. This term includes:

(1) Regulatory assets and other deferred charges typically recoverable under current regulatory practice, the unfunded portion of the utility's projected nuclear generating plant decommissioning costs and cost obligation under contracts with nonutility generating projects which have received a commission order, the recoverability of which shall be determined under section 2808(c)(1) (relating to competitive transition charge).

(2) Prudently incurred costs related to cancellation, buyout, buydown or renegotiation of nonutility generating projects consistent with section 527 (relating to cogeneration rules and regulations), the recoverability of which shall be determined pursuant to section 2808(c)(2).

(3) The following costs, the recoverability of which shall be determined pursuant to section 2808(c)(3):

(i) Net plant investments and costs attributable to the utility's existing generation plants and facilities.
(ii) The utility's disposal of spent nuclear fuel.
(iii) The utility's long-term purchase power commitments other than the costs defined in paragraphs (1) and (2).
(iv) Retirement costs attributable to utility's existing generating plants other than the costs defined in paragraph (1).
(v) Other transition costs of the utility, including costs of employee severance, retraining, early retirement, outplacement and related expenses, at reasonable levels, for employees who are affected by changes that occur as a result of the restructuring of the electric industry occasioned by this chapter.

> The term includes any costs attributable to physical plants no longer used and useful because of the transition to retail competition. The term excludes any amounts previously disallowed by the commission as imprudently incurred. To the extent that the recoverability of amounts that are sought to be included as transition or stranded costs are subject to appellate review as of the time of the commission determination, any determination to include such costs shall be reversed to the extent required by the results of that appellate review.

No transmission or distribution costs are recoverable as transition or stranded costs because transmission and distribution will remain monopoly services under regulated rates. Consistent with traditional ratemaking standards, the costs must be "known and measurable." Only "net " transition or stranded costs are recoverable. Any generation related stranded costs must be offset by "negative" stranded costs from the increase in value of other generation related assets. Only "unmitigated" stranded costs are recoverable. The recoverable stranded cost amount must be identified on a "present value" basis as of the date that competition begins, January 1, 1999. Lastly, costs attributable to plants that are no longer used and useful as a result of the transition to competitive generation may be recoverable, but previously disallowed imprudent costs are not recoverable.

If a claim for stranded costs is found to be recoverable stranded costs within the meaning of Section 2803, it must be fully recovered if it is a Section 2808(c)(1) or (2) stranded cost. Section 2808(c)(1) includes regulatory assets and other deferred charges that are not presently included in rates but which the utility is already entitled to recover through future rate adjustments. PECO claims that it is entitled to recover a total $2.272 billion for these costs. PECO previously was granted partial recovery of $373 million for regulatory assets pursuant to the Qualified Rate Order ("QRO") adopted by the Commission on May 22, 1997 following PECO's

"securitization" proceeding. Non-utility generation contracts previously approved by the Commission, as well as prudently incurred costs to cancel or buyout such contracts, are also included in Sections 2808(c)(1) and (2). PECO has indicated that it does not have any stranded costs related to such contracts. Section 2808(c)(1) also includes recovery of the unfunded portion of the utility's projected nuclear generating plant decommissioning costs. PECO claims recovery of $233.8 million for these costs, but also proposed an alternative that results in no stranded nuclear decommissioning costs.

In contrast to Section 2808(c)(1) and (2) claims that are fully recoverable, once a Section 2808(c)(3) claim is proven to exist as a stranded cost within the definition in the Act, the Commission must authorize a "just and reasonable" amount for recovery. In exercising its discretion, Section 2808(c)(4) directs the Commission to consider the extent to which the utility's efforts to mitigate stranded investment have been "reasonable under all of the circumstances, including consideration of whether mitigation has been commensurate with the magnitude" of the utility's stranded costs. The Act imposes a duty on the utility to mitigate stranded costs "to the extent practicable." Section 2808(c)(5) requires "equal consideration" of the utility's "efforts undertaken over time.....to reduce or moderate rate levels" prior to the adoption of the Act.

PECO's claim for recovery of Section 2808(c)(3) stranded costs includes $4.484 billion for utility generation plant. PECO previously was granted partial recovery of $607 million for recovery of these costs pursuant to the May 22, 1997 QRO. Pursuant to Section 2808(c)(3), PECO also claims recovery of $126.9 million for future fossil plant decommissioning, $25 million for consumer education, and $8 million in other transition costs.

In summary, in order to recover each component of the requested amount, PECO has the burden to prove, based on substantial evidence in the record, that each request would recover the net present value of the unmitigated, net, known and measurable generation related expense within the definition of stranded costs. PECO has the burden to prove that such costs would have been recoverable under traditional regulation but will not be recoverable in a competitive market. Once identified as appropriately recoverable stranded costs, the Commission must determine a just and reasonable amount authorized for recovery.

2. PECO's Claims for Stranded Cost Recovery

a. Regulatory Assets

i. Deferred SFAS 109 Taxes.

PECO claims $1.687 billion for deferred taxes on its books pursuant to SFAS 109. The Commission did not include any recovery for this claim in the May 22, 1997 QRO decision, deferring consideration until this proceeding.

PECO has recorded a deferred tax liability for tax timing differences related to tax and ratemaking depreciation. More specifically, under SFAS 71, a regulatory asset was created which was equal to the deferred tax liability related to depreciation, because under cost-based ratemaking the utility would be entitled to recover the future tax costs in future rates.

The regulatory asset is based upon several tax components where the flow through method had previously been ordered by the Commission. These include Pennsylvania CNI taxes and federal income taxes for pre-ACRS property. When the Commission allowed the flow through of tax depreciation resulting in lower taxes to be

paid in those years by ratepayers, it recognized that the tax liability would be higher for those specific assets in future years. As such, the regulatory asset was properly created and should become a specific component of those regulatory assets to be a part of the stranded cost of the utility.

Another tax component relates to pensions, benefits and taxes that are capitalized as part of the original cost of utility plant for book purposes, but deducted for tax purposes. Under cost-based regulation, the depreciation expense related to this element of original cost would not be used for ratemaking income taxes but treated as income. PECO could then recover the tax liability on it over the life of the asset. It is, therefore, also appropriate to allow it as a component of the regulatory assets to be recovered through this proceeding.

SFAS 109 also required the Company to create a deferred tax liability equal to the income tax deduction reflected by the net-of-tax debt component of the AFUDC plus the unrecorded income tax on the equity component of the AFUDC. A regulatory asset was properly created under SFAS 109, which would be recoverable in future rates under normal ratemaking. It is appropriate to allow the regulatory asset to be recovered through this proceeding.

PECO has presented the testimony of witnesses Cohn, McKnight, Warren and Sharpe to support the recovery of the nominal balance of $1,687.069 through straight-line amortization over the 7-year transition period. The parties generally agree that PECO is entitled to recover SFAS 109 deferred taxes as a regulatory asset. PAIEUG witness Kollen and OCA witness Catlin have argued that PECO's claim is overstated because Section 2808 requires that all stranded costs be quantified on a net present value basis. We agree with Mr. Kollen that the Act is clear on this point, and that the proper

recovery amount as of December 31, 1998, is the net present value of the taxes considering the time period and pattern of actual payment to the taxing authorities and recovery from consumers, as would be the case under traditional regulation. However, we cannot conclude that Mr. Kollen has documented that PECO's claim overcollects the regulatory asset. In rebuttal testimony, Mr. Cohn (PECO Stmt. 3-R) and Mr. Warren (PECO Stmt. 9-R) assert that Mr. Kollen has not considered that the actual due dates of the deferred taxes will be accelerated to match the accelerated recovery through a CTC.

We grant PECO's total regulatory asset for SFAS 109 of $1.687 billion.

ii. Deferred Fuel Expenses

The Energy Cost Adjustment ("ECA") is a mechanism pursuant to Section 1307 designed to pass through any underrecovery or overrecovery of revenues due to fluctuations in energy costs. Once existing rates are unbundled and consumers may choose a competitive generation supplier, the ECA will have outlived its usefulness. By Order adopted May 8, 1997,[55] the Commission allowed PECO to eliminate its ECA and roll the amount being collected pursuant to the ECA into base rates. The same Order granted PECO's request to eliminate its "Limerick Settlement Adjustment" that permitted PECO to retain a portion of future energy cost savings related to off-system power sales and the performance of Limerick 2. In approving the roll-in of variable energy costs into base rates in May, the Commission emphasized that a determination of the right to recovery and the amount of recovery, if any, was to be deferred to PECO's restructuring proceeding. PECO has made two claims for stranded cost recovery as a result of the roll-in of the ECA into base rates.

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[55] Docket Nos. P-00961126; R-00963838.

PECO claims as a regulatory asset $69.7 million of deferred fuel costs and $22.3 million for its nuclear performance incentive actually recognized on the company's books for the period ending 12/31/96 when the ECA was rolled into base rates. No party disputes PECO's right to recover this claimed stranded cost that previously was approved by the Commission in the May 22, 1997 QRO Order. In the QRO Order, the Commission granted interest to the net present value date of 12/31/98. Since the QRO Order is irrevocable, the same amount should be granted in this proceeding.

PECO also claims recovery of $22.0 million for annual deferred fuel expense through 12/31/98 when competition begins and of $22.7 million annually through December 31, 2005. This claim is to recover "the amount by which the Company's average energy costs rolled into base rates from its ECA understated its projected energy costs for the 9-year period from January 1, 1997 to December 31, 2005."

PAIEUG witness Kollen and OCA witness Catlin and La Capra agree with PECO that fuel expenses through December 31, 1998 reflect a potentially unrecovered cost because there no longer will be an ECA adjustment in which to reconcile PECO's actual fuel costs thereafter. However, both witnesses Kollen and La Capra conclude that the ECA permits recovery only based on actual experience and documentation of such costs. Under traditional ratemaking, the ECA cannot grant with finality any future anticipated fuel cost. At this point in time, there is no "known and measurable" fuel cost since the expenses have not yet been incurred. As under traditional ratemaking, PECO cannot claim that it would have collected any specific amount of increased fuel costs in the future. Thus, undetermined future expenses cannot qualify as recoverable stranded costs under the Act. We agree with these arguments that the Commission has no statutory basis for allowing recovery of unknown, future fuel costs, and the claim must be denied.

In addition, PECO's claim for recovery of fuel costs from January 1, 1999 through December 31, 2005 must be denied because it is the market that will determine the amount of generation costs, including fuel costs, that will be recovered during this period. Fuel costs are an important component of the future value of generating plants and have been considered in determining the amount of PECO's generation plant that will be stranded.

Lastly, it is appropriate to recognize that Section 2804(4)(iii)(D) provides an exception to the rate cap for customers purchasing generation from PECO if there are significant increases in fuel costs outside of the utility's control that would not allow the utility to earn a fair rate of return. In addition, Section 2804(4)(v) provides that when a utility rolls its ECA into base rates in compliance with the rate cap, and then experiences excess earnings within its capped rates, the utility may retain such excess earnings rather than being subject to a rate reduction if the Commission determines that the excess earnings are being used to either mitigate transition costs or cover known and measurable cost increases not included within the capped rates. Certainly, neither of these contingencies are applicable at this time, but the existence of these options protects PECO from loss due to future increases in fuel costs to serve its regulated customers. The existence of these statutory protections for PECO further supports our conclusion that unknown, future fuel costs are not recoverable stranded costs.

iii. SFAS 106 Deferred Costs.

PECO claims recovery of two SFAS 106 regulatory assets. The first claim is for $32.615 million for the unamortized balance of certain 1993 and 1994 deferrals. The Commission granted deferred recovery of this regulatory asset pursuant to a

settlement approved on October 19, 1994.[56] No party disputes PECO's right to stranded cost recovery for these deferred expenses. PECO's claim for recovery as a stranded regulatory asset therefore should be approved.

However, PAIEUG witness Kollen properly notes that PECO quantifies this regulatory asset on a nominal dollar basis, although Section 2803 requires that all stranded costs be determined on a net present value basis. We agree with Mr. Kollen that the claim must be quantified on a net present value basis, result in a recoverable principal amount of $20.394 million as of 12/31/98.

The remainder of PECO's SFAS 106 claim is for $67.965 million related to 1994 retirement incentive programs. PECO claims that these costs are recoverable stranded regulatory assets, because they never previously have been included in rates recoverable from ratepayers.

PAIEUG witness Kollen argues, however, that PECO never sought to include these 1994 expenses in rates and never sought any Commission authority to record a regulatory asset for this expense, even though PECO had identified the expense prior to the settlement of the foregoing SFAS 106 claim. Under traditional ratemaking, PECO would not be permitted to recover its claim at this time because it would be a one-time, non-recurring 1994 expense. Witness Kollen argues that recovery of this item as a regulatory asset would be inappropriate single-item and retroactive ratemaking. Moreover, he argues that the employees who retired pursuant to the retirement incentive programs have indeed provided PECO with savings that exceed the costs of the programs, and that the avoided expenses have never been taken out of rates.[57] Witness Kollen

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[56] Docket No. R-00922479.

[57] Witness Kollen estimates this amount as at least $100 million annually, based on the Company's 1995 10-K filing.

submits that generally accepted accounting principles required PECO to write off this amount in past years, but PECO did not do so.

We agree that PECO would not now be permitted to recover this claim for 1994 expenses under traditional ratemaking and that the claim does not represent a recoverable regulatory asset.

iv. Compensated Absences.

PECO claims $16.587 million for compensated absences as a regulatory asset. The claim reflects vacation time and similar benefits that employees have earned but not yet used. Navy witness Smith cites PECO's response to OTS-RE-3 and concludes that PECO does not presently record compensated absences as regulatory expenses and that the expense therefore does not qualify for stranded cost recovery.[58] In the rebuttal testimony of Mr. Cohn, PECO indicates that it does in fact record unused compensated absences on its books as a regulatory asset.[59]

We therefore agree that the requested amount is appropriately recoverable as a regulatory asset, because it is associated with prior service that would be recovered under traditional ratemaking.

v. Limerick Early Window Deferred Costs

The Commission previously granted PECO the authority to defer recovery of Limerick early window costs.[60] No party has disputed the appropriate recovery of

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58 Navy Stmt. No.1, pp.17-18

59 PECO Stmt. No. 3-R, p. 23

60 Commission Order entered May 3, 1989, at Docket No. P-00890349.

Limerick early window deferred costs, although PAIEUG witness Kollen argues that the recoverable amount must be a net present value, as required by Section 2803. PECO inappropriately includes the nominal amount of such costs in its claim. We agree that Section 2803 requires all stranded costs to be stated on a net present value basis.

We therefore adopt witness Kollen's adjustment of PECO's nominal claim for $86.3 million to a net present value of $65.446 million.

vi. Miscellaneous Nuclear Regulatory Asset Claims.

PECO claims recovery of $28.852 million in nuclear design basis documentation costs and $6.692 million for Peach Bottom and Limerick Water Chemistry System Project costs. We agree with Navy witness Smith, OCA witness Catlin, and PAIEUG witness Kollen that these costs are not recoverable regulatory assets, because they were incurred in prior years; they have never been included in rates; and PECO never sought or obtained Commission approval of future recovery of these costs through rates.[61] PECO has not provided substantial evidence to support its claim that these prior costs would ever be recovered under traditional ratemaking.

We therefore deny PECO's claim that $35.544 million of PECO's costs for these expenses are recoverable stranded costs.

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[61] FERC granted accounting approval of these costs but never approved rate recovery from consumers. FERC's accounting approval required the company to write-off any portion not allowed for ratemaking.

vii. Other Recoverable Regulatory Assets

PECO requests recovery of three other regulatory assets that the Commission previously approved in our May 22, 1997 QRO decision. These include: (1) Deferred Limerick Common Plant in the amount of $175.8 million, (2) Deferred Eddystone, Peach Bottom, and Salem Common Plant in the amount of $17.4 million, and (3) Unamortized loss on reacquired debt in the amount of $158.3 million.

These amounts are all approved for recovery.

viii. Offsetting Regulatory Liabilities

PECO has not included in its proposal any recognition of its regulatory liability related to overfunding by ratepayers of PECO's pension funds. Consumers pay for pensions as part of the company's labor expense. PAIEUG witness Kollen documents that PECO's pension plans are overfunded by an amount of $217.347 million at 12/31/98. Mr. Kollen and Navy witness Smith convincingly demonstrate that the overfunded pension expense is a regulatory liability that was funded by consumers and must be "netted" with other regulatory assets being granted to PECO in this proceeding.

