

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

KJR

1. REPORT DATE: February 17, 1998 : 2. BUREAU AGENDA NO.  
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3. BUREAU: : FEB-98-FUS-1035\*  
Fixed Utility Services :  
:  
4. SECTION(S): :  
Energy : 5. PUBLIC MEETING DATE:  
:  
6. APPROVED BY: : February 26, 1998  
Director: D.Muth 3-5242 *DHm* :  
Supervisor: R. Bennett 7-5553 *RB* :  
Law Bureau: *P.K. Blawie 7-3464* :  
7. PERSON IN CHARGE: :  
:  
8. DOCKET NO: :  
R-00973953; ~~XXXXXXXXXX~~

DOCKETED  
MAR - 9 1998

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

(a) PECO Energy Company  
(Home Office- Philadelphia, PA)  
Compliance Filing

(b) On February 19, 1998, PECO Energy Company (PECO or Company) filed a Revised Compliance Tariff in accordance with the Commission's December 23, 1997 Order, January 13, 1998 Secretarial Letter, January 16, 1998 Opinion and Order (Restructuring Reconsideration Order) and February 5, 1998 Opinion and Order (Order on Compliance Filing).

(c) The Bureau of Fixed Utility Services recommends that the Commission adopt the proposed draft Order which addresses the above mentioned filing.

DOCUMENT  
FOLDER

10. MOTION BY: Commissioner Rolka Commissioner Chm. Quain -  
SECONDED: Commissioner Hanger Concurring & Dissenting in part  
Commissioner Bloom -  
Concurring & Dissenting in part  
Commissioner Brownell - Yes

CONTENT OF MOTION:

Staff recommendation adopted.

Statements of Chairman Quain and Commissioner Brownell attached.

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

PUBLIC MEETING-  
February 26, 1998  
FEB-98-FUS-1035\*  
R-00973953

PECO ENERGY COMPANY

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

and

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

P-00971265

STATEMENT OF CHAIRMAN JOHN M. QUAIN

On February 19, 1998, PECO Energy filed with the Commission its revised compliance filing in the above-captioned matter. Before the Commission is the Bureau of Fixed Utilities Services (BFUS) recommendation and proposed Order with respect to the instant filing. I concur in part and dissent in part from the BFUS proposed Order adopted today.

After reviewing the proposed Order, it appears that many of the issues raised by BFUS and articulated by the Commission in its February 6, 1998, Order have been satisfied by the current compliance filing. Initially I would note however, that the parties should recognize that the compliance filing may require further updates and revisions as regulations are finalized over the course of this year.

I must dissent however, with respect to the BFUS recommended revision to Rule 22. That revision would remove the customer

checkoff process for the release of customer name, address, and telephone number. The process being eliminated is an important customer privacy protection and has been included in both our interim requirements and in our proposed regulations on customer information at Section 54.9. To delete this protection from the tariff at this time effectively reverses prior Commission rulemaking determinations.

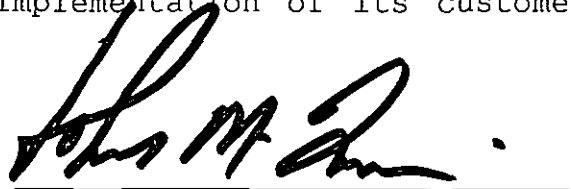
I must also disagree with the proposed recommendations regarding Rule 18.7 - Reconnection Charge, and Rule 14.7 - Meter Reading Interval.

I do, however, concur with the recommended Order on customer education. It properly distinguishes the role of education from that of marketing. The expectation of financial support from the company for the statewide education program with reimbursement through the CTC is likewise appropriate. This procedure was contemplated under the Act.

Lastly, I must state my extreme disappointment with PECO's restrictive approach to customer education. As I have stated many times, customer education is the hallmark of any successful competition program. I therefore urge PECO to rethink its approach to the development and implementation of its customer education program.

2-26-98

DATE



JOHN M. QUAIN  
CHAIRMAN

**REVISED**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3276**

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

PUBLIC MEETING -  
FEBRUARY 26, 1998  
FEB-98-FUS-1035\*  
Docket Nos. 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

**STATEMENT OF COMMISSIONER NORA MEAD BROWNELL**

We have all seen that the issues involved in a restructuring proceeding are many, varied and complex. It is also evident that reasonable people can and will disagree regarding the resolution of some of those issues. Out of this matrix of complexity, one matter is clear and brooks no argument: if you want customer choice and competition to succeed, you must have an effective consumer education program.

The General Assembly and the Governor have spoken for the people of this Commonwealth. They have mandated competition for the electric generation industry and customer choice. The Governor has deemed this to be one of the highlights of an already stellar first administration. The General Assembly has seen fit to provide this Commission with legislation which gives us the framework

and tools to bring true competition to life. Among those tools is the mandate for consumer education.

In order for this Commission, the industry and the public to embrace the vision of the Governor and the General Assembly, we must all actively join in an aggressive, effective education program. It is equally true that if one wishes to stop competition in its tracks, refuse to accept the challenges which the General Assembly and the Governor have laid before us, have required us to accept, then one merely has to refuse to engage in objective, meaningful consumer education.

We recognize and respect the First Amendment concerns which have been suggested here. This Commission encourages freedom of speech on any issue of importance to companies. However, the Act mandating electric restructuring makes it clear that activities which receive ratepayer funding through the CTC must be deemed to be consumer education.

Accordingly, I strongly urge all parties in this action as well as the other restructuring proceedings pending before us to actively and voluntarily engage in aggressive and effective consumer education.

2/26/98

DATE

Nora Mead Brownell

Nora Mead Brownell  
Commissioner



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

February 26, 1998

IN REPLY PLEASE  
REFER TO OUR FILE

R-00973953  
P-00971265

ROBIN L KRONGOLD PARALEGAL  
PAUL BONNEY ESQUIRE  
WARD SMITH ESQUIRE  
MARY MCFALL HOPPER ESQUIRE  
NOEL H TRASK ESQUIRE  
PECO ENERGY COMPANY  
2301 MARKET STREET  
PHILADELPHIA PA 19101-8699

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R-00973953

Application of PECO Energy Company for approval of its restructuring plan under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement

P-00971265

Petition of Enron Energy Services Power, Inc. for Approval of an electric competition and choice plan and for authority pursuant to Section 2807(e)(c) of the Public Utility Code to serve as the provider of last resort in the service territory of PECO Energy Company

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on February 26, 1998 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

Enclosure  
Certified Mail  
JEP

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**  
Harrisburg, PA 17105

Public Meeting held February 26, 1998

Commissioners Present:

John M. Quain, Chairman, Concurring & Dissenting in part—Statement attached  
Robert K. Bloom, Vice Chairman, Concurring & Dissenting in part  
John Hanger  
David W. Rolka  
Nora Mead Brownell, Statement attached

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

~~R-00973953~~

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

P-00971265

**OPINION AND ORDER**  
(Order on Revised Compliance Filing)

**DOCKETED**  
MAR 3 1998

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FOLDER**

**BY THE COMMISSION:**

By motion adopted on December 11, 1997, and by Opinion and Order entered on December 23, 1997, Order this Commission approved a Restructuring Plan for PECO Energy Company (PECO) based upon modifications to PECO's original application in this proceeding. On January 16, 1998, the Commission entered its order granting in part and denying in part several petitions for reconsideration after clarification and/or amendment (Reconsideration Order),

thereby modifying its December 23, 1997 Opinion and Order addressing PECO's Restructuring Plan consistent with the order. The Order affirmed the December 23, 1997 Order in all other respects. Also, the Commission directed that PECO file its compliance filing together with all necessary data and analysis on or before the close of business on January 20, 1998, and further directed that PECO serve the Compliance filing on all active parties of record to the proceeding. The Commission directed that comments were to be filed with the Commission's Secretary no later than close of business, January 27, 1998.

Timely comments were filed by the Office of Consumer Advocate (OCA), Enron, New Energy Ventures (NEV), Philadelphia Area Industrial Energy Users Group (PAIEUG), Conectiv Energy (Conectiv), the Environmentalists, Office of Small Business Advocate (OSBA), Southeastern Pennsylvania Transportation Authority (SEPTA), and Mid-Atlantic Power Supply Association (MAPSA). In addition PECO filed reply comments.

On February 5, 1998, the Commission entered its order on PECO's Compliance Filing (Compliance Order). In its order the Commission addressed only those comments that were pertinent to its evaluation of PECO's compliance with the January 16, 1997 Reconsideration Order, and directed further revisions to PECO's Compliance filing. These revisions related to, *inter alia*, PECO's nuclear decommissioning cost calculation, unbundling its Competitive Transition Charge (CTC) and annual reconciliation tariff, Code of Conduct and numerous Tariff Rules found not to be in compliance with the Compliance Order.

Also, in the Compliance Order, the Commission directed PECO to submit documentation of its 1997 consumer education expenditures and to indicate whether it intended to participate in the Commission's ratepayer-funded consumer

education program that adheres to certain standards for effective and objective consumer education on electric competition. Lastly, the Compliance Order required PECO to submit a proposed supplier tariff and interconnection rules for small self-generators.

The Commission also directed that PECO submit its Revised Compliance Filing, with any required supporting data or analysis to the Commission's Secretary no later than February 19, 1998, and serve copies of the filing on all active parties. The Commission also established a comment period ending February 23, 1998.

Timely Comments were filed by PAIEUG, MAPSA and OCA. In addition, the next day the Commission received comments from NEV and the Environmentalists and Reply Comments from PECO. On February 12, 1998, in regard to the consumer education options, PECO submitted a letter indicating that it "accepts the Commission's invitation to withdraw from conducting Commission-controlled consumer education."

The Commission has carefully considered the Revised Compliance Filing, PECO's letter response, as well as the comments, and appreciates the effort that was expended in their preparation. In this Order, we address only those aspects of the Revised Compliance Filing that are not in compliance with our Compliance Order.

## **I. Annual Reconciliation of CTC Recovery**

### **A. Rate Issues**

PECO has added language stating that each year it will propose adjusted CTC rates through the 1307(e) reconciliation process designed to ensure that the

unamortized Transition or Stranded Cost balance will be at the projected annual target amounts referenced in Appendix A of our Compliance Order. PECO's proposal is to use the 33,569,358 MWH, 1999 level of sales, increased annually by 0.8% to project sales in the prospective year, unless it is apparent that such methodology would over or under recover the Annual CTC Revenue for the following year, in which case PECO would use an adjusted sales level that reflects actual sales and updated sales projections for the following year. This provision is accepted with a clarification that only actual sales may be used to reconcile the prior year CTC collections. PECO is directed to revise the last sentence in the first paragraph of the reconciliation section of the CTC Tariff, Original Page No. 27, to read:

...to refund or recover previous over or under recoveries **based upon actual sales** as well as....

PECO has also made some grammatical corrections to our reconciliation language presented at page 7 of our Compliance Order. We will accept those grammatical corrections.

#### **B. Gross Receipts Tax**

PECO's revised Compliance filing is accepted as it depicts treatment of the Gross Receipts Tax. As further clarification, however, we affirm that the "T&D" and "CTC" rate calculations approved in the Compliance Orders already include a "gross-up" for the GRT. PECO is not authorized to use the approved T&D and CTC numbers for billing purposes and add an additional GRT adjustment that covers these bill components. The GRT may be applied either to the total bill or individual components.

## **II. Tariff Issues**

As a preliminary matter, we note that in our Compliance Order, we directed that all “Rules and Regulations, the Code of Conduct, the phase-in procedures, the Supplier Tariff and other components of the compliance filing necessary to implement the Commission’s Orders become effective immediately upon approval.”

PECO’s revised Compliance Filing includes an effective date of 1/1/99 except that Rules 22, 23, 24, and the *Interim Code of Conduct* indicate an effective date at the bottom of the tariff sheets of 1/1/99 but also include an additional notation at the top of the sheets indicating that they are effective immediately upon approval. In addition, PECO’s proposed Supplier Tariff includes an *October 1, 1998* effective date.

Other than correcting the errors for Rules 22, 23, 24 and the *Interim Code of Conduct*, we will not require corrections to the tariff pages. We note, however, that our Orders require PECO and other parties to prepare for the implementation of the phase-in in advance of the January 1, 1999 commencement date. The terms of the approved tariffs shall be utilized to the extent applicable to any preparation for the implementation of the phase-in on January 1, 1999. We note that the Supplier Tariff is not approved in this proceeding but will become effective immediately upon approval.

### **A. Definition of Terms and Explanation of Abbreviations**

#### **1. Electric Generation Supplier Coordination Tariff (or Supplier Tariff)**

PECO has added this definition to its Tariff to reflect the Commission’s requirement to include a Supplier Tariff in its Revised Compliance filing. We

believe that PECO's definition, as written, is unclear and direct that the definition be revised to read as follows:

**Electric Generation Supplier Coordination Tariff (or Supplier Tariff)-PECO Energy Company's Electric Generation Supplier Coordination Tariff, which provides procedures for EGS and PECO EDC interaction to make arrangements necessary to implement direct access for retail customers.**

## **2. Statutory Rate Cap Period**

PECO has added a definition of a statutory rate cap period commencing on January 1, 1997 and ending on December 31, 2005. Although the Commission did not direct inclusion of such a definition, we will accept it as useful because of the manner in which PECO has revised other portions of the tariffs. However, as noted by PAIEUG in its comments, the definition is not accurate. Section 2804(4) includes several rate caps that may expire at different times and the definition should not limit the availability of the LILR tariff. PECO is directed to include the definition as follows:

**Statutory Rate Cap Period-the applicable rate cap as set forth in Section 2804(4) of the Act.**

### **B. Rule 12.2 Additional Limitations On Liability In Connection With Direct Access**

PECO has made some grammatical changes to this Rule for clarification purposes and has added a sentence at the end of the Rule which states that "In no event, however, shall the Company's liability to customers under this provision exceed the limits contained in Rule 12.1, above."

