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January 13, 1998

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North Office Building - Filing Room
PO Box 3265
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58 JAN 13 AM 11:42
PA. P.U.C.
PROTHONOTARY'S OFFICE

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

ANSWER OF MID-ATLANTIC POWER SUPPLY ASSOCIATION IN OPPOSITION TO PETITION OF PECO ENERGY COMPANY FOR EXTENSION OF TIME TO FILE COMPLIANCE TARIFF AND REQUEST FOR AN ORDER DIRECTING PECO ENERGY COMPANY TO OBEY THE ORDER OF THE COMMISSION AND TO FILE ITS COMPLIANCE FILING FORTHWITH (OR, NO LATER THAN THE CLOSE OF BUSINESS, JANUARY 16, 1998)

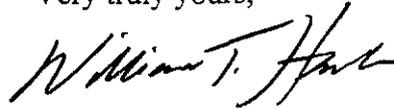
Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of the Answer of Mid-Atlantic Power Supply Association In Opposition To Petition Of PECO Energy Company For Extension Of Time To File Compliance Tariff And Request For An Order Directing PECO Energy Company To Obey The Order Of The Commission And To File Its Compliance Filing Forthwith (Or, No Later Than The Close Of Business, January 16, 1998) in connection with the above-captioned proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

DOCUMENT FOLDER

If you have any questions, please feel free to call. Thank you for your attention to this matter.

Very truly yours,



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

Counsel for the Mid-Atlantic Power
Supply Association

WTH:JLM/kmg
Enclosures

cc: Chairman John Quain
Vice Chairman Robert Bloom
Commissioner John Hanger
Commissioner David Rolka
Commissioner Nora Mead Brownell
Cheryl Walker Davis, Office of Special Assistants
Frank B. Wilmarth, Law Bureau
Attached Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company

R-00973953

ORIGINAL

**ANSWER OF MID-ATLANTIC POWER SUPPLY ASSOCIATION
IN OPPOSITION TO
PETITION OF PECO ENERGY COMPANY
FOR EXTENSION OF TIME TO FILE COMPLIANCE TARIFF
AND
REQUEST FOR AN ORDER DIRECTING PECO ENERGY COMPANY
TO OBEY THE ORDER OF THE COMMISSION AND TO FILE
ITS COMPLIANCE FILING FORTHWITH (OR, NO LATER
THAN THE CLOSE OF BUSINESS, JANUARY 16, 1998)**

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PA. PUBLIC UTILITY
COMMISSION OFFICE

AND NOW, this 13th day of January, 1998, comes the Mid-Atlantic Power Supply Association ("MAPSA"), and opposes PECO Energy Company's ("PECO") Petition for an Extension of Time to file its Compliance filing in this proceeding, and in support of its opposition, states as follows:

1. Contrary to PECO's suggestion, compliance with Commission Orders establishing deadlines in restructuring cases does matter.

2. Further, not only will individual suppliers be prejudiced by extensions of due dates, particularly compliance filings, the public interest will be prejudiced by any delays.

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3. In particular, the Commission's December 23, 1997 Order in this proceeding directs PECO to commence its open enrollment period beginning March 1, 1998, for two-thirds of its customers which are eligible to shop for electric generation effective January 2, 1999.

4. As the Pilot experience has indicated, in order for Electric Generation Suppliers to make their business plans and prepare offers, specific procedures and a supplier tariff must be in place well in advance of enrollment, in order to afford customers the benefits of competition under the time schedules established.

5. Any delays only can lead to cost increases which are contrary to the public interest.

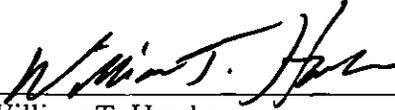
6. The stated reason for the requested extension of time, namely, PECO's Petition for Reconsideration, does not provide a sufficient basis for the requested extension. That Petition addresses few matters decided by the Commission in its December 23, 1997 Order, and any decision by the Commission on reconsideration will have little effect on the Compliance filing. The "burden" to PECO of filing revised tariff rates is relatively insignificant when compared to the harm which any delay in filing a supplier tariff and in starting the open enrollment will cause.

WHEREFORE, in view of the foregoing reasons, it is requested that:

1. The Commission enter an Order denying PECO Energy Company's request for an extension of time to file its Compliance filing;

2. The Commission enter an Order directing PECO Energy Company to bring its conduct in compliance with a final Order of the Commission, and to file the requisite Compliance filing forthwith, or no later than the close of business, January 16, 1998.

Respectfully submitted,



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Counsel for
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Dated: January 13, 1998

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

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January 13, 1998

VIA HAND DELIVERY

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

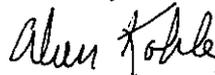
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98 JAN 13 AM 11:57
PA P.U.C.
PROTHONOTARY'S OFFICE

Dear Mr. McNulty:

Enclosed for filing please find an original and three copies of Enron's Answer to Petitions for Reconsideration in the above-captioned action. As indicated on the attached Certificate of Service, copies of this document are being served this day on the parties in the manner indicated.

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

Sincerely,



Alan Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

AK/cln

Enclosure

cc: All Parties of Record w/enc.

DOCUMENT
FOLDER

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

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Dated: January 13, 1998

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Application of PECO Energy Company :
for Approval of its Restructuring Plan : Docket No. R-00935593
Under Section 2806 of the Public :
Utility Code :

ENRON'S ANSWER TO
PETITIONS FOR RECONSIDERATION

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PAP. U.C. OFF.
PROTHONOTARY

Enron Energy Services Power, Inc. and Enron Power Marketing, Inc. (collectively "Enron") submit this Answer to certain portions of the various petitions for reconsideration submitted by parties of record to the above-captioned Restructuring Proceeding for PECO Energy Company ("PECO").¹ Through the various reconsideration requests, petitioners seek a variety of modifications to the Commission's December 23, 1998 Opinion and Order (the "Opinion and Order").

Through this Answer, Enron responds to several of the issues raised by the reconsideration petitions and generally requests the Commission to affirm its determinations in the Opinion and Order as to those issues.² Summarily, Enron advocates the following responses to issues raised by petitioners.

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¹ Enron is responding to the petitions for reconsideration filed by PECO, the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the Office of Consumer Advocate ("OCA"), and Consumer Education and Protective Association et al. ("CEPA"). New Energy Ventures ("NEV") and Enron also submitted petitions for reconsideration.

² In one instance, Enron also requests the Commission to grant reconsideration as to a claim raised by OCA.

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(a) The Commission should affirm its determination that customers choosing to stay with PECO for generation services should pay generation rates equal to the generation credit established by the Opinion and Order, at least until such time as the Commission completes the provider of last resort ("PLR") rulemaking contemplated by the Opinion and Order and implements any alternative pricing methodology, provided that such customers shall have an ongoing opportunity to obtain generation rate savings from the competitive market by choosing an alternative supplier.

(b) The Commission should stay the course and implement PECO's Restructuring Plan in a timely manner — whether it requires any modification as a result of Commission review of pending petitions for reconsideration or not. Within this context, the Commission should maintain the current time line to initiate open enrollment in PECO's service territory on March 1, 1998.

(c) The Commission should affirm its decision to rely on the competitive market to provide long term rate savings to consumers rather than rely on government mandated and temporary rate cuts to provide savings; and

(e) The Commission should adopt OCA's request to eliminate any switching fees which may have survived PECO's original filing.

Overall, Enron requests the Commission to act to maintain and, in some cases, further promote the integrity of the Opinion and Order which was carefully designed to foster the development of a robust competitive market in PECO's service territory. As the Commission emphatically concluded in its Opinion and Order, "It is only genuine competition that will deliver long term price benefits to the customers of the PECO service territory."³

I. THE COMMISSION SHOULD AFFIRM ITS DETERMINATIONS REGARDING THE LEVEL OF GENERATION RATES TO BE CHARGED PLR CUSTOMERS.

The Commission made specific findings and determinations regarding the design and level of rates to be charged customers who are not eligible for direct access during the phase-in period or refrain from choosing a generation supplier once direct access is available.⁴ For ineligible customers in 1999, the Commission determined that these customers "shall remain on 'bundled rates,'" as these customers are charged by PECO

³ Opinion and Order, p. 44.

⁴ The Commission distinguishes between the "customers who do not yet have the opportunity to shop" in 1999 (referred to herein as "ineligible customers") and "phased in customers who do not have a competitive supplier" (referred to herein as "default customers"). The Commission determined that for ineligible customers, PECO's obligation to serve "is derived from EDC status, not as a PLR," while, in contrast, PECO's obligation to serve default customers (both those customers who have never chosen and those customers who choose a competitive supplier and then return to PECO as their electricity provider at some later date) is derived from its status as PLR at least in the early stages of direct access. Opinion and Order, pp. 132-135.

today.⁵ For default customers during the transition period, the Commission expressly determined that these customers "should be treated the same as customers not yet given the choice of competitive suppliers."⁶ Accordingly, both ineligible customers in 1999 and default customers during the transition period would continue to be charged bundled rates at current tariffed levels subject to the rate cap.⁷

Finally, the Commission announced its intent, as required by 66 Pa.C.S. § 2807(e)(2), to initiate a rulemaking "defining the terms and conditions of service for the provision of PLR service at market prices," and to define standards and establish procedures for selection of a PLR after the phase-in, including consideration of the Environmentalists "Better Choice Plan."⁸ Although the Commission did not identify when such a rulemaking would be initiated, it did indicate that it intended to promulgate rules when it has "more experience in the restructuring process."

In their respective reconsideration petitions, CEPA and the OCA seek clarification or reconsideration of the Commission's determination regarding rate treatment of

⁵ Opinion and Order, p. 133. In Commissioner Brownell's Statement attached to the Opinion and Order, she encouraged PECO to provide at least a 7% rate cut to those customers who will not have direct access until January 1, 2000.

⁶ Opinion and Order, p. 134.

⁷ To the extent this Commission's conclusion is disputed, the chart on page 46 of the Opinion Order clarifies the rates to be charged default customers as of January 1, 1999.

⁸ Opinion and Order, pp. 134-137. Under the "Better Choice Plan," default customers would be assigned to competitive electric suppliers. On page 135 of the Opinion and Order, the Commission cites 66 Pa.C.S. § 2808(e)(2) and (3) as the enabling provisions for these regulations. However, it is clear that the intended reference was to 66 Pa.C.S. § 2807(e)(2) and (3).

ineligible and default customers. Both parties seek a Commission determination that the Commission should require PECO to decrease its rates to ineligible and default customers, effective January 1, 1999, at the initiation of direct access. Both CEPA and OCA apparently believe that PECO, the regulated distribution and transmission company, should act as a competitive entity for customers who default to its generation service.⁹ Such a view, as advocated by these parties, is potentially disastrous to competition by removing incentives for customers to shop. Moreover, and as set forth below, the relief sought by CEPA and OCA is precluded by the Electricity Generation Customer Choice and Competition Act ("Act") and the policies underlying the Opinion and Order and should be denied. The fundamental premise of the Opinion and Order is that all customers will be far better off if the competitive market is permitted to offer substantial savings rather than perpetuating PECO as the monopoly provider.

A. Adoption of the CEPA and OCA Position Would Have a Serious Adverse Impact on the Development of a Competitive Market.

Throughout its Opinion and Order, the Commission emphasized its intentions to implement policies which assured the development of a robust competitive market as the

⁹ CEPA apparently believes that rates to default customers should be reduced to prevailing market prices. OCA advocates reductions to market based levels. Neither CEPA or OC, however, propose any details regarding their requested relief. For example, neither party addresses what procedures should be utilized by the Commission to review PECO's default customer rates or what review criteria should be utilized to evaluate the appropriateness of proposed rate levels. In fact, these are the types of issues that the Commission has appropriately deferred to a future rulemaking docket.

only adequate, long term protection for consumers. As the Commission emphatically concluded in setting forth the foundation for PECO's restructuring:

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.

* * *

The Commission is convinced from the record testimony that these shopping credits and the mechanisms of the shopping credits will provide a competitive market. Again, it is only genuine competition that will deliver long term 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.

Opinion and Order, pp. 43-44.

In reaching its determinations in this proceeding the Commission clearly recognized that providing any type of limited, short term rate decreases to consumers which bypass the competitive market threatens the viability of that market and the long term protections the marketplace provides to consumers as a replacement for traditional regulation. The Commission's concerns with such rate decreases is fully supported by the underlying record in this proceeding. As Enron witness Oliver testified in response to a

provision of the Partial Settlement which allowed PECO to "flex down" its PLR rates to default customers to "prevailing market prices":

In contrast, the Partial Settlement virtually assures that the vast majority of PECO customers will remain on PLR service through the end of the year 2008. Because the provisions of the Partial Settlement require that PLR customers always receive the lower of the market price or the generation credits set forth in the plan, customers under the plan will have little or no expectation of finding better rates in the competitive market than they would achieve by continuing to purchase PLR service from PECO. Thus, although the Partial Settlement may allow for the pass-through of some measure of the benefits of competition in wholesale power markets to retail customers, adoption of the Partial Settlement must be understood to produce at least a 10-year postponement of any real opportunity for the development of competition for retail power services in PECO's service territory.

EESPI St. 2-R, pp. 8-9.

This is not to say that any customer, from the largest corporate user to the smallest low-income consumer, should be denied the opportunity for substantial savings on their electric bill.¹⁰ The Opinion and Order "empowers" customers to do better by establishing a significant shopping credit allowing every consumer to experience the savings intended and readily available through participation in the marketplace. Provision of such an opportunity is consistent with the Act's provisions and objectives and assures all consumers an equal opportunity to share in the Act's benefits.

¹⁰ This is true except for the 33% of ineligible customers in 1999 unless PECO agrees to voluntary rate decreases for these customers as encouraged by Commissioner Brownell.

Overall, the Commission's pronouncement is loud and clear. The marketplace, not EDC tariffs, should be relied on to bring significant and lasting rate reductions to all customers in PECO's service territory.¹¹ While CEPA and the OCA continue to disagree with the Commission's conclusion, neither party has presented new evidence or novel arguments in support of their claims but merely raises the same arguments which were decided against them.¹² Accordingly, their petitions should be denied.

¹¹ CEPA argues that this outcome places "unjustifiable burden on low income customers, who are likely to be unable to exercise choices available to them as consumers or who, due to their credit history, will not be able to obtain alternative electric generation." CEPA Petition, p. 4. However, such a conclusion is not supported by the record of this proceeding. CEPA points to an unsupported statement by witness Colton, sponsored by the Environmentalists, as its evidentiary support for concluding that poor and minority customers will not be provided benefits by a competitive market. However, Mr. Colton's conclusion was not substantiated by a study or other evidentiary support and provides no more of an evidentiary basis for CEPA's conclusion than its own unsupported statements in its Petition. There is no basis for assuming that customers, including low income customers, will not be attracted to take advantage of the substantial savings available as a result of the Opinion and Order. Moreover, low-income consumers will be assisted by the expanded universal service program approved for PECO by the Commission. In Enron's view, contrary to CEPA's assertions, portable universal support will result in low-income consumers becoming an attractive market for competitive suppliers. Accordingly, CEPA's claims should be disregarded.

¹² See Duick v. Pennsylvania Gas & Water Company, 56 Pa.P.U.C. 533 (1982).

B. The Act Requires that the Level and Design of Rates for Default Customers be Determined Through the Promulgation of Regulations.

The level and design of rates to be charged to default customers is dependent on the Commission's interpretation of Section 2807 of the Act which defines the EDC's obligation to serve in a competitive environment. Section 2807 provides as follows in relevant part:

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

* * *

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

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

Careful review of the provision reveals that the Commission's determinations closely tracks the statutory directive and, in fact, is the only result authorized by the General Assembly. Subsection (e)(2) expressly mandates that the provisions of subsection (e)(3) pertaining to the connection, delivery and acquisition of

electricity for default customers be implemented through the promulgation of regulations.¹³ No other authority is provided by the Commission as to implementation of this portion of the statute. Furthermore, subsection (e)(2) dictates that the mandatory rulemaking to implement subsection (e)(3) establish the EDC's obligations "that will exist at the end of the phase-in period," or in PECO's case on January 2, 2000.¹⁴

Subsection (e)(3) sets the standard governing the Commission's promulgation of regulations and states that, under the regulations, the PLR is required to "acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs." Read together, the two subsections require the Commission to promulgate rules, following restructuring, which define the EDC's obligation to serve including the terms and conditions under which they will acquire and sell power to default customers. Of course, this is exactly the course the Commission contemplated in its PECO Restructuring Order.

¹³ Subsection (e)(2) mandates the promulgation of regulations defining "the electric distribution company's obligation to connect and deliver and acquire electricity" for default customers. It does not require the promulgation of regulations to provide for the selection of a PLR other than the EDC under subsection (e)(3). Accordingly, although the Commission has determined to initiate a rulemaking to set forth procedures for competitive selection of a PLR, it was not required to do so by statute.

¹⁴ Subsection (e)(2) indicates that the rules should be promulgated at the "end of the transition period" to establish the EDC's obligation "at the end of the phase-in period." To make sense of this provision, it appears that the General Assembly's reference to the end of the transition period was intended to refer to the close of Commission restructuring proceedings. Such an interpretation is consistent with the language of Section 2807(e) which indicates that the various underlying subsections are intended to be carried out by the Commission "following implementation of restructuring."

CEPA and OCA's reference to Commissioner Brownell's statement relative to ineligible customers, as supporting mandatory rate reductions under 66 Pa.C.S. § 2807(e)(3) for default customers is completely misplaced. Commissioner Brownell's reference was to encourage PECO to provide voluntary rate reductions to ineligible customers, like those provided in the Partial Settlement, because ineligible customers in 1999 would not have the ability to experience significant rate reductions from the competitive market. In contrast, as implicitly recognized by Commission Brownell, all default customers have the opportunity to experience immediate and substantial rate reductions from the competitive market and do not have the same need for additional voluntary reductions encouraged for PECO's ineligible customers.

Accordingly, the Commission correctly determined that, until the final promulgation of regulations mandated by 66 Pa.C.S. § 2703(e)(2), both ineligible and default customers should continue to pay tariffed rates to PECO subject of course to the protections afforded by the rate cap. While PECO is not legally precluded from reducing its rates, the rates in effect remain fully regulated and any changes in rates must comply with Chapter 13 rate making procedures. In the interim, most customers will be able to achieve savings by participating in the competitive market. No other outcome is supportable.