If these overcollections and related earnings are not credited to ratepayers now, they will escape any true-up or reconciliation which would have occurred under traditional cost-based regulation. Customers would never be recompensed. We must create an offsetting liability to be paid to ratepayers. We therefore adopt the recommended adjustment.

PAIEUG witness Kollen also has identified a regulatory liability for SFAS 106 trust fund earnings.[62] These earnings represent amounts recovered from ratepayers prior to the Company's associated cash expense. According to witness Kollen, PECO continued to overcollect from ratepayers even after the overfunding became apparent and contributions to the fund were reduced. Under traditional ratemaking, consumers would receive credit against future expenses for these earnings. As such, they should be treated as a regulatory liability at this time. Since generation will no longer be under traditional cost-based regulation, customers would lose these credits if we did not allow them in this proceeding. Mr. Kollen calculated this amount as $150.861 million, and we adopt his adjustment.

b. Non-Utility Generation Contracts

PECO does not claim any stranded costs related to non-utility generation contracts or existing Purchased Power Contracts because its contracts generally require market pricing. PECO asserts, and no party introduced any evidence in the record to the contrary, that PECO's existing purchased power commitments are not above projected market prices and therefore do not expose the company to any related stranded costs. Thus, the Commission finds that PECO incurs no stranded costs related to NUG or other Purchased Power contracts.

We note that OCA witness La Capra testified that some of PECO's existing Power Purchase contracts may in fact be below market prices, yielding PECO with a negative stranded cost that could and should be "netted" against other generation related stranded costs incurred by PECO. There is not, however, any evidence in the record concerning the actual contract prices, so no adjustment is appropriate.

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[62] PAIEUG Stmt. No. 3, pp.31-34.

c. Nuclear Decommissioning Expense.

Under traditional regulation, consumers contribute to a nuclear decommissioning trust fund to ensure that the full amount necessary to decommission a nuclear plant is available. PECO claims $233.8 million for underrecovery through 12/31/98 for the nuclear decommissioning expense, reflecting PECO's ownership in Limerick 1 and 2, Peach Bottom 1, 2 and 3, and Salem 1 and 2. We agree with PECO's basic proposal that consumers should be responsible to fund that portion of nuclear decommissioning expense associated with the period in which the plants were in service to the public, through January 1, 1999.[63] Similarly, we agree with PECO's proposal that it, or its affiliate or future owners of each plant, should be responsible for that portion of the decommissioning cost related to its remaining useful life. Post-1998 decommissioning expenses are properly reflected as a future operating expense that affects the market value of the plants.

PECO bases its claim for underrecovery of nuclear decommissioning costs on its most recent projection of the timing and expense of decommissioning the plants and the contributions made by consumers to the decommissioning trust fund to date, based on the testimony of witness LaGuardia, although PECO proposes several modifications that are reasonable. PECO proposes two methods for recovering these costs.

First, PECO identifies recovery of nuclear decommissioning expenses as a stranded cost. If this approach is used, PECO indicates an existing underrecovery of

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[63] PECO Stmt. No. 3 at 13.

$233.8 million through 12/31/98.[64] In addition, PAIEUG witness Kollen argues that decommissioning expenses will not all exist on the first day of decommissioning, such that the trust fund will continue to accrue earnings until fully spent.[65] We agree that such earnings should be credited to consumers if the stranded cost approach is adopted.[66]

However, we prefer to adopt PECO's alternative approach to fund nuclear decommissioning expense. PECO witness Cohn,[67] Navy witness Smith,[68] and PAIEUG witness Kollen[69] all express concern that recovery of nuclear decommissioning expense as a stranded cost may preclude favorable IRS and NRC treatment. They are concerned that contributions to the fund may not be qualified contributions for direct deposit, receiving favorable tax treatment. In addition, trust fund earnings could be taxed at a higher rate. PECO suggests, and the other witnesses agree, that the tax benefits can be retained if contributions are considered as annuities collected through regulated rates. PECO has indicated that annual contributions of $22.7 million as an annuity payment to the trust fund would provide for full funding.[70]

We therefore adopt the annuity approach. PECO agrees that it does not need to request any recovery of stranded costs related to underfunding of nuclear decommissioning expense with this approach. Instead, PECO will continue to collect

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64 This is a revised amount based on PECO's acceptance, through the rebuttal testimony of Mr. Cohn, that PECO mistakenly failed to include trust fund earnings of $2.918 million through 12/31/98. PECO St. 3-R. This revision is based on PAIEUG witness Kollen's testimony. PAIEUG, St. 3.

65 Mr. Kollen has calculated a net present value of these additional earnings of $32.940 million.

66 This adjustment is consistent with Commission precedent, most recently adopted in the 1994 PP&L rate case at Docket No. R-943271.

67 PECO Stmt. No. 3 at 13-14.

68 Navy Stmt. No. 1 at 23; Navy Stmt. No. 1-R at 13.

69 PAIEUG Stmt. No. 3 at 47, PAIEUG Stmt. No. 3S at 20-21.

70 PECO Stmt. No. 3 at 16, No. 3-R at 26; Navy Stmt. 1 at 23.

$22.7 million annually as a regulated cost of service rate. Since an almost identical amount already is included in rates, there is no net rate effect. We adopt this approach because it utilizes tax benefits to fund nuclear decommissioning expense in full while requiring a lower annual consumer contribution.

d. Stranded Costs Recovery Pursuant to Section 2808(3)

i. Utility Generation

a. Methodology

PECO claims a total book value of $6.688 billion in generation assets and that $3.825 billion of those assets will be stranded. The amount of utility generation plant investment that will be stranded is the net difference between the depreciated value of the investment on the company's books as of 12/31/98 and the future market value of those assets. Thus, it is necessary to determine the book value of PECO's generating assets as of 12/31/98 and compare that value to its value upon restructuring.[71]

b. Present book value

We generally accept PECO's documentation of the depreciated value of the company's generation plant on its books based on PECO witness Cohn's testimony. However, two adjustments are appropriate, as described below, resulting in a total book value as of 12/31/98 of $ 6.639 billion.

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[71] We agree with PAIEUG witness Falkenberg that a "lost revenues" approach to stranded cost recovery is inappropriate. He notes that even under traditional regulation, a utility never had the expectation of guaranteed future revenues. Instead, traditional regulation sought to provide a reasonable opportunity to earn a just and reasonable return on investment. While future revenues are an important component of the future value of utility generation assets, they do not directly determine the amount of recoverable stranded utility plant.

1. Plant no longer used and useful

We agree with the OCA witness La Capra that $35.419 million of generation assets carried on the company's books, although they are no longer used and useful are inappropriately included by PECO in its determination of book value of utility generation.[72] We agree with OCA witness La Capra that this amount is not part of PECO's generation plant in service as of 12/31/98 and should be excluded from PECO's claim. PECO's rebuttal testimony does not successfully demonstrate that this amount is recoverable plant in service as of December 21, 1998.

2. Future Capital Additions

In determining the book value of its generating plant as of 12/31/98, PECO includes planned capital improvements. Navy witness Smith agrees with PECO that future capital additions made before 1/1/99 that are necessary to maintain the plant through the end of the transition period are appropriately added to the book value of net plant as of 12/31/98. Witness Smith also argues that capital additions made prior to 12/31/98 that are not necessary for ongoing maintenance of the plant but instead serve to improve future competitiveness are not appropriately considered as part of the recoverable book value. He argues that the mitigation requirements in Section 2808 specify the minimization of future capital spending and that permitting such recovery would be an anti-competitive subsidy of PECO's future competitiveness in the market funded by captive ratepayers. In its response to PAIEUG IV-2(b), PECO identifies several capital projects as "upgrades" or "improvements."

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[72] Exhibit RLC-2, p. 2.

The record in this proceeding does not identify any specific capital improvement as unnecessary to maintain the proper functioning of the asset through the transition period. Therefore, no adjustment is appropriate.

Mr. Smith also documents a PECO history of overbudgeting capital expenditures by at least a 5% average amount over the last 10 years Since the capital expenditures at issue are future expenditures based on budgetary projections, we accept the recommendation of Mr. Smith to exclude 5% of the budgeted capital additions to reflect a more reasonable likely expenditure based on PECO's past history of overbudgeting future capital improvements. This adjustment reduces PECO generation asset book value as of 12/31/98 by $14 million.

c. The future value in a competitive environment

Next, the Commission must adopt a determination of the future market value of PECO's generating plant as of 12/31/98 to determine the amount of the book value of its assets that will be stranded. A lower market value produces a higher determination of stranded costs. As the Environmentalists have summarized in their Brief, "the market value estimate involves 30+ year projections of every important variable in the business, including electricity prices (expressed on an hourly basis), customer consumption and demand, the hourly output of all its generating plants, and the O&M and capital costs."[73] The Commission has the responsibility to consider all of the objective information provided by the parties in this proceeding as well as the

[73] Environmentalists' Brief at 12.

assumptions and other judgments made by those parties in order to assess their credibility and reach an informed judgment.[74]

PECO presents three witnesses with estimations of the future market value of PECO's generating assets. In its Restructuring Plan, PECO indicates that its request for utility generation stranded cost is based on witness Hieronymus' (a/k/a PHB analysis) estimation that values its generation assets at $2.86 billion.[75] PECO also presented the testimony of witness Bustard (a/k/a EDS analysis), who initially proposed a market valuation of $3.48 billion, and witness Venkateshwara (a/k/a ICF analysis) who initially estimated the market value at $3.65 billion.[76]

PECO witness Hieronymus revised his initial market value estimate of $2.86 billion downward to $2.303 billion in his rebuttal testimony and then again to $1.865 billion in his surrebutal testimony.[77] We agree with PAIEUG witness Falkenberg and OCA witness Smith that PECO's claim for $2.86 billion in stranded cost recovery based upon witness Hieronymus' estimates is not reasonable. As Mr. Falkenberg testifies:

> The revisions made by Dr. Hieronymus at this time marked the third enormous set of corrections to this modeling effort. Recall that in the rebuttal phase of the QRO, Dr. Hieronymus

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[74] All of the witnesses base their recommendations concerning the market valuation of PECO's assets primarily on the "net margin" to be derived from each plant, although they acknowledge that other less-quantifiable factors also affect the future market value of a plant.

[75] Direct testimony of witness Hill , PECO Stmt. 1 at 14.

[76] As noted by the Environmentalists in their Brief at 8, PECO's QRO application in January, included a market value estimate of $2.568 billion, revised to $2.948 billion in March, 1997.

[77] PECO did not revise the dollar value of its stranded cost claim as a result of the changes in witness Hieronymus' valuation, however. Hill Rebuttal, PECO Stmt. 1-S at 19-21.

> entered a correction to his study of roughly $400 million. At the time, Dr. Hieronymus admitted he was uncertain whether that was a complete correction. In his direct testimony in this proceeding, Dr. Hieronymus completed his correction of the error in the expansion of his MAPS model and also corrected his nuclear capacity factor assumption. That amounted to an additional $900 million in market value. However, he offset those legitimate corrections with a new set of unjustifiable assumptions on capacity prices that lowered the market value by approximately $500 million. He has now admitted to another $515 million in new errors (largely the understated capacity costs) but, once again, offset these with a new fuel price forecast. In addition, just as in the QRO phase, I do not believe Dr. Hieronymus has actually gone the full distance to correct his errors. However, at this point, I question whether there is any benefit in further analysis of (his) study. In the past, anytime an error has been justified, Dr. Hieronymus apparently offers a partial correction, then adjusts another unrelated assumption.[78]

While we do not agree with each and every criticism, we do agree with the overall conclusions of witnesses Falkenberg and Smith that all three of the PECO market valuation studies are seriously flawed. These flaws are evident from the frequently changing and substantially differing results obtained. We cannot accept that such adjustments are derived from finely-tuned accuracy, as PECO suggests. The assertion that their models were in fact more reliable because of the level of detail is undermined by the significantly varied results obtained. As Mr. Falkenberg testified:

> ....nearly all of the most crucial input data used by PECO's experts is either wrong, biased, inconsistent with other figures from the same source, or highly suspect. The models appear no better and produce results which are contrary to actual experience or demonstrably unreliable. The PUC simply cannot have any confidence in the PHB or EDS studies.[79]

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78 Falkenberg Surrebuttal testimony, PAIEUG Stmt. at 41.

79 PAIEUG Stmt. No. 2 at 89.

As OCA witness Smith testified, "the generation market price analysis upon which the Company's estimates of stranded generation costs relies is methodologically flawed, and systematically understates the likely energy price in the energy market."

PAIEUG witness Falkenberg and OCA witness Smith document numerous specific flaws in witnesses Hieronymus' and Bustard's methodology.[80] We discuss several of these flaws that lead us to conclude that it would be unreasonable to utilize the Hieronymus and Bustard models as substantial evidence supporting PECO's claim for stranded cost recovery.

Witness Hieronymus acknowledges that certain plants "must run" for operational reasons and in fact will run based on the market, although his market revenue projections indicate that it will not be economic for these plants in fact to operate. As witness Smith responded:

> Dr. Hieromymus identified this problem of "negative cost recovery" and he expects that the problem will be resolved either through pool rules or **through generating unit owners increasing their bid prices** compared to the incremental prices reflected in his analysis. Importantly, Dr. Hieronymus's analysis does not address this latter possibility. If we assume (as Dr. Hieronymus has) that the solution will be a set of pool rules that assign uplift charges only to generating units that fail to recover their variable costs, then the resulting energy price signal will systematically understate the market's decremental cost of energy production. Rather than assuming an awkward uplift payment process that yields an economically inefficient price signal, it is appropriate to assume that affected generating units will increase their energy bids to levels that are sufficient to cover their variable

[80] Even PECO/ICF witness Venkateshwara undermines the testimony of the other PECO witnesses by using a different approach more similar to that of witnesses Smith and Falkenberg.

> costs. PECO witness Venketeshwara has utilized this approach in his analysis, and I will utilize it in my own market price analysis.....a large fraction of the projected uplift charges are attributable to (this) situation (economic dispatch), and Dr. Hieromymus' market energy price projection is significantly understated.[81]

We agree with OCA witness Smith that witness Hieronymus' assumption and explanation do not address the underlying error in his forecast that would provide generation prices so low that even necessary generation would not run.

Witness Falkenberg noted that PECO's Eddystone 3 and 4 units never run under one of witness Bustard's scenarios and barely run under another of his scenarios. Yet, witness Falkenberg notes that over 14,000 MW of PJM capacity has higher running costs than Eddystone 3 and 4. Therefore, he concludes, "the EDS model is predicting that somehow PJM utilities will serve loads with nearly 30% of all capacity idle for the next 30 years. There is no explanation for this anomaly."[82]

As witness Falkenberg explains, the PECO "forecasts do not make sense relative to historical data, given the increasing fuel prices that the Company is using."[83] Witness Falkenberg demonstrates the unreasonableness of witness Hieronymus' prediction that market prices are falling in both real and nominal terms, despite the rise in fuel costs predicted by PECO. Witness Bustard's projection that market prices will increase 2.4% from 1995 to 1999 is only marginally more consistent with his fuel price predictions. No evidence in the record suggests that the other costs to produce electricity,

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81 OCA Stmt. 2 at 6-8 (emphasis in the original).

82 PAIEUG Stmt. 2S at 26.

83 Falkenberg Surrebuttal at 62.

such as capital, operations and maintenance, or taxes, are falling in either real or nominal terms.

Thus, we must conclude that neither witnesses Hieronymus nor Bustard provides reasonable testimony upon which we can make a decision. PECO's third witness, Mr. Venkateshwara (ICF), provides stronger testimony. However, we conclude that it cannot provide the basis for our decision in this proceeding without some of the modifications suggested by other witnesses in this proceeding.[84]

Moreover, PECO replaced ICF witness Venkateshwara with witness Rose beginning with the rebuttal round of testimony. Witness Rose replaced ICF's own fuel forecast prices initially presented by witness Venkateshwara with the lower fuel price estimates issued in the spring, 1997 forecasts by DRI. While we make no finding that either fuel forecast is more reliable than the other, we do conclude that the inadequately explained change casts doubt on the ICF recommendation presented through witness Rose. As witness Falkenberg concluded, the change is an example of "the ephemeral nature of PECO's increasingly results oriented assumptions." [85]

We have reviewed the record concerning this issue in extraordinary detail in order to make a factual finding of the future market value of PECO's generating assets that is supported by the evidence. Our conclusion requires the exercise of judgment based on the evidentiary record.

