

Pennsylvania Public Utility Commission v. NEV East, LLC

R-00973953 and P-00971265

NOTICE OF CROSS-PETITION by NEV East, LLC, at
No. 0445 C.D. 1998, Commonwealth Court of
Pennsylvania, from the order of the Commission dated
December 23, 1997 in the above-captioned proceeding.

KJR

B-00983689

Filed: February 5, 1998

DOCKETED
MAR 4 1998

DOCUMENT
FOLDER

Pennsylvania Public Utility Commission v. Irwin A.
Popowsky, Consumer Advocate

KJR

R-00973953 and P-00971265

NOTICE OF CROSS-PETITION by Irwin A. Popowsky,
Consumer Advocate, at No. 0394 C.D. 1998,
Commonwealth Court of Pennsylvania, from the order of
the Commission dated January 16, 1998 in the above-
captioned proceeding.

B-00983686

Filed: February 5, 1998

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MAR 4 1998

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Pennsylvania Public Utility Commission v. Conectiv Energy

R-00973953 and P-00971265

KJR

NOTICE OF CROSS-PETITION by Conectiv Energy, at No. 0382 C.D. 1998, Commonwealth Court of Pennsylvania, from the order of the Commission dated December 23, 1997 and January 16, 1998 in the above-captioned proceeding.

B-00983685

Filed: February 6, 1998

DOCKETED
MAR 4 1998

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Pennsylvania Public Utility Commission v. Enron Power
Marketing, Inc.

R-00973953 and P-00971265

KJR

NOTICE OF CROSS-PETITION by Enron Power
Marketing, Inc., at No. 0398 C.D. 1998, Commonwealth
Court of Pennsylvania, from the order of the Commission
dated December 23, 1997 and January 16, 1998 in the
above-captioned proceeding.

B-00983688

Filed: February 6, 1998

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

KJR

IN REPLY PLEASE
REFER TO OUR FILE

February 10, 1998

R-00973953

Mr. Philip DiJoseph
329 Sissinghurst Drive
West Chester, PA 19382

Dear Mr. DiJoseph:

As you may have read in the recent press accounts, the Pennsylvania Public Utility Commission, on December 11, 1997, rendered a final decision in the matter of the PECO Energy Company's restructuring filing under the Electricity Generation Customer Choice and Competition Act.

Please find under cover of this letter a copy of the summary points of the decision. Also, please know that I have taken the liberty of sending your correspondence to the Secretary of the Commission for inclusion in the official file at this proceeding's docket number.

Thank you again for sharing your views with the Commission on this very important matter.

Sincerely,

Rosemary Chiavetta
Rosemary Chiavetta, Esq.
Director of Legislative Affairs

132507

Enclosure

cc: The Hon. Tom Ridge
Chairman John Quain
Secretary James McNulty ✓

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FEB 24 1998

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

Auc

Date: 11/15/97
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DOCKETED
FEB 24 1998

Re: PECO "Pennsylvania Plan" vs Enron's proposal

Dear Governer Ridge,

PECO Energy asked me to write to you regarding Enron Corporation's 92s proposal. As a former employee of Philadelphia Electric Company for 26 years, I feel compelled to oblige them. I worked in several technical and managerial positions in my long career at PECO before being "shown the door" in 1994 along with 3000+ fellow employees. I was part of the Information Systems Department which was decimated by an outsourcing decision --- I was among the very few who was asked to stay on but could not due to the Corporate Culture of lies, deception, and management by perception.

For years, we were told to "get ready for competition" and we took all measures possible to improve our computer operations, to deploy automation, to cut costs, and to shift employees to other areas to better utilize them. Then, Joe Paquette and Senior Management brought in several women in senior positions (director, VP, etc.) in an attempt to radically change the composition of the work force and to "raise the bar". As a result, many senior white males were literally forced to take "voluntary" retirement or separation in order to create opportunities for minorities and women. I am an advocate of affirmative action but I couldn't stand by to see people discredited and thrown out of their jobs just to meet arbitrary goals. Of course, nobody at PECO today would confirm this but ask any of the displaced workers about the tactics used to get rid of them and you'd be amazed. I could write a book about the things they did to get rid of excellent employees and some day I just might!