C. Under the Standard in Section 2807(e)(3), the PLR Must Recover All Costs.

In addition to misunderstanding the Commissioner's procedural obligations under Section 2807, CEPA and the OCA also misinterpret or misstate the statutory standard which governs the PLR's acquisition and sale of power to default customers following the phase-in period. In particular, CEPA completely misinterprets the meaning of the statutory language by apparently claiming that default customers have a right to buy power from the PLR at "prevailing market prices."¹⁵ However, review of the language of Section 2807(e)(3) indicates that the provision merely requires that the PLR "acquire" electricity for default customers at "prevailing market prices." As to the rates for generation to be charged these customers, the subsection only requires that the PLR "shall recover all reasonable costs." (Emphasis added).

Accordingly, in determining what standard governs the Commission in promulgating rules concerning an EDC's level of charges to default customers, the Commission must determine what level of rates for generation recovers all of the PLR's costs. In fact, it appears that the Commission has already determined the level of

¹⁵ CEPA Petition, p. 5. While it is somewhat unclear, it appears that CEPA believes default customers should pay only prevailing wholesale market prices. Of course, this claim on behalf of a group of retail customers is nonsensical. If default customers had a right to a wholesale price, without recovery of all associated costs including retail costs, default customers would, by definition, receive a better price than customers who exercised their right to choose, (all of which must pay a retail price which includes recovery of retail costs) making it uneconomic for customers to participate in the competitive marketplace. Clearly, such a result is not intended by either the General Assembly or the Commission's Opinion and Order.

generation costs which it views as reasonable for PECO. In its Opinion and Order, the Commission unbundled PECO's generation related costs from its distribution and transmission costs and then determined the portion of those costs which were transition or stranded in nature and could not be recovered in a competitive market. It follows that PECO's remaining generation costs are reasonable and can and should be recovered in a competitive environment through the sale of electricity to all customers, including default customers. The resulting level of generation rates to be charged to default customers appears to represent the EDC's recovery of all reasonable costs, and is thus equal to the energy and capacity or "shopping credit" provided to customers who exercise their right to choose.

As the Commission promulgates and implements its regulations for selecting PLRs other than the EDC, the Commission will provide default customers with an opportunity to potentially experience reduced rates. Such a scenario results from the vision shared by Enron and the Environmentalists that once implemented, a selection process will allow entities to compete for the PLR role. The PLR bidding process could result in a proposal that would reflect overall rates lower than those presently charged by PECO.

If the Commission determines that Section 2807(e)(3) requires a re-evaluation of the level of rates charged to default customers and determines that EDC's may or should be required to charge default customers a different rate than the shopping credit provided to non-default customers, the Commission's regulations should determine

with specificity the categories of costs to be considered in setting default customer rates. As set forth above, determination of the cost categories included in the "reasonable costs" which must be recovered by the PLR under 66 Pa.C.S. §2807(e)(3), should be examined within the context of the rulemaking process required by Section 2807(e)(2).

If the Commission invokes a process to determine what "reasonable costs" should be recovered from default customers by the PLR, it is crucial that the Commission include all cost categories which are experienced by the PLR in delivering generation to retail customers. Allowing the PLR to charge rates below cost is anti-competitive and would result in the improper recovery of those costs from other customers.

Since establishment of these cost categories would be completed within the rulemaking process, identification of appropriate cost categories may be premature at this time. Nevertheless, if the Commission chooses to address this issue, it should include, at a minimum, the following cost categories as "reasonable costs": (1) energy and capacity; (2) reserve margin; (3) gross receipts tax; (4) line losses; (5) a contribution to overhead or administrative and general costs; (6) cost of capital and (7) other retail costs. To not require recovery of each of these categories would be to violate the statutory mandate that the PLR "shall recovery all reasonable costs" and would be anti-competitive and otherwise inappropriate.

As expressly recognized by the Commission, the success of the competitive market is closely related to the relative level of the energy and capacity or shopping credit and the default price of energy. However, the level of the shopping credit is the

appropriate barometer only if the shopping credit equals the default price. This is because suppliers will compete against the monopoly price as it exists at any point in time not the rate cap.¹⁶ To the extent the two are permitted to diverge, the standard offer will set the "yardstick" against which all suppliers will compete. Accordingly, the Commission must assure that all reasonable costs are recovered by the EDC as PLR. If the EDC is prohibited from recovering a category of costs that is incurred by suppliers, the market will experience anti-competitive effects and marketplace development will be impeded. Section 2807(e)(3) prohibits such an outcome and should be strictly enforced by the Commission.

D. Regardless of the Outcome, Default Rates Remain Fully Regulated Rates.

CEPA appears to suggest that, regardless of the standard applied by the Commission, that the rates charged default customers should be deregulated, except for rate cap application. The apparent intended result is that EDCs could "flex down" default customer rates without Commission regulatory approval. Such a result is completely lacking in statutory support and is inconsistent with the Act's objectives.

As set forth above, Section 2807(e)(3) sets the standard for establishment of default customer rates through the rulemaking process. The Commission has an ongoing

¹⁶ The monopoly price is commonly referred to as the EDC's "standard offer." The standard offer is the price the EDC charges default customers as the PLR at any given point in time. The rate cap, by statute, is the price charged a given rate class by the EDC as of January 1, 1997.

responsibility to regulate these rates to assure they are consistent with the statutory standard. The standard offer put forward by the EDC is not a competitive offering since it is only available to customers who do not choose. Furthermore, as long as the EDC is the PLR, the standard offer is not provided by a generation supplier, affiliated or unaffiliated, but is instead provided by the fully regulated distribution and transmission company. Accordingly, there is simply no basis for asserting that the standard offer does not remain subject to full and ongoing Chapter 13 regulation.

As Commissioner Brownell recognized, nothing in the Act precludes PECO from voluntarily reducing its regulated rates as a result of reduced costs, overearning or other relevant factors. However, such tariff charges remain subject to Chapter 13 to assure that such rate charges are just and reasonable. Included in this review is the Commission's responsibility to assure that such rate changes are not anti-competitive or otherwise violative of the Act. Permitting EDCs to arbitrarily set rates to anyone is not permitted by the Act and would be potentially disastrous to the development of the competitive market the Commission is committed to.

E. The Commission Should Retain the Link Between Default Customer Rates and the Competitive Provision of the PLR.

In its Opinion and Order, the Commission appeared to establish a link between establishment of rates for default customers and the competitive provision of the PLR function. In fact, it appears from the Commission's discussion on pages 132-136 of

its Opinion and Order, that it intends to promulgate rules governing both areas in the same rulemaking proceeding.

In Enron's view, such a link between selection of the PLR and the rates charged PLR customers is completely appropriate and consistent with the Act's objectives. Once procedures are established to competitively select PLRs in the various EDC service territories, the rates offered or proposed to be charged by PLR applicants will be an important factor in the selection process. Such a fair and equitable process will allow the benefits of competition to be brought to those customers who choose not to choose, and will promote, not deter, the development of competitive markets.

Accordingly, the Commission's findings and determinations regarding PLR rates and PLR selection through a rulemaking process is a fair and equitable resolution of those issues and is completely consistent with the Act's directives. Enron urges the Commission to proceed as quickly as possible to initiate and complete the intended rulemaking. In contrast, the relief requested by the OCA and CEPA is inconsistent with both the Act and the Commission's well reasoned course of action. For these reasons, the petitions for reconsideration should be denied.

II. THE COMMISSION SHOULD AFFIRM ITS CURRENT SCHEDULE FOR INITIATION OF OPEN ENROLLMENT

In its Opinion and Order, the Commission directed PECO "to conduct an open enrollment period beginning March 1, 1998, to identify customers that will be able

to shop as of January 2, 1999."¹⁷ In reaching its decision, the Commission recognized that timely implementation of PECO's Restructuring Plan is critical to the development of competition in PECO's service territory.

Through its reconsideration petition, PECO requests the Commission to delay initiation of the open enrollment by four months until July 1, 1998. In support of its request for relief, PECO claims such an extension is necessary to allow the resolution of generic issues through rulemakings and working groups to be finalized and to allow it to implement its education outreach program by preparing and disseminating consumer education materials to customers in its service territory prior to March 1, 1998. Neither reason justifies the extension of the initiation of the open enrollment period requested by PECO.

First, as to final resolution of generic issues like metering and billing and collection services, Enron agrees with PECO that these issues require final resolution as soon as possible. In fact, through its Petition for Reconsideration, Enron has requested the Commission to modify its Opinion and Order and resolve these generic issues now through the record of this proceeding, rather than utilizing time consuming working group and rulemaking procedures.

As further set forth in Enron's Petition for Reconsideration, if the Commission does not decide these issues on the record of this case and sticks with

¹⁷ Opinion and Order, pp. 45, 160.

working groups/rulemakings as the procedural mechanism for determining these issues, it is probable that final decisions will not be rendered until after direct access commences on January 1, 1999. In any case, absent decisions on the underlying record here, the generic issues PECO references will not be decided until long after July 1, 1998 and extending open enrollment will not allow the "rules of the road" to be established before open enrollment as PECO claims.

Second, the Commission should not delay open enrollment to accommodate consumer education efforts. Consumer education efforts are ongoing and should continue through the open enrollment. The pilot programs have been very useful in this regard. Customers will exercise choice when they are adequately educated and ready to do so. The time for exercising choice and the degree of consumer education required will vary from customer to customer. Customers who are not ready to choose on March 1, 1998 will await the appropriate time.

PECO should dedicate its efforts to educating its customers as soon as possible rather than attempting to delay competition into the future. Such delays by EDCs were responsible for the "time crunch" in implementing the pilot programs which detracted from the quality of that program. The Commission should not repeat that experience here. Instead, as set forth in the Opinion and Order, the Commission should stay the course and initiate open enrollment early enough to assure an orderly implementation and to assure that the Commission, PECO, suppliers and customers are

all ready for direct access when it commences on January 1, 1999. No other outcome is consistent with the public interest.

**III. THE COMMISSION SHOULD AFFIRM ITS DECISION
NOT TO PROVIDE GUARANTEED TARIFFED RATE
REDUCTIONS TO CUSTOMERS WHICH BYPASS THE
COMPETITIVE ENVIRONMENT**

As set forth above, the Commission emphatically rejected the Partial Settlement and the tariffed rate reductions included as a provision therein. Instead, the Commission adopted the competitive market as the means to deliver lasting price reductions to all consumers and rejected the attempt by Partial Settlement signatories to bypass the competitive market.

Of the petitioners here, only PAIEUG asks the Commission to revert to replacing competitive benefits with guaranteed, tariffed rate reductions. However, PAIEUG has not presented any newly discovered evidence or novel arguments and merely regurgitates the same arguments already addressed which were rejected by the Commission. Accordingly, its request for Partial Settlement style rate reductions should be denied without serious consideration.

PAIEUG members, as large, sophisticated users of electricity, are in as good a position as anyone to reap the benefits of a competitive market. PAIEUG members are served well by the shopping credits in the Commission's Opinion and Order and its continuing request for regulated rate reduction should be rejected.

**IV. THE OPINION AND ORDER SHOULD BE CLARIFIED TO
ELIMINATE AND SWITCHING FEES.**

As pointed out by OCA in its reconsideration petition, the Commission's Opinion and Order did not address whether PECO should be permitted to charge customers switching fees every time a customer switches suppliers or returns to the PLR. While Enron believes the Commission never intended to allow any switching fees, OCA has discovered an important ambiguity in the Commission's decision which requires specific clarification.

Switching fees, potentially in the early stages of market development, will have a serious adverse impact on shopping customers and will penalize each customer who exercises a right to choose. Such fees should be rejected outright by the Commission through clarification of the Opinion and Order.

WHEREFORE, for all of the foregoing reasons, the Commission should deny the requests for reconsideration as set forth in the above decision.

Respectfully submitted



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Dated: January 13, 1998

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January 13, 1998

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

ORIGINAL

**RE: Application of PECO Energy Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code.
Docket No. R-00973953; Petitions For Reconsideration**

Dear Mr. McNulty:

Enclosed please find an original and nine copies of the Answer of Conectiv Energy to the various Petitions for Reconsideration, with a Certificate of Service attached, in the above captioned proceeding. A copy of this certificate has been served upon all parties of record.

If you have any questions, please do not hesitate to call.

Respectfully,

Craig A. Doll
Craig A. Doll

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CAD/kmv
Attachments

cc: All parties of record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKET NO. R-00973953

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

ORIGINAL

DOCKET NO. P-00971265

**ANSWER OF CONECTIV ENERGY
TO RECONSIDERATION PETITIONS OF VARIOUS PARTIES**

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NOW COMES, Conectiv Energy, by and through its attorney, and pursuant to the Secretarial letter dated January 8, 1998, files this Answer to the various Petitions for Reconsideration filed by numerous parties to the above captioned proceedings. Due to the number of Petitions that have been filed¹, Conectiv will not answer each Petition via numbered paragraphs, but will respond to certain issues raised by the respective

¹ To date, Conectiv has received six Petitions for Reconsideration: PECO Energy (PECO), Office of Consumer Advocate (OCA), Enron Energy Services Power, Inc.(Enron); New Energy Ventures (NEV); Philadelphia Area Industrial Energy Users Group (PAIEUG); and CEPA, TAG, ACORN & John W. Long

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Petitions. Conectiv Energy's silence on other issues raised by the parties should not be construed as endorsement or opposition to the positions outlined.

Introduction

Conectiv Energy has taken an active role in the above captioned matters and commends the Commission for the effort undertaken in this proceeding. Conectiv Energy will address only two issues raised by several parties: (1) the effect of the PECO requested delay in the implementation schedule as currently set forth in the Commission's Order; and (2) the ability of PECO to selectively discount the tariff rate at its sole discretion - raised by the OCA and CEPA, et al.

As was stated by various parties in their Petitions, the standard for the granting of Rehearing, Reconsideration, Amendment, and/or Clarification is set forth in *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. P.U.C. 533 (1982). In applying the *Duick* standard to the instant proceeding, Conectiv Energy submits that the underlying law has not changed, and there has been no allegation of new facts.² With these guiding principles in mind, Conectiv Energy submits the following Answer to the various Petitions.

I. The Implementation Schedule Set Forth in the Commission's Order Should Not be Delayed.

The Commission's Order specifically provides for the period of "Open Enrollment" to begin March 1, 1998 in order to permit the greatest number of customers to begin to enjoy the benefits of competition by the start-up date. PECO has urged that

² PECO has attempted to reargue its position on deferred fuel but presenting affidavits which are merely updates to its previous tables and calculations. While Conectiv takes no position on the accuracy of these updates, it must be noted that the affidavit is no more than an attempt to place into the record evidence after a decision has been rendered. Such an action should not be countenanced.

this (and other dates) be pushed back four months until July 1, 1998 or until such time as other Electric Distribution Companies are required to begin their open enrollment period. The purported purpose is to provide more time for customer education.

When one examines this proposal from the perspective of the requirements of *Duick*, PECO does not introduce any new fact or changes in the law that would warrant the proposed schedule change. Therefore, it does not appear that the *Duick* standard for reconsideration has been satisfied.

Assuming, arguendo, the Commission considers this a proper subject for reconsideration, Conectiv Energy states that the March 1 date is only the date that PECO must begin to accept volunteers for generation shopping. No customer need do anything at that time.

The pilot program experience validates the importance of as long a volunteer/selection period as possible. The process for Phase I of the pilot programs, involving 74,000 PECO customers, ran from September to December and is still not complete. The process for 1,000,000 potential customers to enroll requires as much time as possible.

By requesting that the extension of time not be granted, Conectiv Energy is not implying that consumer education should be sacrificed. Conectiv Energy supports consumer education. However, consumer education is an evolutionary process that is most meaningful in a dynamic environment where customers are empowered to do something with that education if they so choose. Education without application of that education is of little benefit. PECO customers have been exposed to a steady stream of information about electric competition and this most assuredly will continue. Electric Generation Suppliers play an important role in this education process by providing a concrete rather than abstract context for consumer education.

Additionally, open enrollment over an extended period of time more closely resembles a real-world competitive market. Conectiv Energy would prefer to work under

conditions that resemble that environment rather than on a "crash" basis where everything is done in a short time frame. Again, 1,000,000 potential customers is a high number to handle in a compressed time frame.

Conectiv Energy recognizes that not all of the "rules of the road" will be completely finalized by the March 1, 1998 date. However, the same can be said of July 1, 1998. It is better to move forward recognizing some uncertainty than to be paralyzed by uncertainty. Necessary adaptations to change will be made, as they were in the pilot programs.

Finally, Conectiv Energy does believe that the Commission clarify whether that the first 33%³ to volunteer to select are considered "in" the program or are subject to the lottery results if more than 66% of PECO's load volunteers by July 2, 1998. Conectiv Energy does not urge one result or the other, but does believe that this particular "rule of the road" should be certain and known to all concerned at this juncture.

II The Commission Correctly Decided That PECO Should Not Be Permitted to Selectively Discount

Both the OCA and CEPA, et al. request that this Commission reconsider its decision not to order PECO to provide non-choosing customers with a bundled rate which reflects a unilaterally determined market price for generation. Such an action would defeat the entire purpose of the Act, eliminate competition, and enable PECO to retain its monopoly status through the establishment of the price against which an EGS must compete. Conectiv Energy submits that if the Commission allows PECO to establish what amounts to flexible rates, the Legislature, the Commission, and all of the

³ Those customers who participated in the pilot programs are automatically enrolled. Thus, the actual percentage of enrollees in the first round will be slightly less than 33%.

parties to this proceeding have wasted a considerable amount of time and money for nothing.

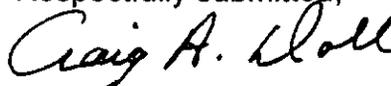
Conectiv Energy does not object to an affiliate of PECO supplying energy at competitive market prices, assuming appropriate safeguards to prevent the shifting of costs from that affiliate to the regulated entity. However, to reverse the Commission's December 23, 1997 Order to permit PECO to set the generation price component that it will charge for bundled service would effectively render the Order a nullity and transfer this Commission's authority to PECO itself. The adoption of such a proposition would recast a purportedly neutral T&D provider into the final arbiter of market prices, providing them with an opportunity to offer discriminatory price discounts due to their unique status and access to customer specific information not readily available to other competitors. Such action is totally inconsistent with the level-playing-field rules applicable to all competitors.