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[84] We consider witness Venkateshwara's testimony, as modified by the recommendations of other witnesses, useful as a diagnostic "check" on the reasonableness of our resolution of this issue.

[85] PAIEUG Stmt. 2S at 64.

Though there is no single proposal that we find completely convincing on every component of its analysis, we adopt the testimony of OCA witness Smith as the most reasonable determination of future market value in the record and therefore determine a market value of PECO's stranded generation plants of $ 3.96 billion as of 12/31/98. Witness Smith's testimony is the most credible, and least criticized of any of the other market value witnesses, and produces a result approximately midway between the other two most credible models. We are also convinced that witness Smith performed an objective analysis of the issues in this proceeding, a task that the Commission believes no other party truly performed. As he testified:

> My analysis is intended to assist the Commission by providing a balanced, non-utility perspective on generation market issues. My general approach in developing assumptions and methods used in the analysis was not, however, to develop a high bound or "counter" to the Company's analysis. As shown in my discussion of the costs and carrying charges associated with new generating units, I have sought a reasonable expected value outcome on each issue. I believe that I have chosen assumptions that have equal likelihood of being above or below the actual outcome.[86]

Witness Smith provided further evidence of the reasonableness of his recommendations and his overall credibility by not adjusting PECO's treatment of nuclear capacity factors and reserve requirements in a way that increases stranded cost recovery. Witness Smith did not recommend any adjustments to PECO's proposals even though adjustments would have reduced PECO's stranded cost recovery significantly and would have been consistent with his credible testimony in the May 22, 1997 QRO proceeding.[87]

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[86] OCA Stmt. 2 at 26.

[87] The entire record of the QRO proceeding was admitted into the record of this case as IPL Exhibit 2.

In this proceeding, PECO assumed a reserve requirement of 18% and nuclear capacity factors consistent with industry averages, just as it did in the QRO proceeding.[88] In the QRO proceeding, the OCA argued that there was no factual basis for an 18% reserve requirement based either on PJM's historic or announced future requirements.[89] In the QRO proceeding, tbe OCA calculated that use of PECO's own actual nuclear performance factors instead of industry averages would reduce stranded cost recovery by $643 million.[90] We conclude that this discussion reaffirms our view that witness Smith recommended the most broadly reasonable result rather than advocating in every case an approach that would minimize stranded cost recovery by PECO.

The general "contribution margin" methodology used by witness Smith has not been challenged by any party, and no party opposes the model used by witness Smith. PAIEUG witness Falkenberg did not object to witness Smith's use of the ENPRO model, and PECO Witness Bustard testified that "the ENPRO model appears to be an adequate model for projecting market value."[91] The Commission is familiar with the ENPRO model and perceives it to be quite suitable to the task of estimating the generation market revenues for PECO.

We find that witness Smith's model fairly represents several other important matters such as unit commitment, NUG operations, fuel prices, imports and exports, and heat rates. The rebuttal testimony of PECO witness Hieronymus and Bustard and the surrebuttal testimony of witness Smith and PAIEUG witness Falkenberg leads us to conclude that witness Smith's testimony is the most reasonable presented in

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88 PECO Stmt. No. 7 at 11.

89 OCA M.B. at 33 (QRO proceeding).

90 OCA M.B. at 35 (QRO proceeding).

91 Rebuttal testimony of witness Bustard, PECO Stmt. No. 4-R at 24.

the record of this proceeding. PECO witness Bustard indicates that witness Smith's capacity value projection "is relatively consistent with the projections of the three PECO models."[92] Witness Bustard indicates that witness Smith's all hours market value for energy is 9% higher than the three PECO projections when levelized over the period 1999 through 2015. We accept witness Smith's explanation that most of the difference is due to "differences in our input assumptions such as capital costs, O&M costs, and energy price."[93] In addition, we agree with witness Smith's approach to fuel use by dual fuel units, the cost of new generation, and the use of average heat rates. Lastly, we accept witness Smith's discount rate of 7.6% for this purpose as the most reasonable in the record. It is approximately the same as the 7.53% adopted by the Commission in our May, 1997 QRO decision and was also recommended by PAIEUG Witnesses Kollen and Falkenberg in this proceeding.

In adopting witness Smith's proposals, we emphasize that we are not adopting each and every assumption and input, however. We find substantial merit in several of the specific considerations utilized by witnesses Venkashwatara and Falkenberg and find that witness Smith's result best balances all of our considerations.

d. Summary of Net Stranded Utility Generation.

Applying the foregoing principles, we find that PECO's book value of generation assets is $6.639 billion. We conclude that these assets will have a market value of $3.96 billion, resulting in a total stranded cost of utility generation of

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92 Id.

93 Surrebuttal testimony of witness Smith, OCA Stmt. No. 2S at 5.

$2.679 billion.[94] This is the amount of utility generation assets that must be considered for "just and reasonable" recovery.[95]

ii. Fossil Decommissioning Expense

PECO claims recovery of $126.6 million in stranded costs for future fossil decommissioning expenses. The definition of "transition or stranded costs" in Section 2803 of the Act includes "retirement costs attributable to the utility's existing generation plants" other than nuclear decommissioning costs as a potentially recoverable stranded cost within the Commission's discretion under Section 2808(c)(3).

However, the Commission finds that PECO's claim for separate recovery of future costs related to fossil plant decommissioning expenses cannot be approved, because future or prospective fossil plant decommissioning expenses are not traditionally recognized in rates in Pennsylvania.[96]

Under traditional regulation, consumers do not necessarily pay any cost for fossil decommissioning, even when decommissioning actually occurs. No determination would be made by the Commission until the plant was in fact retired and the net salvage value can be determined. The net salvage value, whether positive or negative, would be included in the company's revenue requirement at the time. Thus, if PECO were claiming a decommissioning expense for a present fossil plant retirement, we could

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[94] In the compliance filing, PECO is directed to adjust this amount to reflect the proper allocation of certain generation expenses that have been excluded from T&D expenses, as discussed in Section IV-C.

[95] This amount includes the 607 million previously authorized for stranded cost recovery of utility generation in the May 22, 1997 QRO.

[96] Penn Sheraton Hotel, Co., v. Pa. PUC, 198 Pa. Superior Ct. 618, 184 A.2d. 324 (Pa. Super. 1962).

determine the net retirement cost of the plant, including both decommissioning expense and net salvage value. However, PECO presents no such claim.

Prospective fossil decommissioning expenses are not recoverable under traditional ratemaking or as a stranded cost, because they are not "known and measurable" without a specific plan to decommission a particular plant at a particular time and in a particular manner. At this point in time, the record contains no evidence that any particular existing fossil plant will in fact have to be decommissioned at all, when such decommissioning might occur, the extent of decommissioning that will be required, the future use of the plant and its site, or the cost of the decommissioning found to be needed. At this point in time, no one knows whether a generation plant will require total dismantling to "greenfield" status or some other less expensive level of dismantling. Depending on the future use, existing plants connected to the transmission system and their sites may have significant residual "salvage" value, partly offsetting, or even surpassing any cost of decommissioning.

For these reasons, we agree with the recommendation of Navy witness Smith, OCA witnesses La Capra and Catlin, and PAIEUG witness Kollen that PECO's proposed recovery of potential fossil decommissioning costs does not meet the statutory definition of recoverable stranded costs and must be denied.

iii. Other Utility Transition Costs

PECO claims $25 million in transition costs for consumer education and an additional $8 million for legal and other expenses related to its restructuring filings.

PECO claims no transition costs related to employee severance, retraining or other expenses that may be required as it makes the transition to a competitive generation market[97]. PECO indicates that it has already made such adjustments in order to become more efficient prior to adoption of the Act, and that it recovered such costs in the regulated rates that it continues to collect. Under these circumstances, we agree that PECO should not recover any additional transition costs for this item.

No party challenges PECO's claim, and we approve recovery of these costs.

e. Just and Reasonable Recovery

Section 2804(14) requires the Commission to determine a total amount of stranded cost recovery that is "just and reasonable." Section 2808 provides that it is just and reasonable to permit full recovery of Section 2808(c)(1) and (2) costs if the claims otherwise qualify pursuant to the standards of recoverable stranded costs. PECO is entitled to recovery of $1.851 billion for this category of stranded investment. Section 2808(3), (4) and (5) require the Commission to use its discretion to determine an amount of recoverable utility stranded investment and other transition costs that result in a "just and reasonable" total amount of stranded cost recovery for PECO.

Section 2808 provides some additional guidance. Section 2808(c)(4) imposes on the utility "the duty to mitigate generation-related transition or stranded costs to the extent practicable." The same section requires that "the Commission shall consider the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs by appropriate means in a manner that is reasonable under all of the circumstances, including whether mitigation has been commensurate with

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[97] Direct testimony of witness Hill, PECO Stmt. 1 at 41.

the magnitude" of the stranded costs. Second, Section 2808(c)(5) requires that it is "of equal importance to the mitigation efforts" for the Commission to consider "efforts undertaken over time, prior to the enactment of this Chapter, to reduce or moderate customer rate levels."

i. PECO's Mitigation of Stranded Costs

Mitigation of stranded costs include any efforts that reduce the amount of stranded costs that will be recovered from ratepayers and fall into three, general categories. First, mitigation efforts can increase the future market value of a potentially stranded asset. Examples of such mitigation efforts would include improving operating efficiency of a plant, thereby maximizing the market revenues that will be derived from the plant, increasing its value and mitigating the potential stranded amount. Second, a mitigation effort can directly avoid or reduce the value of a potentially stranded asset on the company's books. Examples of such mitigation efforts would include foregone capital additions, sale of assets, accelerated depreciation, and write-down or write-offs of book values. Third, PECO can mitigate stranded investment through the maximum appropriate and possible use of transition bonds.

First, we will consider the ways in which PECO indicates that it has mitigated stranded investment by increasing the future market value of its assets.

PECO indicates that it has been able to improve the capacity factors and therefore the efficiency of its generating plants significantly. PECO claims to have reduced nuclear outage and refueling time significantly and increased the capacity factors of its fossil steam units from 79% to 84% and for coal units from 40% to 70%. PECO St. 1, p. 20.

PECO identifies several efforts that have reduced company operating expenses since rates were last established by the Commission in 1990. PECO claims to have reduced total employment by 37%, including a 28% and 67% reduction in employment in nuclear and fossil generation respectively. PECO indicates that it has reduced health and employee benefit expenses, although no quantification is provided. PECO also claims to have reduced inventory expenses by 23% in real terms since 1990. PECO also took advantage of declining interest rates to refinance debt, saving $252 million annually. PECO indicates that it has reduced overall Operations and Maintenance expense for 1997 by 10% in real terms. PECO St. 1, p. 21-22.

PECO indicates that it was able to retain $60 million in annual revenues that could have been lost had it not negotiated special contracts with industrial consumers. PECO St., p. 22.

Lastly, PECO indicates that it has reduced fuel cost expenses to customers by 27% since 1990. [98] PECO St. 1, p. 22.

Each of these efficiency improvements and enhanced revenues successfully mitigate stranded investments to the extent that they are reflected as an increased market

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[98] Consumers receive the benefit of these reductions to the extent that the Energy Cost Adjustment remains in effect to pass the savings on to customers. In the absence of incorporating fuel cost savings into an ECA, energy cost savings could mitigate stranded costs to the extent that the savings can be replicated in the future, thereby increasing the market value of a stranded plant based on improved operating efficiency.

value of the generating facilities. A higher market value serves to reduce stranded costs of the facilities.[99]

In addition, expense reductions can mitigate stranded costs if used to offset other expense increases or used to fund accelerated depreciation or write down of potentially stranded assets. In the absence of any such use of the revenues received after reduction of the associated expense, the utility would have additional earnings that could be retained for general corporate purposes, including the distribution of dividends.

The foregoing discussion illustrates that the burden of mitigation efforts can fall on shareholders through reduced dividends or share value, on consumers through regulated rates, or on employees through staff reductions. A mitigation effort that reduces stranded costs may be appropriate regardless of the source of the funding, although we agree with Navy witness Smith that it is important to identify the funding source. Navy St. 1.

Second, we will consider the efforts that PECO identifies that reduce the book value of its stranded plants.

PECO indicates that it avoided $218 million in new capital expenditures on existing generation assets based on its 1990 projected capital spending from 1992 through 1996, and that additional reductions in capital spending are being made. These efforts

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[99] Each of the market value witnesses in this proceeding used at least some assumptions concerning the future operating efficiency of PECO's generating plants. PECO did not document a precise dollar value of the efficiency improvements, however, and it is not clear that PECO's market value witnesses fully incorporated the improvements in their determination of future market value. What is clear is that the full value of the identified efficiency improvements has not been fully incorporated into the market value recommendations of any witness.

directly mitigate PECO's stranded investment claim, because they lower the book value of the assets compared to what the book value otherwise might have been on 12/31/98.

PECO has lowered the book value of the Limerick nuclear plant through accelerated depreciation. By Opinion and Order entered on February 23, 1996, the Commission approved PECO's request to accelerate the depreciation on its investment in Limerick in recognition that much of the cost of Limerick would become stranded in future competitive markets. By January 1, 1999, PECO will have accelerated the depreciation on its base plant investment in Limerick during 1997 and 1998 by $161.6 million. PECO St.1, p.16. In addition, PECO will have reduced the book value of the Limerick common plant by $40.9 million and for early window costs by $22.7 million, for a total Limerick related accelerated depreciation during 1997 and 1998 of $225.2 million.[100] PECO St. 1, pp. 16-18. These efforts also directly mitigate PECO's stranded investment claim because they lower the book value of the assets compared to what the book value otherwise might have been on 12/31/98.

In addition, PECO proposes to transfer $176 million of overaccrued depreciation reserve from distribution to generation based on updated depreciation studies and calculated reserve levels. PECO St. 1, p. 19. While Section 2808(c)(4)(iii) of the Act identifies the reallocation of depreciation reserves as an example of mitigation, PECO's proposed reallocation is not a mitigation benefit to consumers. The proposed reallocation would increase future distribution expenses, inappropriately shifting distribution revenues to subsidize generation costs. It is therefore anti-competitive, and is not approved.

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[100] PECO's stranded cost claim in this proceeding does not assume any additional mitigation of its investment in Limerick from 1999 forward through accelerated depreciation as contemplated in the Petition approved by the Commission in February, 1996.

Third, PECO proposes to mitigate stranded costs in the future through the use of transition bonds. On May 22, 1997, the Commission in part granted PECO's request for a QRO to issue transition bonds to securitize $1.098 billion of stranded costs. PECO did not seek additional securitization authority in its base case in this proceeding, although it has indicated that it may do so in the future. Securitization can provide consumer benefit to the extent that the capital costs for transition bonds are lower than the capital costs in existing rates or what they would be under a CTC. However, it remains unclear that transition bonds will in fact be issued.

The foregoing discussion indicates that we readily may quantify mitigation efforts that resulted in $443.2 million in reduced book value. In addition, several of the identified PECO efforts may serve to increase the future market value of its generating assets or lower the CTC revenue requirement through the sale of transition bonds. However, the record in this proceeding is not clear that such mitigation efforts have increased the market value of any plant. The record does not permit us to quantify the impact of such efforts at this time.

Section 2808(c)(4) requires PECO to mitigate stranded costs "during the transition." The Commission finds that PECO's mitigation efforts have been inadequate considering the magnitude of its stranded costs and its historic high rates. PECO will have two transition years since the 1/1/97 effective date of the Act until it faces competition beginning in 1999. Thereafter, PECO will have an additional 8 1/2 year transition period in which to mitigate stranded costs.

PECO still has additional opportunities to mitigate stranded costs in the future based on the foregoing considerations. In addition, competitive markets will

provide PECO with substantial new opportunities to mitigate stranded costs. For example, Section 2808 identifies sale of generating assets as an appropriate mitigation effort, and PECO has indicated that it plans to transfer its generating assets to an affiliate.[101]

Additionally, PECO's generating assets have a residual value that will be available for PECO's use in easing its transition to competitive markets, even if such value was not directly quantified in the determination of the stranded cost. For example, a generating asset may have additional value because of existing connection to the transmission system or more intensive use of the site. Once stranded investment recovery is complete, PECO is free to operate, shut down, or sell the plant as it deems fit. Since the stranded plants are expected to have useful lives beyond the CTC recovery period, there may be a significant residual value of these assets available for PECO's use. This opportunity would not exist under traditional ratemaking. Under traditional ratemaking, PECO would credit the net revenues received upon sale of a consumer financed asset against the revenue requirement that consumers are expected to pay in the future.