We will accept PECO's grammatical changes. However, PECO is directed to delete the above referenced sentence that it has added to this Rule. PECO's proposal is a substantive change not directed in the Compliance Order.

### **C. Rule 14.7 Meter Reading Intervals**

PECO has added two sentences to Rule 14.7. These sentences state that "The EGS meter reading responsibilities are limited to automated meter reading and are solely for the purposes of monitoring the customers' load. The Company will continue to read the meter for billing purposes, and to obtain the data to be used to fulfill its obligations under the Supplier Tariff."

We agree with MAPSA that the added sentences are not in compliance with the Compliance Order.

PECO is directed to delete these two sentences from Rule 14.7. An EGS may utilize a reading from an advanced meter for any lawful purpose including billing a customer if the customer has chosen to receive a separate bill for EGS charges.

### **D. Rule 16.2 Request Tests**

PECO was directed to amend this Rule to include the phrase "customer or an EGS providing electric energy to a customer". Instead, the Company added "customer or an EGS providing electric energy to a customer **and acting as the agent for and with the consent of the customer**". MAPSA correctly notes that the addition is not in compliance with the Compliance Order. PECO is directed to delete "and acting as the agent for and with the consent of the customer", because the Compliance Order permits an EGS independently to request PECO to test or inspect a customer's meter if the EGS is providing energy services to the customer.

#### **E. Rule 17.2 Billing Options**

PECO has complied with the Commission's directive to remove the requirement that the EGS must pay a 90 cents per bill fee when PECO bills for the EGS. However, our Compliance Order specified that it is the EDC's duty to provide a single bill, including competitive generation services, unless the customer chooses to receive a separate bill from the EGS for EGS charges. EGS appointment of PECO as a billing agent is not consistent with the Compliance Order.

PECO is directed to delete the Revised Rule 17.2 and replace it with the following Rule:

**Rule 17.2 BILLING OPTIONS.** The Company will bill the customer for Fixed and Variable Distribution Service Charges, CTCs and Energy and Capacity Charges unless the customer has instead chosen to have the EGS bill the customer for energy and capacity services provided by the EGS.

#### **F. 17.4 Payment Processing**

The Company has revised the payment priority sequence in accordance with our Compliance Order. However, the Company has combined two payment priorities in payment priority No. 2 and No. 3. We believe that clarity will be improved in this complex Rule if these priorities are separated and renumbered. We will also require PECO to delete the "billing agent" language from this Rule.

Rule 17.4(b) shall read as follows:

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

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

#### **G. Rule 17.5 Late Fees And Collection Charges**

In order for PECO to include EGS late fees on the bill (when PECO is billing for EGS charges), the Company will need to be advised of the EGS late fee terms and procedures before billing commences. PECO is directed to delete the last sentence of Revised Rule 17.5 and add the following sentence as the fourth sentence in this Rule:

**If the Company bills EGS energy and capacity charges, no late fee will be billed for such charges until the EGS has provided the terms of any late fee to the Company.**

#### **H. Rule 17.6 Budget Billing**

PECO has not complied with the Commission's specific directions on Rule 17.6(b). The Company is directed to delete Revised Rule 17.6(b) and include the exact language required on page 26 of our Compliance Order.

### **I. Rule 18.2 Payment Terms**

PECO has not complied with the Commission's directions on this Rule. The Company is directed to delete Revised Rule 18.2 and include the exact language required on page 28 of our Compliance Order.

### **J. Rule 18.7 Reconnection Charge**

PECO is directed to remove the phrase "except for Default PLR Service" from this Rule and add "except for the supplier of last resort service". We note that Default PLR Service is a PECO tariffed service. In our Compliance Order, it was our intention to address the OCA's concern that PECO will not condition restoration or reconnection of service based upon unpaid charges owed to an EGS, unless the EGS is the supplier of last resort.

### **K. Rule 19.1 Notice of Discontinuance By Customer**

In our Compliance Order, we accepted changes recommended by the OCA pertaining to residential customers. As OCA has noted in its comments, PECO did not revise this Rule to include these changes. PECO is directed to revise Rule 19.1 to read as follows:

**19.1 Notice of Discontinuance By Customer. Notice to discontinue service before the expiration of a contract term will not relieve a customer from any minimum, or guaranteed, payment under any contract or rate. In the case of residential customers, this Rule only applies if the customer has signed an express written contract that clearly sets forth such a term and condition of service.**

#### **L. Rule 22 Direct Access Phase-In Procedures**

PECO's proposed language does not precisely implement the Compliance Order and includes a new issue not raised in the Compliance Order.

PECO is directed to revise the language under Rule 22.2 to read as follows:

**To volunteer for enrollment, on or after April 27, 1998 customers shall return enrollment cards or forms to PECO Energy either directly or through an EGS. PECO Energy will accept enrollment cards it provided, enrollment cards or forms provided by an EGS, or any writing from the customer that includes the customer name, address and account, number and is signed by the customer.**

In addition PECO is directed to revise the language under Rule 22.7 to read as follows:

**After receiving a letter from PECO Energy advising them of their inclusion in Phase-In, either the participants or his/her EGS shall notify the Company of his/her EGS selection in writing through the mail or by electronic file or fax. Original documents are not required. Within fifteen days after receipt of notification of the participant's EGS choice, PECO Energy shall send the participant a letter confirming the participant's EGS selection.**

#### **M. Rule 24 Provision Of Load Data**

In our Compliance Order, we addressed concerns raised by Commentors by directing PECO to modify its tariff to "reflect that a customer or a customer's designated EGS or authorized consultant will be provided all available data from the meter once each calendar year for no fee." PECO's Revised Rule 24 is unnecessarily restrictive. PECO is directed to replace Revised Rule 24 with the following language:

**24.1 PECO Energy will provide to a customer or a customer's designated EGS or authorized consultant all available data from the meter once each calendar year for no fee.**

**N. Rate R-S Renewable Energy Service**

PECO has added the following language to Rate R-S: "Availability is limited to 10,000 customers (with a maximum of 2,000 customers using fuel cell installations)." The Company has provided no explanation for this additional language that was not directed pursuant to the Compliance Order or otherwise approved by the Commission: PECO is directed to delete this language from Revised Rate R-S.

In our Compliance Order, we restated PECO's duty to provide a "qualified meter" including those that support net metering. In the Revised Compliance Filing, PECO included a reference to an undefined "Smart Meter" with a \$10.32 meter charge. To be consistent with our treatment of this issue and the December Order, this provision should be replaced with:

**PECO shall provide such other Qualified Meters on such terms as shall be approved by the Commission.**

In addition, in our Compliance Order we directed PECO to file proposed interconnection standards for small self-generators that provide a reasonable interconnection opportunity without technical or inspection standards above national norms. PECO has submitted an Appendix that generally appears to be consistent with our concerns except that there is no factual record to support the \$300 application fee. This is a substantial fee that may provide an unnecessary economic barrier. Other than the application fee, the interconnection standards will be approved at this time. We note that revisions may be in order based on greater experience with self-generation.

## O. Special Contracts

In our Compliance Order, we agreed with PAIEUG that the statutory rate cap provisions in Section 2804 ensure that any customer's rates will be no higher than those in effect on January 1, 1997 for the duration of the applicable rate cap period. However, we did not provide PECO with precise language to include in its Tariff. PECO's proposed language does not address our concerns accurately. PECO is directed to reinstate the original compliance language, with some modifications such that the last paragraph on Original Page No. 65 of the Revised Economic Efficiency Rider(EER) reads:

**Customers may remain on this rider until their current term expires, unless their current contract requires PECO Energy to enter into a new contract with the customer, in which case the customer may remain on this rider for the term of the new contract. Contract expiration shall not affect the applicability of any statutory rate cap then in effect. Unless the customer's contract contains provisions concerning the customer's rights upon the advent of Direct Access, customers may remain on the rider while also obtaining Competitive Energy Supply. If a customer wishing to remain on this rider obtains Competitive Energy Supply, the customer will continue to pay the unbundled Distribution Charges and Competitive Transition Charges as designed in accordance with the "Rate And Billing And Unbundling" section, above. Should any such customer return to Default PLR Service, the customer will be entitled to application of the new discount factors to the unbundled Energy and Capacity charges designed in accordance with the "Rate And Billing And Unbundling" section, above.**

In regard to the Revised Incremental Process Rider (IPR), PECO is directed to delete the second paragraph under "Term Of Contract" on Original Page No. 73 and replace it with the same paragraph, above, that we directed be included in the EER.

PAIEUG has commented that PECO's revision to the Large Interruptible Load Rider (LILR), Original Page No. 80 of the Revised Tariff, effectively reduces the availability of the Rider by 1 1/2 years. We agree that this change is inconsistent with the Compliance Order. PECO is directed to change "Statutory Rate Cap Period" to Statutory Transition Period, consistent with the discussion on pages 35 and 36 of our Compliance Order.

PECO is also directed to delete the fourth paragraph of Revised Rule 4.6 Special Contracts and substitute the following language:

**Contract expiration shall not affect the applicability of any statutory rate cap then in effect.**

#### **P. Supplier Services Tariff**

In our December 23, 1997 Order, we directed PECO to submit a Compliance filing which included a new Supplier Service Tariff providing procedures for competitive generation supply arrangements consistent with our orders. PECO, in its first Compliance filing, did not include a specific supplier tariff and instead submitted a brief set of tariff provisions entitled "EGS Rights and Obligations" which referred to other PECO documents not submitted to the Commission. PECO referred to these as a "Policies and Procedures" document, an agreement concerning transmission service, and an agreement concerning installed capacity.

In its comments on PECO's first Compliance filing, Enron provided a list of "EGS Obligations" and suggested "Supplier Operational Rules."

The Commission concluded that PECO did not comply with our directive. We declined to adopt Enron's suggestions at that time. We noted that a Supplier Services Tariff would establish the basic requirements for EGS/EDC interaction in a standard format through a standardized consistent process. We noted that such a tariff would provide specific useful information to all current and future market participants concerning protocols and other requirements. We directed PECO to file the appropriate Supplier Services Tariff which delineated supplier obligations, provided definitions of terms, fully discloses all relevant Company "Policies and Procedures" and specifies its procedures for customer sign-up, switching, balancing, billing and data exchange. We further required that the tariff should be consistent with applicable PJM and FERC requirements and Commission orders.

In its Revised Compliance filing PECO Energy submitted a separate Supplier Tariff entitled the "Electric Generation Supplier Coordination Tariff." This tariff purports to set forth the basic requirements for EGS/EDC interactions in a standardized format and delineates the supplier obligations as well as the various "Coordination Services" to be provided. PECO also states that the proposed Supplier Tariff incorporates certain provisions taken from the Company's Policies and Procedures used in its Pilot Program, including some of the same provisions borrowed by Enron in its proposed Attachment A referenced in Enron's comments to PECO's January 20, 1998 compliance filing. PECO states that the Supplier Tariff addresses such things as load forecasting, load scheduling and reconciliation service. PECO states that the Supplier Tariff contains no fees at this time because the Commission has disallowed all of the fees PECO Energy has previously proposed.

PECO Energy notes that by filing the Supplier Services Tariff, it does not intend to waive any argument or claim it may make in an appropriate forum that

the Commission does not have jurisdiction to regulate many, and perhaps all, of the terms and conditions contained in the Supplier Services Tariff. PECO Energy also believes that most, and perhaps all, of the procedures contained within the Supplier Services Tariff may only be regulated by FERC, if at all.

MAPSA contends that PECO submitted a vague Supplier Services Tariff rather than providing a document which outlines the processes and procedures for arranging for reliable direct access. MAPSA and NEV argue that they have had insufficient time to examine the proposed Supplier Services Tariff to determine whether it is consistent with applicable PJM and FERC requirements and Commission orders. MAPSA encourages the Commission to reject PECO's Supplier Services Tariff at this time and either: (1) extend the comment period for fourteen (14) days to give suppliers a reasonable opportunity to examine and make suggestions on the Supplier Services Tariff; and/or (2) order PECO to hold technical conferences with interested parties to discuss the operational details that need to be included in a Supplier Services Tariff that will produce safe, non-discriminatory, and reliable direct access. NEV raised similar concerns.

We agree that PECO's proposed Electric Generation Supplier Coordination Tariff fails to comply with our Compliance Order, and it is rejected. MAPSA is correct in its description of this "tariff" as "vague." Besides vagueness, the proposed "tariff" emphasizes many aspects of service that will be coordinated primarily between PJM and the load serving entity, not PECO and the EGS. Moreover, the "tariff" does not provide sufficient specific protocols nor does it address all of the issues involving EGS/EDC interaction, such as customer sign-up, switching, metering, billing, collection and data exchange. While the Supplier Services Tariff must be consistent with PJM and/or FERC requirements, the

purpose of the tariff is to define the procedures for PECO's interaction with the EGSs.

Thus, despite PECO's acknowledgment that many of the matters covered in its proposed tariff relate to PJM and/or FERC issues, PECO has filed a proposal that substantially ignores the issues that must be resolved in order to implement retail direct access.

In view of the fact that PECO has failed to provide a relevant Supplier Services Tariff in two compliance filings, the Commission concludes that directing PECO to file a third compliance filing Supplier Services Tariff will not be productive. An alternative methodology must be employed to permit the Commission to approve a useful tariff. Specifically, the Commission will open a new docket to develop a Supplier Services Tariff applicable in PECO's EDC service territory.

During the PECO Restructuring proceeding, a substantial record has been developed concerning issues that must be included in a Supplier Services Tariff, yet the Commission has no useable Supplier Services Tariff at this time. Under the circumstances, we conclude that it is necessary and appropriate to remove the Supplier Services Tariff from consideration in this litigation docket and instead seek the benefits of an alternative proceeding. The subject matter of an appropriate Supplier Services Tariff lends itself well to such a proceeding.