Conectiv Energy recommends that the Commission not alter its enunciated position.

Conclusion

Conectiv Energy respectfully requests that the Commission adopt its recommendations regarding the above items.

Respectfully submitted,



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DATED: January 13, 1998

Certificate of Service

I hereby certify that I have this date served the following document by facsimile, first class or overnight/express mail, upon the persons addressed below:

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January 13, 1998

BY HAND DELIVERY

James McNulty, Acting Secretary
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Room B-20, North Office Building
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Re: Application Of PECO Energy Company For Approval Of Its Restructuring Plan
Under Section 2806 Of The Public Utility Code,
Docket No. R-00973953

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of PECO Energy Company's Answer to Petitions for Reconsideration and/or Clarification of the Order Entered December 23, 1997.

Sincerely,

Paul R. Bonney

PRB/mbo

- w/enclosures
- cc: John M. Quain, Chairman (by hand delivery)
- David W. Rolka, Commissioner (by hand delivery)
- John Hanger, Commissioner (by hand delivery)
- Robert K. Bloom, Commissioner (by hand delivery)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PECO ENERGY COMPANY

ORIGINAL

DOCKET NO. R-00973953

**ANSWER OF PECO ENERGY COMPANY
TO PETITIONS FOR RECONSIDERATION AND/OR
CLARIFICATION OF THE ORDER ENTERED DECEMBER 23, 1997**

On January 7, 1998, PECO Energy Company ("PECO" or the "Company") filed a Petition with the Pennsylvania Public Utility Commission (the "Commission") requesting that it rehear, reconsider, clarify and amend its Order entered December 23, 1997 at the above-captioned docket. Specifically, PECO asked the Commission (1) to correct certain errors in its quantification of PECO's stranded costs, (2) to clarify the discussion of PECO's consumer education program and (3) to stay, for several months, the requirement that PECO initiate an open enrollment period for customer choice on March 1, 1998.

Petitions for Reconsideration and/or Clarification were also filed by the Office of Consumer Advocate (the "OCA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the Consumers Education and Protective Association ("CEPA"), Enron Energy Services Power, Inc. ("EESPI") and Enron Power Marketing, Inc. ("EPMI") (collectively "Enron") and New Energy Ventures ("NEV"). Pursuant to the Secretarial Letter issued January

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8, 1998, PECO hereby responds to those Petitions and, for the reasons set forth hereinafter, respectfully submits that, with limited exception, they should be denied.^{1/}

I. OVERVIEW

Cognizant of the standards that the Commission has applied in the past when asked to revisit its deliberations, PECO, in its Petition, did not seek to relitigate key issues, but instead focused on mechanical errors in the December 23 Order and two areas (i.e, consumer education and open enrollment) where it believes that clarification and/or a somewhat relaxed implementation schedule will better serve the public interest. In marked contrast, several of the opposing parties (Enron and NEV being prime examples) would seize on this opportunity to get “a second bite at the [litigation] apple”. Thus, rather than presenting “new and novel arguments” as suggested in Quick v. Pennsylvania Gas & Water Co., 56 Pa. P.U.C. 533 (1982), such parties, to a large extent, simply restate, in abbreviated form, positions espoused in their Initial Briefs. Moreover, where the parties depart from their earlier script, the relief sought is either totally unsupported by the record evidence or is beyond the power of the Commission to grant.

^{1/} Unlike PAIEUG which would deny PECO a return on the net present value of its claim, the OCA contends that the Company should not be allowed to earn a return on the nominal value of its SFAS 109 regulatory asset (OCA Pet., pp. 3-4). PECO agrees and so advised the Commission in its Petition (pp. 18-20). In addition, PECO accepts, and will reflect in its compliance tariff, the clarification sought by both the OCA and CEPA that it will only terminate service for failure by a customer to meet its obligations to PECO (or the provider of last resort, if different) and **not** for failure to pay the bill of an alternative electric generation supplier.

II. RESPONSE TO SPECIFIC PROPOSALS

A. Allocation And Recovery Of Administrative And General Expenses (OCA Pet., pp. 4-6; Enron Pet., pp. 3-8)

Enron argues that the Commission, in adopting the OCA's position regarding the reallocation of transmission and distribution ("T&D") costs, did not go far enough and should instead have adopted Mr. Reising's proposal. In addition, Enron and the OCA contend that the reallocated costs should not be considered "stranded" because all suppliers will have to recover the same or similar costs through market sales of energy and capacity.

With respect to Enron's initial objection, PECO would simply note that a comprehensive record was developed on the issue of cost allocation. Indeed, Mr. Reising submitted direct testimony on three separate occasions -- first on behalf of EPMI, then the Pennsylvania Electric Competition Coalition ("PECC") and finally EESPI. As a consequence, the various flaws in his recommended reallocations are well documented, having been pointed out by several PECO witnesses (See, e.g., PECO Sts. 6-RJ, 12-R and 12-RJ). In short, the Commission's decision to reject Mr. Reising's proposal is supported by substantial evidence and Enron has presented nothing new in its Petition to alter that determination.

The Commission also properly found that the additional T&D costs allocated to the generation function by OCA witness Smith would be stranded. Although Enron and the OCA assert otherwise, the fact remains that these costs are no different than any of the other generation-related costs, such as fuel and other operating and maintenance expenses, that PECO

will incur in producing power. Accordingly, it is entirely appropriate that they be recognized in the valuation of PECO's generating assets. As PECO witness Hieronymus explained (PECO St. 6-RJ, pp. 13-14):

The market value of PECO's generation is the difference between market prices and generation costs. If such costs are increased by changing the allocation of overheads used in the stranded cost analysis, then stranded costs (and hence the need for CTC coverage) increases on a dollar for dollar basis . . . Mr. Johnstone appears to recognize this obvious fact. Mr. Mitnick and Mr. Reising do not.

Mr. Mitnick recognizes that the costs of running a generation unit include overhead costs. He also states that efficient producers must earn enough over time to cover their overhead costs if they are to survive. I agree with both of these statements. However, he errs in concluding on that basis that the ECC [Energy and Capacity Cap] should be increased by the amount of PECO's generation A&G. He cannot have it both ways, assigning production A&G to PECO's generation function and to the ECC. If production-related overheads are indeed an avoidable cost of generation and should be charged to PECO's generation function, then they, along with fuel and other avoidable costs such as O&M expense, must be subtracted from PECO's generation revenues in arriving at the contribution to capital costs that is the basis for determining the value of its generation. Dollar for dollar, an increase in allocated overheads reduces that contribution, thereby increasing stranded costs.

Enron and the OCA argue in response that the administrative and general costs in question will not be stranded, but instead will be reflected in the market price charged by PECO and other generation suppliers. There is, of course, no evidence which would indicate that the marginal cost of energy and capacity **set by the market** will, in fact, be sufficient to cover the PECO-specific costs that the OCA has reallocated. More importantly, however, the theory espoused by Enron and the OCA would suggest that PECO will not have **any** stranded generation-related costs because all such costs would presumably have to be reflected in and

recovered through market sales. As the Commission correctly found, this is obviously not the case.

B. SFAS 109 (PAIEUG Pet., pp. 15-17)

PAIEUG requests reconsideration of the Commission's treatment of SFAS 109 costs on two different grounds. First, PAIEUG contends that PECO is not entitled to a return on its SFAS 109 regulatory asset even if the asset is included in the Commission's stranded cost calculation at its net present value. This position is totally unsupported by the record evidence. In fact, PAIEUG witness Baron actually included the net present value of PECO's SFAS 109 deferred taxes among the stranded costs upon which he proposed PECO should recover a return.^{2/} Furthermore, as the Commission correctly found in the December 23 Order, if a stranded cost is stated at its net present value and PECO is not permitted a return on the unamortized balance over the CTC recovery period, PECO's recovery will fall short of its actual costs (Order, pp. 104-06). Indeed, in the context of SFAS 109, the failure to provide a return on the unamortized balance would not provide PECO adequate revenues with which to pay its deferred taxes as they fall due.

^{2/} As confirmed by his direct testimony (PAIEUG St. 3, p. 6) and supporting exhibit (Ex. LK-4), PAIEUG witness Kollen proposed that PECO be allowed to recover approximately \$805.2 million of stranded regulatory assets, including the net present value of PECO's SFAS 109 costs which he determined to be \$736.2 million. Mr. Baron, in turn, incorporated this amount into his calculation of the stranded costs on which PECO would be entitled to a return (Ex. SJB-2).

Second, PAIEUG reiterates Mr. Kollen's position that the net present value of the SFAS 109 regulatory asset should be calculated by assuming that PECO's generation-related deferred taxes will be paid ratably over the remaining lives of its generating facilities (i.e., a period as long as 27 years). The Commission properly rejected this argument, finding that it was unsupported by the record (Order, p. 70).

The evidence clearly establishes that PECO's generation-related SFAS 109 deferred taxes will be paid over the CTC recovery period, as explained by Mr. Warren (PECO St. 9-R, pp. 1-9)^{3/} and Mr. Cohn (PECO St. 3-R, pp. 2-7). Significantly, PAIEUG witness Kollen did not disagree with the testimony of Messrs. Warren and Cohn on this point but, instead, argued that a 27-year discounting period should be used as a means of reducing the economic impact on customers (PAIEUG St. 3S, p. 4). However, Mr. Kollen overlooked -- or chose to ignore -- the undisputed fact that his proposal would create a significant temporal mismatch, such that PECO would pay its deferred taxes long before Mr. Kollen assumes that tax expenditures would occur. Consequently, under Mr. Kollen's approach, the present value of PECO's expenditures for deferred taxes would exceed the present value of the portion of the SFAS 109 regulatory asset Mr. Kollen would allow PECO to recover. The difference would be a significant economic loss

^{3/} Mr. Warren is a partner in the firm of Reid & Priest, where he specializes in the taxation of regulated public utilities. Before joining Reid & Priest, he was a tax partner in the international accounting firm of Coopers & Lybrand, where he served as that firm's National Director of Utility Taxation. Mr. Warren is a nationally-recognized expert in the area of taxation of public utilities, having testified in proceedings before the FERC, numerous state utility commissions, the Internal Revenue Service, the Department of Treasury and the House Ways and Means Committee (PECO Ex. JIW-1).

to PECO that would require a write-off for financial reporting purposes of over \$600 million (PECO St. 3-R, p. 7; PECO Sts. 19-R and 23-R).

PAIEUG did not refute these fundamental points in either Mr. Kollen's surrebuttal testimony or in its Initial Brief. PAIEUG's Petition adds nothing new in terms of evidence or argument and, as to this issue, must be denied.

C. "Switching" Fee (OCA Pet., pp. 13-14)

The OCA complains that the Commission neglected to specifically address PECO's proposal to charge customers \$6.00 when they switch suppliers or return to default service. Although acknowledging that such a switching fee may be appropriate "following a transition period" (p. 13), the OCA urges the Commission to reject PECO's request at this time.

No party takes issue with the basic proposition that PECO will incur certain costs in switching customers. Nor, for that matter, has it been suggested that the proposed switching fee is excessive. Indeed, and as explained by PECO witness Sundermeir (PECO St. 13-R, p. 15), the \$6.00 figure is the same that PECO currently charges, under Commission-approved rates, to cover the expenses involved in transferring customers to a new address or adding new customers to the system.

Notwithstanding the OCA's concerns, there is no credible evidence that the imposition of a modest switching fee, such as that proposed by PECO, would impede the development of a competitive market or have a chilling effect on the willingness of customers to fully explore their

options. Moreover, even if such evidence had been presented, that would not justify denying PECO the recovery of legitimate costs occasioned by the transition to competition.

D. PAIEUG's Extra-Statutory Requests (PAIEUG Pet., pp. 5-10, 13-15)

The bulk of PAIEUG's Petition does not address PECO's proposed restructuring plan or the modifications to it directed by the Commission, but rather seeks to have the Commission reconsider its threshold decision to reject the Partial Settlement. Thus, PAIEUG complains that the Commission "overlooked the benefits" of (1) extending the generation, LILR and T&D rate caps, (2) guaranteeing rate reductions and (3) providing specific relief to special contracts customers and those who install new self-generation facilities -- all concessions that PECO was willing to make as part of a much broader agreement between the Joint Signatories.

As it noted in its Petition (p. 2), PECO continues to believe that the Partial Settlement provides the best means to achieve significant rate relief in the short-term and robust competition in the long-term. In the absence of that agreement, however, the Commission lacks the authority to grant PAIEUG the extra-statutory relief that it now seeks. See, e.g., Pa. P.U.C. v. PECO Energy Co., Docket No. R-00973877 (May 22, 1997 Securitization Order, pp. 22-25) (rejecting a proposal that the rate cap set forth in Section 2804(4) of the Competition Act be extended so as to be coterminous with PECO's recovery of intangible transition charges).^{4/}

^{4/} In its Initial Brief (p. 7), PAIEUG acknowledged that many of the foregoing attributes of the Partial Settlement "exceed the scope of the potential benefit that could have been achieved in litigation".

E. Market Power (CEPA Pet., pp. 5-6)

CEPA contends that the record in this proceeding is “insufficient” because it contains no analysis of whether PECO or its unregulated generation affiliate will be able to exercise market power once retail markets are opened up. Because of this alleged deficiency, CEPA argues that the Commission, prior to the implementation of its Order, should conduct “a thorough review of the generation supply market pursuant to Sections 2811(a) and (b) of the [Competition] Act” (CEPA Pet., p. 6).

If CEPA believed that market power was a legitimate concern, it should have raised this issue during the evidentiary phase of the case and not waited until its reconsideration request to complain over the adequacy of the record. More to the point, however, the FERC has concluded that PECO “does not have, or has adequately mitigated, market power in generation . . .”. PECO Energy Company, 74 FERC ¶ 61,336 at 62,047; see also Horizon Energy Company, 74 FERC ¶ 61,368 at LEXIS slip op. at *4 (1997) (noting that “the Commission found that PECO Energy Company lacked generation dominance in the relevant markets”). In addition, the Commission, under the Competition Act, will retain continuing jurisdiction to investigate specific allegations of anticompetitive behavior and to refer its findings to the appropriate State and/or Federal authorities (66 Pa. C.S. § 2811). Consequently, CEPA’s speculation over the **potential** exercise of market power **in the future** is, at best, premature.

F. Mitigation (Enron Pet., pp. 9-11)

Enron, which took no position on mitigation throughout the entire course of this proceeding, contends that the Commission erred in not adjusting (presumably downwards) its stranded cost finding to reflect PECO's alleged inadequate mitigation efforts. At the same time, Enron does not propose a specific adjustment and, not surprisingly, cites no record evidence in support of its belated recommendation.^{5/}

At footnote 20 to its Petition (p. 10), Enron summarizes the various mitigation initiatives enumerated in Section 2808(c)(4) of the Competition Act (66 Pa. C.S. § 2808(c)(4)). What Enron fails to mention is that PECO either has aggressively implemented those mitigation measures (i.e. accelerated depreciation/amortization, minimization of new capital spending, maximization of market revenues from existing assets) or has proposed to do so (i.e. issuance of securitized debt, reallocation of depreciation reserves) (PECO St. 1, pp. 16-23; PECO St. 1-R, p. 22).^{6/} Indeed, the only mitigation strategy mentioned by Enron that PECO has **not** pursued is the one that the Competition Act does not compel -- the auctioning off of its generating assets (66 Pa. C.S. § 2804(5)). Nonetheless, the record confirms that the market value assigned to

^{5/} Neither does NEV which joins in Enron's position (NEV Pet., p. 3).

^{6/} PECO is the only Pennsylvania electric utility to have sought and obtained the Commission's authorization to securitize stranded costs. Unfortunately, and as the Commission recognized in its December 23 Order (pp.19-20), actions pending before the Commonwealth Court have effectively precluded PECO from issuing transition bonds. In addition, the Commission rejected PECO's proposal to reallocate \$271 million of depreciation reserves (i.e. the \$176 million figure noted by the Commission was updated by PECO witness Hill in his rebuttal testimony), concluding that to do so would be "anti-competitive" (Order, p. 97).

PECO's fossil and hydro units for purposes of calculating its stranded costs was substantially greater than PECO could reasonably expect to realize upon their disposition (PECO St. 1-SRJ, p. 6), suggesting that, if anything, PECO understated its stranded costs.

G. Metering And Billing (Enron Pet., pp. 11-15)

Enron, again joined by NEV, also challenges the Commission's decision not to require the unbundling and competitive provisioning of billing and metering services. In particular, Enron argues that the Commission's determination is "inconsistent with the 'market' paradigm underlying its overall decision" and will "impede the development of a competitive market for non-wires services" (Enron Pet., pp. 12, 15).

Reconsideration of billing and metering issues should be denied for at least four reasons. First, Enron is seeking to utilize this proceeding to resurrect positions which it espoused and which were rejected in the context of previous rulemakings and working group collaboratives. Second, Enron has not asked to supplement the record on these matters nor has it presented any "new or novel" arguments in support of its request for reconsideration. Third, and subject to the right of an end-use customer to choose to receive a separate bill for generation from an alternative supplier, the Competition Act does not authorize the unbundling of customer service functions (66 Pa. C.S. § 2807(d)). Finally, and as Mr. Cucchi noted out in his rebuttal testimony

(PECO St. 15-R, pp. 2-14), there are a number of practical considerations which strongly militate against the unbundling of billing and metering even if the statute permitted it.^{7/}

H. Discount Rate (NEV Pet., pp. 2-3)

NEV argues that the 7.47% discount rate adopted by the Commission should be reduced to 4.37% to “reflect the tax benefits PECO would receive from deducting interest payments” (p. 3). This proposal, perhaps more so than any other, underscores the willingness of certain parties seek to enhance their competitive interests even when there is absolutely no evidence or credible basis to support their position.

The bizarre notion that the deductibility of interest expense somehow justifies awarding a utility a return based on its after-tax cost of debt surfaced, in a slightly different context, in the testimony of PECC witness Mitnick.^{8/} In response, PECO witness Cohn explained the fundamental flaw in Mr. Mitnick’s financial theory (PECO St. 3-RJ, p. 5):

Q. Mr. Mitnick also states that there are “tax savings” produced by the deductibility of interest on securitization bonds, which should be used to mitigate stranded costs. Do you agree?