Most of the high level women that were brought in and/or promoted at the time (Gwen King, Dianne Trautwein, Joanne Baur, Katherine Holland) are now gone as are many other very senior level people. PECO has squandered millions in failed Information System Technology and Infrastructure projects and has spent a fortune on IBM to manage their Information Systems resources --- they are paying legions of consultants \$100+ per hour to do what regular employees did. That

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isn't too bad except that many of the consultants are former PECO employees who are also collecting pensions or have collected large severance payments. Corbin McNeil summed up PECO's attitude towards its employees during an all hands meeting just before they were forced out in 1994. When asked "Doesn't loyalty and dedication account for anything?" Corbin told an employee "If I want loyalty, I'll get a dog."

I have seen Philadelphia Electric Company transform itself into PECO Energy. This transformation cost thousands of jobs, increased operating costs, reduced Information Systems effectiveness, lined IBM's pockets, and took a toll on customer satisfaction. The talent pool got so low that some units within the company could barely function. All of this was done to the employees and customers in the name of "getting ready for deregulation." I feel that it is ironic that PECO is now crying foul in the face of real competition especially after so many sacrifices have already been made to become competitive.

You may not believe what I have said and it would certainly look like I am crying "sour grapes". However, there is only one force in this world that will make PECO accountable for its claims and actions. That is head to head competition. Enron and others will force PECO to become a lean and efficient operation or PECO will fold up its tent. Do not fall for Corbin's lame advertisements about being part of the community and saving 10%. Remember what he told his departing employees back in 1994. If he can't compete after such extensive preparation, at least he can pull his golden parachute and spend the rest of his days playing with his loyal dog.

Sincerely

Phil DiJoseph



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February 12, 1998

KJR

VIA HAND DELIVERY

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

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

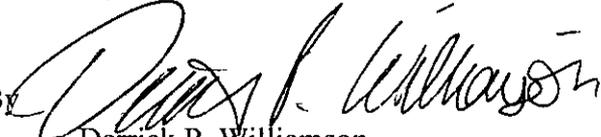
Dear Mr. McNulty:

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 second Petition for Reconsideration of PECO Energy Company in the above-referenced proceeding.

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

Very truly yours,

MCNEES, WALLACE & NURICK

By 
Derrick P. Williamson

Counsel to the Philadelphia Area
Industrial Energy Users Group

DPW/aeH
Enclosures

James J. McNulty, Secretary

February 12, 1998

Page 2

c: Cheryl Walker Davis, Office of Special Assistants (via hand delivery)
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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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

PECO Energy Company

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

**DOCUMENT
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Docket No. R-00973953

DOCKETED

FEB 10 1998

**ANSWER OF THE PHILADELPHIA AREA
INDUSTRIAL ENERGY USERS GROUP TO THE
SECOND PETITION FOR RECONSIDERATION
OF PECO ENERGY COMPANY**

On February 2, 1998, PECO Energy Company ("PECO" or "the Company") filed with the Commission a Petition of PECO Energy Company for Reconsideration of the Order entered January 16, 1998 ("PECO Petition"). PECO seeks reconsideration of the Commission's Order on Reconsideration entered in the above-referenced proceeding on January 16, 1998 ("Reconsideration Order") with respect to its disposition of the SFAS 106 trust fund earnings issue.

The Philadelphia Area Industrial Energy Users Group ("PAIEUG"), an active participant in the above-captioned proceeding, provides this Answer to PECO's Petition pursuant to 52 Pa. Code § 5.572(e). PAIEUG opposes PECO's extra-procedural attempt to revisit the SFAS 106 trust fund earnings issue for a fourth time. In further support of this Answer, PAIEUG submits as follows:

I. PECO'S PETITION MUST BE REJECTED ON PROCEDURAL GROUNDS.

1. PECO's instant Petition for Reconsideration must be rejected as violative of Commission procedure. The Commission issued its initial Opinion and Order in this proceeding on December 23, 1997. Thereafter, PECO (among other parties) filed with the Commission on January 7, 1998, a Petition for Rehearing, Reconsideration, Clarification and Amendment of the Order entered December 23, 1997. In that Petition, PECO specifically requested 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. PAIEUG responded to PECO's claim on this issue via an Answer filed with the Commission on January 13, 1998. Subsequently, by way of its Reconsideration Order issued January 16, 1998, the Commission concluded (again) that PAIEUG witness Kollen's testimony fully supported the recognition of a regulatory liability of \$151 million for SFAS 106 trust fund earnings. Reconsideration Order, p. 13. Despite this, PECO chose to file the instant Petition for Reconsideration, which is, in reality, "a petition to reconsider the reconsideration order," and represents a fourth attempt by PECO to address this issue — testimony, brief, initial Petition for Reconsideration, and Petition for Reconsideration of the Reconsideration Order.