We direct the Office of Administrative Law Judge (OALJ) to open a new docket and allow the parties to incorporate applicable portions of the record in this proceeding into the record of the new proceeding. All parties to this proceeding shall be considered parties to the new proceeding. Other parties whose interests

are not sufficiently represented by the participating parties may seek intervention as well.

The testimony filed and cross-examined in the PECO restructuring docket provides a substantial existing record such that no additional full trial-type hearing is necessary. The OALJ shall conduct a proceeding relying substantially on "technical conferences" designed to encourage consensus on all relevant issues, including those described below. We expect all parties to be prepared to support practical resolution of all required matters in good faith and in consideration of the legitimate requirements of other parties. In consideration of the April 27, 1998 commencement date for the phase-in and the loss of time to resolve Supplier Services Tariff issues since the December 11, 1997 decision of the Commission, we direct the OALJ to conclude the docket by issuing a recommendation to the Commission on or before April 9, 1998. On or before April 16, 1998, parties may file Exceptions and other comments in support, disagreement or clarification of issues in the recommendation.

The OALJ recommendation shall indicate matters of agreement between the parties and precise language to the extent appropriate, as well as a summary of issues considered but not resolved. Lastly, the OALJ shall provide a recommendation for adoption, rejection or modification of the various agreements as well as a recommendation concerning unresolved issues.

Based on the record of this proceeding that will be incorporated into the record of the new proceeding, the Commission is able to provide the following guidance concerning the subject matter of the proceeding and the recommendation of the Administrative Law Judge (ALJ), as follows:

1. Commission licensing requirements govern eligibility to be an EGS, as supplemented by any PJM or FERC requirements. An EDC may not unilaterally restrict the access of any EGS to the retail market. For this reason, as well as because the Supplier Services Tariff is a set of procedures to implement retail direct access and not a contract for services, there is no reason for an EGS to apply to EDC to serve the retail market or for the EDC to determine EGS creditworthiness.

We reaffirm that the record in this proceeding has not provided an evidentiary basis for an EDC to charge an EGS for services. We note that it may be appropriate to adjust an EDC's regulated rates to reflect changes in the provision or cost of various services. At that time, it may be appropriate to assign certain charges either to customers, EGSs or other parties. The Supplier Services Tariff will be effective immediately upon approval as necessary to be prepared for the phase-in on January 1, 1998.

2. PJM and FERC jurisdictional procedures. Although the Supplier Services Tariff proceeding should not seek to determine matters with FERC jurisdiction, the Supplier Services Tariff should consider applicable PJM and/or FERC requirements or procedures as necessary to establish practical and efficient procedures for retail direct access interaction. The text of the Supplier Services Tariff should restate PJM and /or FERC requirements to the extent useful.

We note that under the PJM open access tariff approved by FERC, many of the matters included in PECO's proposed tariff related to load forecasting, scheduling and reconciliation govern an interaction between a load serving entity (LSE) and PJM. The Supplier Services Tariff shall accurately describe

interactions that must, may, or may not be between PJM and an LSE or EGS separately from those that must, may, or may not be between an EDC and an EGS or LSE. The Supplier Services Tariff shall include provisions to facilitate appropriate EGS/EDC coordination of activities between an EDC and either an EGS or LSE.

3. Besides being in compliance with any applicable PJM and/or FERC requirements, the Supplier Services Tariff shall comply with all final orders of the Commission in the various restructuring dockets. For matters that have not yet been finalized, the Supplier Services Tariff shall consider the status and the requirements of such proceedings. Final Orders in such proceedings shall supersede conflicting aspects of the Supplier Services Tariff. The Supplier Services Tariff will be amended as necessary to do so.

4. The Supplier Services Tariff shall describe all procedures and protocols for interaction and coordination by the EGS and EDC to provide all services necessary for a customer to participate in direct access, including, but not limited to:

a. Load data. The Supplier Services Tariff shall include procedures for exchanging individual and class load data consistent with applicable Orders.

b. Choice of Supplier. The Supplier Services Tariff shall include procedures for notification of EGSs of the customers in each phase-in, notification of the EDC and EGS of customer supplier selections, and notification of changes in suppliers.

c. Metering/billing. The Supplier Services Tariff shall specify all required protocols for the exchange of meter reading, billing and other data necessary to implement each entities' customer responsibilities in a timely and accurate manner. The Supplier Services Tariff shall include procedures to *coordinate automated meter reading schedules and data such that the EGS and EDC may share readings or read the meter separately, while providing coordinated meter reading dates.*

d. Collections. The Supplier Services Tariff shall specify all required protocols for reporting collections and payment transfers.

e. Cessation or termination of customer service. The Supplier Services Tariff shall specify all required protocols for the notification and implementation of voluntary and involuntary termination of customer EDC service and cessation of EGS service, including transfer to an alternative EGS or default PLR service.

5. The Interim Code of Conduct shall be applicable to all interactions between the EGS and EDC on its terms, including the dispute resolution procedure under Rule 8 adopted in this Order concerning the Code of Conduct.

### **III. Interim Code of Conduct**

### Rule 3

At page 42 of our Compliance Order on this matter we provided specific language which amended Interim Code of Conduct Rule 3 of the Company's Compliance filing. The last sentence shall read:

**No transaction between PECO EDC and a PECO Supplier shall involve an anti-competitive cross-subsidy, and all such transactions shall comply with applicable law.**

### Rule 8

At page 46 of our Compliance Order on this matter, we directed PECO to submit a proposed dispute resolution procedure as part of its revised Compliance filing to implement Rule 8. We appreciate PECO's proposal but cannot conclude that it should be adopted in this proceeding. We envisioned a dispute resolution process that could provide prompt resolution of issues in a fairly informal manner, perhaps with Commission assistance. In addition, parties have the right to file formal complaints with the Commission or other jurisdictional agencies. The arbitration process proposed would preclude Commission development of a record concerning the dispute. After consideration of the Company's proposed dispute resolution procedure, we direct that Rule 8 be modified to read as follows:

- Regarding any dispute between PECO EDC, and/or a PECO Supplier, and an EGS (each individually referred to as "Party" and collectively referred to as "Parties") alleging a violation of any of these Code of Conduct provisions, the EGS must provide PECO EDC and/or PECO Supplier, as applicable, a written Notice of Dispute that includes the names of the Parties and customer(s), if any, involved and a brief description of the matters in dispute.

- Within five (5) days of PECO EDC's and/or PECO Supplier's receipt of a Notice of Dispute, a designated senior representative of each of the Parties shall attempt to resolve the dispute on an informal basis.
- In the event the designated representatives are unable to resolve the dispute by mutual agreement within thirty (30) days of said referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.
- If mediation is not successful, then the matter shall be converted to a formal proceeding before a Commission Administrative Law Judge.
- Any Party may file a complaint concerning the dispute with the Commission under relevant provisions of the Public Utility Code.

#### **IV. Consumer Education**

Section 2807(d)(3) provides:

“Prior to the implementation of any restructuring plan under section 2806 (relating to implementation, pilot programs and performance-based rates), each electric distribution company, in conjunction with the commission, shall implement a consumer education program informing customers of the changes in the electric utility industry. The program shall provide consumers with information necessary to help them make appropriate choices as to their electric service. The education program shall be subject to approval by the commission.”

In the December Order, the Commission authorized PECO to collect \$24 million from consumers through the CTC to support the statutory mandate for objective consumer education. In the Compliance Order, the Commission agreed with the comments filed by several parties that PECO's first Compliance Filing could not be approved for consumer-funded educational purposes. The Compliance Order required a response from PECO in two areas: 1) documentation of 1997 expenses claimed to reduce the remaining consumer education budget; and 2) an indication of PECO's willingness to engage with the Commission in objective consumer-funded consumer education.

The Commission directed PECO to submit documentation that sums expended in 1997 qualify as objective, non-commercial consumer education to reduce the budgeted amount for the remaining years of the Consumer Education program.

PECO has resubmitted materials documenting that most of the claimed \$4,552,465 of expenses during 1997 constitute educational activities suitable for reimbursement from consumers through the CTC.

There are two adjustments required. An expense of \$9,070 for Legal Notices related to the Interim License of PECO Energy One is not a proper educational expense of the EDC. In addition, PECO has included an expense of \$360,030 for Tele Spectrum charges both as a "Customer Service Adjustment" and a "Continuing Invoice." This expense therefore was double counted.

In summary, we will accept \$4,183,365 as allowable expenses incurred during 1997 for reimbursement through the CTC. PECO's remaining consumer education budget for 1998-2000 therefore is \$19,816,635.

In the Compliance Order, the Commission acknowledged PECO's apparent unwillingness to participate in the Commission's Consumer Education program, which ironically is substantially consistent with PECO's own proposal. The Compliance Order indicated that the Commission "will not compel PECO to participate in an objective campaign by virtue of this Order, apart from serving as a conduit for ratepayer funds earmarked for that purpose." The Compliance Order also referred to PECO's acknowledgment that budget issues, organization and message content have been reserved over to the Commission's statewide Consumer Education proceeding now docketed at Creation and Implementation of a Statewide Consumer Education Program for Electric Restructuring, Commission Docket No. M-000981036 (Order adopted January 15, 1998).

In the first Compliance Order entered February 5, 1998, the Commission encouraged PECO to participate voluntarily in the coordinated Comprehensive Education Plan and directed PECO to file a response indicating its intent within 7 days. By Letter dated February 12, 1997, PECO responded that it "accepts the Commission's invitation to withdraw from conducting Commission-controlled consumer education. 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." In its second compliance filing, PECO submitted no proposals for a CTC-funded Consumer Education program.

The Compliance Order did not invite PECO to decline to participate in consumer education on the terms PECO indicated in its letter, and we are disappointed by PECO's unwillingness to cooperate. PECO apparently believes that under the First Amendment to the Constitution, only it may determine the scope and content of its consumer education plan. We interpret PECO's responses to suggest its belief that Consumer Education funds provided by ratepayers

through CTC contributions should promote PECO's corporate viewpoints concerning the Restructuring Orders and/or promote its own commercial interests. We cannot accept that viewpoint. We will not permit the Consumer Education program funded by ratepayers to promote any commercial interests. It will be designed to disclose basic, objective information about the legal mandate for changes in the electric industry and to enable consumers to learn how to make informed choices. It will be competitively neutral.

PECO's assertions contradict the Legislature's directive that "the education program shall be subject to the approval of the commission." Moreover, PECO's invocation of First Amendment concerns is misplaced. Commercial speech is protected by the First Amendment in order to promote the free flow of information so that a competitive market can function effectively. That is precisely why the Legislature requires a specific consumer education plan approved by the Commission as we make the transition from a regulated monopoly to a competitive market. The consumer education plan is designed to disclose basic, factual information about the law approved by the Legislature and consumer rights and responsibilities under the Act so that consumers can successfully navigate the transition to a competitive generation market. This goal, and our consumer education requirements, are entirely consistent with the core values of the First Amendment.

The Consumer Education plan is intended to be purely objective disclosure of information and competitively neutral. It would be wholly inappropriate to force consumers to promote individual competitors, whether an EGS or an EDC, through mandated CTC payments. Throughout our restructuring proceedings, we have drawn a clear distinction between objective consumer information and marketing or promotional activities that are not intended to be objective.

Consumers will pay for objective consumer education, but the Commission must ensure that consumers are not paying for promotion of particular commercial interests. Any utility or supplier is free to promote themselves and their products as they deem fit, using their own funds. Consumers have the right to receive both objective and promotional commercial information and to be protected from false or misleading advertising.

The Commission is required by the Competition Act to ensure that a quality objective consumer education program is conducted. We will meet that responsibility whether or not PECO cooperates through our proceeding at Docket No. M-00981036. We continue to encourage PECO to cooperate with the Consumer Education program along with the Pennsylvania Electric Association, the Office of Consumer Advocate and the other parties working with the Commission. PECO is directed to provide a letter response indicating whether it will participate in the Commission's Consumer Education program in a complete and cooperative manner. The letter shall be received by the Commission on or before March 5, 1998. If PECO certifies that it will begin and continue to fully participate in the Commission's Consumer Education Program in an effective and timely manner, as required pursuant to the Orders in this docket and Docket No. M-00981036, the Commission is prepared to provide additional time for PECO to prepare to do so by extending the commencement date for volunteering for the first phase-in from April 27, 1998 until July 1, 1998. We reaffirm that we will not force PECO to participate against its will, although PECO must be the conduit for consumer funding of the education plan through the CTC.

Of course, in the absence of such cooperation, PECO will be required to forward the balance of the \$24 million to be paid by consumers for such purposes to the PEA and other parties in fact providing the services. We note that we have

not to date required PECO to support any Consumer Education activities with its own funds.

**THEREFORE,**

**IT IS ORDERED:**

1. That PECO Energy Company's Revised Compliance Filing is accepted as modified consistent with this Order.

2. That PECO Energy Company's proposed Electric Generation Supplier Coordination Tariff is rejected. A new docket shall be opened to develop a supplier tariff consistent with this Order.

3. That PECO Energy Company shall file in hand with the Commission's Secretary by the close of business on March 12, 1998, corrected pages reflecting tariff amendments and other changes directed by this Order.

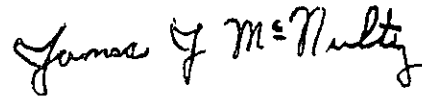
4. That PECO Energy Company's corrected Compliance Filing shall be served on all active parties of record to this proceeding by hard copy with electronic versions attached, consistent with prior directives relative to electronic versions.

5. That PECO Energy Company provide a copy of its corrected Compliance filing to each Commissioner's Office and to the Commission's Bureau of Fixed Utility Services, the Office of Special Assistants and the Law Bureau.