A. Absolutely not. While he is correct that the interest is deductible for tax purposes, he leaves out a very important point. The revenue PECO would receive to pay the interest is fully taxable. As such, there is no net tax

^{7/} As Mr. Cucchi pointed out, the unbundling and deregulation of these services, as proposed by Enron, could inhibit direct access, make it difficult to prevent “slamming”, impede compliance with the Commission’s Chapter 56 requirements and increase PECO’s stranded investment.

^{8/} NEV is a member of the PECC and, accordingly, co-sponsored Mr. Mitnick’s testimony.

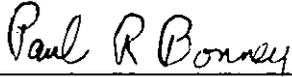
benefit from the deductibility of the interest. For example, if one were to collect \$10 in revenue to pay \$10 in interest cost, the tax liability is the same as if one collected no revenue and incurred no interest expense, i.e., \$0. Moreover, because one's interest payment obligation is \$10, \$10 in revenue must be collected in order to have sufficient funds to pay that obligation.

See also PECO St. 9-RJ, pp. 4-5.

Presumably in response to the foregoing, Mr. Mitnick dropped this particular adjustment when he resubmitted his analysis on surrebuttal (Tr. 836). In other words, the only witness who espoused the position now advanced by NEV on reconsideration abandoned it upon further reflection.

WHEREFORE, PECO requests that the Commission deny those portions of the Petitions for Reconsideration and/or Clarification discussed above.

Respectfully submitted,



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Dated: January 13, 1998

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of Pennsylvania Public Utility Commission v. PECO Energy Company Pa. PUC Docket No. R-00973953.

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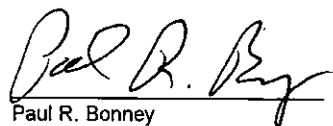
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COMMONWEALTH OF PENNSYLVANIA



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January 13, 1998

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

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

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

Dear Secretary McNulty:

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

DOCUMENT
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Page 2
January 13, 1998

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

Sincerely,



Steven K. Steinmetz
Assistant Consumer Advocate

Enclosures

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

41431

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. R-00973953

ORIGINAL

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

Docket No. P-00971265

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ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
TO PETITIONS FOR RECONSIDERATION

Now Comes, the Office of Consumer Advocate ("OCA") and Answers the
Petitions For Reconsideration filed by various parties on January 7, 1997, in the above-captioned
matters.

I. Introduction.

On December 23, 1997, the Pennsylvania Public Utility Commission entered its
Order in the above-captioned case. On January 7, 1998, numerous parties to this proceeding,
including the OCA, filed Petitions For Reconsideration seeking reconsideration or clarification
of certain aspects of the Commission's Order in this proceeding.

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The OCA has received five Petitions for Reconsideration to the Commission's Order in this matter. There are many requests raised within these Petitions with which the OCA agrees. For example, the OCA would support the Philadelphia Area Industrial Energy Users Group's ("PAIEUG") argument in favor of an extended generation rate cap as proposed during the case by both OCA and PAIEUG. The OCA agrees that such an extension would be an appropriate corollary to the extended CTC charge approved by the Commission in this case. The OCA would also state its agreement with certain aspects of the Petition submitted by the Consumer Education and Protective Association ("CEPA"). More specifically, the OCA supports CEPA's request that the Commission not authorize a "penalty" on customers who do not actively participate in the competitive generation market by requiring these customers to pay PECO above market prices via the shopping credit established within the Commission's Order. The OCA submits that CEPA is correct in its assertion that such a requirement could "place unjustifiable burdens on low income consumers, including many senior citizens, who are unlikely to exercise choices available to them as consumers or who due to their credit problems, will not be able to obtain alternative generation." Moreover, as noted by CEPA, such a result would be contrary to the Act's requirements that following the phase in period, these customers are to be sold generation at "prevailing market prices." 66 Pa. C.S. § 2807(E)(3).¹

There are other aspects of the various Petitions for which the OCA either takes no

¹ The OCA also shares the concerns expressed by PAIEUG regarding the Commission's rejection of the extension of the T&D rate cap and the elimination of any guaranteed rate reductions, as well as Enron's arguments regarding the allocation of any T&D reduction to stranded costs and the approval of full stranded cost recovery in light of the Commission's findings regarding inadequate mitigation.

position or opposes. For example, although the OCA does not specifically object to several PAIEUG issues relating to special customer classes, interruptible load riders or new self-generation, the OCA would oppose the granting of the relief requested by PAIEUG if it were to result in the allocation of additional stranded costs to residential customers.

The OCA will not respond to issues raised by PECO that deal primarily with positions litigated by other parties. Two issues raised by PECO in its Petition, however, require a specific response from the OCA. The OCA must oppose PECO's continued claim for deferred fuel costs and PECO's request that all issues relating to the statewide education program be deferred to a later proceeding.

II. PETITION FOR RECONSIDERATION OF PECO ENERGY

A. The Commission Properly Denied PECO's Request For Claimed Understated Deferred Fuel Costs.

PECO's Petition requests that the Commission authorize it to include any "under- or overrecovery of deferred fuel costs during the period December 1, 1997 through December 31, 1998."² PECO also requests that it be allowed to recover as a stranded cost \$29 million in underrecovered deferred fuel expense for the first 11 months of 1997. PECO Petition for Reconsideration at ¶ 15. The OCA opposes these requests on several grounds.

By Order adopted May 8, 1997, the Commission allowed PECO to eliminate its Energy Cost Adjustment ("ECA") and roll into base rates the amounts being collected through this separate charge. In this proceeding, PECO claimed that this ECA roll-in amount

² Petition of PECO Energy Company for Rehearing, Reconsideration, Clarification and Amendment of the Order Entered December 23, 1997 (hereinafter "PECO Petition for Reconsideration") at ¶16.

underestimated PECO's energy costs by an annual amount of \$22 million, and sought inclusion of such amounts in its stranded cost claim. The OCA submits that the Commission's Order was correct when it rejected PECO's claim, finding that "there is no known and measurable fuel cost since the expenses have not yet been incurred." Order at 71. Regarding the PECO Petition's continued claim for underestimated energy costs through December 31, 1998, the same speculative projected fuel cost problem identified by the Commission's Order continues for much of this claim, and no reason exists demonstrating why this decision should be reversed. Indeed, at least for the 1998 portion of this request, OCA witness LaCapra's testimony continues to be highly applicable in that "[i]t is inconsistent with both traditional ratemaking, the new statute, and also with an unregulated energy market to allow the Company to bill customers for costs which are not known and which they might not have recovered in the future." OCA St. No. 1 at 15.

PECO now offers an Affidavit to demonstrate that it has quantified an underrecovery of these fuel costs for the first eleven months of 1997. The OCA submits that this claim must also be rejected as an attempt at single issue ratemaking. In 1997, PECO requested the authority to roll into base rates the amounts being collected in its ECA charge. PECO claims that these amounts were deficient and result in an undercollection of such costs. Such claims must be rejected since, as stated by OCA witness Catlin, "[i]t would be inappropriate to allow PECO to defer fuel costs during 1997 and 1998 while the Company remains under traditional regulation without a demonstration that its existing rates are inadequate to recover its fuel costs." OCA St. No. 3 at 17 (emphasis added). In other words, once PECO rolled its energy costs into base rates, PECO should not be permitted to recover this one item of expense without a showing

that its overall level of rates produces an inadequate return. In his testimony, OCA witness Catlin then went on to describe PECO's pro forma rate of return as demonstrating the adequacy of PECO's existing rates. Id.

The OCA submits that PECO's requests for the claimed underrecoveries of deferred fuel costs for both 1997 and 1998 should be rejected. As to those amounts for the first eleven months of 1997, which PECO now claims as known and measurable, PECO should be required to demonstrate that its existing rates are inadequate to earn a reasonable return before such amounts are to be awarded.

B. Issues Relating To The Statewide Educational Program Should Not Be Deferred.

PECO's Petition requests that the Commission defer "all issues relating to a statewide education program" to a separate proceeding which the Commission has indicated will be established to consider the statewide portion of PECO's Customer Education Plan. PECO Petition for Reconsideration at ¶ 38.

The OCA generally supports the Commission's determination on this issue and urges the rejection of PECO's request for a complete deferral. While the OCA agrees that some issues, such as the final composition of the Consumer Education Committee, must be left for further reconsideration, the OCA would oppose a delay in the commencement of the consumer education program at this time. The Commission's Order decided important issues concerning consumer education and the OCA submits that education of the public will only be slowed by further deferrals on these issues. Numerous parties to this proceeding went to great expense to testify on issues relating to consumer education and the Commission noted that "the record before us provid[ed] a substantial basis upon which we may direct the development of PECO's

Customer Education Program.” Order at 150.

The OCA submits that there are several key decisions made by the Commission in this proceeding which should not be deferred to any potential future consumer education proceeding. More specifically, the OCA supports the Commission’s decision that there will be a statewide effort; that it will be funded by electric distribution companies, and that the statewide effort shall receive a substantial portion of those funds dedicated to consumer education. The OCA submits that these Commission determinations were correct, recognize the importance of this effort, and should begin to be implemented as soon as possible. With the broad framework outlined in the Commission’s Order, PECO can at least begin the task of educating consumers on competition. As the Commission appropriately recognized, the future proceeding on the statewide effort will solicit the positions of electric distribution companies from other areas of the state, who will also be directed to contribute their share of the statewide initiative’s funding. This future proceeding will then be capable of addressing more of the details of the statewide effort without having to start from the beginning. Retail competition is less than one year away and, accordingly, the OCA submits that PECO’s request to defer all elements of the Commission’s determination on the statewide education effort should be rejected.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, the OCA respectfully requests that the Commission decide the various Petitions for Reconsideration in a manner consistent with the arguments set out above and as set out in the OCA's Petition for Reconsideration.

Respectfully submitted,



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Dated: January 13, 1998
45235

CERTIFICATE OF SERVICE

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

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

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

Dated this 13th day of January, 1998.

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January 13, 1998

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RE: Pennsylvania Public Utility Commission v. PECO Energy Company –
Application For Approval Of A Restructuring Plan And Consumer Education
Program Pursuant To Section §2806 Of The Public Utility Code; Docket No. R-
00973953)

Petition Of ENRON Energy Services Power, Inc. For Approval Of An Electric
Competition And Customer Choice Plan And For Authority Pursuant To Section
2807(E)(3) Of The Public Utility Code To Serve As The Provider Of Last Resort
In The Service Territory Of PECO Energy Company; Docket No. P-00971265

**ANSWER OF MID-ATLANTIC POWER SUPPLY ASSOCIATION TO
PETITIONS FOR RECONSIDERATION**

Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of Mid-Atlantic Power Supply Association's Answer to the various Petitions for Reconsideration filed in connection with the above-captioned proceedings. A copy of this document has been served in accordance with the attached Certificate of Service.

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James J. McNulty, Secretary/Prothonotary
Pennsylvania Public Utility Commission
January 13, 1998
Page Two

If you have any questions, please feel free to call. Thank you for your attention to this matter.

Very truly yours,



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

Counsel for the Mid-Atlantic Power
Supply Association

WTH:JLM/kmg
Enclosures

cc: Chairman John Quain
Vice Chairman Robert Bloom
Commissioner John Hanger
Commissioner David Rolka
Commissioner Nora Mead Brownell
Cheryl Walker Davis, Office of Special Assistants
Frank B. Wilmarth, Law Bureau
Attached Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

R-00973953

ORIGINAL

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

P-00971265

**ANSWER OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION
TO PETITIONS FOR RECONSIDERATION
FILED BY VARIOUS PARTIES
IN RESPONSE TO
THE COMMISSION'S DECEMBER 23, 1997 ORDER**

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On January 7, 1998, PECO Energy Company ("PECO") and various intervening parties filed Petitions for Reconsideration of the Pennsylvania Public Utility Commission's ("Commission") Order entered December 23, 1997, in the above-captioned proceedings; the Mid-Atlantic Power Supply Association ("MAPSA"),¹ through its Counsel, Malatesta Hawke &

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

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JAN 13 1998

McKeon LLP, hereby answers (not in serial fashion, however) the various Petitions for Reconsideration as follows:

1. In Phillip Duick, et al. v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982), the Commission enunciated the standard for exercising its discretion whether to grant a petition for reconsideration:

A petition for reconsideration under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was said that '[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them' What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on the matter or issue was either unwise or in error.

Id. at 559.

2. In general, the Commission's Order considered and resolved the myriad of issues involved in PECO's restructuring filing in a manner that will promote competition consistent with the intent of the Legislature; accordingly, the Commission should take no action to reconsider any matter not specifically raised by the parties in their Petitions for Reconsideration.

3. Should the Commission determine that reconsideration of any of the narrow issues raised in the various Petitions under the standard enunciated in Duick, MAPSA urges the

Commission to resolve the narrow issues raised in the manner set forth in the following paragraphs; except as set forth specifically in this Answer below, MAPSA takes no position on other issues for which reconsideration has been sought by the various parties.

A. PECO's Request To Extend The March 1, 1998 Open Enrollment Date Should Be Denied.

PECO has requested, at pages 21-23 of its Petition for Reconsideration, that the Commission reconsider its direction that PECO "initiate an open enrollment period beginning March 1, 1998 for the two-thirds of its customer base which, under the Order, would be eligible to shop for electric generation effective January 2, 1999." PECO's two reasons for this request are, (i) that PECO will not have consumer education materials prepared and ready to disseminate to its customers in time to meet the March 1, 1998 open enrollment period deadline, and (ii) that a number of generic issues being considered by the Commission in generic rulemakings will not be resolved by that date. MAPSA submits that PECO's reasons for extending the open enrollment date are wholly lacking in merit and, accordingly, the request for reconsideration should be denied.

On the contrary, MAPSA submits that, based on the suppliers' experience in the implementation of the retail electric pilot programs, an open enrollment period beginning on March 1, 1998, is necessary in order to allow sufficient time for customers to enroll and be chosen for retail access, to choose an alternative generation supplier and, for all necessary procedures to be put into place so that suppliers can begin to furnish generation to customers on January 1, 1999. On this basis, and contrary to PECO's assertion, MAPSA believes that an early start of the enrollment process not only is necessary, it is essential and in the public interest. As

to PECO's argument that various issues now pending in Commission rulemaking will not be decided by the March 1, 1998 deadline, MAPSA submits that this consideration cannot be controlling for the simple reason that it is unlikely that these issues will be finally decided by July 1, 1998 (the date on which PECO proposes that enrollment begin), or prior to the latter part of 1998. Further, completion of the rulemaking process is not required in view of the various interim guidelines which are in place. PECO's request for Commission reconsideration of this issue must be denied.

B. Enron and the OCA Properly Argue That The Expenses Misallocated By PECO To Transmission And Distribution Should Be Allocated To The Generation Credit, Not To The Competitive Transition Charge, And That PECO Should Be Denied Additional Stranded Cost Recovery On The Basis Of These Misallocated Expenses.

Both Enron Energy Services Power, Inc. and Enron Power Marketing, Inc. (collectively "Enron") and the Office Of Consumer Advocate ("OCA") have argued that the Commission should reconsider its decision to reallocate expenses which PECO assigned to transmission and distribution to the Competitive Transition Charge ("CTC") and that PECO should not be allowed additional stranded cost recovery on the basis of these expenses. As a result of this reallocation, PECO's proposed transmission and distribution rates were reduced by the Commission. While MAPSA agrees with this portion of the Commission Order, both Enron and the OCA have correctly pointed out that the costs previously assigned in error by PECO to transmission and distribution should be reallocated to the generation function, as the activities which generate these costs are part of, and will continue to be part of, PECO's provision of generation service in the same way that these costs will be incurred by alternative generation suppliers. As also

correctly pointed out by Enron and the OCA, it is unfair to allow PECO to recoup these generation-related expenses through recovery of stranded costs when such a recovery is not permitted for other suppliers. On this basis, the Commission should reconsider its Order and should reallocate PECO's improperly assigned costs to generation functions rather than to stranded costs.

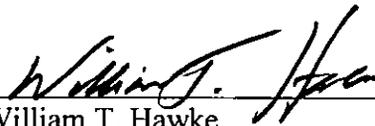
C. The Commission Should Clarify That PECO Has No Discretion To Charge Its Default Customers A Generation Rate That Is Less Than The Generation Shopping Credit Established In The Commission's Order.

The OCA has requested that the Commission clarify that PECO is not permitted to charge its default customers a generation rate that is less than the generation shopping credit established in the Commission's Order on the basis that Commissioner Brownell suggested in her Statement that PECO consider giving a rate decrease to those customers who cannot shop for alternative generation supply. This basis for reconsideration should be granted and the Commission should clarify that PECO cannot discount the generation shopping credit in this manner. Allowing PECO to discount the generation shopping credit would defeat the purpose of the credit -- that is, to create a level playing field for generation supply between all suppliers, both alternative and PECO or its affiliates. The Commission went to great lengths in its Order to explain the purposes of and the reasons for the level of the shopping credit that ultimately was reached by the Commission in these proceedings. That credit will allow competition to develop and will create the level playing field that is necessary for competition to survive and thrive in the Commonwealth of Pennsylvania. The Commission should accept the arguments set forth by the OCA and should clarify this issue.

WHEREFORE, the Mid-Atlantic Power Supply Association respectfully requests that the Commission resolve issues raised in the various petitions for reconsideration in the manner suggested in this Answer, namely:

- A. PECO's request to extend the March 1, 1998 Open Enrollment Date should be denied.
- B. The expenses misallocated by PECO to Transmission And Distribution should be allocated to the Generation Credit, not to the Competitive Transition Charge, and PECO should be denied additional stranded cost recovery on the basis of these misallocated expenses.
- C. The Commission should clarify that PECO has no discretion to charge its default customers a generation rate that is less than the Generation Shopping Credit established in the Commission's Order.

