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January 30, 1998

ORIGINAL

HAND DELIVERY
James McNulty, Acting Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
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

KJR

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and 8 copies of the Reply Comments Of PECO Energy Regarding Compliance Filing.

Sincerely,

Noel H. Trask

DOCUMENT FOLDER

Noel H. Trask

NHT/jap

w/enclosures
cc: John M. Quain, Chairman
David W. Rolka, Commissioner
John Hanger, Commissioner
Robert K. Bloom, Commissioner
Nora Mead Brownell, Commissioner
Cheryl Walker Davis, Office of Special Assistants
John Povilaitis, Law Bureau
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Administrative Law Judge Charles E. Rainey, Jr.
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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REPLY COMMENTS OF PECO ENERGY COMPANY REGARDING COMPLIANCE FILING OF PECO ENERGY COMPANY

January 30, 1998

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REPLY COMMENTS OF PECO ENERGY COMPANY REGARDING COMPLIANCE FILING OF PECO ENERGY COMPANY

I. Introduction

PECO Energy Company ("PECO Energy" or the "Company") respectfully submits the following reply to some of the comments to PECO Energy's Compliance Filing several parties filed on January 27, 1998. Although the Commission did not specifically provide PECO Energy with the opportunity to present these comments, the Company is compelled to respond for four reasons. First, PECO Energy has not been afforded any opportunity to explain why challenged provisions are in fact consistent with the Competition Act and the Commission's December 23, 1997 and January 16, 1998 Orders. Second, some parties – in particular, Enron -- have attempted to resurrect or reargue positions they advanced unsuccessfully in this proceeding. Third, several of the parties have requested that the Commission require PECO Energy to amend its compliance filing to reflect their views on issues that will be addressed by the Commission generically through the working group and rulemaking processes. As such, these issues should not be resolved in the context of this PECO Energy specific compliance filing. Fourth, and finally, the Company wishes to accept certain proposed revisions advocated by other parties.

A theme that emerges from the comments, particularly those of the marketers, it is that many parties expect PECO Energy to be the sole financier of competition. They want to ensure, through a new set of regulations and rules that would impose costs on PECO Energy they should in fact bear, that they will not have to compete against PECO Energy. Marketers and consumer groups want PECO Energy to assume their credit and collection responsibilities, and their uncollectibles burdens. Marketers want PECO Energy to provide, for free, costly new services (e.g., supplier billing, provision of load data, unlimited switching of customers from one supplier to another). And marketers want to remove, through onerous regulations incorrectly characterized as "competitive safeguards," every advantage PECO Energy may have in the emerging competitive marketplace, *even if any such advantage is unrelated to PECO Energy's continuing monopoly over the provision of distribution service*.[1]

This distorted view of "competition" is antithetical to the development of true competition, and should be rejected by this Commission. In touting competition, marketers have claimed it will allow "leaner" and "meaner" competitive companies to supply reliable energy at a lower cost than traditionally regulated utilities. Realization of this promise is clearly at the heart of the Commission's Order in this proceeding. Yet throughout this proceeding, marketers have not argued for the withdrawal of the Commission from its current regulatory responsibilities. Instead, they have barraged the Commission with requests for numerous new rules and regulations designed primarily either to shift to PECO Energy costs that marketers incur to provide energy services, or to disable PECO Energy as a competitor.

Competition should be about competition. It should not be about manipulation of the

[1] Perhaps the most egregious example is Enron's request that PECO Energy be precluded from sharing public information from a PECO Energy competitive supplier.

regulatory process to gain unfair advantage and handicap competitors. The marketers' comments to PECO Energy's Compliance Filing are the latest reflection of this litigation and business strategy. Enough is enough. Let's get to the business of competition, not the business of reregulation.

PECO Energy now offers the following responses to many of the parties' comments.[2]

1. *Quantification Of Stranded Cost Recovery*

Several parties have challenged PECO Energy's Compliance Filing on the grounds that PECO Energy: (1) has overstated the level of stranded costs which the Commission authorized it to recover; and/or (2) has developed unbundled tariff charges which are inconsistent with the Commission's directives. As briefly discussed below, these objections, with two exceptions, are unwarranted and should be rejected.

2. Stranded Cost Starting Point

OCA and others point out that PECO Energy utilized the wrong starting point and, as a consequence, has overstated its recoverable stranded costs by $89.0 million, i.e. the difference between the Commission's quantification of stranded costs in its December 23, 1997 Order ("Order") and the lower figure set forth in its January 16, 1998 Restructuring Reconsideration Order ("Reconsideration Order"). PECO Energy agrees and, in its answer to Interrogatory FUS-

[2] That PECO Energy has not commented on every issue raised by the parties in their comments does not mean PECO Energy agrees with all of these comments or accepts the parties' characterizations of PECO's intentions.

I-1 (copy attached to these Responsive Comments as Exhibit "A") has proposed two alternative ways to correct this oversight.

3. Equity Return Gross-Up for Income Taxes and Collection of GRT

The Commission's Order directed PECO Energy to calculate the revenue requirement for recovery of the CTC using a base rate of 7.47%. Consistent with standard ratemaking procedures and the Commission's directives, PECO Energy used an overall return rate of 7.47% in its calculation.

In its Order the Commission calls the 7.47% a "cost of capital" (Order, p. 109) and also notes that the "[7.47%] is close to the 7.53% proposed by NEV" (Order, p. 108). The 7.53% proposed by NEV is from the Qualified Rate Order ("QRO"), Docket No. R-973877 (QRO, p. 59) and is an *after*-tax cost of capital (i.e. tax savings on debt is netted against the cost of capital). In its calculation, however, the Company assumed conservatively that the 7.47% is a cost of capital, not an after tax cost of capital. Had PECO Energy used the more aggressive assumption in its calculation, the pre-tax return would have been close to 13%, not the 10.31% it used.

Several parties criticized PECO Energy's approach, claiming the 7.47% figure was intended to be an "all-in" number from which PECO Energy would be expected to pay gross receipts and income taxes. Such an interpretation, however, is entirely inconsistent with the Commission's determination that PECO Energy should receive a rate of return commensurate with its cost of long-term debt. Indeed, the position espoused by the opposing parties would sentence PECO Energy's investors to an implied return of approximately 4.38%, a result

unsupported by the record in this proceeding.

Moreover, if the 7.47% figure is to be treated as a "pre-tax" return rate, or in this case as debt as some parties suggest, PECO Energy's capitalization ratio for other functions would change substantially. As a result, PECO Energy's distribution rates would increase substantially, and the market value of generation assets would decline, thereby increasing stranded cost. In addition, significant elements of PECO Energy's stranded costs, such as its SFAS 109 regulatory asset, would have to be restated (i.e. adjusted upwards) to reflect a debt only discount rate. (See also Exhibit "A"). The end result, a cost of capital lower than intended, contravenes the Commission's intention that PECO Energy is recovering 100% of its stranded costs. (Motion of Commissioner John Hanger, December 11, 1997, at p. 53).

Furthermore, it is standard practice for the Commission to state a rate of return or cost of capital in its Orders. It does not state the return at the revenue requirement level and it does not state an after-tax cost of capital. Accordingly, under accepted ratemaking procedures the gross-up of the equity component for income taxes is an assumed calculation.

In addition, the NEV claim that PECO Energy should use the twelfth root of 7.47% for the monthly rate lacks any merit. Again, Commission ratemaking practice has been to use a stated rate divided by 12. Furthermore, by calculating the CTC based upon monthly payments, this effect has already been included. To use the NEV methodology would inappropriately lower the rate.

Finally, PECO Energy strongly objects to the astonishing claims of both Enron and MAPSA that PECO Energy should not be allowed to recover Pennsylvania Gross Receipts Tax on its allowed stranded cost recovery amount. The Commission should recognize that it is the

Commonwealth of Pennsylvania, and not PECO Energy, that benefits from this adjustment.