Such filings are to be made by hard copy with electronic versions attached consistent with prior directives relative to electronic versions.

6. That this docket is closed.

BY THE COMMISSION,



James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: February 26, 1998

ORDER ENTERED: **FEB 26 1998**

ROBIN L KRONGOLD PARALEGAL  
PAUL BONNEY ESQUIRE  
WARD SMITH ESQUIRE  
MARY MCFALL HOPPER ESQUIRE  
NOEL H TRASK ESQUIRE  
PECO ENERGY COMPANY  
2301 MARKET STREET  
PHILADELPHIA PA 19101-8699

CHRISTOPHER B CRAIG ESQ  
SENATE DEMOCRATIC  
APPROPRIATIONS COMMITTEE  
ROOM 545 MAIN CAPITOL  
BLDG  
HARRISBURG PA 17120  
MESSENGER

KENNETH L MICKENS  
ESQUIRE  
CHARLES DANIEL SHIELDS  
ESQ  
OFFICE OF TRIAL STAFF  
P O BOX 3265  
HARRISBURG PA 17105-3265

TANYA J MCCLOSKEY  
STEVEN K STEINMETZ  
OFFICE OF CONSUMER ADVOCATE  
1425 STRAWBERRY SQUARE  
HARRISBURG PA 17120

WALTER W COHEN ESQUIRE  
ANDREW J GIORGIONE  
ESQUIRE  
OBERMAYER REBMAN MAXWELL  
& HIPPEL  
204 STATE STREET  
HARRISBURG PA 17102

ALAN J BARAK ESQUIRE  
KATHLEEN O'REILLY  
ESQUIRE  
ENVIRONMENTAL ENERGY  
PROJECT  
3700 VARTAN WAY  
HARRISBURG PA 17110

CRAIG A DOLL ESQUIRE  
214 STATE STREET  
HARRISBURG PA 17101

RANDALL V GRIFFIN ESQUIRE  
DELMARVA POWER & LIGHT CO  
800 KING STREET  
WILMINGTON DE 19899

DANIEL CLEARFIELD  
ESQUIRE  
ALAN KOHLER ESQUIRE  
ROBERT LONGWELL ESQUIRE  
212 LOCUST STREET  
SUITE 300  
HARRISBURG PA 17101

ROGER E CLARK ESQUIRE  
THE ENVIRONMENTALISTS  
905 DENSTON DRIVE  
AMBLER PA 19002-3901

DERRICK WILLIAMSON  
ESQUIRE  
DAVID KLEPPINGER ESQUIRE  
MCNEES WALLACE & NURICK  
100 PINE STREET  
P O BOX 1166  
HARRISBURG PA 17108-1166

BERNARD A RYAN JR  
ESQUIRE  
OFFICE OF SMALL BUSINESS  
ADVOCATE  
300 N SECOND STREET  
SUITE 1102  
HARRISBURG PA 17101

SAM DEFRAWI DIR NAVY RATE  
INTERVENTION  
DEPARTMENT OF NAVY  
WASHINGTON NAVY YARD  
BLDG 212 CODE 00RI  
901 M STREET NE  
WASHINGTON DC 20374-5018

WILLIAM T HAWKE ESQUIRE  
JANET L MILLER ESQUIRE  
TODD S STEWART ESQUIRE  
MALATESTA HAWKE & MCKEON  
P O BOX 1778  
HARRISBURG PA 17105-1778

LANCE HAVER  
6803 LAWNTON AVENUE  
PHILADELPHIA PA 19126

THE MCFARREN GROUP  
200 N THIRD STREET  
SUITE 1100  
HARRISBURG PA 17101

DAVID M BOONIN ESQUIRE  
NEW ENERGY VENTURES INC  
1845 WALNUT STREET  
SUITE 2525  
PHILADELPHIA PA 19103

DONALD A KAPLAN ESQUIRE  
PRESTON GATES & ELLIS  
1735 NEW YORK AVENUE  
WASHINGTON DC 20006

BRUCE A CONNELL ESQUIRE  
DUPONT POWER MARKETING INC  
600 N DAIRY ASHFORD ML-1034  
HOUSTON TX 77079

JOHN L MUNSCH ESQUIRE  
WPP COMPANY ALLEGHENY POW  
800 CABIN HILL DRIVE  
GREENSBURG PA 15601-1689

DEBORAH SWANSTROM ESQUIRE  
JOEL D NEWTON ESQUIRE  
PAUL E NORDSTROM ESQUIRE  
VERNER LIIPFERT BERNHARD  
MCPHERSON HAND  
901 15TH STREET N W  
WASHINGTON DC 20005-2301

TERRANCE FITZPATRICK ESQ  
DAVID DESALLE ESQUIRE  
RYAN RUSSELL OGDEN &  
SELTZER  
800 N THIRD STREET STE 101  
HARRISBURG PA 17102

PAUL RUSSELL ESQUIRE  
PP&L  
TWO NORTH NINTH STREET  
ALLENTOWN, PA 18101

H ALLAN KNOPP DIRECTOR  
REGULATORY AFFAIRS  
DUPONT POWER MARKETING  
P O BOX 2197 CH-1038  
HOUSTON TX 77252

BILLIE RAMSEY EXEC DIR  
ARIPPA  
1300 MARKET STREET  
LEMOYNE PA 17043

PAUL L ZEIGLER ESQUIRE  
ZEIGLER & ZIMMERMAN  
355 N 21ST STREET STE 304  
P O BOX 1080  
CAMP HILL PA 17011-3707

LINDA C SMITH ESQUIRE  
FREDERICK D OCHSENSHIRT  
DILWORTH PAZSON KALISH &  
KAUFFMAN LLP  
305 N FRONT STREET STE  
403  
HARRISBURG PA 17101-1236

MICHAEL L KESSLER  
AMERICAN ENERGY SOLUTIONS  
INC  
111 SOUTH ALFRED STREET  
ALEXANDRIA VA 22314

GARY A JEFFRIES ESQ  
CNG ENERGY SERVICES  
ONE PARK RIDGE CENTER  
PO BOX 15746  
PITTSBURGH PA 15244-0746

RUFUS L MILEY  
22 LEOPARD RUN  
GLEN MILLS PA 19342

JOHN P LAVELLE JR  
JOSEPH A DWORETZKY  
HANGLEY ARONCHICK SEGAL &  
PUDIN  
ONE LOGAN SQUARE 12TH FLOOR  
PHILADLEPHIA PA 19103

USHER FOGEL ESQUIRE  
ROLAND FOGEL KOBLENZ &  
CARR LLP  
1 COLUMBIA PLACE  
ALBANY NY 12207

JOHN P ZINKAND EXEC V P  
PA PETROLEUM ASSN  
SUITE 121 BLDG 2  
2001 N FRONT STREET  
HARRISBURG PA 17102

ETHAN GIDDINGS  
217 RODMAN AVENUE  
JENKINTOWN PA 19046

SUSAN SHANAMAN  
212 N. THIRD STREET  
SUITE 203  
HARRISBURG, PA 17101

JAMES H NORRIS ESQUIRE  
ECKERT SEAMANS CHERIN &  
MELLOTT  
600 GRANT STREET 42ND FL  
PITTSBURGH PA 15219

JOELLE OGG  
GORDON J SMITH ESQUIRE  
JOHN & HENGERER  
1200 17TH STREET NW SUITE  
600  
WASHINGTON DC 20036

GERALD GORNISH ESQUIRE  
12TH FLOOR PACKARD BLDG  
111 S 15TH STREET  
PHILADELPHIA PA 19102-2678

KENNETH HURWITZ  
MAUREEN HURLEY  
VENABLE BAETJER HOWARD &  
CIVILETTI LLP  
1201 NEW YORK AVE NW SUITE  
1000  
WASHINGTON DC 20005-3917

JOHN R ORR ESQUIRE  
ONE WESTCHASE CENTER  
10777 WESTHEIMER  
SUITE 650  
HOUSTON TX 77042

ROBERT A MILLS COUNSEL  
ROBERT WEISHOAR JR ESQ  
PA RETAILERS ASSN  
100 PINE STREET BOX 1166  
HARRISBURG PA 17108-1166

BRIAN A RIDER PRES  
PA RETAILERS ASSN  
224 PINE STREET  
HARRISBURG PA 17101-  
1325

KEITH SAPPENFIELD II  
DIRECTOR OF MARKETING SUPPORT  
P O BOX 2628  
HOUSTON TX 77252-2628

NORMA ROSNER ESQUIRE  
VASTAR POWER MARKETING INC  
200 WESTLAKE PARK BLVD  
HOUSTON TX 77079

DAVID CRUTHIRDS  
ELECTRIC CLEARINGHOUSE  
INC  
1000 LOUISIANA  
SUITE 5800  
HOUSTON TX 77002-5050

CRAIG G GOODMAN ESQUIRE  
3333 K STREET NW  
SUITE 425  
WASHINGTON DC 20007

JOHN HAUCKE EXEC V P  
PA ASSN PLUMB HEAT COOL  
CONTRACTORS  
4015 JONESTOWN ROAD  
HARRISBURG PA 17109-9109

ALBERT M BENINCASA DIR  
REGULATORY AFFAIRS  
SKIPPING STONE  
46 9TH AVENUE  
SEA CLIFF NY 11579

VICKIREN S AESCHLEMAN  
DIRECTOR  
QST ENERGY INC  
300 HAMILTON BLVD STE 330  
PEORIA IL 61601

SHEILA S HOLLIS ESQ  
MARY ANN RALLS ESQS &  
STEPHANIE A SUGRUE ESQ  
1667 K STREET N W SUITE  
700  
WASHINGTON PA 20006-1608

HONORABLE STEWART J  
GREENLEAF  
SENATE BOX 203012  
HARRISBURG PA 17120-3012

MICHAEL BANTA ESQUIRE  
DANIEL W MCGILL ESQUIRE  
INDIANAPOLIS POWER & LIGHT  
ONE MINNIT CIRCLE  
INDIANAPOLIS IN 46051

EDWARD B CANNON PRESIDENT  
BLDG OWNERS & MANAGERS  
ASSN  
SUITE 1560 CENTER CITY  
TOWER  
650 SMITHFIELD STREET  
PITTSBURGH PA 15222

HONORABLE CONNIE WILLIAMS  
110 SOUTH OFFICE  
HOUSE BOX 202020  
HARRISBURG PA 17120-2020

ROBERT I FREEMAN RPA PRES  
BLDG OWNERS & MANAGERS ASSN  
TWO PENN CENTER PLAZA  
SUITE 310  
PHILADELPHIA PA 19102

SCOTT J. RUBIN  
PUBLIC UTILITY  
COUNSULTING  
3 LOST CREEK DRIVE  
SELINSGROVE, PA 17870

PATRICIA ARMSTRONG  
ESQUIRE  
REGINA L MATZ ESQUIRE  
JOHN A ALZAMAORA ESQUIRE  
ROBERT F YOUNG ESQUIRE  
212 LOCUST ST P O BOX  
9500  
HARRISBURG PA 17108-9500

PA. RURAL ELECTRIC ASSOCIATION  
212 LOCUST STREET  
P.O. BOX 1266  
HARRISBURG, PA 17108-1266

AUDREY VAN DYKE ASSOC  
COUNSEL  
DEPT OF NAVY  
WASHINGTON NAVY YARD BLDG  
218  
ROOM 200  
901 M STREET SE  
WASHINGTON DC 20374-5018

STEVEN P HERSHEY ESQUIRE  
PHILIP A BERTOCCI ESQUIRE  
COMMUNITY LEGAL SERVICES  
1424 CHESTNUT STREET  
PHILADELPHIA PA 19102

DEPT OF NAVY  
NAVAL FACILITIES ENGINEER  
COMMAND NAVY RATE INTERVENTION  
901 M STREET SE BLDG 212  
WASHINGTON DC 20374-5018

ANGELO P TERANA  
STATE ANALYSIS CORP  
1911 NORTH FRONT MEYER  
DRV  
SUITE 702  
ARLINGTON VA 22209

JOHN KLAUBERG ESQUIRE  
BRUCE MILLER ESQUIRE  
LEBOEUF LAMB GREEN &  
MCRAE  
125 W 55TH STREET  
NEW YORK NY 10019-5389

EDWARD G RENDELL MAYOR  
CITY OF PHILADELPHIA  
ROOM 215 CITY HALL  
PHILADELPHIA PA 19107-3295

VERONICA A SMITH DEPUTY  
EXECUTIVE DIRECTOR  
PA PUC  
P O BOX 3265  
HARRISBURG PA 17105-  
3265

JOHN GALLAGHER ESQUIRE  
MICHAEL KLEIN ESQUIRE  
LEBOEUF LAMB GREENE &  
MCRAE  
200 N THIRD STREET STE  
300  
P O BOX 12105  
HARRISBURG PA 17108-2105

G ROGER BOWERS ESQUIRE  
VINCENT WALSH JR ESQUIRE  
SEPTA  
1234 MARKET STREET  
5TH FLOOR  
PHILADELPHIA PA 19107-3780

JAMES CUNNINGHAM  
DAVID EPPLE  
PA ELECTRIC ASSOCIATION  
301 APC BLDG  
800 N 3RD STREET  
HARRISBURG PA 17102

FRANK NADOLNY  
DUQUESNE LIGHT COMPANY  
P O BOX 1930  
PITTSBURGH PA 15230-1930

LAWRENCE GODLASKY  
GPU ENERGY  
100 APC BUILDING  
800 N 3RD STREET  
HARRISBURG PA 17102

DAVID LANGER  
BEVERAGE & DIAMOND  
477 MADISON AVENUE  
NEW YORK NY 10002

DONALD A KAPLAN  
LISA M HELPERT EQS  
PRESTON GATES ELLIS &  
ROUVELAS MEEDS LLP  
SUITE 500 1735 NEW YORK  
AVENUE NW  
WASHINGTON DC 20006