Respectfully submitted,



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Dated: January 13, 1998

CERTIFICATE OF SERVICE

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

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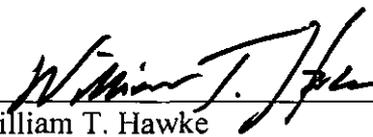
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January 13, 1998

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FAX and FEDERAL EXPRESS

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

Dear Mr. McNulty:

Kindly accept for filing New Energy Ventures' Answer to Petitions for Reconsideration to be filed in the above proceedings. We are filing this Answer by fax and forwarding original and nine (9) copies by Federal Express to be delivered to your office tomorrow. We have enclosed an extra copy of this document to be time-stamped and returned to us in the enclosed, self-addressed stamped envelope.

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

Very truly yours,
Joseph A. Dworetzky
Joseph A. Dworetzky

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encl.
cc: Certificate of Service (w/encl.)

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for Approval of its Restructuring Plan :
and Joint Petition for Partial Settlement :

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

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JAN 13 1998

NEW ENERGY VENTURES'
ANSWER TO PETITIONS FOR RECONSIDERATION

NEV East, LLC ("NEV"), by its counsel, responds to certain of the petitions for reconsideration filed in the above proceedings. Petitions for Reconsideration of the Commission's Order of December 23, 1997 (the "Order") were filed by PECO, PAIEUG, OCA and CEPA.¹ While response to most of the points raised in those petitions are not necessary, NEV files this answer to address two important issues raised.

1. PECO's Request for Delay. NEV opposes PECO's request to defer the commencement date for open enrollment of customers in Southeastern Pennsylvania. The enormous attention paid to the Commission's December decision has created a high degree of public interest and receptivity to the commencement of competition. It is

¹ Petitions were also filed by NEV and Enron.

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extremely important that consumers do not perceive the process as being put on hold. If the Commission moves in a "start-stop-start" fashion, the public's receptivity to competition will be negatively affected.

Moreover, there is no good reason to defer the commencement of open enrollment. While PECO proposes to defer enrollment until the resolution of various generic issues, the timetable it proposes is not likely to permit completion of these issues. Instead the Commission will find itself several months from now considering another request for delay. This would be particularly inappropriate given that it was PECO that pressed the Commission - over the objection of NEV and other suppliers - to sever many of the generic issues from the restructuring proceedings and put them on a slower timetable. It comes with ill grace for PECO to now use those issues to support a delay in the enrollment process.

2. The Standard Offer. OCA and CEPA, respectively, argue that PECO should either have the flexibility, or be required, to offer power to default customers at a price less than the 4.46¢ shopping credit approved in the Commission's December Order. As Enron discusses at length in its Answer, this subject should be taken up by the Commission in connection with its development of regulations on the PLR function. However, NEV notes that should PECO collect an amount from default customers in excess of the amount determined by the PUC to be appropriate, the excess should be used as mitigation of stranded costs.

For the foregoing reasons, PECO's request for delay and the requests of OCA and CEPA for reconsideration with respect to the amount of the Standard Offer should be denied.

Dated: January 13, 1998



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Counsel for New Energy Ventures

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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

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

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 1998, I caused a true and correct copy of New Energy Ventures' Answer to Petitions for Reconsideration via telecopy upon the following counsel as noted. I further certify that the manner of service satisfied the requirements of 52 PA. Code §§ 5.75 and 1.54.

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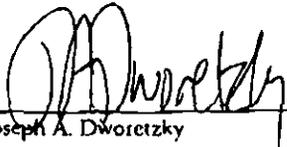
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(VIA FACSIMILE - 717/783-9526)

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Re: Pennsylvania Public Utility Commission v. PECO Energy Company, PECO Application for Approval of its Restructuring Plan and Joint Petition for Partial Settlement, Docket No. R-00973953; Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and For Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, Docket No. P-00971265

Dear Mr. McNulty:

Attached hereto for filing in the above-captioned proceedings is a facsimile version of the *Answer of the Southeastern Pennsylvania Transportation Authority to Philadelphia Area Industrial Energy Users Group's Petition for Reconsideration and Clairification*.

In compliance with the January 8, 1998 letter from you to all parties, an original and nine (9) copies, plus five (5) additional copies to be time-stamped and returned, of SEPTA's Answer will be delivered to the Commission via overnight mail by tomorrow, January 14, 1998.

DOCUMENT
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23

VENABLE
ATTORNEYS AT LAW

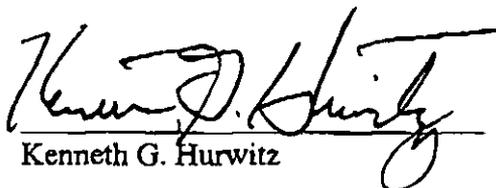
Mr. John McNulty, Secretary

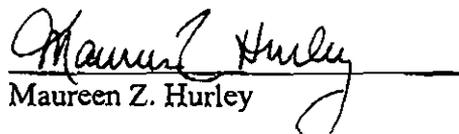
January 13, 1998

Page 2

Thank you for your assistance.

Very truly yours,


Kenneth G. Hurwitz


Maureen Z. Hurley

Attachment

cc: Parties listed on Certificate of Service

54519

("Answer") to the Philadelphia Area Industrial Energy Users Groups' ("PAIEUG") Petition for Reconsideration and Clarification ("Petition For Reconsideration") filed January 7, 1998.

SEPTA filed a *Motion to Intervene* in these proceedings on November 17, 1997, which was granted on November 20. On December 2, 1997, SEPTA filed a brief that addressed one aspect of the *Joint Petition for Partial Settlement*^{1/} ("the *Partial Settlement*"). (PAIEUG was a signatory to the *Partial Settlement* but SEPTA was not.) SEPTA's brief confined itself to Paragraph 13 of the *Partial Settlement*, which dealt with the critical issue of recovery of the competitive transition charge ("CTC") and the intangible transition charge ("ITC") from those industrial and commercial customers who "significantly reduce" their purchases of electricity through installation of on-site generation.

PAIEUG's Petition for Reconsideration was filed in response to the Commission's entry, on December 23, 1997, of an Opinion and Order denying approval of both the *Partial Settlement* and the Petition of Enron Energy Services, Inc.,^{2/} and approving, as modified by the Commission, the Application of PECO Energy Company for Approval of its Restructuring Plan. In its Petition for Reconsideration (pp. 13-14),

^{1/} Joint Petition for Partial Settlement of PECO Energy Company's Proposed Restructuring Plan and Application for a Qualified Rate Order, Docket No. R-00973952, August 25, 1997.

^{2/} Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, Docket No. P-00971265, October 7, 1997.

PAIEUG states that the Commission failed to address, overlooked or otherwise ignored the treatment of several issues addressed in the *Partial Settlement*, including an issue addressed in Paragraph 13 thereof, *i.e.*, the level of CTCs imposed as a result of new self-generation.

SEPTA supports PAIEUG's Petition for Reconsideration on this point, but submits that, if the Commission reconsiders the issues raised in Paragraph 13 of the *Partial Settlement*, it also should rule on the related issue raised in SEPTA's brief. Just as the Commission failed to address the issues raised in Paragraph 13 of the *Partial Settlement*, it ignored the related issue raised by SEPTA in the context of Paragraph 13 of the *Partial Settlement*. Thus, disposition of SEPTA's related request is warranted based upon the same authority cited by PAIEUG.³⁷ Accordingly, SEPTA submits that in any reconsideration of the issues raised in Paragraph 13 of the *Partial Settlement*, the Commission should provide the related interpretation of that language and, by derivation, of Section 2808(a) of the Public Utility Code, Title 66 of the Pennsylvania Consolidated Statutes (the "Code"), as added by the Electricity Generation Customer Choice and Competition Act (the "Act"), requested by SEPTA in its brief. For the convenience of the Commission, SEPTA incorporates those interpretations and supporting arguments herein.

³⁷ *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (addressing 66 Pa. C.S. §703(g)).

II.
SUMMARY OF ARGUMENT

The language contained in Paragraph 13 of the *Partial Settlement* dealt with the critical issue of recovery of the CTC and the ITC from those industrial and commercial customers who “significantly reduce” their purchases of electricity through installation of on-site generation. Paragraph 13 and Exhibit E of the *Partial Settlement* provided for recovery of the fully allocated share of transition costs for such customers, except for a specified subset of such customers.^{4/} To the extent it dealt with the CTC, Paragraph 13 implemented Section 2808(a), which states in pertinent part:^{5/}

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 the transition or stranded costs shall be recovered from the customer through a competitive transition charge.^{6/}

66 Pa. C.S. § 2808(a), *emphasis supplied*.

^{4/} Paragraph 13 of the *Partial Settlement* provided that, with respect to any existing industrial or commercial customer whose peak load during 1996 was at least four megawatts and who can document that he was actively self-generating or considering self-generation as of December 31, 1996 or earlier, such customer would pay CTC/ITC charges following the start-up of any self-generating facility installed before December 31, 2008 calculated by PECO as one-third of the dollar amount that would have been charged had the customer been billed for the CTC/ITC at the prevailing Rate HT ITC/CTC charges using billing determinants based on average usage for calendar year 1996.

^{5/} Unless otherwise stated herein, all references to a “Section” or “Sections” refer to the Code.

^{6/} For the Commission’s convenience, copies of Paragraph 13 of the *Partial Settlement*, as well as Appendix E thereto, and Section 2808(a), are attached hereto as Attachment “A”.

SEPTA contends, and seeks a declaration by the Commission, that neither Section 2808(a), nor the language contained in Paragraph 13 of the *Partial Settlement* which derives therefrom (to the extent it applies to the CTC), applies to customers who, through the installation of on-site generation, cease making any purchases of electricity through the utility's transmission and distribution network but who remain physically interconnected with (*i.e.*, operate in parallel with other generation on) the public utility's system. In other words, once such a customer terminates its electricity purchases from the utility and elects to utilize no transmission, distribution or other service of the utility, that entity should not be required to pay a Competitive Transition Charge, notwithstanding the above-quoted statutory provision.²⁷ This interpretation is the proper one not only because it emanates from the plain meaning of the above-quoted provision of Section 2808(a) -- which, on its face, deals only with *significant reductions* in purchases, not cessations or eliminations of them -- but, as demonstrated in SEPTA's brief and in this Answer, is the only interpretation that is consistent with other language in Section 2808(a) and elsewhere in the Act.

Furthermore, this interpretation faithfully reflects the general policies behind the Act, which are spelled out in Section 2802. Recognizing the importance of fairly resolving issues associated with the transition to a competitive generation marketplace, the General Assembly found that the Commission should be empowered to establish a

²⁷ SEPTA does not, either in its brief or in this Answer, request a ruling on, and takes no position as to, the Intangible Transition Charge ("ITC") under Paragraph 13 of the *Partial Settlement*. SEPTA expressly reserves its rights to address the ITC in the future.

mechanism for electric utilities to recover an appropriate amount of transition or stranded costs. 66 Pa. C.S. §§ 2802(8), (15). The General Assembly also declared a policy that Pennsylvanians should be able to take advantage of the lower costs brought about by increasing competition in the electricity generation market. 66 Pa. C.S. §§ 2802(5), (8). That these two policies are basically at odds with one another could not have escaped the attention of the Act's drafters. The provisions of the Act relating to transition costs and transition cost recovery mechanisms, thus, must be viewed as carefully crafted compromises consistent with *both* of these declarations of legislative intent.

Accordingly, when the General Assembly provided in Section 2808(a) that a "customer who installs on-site generation . . . which significantly reduces the customer's purchases of electricity through the transmission and distribution network" must pay its "fully allocated share of transition or stranded costs," it likely intended to define a precise set of circumstances under which this responsibility would have to be borne. At the same time, recognizing the competing goal of promoting competition in the electricity generation market, the drafters probably were loathe to impose this responsibility upon customers who entirely sever their economic relationship with the electric utility by installing on-site generation and ceasing to purchase any services from the electric utility. To infer otherwise would mean that the General Assembly was willing to allow the Commission to impose a substantial one-time exit fee, or continuing exit fee payments over the duration of the entire transition period, upon customers who had long since ended their economic relationship with the electric utility. This interpretation of the statute would plainly be at odds with its underlying competitive goals.

III.
ARGUMENT

Neither Section 2808(a), Nor the Language Contained in Paragraph 13 of the Partial Settlement, Should Be Interpreted To Apply to Customers Who Install On-Site Generation, Cease Purchasing Electricity Through the Public Utility's Transmission and Distribution Network, But Remain Physically Connected to the Network.

A. **The Phrase "Significantly Reduced" Has a Plain Meaning That Does Not Include the Concept of a "100% Reduction."**

The plain meaning of the statutory phrase "significantly reduces" contained in Section 2808(a) (and by extension, the language contained in Paragraph 13 of the *Partial Settlement*) clearly does not extend to a customer's election to stop all purchases of electricity from his local utility in favor of self-generating all of his electric power requirements. If a consumer who typically has purchased a large number of units of a product or service annually from a certain supplier reports that he has "significantly reduced" his purchases, his comment (absent sarcasm) would not be interpreted by any reasonable person to signal that he no longer buys any units from that supplier. Rather, the word "reduced," even if modified by the word "significantly," would be understood to mean cutting back on purchases. The plain meaning and common usage of the word "reduced" simply does not include the concept of "reduced by 100%". That concept is more precisely captured by any of a variety of words -- "stopped," "ceased," or "terminated," to list the most commonly used ones -- that plainly convey that henceforth, no more purchases will be made.

If the General Assembly had intended to include termination of electricity purchases within the ambit of Section 2808(a), it could easily have overcome the gap left

by the plain meaning of the words “significantly reduces.” For example, it could have added after the words, “significantly reduces” a phrase such as “or results in a complete cessation of.” Neither this nor any other word or phrase, however, was included to alter the plain meaning of the phrase “significantly reduces” as used in the Act, namely, a reduction in electricity purchases short of termination of generation service.

B. SEPTA’s Interpretation of the Phrase “Significantly Reduces” in Section 2808(a) is Consistent With Other Provisions of the Act.

1. Section 2808(a): “accessing the transmission and distribution network”

The interpretation of Section 2808(a) by SEPTA above and in its brief is consistent with, and in fact is required by, the statutory language addressing payment of the CTC. The first sentence of Section 2808(a) states:

To provide each electric utility with an opportunity to recover its transition or stranded costs following the Commission’s determination under subsection (c), every customer *accessing the transmission or distribution network* shall pay a competitive transition charge to the electric distribution company in whose certificated territory that customer is located.

66 Pa. C.S. § 2808(a), *emphasis supplied*.^{8/}

The factual situation presented by SEPTA herein and in its brief does not involve a “customer” who meets the statutory qualifier, “accessing the transmission or distribution network.” First, it is clear that a person who purchases no electric supply,

^{8/} The definition of “Competitive Transition Charge” in Section 2803 also contains the language in italics.

transmission or distribution service from any entity is not a "customer" under the Act. Section 2803 defines "customer" as "a retail electric customer," which in turn is defined in that section as "a direct purchaser of electric power."

Second, a self-generator who provides 100% of its electric power requirements, and purchases no generation, transmission or distribution service from its former utility provider, does not use the network for any purpose and should not be deemed to be "accessing" the network simply by virtue of maintaining a physical interconnection to the grid. That a mere physical interconnection is not enough to characterize a self-generator as "accessing" the network is made clear in the definition in the Act of a related term, "direct access."

Section 2803 defines "direct access" as the right of electric generation suppliers and end-use customers "to *utilize and interconnect* with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies' own use of the system *to transport electricity from any generator of electricity to any end-use customer.*" 66 Pa. C.S. § 2803, *emphasis supplied*. The foregoing definition first focuses on the right to both "*utilize and interconnect with*" the network, implying that interconnection is distinct from utilization, and that direct access connotes the right to both elements, *i.e.*, utilization and interconnection. The self-generator under the facts presented by SEPTA herein and in its brief, by contrast, may be interconnected with the network but does not use the network for any purpose.

SEPTA believes that the critical element required in order for an end-use customer to be characterized as “accessing the transmission and distribution network” under Section 2808(a) is use of the system to receive energy from a generation supplier. That use, in fact, is identified in the second italicized phrase in the definition of “direct access” quoted in the paragraph above, in the context of requiring that the rights of an end-use customer to use the network be subject to rates, terms and conditions of service “comparable to the transmission and distribution companies’ own use of the system *to transport electricity from any generator of electricity to any end-use customer.*” 66 Pa. C.S. § 2803, *emphasis supplied*. The comparability concept embedded in the definition of “direct access” thus highlights that, under the Act, the *sine qua non* of an end-user’s “accessing” the network is his use of the network to transport electric energy. The mere presence of a physical interconnection without such actual use should not -- and cannot consistent with the Act as a whole -- be interpreted to constitute “accessing” the network for purposes of Section 2808(a), nor by extension, the language contained in Paragraph 13 of the *Partial Settlement*.

2. ***Section 2803: Definition of “Competitive Transition Charge”***

The interpretation of Section 2808(a) urged by SEPTA herein and in its brief is not inconsistent with the “nonbypassable charge” requirement contained in the definition of “Competitive Transition Charge.” CTC is defined in Section 2803, in relevant part, as “a *nonbypassable charge, applied to the bill of every customer accessing the transmission or distribution network . . .*” 66 Pa. C.S. § 2803, *emphasis supplied*. Thus, the CTC is to be recovered only from customers who access the network. If a self-

generator chooses not to access the network, then not imposing the CTC on that self-generator would not constitute a bypass because the charge, by definition, was not recoverable from him in the first instance. Bypass would occur only if a "customer accessing the transmission or distribution network" were permitted to avoid the CTC.^{2/}

IV. CONCLUSION

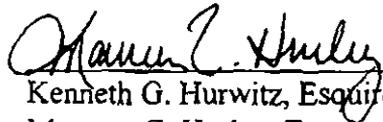
SEPTA supports PAIEUG's Request for Reconsideration to the extent discussed herein, and urges that any reconsideration by the Commission of the issues raised in Paragraph 13 of the *Partial Settlement* should include a finding that neither Section 2808(a) nor the language contained in Paragraph 13 of the *Partial Settlement* requires that customers who install on-site generation and cease taking any services from their former utility provider, but remain physically connected to the utility's transmission and distribution network, must pay a Competitive Transition Charge.