4. Deferred Taxes On Reallocated Administrative And General Costs

Enron, which made no attempt to independently quantify PECO Energy's stranded costs during this proceeding, questions the method PECO Energy used to calculate the amount of stranded cost resulting from the Commission's ordered reallocation of administrative and general (A&G) costs to the generation function. Enron questions PECO Energy's reflection of the impact this reallocation has on deferred taxes and therefore on the resulting stranded cost amount. Enron's objection, however, is groundless, as PECO Energy's treatment of the deferred tax impact resulting from the reallocation is in fact expressly required by the Commission's Reconsideration Order.

In that Reconsideration Order, the Commission instructed PECO Energy to calculate the stranded cost amount by considering A&G expense in the same way that any other operating expense is considered to assess the market value of generating assets. (Reconsideration Order, p. 16). As *all parties* that presented evidence on PECO Energy's stranded costs properly recognized, (including the OCA, on whom the Commission relied for its generation stranded cost determination) this requires the deferred tax adjustment PECO Energy reflected, as there is a direct relationship between market value and associated cash flow, on the one hand, and deferred taxes on the other. In its Compliance Filing, therefore, PECO Energy simply reflected this deferred tax impact in calculating the stranded cost amount associated with the reallocation of A

& G expense to the generation function.[3]

5. Nuclear Decommissioning Costs

The OCA contends that PECO Energy, by including a Nuclear Decommissioning Cost Adjustment ("NDCA") clause in its Compliance Filing, has "double-counted" its nuclear decommissioning costs. In support of its position, the OCA notes that its proposed market prices, which were accepted by the Commission, already include as an annual ongoing cost (i.e. offset to market revenue), an amount it contends will make PECO Energy whole for its future decommissioning obligations.

PECO Energy has carefully reviewed the OCA's comments and has confirmed that its market value analysis does, in fact, take into consideration nuclear decommissioning costs. Accordingly, when PECO Energy resubmits its compliance rates it will zero out its proposed NDCA.

6. CTC And T&D Rates

Several parties criticize PECO Energy for not reflecting in its Compliance Filing the 4.46¢/kWh average CTC rate and the 2.93¢ kWh average T&D rate mentioned by the Commission in the Order. With respect to the former, the Order emphasizes that the Commission's projected CTC value was an estimate that would have to be adjusted in accordance

[3] See response to FUS-I-1(c), included within Exhibit "A".

with the Commission's other findings; it was not intended to be the final figure. In contrast, the Commission asserted that the 2.93¢/kWh T&D figure extracted from OCA witness Smith's surrebuttal testimony already reflected any required adjustments. As set forth, however, in PECO Energy's response to Interrogatory FUS-I-5 (copy attached as Exhibit "B"), the Company has been unable to replicate Ms. Smith's calculations and believes them to be incorrect. Rather, following Ms. Smith's methodology precisely, PECO Energy derived a system average rate of 2.97¢/kWh and not 2.93¢/kWh. (See Exhibit "B").

II. Other Cost of Service/Proof of Revenue Issues

OCA and Conectiv both object to the fact that the sales levels for each rate as shown in the "Summary of Unbundled Revenue" sheets and the Proofs of Revenue are not identical. In spite of identical objections by Enron during the course of the proceeding, the Commission did not order any change to PECO Energy's Proofs of Revenue or resulting rates, accepting instead PECO Energy's detailed explanation of the differences and their lack of significance.[4] PECO Energy's testimony demonstrated that the *differences do not yield different, higher rates* that would allow PECO Energy to collect more revenue than reported in the Proofs of Revenue.

[4] See the Rejoinder Testimony of Robert A. Clemmer (PECO Statement No. 12-RJ) and the "Choice Plan" testimony of William F. Sundermeir (PECO Statement No. 13-E).

III. Rate Design and Tariff Issues

1. Special Contracts

Enron and MAPSA contend the Commission's Order requires eliminating PECO Energy's flexible tariff provisions. In its Compliance Filing, PECO Energy did not limit the availability of these provisions – Rule 4.6, the Economic Efficiency Rider ("EER"), and the Incremental Process Rider ("IPR"). The parties' interpretation of the Commission's Order must be incorrect for two reasons. First, the Order itself provides unambiguously that PECO Energy must "continue to offer regulated LILR, EER and IPR service to existing customers." (Order, p. 119). Second the Competition Act provides unambiguously that utilities be permitted to offer special contracts and flexible tariff rates to address competitive alternatives. (66 Pa.C.S. §2806(h)).

Further, as Enron, a stakeholder in the negotiations that led to the Competition Act knows well, other stakeholders representing the interests of industrial and commercial customers advocated including Section 2806(h) to ensure the continued availability of these rates.[5] Rather than seeking to disable a competitor and stifle competition by eliminating these options, Enron and other suppliers should spend their time competing for customers. Competition – not the disabling of one competitor for the benefit of others – is the purpose of the Competition Act, and this Commission should give full effect to that purpose by rejecting Enron's request to eliminate

[5] PECO Energy has been authorized by counsel to PAIEUG to represent that PAIEUG agrees with PECO Energy's understanding of the stakeholder process negotiations on this issue as well as PECO Energy's statutory and regulatory interpretation on the subject.

PECO Energy's flexible rates.

2. Status of Customers with Special Contracts in effect as of January 1, 1997

The Compliance Filing provides that when a customer's special contract expires, so does the customer's right to any discounted unbundling. PAIEUG asserts that to comport with the Competition Act's rate caps, PECO Energy must be required to continue to offer discounted unbundling to such customers even after those contracts expire. The Commission's Orders are silent on this question. PAIEUG's request, however, should be rejected. All of the rate caps are linked to "the effective date of [the Competition Act]." Notably, as of the effective date of the Competition Act, a special contract customer was being served under a contract with a specific term or length. To fulfill the Competition Act's rate caps requires enforcing *all* provisions of the then existing contract, *including its length.*

3. "Customer" Definition

Enron and MAPSA request that the definition of customer be revised to include suppliers when the customer appoints the supplier as an agent. This is a blatant attempt to reintroduce Enron's preferred tariff structure, as contained in the Enron "Choice Plan," which the Commission summarily rejected. The rejected "Choice Plan" Tariff defined customer as a supplier. The Commission has decided instead that the current structure, under which the Tariff governs the PaPUC jurisdictional services to be provided to end-use customers, is the preferred

structure for an unbundled electric services tariff. Accordingly, Enron's requested change should be rejected again. [6]

4. Term of Contract Provisions in Bundled Rates

Enron and MAPSA both contend that PECO Energy be required to eliminate the term of contract (length of contract) provisions that exist in the proposed unbundled Base Rates. Neither, however, refers to any record evidence or support in either of the Commission's Orders for this position. Although the Commission should reject the request for that reason alone, there are two additional reasons for rejecting it.

First, if customers are permitted to switch back and forth between rates for which they are eligible, they will be able to game the system, causing PECO Energy under-recovery of both its distribution charges and CTCs, and therefore shifting costs to other customers in clear contravention of the Competition Act's anti-cost shifting protections. (66 Pa.C.S. §2808(a)). Because the Commission has required an annual true-up of the CTC under §1307(e) of the Public Utility Code, this under-recovery will mean likely increases to the CTC, with corresponding decreases to the shopping credit, an outcome the Commission presumably would wish to avoid. Second, term of contract provisions for unbundled regulated charges will have no impact on a

[6] Similarly, Enron and MAPSA both suggest that under Rule 16.2, an EGS and not just a customer should be allowed to request a meter test. MAPSA also proposes that under Rule 13.1, an EGS, and not just an end-use customer, should be permitted to resell service and Energy and Capacity in accordance with the rule, thus attempting to enable suppliers to circumvent both the rate caps and Commission oversight of PECO Energy's regulated distribution and CTC rates. Again, the tariff structure underlying these proposed changes has been rejected by this Commission. The Commission's unambiguous mandate is that PECO Energy should provide directly to end-use distribution service customers all services set forth in its Tariff.

supplier's ability to offer supply contracts of different lengths.

5. Summary Billing

NEV objects to PECO Energy's revisions to its summary billing provisions. The Tariff Rules contained in PECO Energy's Compliance Filing make clear that the Company will provide a summary bill for all of a customer's CTC and competitive energy supply charges for all of the customer's locations. NEV contends, however, that PECO Energy must conjunctively bill CTCs and transmission charges for customers with multiple locations.