In addition to the residual value of utility assets, PECO will have significant other earnings opportunities as a result of the transition to competitive markets. PECO also will be free to compete in competitive generation markets as well as unrelated industries. These financial opportunities are at least partly supported in the early years by ratepayer contributions that have enabled PECO to develop expertise, name recognition and other assets.

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[101] Section 2808(a) makes the recovery of stranded costs for a generation asset "contingent on continued operation at reasonable availability levels of the generation facilities for which recovery has been approved, except when the generation facility is uneconomic on a production cost basis because of the transition to a competitive market." Thus, upon transfer, stranded costs associated with the asset would be removed from the CTC.

The Commission reaches its decision to approve $5.024 billion of stranded cost recovery by quantifying accurately PECO's stranded costs. In quantifying accurately PECO's stranded cost claims, the Commission follows Section 2803 that defines "transition or stranded costs." To be recoverable, Section 2803 requires a stranded cost to be generation-related, to be known and measurable, to be a net stranded cost, to be determined on a net present value basis, to be traditionally recoverable under regulation, and to be unmitigated. Again, these standards yield $5.024 billion of recoverable stranded costs.

ii. No Disallowance Despite PECO's Inadequate Mitigation.

Although we conclude that PECO's efforts to mitigate stranded costs have been inadequate, we do not exercise our discretion under Sections 2804(13) and (14) to disallow recovery of a portion of accurately quantified 2808(c)(3) stranded costs. Consequently, the Commission allows PECO to recover 100% of its recoverable stranded costs. The Commission does not impose a disallowance, since the Commission finds that $5.024 billion of stranded cost recovery properly balances the interests of shareholders and ratepayers and is just and reasonable. It is just and reasonable, because it gives PECO Energy substantial stranded cost recovery and a fair transition to full competition when stranded cost recovery expires on June 30, 2007. It also is just and reasonable, because the Commission's Opinion and Order provides customers with adequate shopping credits, even while ratepayers are charged a CTC that will recover $5.024 billion of stranded costs.

We prefer to avoid any discretionary disallowance, instead limiting our adjustments to PECO's claim for cost recovery to those that are the most indisputable and objective. We reach this decision in part because the Commission seeks to provide all parties with incentives to act consistently with the public interest.

The Commission further notes that its decision not to impose a disallowance is explicitly predicated on or inextricably linked to ratepayers paying $5.024 billion of stranded costs, not more or less. This decision is a delicate balance between the interests of shareholders and ratepayers. It cannot be changed without destroying the balance that allows this Commission to conclude $5.024 billion is a just and reasonable amount and that no disallowance of some portion of actual stranded costs is necessary. If any material change to the Commission's quantification of stranded costs occurs for any reason, the Commission's decision not to impose a disallowance would have to be reconsidered .

We are confident that allowing PECO full recovery of its actual stranded costs as determined in this proceeding will enable PECO to make an effective transition to competitive markets as required under the Act, while also establishing a vibrant competitive market with real economic opportunities for competitive suppliers and consumers.

f. Summary of Stranded Cost Recovery

Recoverable Regulatory Assets		
SFAS 106		20.394 million
Deferred Fuel $		96.162 *
SFAS 109		1687.
Compensated Absences		16.587
Miscellaneous Nuclear expenses		0
Limerick Early Window		65.446 *
Deferred Limerick Common Plant		158.3 *
Deferred Common Plant for Peach Bottom, Eddystone and Salem		17.4
Unamortized Loss Reacquired Debt		158.311 *
SUBTOTAL	$	2.219 billion

Offsetting Regulatory Liabilities		
Pension Fund Overcollection	$	(217.347)
SFAS 106 Trust Earnings		(150.861)
SUBTOTAL	$	(368.208)
Non-Utility Generating Contracts		0
Nuclear Decommissioning Expense		0
TOTAL Section 2808(c)(1) and (2) STRANDED COSTS$		1.851 billion
Utility Generation		
Book Value		6.639 billion
less: Market Value		3.96 billion*
Stranded Cost		2.679 billion
Fossil Decommissioning Expense		-0-
Other Transition Costs		33.0
Disallowance		-0-
Reallocation of A&G to Generation		460.691**
TOTAL RECOVERABLE STRANDED COSTS		5.024 billion

* Each of these stranded costs previously was approved for recovery in the May 22, 1997 QRO. This Order in general and this table in particular incorporates the recovery previously authorized. The indicated stranded costs, therefore, do not represent additional recovery.

** This figure is our estimate of the reallocation of a portion of A&G expenses to generation.

E. The Competitive Transition Charge

1. Statutory Directives

The definition of competitive transition charge (CTC) in Section 2803 requires the Commission to establish an appropriate CTC "designed to recover an electric utility's transition or stranded costs as determined by the Commission under Sections 2804 and 2808". Section 2804(13) specifies that "the Commission has the power and duty to approve a competitive transition charge for the recovery of transition or stranded costs it determines to be just and reasonable to recover from ratepayers. Section 2804(14) provides that the transition to competitive markets shall "provide the investors in Pennsylvania electric utilities with a fair opportunity to fully recover the amount of transition or stranded costs that the Commission determines to be just and reasonable."

Section 2808(a) identifies several directives for the Commission to implement in establishing the CTC. First, "every customer accessing the transmission or distribution network shall pay a CTC to the electric distribution company in whose certificated territory that customer is located." Second, the "costs to be recovered shall be allocated to customer classes in a manner that does not shift inter-class or intra-class costs and maintains consistency with the allocation methodology for utility production plant accepted by the Commission in the electric utility's most recent base rate proceeding." The definition of CTC in Section 2803 makes clear the legislative intent that the CTC shall be "nonbypassable". Section 2808(b) specifies the general requirement that the CTC shall be collected from consumers for a period not to exceed 9 years from the

effective date of the Act, ending by 12/31/05.[102] Section 2808(b) also provides that "in establishing the length of the period for collection of the competitive transition charge, the Commission shall consider the effect on the ability of the Commonwealth to compete in attracting industry and jobs, on the financial health of the electric utilities and other relevant factors."

2. Cost of Capital for Stranded Cost Recovery

PECO proposes in its Restructuring Plan to recover stranded costs over 7 years. In order to determine a proposed revenue requirement for the collection of the authorized recoverable amount, PECO proposes to separate various components of the stranded costs based on whether PECO claims any return on the unamortized amount of its stranded investment. PECO did not reduce all claimed stranded costs to a net present value because it considered a return on its investment as part of its stranded costs methodology. In sum, PECO asserts that it is entitled to a 9.52% after-tax cost of capital (13.71% pre-tax) on the unamortized balance of stranded investment during the transition period.[103]

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[102] Thus, the Act adopts a general rule that the CTC is to be collected for no longer than 7 years from the onset of competition on January 1, 1999. The Act presumes that in adopting a collection period of 7 years or less, the Commission must consider the "effect on the ability of the Commonwealth to compete in attracting industry and jobs, on the financial health of the electric utilities, and other relevant factors." In addition, Section 2808 contemplates several possibilities for a longer collection period. First, an individual customer and the utility may agree on an alternative collection methodology. Second, the Commission may "in its discretion and for good cause shown" adopt an alternative payment period. Lastly, in the event that a utility securitizes any portion of its stranded investment pursuant to Section 2812, the definition of "transition bonds" in Section 2812(g) authorizes a collection period of up to 10 years for collection of the Intangible Transition Charge (ITC), thereby superseding any CTC recovery period.

[103] PECO Stmt. No. 3 at 53.

Several parties to this proceeding, such as the OCA, PAIEUG and Navy, argue that the Commission should "disallow" either a partial or full return on equity. OCA recommend that the Commission not allow any return of PECO's stranded generation investment in order to be consistent with traditional regulatory standards of not allowing a return on generation that is not used and useful.[104] PAIEUG also recommends a disallowance of the return on equity in the determination of the CTC revenue requirement, producing a total return of 3.96%.[105] Other parties, such as IPALCO, have proposed that PECO should not recover any stranded costs at all.

PECC argues that PECO should earn a return during the transition period commensurate with the low risk associated with recovery of stranded investment through the CTC/ITC. In short, the parties disagree on the proper considerations necessary to develop the cost of capital to be used for this purpose, and the record provides substantial evidence upon which we can determine a just and reasonable result. We agree with PECC that a just and reasonable result requires that PECO recover a cost of capital that reflects the low risk associated with CTC recovery.

We cannot agree that PECO's methodology or cost of capital assumptions are appropriate for calculating the CTC. The definition of "transition or stranded costs" in Section 2803 requires a determination of the net present value of PECO's stranded costs. We have determined a net present value principal amount of $5.024 billion as just and reasonable transition or stranded costs that PECO is entitled to collect as of 12/31/98. If consumers were to pay PECO the authorized principal amount of recoverable stranded costs of $5.024 billion on 12/31/98, PECO would be paid in full, and there would be no additional cost of capital to consider. PECO's cost of debt, cost of equity, or any other

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104 OCA Stmt. No. 1 at 23.

105 PAIEUG Stmt. No. 1 at 14; PAIEUG Exhibit SJB-3.

assessment of its cost of capital would not be relevant to our consideration of payment of the principal amount payable.

While that situation will not exist, the example is useful to a proper understanding of the relationship between PECO's cost of capital, discount rates, interest rates and the revenue requirement necessary to pay off PECO's authorized recovery of transition costs.

Alternatively, PECO could sell transition bonds in the full principal amount of the recoverable stranded costs on 12/31/98. Under such circumstances, PECO would also receive its full recoverable stranded costs in a lump sum on 12/31/98 and be paid in full. Again, PECO's cost of prior debt, cost of equity, or any other assessment of its cost of capital would not be relevant to our determination of the principal recoverable stranded cost or the amortization of transition bonds.[106] However, there would be a new cost of capital associated with the transition bonds. That cost of capital would be the issuance, servicing and interest costs necessary to fully amortize the transition bonds during the recovery period required pursuant to Section 2812.

As of the date of this decision, no sale of transition bonds can be assumed. Thus, PECO will not receive any single lump sum payment on 12/31/98. PECO will recover the principal amount month by month during the transition period through the CTC.

We cannot agree with PECO that the Commission must incorporate either PECO's historic, current or future cost of capital in the calculation of the CTC. What

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[106] In fact, the transition bonds would be issued to retire existing debt and equity.

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. These differences serve to focus the underlying questions that we must address concerning this issue in this proceeding: 1) should PECO be permitted to collect a cost of capital on its recoverable stranded costs? 2) if so, should PECO be permitted to recover its full cost of capital, inherently based on the cost of its equity and providing a full return or full profit on its stranded costs? or 3) is it more appropriate for PECO to recover a cost of capital through the CTC that more closely reflects a low-risk debt rate?

We conclude that it is just and reasonable to include a cost of capital in our determination of the CTC in order fully to reimburse PECO for the authorized principal amount of recoverable stranded costs.[107] We have concluded that PECO should receive a rate of return on the unamortized balance of its authorized recoverable stranded costs at a rate consistent with PECO's receipt of payment and the risk of non-recovery. The duration and risk associated with long-term debt is commensurate with that associated with the CTC recovery during the transition period. We substantially agree with PECC witness Mitnick's characterization of this issue:

> I question whether the cost of capital is the proper discount rate to use on a stream of riskless income. With stranded cost recovery under the true-up provision there is no risk that the

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[107] The Act is silent concerning whether any cost of capital may be, may not be or must be collected as part of the CTC, and if so, how this Commission is to determine the appropriate cost of capital to be included. In contrast, Section 2812(g) explicitly requires the recovery of all capital costs and transaction expenses related to the issuance of transition bonds. In addition, the definition of "transmission and distribution costs" in section 2803 "includes the return of and return on facilities."

future revenue stream promised by the statute will not be recovered. It is one thing for PECO to recover the net present value of its Commission mandated sum of stranded costs; but quite another to receive additional compensation for non-existent risk. Under this logic the discount rate would be related to the rate on 10-year Treasury bonds, an equivalent riskless asset. In 1996, the ten year Treasury bond had an average rate 6.44%.[108]

We agree that the risk of non-payment of the CTC is minimal. PECO has a large service territory with well over 1 million customers legally required to pay the CTC. Recovery of the full principal amount is assured through the reconciliation mechanisms in Section 2808 (f). The level of risk does not compare with that associated with generation charges pursuant to regulated rates. Under regulated rates, a utility only had the opportunity to earn a reasonable return. There was no guarantee of any return at all. The utility was at risk that sales lower than projected would erode its return. PECO is protected from such risks with the CTC. It should be noted that the CTC costs would not be recoverable under traditional ratemaking principles.

Under such circumstances, we conclude 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 8 1/2 year transition period.[109] This result is between the low range proposed by OCA, PAIEUG, Navy and IPALCO and the 9.52% proposed by PECO. It is close to the 7.53% proposed by NEV.[110] Our proposal of 7.47% reflects the low risk associated with the CTC and therefore achieves a just and reasonable result. We shall use 7.47% for calculating the CTC revenue recovery in this proceeding.

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108 PECC Stmt. No. 1 page 32.

109 PECO Stmt. No. 3, Schedule 10 and workpapers.

110 New Energy Ventures Brief at 33.

Our discussion of PECO's mitigation efforts makes clear that PECO's mitigation efforts have been inadequate. PECO will have substantial opportunities in the future to continue to mitigate its stranded costs and otherwise accommodate the lower, but guaranteed, return on stranded investment allowed in this decision.

In addition, PECO has an opportunity to mitigate its cost of capital through the issuance of transition bonds, as further discussed in the next Section. Section 2808(c)(4)(6) specifies that the issuance of transition bonds is an appropriate mitigation effort, and PECO has proposed to do so as part of its mitigation efforts. Transition bonds can reduce PECO's cost of capital. Upon the successful issuance of transition bonds, when legal impediments to securitization are eliminated, PECO will receive a "lump sum" enabling it to pay off its higher cost of capital with the lower carrying cost of the transition bonds. Thus, PECO can improve its financial position if it issues transition bonds to the fullest extent available. We find it just and reasonable to expect that PECO does so as part of its mitigation obligation under the Act.

3. Calculation of CTC

We determine that PECO should receive its authorized transition and stranded cost recovery of $5.024 billion over a levelized period of 104 months, or 8 1/2 years. 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. CTC revenues shall be allocated on a class basis consistent with the allocation methodology for utility production plant accepted by the Commission in the company's

1990 general rate case proceeding. Several additional comments are appropriate concerning our calculation of the CTC.

a. Recovery Period

Section 2808(b) provides a general rule that the CTC recovery period shall be concluded within 9 years from the effective date of the Act. This general rule would establish a maximum stranded cost recovery period of 7 years ending on or before 12/31/05. The Act modifies the general rule, however, if "the Commission, in its discretion and for good cause shown, orders an alternative payment period. We find that PECO's large amount of stranded costs warrants extending the transition period for PECO by eighteen months. We further find that the large amount of stranded costs that this decision requires consumers to pay warrants extending the payment period by eighteen months. A shorter recovery period would require reduced stranded cost recovery and/or reduced consumer savings during the transition. We do not find any good cause to extend the recovery period further and delay longer the onset of a fully competitive market.

CTC revenues will be recovered by PECO on a monthly basis as PECO collects its monthly bills, decreasing the unamortized amount over the course of each year. Therefore, it is appropriate to calculate the amortization of PECO's stranded costs on a monthly basis.[111] PECO's proposal to assume a year-end amortization serves to overcollect the CTC revenues needed to amortize the principal amount, and essentially would result in an overcollection of stranded costs.

[111] NEV Stmt. DMB-2 at 14.

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.

b. KWH Sales

PECO provides several different growth assumptions in this proceeding. In the April 1, 1997 Restructuring Filing, PECO assumes load growth averaging 1.2% throughout the transition period.[112] PECO's April, 1997, IRP filing assumed annual growth of 1%. PECO reported to the federal government in its most recent FERC Form 714 filing that it anticipated annual growth of 0.8% throughout the transition pweriod. PECO witness Hill testified that he reported the same 0.8% growth projection to PECO's Board of Directors for the purpose of evaluating the Partial Settlement.[113] We find that 0.8% is the most reasonable growth projection. We presume that regular growth as well as some growth induced by lower prices and enhanced economic development in the service territory will occur.

c. Levelized Recovery

The level of the CTC directly impacts the competitive market because it limits the opportunities for consumers and competitive suppliers to achieve savings and earn profits, respectively. Several of the proposals in this proceeding include methodologies that effectively use different CTC levels at different times. We recognize that the parties have identified some advantages to adjusting CTC levels at various times

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[112] PECO Exhibit GAC-3.