As demonstrated by SEPTA in its brief and in this Answer, such a finding is consistent with the plain meaning of the operative words "significantly reduces" that are found both in Section 2808(a) and Paragraph 13 of the *Partial Settlement*, and is required by the language in the same section of the Act that specifies the entities subject to the CTC payment requirement -- "customers accessing the transmission or distribution network." Furthermore, to find that on-site generators who elect to completely sever their

^{2/} SEPTA's argument that the phrase "accessing" the network implies the utilization of the network to procure some utility service is bolstered by the use of the phrase "applied to the bill of every customer" in Section 2803's definition of CTC. This phrase implies that the customer is already receiving a bill, which in turn implies that he is presently purchasing some service from the utility.

economic relationship to their former utility provider do not remain subject to the CTC would not violate the "nonbypassable charge" requirement in the statute, and would reflect an appropriate balancing of competing policy goals relating to the transition to a restructured electric industry in the Commonwealth.

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Dated: January 13, 1998

All Rate HT industrial customers, LILR customers, and Rule 4.6 and EER customers shall have the right to pay all applicable CTC/ITC charges in one lump sum. For customers exercising this option, PECO and the customers will negotiate a mutually acceptable lump sum using the customer's most recent 12 months of demand and energy usage as billing determinants, unless such demand and energy usage will not be representative of the customer's likely demand and energy consumption during the CTC/ITC recovery period (in which case representative values will be used), applied to the CTC/ITC charges for the entire CTC/ITC recovery period, discounted using PECO's after-tax cost of capital. Exercise of the rights in this paragraph 12 and paragraph 13 below shall impose no additional burdens on any other customer classes.

13. Recovery of CTC/ITC from industrial and commercial customers that significantly reduce their purchases through installation of on-site generation will be as fully set forth in Appendix E hereto, which is incorporated as a part of this Partial Settlement; provided, however, that existing industrial and commercial customers whose peak load during 1996 was at least four (4) megawatts, and who can document that they were actively self generating or considering self-generation as of December 31, 1996 or earlier, will pay CTC/ITC charges following full start-up of any self-generation facility they install before December 31, 2008 as follows:

- i. PECO will calculate the customer's average billing demand and energy usage for calendar year 1996;
- ii. Using those billing determinants PECO will determine the dollar amount that would be charged were the customer billed for CTC/ITC using the prevailing Rate HT CTC/ITC charges;

- iii. PECO will bill the customer one-third of the dollar amount determined in accordance with step 2.

14. The cap on PECO's transmission and distribution charges, which otherwise would expire on June 30, 2001 under Section 2804(4) of the Electric Competition Act (66 Pa.C.S. § 2804(4)), will be extended until January 1, 2004. The Joint Petitioners shall not challenge PECO's transmission or distribution rate structure, as set forth in PECO's Restructuring Plan filing, or the level of PECO's transmission or distribution rates as set forth in Appendix C hereto until the expiration of the transmission and distribution cap on January 1, 2004. The charges for distribution service shall be separately stated on retail customer bills. The Joint Petitioners agree that, depending on how this Commission and the FERC resolve the manner in which retail customers may obtain transmission service, charges for transmission service shall be separately stated on retail customer bills unless they are already included by alternative generation suppliers in the market price of delivered energy and capacity or unless the customer purchases the transmission service directly.

15. Direct customer access to alternative generation suppliers will be phased in for all customers on a first-come, first-served basis in three steps -- one-third of the peak load of each customer class of service will have access on January 1, 1999, two-thirds of the peak load of each customer class on January 2, 1999, and the remainder on January 2, 2000. With respect to Rate HT and PD customers only, if the individual customer peak load subscriptions exceed the class peak load limitation for one or more of these steps, then each customer's subscription will be reduced pro rata to meet the class peak load limitation. The Rate GS class will be divided into

ATTACHMENT "A"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1509 Session of 1995

INTRODUCED BY DURHAM, FICHTER, KENNEY, EVANS, TRELLO,
YOUNGBLOOD, PRESTON AND WOGAN, APRIL 27, 1995

SENATOR LOEPER, RULES AND EXECUTIVE NOMINATIONS, IN SENATE, RE-
REPORTED AS AMENDED, NOVEMBER 20, 1996

AN ACT

1 ~~Amending Title 66 (Public Utilities) of the Pennsylvania~~ ←
 2 ~~Consolidated Statutes, providing for the regulation of~~
 3 ~~taxicabs in cities of the first class.~~
 4 AMENDING TITLES 15 (CORPORATIONS AND UNINCORPORATED ←
 5 ASSOCIATIONS) AND 66 (PUBLIC UTILITIES) OF THE PENNSYLVANIA
 6 CONSOLIDATED STATUTES, PROVIDING FOR GENERATION CHOICE FOR
 7 CUSTOMERS OF ELECTRIC COOPERATIVES AND UTILITIES; FURTHER
 8 PROVIDING FOR DEFINITIONS; REENACTING PROCEDURAL REQUIREMENTS
 9 FOR TAXICAB CERTIFICATES AND MEDALLIONS; PROVIDING FOR
 10 RESTRUCTURING OF THE ELECTRIC UTILITY INDUSTRY; AND FURTHER
 11 PROVIDING FOR TAXATION.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. Section 2404(a) of Title 66 of the Pennsylvania~~ ←
 15 ~~Consolidated Statutes is amended to read:~~

16 SECTION 1. TITLE 15 OF THE PENNSYLVANIA CONSOLIDATED ←
 17 STATUTES IS AMENDED BY ADDING A CHAPTER TO READ:

18 CHAPTER 74
 19 GENERATION CHOICE FOR CUSTOMERS
 20 OF ELECTRIC COOPERATIVES

21 SEC.

1 DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND
 2 ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT
 3 THE END OF THE PHASE-IN PERIOD.

4 (3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT
 5 IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN
 6 ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC
 7 DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE
 8 SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET
 9 PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL
 10 REASONABLE COSTS.

11 (4) IF A CUSTOMER THAT CHOOSES AN ALTERNATIVE SUPPLIER
 12 AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION
 13 COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION
 14 COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW
 15 APPLICANT FOR ENERGY SERVICE.

16 § 2808. COMPETITIVE TRANSITION CHARGE.

17 (A) GENERAL RULE.--TO PROVIDE EACH ELECTRIC UTILITY WITH AN
 18 OPPORTUNITY TO RECOVER ITS TRANSITION OR STRANDED COSTS
 19 FOLLOWING THE COMMISSION'S DETERMINATION UNDER SUBSECTION (C),
 20 EVERY CUSTOMER ACCESSING THE TRANSMISSION OR DISTRIBUTION
 21 NETWORK SHALL PAY A COMPETITIVE TRANSITION CHARGE TO THE
 22 ELECTRIC DISTRIBUTION COMPANY IN WHOSE CERTIFICATED TERRITORY
 23 THAT CUSTOMER IS LOCATED. THE COSTS TO BE RECOVERED SHALL BE
 24 ALLOCATED TO CUSTOMER CLASSES IN A MANNER THAT DOES NOT SHIFT
 25 INTER-CLASS OR INTRA-CLASS COSTS AND MAINTAINS CONSISTENCY WITH
 26 THE ALLOCATION METHODOLOGY FOR UTILITY PRODUCTION PLANT ACCEPTED
 27 BY THE COMMISSION IN THE ELECTRIC UTILITY'S MOST RECENT BASE
 28 RATE PROCEEDING. IF A CUSTOMER INSTALLS ON-SITE GENERATION WHICH
 29 OPERATES IN PARALLEL WITH OTHER GENERATION ON THE PUBLIC
 30 UTILITY'S SYSTEM AND WHICH SIGNIFICANTLY REDUCES THE CUSTOMER'S

1 PURCHASES OF ELECTRICITY THROUGH THE TRANSMISSION AND
2 DISTRIBUTION NETWORK, THE CUSTOMER'S FULLY ALLOCATED SHARE OF
3 TRANSITION OR STRANDED COSTS SHALL BE RECOVERED FROM THE
4 CUSTOMER THROUGH A COMPETITIVE TRANSITION CHARGE. THE RECOVERY
5 OF TRANSITION OR STRANDED COSTS ASSOCIATED WITH EXISTING
6 GENERATING FACILITIES IS CONTINGENT ON CONTINUED OPERATION AT
7 REASONABLE AVAILABILITY LEVELS OF THE GENERATION FACILITIES FOR
8 WHICH RECOVERY HAS BEEN APPROVED, EXCEPT WHEN THE GENERATION
9 FACILITY IS UNECONOMIC ON A PRODUCTION COST BASIS BECAUSE OF THE
10 TRANSITION TO A COMPETITIVE MARKET.

11 (B) PERIOD FOR COLLECTING COMPETITIVE TRANSITION CHARGE.--
12 THE COMPETITIVE TRANSITION CHARGE SHALL BE INCLUDED ON BILLS TO
13 CUSTOMERS FOR A PERIOD NOT TO EXCEED NINE YEARS FROM THE
14 EFFECTIVE DATE OF THIS CHAPTER UNLESS AN ALTERNATIVE PAYMENT
15 METHODOLOGY IS MUTUALLY AGREED UPON BY THE CUSTOMER AND THE
16 UTILITY OR UNLESS THE COMMISSION, IN ITS DISCRETION AND FOR GOOD
17 CAUSE SHOWN, ORDERS AN ALTERNATIVE PAYMENT PERIOD. IN
18 ESTABLISHING THE LENGTH OF THE PERIOD FOR COLLECTION OF THE
19 COMPETITIVE TRANSITION CHARGE, THE COMMISSION SHALL CONSIDER THE
20 EFFECT ON THE ABILITY OF THE COMMONWEALTH TO COMPETE IN
21 ATTRACTING INDUSTRY AND JOBS, ON THE FINANCIAL HEALTH OF
22 ELECTRIC UTILITIES AND OTHER RELEVANT FACTORS.

23 (C) DETERMINATION OF COMPETITIVE TRANSITION CHARGE.--IN
24 DETERMINING THE LEVEL OF TRANSITION OR STRANDED COSTS THAT AN
25 ELECTRIC UTILITY MAY RECOVER THROUGH THE COMPETITIVE TRANSITION
26 CHARGE, THE COMMISSION SHALL APPLY THE FOLLOWING PRINCIPLES:

27 (1) THE COMMISSION SHALL ALLOW RECOVERY OF REGULATORY
28 ASSETS AND OTHER DEFERRED CHARGES TYPICALLY RECOVERABLE UNDER
29 CURRENT REGULATORY PRACTICE, THE UNFUNDED PORTION OF THE
30 UTILITY'S PROJECTED NUCLEAR GENERATING PLANT DECOMMISSIONING

APPENDIX E

Exhibit SRX - 5

Tariff Language to be Added to the Auxiliary Service Rider**CTC/ITC Cost Recovery and On-site Generation:**

To ensure that customers that use on-site generation equipment that operates in parallel with PECO Energy's transmission and distribution system pay their fully allocated share of Transition or Stranded Costs through the Company's CTC and ITC, the Company will follow the following procedure:

1. For all customers served under the Auxiliary Service Rider, PECO will determine annually following completion of each calendar year during which it is charging a CTC and/or ITC whether any such customer purchased at least 10% fewer kilowatt-hours through PECO's transmission and distribution system than the customer purchased during the applicable base year as defined below.
2. Base Year definition: For customers who begin service under the Auxiliary Service Rider on or after January 1, 1997, the base year will be the immediate prior calendar year. For all other Auxiliary Service Rider customers, the base year will be 1996.
3. For all such customers, PECO will then determine the extent to which the reason for the reduction is use of on-site generation equipment. If this cannot be determined using metering data otherwise available to the Company, the customer will be required to provide metering data for its generator, or of its load served by that generator.
4. If the Company determines that the ratio expressed as a percentage between: (1) the amount of the usage difference caused by the on-site generation, and (2) the base year usage, is 10% or more, then the Company will render a separate bill to the customer that is equal to the difference between: (1) the total CTC/ITC amount that the customer would have paid in the just completed calendar year using monthly usage and demand data for the base year (adjusted for any portion that is not related to on-site generation) and (2) the total CTC/ITC amount that the customer did pay in the just completed calendar year.
5. The separate bill will be issued in the first quarter of the new calendar year, and will be due within thirty (30) days of the issuance date printed on the bill.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Answer of the Southeastern Pennsylvania Transportation Authority to Philadelphia Area Industrial Energy Users Group's Petition for Reconsideration and Clarification* was served via first-class U.S. Mail, this 13th day of January, 1998, upon the following:

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January 13, 1998

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ORIGINAL

VIA HAND DELIVERY

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

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

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

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of the Answer of the Philadelphia Area Industrial Energy Users Group to the Petitions for Rehearing, Reconsideration, Clarification or Amendment of PECO Energy Company and the Office of Consumer Advocate, et al., in the above-referenced proceedings.

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

Very truly yours,

MCNEES, WALLACE & NURICK

By *Susan E. Bruce*
Susan E. Bruce
DOCUMENT FOLDER

SEB/ah
Enclosures

James J. McNulty, Secretary

January 13, 1998

Page 2

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John A. Levin, Law Bureau (via hand delivery)
Chairman John M. Quain (via hand delivery)
Vice Chairman Robert K. Bloom (via hand delivery)
Commissioner John Hanger (via hand delivery)
Commissioner David W. Rolka (via hand delivery)
Commissioner Nora Mead Brownell (via hand delivery)
Certificate of Service

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ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Docket No.
R-00973953**

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

**Docket No.
P-00971265**

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**ANSWER OF THE PHILADELPHIA AREA
INDUSTRIAL ENERGY USERS GROUP TO THE
PETITIONS FOR REHEARING, RECONSIDERATION,
CLARIFICATION OR AMENDMENT OF PECO ENERGY COMPANY
AND THE OFFICE OF CONSUMER ADVOCATE, ET AL.**

On January 7, 1998, PECO Energy Company ("PECO" or "the Company") filed with the Commission a pleading styled as the Petition of PECO Energy Company for Rehearing, Reconsideration, Clarification and Amendment of the Order entered December 23, 1997 ("PECO Petition"). PECO's Petition seeks reconsideration, clarification or amendment of the Commission's Order entered in the above-captioned, consolidated proceeding on December 23, 1997. PECO's Petition requests, inter alia: Commission recognition as a stranded cost projected under-recoveries of fuel costs; Commission recognition as a stranded cost PECO's original claim for SFAS 106 employee retirement costs; Commission reversal of its conclusion to acknowledge PECO's SFAS

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106 earnings as a regulatory liability; Commission reversal of its conclusion to acknowledge \$217.3 million in pension fund overcollections; and, a reduction of \$471 million in its stranded costs to correct the Commission's failure to include PECO's accumulated *deferred* taxes at their present value, rather than their nominal value, with respect to valuation of the SFAS 109 regulatory asset.

Also on January 7, 1998, the Office of Consumer Advocate ("OCA") filed a Petition for Reconsideration or Clarification. The OCA, among others, requests, inter alia, that the Commission reconsider its decision to allocate 100% of universal service costs to residential customers.

The Philadelphia Area Industrial Energy Users Group ("PAIEUG"), an active participant in the above-captioned proceedings, hereby provides this Answer pursuant to 52 Pa. Code § 5.572(e). PAIEUG opposes the adjustments proposed by PECO with respect to deferred fuel, SFAS 106, and pension overfunding. PAIEUG concurs with PECO's proposed adjustment relative to the calculation of stranded costs associated with its SFAS 109 regulatory asset. PAIEUG opposes the OCA's request to allocate *universal service* costs to commercial and industrial customers in violation of cost shifting and rate cap provisions of the Competition Act. In further support of this Answer, PAIEUG submits as follows:

Deferred Fuel (Under-Recovery)

1. PECO requests that the Commission reconsider its rejection of PECO's claim for \$22 million per year of projected deferred fuel costs through 1998. PECO Petition, p. 7. In alleged support thereof, PECO argues that the rebuttal testimony of PECO witness Cohn purporting to identify an under-recovery during the first five months of 1997 "confirms" PECO's projected annual

under-recovery for 1997 and 1998. Id. at 8. PECO also attempts to substantiate its claim by attaching to its Petition for Reconsideration an affidavit setting forth its deferred fuel under-recovery for the first eleven months of 1997. Id. at 8. PECO further tenders, for the first time, a proposal for consideration of under-recovered deferred fuel costs during its annual true-up/reconciliation of stranded costs. Id.

2. PECO's further request for recovery of deferred under-recovered fuel costs must be rejected. First, PECO has, absent its attempt to provide extra-record evidence through the affidavit of PECO witness Cohn, failed to provide any new or novel argument, nor has PECO identified any considerations that were overlooked or not addressed by the Commission. PECO merely cites to the same, tired testimony upon which it based its original request for recovery of projected under-recoveries (a five-month accounting for 1997 presented for the first time in rebuttal). As the Commission properly concluded, PECO's claim for stranded cost recovery of projected under-recoveries is not, as required by the statute, known and measurable. See also PAIEUG Statement No. 3, pp. 20-22, and PAIEUG Statement No. 3S, pp. 12-13. Consequently, the Commission was correct in rejecting PECO's claim and should confirm that rejection with respect to PECO's instant request.

3. Second, PECO's request for reconsideration is otherwise founded upon extra-record evidence and an untimely reconciliation proposal. The Commission must disregard PECO's attempt to provide supplemental evidence through the affidavit of PECO witness Cohn. It is improper and an abuse of process for PECO to attempt to supplement the record at this late stage. Accordingly,

the Commission must reject PECO's request to the extent it relies on this extra-record evidence. In addition, the Commission must likewise reject PECO's proposal for consideration of under-recovered deferred fuel costs during the annual true-up/reconciliation for stranded costs. Again, this proposal has been offered by PECO for the first time at this extremely late stage in the process, and it has not been subject to analysis, cross-examination, or responsive testimony from other parties. It is inappropriate for the Commission to rely on this aspect of the PECO proposal.

4. Therefore, the Commission should reject PECO's request for reconsideration on the issue of recovery of projected deferred fuel cost under-recoveries. Those costs were not known and measurable at the time PECO put on its case before the Commission, and they should not be recovered as stranded costs, consistent with the Competition Act.

SFAS 106 (Employee Retirement Costs)

5. PECO requests Commission reconsideration of the Commission's decision to disallow PECO's claim to recover an alleged regulatory asset of \$67 million associated with the Company's Voluntary Retirement Incentive Program and Voluntary Separation Incentive Program ("VRIP/VSIP"). PECO Petition, p. 10. As PECO acknowledges, the Commission rejected PECO's claim because "under traditional ratemaking, PECO would not be permitted to recover its claim" and because the claim "does not represent a recoverable regulatory asset." Order, pp. 73-74. PECO argues, however, that the Commission's decision to disallow PECO's claim denies PECO recovery of an expense that it was recovering under Commission-approved rates and that it would continue to recover under a regulatory environment. PECO Petition, pp. 10-11.