PECO Energy strongly objects to this interpretation. Such an interpretation would cause intra-class CTC cost shifting, a result expressly prohibited by the Competition Act, 66 Pa.C.S. §2808(a).[7] If the Company conjunctively billed for demands at multiple meter locations, the total number of demand-related billing units *would decrease, and therefore result in substantially lower CTC collection amounts for all classes in which the customer's peak demand is a billing determinant (Rate HT, PD, and GS)*. The amounts reported in PECO Energy's Proofs of Revenue assume the current level of demand-related billing units. Given the required annual CTC true-up, these potentially huge under-collections would require substantial increases to PECO Energy's CTC rates for the affected rate classes, thus unfairly burdening customers with only one location. Because of the statutory rate caps, these CTC rate increases would also require corresponding reductions to the affected rate classes' shopping credits, which the Commission has intentionally set at high levels to encourage Competition.[8]

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[7] See (PECO St. 13-R, p. 9).

[8] NEV apparently confuses load aggregation for energy billing purposes with *conjunctive billing of regulated charges*. Nothing in PECO Energy's Tariff would inhibit load aggregation, NEV simply does not face any barrier

Accordingly, the Commission should reject NEV's interpretation of the Commission's Reconsideration Order.

6. Limitations on Liability

Regarding Enron's proposed revisions to PECO Energy's Tariff Rule 12.2, in particular those relating to switching, PECO Energy proposes that at a minimum, any liability must be limited to: (1) "willful and wanton misconduct"; and (2) to direct damages with a specified cap on the amount of damages recoverable by a customer, similar to that contained in Rule 12.1.

7. Effective Date of Tariff

Enron and others have requested that PECO Energy's proposed tariff be effective immediately. PECO Energy sees no need for this. PECO Energy will not actually begin providing unbundled distribution service, or charging CTCs, until January 1, 1999, PECO Energy's proposed effective date. Instead of confusing matters by making the effective date of the entire tariff several months before Direct Access will actually begin, the preferable course is for the Commission to state in its Order approving the Compliance Filing that PECO Energy must commence certain of the procedures contained within the Tariff when appropriate and necessary.

Those procedures, however, should not include the Interim Code of Conduct. A Code of

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to aggregation of its customers' loads in the absence of conjunctive billing. If NEV develops an aggregate customer mix with a load factor that is better than the system average, which it has previously claimed is its primary business strategy, it will save on its energy costs, and potentially be able to offer its customers lower retail energy prices.

Conduct for PECO Energy's Pilot is already being administered by PECO Energy.

IV. Metering, Billing, Credit and Collection, Universal Service, and Fees for New Services

1. Metering

Enron complains that the Company's proposed metering rule (Rule 14) fails to incorporate requirements of the Commission's metering rulemaking (Docket L-00970128). Contrary to Enron's claim, the Company's compliance filing incorporates the metering rules adopted so far by the Commission in its rulemaking proceedings, which PECO Energy notes is only in its initial stages. In accordance with that rulemaking, proposed Rule 14 requires the Company, to the extent technically possible, to provide and support a selection of qualified meters it also provides that although the Company would continue to own and maintain the meter, the customer or the EGS would pay for the advanced meter.

2. Billing

Enron and Conectiv assert that PECO Energy's proposed billing rule (Rule 17) should be modified so that: (1) *suppliers* should have the right to determine whether a customer receives a combined bill; (2) the Company should pay suppliers within 15 days of the date of the issuance of a combined bill even if the customer has not paid PECO Energy, and then collect and retain the amount due from customers; and (3) the Company's proposed method of applying partial

payments should be modified so that PECO Energy default Energy and Capacity charges do not receive priority over EGS supply charges. These proposed changes should be rejected, as the Company's proposed Rule 17 incorporates the changes required by the Competition Act and the Commission's Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality. ("Folder 11").

With regard to the first proposal, the Competition Act unambiguously provides that *the customer and not the customer's supplier has the right to choose* whether he/she will receive a combined bill. 66 Pa.C.S. §2807(c). Concerning the second proposal, the Competition Act, provides unambiguously also that PECO Energy is entitled to be paid by the customer *before* it forwards any monies to an EGS. 66 PaC.S. § 2807(c)(3). Third, with respect to priority of payment, as the Competition Act and Folder 11 both provide, the Company is to be paid first in all circumstances, and EGSs' supply charges cannot have priority over those of PECO Energy.

3. Payment Arrangements

Enron, Conectiv, and the OCA propose to revise PECO Energy's Rule 18 to require PECO Energy to negotiate payment arrangements for EGSs when PECO Energy provides customers with combined bills. This proposal is also inconsistent with the requirements of Folder 11. Folder 11 specifically states that EGSs are not permitted to terminate service and are also therefore relieved of the obligation to negotiate Chapter 56 payment arrangements. The Company adopted the position of the OCA in the pilot proceedings that it will not terminate service for a customer's failure to pay an EGS for its services.

Contrary to the parties' contentions, this is not unfair. An EGS has the option of discontinuing its contract with a customer as soon as the customer fails to pay, an option PECO Energy does not have. Following such discontinuance, the customer will get service from another supplier, or return to the Company, with the Company responsible for collection and payment arrangements.[9]

Finally, PECO Energy reminds the Commission that in an Order issued on November 7, 1997 in PECO Energy's Pilot Proceeding, this Commission directed that the order of payment issue be addressed in the Pilot post-implementation hearings.

4. Switching Procedures

Enron requests that customer switches should not be tied to the customer's meter reading date. This request contravenes the Commission's controlling January 15, 1998 Order in the Pilot proceeding, in which the Commission determined that switches should be linked to the customer's regularly scheduled meter reading date. That January 15 Order required EDCs to change their Pilot switching rules to allow a customer's request for a new supplier to be effective as of the next scheduled meter reading date, provided the EDC received 15 days prior notice.

Linking the customer's switch with his/her meter reading date provides many benefits for both the EGSs and the Company. The process will enable EGSs to conform to current PJM guidelines and nominate capacity for customers in advance. In addition, scheduling switches based on the meter reading date avoids potential confusion for customers caused by an additional

[9] PECO Energy notes that the Commission implicitly acknowledged this logic by agreeing with PECO Energy that no uncollectible accounts expense should be allocated to the production function. (Order, p. 61).

meter reading and, by providing a fixed date, helps EGSs forecast their customers' usage, resulting in cost savings for EGSs and their customers.

5. Supplier Switching Fee

Some parties have objected to PECO Energy's proposed supplier switching fee, contained in PECO Energy's proposed Tariff Rule 23.7, arguing that the Commission has expressly rejected this fee in its Order. This is an incorrect interpretation of the Commission's Reconsideration Order. That Order directed PECO Energy to adopt the approach of OCA witness Barbara Alexander to switching fees: "we shall adopt the recommendation of OCA witness Alexander that a switching fee is inappropriate during the early stages of customer choice and that PECO Energy consider the guidelines proposed in OCA Statement No. 5S at 10-11 in proposing any switching fee in the future." Ms. Alexander recommended that any fee be relatively low, that no fees be charged in the early stages of the phase-in, that no fees be charged to customers that receive provider-of-last resort service, and that the fee be waived for customers new to the distribution system for a period of 90 days. Proposed Tariff Rule 23.9 follows Ms. Alexander's recommendations.

In the early states of Phase-In, the first six months of 1998 - there will be a moratorium on any switching fee.[10] The rule also requires a waiver of the fee for 90 days for new customers and precludes PECO Energy from imposing the fee on customers taking service under the CAP Rate or on those whose EGS goes bankrupt.

[10] PECO Energy regrets that this moratorium was not included in its original tariff filing. Its omission was inadvertent – PECO Energy's intention was always to include this provision in its January 20, 1998 filing.