[113] Connectiv Brief at 9 and NEV Brief at 18, 25.

based on their perception of the need to "jump start" or "forestall" competition. We think it preferable to avoid an approach that would so directly affect the market. We prefer to adopt a levelized amortization of recoverable stranded costs so that market participants are not faced with changing financial considerations other than the real market price of electricity.

d. CTC Revenue Allocation and Recovery

Section 2808(a) directs that "every customer accessing the transmission and distribution network shall pay a competitive transition charge. Additionally, "the costs to be recovered shall be allocated to customer classes in a manner that does not shift inter-class or intra-class costs and maintains consistency with the allocation methodology for utility production plant accepted by the Commission in the electric utility's most recent base rate proceeding."

We accept generally PECO's proposal for CTC revenue allocation based on compliance with the foregoing principles and our discussion concerning unbundling. PECO witness Sundermeir proposes to collect the CTC as a per kwh charge with blocking based on usage for residential customers and on demand for commercial classes.[114] OCA witness Smith[115] and the Environmentalists[116] note that different customer classes may have differing levels of kwh growth over the transition period. In order to minimize any possible cost shifting, we continue the approach that we utilized in the QRO proceeding, and recommended in this proceeding by OCA witness Smith, to allocate the CTC revenue requirement to each tariff class based on 1997 sales, and then reconcile actual revenues on a class basis.

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114 Xander Direct, PECO Stmt. No. 14 at 8-9.

115 OCA Stmt. No. 4 at 11-12.

116 Environmentalists Brief at 15.

e. Reconciliation

Section 2808(f) requires annual reconciliation of CTC revenues in order to ensure that CTC revenues are no less than nor greater than the authorized amount. Section 2808(f) requires the Commission to adopt procedures for the annual review of the CTC consistent with Section 1307(e). We do not at this time anticipate any need to amend the existing Section 1307(e) procedures for review of the CTC. PECO shall file reports, hearings shall be conducted, and decisions shall be reached based on the existing procedures.

In its Initial Filing, PECO proposed, and was supported by the testimony of OCA witness Smith and PAIEUG witness Baron, to reconcile overrecovery or underrecovery of CTC revenues by adjusting the duration of the recovery period instead of the amount of the CTC.[117] While this approach has benefits, Section 1307(e) does not permit the Commission to adopt such an approach in this proceeding. Section 1307(e) requires a dollar adjustment over an appropriate 12-month period unless, following hearings on the reconciliation adjustments, the Commission finds "good reason" to adopt an alternative adjustment methodology.

F. Transition Bonds

1. Summary of May 22, 1997 QRO Order.

By Opinion and Order entered on May 22, 1997, this Commission issued an irrevocable Qualified Rate Order authorizing PECO to issue transition bonds on or before

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[117] Xander Rebuttal, PECO Stmt. No. 14-R at 15.

May 22, 1998 in a total principal amount of up to $1.098 billion based on recovery of the following stranded costs:

Stranded Generating Assets	$607.355
Regulatory Assets	469.079
Deferred fuel	96.162
Deferred Limerick Common Plant	175.8
Deferred Eddystone, Peach Bottom, Salem Common Plant	17.4
Unamortized loss on reacquired debt.	179.7
Issuance Expenses	7.116
Use Of Proceeds Expenses	14.801

Each of the stranded approved for recovery pursuant to the May 22, 1997 QRO are included in this Opinion and Order and are part of the total authorized recovery of 5.024 billion.

The QRO authorized PECO to establish an ITC that would return the $1.098 billion principal amount along with any credit enhancement, servicing, redemption premium and interest expense over a period not to exceed 10 years. The May 22, 1997 QRO deferred other portions of PECO's request to consideration in this proceeding without denial.

It is not clear at this time whether PECO will in fact issue transition bonds by May 22, 1998 pursuant to the May 22, 1997 Opinion and Order. We note that there remain several outstanding appeals of the Act and the May 22, 1997 QRO Order that are likely to preclude successful issuance of transition bonds while such appeals remain outstanding.[118] In the event that transition bonds are successfully issued, an ITC will be

[118] All parties to the Partial Settlement agreed to withdraw all such appeals in the event that the Partial Settlement is approved by this Commission without modification. Pursuant to this Order, that condition has not been met, so parties to the Partial Settlement may choose to withdraw or continue their appeals as they deem

established that replaces a portion of the CTC authorized pursuant to this Opinion and Order.

2. Use of Transition bonds by PECO.

PECO retains the authority to issue transition bonds in an amount up to $1.098 billion until May 22, 1998. In its Initial Filing in this proceeding, PECO indicated that it had no present request for additional authority to issue transition bonds.[119] Section 2812(a)(1) indicates that a QRO "may be adopted only upon the application of the utility" and that the utility retains "sole discretion" to issue bonds after a QRO has been issued. Thus, it is unclear at this time whether PECO will issue any transition bonds.

We believe that it is in PECO's financial interests to issue an appropriate amount of transition bonds to refinance stranded costs, and we encourage PECO to exercise its existing authority and/or request a new QRO. Since the company's total stranded costs have already been determined in this proceeding, a new QRO request should not be as controversial as the last.

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appropriate. In addition, three parties that did not agree to the Partial Settlement, the Environmentalists, IPALCO and the Utility Workers of America, Utility Workers Union of America, AFL-CIO System Local No. 102, et al. v. The Pennsylvania Public Utility Commission, 760 M.D. 1997 (Cmwlth. Ct.), have outstanding appeals that may preclude successful issuance of transition bonds while they remain outstanding.

[119] PECO requested a QRO for up to $4.0 billion as part of the Partial Settlement proposal. Since the Partial Settlement was presented without the possibility of modification and the Commission has denied the petition in this Order, no QRO request is before us at this time.

G. Special Customer Classes

Section 2804(7) requires the Commission to implement the Act "in a manner that does not unreasonably discriminate against one customer class to the benefit of another." Different classes of customers have received service upon different terms and conditions under traditional regulation The transition to competition means that the market will determine many of these terms of service as they apply to competitive generation. As a result, the Commission must consider the special circumstances of several customer classes in order to ensure that all classes are provided a fair opportunity to achieve the advantages anticipated under the Act .

PECO has the duty to continue to provide service to existing customers through the end of the transition period. Except as explicitly indicated in this Opinion and Order or as otherwise adopted by the Commission, the terms and conditions of those tariffs will not change. Section 2804(3) provides that "the Commission shall require the unbundling of electric utility services, tariffs, and customer bills to separate the charges for generation, transmission and distribution." Several tariffs serving special customer classes were designed without the assumption that the customers could choose an alternative generation supplier, however. In its Restructuring Plan, PECO proposes that certain customer classes would not be permitted to choose a competitive supplier and otherwise remain on its existing tariff for transmission and distribution services, proposes several tariff modifications, and proposes certain alternative CTC provisions.[120] These tariffs include PECO's existing Large Interruptible Load Rider (LILR), High Tension (HT), Incremental Process Rider (IPR), Economic Efficiency Rider (EER), Rule 4.6 Special Contracts and self-generation customers.

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[120] PECO modified its proposal during rebuttal. PECO Stmt. 2-R at 7-10 .

As a general rule, our approach to these special classes of customers is to treat them the same as all other customers concerning all regulated rates and services including transmission, distribution and generation services provided by PECO as an EDC, including CTC obligations. All existing tariffs shall remain available throughout the transition period, and all special contracts shall remain in force, except as modified pursuant to this Opinion and Order or other tariff modifications approved by the Commission. Our goal is to permit customers to continue to receive the economic benefit of these tariffs to the extent that such benefits can be applied to the regulated portion of the bill.

1. Opportunity to shop

PECO proposes that LILR, EER and IPR customers should not be permitted to remain on the unbundled tariff for transmission and distribution service and still choose an alternative supplier. As indicated in the testimony of PECO witnesses Miller[121] and Sundermeier,[122] PECO argues that "it would defeat the purpose" of these tariff riders to allow customers to obtain their supply from a competitive supplier.[123]

Section 2804(2) specifies that "the Commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access. Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources, including reasonable and fair opportunities to self-generate and interconnect. These alternatives may be provided by different electric suppliers." Thus, there is a statutory mandate to ensure that PECO, as an EDC, makes transmission and distribution service available to

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121 PECO Stmt. No. 2 at 14.
122 PECO Stmt. No. 13 at 13-14.
123 PECO Stmt. No. 2-R at 7-10.

such customer classes. PECO has a duty to serve such customers. There is no statutory suggestion that any class of customers can be denied the opportunity to shop.

Thus, the statute requires that PECO must continue to offer regulated LILR, EER and IPR service to existing customers until the end of the transition period, just as it must do for all other classes of customers. The Act specifies that interruptible options shall be available. Interruptible service provides customers with an opportunity to save because they do not contribute to more expensive peak load. Interruptible service also provides an important reliability benefit to all consumers because it provides an organized way to reduce load under peak demand.

In addition, as an EDC, PECO must file tariffs for distribution and transmission service applicable to customers in all classes who choose to shop. PECO shall do so in a manner that properly allocates the costs and existing discount provisions to each of the transmission, distribution and generation components of service. We do not agree with PECO's assertion that no portion of the existing discount is properly allocated to distribution and transmission. Even interruptible service has a distribution and transmission system benefit at times of peak load. Discounts allocable to generation therefore would remain available to customers purchasing generation from PECO, but not to customers purchasing generation from other suppliers, who would likely offer alternative savings of their own. To the extent that any portion of the discount is properly allocated to distribution or transmission, however, PECO's unbundled transmission and distribution tariffs must retain that benefit for a customer choosing to shop. PECO's compliance filing should include proposed tariffs to implement these results and otherwise comply with the applicable rate cap provisions of Section 2808(4).

2. EER and Rule 4.6 Contracts

PECO proposes to continue to offer EER and Rule 4.6 service to current customers as well as prospective customers. PECO witness Miller's Rebuttal testimony indicates PECO's view that existing contracts that contain language covering the future availability of competitive generation services will be governed by the terms of the contracts. Existing customers under contracts that are silent concerning future opportunities to choose competitive suppliers will be permitted to enter into separate generation contracts. PAIEUG has presented the testimony of Mr. Baron concerning these issues.

We note that these contracts provided rate discounts in order to retain or expand customers or load as competitive pressures limited PECO's ability to continue to charge full regulated rates. In recognition of the increasing competitive pressures that have lead to adoption of the Act, the Commission has approved such tariffs or individual contracts provided that PECO received at least the marginal cost of service and no foregone revenues were shifted to other customers.

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 agree that PECO, as an EDC, should honor all existing contracts and be permitted to continue to negotiate these special contracts with any customer who has not yet been phased-in to customer choice. We agree with PECO witness Miller that existing

contracts specifying requirements upon the commencement of competitive generation generally should remain in effect according to their terms, and that it is not necessary to assign such existing contracts to an affiliated competitive supplier. Customers on these contracts may retain regulated generation service from PECO throughout the transition period, just as all other customers can.

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.

3. CTC Payments By Special Customer Classes

Section 2808(a) requires the Commission to adopt a CTC that recovers authorized stranded costs "allocated in a manner that does not shift interclass or intraclass costs and maintains consistency with the allocation methodology for utility production plant" presently used to establish rates. The CTC is defined in Section 2803 to be "a nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network." Section 2808(b) provides that a utility and customer may "mutually agree" to pay CTC obligations in a manner other than monthly bills over the transition period.

The Act does not permit customers to bypass payment of the CTC. No contract or tariff may permit the customer to bypass payment of the full CTC allocable to its use of the transmission and distribution system. Any existing contract that does so shall be modified to require full payment of the CTC/ITC while providing a comparable

dollar value offset on the regulated transmission, distribution or generation rates.[124] We recognize that the terms of service for these classes of customers may make it appropriate to design a CTC that collects the customer's full share of stranded costs in a manner different than the general "per/kwh" methodology. PECO's compliance filing may propose alternative methods provided that it is otherwise in compliance with this decision and the Act.

4. Self-Generation

Section 2804 (2) provides that restructuring shall permit "reasonable and fair opportunities to self-generate and interconnect" to the transmission and distribution system. Additionally, Section 2808(a) specifies that " if a customer installs on-site generation which operates in parallel with other generation on the public utility's system and which significantly reduces the customer's purchases of electricity through the transmission and distribution network, the customer's fully allocated share of transition or stranded costs shall be recovered from a customer through a competitive transition charge." Thus, the Act encourages self-generation without unreasonable obstacles but will not permit self-generation to be a way to avoid paying a fair share of the company's stranded costs through the CTC.

a. Interconnection opportunities

In its Initial Filing, PECO has provided the testimony of Gregory Cucchi, PECO Statement No. 15, indicating its current provisions in support of self-generation. Mr. Cucchi has identified PECO's "Gray Book", or "Requirements for Parallel Operation

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[124] The rate cap provisions protect such customers from any increase in rates as a result.

of Non-Utility Generation,"[125] that provides detailed standards and interconnection procedures for non-utility generators. PECO witness Sundermeir describes PECO's current Auxillary Service Rider that contains the terms and conditions under which PECO offers firm and interruptible back-up and maintenance power to customers that operate generation in parallel with PECO's system.[126] In its Restructuring Plan , PECO does not identify any specific proposals related to the new statutory self-generation requirements and proposes no current changes to the foregoing policies.[127]

The standards and procedures in PECO's Gray Book indicate that it was designed primarily to provide for the interconnection of Non-Utility Generators (NUGS). It clearly could be applied to self-generators such as large industrial customers. Neither PAIEUG nor any other party recommends specific changes to PECO's policies governing the interconnection of larger self-generating customers. For this reason, we do not require any specific changes, although PECO's compliance filing shall consider and include any adjustments necessary to provide a "reasonable and fair" opportunity for larger self-generating customers to interconnect, as required by the Act.

In addition, PECO has a residential solar net-metering tariff, Rate R-S, described in the testimony of Environmentalists' witness Schoengold.[128] Mr. Schoengold recognizes that PECO is a leader in Pennsylvania in residential net-metering for self-generation. "Net-metering" is an arrangement through which a small self-generator may interconnect with the distribution system by purchasing power as required and selling power when more is produced than is needed for the customer's own consumption.

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125 Exhibit GAC-5.

126 PECO Stmt. No. 13.

127 Mr. Cucchi acknowledges that PECO's existing procedures may require modification to accommodate self-generators wishing to sell excess production to parties other than PECO.

128 Environmentalists Stmt. No. 1-E and Exhibit DS-4 .

Environmentalists' witness Schoengold identifies several changes to PECO's net metering tariff. He recommends that it should be available to all customers, should include all renewable technologies, including fuel cells, should have no limit on the number of customers able to use the tariff, should specify "retail-in/retail-out up to net" each month, and permit customers to carry forward any generation credit for up to 12 months.

We cannot agree that the new statutory requirement that an EDC provide reasonable and fair opportunities to self-generate imposes a new obligation for PECO to purchase generation from a self-generating customer through net-metering or any other manner. With customer choice and direct access, a self-generating customer may contract to buy and sell electricity on an as needed basis with any willing supplier. For this reason, we cannot agree that PECO must expand the purchasing aspects of its R-S tariff as proposed by Mr. Schoengold.[129]

However, as an EDC, PECO must provide reasonable and fair opportunities for all self-generators to interconnect. The Gray Book is not particularly useful to enable small self-generators, such as residential customers with rooftop photovoltaic panels, to interconnect. PECO's compliance filing should include one or more proposals to provide such reasonable interconnection standards for all types of self-generating customers. We agree with Mr. Schoengold's recommendations that self-generating interconnection must be provided by PECO as an EDC to all customers, without numerical limits. Interconnection should be available for all renewable and other technologies, including fuel cells, that can be interconnected. We also agree with

[129] However, an EDC must continue to make all existing tariffs available to new customers through the end of the phase-in and to existing customers through the end of the transition period.

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 inspection standards.

Lastly, PECO has the duty as an EDC to provide a "qualified meter" that can provide advanced services required in the market. Meters that support net metering, such as non-ratcheted bi-directional meters, and two meter or smart meter systems should be considered.

b. CTC and Self Generation

The CTC generally is a non-bypassable charge imposed on all customers based on each kwh purchased through the transmission or distribution system. Section 2808(a) specifies that "if a customer installs on-site generation which operates in parallel with other generation on the public utility's system and which significantly reduces the customer's purchases of electricity through the transmission and distribution network, the customer's fully allocated share of transition or stranded costs shall be recovered from a customer through a competitive transition charge."