2. 66 Pa. C.S. §§ 703(f) & (g) govern requests to rehear, rescind or amend orders made by the Commission. Neither section directly addresses requests for reconsideration of a Commission Order. However, 52 Pa. Code § 5.572 provides guidelines for the filing of Petitions for Reconsideration within 15 days after the Commission Order is entered. Although PECO's Petition

fails to assert statutory or regulatory authority, it presumably was filed under this section of the Commission's rules for formal proceedings.

3. Notwithstanding this presumption, as a matter of Commission precedent, PECO's Petition for Reconsideration of the Reconsideration Order still must meet the Duick standard; *i.e.*, in determining whether to grant a Petition for Reconsideration, the Commission must assess whether the petitioning party has raised arguments that are (1) new and novel (not previously heard) or (2) considerations which appear to have been overlooked or not addressed. Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 533, 559. However, "[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" Id.

4. Despite PECO's apparent contention to the contrary, its second Petition for Reconsideration clearly does not meet the Duick standard for granting reconsideration. In fact, PECO's Petition defies the express language directing that parties cannot by a second motion to reconsider raise questions that were specifically considered and decided against them. Id. Yet that is precisely what PECO is attempting.

5. PECO's Second Petition for Reconsideration essentially represents its fourth attempt to convince the Commission that ratepayers are not entitled to a regulatory liability associated with SFAS 106 trust fund earnings. Clearly, PECO has had every opportunity in testimony, in its brief to the Commission, and in its first Petition for Reconsideration to thoroughly present its arguments and evidence (if any) on this issue. The arguments raised in PECO's instant Petition are neither new

nor novel, and they do not represent considerations that appear to have been overlooked or not addressed by the Commission. In fact, the only specific claim that PECO makes in its Petition to justify a second reconsideration is that it “is concerned that somehow it did not present its arguments in the clearest possible form” (Petition, p. 1) and that “the Commission misunderstood the import of PECO’s contentions” (Id. at 5). Nowhere does PECO claim that the arguments it now presents are new and novel (not previously heard) or that the Commission overlooked or failed to address PECO’s arguments. Quite the contrary, PECO apparently does not dispute that it previously presented its arguments and that the PUC addressed them; rather, PECO merely proposes that it be entitled to an additional opportunity to present its arguments because they may have been presented by PECO without clarity and thus, PECO claims, were misunderstood by the Commission.¹ This clearly fails to meet the Duick standard for granting reconsideration. The bottom line is that PECO has had at least three opportunities to present its position, arguments, and other considerations for Commission review (direct and rebuttal testimony, main brief, first Petition for Reconsideration). The Commission understood and rejected the PECO position. Accordingly, PECO’s fourth attempt to argue the issue fails to meet the Duick standards for reconsideration, and in fact squares perfectly with the type of Petition for Reconsideration that Duick indicates will not be permitted. The PECO Petition must therefore be rejected.

¹ To the extent that PECO is presenting new and novel argument and new evidence on the issue, its Petition represents an extra-procedural attempt to bootstrap in evidence or argument that was otherwise omitted by PECO despite its prior opportunities in addressing the Commission on this issue.

6. A failure to reject PECO's Petition on these grounds simply opens the door in this and any future proceeding for Petitions for Reconsideration in perpetuity. Predictability of proper procedure constitutes a fundamental tenet of regulatory law. The PECO Petition destroys that predictability. PECO's instant Petition for Reconsideration must be rejected as incompatible with Duick and the general tenets of procedural fairness.