6. As noted by PAIEUG witness Kollen, it is inappropriate to include in the stranded cost quantification associated with SFAS 106 the unamortized balance of the 1994 expense associated with the VRIP/VSIP. PAIEUG Statement No. 3, p. 30. The Company was required to write off the transition obligation, but chose not to, and a grant of rate recovery at this time would constitute improper retroactive ratemaking. Id. at 30-31. Moreover, it would be inappropriate to recognize this aspect of PECO's claim given that PECO has failed to include recognition of future revenue streams that it would collect from ratepayers under current base rates as a result of costs associated with terminated VRIP/VSIP employees. Id. at 31. In fact, PECO identified \$60 million in savings in 1995 and an anticipated \$100 million in savings annually thereafter (based on PECO's 1995 10K), given that it no longer incurs the retirement costs but failed to reduce its base revenues. As a result, PAIEUG witness Kollen proposed netting future revenue streams against these savings. Id. That is, even if costs were not recovered, the savings retained by the Company far exceeded the costs. PAIEUG Statement No. 3S, p. 17. Accordingly, the Commission's decision was reasonable and appropriate, and PECO's request for reconsideration of this issue should be denied.

SFAS 106 (Earnings)

7. PECO also requests that the Commission reconsider its acceptance of PAIEUG witness Kollen's adjustment to impute a regulatory liability of \$151 million for SFAS 106 trust fund earnings. PECO makes numerous bald assertions regarding the lack of factual evidence to support this Commission conclusion. PECO Petition, pp. 14-16.

8. PECO's assertions are unfounded and its request for reconsideration should be rejected. As recognized by the Commission and as detailed by PAIEUG witness Kollen, the present value earnings on the SFAS 106 trust fund (related to generation) are properly treated as a regulatory liability since those earnings represent amounts recovered from ratepayers prior to PECO's requirement to pay the retiree costs. PAIEUG Statement No. 3, p. 33.¹ Indeed, ratepayers prepaid this future liability and are entitled to interest as a regulatory liability; otherwise, PECO improperly retains the benefit. PAIEUG Statement No. 3S, p. 18. Accordingly, it is clear that the Commission properly considered record evidence before it, and PECO's request for further reconsideration should be denied; the PUC thoroughly and completely addressed the issue.

Pension Fund Overcollection

9. PECO also requests Commission reconsideration of its decision to acknowledge \$217.3 million, reflecting an overcollection of pension expense. PECO Petition, p. 16. PECO alleges that this adjustment is flawed because customers have already been "recompensed." *Id.*

10. As amply documented by PAIEUG witness Kollen, PECO failed to treat its excess pension fund assets as a regulatory liability despite substantial overfunding coupled with continued overcollections in base rates. PAIEUG Statement No. 3, p. 23. Indeed, this overfunding represented a "savings count" that could be utilized by the Company either to offset future pension expense or to withdraw. *Id.* at 24. Accordingly, the pension funding regulatory liability exists, and as detailed

¹Contrary to PECO's claim that this issue was not raised on the record and that there is no record support for the issue, PAIEUG witness Kollen thoroughly addressed the issue in his direct testimony and PECO had ample opportunity to respond.

by PAIEUG witness Kollen, it is quantifiable on a net present value basis. Id. at 24-25; see also PAIEUG Statement No. 3S, p. 15.²

SFAS 109

11. To its credit, PECO also seeks reconsideration from the Commission on the issue of valuing the SFAS 109 regulatory asset. PECO Petition, pp. 18-20. PAIEUG also sought reconsideration on this issue. PECO properly notes that the Commission failed to state the SFAS 109 asset on a present value basis. When properly adjusting PECO's accumulated deferred taxes on a present value basis, this results in a downward adjustment to PECO's total stranded costs of \$471 million. PAIEUG concurs in this adjustment.

Universal Service Cost Recovery

12. The OCA seeks PUC reconsideration of the PUC's decision allocating 100% of universal service costs to residential customers. OCA Petition, p. 9. The OCA argues that because it tendered a proposal for cost recovery that was not based on an energy allocation (in surrebuttal), the PUC's concerns should be placated. Id. The OCA also argues that imposing incremental universal service costs does not create cost shifting. Id. at 10.

13. The OCA's request for reconsideration must be rejected. First, the OCA has raised no new or novel argument nor has it identified an issue overlooked by the PUC. The OCA merely rehashes arguments presented in its Main Brief and restates the proposal put forth in the surrebuttal

²Contrary to PECO's assertion in its Petition (p. 18, n. 10), witness Kollen's surrebuttal was appropriate surrebuttal in all respects, and PECO failed to pursue any partial Motion to Strike in any event.

testimony of its witness. The OCA's request for reconsideration on this issue fails to meet the Duick standard, and it must be rejected.

14. Second, assuming the Duick standard has been met, the OCA's proposed allocation (based on non-production revenues) of universal service costs still produces a cost shift that will also violate the rate cap. As previously recognized by the PUC, it is clear that these costs are currently allocated to the residential classes. Order, p. 146. Accordingly, any allocation to commercial and industrial customers violates the cost shifting provisions of the Act (66 Pa. C.S. § 2804(7)) and the rate cap on any non-generation charge (66 Pa. C.S. § 2804(4)(i)(B)). PAIEUG Statement No. 1R, pp. 4-6; PAIEUG Main Brief, pp. 42-43. The attendant cost shifting and rate cap increases are equally applicable to recovery of incremental universal service costs. Universal service costs benefit the residential class and should be recovered therefrom. 66 Pa. C.S. § 2803 (definition of "universal service"); PAIEUG Statement No. 1R, p. 4. The OCA's request for reconsideration of this issue must be denied.

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that PECO's request for reconsideration of the pension overfunding, deferred fuel, and SFAS 106 issues be denied.

PAIEUG concurs with PECO's request for reconsideration on the issue of properly valuing the SFAS 109 asset; PAIEUG respectfully requests that the PUC reduce PECO's stranded cost amount by \$471 million.

PAIEUG respectfully requests that the Office of Consumer Advocate's request to reconsider the PUC's decision regarding allocation of universal service costs be denied.

Respectfully submitted,

McNEES, WALLACE & NURICK

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Dated: January 13, 1998

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

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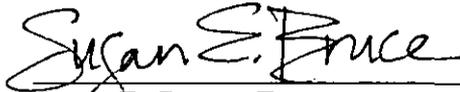
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Dated this 13th day of December, 1997, in Harrisburg, Pennsylvania.

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**RE: Application of PECO Energy Company for Approval of Its
Restructuring Plan Under Section 2806 of the Public Utility
Code
Docket No. R-00973953**

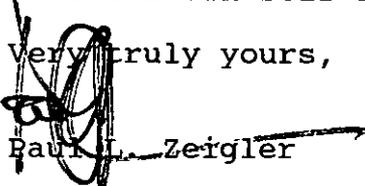
Dear Secretary McNulty:

DOCKETED
JAN 13 1998

Please accept this letter on behalf of the Delaware Valley Schools Energy/Utility Consortium, a named inactive party to the above-noted matter. In response to the Application of PECO Energy Company, it is respectfully submitted that the Delaware Valley Schools Energy/Utility Consortium is opposed to any effort on the part of PECO to delay the implementation of the Pilot Program. A significant amount of activity has occurred to implement the Public Utility Commission's intent to begin the deregulation process. The Delaware Valley School Districts and many others have relied upon the initiatives set forth by the Public Utility Commission in an effort to promote a competitive environment for electric deregulation in Pennsylvania.

It would be absolutely counter-productive to allow PECO to now stall that process on the basis of its own self-serving interests.

Very truly yours,


Paul L. Zeigler

**DOCUMENT
FOLDER**

PLZ/kam

cc: The Honorable John M. Quain, Chairman (via hand delivery)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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Docket No. R-00973953

PA.P.U.C.
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CERTIFICATE OF SERVICE

I, Paul L. Zeigler, Esquire, on behalf of the Delaware Valley Schools Energy/Utility Consortium (DVSEUC), certify that I am serving a copies of the foregoing document upon the persons addressed below, in the manner indicated:

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DATE: January 13, 1998

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January 13, 1998

JAN 13 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

(VIA FACSIMILE - 717/783-9526)

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17120-3265

Re: Pennsylvania Public Utility Commission v. PECO Energy Company,
PECO Application for Approval of its Restructuring Plan and Joint
Petition for Partial Settlement, Docket No. R-00973953; Petition of Enron
Energy Services Power, Inc. for Approval of an Electric Competition and
Customer Choice Plan and For Authority Pursuant to Section 2807(e)(3)
of the Public Utility Code to Serve as the Provider of Last Resort in the
Service Territory of PECO Energy Company, Docket No. P-00971265

Dear Mr. McNulty:

Attached hereto for filing in the above-captioned proceedings is a facsimile version of the *Answer of the Southeastern Pennsylvania Transportation Authority to Philadelphia Area Industrial Energy Users Group's Petition for Reconsideration and Clairification*.

In compliance with the January 8, 1998 letter from you to all parties, an original and nine (9) copies, plus five (5) additional copies to be time-stamped and returned, of SEPTA's Answer will be delivered to the Commission via overnight mail by tomorrow, January 14, 1998.

KJR

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JAN 13 1998

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
PRACTICE AND PROCEDURE

Pennsylvania Public Utility Commission

v.

PECO Energy Company

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

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

ORIGINAL

Docket No. R-00973953

DOCUMENT FOLDER

Docket No. P-00971265

ANSWER OF THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY TO PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP'S PETITION FOR RECONSIDERATION AND CLARIFICATION

I. INTRODUCTION

Pursuant to Rule 5.572(e) of the Commission's Rules of Practice and Procedure, 52 PA. CODE § 5.572(e), and the letter dated January 8, 1998 from Secretary James J. McNulty to the parties in the above-captioned proceedings, the Southeastern Pennsylvania Transportation Authority ("SEPTA") respectfully files its answer

("Answer") to the Philadelphia Area Industrial Energy Users Groups' ("PAIEUG") Petition for Reconsideration and Clarification ("Petition For Reconsideration") filed January 7, 1998.

SEPTA filed a *Motion to Intervene* in these proceedings on November 17, 1997, which was granted on November 20. On December 2, 1997, SEPTA filed a brief that addressed one aspect of the *Joint Petition for Partial Settlement*^{1/} ("the *Partial Settlement*"). (PAIEUG was a signatory to the *Partial Settlement* but SEPTA was not.) SEPTA's brief confined itself to Paragraph 13 of the *Partial Settlement*, which dealt with the critical issue of recovery of the competitive transition charge ("CTC") and the intangible transition charge ("ITC") from those industrial and commercial customers who "significantly reduce" their purchases of electricity through installation of on-site generation.

PAIEUG's Petition for Reconsideration was filed in response to the Commission's entry, on December 23, 1997, of an Opinion and Order denying approval of both the *Partial Settlement* and the Petition of Enron Energy Services, Inc.,^{2/} and approving, as modified by the Commission, the Application of PECO Energy Company for Approval of its Restructuring Plan. In its Petition for Reconsideration (pp. 13-14),

^{1/} Joint Petition for Partial Settlement of PECO Energy Company's Proposed Restructuring Plan and Application for a Qualified Rate Order, Docket No. R-00973952, August 25, 1997.

^{2/} Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Customer Choice Plan and for Authority Pursuant to Section 2807(e)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, Docket No. P-00971265, October 7, 1997.

PAIEUG states that the Commission failed to address, overlooked or otherwise ignored the treatment of several issues addressed in the *Partial Settlement*, including an issue addressed in Paragraph 13 thereof, *i.e.*, the level of CTCs imposed as a result of new self-generation.

SEPTA supports PAIEUG's Petition for Reconsideration on this point, but submits that, if the Commission reconsiders the issues raised in Paragraph 13 of the *Partial Settlement*, it also should rule on the related issue raised in SEPTA's brief. Just as the Commission failed to address the issues raised in Paragraph 13 of the *Partial Settlement*, it ignored the related issue raised by SEPTA in the context of Paragraph 13 of the *Partial Settlement*. Thus, disposition of SEPTA's related request is warranted based upon the same authority cited by PAIEUG.^{3/} Accordingly, SEPTA submits that in any reconsideration of the issues raised in Paragraph 13 of the *Partial Settlement*, the Commission should provide the related interpretation of that language and, by derivation, of Section 2808(a) of the Public Utility Code, Title 66 of the Pennsylvania Consolidated Statutes (the "Code"), as added by the Electricity Generation Customer Choice and Competition Act (the "Act"), requested by SEPTA in its brief. For the convenience of the Commission, SEPTA incorporates those interpretations and supporting arguments herein.

^{3/} *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (addressing 66 Pa. C.S. §703(g)).

II.
SUMMARY OF ARGUMENT

The language contained in Paragraph 13 of the *Partial Settlement* dealt with the critical issue of recovery of the CTC and the ITC from those industrial and commercial customers who “significantly reduce” their purchases of electricity through installation of on-site generation. Paragraph 13 and Exhibit E of the *Partial Settlement* provided for recovery of the fully allocated share of transition costs for such customers, except for a specified subset of such customers.^{4/} To the extent it dealt with the CTC, Paragraph 13 implemented Section 2808(a), which states in pertinent part:^{5/}

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 the transition or stranded costs shall be recovered from the customer through a competitive transition charge.^{6/}

66 Pa. C.S. § 2808(a), *emphasis supplied*.

^{4/} Paragraph 13 of the *Partial Settlement* provided that, with respect to any existing industrial or commercial customer whose peak load during 1996 was at least four megawatts and who can document that he was actively self-generating or considering self-generation as of December 31, 1996 or earlier, such customer would pay CTC/ITC charges following the start-up of any self-generating facility installed before December 31, 2008 calculated by PECO as one-third of the dollar amount that would have been charged had the customer been billed for the CTC/ITC at the prevailing Rate HT ITC/CTC charges using billing determinants based on average usage for calendar year 1996.

^{5/} Unless otherwise stated herein, all references to a “Section” or “Sections” refer to the Code.

^{6/} For the Commission’s convenience, copies of Paragraph 13 of the *Partial Settlement*, as well as Appendix E thereto, and Section 2808(a), are attached hereto as Attachment “A”.

SEPTA contends, and seeks a declaration by the Commission, that neither Section 2808(a), nor the language contained in Paragraph 13 of the *Partial Settlement* which derives therefrom (to the extent it applies to the CTC), applies to customers who, through the installation of on-site generation, cease making any purchases of electricity through the utility's transmission and distribution network but who remain physically interconnected with (*i.e.*, operate in parallel with other generation on) the public utility's system. In other words, once such a customer terminates its electricity purchases from the utility and elects to utilize no transmission, distribution or other service of the utility, that entity should not be required to pay a Competitive Transition Charge, notwithstanding the above-quoted statutory provision.²¹ This interpretation is the proper one not only because it emanates from the plain meaning of the above-quoted provision of Section 2808(a) -- which, on its face, deals only with *significant reductions* in purchases, not cessations or eliminations of them -- but, as demonstrated in SEPTA's brief and in this Answer, is the only interpretation that is consistent with other language in Section 2808(a) and elsewhere in the Act.

Furthermore, this interpretation faithfully reflects the general policies behind the Act, which are spelled out in Section 2802. Recognizing the importance of fairly resolving issues associated with the transition to a competitive generation marketplace, the General Assembly found that the Commission should be empowered to establish a

²¹ SEPTA does not, either in its brief or in this Answer, request a ruling on, and takes no position as to, the Intangible Transition Charge ("ITC") under Paragraph 13 of the *Partial Settlement*. SEPTA expressly reserves its rights to address the ITC in the future.

mechanism for electric utilities to recover an appropriate amount of transition or stranded costs. 66 Pa. C.S. §§ 2802(8), (15). The General Assembly also declared a policy that Pennsylvanians should be able to take advantage of the lower costs brought about by increasing competition in the electricity generation market. 66 Pa. C.S. §§ 2802(5), (8). That these two policies are basically at odds with one another could not have escaped the attention of the Act's drafters. The provisions of the Act relating to transition costs and transition cost recovery mechanisms, thus, must be viewed as carefully crafted compromises consistent with *both* of these declarations of legislative intent.

Accordingly, when the General Assembly provided in Section 2808(a) that a "customer who installs on-site generation . . . which significantly reduces the customer's purchases of electricity through the transmission and distribution network" must pay its "fully allocated share of transition or stranded costs," it likely intended to define a precise set of circumstances under which this responsibility would have to be borne. At the same time, recognizing the competing goal of promoting competition in the electricity generation market, the drafters probably were loathe to impose this responsibility upon customers who entirely sever their economic relationship with the electric utility by installing on-site generation and ceasing to purchase any services from the electric utility. To infer otherwise would mean that the General Assembly was willing to allow the Commission to impose a substantial one-time exit fee, or continuing exit fee payments over the duration of the entire transition period, upon customers who had long since ended their economic relationship with the electric utility. This interpretation of the statute would plainly be at odds with its underlying competitive goals.

III.
ARGUMENT

Neither Section 2808(a), Nor the Language Contained in Paragraph 13 of the Partial Settlement, Should Be Interpreted To Apply to Customers Who Install On-Site Generation, Cease Purchasing Electricity Through the Public Utility's Transmission and Distribution Network, But Remain Physically Connected to the Network.

A. **The Phrase “Significantly Reduced” Has a Plain Meaning That Does Not Include the Concept of a “100% Reduction.”**

The plain meaning of the statutory phrase “significantly reduces” contained in Section 2808(a) (and by extension, the language contained in Paragraph 13 of the *Partial Settlement*) clearly does not extend to a customer’s election to stop all purchases of electricity from his local utility in favor of self-generating all of his electric power requirements. If a consumer who typically has purchased a large number of units of a product or service annually from a certain supplier reports that he has “significantly reduced” his purchases, his comment (absent sarcasm) would not be interpreted by any reasonable person to signal that he no longer buys any units from that supplier. Rather, the word “reduced,” even if modified by the word “significantly,” would be understood to mean cutting back on purchases. The plain meaning and common usage of the word “reduced” simply does not include the concept of “reduced by 100%”. That concept is more precisely captured by any of a variety of words -- “stopped,” “ceased,” or “terminated,” to list the most commonly used ones -- that plainly convey that henceforth, no more purchases will be made.