STEPHEN L FELD ESQUIRE  
PA POWER COMPANY  
1 EAST WASHINGTON STREET  
PO BOX 891  
NEW CASTLE PA 16103-0891

ALFRED MILLER  
JAN FREEMAN DIR OF PUBLIC  
POLICY  
PECO ENERGY COMPANY  
2301 MARKET STREET S21-1  
PHILADELPHIA PA 19101

JOHN LITZ  
UGI UTILITIES  
400 STEWART ROAD  
P O BOX 3200  
WILKES-BARRE PA 18773-3200

EASTERN ENERGY MARKETING INC  
REGULATORY AFFAIRS MANAGER  
2800 EISENHOWER AVENUE  
ALEXANDRIA VA 22314

HONORABLE SAMUEL MCCULLOUGH  
SECRETARY  
DEPARTMENT OF COMMUNITY &  
ECONOMIC DEVELOPMENT  
433 FORUM BUILDING  
HARRISBURG PA 17120

STANLEY LASKOWSKI ACT  
REGIONAL ADMINISTRATION  
EPA  
841 CHESTNUT BUILDING  
PHILADELPHIA PA 19107

JAMIE WINEBRAKE  
US DOE  
1880 JFK BOULEVARD  
SUITE 501  
PHILADELPHIA PA 19103

DANIEL TUNNELL, PRESIDENT  
PENNSYLVANIA GAS ASSOCIATION  
800 N. 3RD STREET, 2ND FLOOR  
HARRISBURG, PA 17102

JUDITH L. MONDRE  
CITY OF PHILADELPHIA  
MUNICIPAL ENERGY OFFICE  
1401 JFK BOULEVARD  
PHILADELPHIA, PA 19102-1665

WICK HAVENS  
DIV OF AIR RESOURCE MGMT  
400 MARKET STREET 12TH FL  
P O BOX 8468  
HARRISBURG PA 17105-8468

MIKE WELSH,  
SECRETARY/TREASURER  
UTILITY WORKERS/PENNSYLVANIA  
UTILITY CAUCUS  
408-412 BROAD STREET  
JOHNSTOWN, PA 15906

EUGENE M. TRISKO  
ATTORNEY FOR UMWA  
P. O. BOX 596  
BERKELEY SPRINGS, WV 25411

DAN ROSENBLUM  
MID-ATLANTIC ENERGY PROJECT  
203 W. 22ND ST., APT. 3  
NEW YORK, NY 10011-2748

RICHARD H. COUNIHAN, VP  
GOVERNMENT AFFAIRS  
EDISON SOURCE  
13191 CROSSROADS PARKWAY  
NORTH  
CITY OF INDUSTRY, CA 91746

BILL SHANE, ESQUIRE  
440 SCHOOL STREET  
INDIANA, PA 15701

MR. GEORGE ELLIS  
PENNSYLVANIA COAL ASSOCIATION  
212 N. 3RD ST., SUITE 102  
HARRISBURG, PA 17101

MR. GEORGE EMMONS  
17 N. LANCASTER LANE  
NEWTOWN, PA 18940

MR. PHIL PATITSAS  
AIR PRODUCTS & CHEMICALS  
WINDSOR 2  
7201 HAMILTON BLVD.  
ALLENTOWN, PA 18195-1501

JAMES STEFFES DIR GOV'T AFFAIRS  
ENRON CAPITAL & TRADE RESOURCES  
1400 SMITH STREET  
ED #2408  
HOUSTON TX 77002

CHARLES ESTES  
APPALACHIAN PACIFIC  
1600 WILSON BOULEVARD  
ARLINGTON VA 22209

THOMAS BROGAN ESQUIRE  
KLETT LIEBER ROONEY & SCHORLING  
240 NORTH THIRD STREET  
SUITE 600  
HARRISBURG PA 17101-1503

JAMES BRODT  
SMITH BARNEY INC  
390 GREENWICH STREET  
5TH FLOOR  
NEW YORK NY 10013

EDWARD PERMAR  
UNIVERSITY OF PITTSBURGH  
3400 FORBES AVENUE  
PITTSBURGH PA 15260

JAMES ROYAL  
PRESIDENT & C.O.O  
NOBLE GROUP CORPORATION  
3121 NORRIS STREET  
PHILADELPHIA, PA 19121

TIMOTHY MCNULTY  
DEPT. OF ECONOMIC AND  
COMMUNITY DEVELOPMENT  
471 FORUM BUILDING  
HARRISBURG, PA 17120

RODNEY R AKERS ASST CITY SOL  
DEPT OF LAW  
313 CITY COUNTY BLDG  
414 GRANT STREET  
PITTSBURGH PA 15219

ELLIOT M. LOYLESS, P.E.  
ENERGY COST MANAGEMENT  
1901 CAMP FLORIDA ROAD  
BRANDON, FL 33510

BILL MCCUE  
MERCK & CO., INC.  
SUMNEYTOWN PIKE  
P.O. BOX 4, WP2-1  
WEST POINT, PA 19486-0004

MICHAEL WALKER  
BRADFORD STERN  
BUCHANAN INGERSOLL-COLLEGE CENTRE  
500 COLLEGE ROAD EAST  
PRINCETON, NJ 08540

PETER THOMPSON  
ANDREWS & KURTH LLP  
1701 PA AVENUE NW  
WASHINGTON DC 20006

BYRON WILLIAMSON  
ENGELHARD POWER MARKETING INC  
101 WOOD AVENUE  
ISELIN NJ 08830-0770

BRIAN HICKEY  
MED AMERICAN NATURAL RESOURCES  
2005 WEST 8TH STREET SUITE 201  
ERIE PA 16505

HARRY GELLER ESQUIRE  
PA UTILITY LAW PROJECT  
118 LOCUST STREET  
HARRISBURG PA 17101-1414

GLENN WINTER PE  
1847 RADNOR ROAD  
YORK PA 17402

ANTHONY LISANTI  
CONSOLIDATED EDISON COMPANY  
511 THEODORE FREMD AVENUE  
ROOM 112  
RYE NY 10580

JOHN MOLINDA  
STRATEGIC ENERGY LTD  
2 GATEWAY CENTER  
PITTSBURGH PA 15222

MICHAEL KARP  
31 APPALOOSA ROAD  
BELLINGHAM WA 98226

DAN DELANEY  
KIRKPATRICK & LOCKHART  
240 N. THIRD STREET  
HARRISBURG, PA 17101

AMY LEADER  
LEGISLATIVE DIRECTOR  
DECHERT PRICE & RHOADS  
30 N. 3RD STREET  
HARRISBURG, PA 17101

DEBORAH SCHACHTER  
163 SILK FARM ROAD  
CONCORD, NH 03301

ERIK HANSEN  
DELMARVA POWER  
800 KING STREET  
WILIMINGTON, DE 19899

TRAVIS PEYTON, PE  
BALLINGER  
2005 MARKET ST., STE. 1500  
PHILADELPHIA, PA 19103-7088

TIMOTHY W. MERRILL, JR.  
ENSERCH ENERGY SERVICES, INC.  
PENN CENTER WEST, BLDG. 4,  
SUITE 200  
PITTSBURGH, PA 15276

FRANK K. GATES  
GREENLEE ASSOCIATES  
P.O. BOX 291  
HARRISBURG, PA 17108

JOHN V. KULIK, VP  
GOVERNMENT RELATIONS  
PA. FOOD MERCHANTS ASSN.  
1029 MUMMA ROAD  
P.O. BOX 870  
CAMP HILL, PA 17011

RALPH L. LENTZ, REGISTRAR  
CHM., POLITICAL EDUCATION COMM.  
I.B.E.W. LOCAL UNION 777  
740 ANNA MAY STREET  
YORK, PA 17404-1366

RICHARD W. BAIN  
CENTERIOR ENERGY  
5761 WEST AVENUE  
EDINBORO, PA 16412-1342

DENIS E. GEORGE, VP  
STAND ENERGY CORPORATION  
1077 CELESTIAL STREET  
ROOKWOOD BLDG., SUITE 110  
CINCINNATI, OH 45202

EVE R. CORWELL  
ST ENERGY, INC.  
300 HAMILTON BLVD.  
SUITE 330  
PEORIA, IL 61602

RICH HEIDORN, JR.  
THE PHILADELPHIA INQUIRER  
P.O. BOX 8263  
PHILADELPHIA, PA 19101

GINNY KREITLER  
KREITLER CONSULTING  
1004 HAMPSTEAD ROAD  
WYNNEWOOD, PA 19096

NEAL K. CODY  
MAPSA  
ENERGY INVESTMENT ADVISORS  
7004 CLIFTON FOREST DRIVE  
CLIFTON, VA 20124

TROND GRENAGER, PRES./CEO  
LEBANON METHANE RECOVERY, INC.  
920 ROSSTOWN ROAD  
LEWISBERRY, PA 17339

FRANK E. SPARROW  
EQUITABLE GAS  
423 WALNUT STREET  
SUITE 220  
HARRISBURG, PA 17101

CHRISTOPHER ZETTEMAYER  
REED SMITH SHAW & MCCLAY  
213 MARKET STREET  
P.O. BOX 11844  
HARRISBURG, PA 17108

DONNA GEHLHAART  
REGULATORY PUB. AFFRS. MGR.  
INTERNATIONAL PAPER  
320 W. MARKET ST., SUITE 600  
HARRISBURG, PA 17101

JOHN EARWOOD  
PA. DEPARTMENT OF AGING  
400 MARKET STREET  
HARRISBURG, PA 17101

SCOTT HELM  
EXPENSE AUDIT & CONSULTING  
516 KENHORST BLVD.  
READING, PA 19610

LOUIS CARTER ESQUIRE  
7300 CITY LINE AVENUE  
PHILADELPHIA PA 19151

GARY STOCKBRIDGE VP  
STEPHEN HUNTOON ESQUIRE  
HORIZON ENERGY COMPANY  
2301 MARKET STREET S20-1  
PHILADELPHIA PA 19103

TAMASIN STERNER  
PURE ENERGY  
531 W FREDERICK STREET  
LANCASTER PA 17603

DANIEL DESMOND  
SUSTAINABLE SYSTEMS RESEARCH  
1303 WHEATLAND AVENUE  
LANCASTER, PA 17603

DIANE S. MEYER  
VP - RATES & REGULATORY AFFAIRS  
PEOPLES GAS  
625 LIBERTY AVENUE  
PITTSBURGH, PA 15222-3197

JOEL BLAU REG CNS  
WHEELED ELECTRIC POWER  
32 WINDSOR COURT  
DELMAR NY 12054

DR JOHN O'BRIEN PRES  
WHEELED ELECTRIC POWER  
50 LINDBERGH BLVD  
SUITE 400  
UNIONDALE NY 11553

JOSEPH GOLDBERG  
CHIEF DEPUTY ATTORNEY GENERAL  
DIR., BUR. OF CONSUMER  
PROTECTION  
14TH FLOOR- STRAWBERRY SQUARE  
HARRISBURG, PA 17120

DAVID HUGHES  
4037 LUDWICK STREET  
PITTSBURGH, PA 15217

SUSAN WEINSTOCK  
AARP  
601 E STREET, NW  
WASHINGTON, DC 20049

ANTHONY MIRABILE  
UNITED REGIONAL ENERGY  
3200 MELLON BANK CENTER  
1735 MARKET STREET  
PHILADELPHIA, PA 19103

NORMAN H. STARK  
MACDONALD, ILLIG, JONES & BRITTON  
SUITE 700  
100 STATE STREET  
ERIE, PA 16507

DENNIS KALBARCZYK  
UTILITY RATES RESOURCES  
910 PIKETOWN ROAD  
HARRISBURG, PA 17112

JOSEPH WYDRA  
SHUMAKER WILLIAMS GOVERNANCE  
RESOURCE GROUP  
P.O. BOX 88  
HARRISBURG, PA 17108

JAY LAYMAN  
CAPITAL ASSOCIATES, INC.  
200 NORTH 3RD STREET, SUITE 1402  
P.O. BOX 1085  
HARRISBURG, PA 17108-1085

ROCCO PUGLIESE  
PUGLIESE ASSOCIATES  
208 N. 3RD STREET  
SUITE 410  
HARRISBURG, PA 17101

JACK JOHNSON  
GEOPHONICS  
332 SPRINGFIELD AVENUE  
SUMMIT, NJ 07901

JOE DUDICK  
PA RURAL DEVELOPMENT COUNCIL  
506 FINANCE BUILDING  
HARRISBURG, PA 17120

ELISA J. GRAMMER  
MONIQUE PENN-JENKINS  
GRAMMER KISSEL ROBINS  
SKANCKE & EDWARDS  
1225 EYE ST., NW, STE. 1225  
WASHINGTON, D.C. 20005

WILLIAM KAHOC  
NORSTAR ENERGY  
26 TOLCHESTER LANE  
BEL AIRE, MD 21014

DAN KENNEDY  
GOVERNOR'S ACTION TEAM  
439 FORUM BUILDING  
HARRISBURG, PA 17120

ROGER ODISIO  
170 DRAKE ROAD  
BETHEL PARK, PA 15102

STEVEN B. LOUX, RESEARCH  
ASSOCIATE  
THE COMMONWEALTH FOUNDATION  
3544 NORTH PROGRESS AVENUE  
SUITE 101  
HARRISBURG, PA 17110