II. PECO'S PETITION MUST BE REJECTED ON SUBSTANTIVE GROUNDS.

7. In addition to the procedural impropriety of PECO's instant Petition for Reconsideration, it is equally devoid of substantive support. Despite PECO's continued attempts to argue the issue, it is clear and the Commission has recognized (twice already) that, 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. Since ratepayers prepaid this future liability, they should be entitled to interest as a regulatory liability for the present value of that portion of trust fund earnings associated with consumer funding responsibility through December 31, 1998. Reconsideration Order, p. 13. Otherwise, PECO is improperly retaining the benefit (PAIEUG Statement No. 3S, p. 18), and the Commission would thereby fail to ensure the appropriate consideration of regulatory liabilities and assets as required by the Act. 66 Pa. C.S. § 2803. In turn, in failing to incorporate an appropriate regulatory liability, the Commission would otherwise fail to ensure a quantification and recovery of stranded costs that are just and reasonable to recover from ratepayers. 66 Pa. C.S. § 2804(14).

Moreover, as the Commission explained in its Reconsideration Order, the Order does not eliminate trust fund earnings in support of the underlying expense as PECO has previously asserted. Reconsideration Order, p. 13.

8. However, in further support of its attempt to absolve itself of having to recognize the SFAS 106 trust fund earnings as a regulatory liability, PECO continues to argue that the trust fund earnings were recognized by PECO in its valuation of generation assets. PECO Petition, p. 5. PECO's instant claim that customers are already receiving credit for the regulatory liability through some convoluted reflection in future generation operating expense is unsupported by substantial record evidence. In addition, PECO's arguments that recognition of the regulatory liability amounts to double-counting is likewise an assumption devoid of persuasive support in the record.

9. The \$151 million liability supported by PAIEUG and adopted by the Commission was understated. PAIEUG's quantification represents a net present value of future SFAS 106 trust fund earnings at December 31, 1998; it is a liability to ratepayers representing the return on their prepayments through the SFAS 106 accrual in excess of cash pay-as-you-go payment requirements. PAIEUG Statement No. 3, pp. 33-34 & Exh. LK-6. These prepayments will exist many years into the future before the cash in the SFAS 106 trust funds is fully disbursed (see id. at 33); however, PAIEUG assumed that the trust fund would continue to build only through the next 14 years and then be amortized over the subsequent ten years. Id. In reality, the fund will likely build for many years before being fully amortized. In addition, subsequent to the completion of the amortization of the transition obligation, the build-up of funds in the trust may accelerate. PAIEUG did not

incorporate any of this additional build-up in its quantification, although it would have been legitimate and reasonable to have done so. For this reason, PAIEUG witness Kollen stated that the appropriate regulatory liability was "at least \$150.861 million." Id. (emphasis added). Thus, the regulatory liability could have been quantified at a substantially higher amount, an amount that would more than exceed trust fund earnings, if any, now claimed to have been included by the Company in its market valuation.

10. Moreover, although it is conceivable, theoretically, that a reflection of trust fund earnings could be made in the valuation of generating assets, the Company's alleged reflection is questionable at best. First, PAIEUG witness Kollen disposed of PECO's market valuation argument in surrebuttal. PAIEUG Statement No. 3S, pp. 16-17. Second, contrary to the Company's claim, there is no apparent direct correlation between the amounts reported in the Company's 1996 annual report and the amounts included by the Company in the generation stranded costs. See Appendix "A" of PECO's Petition. The 1996 annual report includes amounts for gas utility operations, nonregulated activities, amounts that were capitalized, and amounts that were expensed on its financial statements in 1996. Id. Thus, any claim that the 1996 annual report amounts represent "expense" levels that can be multiplied by a generation percentage is misleading. Logic dictates that if there are any trust fund earnings reflected in the Company's market valuation (which was not substantially demonstrated on the record in this case), then the quantification would be substantially less than that quantified by the Company in its Petition.