If the General Assembly had intended to include termination of electricity purchases within the ambit of Section 2808(a), it could easily have overcome the gap left

by the plain meaning of the words “significantly reduces.” For example, it could have added after the words, “significantly reduces” a phrase such as “or results in a complete cessation of.” Neither this nor any other word or phrase, however, was included to alter the plain meaning of the phrase “significantly reduces” as used in the Act, namely, a reduction in electricity purchases short of termination of generation service.

B. SEPTA’s Interpretation of the Phrase “Significantly Reduces” in Section 2808(a) is Consistent With Other Provisions of the Act.

1. Section 2808(a): “accessing the transmission and distribution network”

The interpretation of Section 2808(a) by SEPTA above and in its brief is consistent with, and in fact is required by, the statutory language addressing payment of the CTC. The first sentence of Section 2808(a) states:

To provide each electric utility with an opportunity to recover its transition or stranded costs following the Commission’s determination under subsection (c), every customer *accessing the transmission or distribution network* shall pay a competitive transition charge to the electric distribution company in whose certificated territory that customer is located.

66 Pa. C.S. § 2808(a), *emphasis supplied*.^{8/}

The factual situation presented by SEPTA herein and in its brief does not involve a “customer” who meets the statutory qualifier, “accessing the transmission or distribution network.” First, it is clear that a person who purchases no electric supply,

^{8/} The definition of “Competitive Transition Charge” in Section 2803 also contains the language in italics.

transmission or distribution service from any entity is not a “customer” under the Act. Section 2803 defines “customer” as “a retail electric customer,” which in turn is defined in that section as “a direct purchaser of electric power.”

Second, a self-generator who provides 100% of its electric power requirements, and purchases no generation, transmission or distribution service from its former utility provider, does not use the network for any purpose and should not be deemed to be “accessing” the network simply by virtue of maintaining a physical interconnection to the grid. That a mere physical interconnection is not enough to characterize a self-generator as “accessing” the network is made clear in the definition in the Act of a related term, “direct access.”

Section 2803 defines “direct access” as the right of electric generation suppliers and end-use customers “to *utilize and interconnect* with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system *to transport electricity from any generator of electricity to any end-use customer.*” 66 Pa. C.S. § 2803, *emphasis supplied*. The foregoing definition first focuses on the right to both “*utilize and interconnect with*” the network, implying that interconnection is distinct from utilization, and that direct access connotes the right to both elements, *i.e.*, utilization and interconnection. The self-generator under the facts presented by SEPTA herein and in its brief, by contrast, may be interconnected with the network but does not use the network for any purpose.

SEPTA believes that the critical element required in order for an end-use customer to be characterized as “accessing the transmission and distribution network” under Section 2808(a) is use of the system to receive energy from a generation supplier. That use, in fact, is identified in the second italicized phrase in the definition of “direct access” quoted in the paragraph above, in the context of requiring that the rights of an end-use customer to use the network be subject to rates, terms and conditions of service “comparable to the transmission and distribution companies’ own use of the system *to transport electricity from any generator of electricity to any end-use customer.*” 66 Pa. C.S. § 2803, *emphasis supplied*. The comparability concept embedded in the definition of “direct access” thus highlights that, under the Act, the *sine qua non* of an end-user’s “accessing” the network is his use of the network to transport electric energy. The mere presence of a physical interconnection without such actual use should not -- and cannot consistent with the Act as a whole -- be interpreted to constitute “accessing” the network for purposes of Section 2808(a), nor by extension, the language contained in Paragraph 13 of the *Partial Settlement*.

2. ***Section 2803: Definition of “Competitive Transition Charge”***

The interpretation of Section 2808(a) urged by SEPTA herein and in its brief is not inconsistent with the “nonbypassable charge” requirement contained in the definition of “Competitive Transition Charge.” CTC is defined in Section 2803, in relevant part, as “a *nonbypassable* charge, applied *to the bill* of every customer accessing the transmission or distribution network . . .” 66 Pa. C.S. § 2803, *emphasis supplied*. Thus, the CTC is to be recovered only from customers who access the network. If a self-

generator chooses not to access the network, then not imposing the CTC on that self-generator would not constitute a bypass because the charge, by definition, was not recoverable from him in the first instance. Bypass would occur only if a “customer accessing the transmission or distribution network” were permitted to avoid the CTC.^{2/}

IV. CONCLUSION

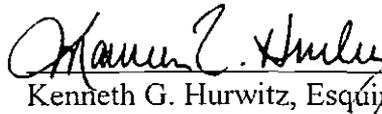
SEPTA supports PAIEUG’s Request for Reconsideration to the extent discussed herein, and urges that any reconsideration by the Commission of the issues raised in Paragraph 13 of the *Partial Settlement* should include a finding that neither Section 2808(a) nor the language contained in Paragraph 13 of the *Partial Settlement* requires that customers who install on-site generation and cease taking any services from their former utility provider, but remain physically connected to the utility’s transmission and distribution network, must pay a Competitive Transition Charge.

As demonstrated by SEPTA in its brief and in this Answer, such a finding is consistent with the plain meaning of the operative words “significantly reduces” that are found both in Section 2808(a) and Paragraph 13 of the *Partial Settlement*, and is required by the language in the same section of the Act that specifies the entities subject to the CTC payment requirement -- “customers accessing the transmission or distribution network.” Furthermore, to find that on-site generators who elect to completely sever their

^{2/} SEPTA’s argument that the phrase “accessing” the network implies the utilization of the network to procure some utility service is bolstered by the use of the phrase “applied to the bill of every customer” in Section 2803’s definition of CTC. This phrase implies that the customer is already receiving a bill, which in turn implies that he is presently purchasing some service from the utility.

economic relationship to their former utility provider do not remain subject to the CTC would not violate the "nonbypassable charge" requirement in the statute, and would reflect an appropriate balancing of competing policy goals relating to the transition to a restructured electric industry in the Commonwealth.

Respectfully submitted,



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Dated: January 13, 1998

ATTACHMENT "A"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1509

Session of
1995

INTRODUCED BY DURHAM, FICHTER, KENNEY, EVANS, TRELLO,
YOUNGBLOOD, PRESTON AND WOGAN, APRIL 27, 1995

SENATOR LOEPER, RULES AND EXECUTIVE NOMINATIONS, IN SENATE, RE-
REPORTED AS AMENDED, NOVEMBER 20, 1996

AN ACT

1 ~~Amending Title 66 (Public Utilities) of the Pennsylvania~~ ←
 2 ~~Consolidated Statutes, providing for the regulation of~~
 3 ~~taxicabs in cities of the first class.~~
 4 AMENDING TITLES 15 (CORPORATIONS AND UNINCORPORATED ←
 5 ASSOCIATIONS) AND 66 (PUBLIC UTILITIES) OF THE PENNSYLVANIA
 6 CONSOLIDATED STATUTES, PROVIDING FOR GENERATION CHOICE FOR
 7 CUSTOMERS OF ELECTRIC COOPERATIVES AND UTILITIES; FURTHER
 8 PROVIDING FOR DEFINITIONS; REENACTING PROCEDURAL REQUIREMENTS
 9 FOR TAXICAB CERTIFICATES AND MEDALLIONS; PROVIDING FOR
 10 RESTRUCTURING OF THE ELECTRIC UTILITY INDUSTRY; AND FURTHER
 11 PROVIDING FOR TAXATION.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. Section 2404(a) of Title 66 of the Pennsylvania~~ ←
 15 ~~Consolidated Statutes is amended to read:~~

16 SECTION 1. TITLE 15 OF THE PENNSYLVANIA CONSOLIDATED ←
 17 STATUTES IS AMENDED BY ADDING A CHAPTER TO READ:

18 CHAPTER 74
 19 GENERATION CHOICE FOR CUSTOMERS
 20 OF ELECTRIC COOPERATIVES
 21 SEC.

1 DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND
2 ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT
3 THE END OF THE PHASE-IN PERIOD.

4 (3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT
5 IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN
6 ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC
7 DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE
8 SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET
9 PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL
10 REASONABLE COSTS.

11 (4) IF A CUSTOMER THAT CHOOSES AN ALTERNATIVE SUPPLIER
12 AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION
13 COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION
14 COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW
15 APPLICANT FOR ENERGY SERVICE.

16 § 2808. COMPETITIVE TRANSITION CHARGE.

17 (A) GENERAL RULE.--TO PROVIDE EACH ELECTRIC UTILITY WITH AN
18 OPPORTUNITY TO RECOVER ITS TRANSITION OR STRANDED COSTS
19 FOLLOWING THE COMMISSION'S DETERMINATION UNDER SUBSECTION (C),
20 EVERY CUSTOMER ACCESSING THE TRANSMISSION OR DISTRIBUTION
21 NETWORK SHALL PAY A COMPETITIVE TRANSITION CHARGE TO THE
22 ELECTRIC DISTRIBUTION COMPANY IN WHOSE CERTIFICATED TERRITORY
23 THAT CUSTOMER IS LOCATED. THE COSTS TO BE RECOVERED SHALL BE
24 ALLOCATED TO CUSTOMER CLASSES IN A MANNER THAT DOES NOT SHIFT
25 INTER-CLASS OR INTRA-CLASS COSTS AND MAINTAINS CONSISTENCY WITH
26 THE ALLOCATION METHODOLOGY FOR UTILITY PRODUCTION PLANT ACCEPTED
27 BY THE COMMISSION IN THE ELECTRIC UTILITY'S MOST RECENT BASE
28 RATE PROCEEDING. IF A CUSTOMER INSTALLS ON-SITE GENERATION WHICH
29 OPERATES IN PARALLEL WITH OTHER GENERATION ON THE PUBLIC
30 UTILITY'S SYSTEM AND WHICH SIGNIFICANTLY REDUCES THE CUSTOMER'S

1 PURCHASES OF ELECTRICITY THROUGH THE TRANSMISSION AND
2 DISTRIBUTION NETWORK, THE CUSTOMER'S FULLY ALLOCATED SHARE OF
3 TRANSITION OR STRANDED COSTS SHALL BE RECOVERED FROM THE
4 CUSTOMER THROUGH A COMPETITIVE TRANSITION CHARGE. THE RECOVERY
5 OF TRANSITION OR STRANDED COSTS ASSOCIATED WITH EXISTING
6 GENERATING FACILITIES IS CONTINGENT ON CONTINUED OPERATION AT
7 REASONABLE AVAILABILITY LEVELS OF THE GENERATION FACILITIES FOR
8 WHICH RECOVERY HAS BEEN APPROVED, EXCEPT WHEN THE GENERATION
9 FACILITY IS UNECONOMIC ON A PRODUCTION COST BASIS BECAUSE OF THE
10 TRANSITION TO A COMPETITIVE MARKET.

11 (B) PERIOD FOR COLLECTING COMPETITIVE TRANSITION CHARGE.--
12 THE COMPETITIVE TRANSITION CHARGE SHALL BE INCLUDED ON BILLS TO
13 CUSTOMERS FOR A PERIOD NOT TO EXCEED NINE YEARS FROM THE
14 EFFECTIVE DATE OF THIS CHAPTER UNLESS AN ALTERNATIVE PAYMENT
15 METHODOLOGY IS MUTUALLY AGREED UPON BY THE CUSTOMER AND THE
16 UTILITY OR UNLESS THE COMMISSION, IN ITS DISCRETION AND FOR GOOD
17 CAUSE SHOWN, ORDERS AN ALTERNATIVE PAYMENT PERIOD. IN
18 ESTABLISHING THE LENGTH OF THE PERIOD FOR COLLECTION OF THE
19 COMPETITIVE TRANSITION CHARGE, THE COMMISSION SHALL CONSIDER THE
20 EFFECT ON THE ABILITY OF THE COMMONWEALTH TO COMPETE IN
21 ATTRACTING INDUSTRY AND JOBS, ON THE FINANCIAL HEALTH OF
22 ELECTRIC UTILITIES AND OTHER RELEVANT FACTORS.

23 (C) DETERMINATION OF COMPETITIVE TRANSITION CHARGE.--IN
24 DETERMINING THE LEVEL OF TRANSITION OR STRANDED COSTS THAT AN
25 ELECTRIC UTILITY MAY RECOVER THROUGH THE COMPETITIVE TRANSITION
26 CHARGE, THE COMMISSION SHALL APPLY THE FOLLOWING PRINCIPLES:

27 (1) THE COMMISSION SHALL ALLOW RECOVERY OF REGULATORY
28 ASSETS AND OTHER DEFERRED CHARGES TYPICALLY RECOVERABLE UNDER
29 CURRENT REGULATORY PRACTICE, THE UNFUNDED PORTION OF THE
30 UTILITY'S PROJECTED NUCLEAR GENERATING PLANT DECOMMISSIONING

All Rate HT industrial customers, LILR customers, and Rule 4.6 and EER customers shall have the right to pay all applicable CTC/ITC charges in one lump sum. For customers exercising this option, PECO and the customers will negotiate a mutually acceptable lump sum using the customer's most recent 12 months of demand and energy usage as billing determinants, unless such demand and energy usage will not be representative of the customer's likely demand and energy consumption during the CTC/ITC recovery period (in which case representative values will be used), applied to the CTC/ITC charges for the entire CTC/ITC recovery period, discounted using PECO's after-tax cost of capital. Exercise of the rights in this paragraph 12 and paragraph 13 below shall impose no additional burdens on any other customer classes.

13. Recovery of CTC/ITC from industrial and commercial customers that significantly reduce their purchases through installation of on-site generation will be as fully set forth in Appendix E hereto, which is incorporated as a part of this Partial Settlement; provided, however, that existing industrial and commercial customers whose peak load during 1996 was at least four (4) megawatts, and who can document that they were actively self generating or considering self-generation as of December 31, 1996 or earlier, will pay CTC/ITC charges following full start-up of any self-generation facility they install before December 31, 2008 as follows:

- i. PECO will calculate the customer's average billing demand and energy usage for calendar year 1996;
- ii. Using those billing determinants PECO will determine the dollar amount that would be charged were the customer billed for CTC/ITC using the prevailing Rate HT CTC/ITC charges;

- iii. PECO will bill the customer one-third of the dollar amount determined in accordance with step 2.

14. The cap on PECO's transmission and distribution charges, which otherwise would expire on June 30, 2001 under Section 2804(4) of the Electric Competition Act (66 Pa.C.S. § 2804(4)), will be extended until January 1, 2004. The Joint Petitioners shall not challenge PECO's transmission or distribution rate structure, as set forth in PECO's Restructuring Plan filing, or the level of PECO's transmission or distribution rates as set forth in Appendix C hereto until the expiration of the transmission and distribution cap on January 1, 2004. The charges for distribution service shall be separately stated on retail customer bills. The Joint Petitioners agree that, depending on how this Commission and the FERC resolve the manner in which retail customers may obtain transmission service, charges for transmission service shall be separately stated on retail customer bills unless they are already included by alternative generation suppliers in the market price of delivered energy and capacity or unless the customer purchases the transmission service directly.

15. Direct customer access to alternative generation suppliers will be phased in for all customers on a first-come, first-served basis in three steps -- one-third of the peak load of each customer class of service will have access on January 1, 1999, two-thirds of the peak load of each customer class on January 2, 1999, and the remainder on January 2, 2000. With respect to Rate HT and PD customers only, if the individual customer peak load subscriptions exceed the class peak load limitation for one or more of these steps, then each customer's subscription will be reduced pro rata to meet the class peak load limitation. The Rate GS class will be divided into

Tariff Language to be Added to the Auxiliary Service Rider**CTC/ITC Cost Recovery and On-site Generation:**

To ensure that customers that use on-site generation equipment that operates in parallel with PECO Energy's transmission and distribution system pay their fully allocated share of Transition or Stranded Costs through the Company's CTC and ITC, the Company will follow the following procedure:

1. For all customers served under the Auxiliary Service Rider, PECO will determine annually following completion of each calendar year during which it is charging a CTC and/or ITC whether any such customer purchased at least 10% fewer kilowatt-hours through PECO's transmission and distribution system than the customer purchased during the applicable base year as defined below.
2. Base Year definition: For customers who begin service under the Auxiliary Service Rider on or after January 1, 1997, the base year will be the immediate prior calendar year. For all other Auxiliary Service Rider customers, the base year will be 1996.
3. For all such customers, PECO will then determine the extent to which the reason for the reduction is use of on-site generation equipment. If this cannot be determined using metering data otherwise available to the Company, the customer will be required to provide metering data for its generator, or of its load served by that generator.
4. If the Company determines that the ratio expressed as a percentage between: (1) the amount of the usage difference caused by the on-site generation, and (2) the base year usage, is 10% or more, then the Company will render a separate bill to the customer that is equal to the difference between: (1) the total CTC/ITC amount that the customer would have paid in the just completed calendar year using monthly usage and demand data for the base year (adjusted for any portion that is not related to on-site generation) and (2) the total CTC/ITC amount that the customer did pay in the just completed calendar year.
5. The separate bill will be issued in the first quarter of the new calendar year, and will be due within thirty (30) days of the issuance date printed on the bill.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Answer of the Southeastern Pennsylvania Transportation Authority to Philadelphia Area Industrial Energy Users Group's Petition for Reconsideration and Clarification* was served via first-class U.S. Mail, this 13th day of January, 1998, upon the following:

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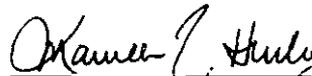
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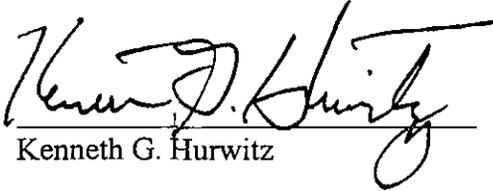
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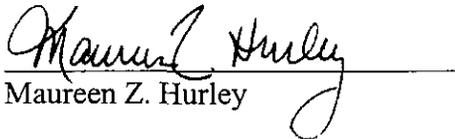
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January 13, 1998
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Thank you for your assistance.

Very truly yours,


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