In addition, the six dollar fee, which is based on the Commission-approved fee in Tariff Rule 9.7, is far less than the costs PECO Energy will likely incur to switch a customer and thus, to use Ms. Alexander's adjective, is "low." PECO Energy's current supplier policies and procedures, which are a part of the record evidence in this proceeding, establish that in addition to the tasks currently associated with customer transfers, PECO Energy will incur substantial new costs to switch customers (See Exhibit TPH-32 to PECO St. 1-RJ). For example, PECO Energy must adjust supplier load curves, process customer switch files, communicate with all involved suppliers, update installed capacity obligations, make any necessary billing changes, send confirmations to customers, and perform numerous other tasks.

6. Fees for Provision of Customer Load Data and Supplier Billing

Enron and Conectiv claim that the $24 fee PECO Energy has proposed to charge customers who have telemetric continuous hourly metering (Rule 24) for the provision of 12 months of historic load data has not been cost justified, and should be disallowed. Parties also claim that PECO Energy has not cost justified its proposed $0.90 per bill fee (Rule 17.2) for suppliers that choose to have PECO Energy provide billing. Neither claim is true. The Company presented specific cost justification for both fees through the testimony of William F. Sundemeir (PECO St. 13-R). No party offered any evidence to dispute these justifications. Accordingly, the Commission should approve those fees and reject the parties' requested disallowance.

7. Universal Service Fund Charge ("USFC")

The OCA has expressed concern that the Company's proposed USFC charge is an additional charge over and above the distribution rates contained in PECO Energy's proposed Tariff. It is not. The costs included in the USFC tariff provision are not additional costs, but rather are embedded in the Variable Distribution Service Charges of residential rates contained in Tariff No. 3. The initial funding level is $50,644,000, as detailed in PECO St. 14-R, Exhibit SRX-6.

The OCA has also objected to including in the USFC the costs of special payment arrangements (SPAs) over 48 months and increases or decreases in uncollectible accounts over 90 days. With its objections, the OCA is attempting to relitigate positions that were advocated in the surrebuttal testimony of Ms. Brockway but rejected in the Commission's Order. As for including in the USFC changes in uncollectible accounts over 90 days (associated with residential classes only), PECO Energy advocated this approach (PECO St. 14-R) in response to the contentions of the OCA and the Environmentalists that a successful CAP Program would affect the level of other uncollectible accounts expense. As the Commission Order noted, "PECO accepted much of the criticisms of other parties to correct the initial filing, and we adopt these changes." Further, in the case of SPAs over 48 months, the Company maintains that the portion included in the USFC is all associated with low-income residential customers, as was clearly demonstrated in Exhibit SRX-1 of the Company's original testimony (PECO St. 14).

V. Supplier Procedures And Transmission Service

1. Supplier ("EGS") Rights and Obligations

Enron, MAPSA, and OCA contend that PECO Energy should have included a "supplier tariff" in the Compliance Filing and that PECO Energy's compliance filing is deficient with regard to its treatment of Supplier rights and obligations. Contrary to these contentions, PECO Energy has in fact already satisfied the Commission's directive that it include a separate supplier tariff with its compliance filing and the Competition Act's requirement that a utility' restructuring plan include "procedures for ensuring direct access to . . . suppliers." (Section 2806(e)).

The proposed PECO Energy tariff already contains in the "EGS Rights and Obligations" Section all of those provisions necessary to facilitate the interaction between PECO Energy as the EDC and competitive EGSs. One of these provisions requires PECO Energy and Suppliers to enter into an agreement containing extensive and detailed policies and procedures that Direct Access necessitates, including procedures for customer sign-up, switching, balancing, billing, and data exchange. As explained by PECO Energy in testimony, the starting point for these policies and procedures will be those procedures that PECO Energy and EGSs have relied on successfully in PECO Energy's Pilot. (PECO St. No. 1-RJ, p.24, and Exhibit TPH-32).

As also explained by PECO Energy in record testimony, for several reasons it would be a significant mistake to replace PECO Energy's agreement-based approach with the full-blown tariff-based approach recommended by Enron and MAPSA. (See the testimony of David J. Pratzon, PECO St. 21-E, pp. 40-43). First, any procedures that PECO Energy would now

include will almost certainly have to change before the beginning of actual implementation toward the end of this year. PJM is in the process of dramatic and fundamental change that could require substantial changes to most of the procedures now covered in PECO Energy's Pilot procedures. A more flexible agreement-based approach allows PECO Energy and suppliers to adapt to changing circumstances without the need to make cumbersome tariff filings that normally require 60 days' notice before becoming effective. Such delays could seriously hamper the smooth transition to full Direct Access in the beginning of 1999.

Second, it is incorrect that an agreement-based approach would allow PECO Energy to "unilaterally dictate" terms and conditions of service to suppliers. If suppliers object to certain rules or procedures, and PECO Energy is unable to satisfactorily resolve these objections, suppliers may complain to the PaPUC about those matters that are PaPUC jurisdictional, and to the FERC with regard to those matters that are within FERC's exclusive jurisdiction. PECO Energy is also more than willing to work with interested suppliers and other parties to create an agreement or set of agreements that all parties agree is reasonable.

Third, the PaPUC probably does not have jurisdiction over many of the policies and procedures included in Enron's proposed "Annex A." In particular, the reconciliation/balancing process necessarily requires sales for resale of energy that are regulated by FERC.

Fourth, Enron's proposed rules are inadequate, as they do not cover all of the required policies and procedures that will be necessary to administer Direct Access.

Fifth, and finally, the Commission has already rejected Enron's attempt to include its desired supplier rules in PECO Energy's Tariff by disapproving the "Choice Plan," which included a tariff with supplier rules almost identical to those proposed by Enron now. The Commission

should not countenance Enron's inappropriate attempt to reinsert those rejected rules.

2. Enron's Misunderstanding of the Rules Regarding Transmission Service

Although Enron acknowledges that PECO Energy is correct that the rates and terms and conditions of transmission service are FERC jurisdictional, Enron's proposed changes to certain provisions in PECO Energy's proposed Tariff reflect its misunderstanding regarding how transmission service will be provided following the further evolution of PJM. Enron has modified PECO Energy's proposed EGS Rights and Obligations to allow EGSs to require PECO Energy to obtain transmission service from PJM as their agents and at their option. As PJM evolves into a fully functional ISO, this option, however, will not be available.

The FERC accepted the current agency mechanism presently being used by PECO Energy for its Pilot on an interim basis only. FERC did so because of its recognition that existing technical limitations currently prevent the PJM Office of Interconnection from being able to offer transmission service directly to suppliers. Once those technical limitations disappear, all load-serving entities – including PECO Energy *and* Enron – will have to obtain transmission service directly from the PJM OI under the PJM Tariff, and the agency mechanism will no longer be necessary or permissible.

The EGS Rights and Obligations section of PECO Energy's proposed Tariff properly reflects these realities. Accordingly, the Commission should reject Enron's impermissible

changes.[11]

3. MAPSA Has Also Misunderstood PECO Energy's Approach To Transmission Service

MAPSA as well has misunderstood PECO Energy's approach to transmission. PECO Energy has not included the Retail Transmission Services Rider ("RTSR") for informational purposes only. Rather, to comply with the Commission's Order, in which the Commission has asserted jurisdiction over transmission service, PECO Energy has included the RTSR as an alternative to the approach to retail transmission access PECO Energy believes Federal law requires. Under Federal law, the Pennsylvania Commission may not regulate transmission rates at all, and therefore the proposed Tariff contains no transmission rates. As currently structured, therefore, PECO Energy's proposed Tariff would allow PECO Energy, EGSs such as MAPSA members, and eligible end-use customers to obtain their transmission service directly from PJM and pay a FERC-regulated rate for such service.

4. OCA's Claims Regarding Transmission Service For Residential Customers

The OCA contends that suppliers should not be allowed to obtain transmission service on behalf of residential customers. As FERC has exclusive jurisdiction over transmission, however, its open access pro forma tariff controls. Under that tariff, "eligible customers" would include

[11] Likewise, the same analysis applies to Enron's treatment of the installed capacity obligation. Enron has revised PECO's language to give EGSs a permanent option of satisfying these obligations through an agreement with PECO Energy. In the future, all suppliers will owe that obligation directly to PJM.

suppliers serving retail access loads.