MARY LAYSHOCK  
DOWNES ASSOCIATES, INC.  
2129 NORTHWOOD DRIVE  
SALISBURY, MD 21801

JAMES H. CAWLEY  
RHOADS & SINON, LLP  
ONE SOUTH MARKET SQUARE  
P.O. BOX 1146  
HARRISBURG, PA 17108-1146

GLENN BERGER  
1440 NEW YORK AVENUE, NW  
SIXTH FLOOR  
WASHINGTON, D.C. 20005

ANDREW ALTMAN  
CLEAN AIR COUNCIL  
135 S. 19TH STREET  
SUITE 300  
PHILADELPHIA, PA 19103

ELIZABETH R. BENSON,  
PRESIDENT  
ENERGY ASSOCIATES  
7303 TIMBER LANE  
FALLS CHURCH, VA 22046-2735

TOM SCOTT  
KILLIAN & GEPHART  
218 PINE STREET  
P.O. BOX 886  
HARRISBURG, PA 17108

PAUL BARBER  
CITIZENS LEHMAN POWER, LLC  
530 ATLANTIC AVENUE  
BOSTON, MA 02210

ROBERT E. STEWART  
PA GOVT. NEWS & ADVISORY  
SERVICE  
100 SOUTH 21ST STREET  
HARRISBURG, PA 17104

TERRY HOLT  
HILLS DEPARTMENT STORES  
3010 GREENGARDEN ROAD  
ALIQUIPPA, PA 15001

ELIZABETH R. BENSON, PRESIDENT  
ENERGY ASSOCIATES  
7303 TIMBER LANE  
FALLS CHURCH, VA 22046-2735

RALPH J. WEED, CPA  
311 EDINBURGH ROAD  
CHADDS FORD, PA 19317

DENNIS BLOOM  
IBEW LOCAL 272  
1099 MARSHALL ROAD  
MONACA, PA 15061

EDWARD WYLAND  
UWUA LOCAL 102  
338 WEST MAIDEN STREET  
WASHINGTON, PA 15301

JAMES KIRKPATRICK, PROGRAM MGR.  
ELECTRIC UNIT  
PENNDOT  
DISTRICT 6-0  
ST. DAVIDS, PA 19003

ERIC WOYCHIK  
SI  
9901 CALODEN LANE  
OAKLAND, CA 94605

RICH LUCZKO  
LEGISLATIVE COORDINATOR  
IBEW  
5144 CASTE DRIVE  
PITTSBURGH, PA 15236

JANE DRENAN  
1216 - 16TH STREET, NW  
WASHINGTON, DC 20036

TODD GLASS  
HELLER, EHRMAN, WHITE & MCAULIFF  
200 SOUTHWEST MARKET STREET  
SUITE 1750  
PORTLAND, OR 97201

LISA YOHO  
COLUMBIA GAS TRANSMISSION CORP.  
1700 MACCORKLE AVENUE, S.E.  
P.O. BOX 1273  
CHARLESTON, WV 25325-1273

TIM MCCORRY, PRESIDENT  
MACK SERVICES GROUP  
45 BRANCH AVENUE  
BERWYN, PA 19312

MARYLOU BARTON, ASSISTANT COUNSEL  
BUREAU OF REGULATORY COUNSEL  
RCSOB  
400 MARKET STREET, 9TH FLOOR  
P.O. BOX 8464  
HARRISBURG, PA 17105-8464

EDWARD GALLAGHER  
DAIRYLEA COOPERATIVE, INC.  
5001 BRITTONFIELD PARKWAY  
P.O. BOX 4844  
SYRACUSE, NY 13221-4844

BARRY GOODSTADT, PH.D.  
VICE PRESIDENT  
ITRON, INC.  
P.O. BOX 1160  
COLUMBIA, MD 21044

STEVE HASTIE  
RESOURCE MANAGEMENT, INC.  
111 PRESIDENTIAL BLVD.  
SUITE 127  
BALA CYNWYD, PA 19004

TIM MORAN  
SYSTEM COUNCIL U10, IBEW  
986 GREENTREE ROAD  
PITTSBURGH, PA 15220

JEFF SIMPSON  
SHIPLEY OIL COMPANY  
550 E. KING STREET  
YORK, PA 17403

ED PANAVICH  
WESTINGHOUSE ELECTRIC CORP.  
11 STANWIX STREET  
PITTSBURGH, PA 15222-1384

JAMES P. MCCORMICK  
UTILITY OPERATIONS CONSULTANT  
1940 ROBERT ROAD  
MEADOWBROOK, PA 19046

BERNIE MCNAMEE, GENERAL MANAGER  
COMPASS MANAGEMENT AND LEASING  
MELLON INDEPENDENCE CENTER  
701 MARKET STREET, SUITE 2384  
PHILADELPHIA, PA 19106

SIEGFRIED DOERRER  
XENERGY, INC.  
3 BURLINGTON WOODS  
BURLINGTON, MA 01803

GLENN D. CLOWNEY  
DELMARVA POWER  
CHRISTIANA BUILDING  
252 CHAPMAN ROAD  
P.O. BOX 6066  
NEWARK, DE 19714-6066

ARLEN K. BOLSTAD  
ROBERT A. OMBERG  
DIV. OF LEGISLATIVE SERVICES  
GENERAL ASSEMBLY BLDG.- 2ND  
FLOOR  
910 CAPITOL STREET  
RICHMOND, VA 23219

WALTER HANS  
TRD  
PO BOX 2820  
CHERRY HILL, NJ 08034-0246

ROBERT N. GRANT  
PRINCIPAL FOR MGMT. CONSULTING  
DELTA DEVELOPMENT GROUP, INC.  
207 HOUSE AVENUE, SUITE 103  
CAMP HILL, PA 17011

J. JOHN FLUHARTY  
CHESAPEAKE ENTERPRISES  
1800 K STREET, NW  
SUITE 629  
WASHINGTON, D.C. 20006

DANIEL MONCINO  
SCHLUMBERGER INDUSTRIES  
3155-B NORTHWOODS PARKWAY  
NORCROSS, GA 30071

BARRY BLACKWELL  
CINERGY CORP.  
1000 E. MAIN STREET  
PLAINFIELD, IN 46168

ROBERT O'DONNELL ESQUIRE  
1515 MARKET STREET  
SUITE 500  
PHILADELPHIA PA 19102

JOE FISHER ASSOC EDITOR  
NATURAL GAS INTELLIGENCE  
211 REGENCY SQUARE BLVD  
SUITE 221  
HOUSTON TX 77036

RUSSELL HENN  
LG & E POWER MARKETING  
12500 FAIR LAKES CIRCLE  
SUITE 350  
FAIRFAX VA 22033-3804

WILLIAM EDWARDS JR  
PACIFICORP  
1500 MARKET ST CENTER SQ  
EAST TOWER -12TH FLOOR  
PHILADELPHIA PA 19102

VALERIE SMITH  
RURAL UTILITIES  
1400 INDEPENDENCE AVE SW  
MAIL STOP 1516  
RM 4027 SOUTH BLDG  
WASHINGTON DC 20250

JOHN HORTON ANALYST  
MC<sup>2</sup>  
701 EAST 22ND STREET  
LOMBARD IL 60148-5072

PETE LANGBEIN  
GPU - ADVANCED RESOURCES  
2675 MORGANTOWN ROAD  
SUITE GH2-3300  
READING, PA 19607

ROBERT SPAULDING  
SPAULDING GROUP  
5127 WALNUT RIDGE DRIVE  
ERIE, PA 16506

JAMES KIMBALL  
ONLOCATION, INC.  
8100 OAK STREET  
SUITE 300  
DUNN LORING, VA 22027

ALBERT THOMAS  
TECHNEGLAS  
60 OLD BOSTON ROAD  
PITTSBURGH, PA 15201

PAUL EDMUNDSON  
PRICING AND PLANNING ANALYST  
PLUM STREET ENERGY MARKETING  
P.O. BOX 5001  
507 PLUM STREET  
SYRACUSE, NY 13204

JOHN HAPP  
NORAM ENERGY  
1600 SMITH STREET  
SUITE 1161  
HOUSTON, TX 77002-7345

JAN JARRETT  
1740 MAIN STREET LISBURN  
MECHANICSBURG PA 17055

FRANK FELDER SR CONSULTANT  
THE ECONOMICS RESOURCE GROUP  
1 MIFFLIN PLACE  
CAMBRIDGE MA 02138

WILLIAM CAMPBELL  
SEASONED ENERGY DEVELOPMENT LTD  
P O BOX 7955  
PHILADELPHIA PA 19101-7955

JUNE PERRY  
ROOM 19 CAPITOL ANNEX  
HARRISBURG, PA 17120

ALEXANDRA MATTHEWS-RITTER  
SENATOR BELL'S OFFICE  
20 EAST WING CAPITOL  
HARRISBURG, PA 17120

SENATOR ROY C. AFFLERBACH  
184 MAIN CAPITOL  
HARRISBURG, PA 17120

REP. FRANK TULLI, JR.  
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128 SOUTH OFFICE BUILDING  
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SEN. BRIGHTBILL'S OFFICE  
337 MAIN CAPITOL  
HARRISBURG, PA 17120

SENATOR JOSEPH M. ULIANA  
459 MAIN CAPITOL  
HARRISBURG, PA 17120

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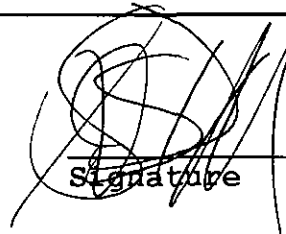
AND NOW, to wit, this 07<sup>th</sup> day of MARCH, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

\_\_\_\_\_  
JOE DUDICK

\_\_\_\_\_  
PA RURAL DEVELOPMENT COUNCIL

DOCUMENT  
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Signature

136300

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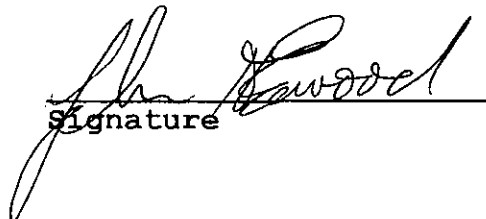
ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 27 day of February, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

JOHN EARWOOD

PA DEPT OF AGING

  
Signature

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KJR

AND NOW, to wit, this 27<sup>th</sup> day of February, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

NAN MCLAUGHLIN

GOVERNOR'S OFFICE

*Nan McLaughlin/kab*  
Signature

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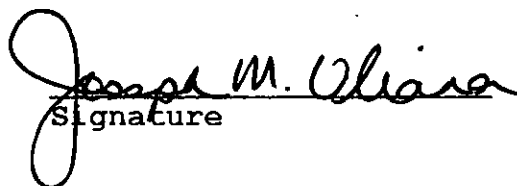
ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 2<sup>nd</sup> day of March, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

\_\_\_\_\_  
SENATOR JOSEPH M ULIANA

\_\_\_\_\_  
SENATE OF PA

  
Signature

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TANYA J MCCLOSKEY ASST CONSUMER  
ADVOCATE

OFFICE OF CONSUMER ADVOCATE

Tanya J. McCloskey  
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REP KEITH MCCALL

HOUSE OF REPRESENTATIVES

  
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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

KJR

AND NOW, to wit, this 27th day of February, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

\_\_\_\_\_  
KENNETH L MICKENS ESQUIRE

\_\_\_\_\_  
OFFICE OF TRIAL STAFF

Maing Rudy  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

OFFICE OF PROTHONOTARY FILE ROOM  
PA PUBLIC UTILITY COMMISSION  
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Harrisburg, PA 17105-3265

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

KJR

AND NOW, to wit, this 26<sup>th</sup> day of Feb., 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

VERONICA A SMITH DEPUTY EXECUTIVE  
DIRECTOR

*Veronica A. Smith*  
Signature */ms*

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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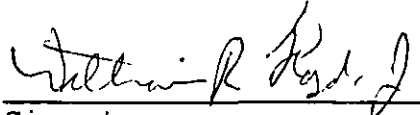
KJR

AND NOW, to wit, this 2nd day of March, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

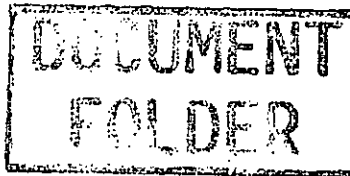
\_\_\_\_\_  
REP WILLIAM LLOYD JR

\_\_\_\_\_  
HOUSE CONS AFFAIRS COMMITTEE

  
\_\_\_\_\_  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

OFFICE OF PROTHONOTARY FILE ROOM  
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Harrisburg, PA 17105-3265



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PROTHONOTARY'S OFFICE

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ ,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

\_\_\_\_\_  
BERNARD A RYAN JR SMALL BUSINESS  
ADVOCATE

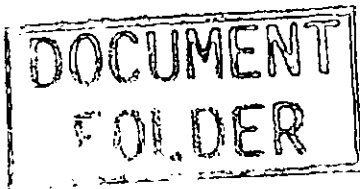
OFFICE OF SMALL  
BUSINESS ADVOCATE

MAR 2 1998

C. Updegraff  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

OFFICE OF PROTHONOTARY FILE ROOM  
PA PUBLIC UTILITY COMMISSION  
B-20, North Office Building  
Harrisburg, PA 17105-3265



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P.A.P.U.C.