A customer newly installing self-generation purchases less through the transmission and distribution system and may be able to bypass the CTC . The Act clearly intends to prohibit such bypass to the extent that it "significantly reduces" purchases through the transmission and distribution system. PECO proposes to consider a 10% reduction from base year usage as a result of self-generation to constitute a "significant" reduction requiring an adjustment to avoid bypass.[130] PAIEUG witness

[130] Direct testimony of witness Xander, PECO Stmt. No. 14 at 12-14. Xander Rebuttal, PECO Stmt. No. 14-R at 16.

Baron has proposed that a usage reduction exceeding 25% because of self-generation should be considered a "significant" reduction requiring recoupment of the otherwise bypassed CTC.[131] We agree that PECO's 10% threshold is a reasonable interpretation of the Act. A newly self-generating customer shall pay a CTC on the amount of reduced usage due to self-generation in excess of 10% of its prior year usage. A customer does not have any CTC obligation related to its self generation installed prior to the effective date of the Act.

H. Competitive Safeguards

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 are many more subtle ways in which one market participant might receive an inappropriate advantage over another.

Effective functioning of competitive markets requires full access to the free flow of information and compliance with the rules of the market. The fundamental mechanism by which the Act promotes competition is by giving customers a choice of their electric generation supplier and requiring EDCs to provide competitive suppliers with open access to those customers through the transmission and distribution system "on rates, terms of access and conditions that are comparable to the utility's own use of the

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[131] Direct testimony of witness Baron, PAIEUG Stmt. No. 1 at 55-56.

system." Section 2804(6). Section 2806(e) requires a restructuring plan to include "procedures for ensuring direct access to all licensed generation suppliers."

The parties recognize the importance of this issue and considered it extensively in this proceeding. Witnesses Sidal, Cucchi, Mayo, Dirmeier, Alexander, Silkman, Biewald and Johnstone, as well as others, provided their suggestions.

The Commission has adopted several Orders and initiated several rulemakings that address these concerns. Each of these Orders and rulemakings are applicable to restructuring in the PECO service territory on the terms specified therein and are incorporated in this Opinion and Order to the extent that they are applicable.

1. Corporate Structure and Divestiture of Generation Assets

Section 2804(5) provides that the Commission may permit but not require a utility to divest itself of facilities or to reorganize its corporate structure. Chapter 11 requires the Commission to grant a Certificate of Public Convenience to transfer physical assets in public service. Chapter 21 requires the Commission to approve any transaction with an affiliate.

In its Restructuring Filing, PECO proposed to transfer all of its generating facilities to one or more separate corporate entities that may be affiliates or subsidiaries of PECO. PECO has not yet identified the entity to which it proposes to transfer its generating assets or filed an application pursuant to Chapters 11 and 21. Therefore, the Commission does not at this time have enough information in this proceeding to approve the transfer of its generating assets.

PECO should request approval by filing the necessary applications and supporting material pursuant to Chapters 11 and/or 21. The Commission will review the application to determine whether it is consistent with the Act and the rest of the Code and is in the public interest. Specifically, the Commission must ensure that the transfer does not provide any inappropriate cross-subsidization of the competitive affiliate, and is accompanied by appropriate and other safeguards to protect the public interest..

In particular, we note that Section 2101 of the Public Utility Code requires that all contracts or agreements, whether in writing or not, for transactions between affiliates are not valid unless approved by the Commission. Section 2101(b) requires that the Commission shall approve an affiliated transaction "only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest." Section 2103 requires the Commission to exercise continuing jurisdiction "so far as necessary to protect the public interest."

As we enter the era of competitive generation, this Commission takes its responsibility pursuant to Chapter 21 seriously. Among other issues affecting the public interest, the Commission must insure that affiliate transaction are not inappropriately cross-subsidizing competitive affiliates or divisions. PECO shall review all of its affiliated transactions and submit requests for approval as necessary.

In the event that PECO does not receive all required regulatory approvals for the transfer, PECO proposes to operate functionally separate generation units. To date, PECO has been operating a separately incorporated affiliate under the name "Horizon Energy" and marketing under the name "PECO/Energy One" as a division of PECO without separate corporate identity.

In our view, functional separation of regulated EDC functions and competitive generation functions is essential for the development of a vibrant competitive market. Structural separation through the establishment of fully independent entities is preferable whenever possible. With the development of competitive generation, the EDC must have no reason or ability to treat its competitive suppler affiliates any differently than any other competitive supplier. Functional separation without legal separation must not provide a basis for any competitive advantages or opportunities for the marketing entity. 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. The Commission must enforce competitive standards in a comparable manner whether the supplier is an independent supplier, a separately organized affiliate of an EDC or an operating division of an EDC or an affiliate. We encourage PECO to complete its proposed reorganization in a way that meets these standards and to file for the necessary Commission approvals.

2. Code of Conduct

The Declaration of policy in Section 2802 directs this Commission to implement a transition to a competitive retail generation market in Pennsylvania. In particular, Section 2802(12) expresses the purpose of the Act as the creation of "direct access by retail customers to the competitive market for the generation of electricity." Section 2803 defines "Direct Access" required under the Act as "the right of electric generation suppliers and end-use customers to utilize and interconnect with the transmission and distribution system on a non-discriminatory basis at rates, terms, and conditions of service comparable to the transmission and distribution company's own use of the system to transport electricity from any generator of electricity to any end-use

customer." The declaration of policy at 2802(13) requires that the "procedures established under this chapter provide for a fair and orderly transition."

Thus, the Commission must ensure in this decision that the competitive market will be permitted to operate fairly in a way that fulfills the statutory directives. In order to do so, it is appropriate to adopt certain competitive safeguards.

In its Initial Filing, PECO submitted the testimony of Gregory Cucchi, PECO Statement No. 15, Exhibit GAC-2, to propose a Code of Conduct that would remain in effect until such time as the Commission adopts regulations establishing a permanent Code of Conduct. We agree with PECO that an interim Code of Conduct should be adopted in this Opinion and Order. The rules adopted herein shall be applicable in PECO's distribution territory until changed. In particular, we note that the Commission is in the process of adopting regulations concerning competitive safeguards in Docket L-0097 and Customer Supplier Interaction at Docket No. M-00960890F0011.

PECO's proposed Interim Code of Conduct provides more appropriate details than does the Pilot Code of Conduct. We accept each item in PECO's proposal but conclude that several additions and clarifications are appropriate.

a. Functional Separation

PECO's proposal includes several components addressing functional separation. PECO's proposed Rule 3 provides that PECO will not sell non-power goods or services to an affiliated supplier below the higher of the market price or cost and that PECO will not buy non-power goods or services from an affiliated supplier at an above-market price. PECO's proposed Rule 5 provides that PECO's employees "operating the

distribution system" shall not be shared with an affiliated supplier and shall be physically separated. Any shared facilities shall be fully allocated with clear identification of the allocation on PECO's books.

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 transactions concerning the competitive generation industry unless it is for goods or services made available to competitors on comparable terms and conditions.

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.

b. Comparable Direct Access

PECO's proposed Rule 1 provides for comparable treatment in the processing of a request for customer service. Proposed Rule 2 provides that all supply services and tariff rules should be comparably applied to affiliated suppliers and competitors. Proposed Rule 4 provides that PECO will simultaneously make available market information to all suppliers.

These provisions are close to, but not quite complete statements of comparable treatment. 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, but also provide an assurance of comparable treatment without regard to the customer's chosen supplier. 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, goods, and services.

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 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. In addition, the proscriptions 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.

I. Duty To Serve

Under traditional regulation, a utility has the duty to serve all customers in its electric distribution territory, including transmission and distribution service, as well as providing generation services. Under the Act, the utility retains the duty to serve all customers as an EDC, but customers can select an alternative supplier of generation services. The Act, however, is clear that all customers must have a guaranteed supplier of generation in all circumstances. Section 2802(16) declares that the EDC should continue to "... be the provider of last resort in order to ensure the availability of universal electric service in this Commonwealth unless another provider of last resort (PLR) is approved by the commission."

1. Generation Service

a. Customers Who Do Not Yet Have the Opportunity to Shop

Section 2807(e) provides additional guidelines describing the obligation of the EDC to provide electric service "following implementation of restructuring and the choice of alternative generation by a customer." This section does not change any duty to provide all existing services to customers who do not yet have the ability to choose a competitive generation supplier. Section 2806 (b)(3) requires that all customers have the opportunity for direct access to electric generation supply as of January 1, 2001. Section 2804(4)(i)(A) provides that the total charges for service to any customer who continues to purchase generation from the EDC and is not competitively shopping may not exceed the rates in effect as of January 1, 1997 (the effective date of the Act). This rate is capped, or frozen, until July 1, 2001 (54 months from the effective date of the Act)

or until the EDC is no longer recovering its transition or stranded costs and all of its customers may choose an alternative supplier, whichever is shorter.

Thus, the EDC retains the existing duty to serve all customers who do not yet have the opportunity to shop. This duty is derived from EDC status, not as a PLR. Such customers will remain on regulated rates and protected by the rate cap without change in any terms or conditions of service except as expressly approved in this or another Commission Order. Customers in this category shall remain on "bundled rates," although the EDC shall show the unbundled rates adopted in this proceeding on customer bills in order to assist customers to understand the transition to competitive generation markets that they will soon experience. Section 2807(c); 2807(e).

b. Phased-in Customers Who Do Not Have a Competitive Supplier.

Even if every customer has the opportunity to shop, there will remain some customers without a competitive generation supplier. These customers could include those who affirmatively choose not to shop, passively neglect to choose a competitive supplier, or intentionally choose to return to the EDC for generation service. In addition, this class of customers may include those who cannot find a competitive supplier willing to serve them or customers whose chosen supplier fails to deliver as required. Section 2807(e)(3) requires that there be a PLR to serve all such customers.

Section 2807(e)(1) clearly imposes on the EDC the duty to serve these customers until it is no longer collecting a CTC/ITC, although it does not specify the terms and conditions of such service. The rate cap provisions of Section 2804(4)(i)(A) and 2804(4)(ii), however, continue to apply. Pursuant to the Section 2804(4)(i)(A) rate cap, the total charges for any customer not yet shopping may not exceed the rates in effect

as of January 1, 1997 until July 1, 2001. Pursuant to the Section 2804(4)(ii) rate cap, the total price for generation and the CTC/ITC may not exceed the charges for generation as of January 1, 1997, until the earlier of January 1, 2006, or the CTC/ITC charges are no longer collected.

Section 2807(e) requires that customers desiring to return to the EDC for generation service shall be treated exactly the same as any new applicant for service. During the phase-in period, both new applicants for service and those wishing to return to the EDC for generation service should be treated the same as customers not yet given the choice of competitive suppliers. They would receive service under regulated rates. Once the last part of the phase-in has begun, new customers should be permitted to choose a competitive supplier just as any other customer.

After the rate caps and duty to serve have expired, the EDC or alternative supplier approved by the Commission shall provide PLR service to all customers without a competitive generation supplier. Pursuant to Section 2807(e)(2), the Commission will adopt regulations defining the terms and conditions of service for the provision of PLR service at market prices.

2. Approval of the Provider of Last Resort

In addition to Enron's proposal to be the Provider of Last Resort, the Environmentalists also included a proposal concerning how the Act's provision concerning provider of last resort should be implemented, called this the "Better Choice Plan."

Essentially, the "Better Choice Plan" distinguishes between provider of last resort service and default service.[132] The Better Choice Plan would allocate customers to qualifying companies if more than 50% of customers in the PECO service territory affirmatively chose PECO or its affiliates, or defaulted to PECO by not choosing at all. Under the Better Choice Plan, companies would qualify to have customers assigned to them if they meet seven (7) conditions necessary for participation in the Default Supplier Group. (Environmentalists' Brief at 24). As such, the Environmentalists see the Better Choice Plan as a means of preventing market domination, promoting competition and advancing environmental stewardship.[133]

We have a major reservations about the Better Choice Plan. It is unclear whether the Act allows the assigning of customers to companies in the manner that the Better Choice Plan proposes. The Act plainly allows customers to default to the provider of last resort or the existing public utility. However, the Environmentalists have yet to convince this Commission that it can legally approve assignment of customers to competitive electric suppliers.

With more experience in the restructuring process, we will be in a better position to answer those questions. The Commission will, therefore, further consider the proposal of the Environmentalists when it promulgates regulations required by Sections 2808(e)(2) and (3).

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132 Brief of Environmentalists at 22.

133 The Environmentalists' proposed requirements for "qualification" include a resource mix of at least one percent renewable resources and that the supplier has a net metering tariff and other policies to facilitate the interconnection to small-scale clean and renewable energy generation.

In our view, the Act does impose the duty to provide generation services on PECO and other EDCs, but nowhere suggests that the EDC has a right to serve any generation customers once the generation market is competitive. Any argument to the contrary simply ignores the basic conceptual framework of the Act as well as Sections 2802(16) and 2807(e)(3) which specify a clear legislative grant of authority to the Commission to appoint an alternative PLR. Parties have expressed differing views concerning whether the Act intended this Commission to authorize an alternative PLR at this time. (Enron Stmt. No. 1-R, p. 17; Brief of the OTS). We do not need to reach such a legal conclusion in this proceeding because we find that PECO should remain the de facto default supplier and serve as the PLR at this time.

As specified in 2807(c)(2), the Commission will adopt regulations identifying the duties and manner of selection of the PLR upon the conclusion of the transition period. We also note in this regard that Section 2803 (19) indicates the policy of the state to encourage coordination through an independent system operator or its functional equivalent. It is likely that market forces will encourage the development of both an independent system operator and a "power exchange" function. With a power exchange, there will be a "spot market" readily accessible to all consumers so that customers will be able to receive electricity at prevailing market prices without identifying a particular supplier. We consider it likely that a power exchange will develop with the ability to fulfill the PLR function.

Lastly, we note that the PLR function has previously been considered a "burden" to serve the least desirable or profitable customers in each local distribution territory. If any clear conclusion can be drawn from this proceeding, it is that many parties, including PECO, Enron and the Environmentalists, can visualize PLR customers as an economically attractive market that some suppliers are anxious to serve.

3. Electric Transmission and Distribution Service

As an EDC, PECO must provide continuing transmission and distribution service in compliance with the Code in general, and Chapter 28 in particular, as well as all applicable Commission regulations and Orders. Chapter 28, the Act, provides some important specifications, most of which are being addressed through other Commission Orders, proceedings, and/or regulations.

a. Reliability and Safety

Section 2807(a) of the Act mandates minimum reliability and safety of the distribution system in compliance with the National Electric Safety Code and general industry standards. All existing Commission regulations and Orders remain applicable. In addition, this Commission has initiated a rulemaking at Docket No. L-00970120 that will be applicable to PECO and all other EDCs. The regulations adopted pursuant to that docket will ensure compliance with reliability and safety standards addressed therein.

We conclude that this Opinion and Order will establish the financial basis for a reliable competitive market that will provide adequate generation reserves to meet the demands of PECO's service territory.

b. Customer Service

Section 2807(d) of the Act provides that the EDC shall continue to provide all customer services at a level that maintains the quality of such services and that all

existing regulations and Orders of the Commission shall remain applicable. PECO's transmission and distribution services will continue to be regulated by this Commission.

The Commission has initiated a rulemaking at Docket No. M-00960890, F0007, that will require all EDCs, including PECO, to report information enabling this Commission to monitor and enforce customer service standards to ensure that customer service is maintained at or better than the levels now experienced.

c. Unbundling Other Customer Services

Competitive suppliers have argued in this proceeding that customer metering and billing services should be unbundled from other EDC customer services in order to create an additional opportunity to provide value-added services to consumers. Conversely, PECO, other EDCs, and other parties have argued that billing and metering services are inherently distribution services and that this Commission does not have the authority to open such services to the competitive market.

We have addressed these issues through working groups and the rulemakings and Orders previously discussed. In our view, Section 2804(3) of the Act clearly indicates that "the Commission may require the unbundling of other services" in addition to basic unbundling of transmission, distribution, and generation services. We also conclude that Section 2807 of the Act does not assume that any additional unbundling is required and that the EDC retains the duty to provide all services that are not unbundled.