VI. Default Customer Energy And Capacity Pricing

1. Energy Services Rider Pricing

Several parties have objected to provisions in PECO Energy's proposed Energy Services Rider, governing the price that PECO Energy will charge to default customers. In particular, some parties object to pricing option (b), under which returning customers would have the option of paying a monthly market price for Energy and Capacity or the capped price for one full year following return. They argue that the Commission ordered that such customers be treated the "same as" customers who have never switched to a competitive supplier.

But PECO Energy's proposed energy pricing structure does treat all customers "the same." All customers, including returning customers, have the option of paying a capped energy price (Option (b)(2)). PECO Energy has simply added an option for customers that return temporarily, and wish to shop soon for a new competitive supplier (Option (b)(1)). PECO Energy sees no reason why anyone would object to allowing such customers, who wish to continue to have the opportunity to shop, to pay a market price while they are making their decision. It is indeed ironic that to serve their self-interests, those very same marketers that tout the benefits of competition would deprive so many customers of its benefits and require that customers pay ***higher*** rates. The Commission should not countenance this approach, and should therefore reject the parties' requested elimination of Option (b).

In addition, a one-year term for PECO Energy's capped energy price is essential to avoid gaming and the attendant under-recovery of costs. Absent a one-year term, a customer could return to PECO Energy during "peak" months, when PECO Energy's capped rates are likely to yield total charges less than those available on the market, and then leave during lower cost, "shoulder" months. Accordingly, this gaming not only would result in under-recovery of costs to serve default customers, in clear violation of the Competition Act, (66 Pa.C.S. §2807(e)(3)), it would also adversely affect the very marketers that propose eliminating this anti-gaming protection.

2. Conectiv's Request to Eliminate the Energy Services Rider

Conectiv proposes that the Commission eliminate the Energy Services Rider altogether, and instead require PECO Energy to serve default customers under bundled rates. The Commission has unambiguously rejected this approach, and required unbundled pricing so that customers can make meaningful choices regarding their energy supply: "[c]ustomers who do not shop pay the approved tariffed rate divided into *unbundled* generation, transmission, and distribution charges." (Reconsideration Order, p. 21; emphasis added). Furthermore, the approach Conectiv proposes also violates the Competition Act, which requires utilities to unbundle their charges. (66 Pa.C.S. §2804(3)).

3. MAPSA's Incorrect Interpretation of its Supply Obligations

MAPSA suggests that unlike in the Pilots, PECO Energy will not require suppliers to supply line losses or obtain necessary ancillary services when they secure transmission service for their customers. MAPSA is incorrect on both scores. EGSs will be required to supply losses, and will have to procure or arrange for necessary ancillary services when they obtain transmission service from PJM for their customers.[12]

4. Code of Conduct

As noted in its Order, the Commission is in the process of adopting regulations concerning competitive safeguards (Order at 129). Further, the Commission incorporated explicitly in its Order the terms specified in any such applicable rulemaking (Order at 126). Until adoption of final regulations, the Commission directed PECO Energy to use the Company's proposed Interim Code of Conduct, ordering not major changes, but merely "several additions and clarifications." (Order at 129). In compliance with this directive, PECO Energy, submitted a revised and expanded Interim Code of Conduct. Some parties, however, have used their comments on PECO Energy's Compliance Filing to propose major code revisions that appropriately should be considered, if at all, in the generic competitive safeguard proceeding.

That the Competition Act even authorizes the Commission to impose a Code of Conduct

[12] Of course, this will only be true if PECO Energy's approach to retail transmission service is adopted. If the PaPUC continues to assert jurisdiction over transmission service, suppliers would have to procure neither transmission service nor ancillary services. They would still, however, be required to supply losses.

is questionable. Even assuming the Act can be interpreted to authorize imposing a Code, any Code so mandated must be tailored to the Commission's clear authority. The Commission's approval authority over affiliate transactions, for which the Commission cited Chapter 21 of the Public Utility Code (Order at 127), applies only to transactions between PECO Energy and any controlling affiliate, and not, in any circumstance, to transactions between PECO Energy and any divisional EGS. 66 Pa. C.S. § 2102(b). Accordingly, requiring Commission approval of all transactions between PECO Energy and its affiliated or divisional EGS is precluded.

Moreover, the Act explicitly precludes the Commission from requiring a utility to divest "or reorganize its corporate structure." 66 Pa. C.S. § 2804(5). Rather, to effectuate direct access, the Act simply requires utilities to provide transmission and distribution services to all customers and suppliers, affiliated or non-affiliated, "on rates, terms of access and conditions that are comparable to the utility's own use of its system." 66 Pa. C.S. § 2805(b). PECO Energy's proposed Interim Code of Conduct undeniably fulfills that mandate.

Yet, if the Commission were to implement some commentors' proposals, in particular those of Enron and NEV, they effectively would mandate such precluded reorganization.[13] Indeed, NEV suggests, without any evidentiary support, adapting to Pennsylvania the California Code, a code which *requires* structural separation. Furthermore, Enron and NEV seek to resurrect some issues they had previously advocated aggressively, but unsuccessfully, proposing overreaching code provisions that are inconsistent with the Order and have no basis in the record. Some examples are bans on *any* joint marketing by PECO EDC and any PECO Energy

[13] The additional provision No. 10 recommended by MAPSA, though ambiguous, seems to suggest PECO could compete only through an affiliate not a division, a prohibition that contravenes the Competition Act and has no basis in the record.

competitive Supplier,[14] and on *any* transfer of certain EDC employees and their managers any PECO Energy competitive supplier.

Significantly, in proposing stringent restrictions on a PECO Supplier's use of PECO Energy's name, trademark and logo, NEV claims to address PECO Energy's alleged "most glaring omissions." But again, NEV's recommended proscriptions have no basis in the record. In fact, such a prohibition on the use of PECO Energy's name contravenes Commissioner Hanger's explicit recognition in his December 11, 1997 Motion that "earnings opportunities" in competitive markets attributable to PECO Energy's "name recognition" should help the Company mitigate stranded costs. (Hanger Motion at 52). Such prohibitions would also violate PECO Energy's First Amendment rights.

Similarly, NEV's and Enron's proposals to include "power" transactions in the third provision of PECO Energy's Interim Code, and NEV's proposal to mandate terms and conditions of installed capacity are unsupported by the evidence and not referenced in the Commission's Order. Moreover, the Commission in its Pilot Order (P-00971170, August 29, 1997) explicitly rejected requests of marketers to include such a provision in the Pilot Code, recognizing instead that the issue of power sales is FERC jurisdictional (Pilot Order at 48).

Another egregious example of overreaching is Enron's attempt to impose restrictions on PECO Energy's provision *of public* information to its PECO Supplier. Exchange of public information bears absolutely *no* relationship to PECO Energy's continued monopoly of distribution services. To PECO Energy's knowledge, no party in any state proceeding or working group has espoused such an unreasonable requirement. Clearly, however, if the Commission

[14] Concerning Conectiv's extra record complaint that PECO Energy promotes its own competitive supplier, Horizon Energy, on its Web-site, the Web-site is not an essential monopoly facility. Customers can just as easily access Conectiv's Web-site as they can PECO Energy's.

determines any basis for applying such a requirement to PECO Energy it must apply equally to any supplier.

VII. Phase-In

Enron proposes to revise PECO Energy's Phase-In Rule 22 to expand the partial load approach to industrial GS customers. Such an expansion has no support in the record and was not directed by the Commission in its Reconsideration Order. Rather, the Reconsideration Order explicitly adopted PAIEUG's proposed methodology (Reconsideration Order at 22), which had specified partial loads for "Rate HT and PD" customers, not for industrial GS customers (PAIEUG's Petition for Reconsideration at 12).

Several parties also requested that PECO Energy be required to send a confirmation letter not only to the customer, but also to the supplier. Notably, however, the Commission's order required that suppliers also send confirmation letters to customers, not that PECO Energy send them to suppliers. (Restructuring Reconsideration Order at 22).

VIII. Conclusion

PECO Energy respectfully requests that the Commission consider the foregoing comments, and reject or modify the parties' requested changes consistent with the recommendations contained herein.