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 3<sup>rd</sup> day of March, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

\_\_\_\_\_  
KIM SHAWKEY

\_\_\_\_\_  
SENATOR BRIGHTBILL'S OFFICE

  
\_\_\_\_\_  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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Harrisburg, PA 17105-3265

KJR

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ ,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

\_\_\_\_\_  
REP CHRIS WOGAN

\_\_\_\_\_  
HOUSE OF REPRESENTATIVES  
\_\_\_\_\_  
\_\_\_\_\_

*Chris Wogan*  
\_\_\_\_\_  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

5  
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Harrisburg, PA 17105-3265

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MAR 05 1998

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 10 day of March, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of OPINION AND ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 26, 1998 at Docket No. R-00973953 on behalf of:

HONORABLE STEWART J GREENLEAF

SENATE OF PA

KJR

*Eric Rowley*  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

OFFICE OF PROTHONOTARY FILE ROOM  
PA PUBLIC UTILITY COMMISSION  
B-20, North Office Building  
Harrisburg, PA 17105-3265

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# HISTORICAL DOCUMENTS

- |   |   |
|---|---|
| <input type="checkbox"/> Administrative Order                 | <input type="checkbox"/> Permit                 |
| <input type="checkbox"/> Annual Report                        | <input type="checkbox"/> Rate Filing            |
| <input type="checkbox"/> Application                          | <input type="checkbox"/> Recommended Decision   |
| <input type="checkbox"/> Bench Decisions                      | <input type="checkbox"/> Report Folder          |
| <input type="checkbox"/> Certificate of Public<br>Convenience | <input type="checkbox"/> Secretarial Letter     |
| <input checked="" type="checkbox"/> Document Folder           | <input type="checkbox"/> Tariff                 |
| <input type="checkbox"/> Exhibits                             | <input type="checkbox"/> Tentative Decision     |
| <input type="checkbox"/> Initial Decision                     | <input type="checkbox"/> Transcript (Testimony) |
| <input type="checkbox"/> Orders                               |   |
| <input type="checkbox"/> Oversized Documents                  |   |



Pennsylvania Department of Environmental Protection

OFFICE OF CHIEF COUNSEL  
Rachel Carson State Office Building  
P. O. Box 8464  
Harrisburg, PA 17105-8464  
March 3, 1998

Bureau of Regulatory Counsel

(717) 787-7060  
Fax (717) 787-9378

Office of Prothonotary File Room  
PA Public Utility Commission  
B-20, North Office Building  
Harrisburg, PA 17105-3265

KJR

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

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

To Whom It May Concern:

Please remove my name from the distribution list for the  
above captioned PUC cases.

Sincerely,

Marylou Barton  
Assistant Counsel

MLB/pjd

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MAR 09 1998

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**PECO ENERGY**

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PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5760

March 4, 1998

Mr. Lawrence G. Spielvogel  
203 Hughes Road  
King of Prussia, PA 19406-3785

Dear Larry,

Thank you for your letter of February 25, 1998 in which you raised various concerns with our compliance filing of February 19, 1998. This compliance filing was made as a direct result of the Commission's Orders of December 23, 1997, January 16, 1998, and February 5, 1998 concerning our restructuring proceeding in which customers were fully noticed. Changes to our existing tariff were necessary to effectuate the provisions of those Orders and have undergone review by the Commission in the context of PECO Energy's restructuring plan proceeding, which has been properly noticed. Accordingly, no further customer notice is required, nor does PECO Energy have the right or obligation to make many of the revisions you request. Our specific comments to your concerns are as follows:

**Rule 13.1 - Resale of Service**

Our existing tariff provides ... "The charges for residential submetered electric service to tenants shall not exceed the **charges** for electric service to such tenants under the Company's applicable rate schedules." The compliance filing adds the word "unbundled" before "charges" which is necessary to preserve the protections contained in Section 1313 of the Public Utility Code in an unbundled rate environment. Otherwise, residential tenants would lose the protection of the rate caps as provided in 2804 of the Electricity Generation Customer Choice and Competition Act.

**Transmission Rates**

Retail transmission rates cannot be shown in the PaPUC approved tariff, as the PaPUC does not have jurisdiction over such service. The Commission expressly recognized this in its February 5, 1998 Order, and directed that PECO Energy not include any transmission rates in its tariffed PaPUC jurisdictional Base Rates.

**Rate R-H**

The Company will restore the Rate OP qualification, as it was inadvertently omitted from our compliance filing, assuming Commission assent.

108798

Mr. Lawrence G. Spielvogel  
March 4, 1998  
Page 2

**Rate GS General Service**

In general, we agree with your comments regarding the single meter electric heat provision. Assuming Commission assent, the Company will reinstate the language in this section as it appears in our currently approved tariff (it was inadvertently changed in the compliance filing), with one exception. The grandfathering section (paragraph 3 of the Single Meter Section) will be changed by replacing the date "January 2, 2000" with the words "the date of full Direct Access".

**E2R2**

We will correct the typographical error that you pointed out, again assuming Commission assent.

Please feel free to contact me with any questions or further concerns.

Sincerely,



A. A. Miller  
Director of Rates

*Handwritten initials/signature*

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held March 13, 1997

Commissioners Present:

- John M. Quain, Chairman
- Lisa Crutchfield, Vice Chairman
- John Hanger
- David W. Rolka
- Robert K. Bloom

L. G. Spielvogel, P.E.

v.

R-00963728C00001

PECO Energy Company

Larry Abramovitz

v.

R-00963728C00002

PECO Energy Company

O R D E R

BY THE COMMISSION:

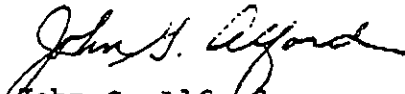
We adopt as our action the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. dated January 17, 1997; THEREFORE,

IT IS ORDERED:

1. That the Complaint of L. G. Spielvogel, P.E. v. PECO Energy Company at Docket No. R-00963728C0001 is dismissed for lack of standing.

2. That the Complaint of Larry Abramovitz v. PECO Energy Company at Docket No. R-00963728C0002 is dismissed for lack of standing.

BY THE COMMISSION,

  
John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: March 13, 1997

ORDER ENTERED: MAR 14 1997

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

L. G. Spielvogel, P.E.	:	Docket Number
	:	
v.	:	
	:	R-00963728C0001
PECO Energy Company	:	
	:	
Larry Abramovitz	:	Docket Number
	:	
v.	:	
	:	R-00963728C0002
PECO Energy Company	:	

RECOMMENDED DECISION

Before  
Charles E. Rainey, Jr.  
Administrative Law Judge

Background

On July 22, 1996, PECO Energy Company (PECO or Respondent) filed with the Pennsylvania Public Utility Commission (Commission) Supplement No. 6 to Tariff Electric - Pa. P.U.C. No. 2 (Tariff Supplement No. 6) to become effective September 20, 1996. The proposed Supplement modifies the single meter electric heating "demand forgiveness" provision of the general service rate (GS). The effective date was voluntarily postponed to October 18, 1996 by PECO to give it additional time to respond to Complaints by (1) Lawrence J. Spielvogel, P.E. (Spielvogel) of King of Prussia, PA and (2) Larry Abramovitz (Abramovitz) of Warrington, PA (collectively referred to as "Complainants").

Spielvogel filed his Complaint on September 9, 1996. The gravamen of his Complaint is that PECO's proposed method for determining demand forgiveness will inappropriately and unfairly raise the rates of some of its GS customers. Therefore, according to Spielvogel, Tariff Supplement No. 6 should be rejected.

Abramovitz filed his Complaint on September 12, 1996. Like Spielvogel, Abramovitz also challenges the appropriateness and fairness of PECO's proposed methodology for determining demand forgiveness. Abramovitz's Complaint also avers that "[w]hat they [PECO] are in essence doing is trying to eliminate the consultant's role with the customer in providing them with the maximum allowable rate relief." Abramovitz Complaint at 2. Additionally, Abramovitz addressed the issue of his standing to bring a Complaint and stated "[w]hile I am presently not a customer affected by this proposed rate change, I am a consultant who has many clients who would be adversely affected by this change." Abramovitz Complaint at 4.

PECO filed an Answer and New Matter to the Complaint of Spielvogel on September 16, 1996; and to the Complaint of Abramovitz on September 27, 1996. In its Answer, PECO admitted and denied the various allegations of the Complainants. In its New Matter to each Complaint, PECO averred that:

Complainant has no standing under 66 Pa. C.S. §701 to bring a complaint addressed to a proposed change in the GS rate. Regardless of whatever remunerative arrangements Complainant has with GS customers, he is not himself a GS customer and thus has no direct, immediate or substantial interest in this proceeding. Wm.

Penn Parking Garage, Inc., et al. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975).  
Bensalem School District v. PECO Energy Company, PUC Docket No. C-00967737 (1996) (unpublished).

By Order entered October 17, 1996, the Commission allowed Tariff Supplement No. 6 become effective October 18, 1996. The Commission further stated, however, that its Order was without prejudice to the complaints filed by Spielvogel and Abramovitz, or any other complaints timely filed against PECO's proposed tariff.<sup>1</sup>

This matter was assigned to me by Notice dated October 22, 1996. On November 20, 1996, I issued a prehearing order which required the parties to file prehearing memoranda. Prehearing memoranda were filed by all of the parties. In its prehearing memorandum, PECO raised as an issue the standing of Complainants to bring their Complaints.

A prehearing conference was held as scheduled on December 12, 1996. At the prehearing conference a number of matters were taken up - including the issue of the standing of the Complainants. Testimony and oral argument were provided by Complainants and PECO's counsel, Delia W. Stroud, Esq. Subsequently, I directed PECO and the Complainants to file memoranda of law on the issue of

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<sup>1</sup> On or about November 19, 1996, Parcel 6-4 Associates, L.P., et al. filed a Complaint against PECO alleging that Tariff Supplement No. 6 is unfair and unreasonable. The Complaint of Parcel 6-4 Associates, L.P., et al. was docketed at R-00963728C0003. PECO filed an Answer to the Complaint of Parcel 6-4 Associates, L.P., et al. on or about December 11, 1996. In its Answer, PECO admitted and denied the various allegations made in the Complaint.

whether Spielvogel and Abramovitz have standing to bring their Complaints. This directive was memorialized in a written order which I issued on December 12, 1996. Consequently, memoranda of law were filed by PECO and the Complainants.

#### Discussion

This Commission has recognized that standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. The pertinent section of the Public Utility Code, 66 Pa. C.S. §701, provides that any person, corporation or municipal corporation having an interest in the subject matter may complain in writing to the Commission. The complaint must demonstrate a direct, immediate and substantial interest. Investigation into Equitable Gas Company's Revenue Allocation Among Transportation Customers, I-900009 (Order entered January 16, 1992); Re L & H Trucking Company, Inc., 55 Pa. PUC 469 (1982); Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company, 32 Pa. Commw. Ct. 19, 377 A.2d 1270 (1977), aff'd 488 Pa. 308, 412 A.2d 522 (1980).

The gravamen of PECO's position that Complainants lack standing is as follows:

In sum, the Consultants, Mr. Spielvogel and Mr. Abramovitz, lack the requisite standing as they have no immediate, direct, and substantial interest in this proceeding. Nor should they be accorded representational standing on behalf of their clients who are single-meter customers. The interests of any of their clients who may have decreased demand

forgiveness under PECO Energy's proposed methodology are the same as Parcel 6-4 Associates and will be adequately represented through that party.

PECO Memorandum of Law at 7.

The gist of Complainants arguments<sup>2</sup> regarding why they have standing are as follows:

1. They are residential customers, and residential customers can take GS service;
2. They are consultants to GS customers; and
3. Tariff Supplement No. 6 is unfair and inappropriate, and their experience and familiarity with the issues would be an asset to this proceeding.

In determining whether the Complainants have standing, it is necessary to examine whether they have a direct, immediate and substantial interest in Tariff Supplement No. 6.

Complainants claim that they have standing because they are residential customers of PECO, and residential customers<sup>3</sup> "can" take Rate GS service. Spielvogel Memorandum of Law at 4; Abramovitz Memorandum of Law at 1. However, Complainants do not

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<sup>2</sup> Although filed individually, Complainants' memoranda of law make the same arguments and therefore will be addressed together.

<sup>3</sup> At the prehearing conference Spielvogel claimed that he was a GS customer. (Tr. 7). However, based on a copy of a letter I received dated December 17, 1996 addressed to Spielvogel from PECO's counsel, Ms. Stroud, Spielvogel had agreed with her not to claim that he was a GS customer. In his memorandum of law, Spielvogel infers that he is a residential customer of PECO. Spielvogel Memorandum of Law at 4.

claim that they take Rate GS service. Therefore, Complainants' utility service is not affected by Tariff Supplement No. 6. Thus, Complainants have failed to establish by this argument that they have a direct, immediate and substantial interest in Tariff Supplement No. 6.

Complainants also infer that because they are consultants to GS customers that they have standing to bring their complaints. Spielvogel Memorandum of Law at 4-5; Abramovitz Memorandum of Law at 2. However, Complainants, as consultants, are not directly affected by Tariff Supplement No. 6 - their Rate GS clients are. Their clients, of course, can assert their own rights by bringing complaints against Tariff Supplement No. 6 if they so choose. I further note that Complainants are not attorneys. Therefore, Complainants may not bring complaints on behalf of GS customers who have standing.<sup>4</sup> See, 52 Pa. Code §1.21. Additionally, because Complainants are not members of an association whose members are receiving GS service, the concept of associational standing does not apply here. See, Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company, supra. Thus, Complainants have

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<sup>4</sup> Complainants infer that they should be granted standing because GS customers cannot afford to hire an attorney. Spielvogel Memorandum of Law at 4-5; Abramovitz Memorandum of Law at 2. However, GS customers who are individuals can file complaints in their own names and represent themselves at hearings. See, 52 Pa. Code §1.21. Additionally, some GS customers are being represented by legal counsel in a complaint brought in opposition to Tariff Supplement No. 6 by Parcel 6-4 Associates, L.P., et al. at Docket No. R-00963728C0003.

not established that they have standing as a result of their employment as consultants to GS customers. I also note that the loss of any Rate GS clients, or a possible reduction in remuneration from those clients may be an indirect impact of Tariff Supplement No. 6 on Complainants.<sup>5</sup> However, to have standing the impact must be direct, immediate and substantial.

Complainants also claim that they have standing because Tariff Supplement No. 6 is unfair and inappropriate, and their experience and familiarity with the issues would be an asset to this proceeding. Spielvogel Memorandum of Law at 5; Abramovitz Memorandum of Law at 2. However, standing focuses on whether a party is a proper litigant; not on whether a case has merit or whether a party has particular expertise or familiarity with the issues involved in a case. In this case, Complainants have not established that they are proper litigants.