However, we do not believe that it is appropriate or necessary to unbundle additional services based on the record before us. EDCs continue to have the duty to

provide all distribution services, including metering and billing, in compliance with existing Commission requirements. These procedures may be amended by a later rulemaking.

i. Customer Billing

Section 2807(c) of the Act provides that the EDC may be responsible for billing customers for all electric services while granting the customer the right to choose to receive a separate bill from its generation supplier. The manner and details of the interaction between customers, suppliers, and EDCs are governed by the rulemaking at Docket No. M-00960890, F0011. The Act explicitly specifies a presumption that the EDC shall have the duty to provide a single bill, including competitive generation services, to all customers unless the customer chooses to receive a separate bill directly from its EGS.

Several parties have argued for a "third" billing option that would permit customers to choose to receive a single bill from their EGS that includes billing of the EDC charges. PECO and others conversely maintained that the EDC should be the entity responsible for billing except when a customer elects to receive one bill from the EDC and a separate bill for generation from the EGS.

We recognize there may be potential benefits of such proposals but cannot conclude that it is appropriate to unbundle billing based on this record. Therefore, PECO shall provide all billing services, including billing for generation services, unless a customer indicates a preference to receive a separate bill directly from the supplier for generation services.

PECO has defined "customer" to include a single point of delivery. In challenging PECO's position, it was asserted that EGSs should be permitted to treat customers with multiple locations as a single service for purposes of billing for transmission and CTC-related charges. In other words, transmission 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 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.

ii. Metering

As indicated in our rulemaking at Docket No. L-00970120, we do not believe that it is necessary to unbundle metering as a competitive service at this time. However, we 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 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.

Therefore, 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. This Commission will ensure that the list of qualified meters includes all meters necessary to support market services such as two-way communication, remote readings, time-of-use capability, and net metering. 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 and shall pay as a regulated rate any net incremental cost incurred by PECO as a result of the metering choice.

J. Universal Service And Energy Conservation

PECO addresses its Section 2804(15) responsibility to submit an initial plan setting forth how it shall meet its universal service and energy conservation obligations in the testimony of Thomas P. Hill (PECO Statement 1), Marilyn C. Kray (PECO Statement 16) and Stephen R. Xander (PECO Statement 14). Ms Kray describes PECO's current low income energy assistance programs and explains that PECO intends to continue operating those programs to meet the Universal Service obligations provided in the Electricity Generation Customer Choice and Competition Act . The same statement also describes PECO's 1996 costs associated with providing service and assistance to low income customers. Mr. Xander describes the Company's proposal to recover costs associated with the universal service and energy conservation program. Mr. Hill explains how PECO developed its pro forma level of uncollectable accounts expense.

The "Declaration of Policy" in Section 2802 of the Act makes several points very clearly. Section 2802(10) provides that " the commonwealth must at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service." Section 2802(17) specifies that "there are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protection and services and full recovery of such costs is to be permitted through a non-bypassable rate mechanism." Section 2804(15) also requires that PECO submit with its Restructuring Plan an initial plan setting forth how it shall meet its universal service and energy conservation obligations. Universal Service and Energy Conservation is defined in Section 2803 as policies, protections and services that help low-income to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

Prior ratemaking allowances are not discussed in these statements and have no relevance to these sections of the Act. The foregoing review of Sections 2802, 2803, and 2804 unambiguously requires that we provide for a non-bypassable mechanism that will provide for full recovery of those costs.

PECO has by far the largest and most comprehensive set of customer assistance programs of any utility in the Commonwealth, with over 41,000 customers already enrolled. As explained by witness Kray[134] the Company's initial plan regarding universal service and energy conservation is to build upon its existing programs,

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[134] Kray Direct, PECO Stmt. No. 16.

including its pilot customer assistance program (Cap Rate). The Company also intends to maintain the current service protections offered residential customers as required by the Commission's Chapter 56 Credit, Collection and Termination regulations. 52 Pa. Code section 56.1 et seq. (Chapter 56). PECO operates five programs that provide energy assistance to low-income customers. These include its Customer Assistance Program (CAP), the Customer Assistance Program pilot (the CAP Rate), its Low Income Usage Reduction Program (LIURP), its Low Income Heating Energy Assistance Program outreach efforts (LIHEAP Outreach) and its Matching Energy Assistance Fund (MEAF). PECO also plans to institute a consumer education program specifically targeted to low income customers, although that plan is not included in the restructuring filing.

Each program has its own eligibility requirements. Generally, a customer must be at or below 150% of the federal poverty guidelines. A customer is eligible for the Company's CAP Rate if the customer is low income, payment troubled and applies for LIHEAP. To qualify for LIURP a customer must be an "electric baseload" or "electric heating" customer whose income is at or below 150% of the federal poverty guidelines.

The Company considers as "payment troubled" a customer who: (1) is already enrolled in CAP or CAP Rate; or (2) has a payment agreement that extends beyond 48 months; or (3) has been past due on five out of their last six bills. PECO has identified that as of December 31, 1996, there are approximately 150,000 low income, payment troubled customers on its system meeting the aforementioned criteria.

The latest census data estimates that 250,000 households in PECO's service territory are low income (below 150% of poverty) and therefore potentially eligible for the Company's CAP Rate. The Company argues that enrolling all 250,000 customers in

its CAP Rate program would equate to expanding its customer assistance program to more than six times the current size and that such a significant expansion would be costly and difficult to administer. The Company proposes to expand its current CAP Rate at the conclusion of the Commission's proceeding addressing the CAP Rate by moving all the customers currently on its CAP as well as those low-income customers who have had payment arrangements that exceed 48 months into the permanent CAP Rate program. PECO estimates that there will then be approximately 70,000 customers on its CAP Rate.

The Company proposes to recover certain costs associated with providing universal service and energy conservation for low-income customers through its proposed Universal Service Fund Charge (USFC). These costs include the uncollectible account expense for customers in the Customer Assistance Program (CAP), including CAP Rate discounts and the costs associated with special payment agreements over 48 months[135] as well as the costs associated with the Low Income Usage Reduction Program (LIURP).[136] The administrative costs identified in Ms. Kray's testimony [137]are not included in the request for recovery via the proposed USFC. According to witness Xander [138] some of these costs are associated with energy assistance programs for low-income customers, and some are associated with all customers. The Company has included them as costs that are traditionally recovered through its distribution rates.

We agree with PECO that its existing programs include all elements of the now statutorily required Universal Service and Energy Conservation Programs and that such programs should provide the basis for its continuing efforts. However, PECO is

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135 $32,920,000, Ex. SRX-1.
136 $2,772,000, Ex. SRX-1.
137 $16,211,000 Ex. MCK-6.
138 Xander Direct, PECO Stmt. No. 14.

directed to expand the participation of community based organizations with relevant expertise in program design, education and service delivery pursuant to Section 2804(9).

We accept PECO's proposal to adopt a reconcilable Universal Service Fund Charge that is separately identifiable for cost accounting but included within the distribution portion of a customer's bill. The USFC shall be reconcilable pursuant to Section 1307. As PECO proposed, any funding adjustment that would increase total expense above the rate caps shall be deferred until after the rate cap expires.[139]

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. Both CAP and LIURP have been found to be cost-effective programs if well operated.[140] Appropriate administration of CAP and LIURP avoids other existing program expenses and may serve to reduce total universal service and energy conservation expenses. PECO accepted much of the criticisms of other parties to correct the initial filing, and we adopt these changes. PECO may include expenses in the "base rate" or the reconcilable portion of the mechanism, but any reconciliation will be based on all program costs as indicated in our Guidelines for Universal Service and Energy Conservation Programs.[141] The record does not indicate that the existing funding, including all of the avoided current expenses, is insufficient to fund the program fully. While additional funding may be required, such matters will be addressed following evaluation of CAP through the reconciliation process.

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[139] Xander Direct at 6-7.

[140] Brockway Direct at 20, discussing PECO's 1994 CAP evaluation. Docket M-960890 F-0010, adopted July 10, 1997.

[141] Docket M-960890 F-0010, adopted July 10, 1997.

We agree that the programs costs now to be included in the USFC have previously been allocated solely to residential classes. In order to avoid cost shifting, we will retain that principle.

Since the CAP rate evaluation will be available within the next few months, we do not agree that any program changes should be ordered at this time. While we agree that many of the suggestions made by witnesses Brockway, Colton, Alexander and others have merit, we will consider program changes upon review of the evaluation. PECO is directed to submit the evaluation to the Commission as soon as it is completed by the independent evaluator. Within 30 days thereafter, PECO shall file a proposal for implementing the CAP program as part of its Universal Service Plan, considering the program components of CAP, CAP Rate, the evaluation, and the recommendations of the parties in this proceeding. We direct that the Universal Service record from this proceeding be incorporated into the record of the first reconciliation proceeding, so that appropriate changes may be considered.

We agree with PECO that enrollment should be increased to 80,000 customers based upon the priorities PECO has proposed. However, no customers should be transferred from CAP to CAP rate until our consideration following the evaluation is complete. PECO is directed to begin and complete all other enrollment as soon as practical. The Commission does not agree that there should be an arbitrary limit on the number of participating customers. Participation of 80,000 customers may not be sufficient. Following the evaluation, we will determine annually an appropriate schedule for achieving a total appropriate level of participation as part of the reconciliation proceeding.

We agree with PECO's proposal that the CAP discount must be allocated to each component of the current bill upon unbundling.[142] All CAP customers must have the opportunity to choose a competitive supplier. In its compliance filing, PECO shall indicate a fixed percentage of the dollar value of any CAP discount, as the level of discount may change from time to time, that will be applied to the distribution, CTC, and generation portion of the bill. The discount allocated to the generation portion of the bill will be portable if the customer chooses an alternative supplier.

We agree that LIURP is a cost-effective program that should be continued, as modified by the proposals of OCA witness Brockway, at an annual funding level of $5.6 million, including a renewables pilot program. We adopt the Environmentalists' proposal that customers with usage over 110% of class average shall be eligible for LIURP, but this does not mean that all services must be provided to all participating households or that prioritization is not appropriate.

We generally support the use of community based organizations to deliver universal service and conservation related programs. However, we are constrained by statute and by experience to assure that proper financial and managerial controls are implemented. 66 Pa.C.S. §2804 (9) states:

> The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric service. Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.

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142 Xander Direct at 7.

To the extent that community based organizations are utilized in the delivery of universal service and energy conservation policies, activities or services, PECO shall require (in addition to any other reasonable requirements it may impose), that such community based organizations agree in writing to make all books, records and receipts related to such participation and funding available for inspection, review and duplication by PECO and the Commission. CBOs shall also undertake in writing to keep books and records according to generally accepted principles. Such books and records shall be audited annually by an independent licensed professional accountant or auditor. Such annual audit reports shall be made available to PECO, the Commission and the public upon request.

K. Consumer Education

1. Introduction

The promise of customer benefits from electric competition will only be fulfilled through a comprehensive education program. This important policy consideration in the implementation of electric competition was thoroughly discussed during the legislative debate and the final passage of the Act. The expectations of the Act are significant and the Commission and PECO must endeavor to meet those expectations. There are a number of key policy issues which need to be addressed.

The customer education process must have specific direction so the industry, consumers and this Commission can be assured that education efforts are designed to reach all customers in ways which are most responsive to their cultural and educational needs. Since program expenditures will be recovered from ratepayers, the Commission has an obligation to determine whether the consumer education funds meet

the provisions of the Act. Consequently, this section will outline a detailed set of rules for the implementation of the consumer education provisions consistent with the expectations of the Act.

The Act clearly instructs us to direct consumer education programs so that the public is adequately educated about electric competition. The following provisions of the Act authorize our directives concerning consumer education.

First, the Act recognized the importance of consumer education by including the term in the definition of universal service and energy conservation at Section 2803 of the Act. In addition, the Act clearly articulates the requirement that consumers need to be well-informed about purchasing electricity services from alternative providers. Specifically, the Legislature at Section 2807(d)(2) states that "[t]he Commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis." The Act further directs the Commission and each electric distribution company at Section 2807(d)(3) to implement a consumer education program informing customers of the changes in the electric utility industry prior to the implementation of any restructuring plan. The Act also instructs the Commission at Section 2807(d)(3), to approve a program which provides consumers with information necessary to help them make appropriate choices as to their electric service.

One example of new information which will assist in customer choice concerns energy sources. There is a growing consumer interest in renewable energy

sources being made available in Pennsylvania. The Commission encourages EDCs to inform customers about their energy resources.[143] Suppliers should provide a written disclosure statement of energy sources including a break-out by percentage of all energy sources with renewables separately addressed.

The stated goal of PECO Energy's education plan in its Restructuring Plan is "to create a communications campaign to inform and educate the public about electric utility competition and help convert them into informed consumers." [144] PECO's plan is aimed at all customers and includes a public relations program, research, development of educational materials, employee communications, media relations, and community outreach.

The Partial Settlement as proposed in Appendix G sets forth a statewide consumer education program, through the creation of a formal education advisory group to develop goals and objectives, program approaches and strategies, and education materials. That program also would include the use of community based organizations, and the retention of a consultant to assist the Commission with market research and needs assessment.

Interested parties have been provided an opportunity to testify regarding the consumer education program set forth in the Partial Settlement, as well as PECO's Restructuring Plan. Accordingly, the Act and the record before us provide a substantial basis upon which we may direct the development of PECO's Customer Education Program.

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[143] We have discussed this matter more thoroughly in our Licensing and Customer Information Rulemaking at L-00970129 and L-00970126, respectively.

[144] Direct testimony of witness G. King, Stmt. 17, Exhibit GSK-1 at 2.

Before we set forth the specific guidelines of the consumer education program, we applaud PECO Energy for its efforts to address this issue. We commend the willingness of PECO to develop a meaningful consumer education program -- one which links PECO Energy's historical resources and good will with the community at large.

We also recognize that PECO proposes to spend $24 million over three years toward consumer education programs. This calculates to be approximately $5.33 per customer per year. This level is the highest per capita commitment in the country. If this formula was applied statewide, the consumer education budgets of the EDCs would be $84 million. The Commission wishes to commend the Company for its significant efforts to recognize the importance of consumer education in the implementation of electric competition. However, the focus and allocation of resources is as important as the amount of resources.

2. Issues

There are two primary issues discussed in this record which are critical components to the overall goal of effective consumer education. They are: 1) A statewide plan for consumer education; and 2) a local consumer education plan including the role of community based organizations. It is important to note that the statewide plan and the local plan must contain adequate feedback and formal evaluation mechanisms, as well as auditing and review mechanisms as discussed above for CBO's providing universal service and conservation programs, in order for the Commission to determine the success of the program.

a. Statewide Consumer Education Plan

The $24 million proposed for PECO's Customer Education Plan includes the following: television, radio, cable, newspaper and magazines. In this electronic age, consumer education does not recognize geographic boundaries. This geographic issue alone begs for a statewide approach for the use of mass media in consumer education.

In addition to the geographic reasons, this approach makes sense for two other reasons. First, economies of scale work in the advertising business as well as the utility business. A coordinated statewide approach should lower the costs for all the EDCs. Second, a statewide approach to these highly visible tasks insures a consistent, honest and competitively neutral approach to consumer education. We find that a statewide program to fund consumer education using these media is both practical and effective.

This statewide approach to centralizing mass media education had its genesis during the electric restructuring pilot program. There was a significant concern that customers would respond to deregulation in the same manner as had been experienced by other states who had previously undergone this process; i.e. mass confusion, low interest, and pilot program quotas not being met. We challenged the industry to expand consumer education efforts by informing consumers throughout the state that electric generation competition was beginning, and to encourage immediate enrollment in the pilot program.

The Pennsylvania Electric Association (PEA) developed a strategy with our input to use two TV commercials with very distinct objectives. The strategy was to raise awareness of the pilot programs, and to alert consumers to direct mailings that would

follow from the individual companies. The second television commercial was developed as a reminder to those consumers chosen for the pilot program to select a supplier. The results were overwhelming. Within the two week enrollment period, Pennsylvania's electric utility pilot program achieved an overall response rate of over 17%, almost four times the planned goal of 5% per company. Over 900,000 Pennsylvanians chose to participate in a pilot program with only 254,000 openings. In the first phase of the pilot, approximately 70% of the customers who enrolled in the pilot program selected a generation supplier. We commend PECO for their vision in participating in this program. This level of customer participation exceeds that of any other state in the nation.