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Dated: January 30, 1998

Exhibit "A"

FUS-I-1 Question:

Please refer to the Stranded Investment Recovery Schedule/Calculations section of the Compliance Filing and provide the following additional information:

a. Regarding the calculation of accumulated deferred taxes please explain the relationship of 43.43% to 1) the net (market value) subject to tax/book timing difference of $572,096 and 2) the estimated accumulated deferred tax of $248,465.

b. Please provide all calculations and assumptions used to develop the 43.43%.

c. Please provide the rationale for including this adjustment for deferred taxes of $176,685,481 as an additional stranded cost.

d. Please explain and demonstrate how T&D rates have been reduced to reflect the shift of accumulated deferred taxes of $176,685,481.

e. Please provide a detailed schedule to support and reconcile the $5,146,508,000 stranded investment presented on page one of nine, to the Commission allowance of $4.935 billion as stated in the Appendix to the Commission's January 16, 1998, Order.

f. Regarding the calculation of return on unrecovered stranded investment, please explain in detail why 10.31% is utilized while the Commission's Order states 7.47% as the appropriate interest rate.

FUS-I-1 Answer:

a. The $572,096 and $248,465 are associated with the Company's claim of $2.303 billion for market value, and are estimates of the tax/book timing differences and the deferred taxes associated with the Company's market value. The 43.43% is the result of dividing total deferred taxes by the total tax/book timing differences. The referenced calculation was developed to provide an estimate of the accumulated deferred taxes allocated to the market value. Such allocation was based upon tax/book timing differences. Note, as shown on Attachment FUS-I-1(a), the OCA adjusted deferred taxes in calculating market value.

b. The 43.43% is developed from the data contained in the referenced schedule. It is not an independently calculated number that is input into the formula but represents the ratio of total deferred taxes to total timing differences.

Interrogatory FUS-I-1 (continued)

FUS-I-1 Answer (continued)

c. As the OCA in developing market value, and therefore stranded cost, included a deferred tax adjustment, any changes in market value should also include it. For example, if all market values are calculated as the NPV of after-tax cash flow plus allocated deferred taxes where deferred taxes are a function of cash flow, then any reduction in cash flow due to changes in revenue or expense must have a corresponding change in deferred taxes. i. e. If cash flow is down deferred taxes are down and vice versa. The T&D reallocation is effectively a change in market value and thus requires the deferred tax adjustment.

d. The $176 million is already reflected in the T&D rate reduction which, as shown below is greater than the stranded investment increase, on a present value basis. The adjustment to T&D is on the expense side, therefore there is no specific accumulated deferred tax adjustment. However, it is important to note that T&D rates, on a present value basis have been reduced by $693.1 million versus the $583.5 million stranded investment increase.

e. As depicted in the table below, the Company's stranded investment total of $5,146,508,000 is overstated by $89,000,000. This overstatement could be alleviated in several ways. The first is to simply continue with the system average CTC rate of 2.77¢/kWh as shown in the Compliance filing but end the term of the CTC approximately two months early so that only $5,057,508,000 is collected. A second method would be to recalculate the amortization and recovery schedules shown in the Compliance filing, thereby reducing the CTC and increasing the Energy and Capacity charges.

	Filed 1/20/98		**Corrected**	
Total Stranded Investment	$5,024,000,000	(a)	$4,935,000,000	(b)
PUC Estimate of T&D A&G	($461,000,000)	(a)	($461,000,000)	(a)
Company Calculation of T&D A&G including Deferred Tax Effect	$583,508,000	(c)	$583,508,000	(c)
Stranded Investment	$5,146,508,000		$5,057,508,000	

Notes: (a) Commission 1/16/98 Order - Appendix - "Restructuring Order" column
(b) Commission 1/16/98 Order - Appendix - "Restructuring Reconsideration Order" column
(c) Compliance filing - Calculation of A&G Expense Adjustment

FUS-I-1 Answer (continued)

f. The Company used an overall return of 7.47% in its calculations but recognized that a portion of that return (i.e. the equity component) is subject to income taxes. In order for PECO to achieve an equity return of 7.47%, a pre-tax return of 12.76% is required for the equity component. The stranded cost section of the Compliance Filing shows how the 10.31% is developed from the 7.47%. The calculation is consistent with the Commission intent to provide an overall return, that is equal to the cost of debt. To treat the 7.47% return as a pre-tax figure is to assume that debt is financing all of PECO's stranded costs. Such an assumption would require the Company to reestablish its capitalization ratios such that it would have to be further assumed that its remaining operations were financed entirely by [common] equity. The table below illustrates this impact.

		Capitalization		
	Net Invest $	**Type**	**%**	**$**
Plant - Mkt	3,500	Debt	50%	5,000
CTC	5,000			
T & D	1,500	Equity	50%	5,000
	10,000		100%	$10,000

	Capitalization		
	Debt	**Equity**	**Total**
CTC	$5,000	0	$5,000
Plant - net		3500 (a)	3,500
T & D		1500 (a)	1,500
Total	$5,000	5,000	$10,000

(a) Since all debt is used for the CTC, the plant and T&D must be financed by equity in order to balance capitalization.

In the Company filing there would be numerous changes as a result of a capitalization ratio change, two of which are noted below.

1. T&D rates would increase substantially.
2. The discount rate for determining market value would have to change as it would be all equity.

Similarly, to assume the 7.47% already has a tax gross-up would effectively mean the Commission is allowing only a 4.38% ROE, (7.47% x (1-T)), far below the risk free rate. Such was not the Commission intention either. The Company's method required no interpretation, just normal ratemaking.

FUS-I-1 Answer (*continued*)

Additionally, in its Order the Commission notes that the "[7.47%] is close to the 7.53% proposed by NEV". The 7.53% proposed by NEV is from the Qualified Rate Order P. 59 Docket No. R-973877 (provided as Attachment FUS-I-1(b)) and is an after tax cost of capital (i.e. tax savings on debt is netted against the cost of capital). The Company has made the conservative assumption that the 7.47% is a cost of capital, not an after tax cost of capital. Had the latter assumption been made the pre-tax return would have been close to 13%.

Exhibit "B"

Interrogatory FUS-I-5

FUS-I-5 Question:

Please explain in detail and provide supporting calculations to demonstrate the transition to demonstrate the transition of the average T&D rate from 2.93¢ to 2.97¢.

FUS-I-5 Answer:

In developing a system-wide average T&D rate, PECO made two adjustment to its rebuttal case – one to correct an error and the other to reflect the effect of the Commission's December 23, 1997 Order. The first adjustment, a correction to the "Rates of Return After Other Revenue Adjustment" used in the Unit Cost Study to determine functional revenue requirements, was made because an incorrect tax rate was used in PECO's rebuttal cost of service study (Exhibit RAC-10). This correction increased the system average rate of return from 9.44% to 9.52% which, on a T&D rate base of approximately $2,279 million, increased T&D return by approximately $1.8 million.

The second adjustment resulted from the shifting of A&G expenses from transmission and distribution to generation as directed by the Commission's December 23, 1997 Order. The Company used the functional totals contained in OCA Exhibit LS-9, as shown on Page 7 of 14 of the Functional Allocation Section of the Cost of Service Study contained in the Compliance filing.

Taking the sum of the rate class revenue requirements for the transmission and distribution functions produced through the Compliance filing cost of service study, which incorporated the two adjustments mentioned above, and dividing by the Commission approved retail system sales figure of 33,569,357 MWh results in the system average T&D rate of 2.97¢/kWh.

Pennsylvania Public Utility Commission v. Association of Community Organizations for Reform Now, Consumers Education and Protective Association, Tenant Action Group, and John W. Long, Jr.

R-00973953 and P-00971265

KJR

NOTICE OF PETITION by Association of Community Organization for Reform Now, Consumers Education and Protective Association, Tenant Action Group, and John W. Long, Jr., at No. 0264 C.D. 1998, Commonwealth Court of Pennsylvania, from the orders of the Commission dated December 23, 1997 and January 15, 1998 in the above-captioned proceedings.