11. The Company also argues that the Commission has given the ratepayers a regulatory liability that exceeds the value of payments made by ratepayers. PECO Petition, p. 6. Again, this claim is misleading as it fails to recognize the huge increase in the trust fund assets over the next 30 years and the cumulative earnings effect on that trust fund. PAIEUG Statement No. 3, pp. 32-33. Indeed, it does not appear that the Company recognized the increase in the trust fund balance and the huge earnings increase that will occur in its "market valuation" analysis. Earnings on these increased trust fund balances would reduce the SFAS 106 expense. Yet, the Company assumed that the SFAS 106 expense would increase every year. See PECO Petition, p. 6. These earnings belong to the ratepayers, not the Company's shareholders, because the earnings (either directly or through a reduction to future years' SFAS 106 expense included in the market valuation) are due to SFAS 106 expense paid by the ratepayers for future years. PAIEUG Statement No. 3, pp. 32-33. Thus, the appropriate comparison is not to the December 31, 1996, balance in the trust fund, but to the future earnings on the trust fund and the additional contributions. Id.

12. The question confronting the Commission is whether the net present value of the earnings on this trust fund are a regulatory liability or belong to the Company's shareholders. PAIEUG submits that the answer to this question is obvious. The source of the prepayments is the ratepayers, not the Company's shareholders. It is a basic regulatory tenet that funds provided by ratepayers are to be ascribed a rate of return to reduce the revenue requirement. That is true of accumulated depreciation, accumulated deferred taxes, and other rate base deductions. It is likewise true for SFAS 106 trust fund earnings.

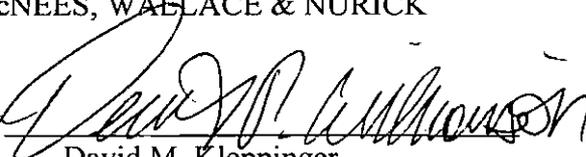
13. In summary, no substantive basis has been demonstrated to warrant a grant of the relief PECO requests. The PUC has properly resolved the issue on two separate occasions in recognizing a regulatory liability owed to ratepayers. However, if the PUC decides to grant PECO's request for relief, it should reopen the record on this issue in order to take evidence on the full and complete quantification of the SFAS 106 regulatory liability and its impact on market valuation.

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that PECO's second request for reconsideration of (and fourth attempt to address) the issue of SFAS 106 trust fund earnings be denied on procedural and/or substantive grounds.

Respectfully submitted,

McNEES, WALLACE & NURICK

By



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Counsel to the Philadelphia Area
Industrial Energy Users Group

Dated: February 12, 1998

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CERTIFICATE OF SERVICE

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

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CERTIFICATE OF SERVICE

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Page 3

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Dated this 12th day of February, 1998, in Harrisburg, Pennsylvania.

* Via Federal Express.

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February 12, 1998

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

RE: Order on Compliance Filing, Consumer Education Issues
Docket No. R-00973953

KJR

Dear Mr. McNulty:

At pp. 49-51 of the Commission's February 5, 1998 Opinion and Order (Order on Compliance Filing), the Commission advised PECO Energy that it would not compel PECO Energy to engage in any speech, particularly speech that is objectionable to the Company. The Commission directed PECO Energy to respond within seven days and state whether it intends to participate in the consumer education program contemplated by the Commission.

PECO Energy accepts the Commission's invitation to withdraw from conducting Commission-controlled consumer education.¹ In no event will PECO Energy engage in, fund, or serve as the conduit for funding speech, unless it controls the content of that speech.

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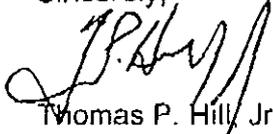
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¹ We will, however, continue to exercise our rights to advance views regarding consumer education by, among other things, filing comments and attending meeting or hearings in the appropriate proceedings.

February 12, 1998
Page 2

This is our current position on consumer education. We reserve the right to modify this position if, as we hope, this and other issues are resolved during the forthcoming settlement discussions.

Sincerely,



Thomas P. Hill, Jr.
Vice President and Controller

TPH/ads

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
Kevin F. Cadden
Certificate of Service

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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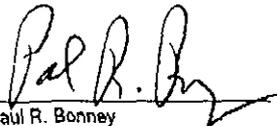
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Dated: February 12, 1998



PECO ENERGY

133132

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FEB 25 1998



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February 12, 1998

James McNulty, Acting Secretary
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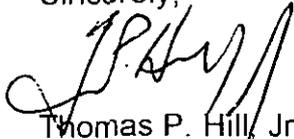
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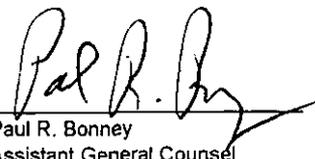
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