This statewide approach should be administrated from a financial and technical perspective by the PEA. During the electric pilot program PEA demonstrated their ability in coordinating the mass media education effort, and, while we cannot order them to do so, we would like to request them to step forward and take charge of this effort on behalf of the member companies. If the PEA declines this responsibility, an alternate mechanism may be created to manage this effort. PECO is therefore directed to appropriate 65% of the consumer education budget, or $15.6 million dollars, over the phase in period.

The content of the mass media campaign will be directed by a committee comprised of the following organizations: The Office of Consumer Advocate (OCA), the President of PEA, the Executive Director of the Energy Coordinating Agency of Philadelphia, the Chair of the Consumer Advisory Council, and the Chairman of the Commission. The Commission will have final authority over the final content of all consumer education advertising. The Committee will be directed to create a mechanism to track the success of this program and submit it to the Executive Director of the Commission for approval.

b. Local Consumer Education Plan

While 65% of the consumer education budget is allocated to the statewide effort, local community based efforts must also be encouraged. Therefore, PECO is directed to use 35% of its consumer education budget toward local efforts.

Local efforts may include community based organizations (CBOs) and other consumer interest groups to assist in the education of all Pennsylvania consumers. PECO's desire to use CBOs in their consumer education process is a sound approach, as expressed in this proceeding.[145]

Some CBOs have been very effective in partnering to develop consumer education efforts. To the extent that the objectives of the local consumer education plan can be accomplished through CBOs, we encourage their involvement. We have developed a core curriculum for training instructors and we expect to continue to have cooperation from community based and other organizations to facilitate a wide distribution of resources.

c. The Company's Role In Education

As outlined in our draft core curriculum, the Commission's education plan is divided into six topic areas which include sub-sections. The overall topic areas are: 1. Competition in the Electric Industry; what it is and how it works; 2. Effective Consumer Decision Making; 3. Selecting an Appropriate Supplier; 4. Understanding and Paying Your Bill; 5. Customer Rights and Responsibilities; and 6. Other topics including

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[145] PECO Stmt. 17.

universal service, customer assistance programs, low income usage reduction programs, and special needs customer issues.

At this time, it is unclear how and whether PECO's program intends to make use of the core curriculum developed by this Commission. PECO is hereby directed as part of their compliance filing to provide a plan for their consumer education through the use of CBOs. Specifically that plan should include:

1. what educational functions the CBOs and vendors will be providing;
2. specific information about who will be served;
3. a complete budget including personnel, operating, and fixed costs and periodic reporting requirements;
4. credentials sought to select participating organizations and vendors; and
5. any certification requirements.[146]

We note that participation in a statewide plan does not exonerate PECO from all its consumer education duties. PECO has continued obligations in the area of plain language, direct mail and bill insert communications to consumers, customer services, low income education, training of personnel to answer questions from the public, participation in education policy issues and keeping this Commission informed of issues, problems and successes in their educational efforts.

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[146] In formulating certification requirements, PECO should include the following as part of a CBO's selection process: a summary of the CBO's and vendor's history in educating consumers, particularly as to their experience educating on utility issues; a copy of the CBO's 501C3 and 990 tax filings; a historical (5 year) representation of any financial arrangements with utilities from both vendors and CBOs; a Pennsylvania Department of State certificate registering the CBO as a not-for-profit organization in Pennsylvania.

d. Conclusion

In providing for a statewide consumer education program, we are fulfilling the directives of Sections 2802 and 2808 of the Act. In the declarations of policy articulated by the Act in Section 2802, it is clear that the purpose of the Act is to modify existing legislation and regulation in order to establish standards and procedures for the creation of direct access by retail customers to the competitive generation market.[147] In addition, the Legislature declared that the procedures established under the Act provide for a fair and orderly transition from the current regulated structure to one in which retail customers have direct access to a competitive market for the generation and sale or purchase of electricity.[148] Further, the Act requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in the Commonwealth.[149]

It is abundantly clear that the legislative intent of the Act is to provide open access to the generation market by all retail customers, thereby removing the traditional service territory boundaries which have existed for decades. In doing so, the Act contemplates that all consumers throughout the Commonwealth be educated on a statewide and local basis so that they fully understand their choices in obtaining electric service. Further, the Act provides broad authority to the Commission through Section 2807(d)(3) to approve and implement a program which informs customers of the changes in the electric utility industry, so that consumers are empowered to make appropriate choices as to their electric service.

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147 66 Pa. C.S. § 2802(12).

148 66 Pa. C.S. § 2802(13).

149 66 Pa. C.S. § 2802(14).

We find that the dual statewide and local community based education proposal in this record is reasonable. However, this particular program with its statewide component cannot be directed for all EDCs without an opportunity to be heard.

The significance of this issue as dictated by the Act is such that we will initiate a separate proceeding regarding the statewide portion of PECO's Customer Education Plan. All interested parties, including the other EDCs will have an opportunity to participate and be heard on the statewide portion of this plan.

V. CONCLUSION

For the reasons discussed, we conclude that PECO's Restructuring Plan as filed must be modified consistent with this Opinion and Order. In assessing PECO's Restructuring Plan and reaching our decision, the Commission has balanced carefully the "interdependent standards" contained in Section 2804. PECO's compliance filing must precisely reflect the balancing indicated in this Opinion and Order or it will not be accepted.

PECO is directed to submit a compliance filing incorporating the conclusions and directives contained in this Opinion and Order within 20 days after the entry of the Order in this proceeding. The compliance filing shall be served on the same date as filed to all parties in this proceeding, who may file written comments concerning non-compliance with this Opinion and Order within 7 days after the compliance filing is filed. It shall identify fully unbundled service for generation, transmission, CTC, and distribution for all tariff classes and a separate tariff for suppliers.

VI. ORDER

1. That the Joint Petition for Partial Settlement, filed on August 25, 1997, relative to PECO Energy Company's Proposed Restructuring Plan, docketed at No. R-00973953, and Application for a Qualified Rate Order, is denied.

2. That the 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, filed October 6, 1997, and docketed at P-00971265, is denied.

3. That the Application of PECO Energy Company, for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code, filed April 1, 1997, and docketed at R-00973953, is adopted as modified by this Opinion and Order.

4. That PECO Energy Company shall remain the provider of last resort consistent with the determinations contained in this Opinion and Order and the requirements of 66 Pa. C.S. §2802(16).

5. That PECO Energy Company shall phase-in direct access to alternative generation suppliers in the following manner:

a. 33% of the peak load of each customer class shall have the opportunity for direct access as of January 1, 1999.

b. 66% of the peak load of each customer class shall have direct access as of January 2, 1999.

c. All customers shall have direct access as of January 2, 2000.

6. That PECO Energy Company is directed to conduct an open enrollment period, beginning March 1, 1998, to identify customers that will be able to shop for electric generation supply as of January 2, 1999. All customers shall have the opportunity to shop as of January 2, 2000.

7. That, consistent with the various determinations and findings in this Opinion and Order, PECO Energy Company shall be permitted to recover $5.024 billion of stranded costs, subject to the compliance filing, through the application of a competitive transition charge to customers' bills.

8. That the competitive transition charge authorized in the preceding ordering paragraph shall be subject to the following requirements:

a. The competitive transition charge may be collected from January 1, 1999 to June 30, 2007.

b. The competitive transition charge shall be a flat rate, and shall be calculated and applied consistent with the directives contained in this Opinion and Order.

c. The competitive transition charge shall be reconciled and may be modified on an annual basis as required by 66 Pa. C.S. §2808(f).

d. Any reconciliation and modification of the competitive transition charge shall be done on a customer class basis.

e. Calculation based on 33,569,358 MWHs

f. The competitive transition charge shall be calculated in a manner recognizing monthly receipt of competitive transition charges revenues.

9. That PECO Energy Company shall modify its transmission and distribution revenue requirement and rate structure to incorporate the adjustments, including cost allocation method, as directed in this Opinion and Order.

10. That PECO Energy Company shall continue to provide service to existing customers through existing tariffs throughout the transition period, and all special contracts shall remain in force, except as modified pursuant to this Opinion and Order.

11. That PECO Energy Company shall continue to offer regulated LILR, EER and IPR service to existing customers until the end of the transition period. In addition, these customer classes shall not be denied the opportunity to shop for alternative generation supply.

12. That PECO Energy Company's filing in compliance with this Opinion and Order is to include one or more proposals to provide reasonable interconnection standards for all types of self-generating customers without limiting availability. The compliance filing must also include a reasonable interconnection opportunity that does not impose barriers to entry.

13. That PECO Energy Company shall comply with the determinations contained in this Opinion and Order regarding bill consolidation based on multiple meters and installation and use of qualified meters.

14. That PECO Energy Company's proposed Code of Conduct is approved as modified by this Opinion and Order.

15. That PECO Energy Company's proposed Universal Service and Energy Conservation Programs are approved as modified by this Opinion and Order.

16. That PECO Energy Company's proposed Consumer Education Proposal is tentatively approved pending possible modification in a future and separate proceeding.

17. That PECO Energy Company shall, within twenty (20) days of entry of this Opinion and Order, submit a compliance filing which incorporates the conclusions and directives contained in this Opinion and Order, including, but not limited to the following:

a. The full identification of unbundled charges for generation, transmission and distribution service, and competitive transition charges.

b. A separate tariff for alternative generation suppliers.

18. PECO Energy Company shall serve a copy of its compliance filing on all parties to this proceeding on the same date that it is filed with the Commission.

19. Parties to this proceeding may file written comments concerning non-compliance with this Opinion and Order within seven (7) days after the filing of PECO Energy Company's compliance filing.

20. That PECO Energy Company shall, within twenty (20) days of entry of this Opinion and Order, submit a compliance filing that incorporates all of the conclusions and directives contained in this Opinion and Order, including, but not limited to:

a. For each tariff class or schedule, the compliance filing shall:

   i. identify the unbundled charges for generation, transmission and distribution service;
   ii. identify the CTC, calculated to recover the authorized principal amount, consistent with the allocation methodology, collection period, monthly amortization, total sales, and return adopted herein;
   iii. identify the shopping credit, calculated as the difference between the average rate for that tariff class or schedule in effect on January 1, 1997 and the sum of the transmission and distribution and CTC rates for that tariff class or schedule; and
   iv. Identify all other adjustments necessary to the terms and conditions of service to reflect a competitive generation market as provided herein.

b. Each tariff class or schedule shall reallocate Administrative and General expense to production as provided herein without including a separate return component for capitalized items.

c. A new supplier tariff providing procedures for competitive generation supply consistent with this Opinion and Order.

21. That, in addition to the specific requirements contained in the foregoing ordering paragraphs, PECO Energy Company shall comply with all other directives contained in this Opinion and Order.

BY THE COMMISSION,

James J. McNulty
Secretary

SEAL

ORDER ADOPTED: December 11, 1997

ORDER ENTERED: DEC 23 1997

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HARRISBURG, PA 17120

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184 MAIN CAPITOL
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REP. WILLIAM LLOYD, JR.
CHAIRMAN
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KIM SHAWKEY
SEN. BRIGHTBILL'S OFFICE
337 MAIN CAPITOL
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SENATOR JOSEPH M. ULIANA
459 MAIN CAPITOL
HARRISBURG, PA 17120

NAN MCLAUGHLIN
GOVERNOR'S OFFICE
238 MAIN CAPITOL
HARRISBURG, PA 17120

GLEN THOMAS
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VINCENT ROSSI
SENATOR FUMO'S OFFICE
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HOUSE OF REPRESENTATIVES
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HARRISBURG, PA 17120

REP. CHRIS WOGAN
HOUSE OF REPRESENTATIVES
5 EAST WING
HARRISBURG, PA 17120

SENATOR CLARENCE D. BELL
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PRESIDENT
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SPOKANE WA 99216

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CITY TASK FORCE
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FRANK BENTLEY VICE
PRESIDENT
PA RURAL ELECTRIC ASSN
P O BOX 1266
HARRISBURG PA 17108-1266

CHARLES AULT
ALLEGHENY POWER COMPANY
800 CABIN HILL DRIVE
GREENSBURG PA 15601

ALAN GOVER
WEIL GOTTSHAL & MANGES
700 LOUISIANA - SUITE 1600
HOUSTON TX 77002

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 19th day of December, 1997,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

JOSEPH GOLDBERG
CHIEF DEPUTY ATTORNEY GENERAL
DIR., BUR. OF CONSUMER PROTECTION
14TH FLOOR- STRAWBERRY SQUARE
HARRISBURG, PA 17120

DOCUMENT FOLDER

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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OFFICE OF PROTHONOTARY FILE ROOM
PA PUBLIC UTILITY COMMISSION
B-20, North Office Building
Harrisburg, PA 17105-3265

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PROTHONOTARY'S OFFICE
98 JAN -2 PM 12:23

025577

DEC 26 1997
Office of Attorney General

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 24th day of December, 19 97

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

KJR

KENNETH L MICKENS ESQUIRE
CHARLES DANIEL SHIELDS
ESQ
OFFICE OF TRIAL STAFF
P O BOX 3265
HARRISBURG PA 17105-3265

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

OFFICE OF PROTHONOTARY FILE ROOM
PA PUBLIC UTILITY COMMISSION
B-20, North Office Building
Harrisburg, PA 17105-3265

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

KJR

AND NOW, to wit, this 5 day of January, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

WICK HAVENS
DIV OF AIR RESOURCE MGMT
400 MARKET STREET 12TH FL
P O BOX 8468
HARRISBURG PA 17105-8468

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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026632

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

DEC 29 1997

AND NOW, to wit, this 29th day of December, 1997, KJR

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

HONORABLE SAMUEL MCCULLOUGH
SECRETARY
DEPARTMENT OF COMMUNITY &
ECONOMIC DEVELOPMENT
433 FORUM BUILDING
HARRISBURG PA 17120

Samuel G. McCullough
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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B-20, North Office Building
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AND NOW, to wit, this 29 day of December, 1997,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

JOHN EARWOOD
PA. DEPARTMENT OF AGING
400 MARKET STREET
HARRISBURG, PA 17101

KJR

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

OFFICE OF PROTHONOTARY FILE ROOM
PA PUBLIC UTILITY COMMISSION
B-20, North Office Building
Harrisburg, PA 17105-3265

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

KJR

AND NOW, to wit, this 24th day of December, 1997,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

NAN MCLAUGHLIN
GOVERNOR'S OFFICE
238 MAIN CAPITOL
HARRISBURG, PA 17120

Nan McLaughlin/kab
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

OFFICE OF PROTHONOTARY FILE ROOM
PA PUBLIC UTILITY COMMISSION
B-20, North Office Building
Harrisburg, PA 17105-3265

KJR

Received

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Harrisburg

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 29 day of Dec., 1997,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

HONORABLE STEWART J
GREENLEAF
SENATE BOX 203012
HARRISBURG PA 17120-3012

Eric Ramsey
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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97 DEC 29 AM 11:16
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DEC 29 1997

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AND NOW, to wit, this 12/29 day of _____, 1997,

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TIMOTHY MCNULTY
DEPT. OF ECONOMIC AND
COMMUNITY DEVELOPMENT
471 FORUM BUILDING
HARRISBURG, PA 17120

KJR

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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025485

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KJR

AND NOW, to wit, this 29th day of December, 1997,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

KAREN OILL MOURY ESQUIRE
OFFICE OF SMALL BUSINESS
ADVOCATE
300 N SECOND STREET
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HARRISBURG PA 17101

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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AND NOW, to wit, this 24 day of Dec, 1997,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

REP. KEITH MCCALL
HOUSE OF REPRESENTATIVES
313 SOUTH OFFICE BUILDING
HARRISBURG, PA 17120

Deborah Wright (Secy)
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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B-20, North Office Building
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AND NOW, to wit, this 29th day of December, 1997, KJR

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

SENATOR JOSEPH M. ULIANA
459 MAIN CAPITOL
HARRISBURG, PA 17120

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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PROTHONOTARY'S OFFICE

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the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of DECEMBER 19, 1997 at Docket No. R-00973953, on behalf of:

TANYA J MCCLOSKEY
STEVEN K STEINMETZ
OFFICE OF CONSUMER ADVOCATE
1425 STRAWBERRY SQUARE
HARRISBURG PA 17120

Judy Edgett
Signature Consumer advocate

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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Harrisburg, PA 17105-3265

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AND NOW, to wit, this 27th day of December, 1997,

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REP. WILLIAM LLOYD, JR.
CHAIRMAN
HOUSE CONS. AFFAIRS COMM.
128 SOUTH OFFICE BUILDING
HARRISBURG, PA 17120

William R. Lloyd, Jr.
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

OFFICE OF PROTHONOTARY FILE ROOM
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