B-00983683 Filed: January 22, 1998

Pennsylvania Public Utility Commission v. PECO Energy Company

R-00973953 and P-00971265

NOTICE OF PETITION by PECO Energy Company, at No. 0246 C.D. 1998, Commonwealth Court of Pennsylvania, from the order of the Commission dated January 16, 1998 in the above-captioned proceeding.

B-00983681 Filed: January 22, 1998

KJR

Pennsylvania Public Utility Commission v. PECO Energy Company

R-00973953 and P-00971265

NOTICE OF PETITION by PECO Energy Company, at No. 0245 C.D. 1998, Commonwealth Court of Pennsylvania, from the order of the Commission dated December 23, 1997 in the above-captioned proceeding.

B-00983680 Filed: January 22, 1998

KJR

Pennsylvania Public Utility Commission v. Indianapolis Power & Light Company

R-00973953 and P-00971265

KJR

NOTICE OF PETITION by Indianapolis Power & Light Company, at No. 0165 C.D. 1998, Commonwealth Court of Pennsylvania, from the order of the Commission dated December 23, 1997 in the above-captioned proceeding.

B-00983679 Filed: January 20, 1998

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ORIGINAL

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

KJR

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 and 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

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

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

DOCUMENT
FOLDER

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

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

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[1] Petitions were also filed by NEV and Enron.

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 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

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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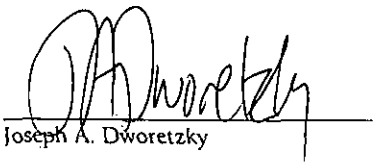

Joseph A. Dworetzky

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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Dated: January 30, 1998

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ORIGINAL

February 2, 1998

BY HAND DELIVERY
James McNulty, Acting Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

KJR

Enclosed for filing with the Commission are an original and three copies of PECO Energy Company's Petition for Reconsideration of the Order Entered January 16, 1998 with respect to its disposition of the SFAS 106 trust fund earnings issue.

Sincerely,

Paul R Bonney

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)
Nora Mead Brownell, Commissioner (by hand delivery)
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Administrative Law Judge Marlane R. Chestnut (by first class mail)
Administrative Law Judge Charles E. Rainey, Jr. (by first class mail)
Certificate of service (by first class mail)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	**DOCKET NO. R-00973953**
	:	
PECO ENERGY COMPANY	:	

PETITION OF PECO ENERGY COMPANY FOR RECONSIDERATION OF THE ORDER ENTERED JANUARY 16, 1998

PECO Energy Company ("PECO" or the "Company") hereby requests that the Pennsylvania Public Utility Commission ("Commission") reconsider its January 16, 1998, Order at the above-captioned docket with respect to its disposition of the SFAS 106 trust fund earnings issue. PECO is making this admittedly unusual request for further reconsideration of the SFAS 106 trust fund earnings issue because the Commission's resolution of the issue is so directly at odds with its correct resolution of another benefits issue (pensions) that PECO is concerned that somehow it did not present its arguments in the clearest possible form.

More specifically, and as will be explained herein, PECO's calculation of the market value of generating plant assets includes SFAS 106 annual accruals as an operating expense. The actuarial formula for SFAS 106 expense purposes recognizes that the trust fund balance will produce earnings, and uses these earnings to reduce the SFAS 106 accruals. This reduced expense has increased the value of PECO's generating assets, thereby reducing PECO's claim for stranded costs related to its generating assets. The Commission's recognition of a regulatory liability in the amount of $151 million thus inappropriately double counts the benefit

of trust fund earnings. The Commission should revise its reconsideration order to eliminate the $151 million regulatory asset for trust fund earnings.

I. INTRODUCTION

1. On April 1, 1997, PECO filed a comprehensive electric restructuring plan for approval by the Commission under Section 2806 of the Public Utility Code (66 Pa.C.S. § 2806). As part of that filing, PECO quantified its projected stranded costs and submitted a competitive transition charge ("CTC") mechanism to provide for their recovery.

2. Numerous parties thereafter intervened in the proceeding and several of them challenged individual elements of PECO's stranded cost claim. In response, PECO submitted extensive rebuttal testimony in which it reviewed and critiqued the adjustments proposed by the opposing parties.

3. By Order entered December 23, 1997, the Commission determined that PECO's stranded costs would approximate $5.024 billion. A detailed breakdown of the Commission's stranded cost findings may be found at pages 101-102 of its December 23 Order.

4. Subsequently, PECO and other parties filed timely petitions for reconsideration of the Commission's December 23 Order.

5. In its petition for reconsideration, PECO requested the Commission, inter alia, to reconsider its disposition of the SFAS 106 trust fund earnings issue and the pension fund overcollection issue.

6. By Order entered January 16, 1998, the Commission disposed of the various parties' petitions for reconsideration. In that Order, the Commission revised its allowance for stranded costs to approximately $4.935 billion.

7. With respect to the SFAS 106 trust fund earnings issue, the Commission affirmed its previous decision to recognize a $151 million regulatory liability for future trust fund earnings. The Commission stated:

> Consumers should receive credit for the present value of that portion of trust fund earnings associated with consumer funding responsibility through December 31, 1998. (January 16 Order at p. 13)

8. With respect to the pension fund overcollection issue, the Commission reversed its prior conclusion that $217.347 million in "overcollected" pension funds were to be recognized as a regulatory liability. In reaching this conclusion, the Commission recognized that the "overcollection" was already taken into account in PECO's valuation of the market value of stranded assets. The Commission explained:

> In its Petition, PECO indicates that it has included only $200,000 of annual pension expense as an operating expense in its market valuation instead of $13.4 million that would be required as annual pension contributions in the absence of the current overfunding. PECO argues that this reduced future expense is "credited" to consumers as decreased future operating expenses, increasing the value of its generation assets and limiting the amount of stranded costs.
>
> While we continue to agree that overfunding of pension expense can be credited to consumers as a regulatory liability, we are persuaded to reconsider our decision. PECO's approach is reasonable under the circumstances because PECO has provided an alternative methodology to credit consumers with the economic benefit of the overfunding through the increased valuation of its stranded assets. We decline to retain the regulatory liability and adopt a new adjustment to increase the pension funding expense to $13.4 million, thereby requiring a recalculation of the market value of PECO's generating assets at this stage of the proceedings.
>
> Thus, we shall grant PECO's request for relief on this issue, resulting in an increase in stranded costs of $217.347 million. (January 16 Order at p. 14)

9. In Duick v. Pennsylvania Gas & Water Co., 56 Pa. P.U.C. 533, 558-59 (1982), the Commission reviewed the criteria that it applies in determining whether a petition for reconsideration should be granted:

> 3. 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. (Emphasis added)

As explained below, this Petition clearly satisfies the foregoing criteria.

II. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO IMPUTE $151 MILLION AS A REGULATORY LIABILITY FOR SFAS 106 TRUST FUND EARNINGS

10. Statement of Financial Accounting Standards No. 106 ("SFAS 106") established an accrual method of accounting for post-employment benefits other than pensions ("OPEBs"). For PECO, these OPEBs are primarily health care and life insurance benefits for retirees. In accordance with SFAS 106, PECO's annual OPEB accrual is determined by an independent actuary. In compliance with the Commission's Statement of Policy on OPEB costs, 52 Pa. Code § 69.351, annual accruals in excess of pay-as-you-go costs are deposited into a dedicated trust fund.

11. As previously explained, the Commission has imputed a regulatory liability of $151 million with respect to future earnings on SFAS 106 trust funds deposited

through December 31, 1998. The only party that supported this adjustment was PAIEUG. In imputing this liability, the Commission stated that it was rejecting "PECO's argument that it should be permitted to retain trust fund earnings in order to account for future inflation and cost escalation" because PECO "is responsible for the share of funding after January 1, 1999."

12. PECO respectfully asserts that the Commission misunderstood the import of PECO's contentions. It was never PECO's argument that it could retain future earnings as a "hedge" against future cost increases. Instead, PECO was attempting to explain to the Commission that the actuarial calculation of annual SFAS 106 costs, like the actuarial calculation for pensions, contains several components. First, the actuary must determine the present value of future post retirement costs, including future inflation and cost rate trends, to determine initially the annual level of SFAS 106 expense necessary to fully fund future costs.[1/] See PECO Exhibit 2, Schedule H, Attachment H-13(b), page 32, a copy of which is attached as Appendix "A." From this amount is deducted return on plan assets, to recognize that earnings do offset costs. Specifically, PECO's total SFAS 106 expense for the 1996 base year was $71.3 million, including a credit of $13.3 million for earnings on the trust funds. (PECO Exh. 2, Sch. H, Attachment H-13(b), p. 32). PECO allocated 52.5% of SFAS 106 costs to generation assets (Exh. ABC-2, Sch. 6, p. 2). Accordingly, the market value of PECO's generating assets was increased by $6.93 million each year (with adjustment for future inflation) to recognize trust earnings. Thus, as was the case with the pension trust fund overcollection, it is not necessary to

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1/ Indeed, one fatal flaw in PAIEUG witness Kollen's analysis of SFAS 106 costs is that he failed to recognize that future post retirement benefit costs will be greater than current costs due to inflation and other cost escalation. PECO St. 3-R, pages 17-18.

credit customers with a regulatory liability for future SFAS 106 trust fund earnings, since customers are already receiving the benefit of the earnings associated with their funding, through a reduction in future generation operating expense.[2/] These lower generation operating expenses are reflected in the life cycle analysis used to calculate PECO's generation plant stranded assets.

13. There is another way to identify the error in the Commission's decision on this issue. PECO first received authority to recover SFAS 106 expenses in 1995. The total rate allowance for SFAS 106 expense was $25 million. Of that amount, 52.5% is allocated to generation assets (Exh. ABC-2, Sch. 6, p. 2), or $13.125 million annually. Therefore, by December 31, 1998, only $52.5 million in SFAS 106 expense related to generation assets will have been collected from customers ($25 million x 4 years x 52.5%). The Commission's decision thus would produce the anomalous result of giving customers a present value credit for future earnings which far exceeds the present value of the principal amount that they have actually paid. This makes no sense. At a minimum, logic would dictate that customers are entitled to a regulatory liability equal to what they have paid. Of course, if PECO were to credit customers for SFAS 106 principal, the Commission would be required to recompute the market value of PECO's generating assets, just as the Commission recognized would be required if pension assets were classified as a regulatory asset. Again, the point to be recognized is that any

---

2/ In fact, customers are receiving credit for earnings on assets which they did not contribute. The total ratemaking allowance for SFAS 106 expense included in current rates is $25 million, even though PECO has been contributing about $50 million (Affidavit of Alan Cohn attached as Appendix E to PECO's first Petition for Reconsideration).

credit for a regulatory asset for SFAS 106 amounts, either principal or earnings, double counts the benefit already provided by PECO in calculating market value of stranded assets.

WHEREFORE, PECO Energy Company requests that the Pennsylvania Public Utility Commission reconsider its Order entered January 16, 1998, and remove the $151 million regulatory liability for SFAS 106 trust fund earnings.

Respectfully submitted,

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Paul R. Bonney, Esquire
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(215) 841-4252

Dated: February 2, 1998

The funded status of the plan at December 31, 1996 and 1995 is summarized as follows:

	1996	1995
		Thousands of Dollars
Actuarial present value of accumulated plan benefit obligations:		
Vested benefit obligation	**$ (1,657,098)**	$ (1,746,685)
Accumulated benefit obligation	**(1,742,116)**	(1,838,661)
Projected benefit obligation for services rendered to date	**$ (1,982,915)**	$ (2,097,300)
Plan assets at fair value	**2,302,935**	2,088,950
Funded status	**320,020**	(8,350)
Unrecognized transition asset	**(40,251)**	(44,789)
Unrecognized prior service costs	**92,682**	68,223
Unrecognized net gain	**(588,013)**	(265,472)
Pension liability recognized on the balance sheet	**$ (215,562)**	$ (250,388)

6. Non-Pension Postretirement Benefits

The Company provides certain health care and life insurance benefits for retired employees. Company employees become eligible for these benefits if they retire from the Company with ten years of service. These benefits and similar benefits for active employees are provided by an insurance company whose premiums are based upon the benefits paid during the year.

The transition obligation, which represents the previously unrecognized accumulated non-pension postretirement benefit obligation, is being amortized on a straight-line basis over an allowed 20-year period. As a result of voluntary retirement and separation programs in 1994, the Company accelerated recognition of $177 million of its non-pension postretirement benefits obligation (see note 21).

The transition obligation was determined by application of the terms of medical, dental and life insurance plans, including the effects of established maximums on covered costs, together with relevant actuarial assumptions and health care cost trend rates, which are projected to range from 8% in 1997 to 5% in 2002. The effect of a 1% annual increase in these assumed cost trend rates would increase the accumulated postretirement benefit obligation by $68 million and the annual service and interest costs by $8 million.

Total costs for all plans amounted to $71 million in 1996 and 1995 and $81 million in 1994.

The net periodic benefits costs for 1996 and 1995 included the following components:

	1996	1995	1994
			Thousands of Dollars
Service cost benefits earned during the period	**$ 11,855**	$ 8,681	$ 17,056
Interest cost on projected benefit obligation	**48,524**	48,641	41,196
Amortization of transition asset	**14,882**	14,882	22,659
Actual return on plan assets	**(13,257)**	(2,075)	-
Deferred asset gain	**9,320**	1,359	-
Net postretirement benefits costs	**$ 71,324**	$ 71,488	$ 80,911

Plan assets consist principally of common stock, U.S. government obligations and other fixed income instruments. In determining non-pension postretirement benefits costs, the assumed long-term rate of return on assets was 8% for 1996, 1995 and 1994.

The weighted-average discount rate used in determining the actuarial present value of the projected benefit obligation was 7.50% as of January 1, 1996, 8.50% as of January 1, 1995 and 7.25% at January 1, 1994. The average rate of increase in future compensation levels ranged from 4% to 6% at December 31, 1996 and 1995, and from 4.25% to 6.25% at December 31, 1994.

Prior service cost is amortized on a straight-line basis over the average remaining service period of employees expected to receive benefits under the plan.

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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Dated: February 2, 1998

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COMMONWEALTH OF PENNSYLVANIA

DATE: February 3, 1998

SUBJECT: R-00973953

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary

KJR

PETITION OF PECO ENERGY COMPANY FOR RECONSIDERATION
OF THE ORDER ENTERED JANUARY 16, 1998

Attached is copy of a Petition for Reconsideration of Peco Energy Company filed in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

DOCKETED
FEB 03 1998

Attachment

cc: Law Bureau
Bureau of Fixed Utility Services

wjz

DOCUMENT
FOLDER

ORIGINAL

Legal Department

KJR

PECO ENERGY

PECO Energy Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101-8699
215 841 5544
Fax 215 568 3389

Direct Dial: 215 841 4252

February 3, 1998

James McNulty, Acting Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

PECO Energy desires to provide a clarification regarding its list of potential Community Based Organizations ("CBOs") to use locally in the Company's Consumer Education Program. In the event the Consumer Education and Protective Association ("CEPA") participates as a CBO in PECO Energy's program, it will not accept reimbursement from PECO Energy for any costs it may incur in participating.

Thank you for allowing us to clarify this matter.

Sincerely,

Noel H. Trask

NHT/jap

w/enclosures
cc: John M. Quain, Chairman
David W. Rolka, Commissioner
John Hanger, Commissioner
Robert K. Bloom, Commissioner
Nora Mead Brownell, Commissioner
Cheryl Walker Davis, Office of Special Assistants
John Povilaitis, Law Bureau
Robert Bennett, Bureau of Fixed Utility Services
Certificate of Service

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Pennsylvania Public Utility Commission v. Indianapolis Power & Light Company

R-00973953 and P-00971265

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NOTICE OF PETITION by Indianapolis Power & Light Company, at No. 0379 C.D. 1998, Commonwealth Court of Pennsylvania, from the order of the Commission dated January 16, 1998 in the above-captioned proceeding.

B-00983684 Filed: February 4, 1998