Complainants have also raised a number of other issues which will be summarily addressed below.

Complainants claim that PECO's failure to raise the standing issue in a motion instead of in its New Matter deprived them of an opportunity to respond. Spielvogel Memorandum of Law at 2; Abramovitz Memorandum of Law at 1. It is true that 52 Pa. Code §5.101(a)(3) provides for filing a motion to dismiss a pleading

---

<sup>5</sup> Abramovitz testified that his remuneration from his GS clients would be less under Tariff Supplement No. 6. (Tr. 7-8).

that does not indicate on its face the standing of the party. However, this is a moot point because Complainants have been given an opportunity to respond, and have responded, to the issue of standing, both at the prehearing conference and in their memoranda of law.<sup>6</sup>

Spielvogel also asserts that Complainants should be granted standing because PECO did not challenge Complainants' standing in a prior related proceeding.<sup>7</sup> Spielvogel Memorandum of Law at 3. Complainants did not cite any legal authority for their argument, and there does not appear to be any. A party's failure to challenge another party's standing in one proceeding does not preclude that party from challenging the other party's standing in a separate related proceeding. Therefore, PECO is not precluded from challenging Complainants' standing in this case.

Complainants also infer that Section 701 of the Public Utility Code, 66 Pa. C.S. §701, does not require that litigants have a direct, immediate and substantial interest in the subject matter. Spielvogel Memorandum of Law at 2; Abramovitz Memorandum of Law at 1. Section 701 of the Public Utility Code provides that ". . . any person . . . having an interest in the subject matter

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<sup>6</sup> Abramovitz also addressed the issue of standing in his Complaint.

<sup>7</sup> Spielvogel asserts that he was a party to a 1993 proceeding regarding PECO's GS Rate. Spielvogel Memorandum of Law at 3. According to Spielvogel, he withdrew his complaint in that case after he reached a "compromise" with PECO and PECO amended its filing. Id.

. . . may complain in writing . . . ." It is true that Section 701 of the Public Utility Code does not define the degree of interest which a litigant must have. However, long-standing case law does - that interest must be direct, immediate and substantial. See, e.g., Investigation into Equitable Gas Company's Revenue Allocation Among Transportation Customers, supra; Re L & H Trucking Company, Inc., supra; Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company, supra. In the present case, because Complainants do not receive Rate GS service, they are not directly, immediately and substantially affected by Tariff Supplement No. 6.

Spielvogel further argues that standing requirements should be waived pursuant to 52 Pa. Code §1.2 (Liberal Construction). Spielvogel Memorandum of Law at 4. That rule provides that the "Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties." 52 Pa. Code §1.2(b). The rule does not permit the Commission or a presiding officer to waive standing requirements. The requirement that a party have standing to bring a complaint is essential to the integrity of the administrative hearing process.

For all of the foregoing reasons, Complainants have failed to establish that they have a direct, immediate and substantial interest in PECO's Tariff Supplement No. 6. Therefore, their Complaints are dismissed.

Order

THEREFORE,

IT IS ORDERED:

1. That the Complaint of L. G. Spielvogel, P.E. v. PECO Energy Company at Docket No. R-00963728C0001 is dismissed for lack of standing.

2. That the Complaint of Larry Abramovitz v. PECO Energy Company at Docket No. R-00963728C0002 is dismissed for lack of standing.

January 17, 1997  
Date

Charles E. Rainey, Jr.  
CHARLES E. RAINEY, JR.  
Administrative Law Judge



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

March 3, 1998

IN REPLY PLEASE  
REFER TO OUR FILE

R-973953

Mr. Attilio DeFilippo, Jr.  
P. O. Box 251  
Avondale, PA 19311

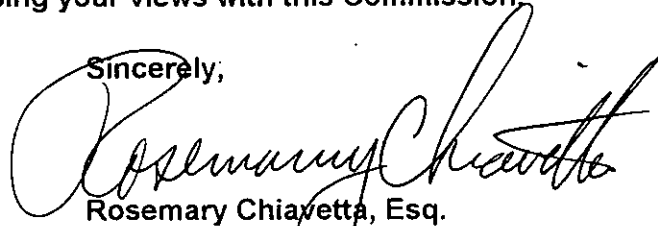
Dear Mr. DeFilippo:

Thank you for your recent letter to Chairman John Quain of the Public Utility Commission expressing your displeasure with the stranded cost recovery granted to the PECO Energy Company by the Public Utility Commission in its Order of December 11, 1997.

Please know that I have taken the liberty of forwarding your letter to the Secretary of the Commission so it can be included in the official file of this proceeding.

Thank you again for expressing your views with this Commission.

Sincerely,

  
Rosemary Chiaetta, Esq.  
Director of Legislative Affairs

cc: Chairman Quain ✓  
Secretary McNulty ✓

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MAR 07 1998

Office of Prothonotary  
Public Utility Commission

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CHAIRMAN QUAIN'S OFFICE

FEB. 23, 1998  
P.O. 251  
AVONDALE, PA.  
19311

SUBJECT: PECO'S RAPE OF THE CONSUMERS..

MR. QUAIN,

FACTS SPEAK FOR THEMSELVES..

PECO RAPES THE CONSUMER FOR NEARLY 300MILLION EVERY YEAR USING  
WHAT THEY CALL CUSTOMER CHARGE FORBASICS SERVICES. THIS IS  
AN OUTRAGE ALLOWED BY THE PUC...

EVERYONE OF PECO'S CUSTOMERS IS GOING TO PAY 3,300.00 dollars  
to pay off what they call stranded costs this farce is also  
approved by the puc..

PECO CUSTOMERS ALREADY PAY THE HIGHEST RATBS IN THE COUNTRY  
THIS IS ANOTHER DISGRACE CONDONED BY THE PUC...

MY QUESTION IS HOW DO YOU PEOPLE OF THE COMMISSION SLEEP  
NIGHTS????



B-983685 JL

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2

CONNECTIV ENERGY

Petitioner(s)

File in R-973953

v.

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

Respondent(s)

DOCKETED

APR 10 1998

No. 0382 C.D. 1998

PRAECIPE TO STRIKE PETITION FOR REVIEW

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NOW, March 5, 1998, on Praecipe to Strike Petition for Review filed by the attorney for the Respondent, the above petition for review is hereby stricken as inoperative pursuant to Pa. R.A.P. 1701(b)(3)(ii).

*CR Heston*

DEPUTY PROTHONOTARY/CHIEF CLERK

CERTIFIED FROM THE RECORD

MAR 5 1998

*CR Heston*

Deputy Prothonotary - Chief Clerk

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PA P.U.C.  
LAW BUREAU

B-983689 JL

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2

File in R-973953

NEV EAST LLC

Petitioner(s)

v.

PUBLIC UTILITY COMMISSION  
PENNSYLVANIA

Respondent(s)

DOCKETED

APR 10 1998

No. 0445 C.D. 1998

PRAECIPE TO STRIKE PETITION FOR REVIEW

NOW, March 5, 1998, on Praecipe to Strike Petition for Review filed by the attorney for the Respondent, the above petition for review is hereby stricken as inoperative pursuant to Pa. R.A.P. 1701(b)(3)(ii).

*CR Hutter*

DEPUTY PROTHONOTARY/CHIEF CLERK

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MAR 5 1998

*CR Hutter*

Deputy Prothonotary - Chief Clerk

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**PECO ENERGY**

**ORIGINAL**

**Thomas P. Hill, Jr.**  
Vice President and Controller

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5802

March 5, 1998

**HAND DELIVERY**

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

Re: Response to February 26, 1998 Order on Revised Compliance Filing;  
Consumer Education Participation  
Docket No. R-00973953

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PA.P.U.C.  
PROTHONOTARY'S OFFICE

Dear Mr. McNulty:

*KJR*

At page 27 of its February 26, 1998 Order, the Commission directed PECO "to provide a letter response indicating whether it will participate in the Commission's Consumer Education program in a complete and cooperative manner." In light of the Commission's further discussion of this issue, and the requests for reconsideration by Chairman Quain and Commissioner Brownell, PECO agrees to participate in the Commission's Consumer Education program in a cooperative manner.

One important factor that helped PECO reach this decision is Commissioner Brownell's February 26 statement recognizing and respecting the First Amendment issues the Company has raised. The Company takes seriously its constitutional right to be free from government-compelled speech, whether that compulsion comes in the form of requiring the Company to make statements, creating the impression that the Company has associated itself with certain statements, or forcing the Company to assist in the funding of statements with which it does not agree. The Commission's decision to recognize those concerns is a critical step that allows effective consumer education to be developed while respecting both the Company's First Amendment rights and the Electric Competition Act.

PECO's agreement to participate in consumer education is subject to the following understandings. First, it is PECO's understanding that its participation in consumer education will follow the same schedule as that followed by the other EDCs in Pennsylvania. This is made possible by the rescheduling of enrollment as ordered by the Commission, and will minimize customer confusion and ensure a more effective, coordinated statewide education program.

Second, we want to reiterate that PECO's funding of statewide consumer education will be commensurate (on a pro rata, per-customer basis) with the funding provided by other EDCs, and that electric generation suppliers and others who benefit should contribute.

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March 5, 1998

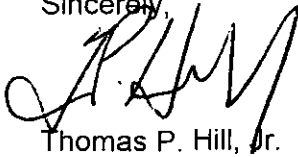
Page 2

Third, by agreeing to participate in the Commission's Consumer Education program, PECO is not waiving any of its First Amendment or other rights, and PECO must have the ability to review and agree with the content of the customer education material. Thus, as the Commission's Order notes (pp. 26-27), the consumer education in which PECO participates, including statewide education, must be objective and will disclose basic, factual information about the law and consumer rights and responsibilities. The education material will be competitively neutral, and will not promote the commercial interests of any entity competing with PECO.<sup>1</sup> As noted above, though, we firmly believe that appropriate information can be distributed that preserves our rights while effectively educating consumers.

Finally, we are agreeing to participate in the Commission's statewide Consumer Education program in the spirit of cooperation that we hope will animate the comprehensive settlement discussions the Commission is commencing today. Indeed, we look forward to informing customers of the terms of that ultimate settlement, and customers' rights and obligations under it, when the consumer education process begins.

We look forward to working with the Commission and the interested parties further as the Consumer Education program unfolds.

Sincerely,



Thomas P. Hill, Jr.

TPH/mbo

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  
Bohdan R. Pankiw, Law Bureau  
Kevin F. Cadden  
Certificate of Service

---

<sup>1</sup> For example, we should not be required to engage in or assist in funding the dissemination of materials that identify competing electric generation suppliers or the services, prices or savings they may offer, or which encourage customers to leave PECO, nor should we have to participate in providing free market research to suppliers. Marketers, of course, are free to provide such promotional and marketing information on their own and to conduct their own market research.

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.

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Derrick Williamson, Esquire  
David Kleppinger, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PAIEUG)

Christopher B. Craig, Esquire  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for The Honorable Vincent J. Fumo)

Daniel Clearfield, Esquire  
Alan Kohler, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
Locust Court Bldg., Suite 300  
212 Locust Street  
Harrisburg, PA 17101  
(Counsel for Enron)  
Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Roger Clark, Esquire  
NESIP  
905 Denston Drive  
Ambler, PA 19002-3901  
(Attorney for Environmentalists)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(Counsel for Delmarva Power & Light)

Walter W. Cohen, Esquire / Andrew J. Giorgione, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
204 State Street  
Harrisburg, PA 17101  
(Counsel for IPL)

Audrey Van Dyke, Associate Counsel  
Naval Facilities Engineering Command  
Washington Navy Yard, Building 218, Room 200  
901 M Street, S.E.  
Washington, DC 20374-5018  
(Counsel for Dept. of Navy)

Robert A. Mills, Esquire

Tanya McCloskey, Esquire  
Steven K. Steinmetz, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Karen Oill Moury, Esquire  
Assistant Small Business Advocate  
Suite 1102, Commerce Building  
300 N. 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Steven P. Hershey, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(Counsel for CEPA, TAG, Action Alliance of Sr. Citizens & John Long, Jr.)

Donald A. Kaplan, Esquire  
Preston, Gates, et al.  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006-4759  
(Counsel for PP&L)

Paul L. Zeigler, Esquire  
Zeigler & Zimmerman, PC  
355 North 21<sup>st</sup> Street, Suite 304  
P.O. Box 1080  
Camp Hill, PA 17011-3707  
Linda C. Smith, Esquire  
Dilworth, Paxson, Kalish & Kauffman  
305 North Front Street, Suite 403  
Harrisburg, PA 17101  
(Counsel for AARP)

Randall V. Griffin, Esquire  
Delmarva Power & Light Company  
800 King Street  
Wilmington, DE 19899  
(Counsel for Delmarva Power & Light)

Michael G. Banta, Esquire  
Indianapolis Power & Light Company  
One Monument Circle  
P.O. Box 1595  
Indianapolis, IN 46206-1595

Janet Miller, Esquire  
William T. Hawke, Esquire/Todd S. Stewart, Esq.  
Malatesta Hawke & McKeon  
100 N. Tenth Street  
Harrisburg, PA 17105  
(Counsel for Mid-Atlantic Power Supply Association)

John L. Munsch, Esquire

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PROTHONOTARY'S OFFICE

McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166  
(Counsel for PA Retailers' Association)

Joel D. Newton, Esquire  
Verner Lipfert Bernhard McPherson & Hand  
901 - 15<sup>th</sup> Street, NW  
Washington, DC 20005-2301  
(Counsel for Allegheny Power)

Gordon J. Smith, Esquire  
John & Hengerer  
1200 17<sup>th</sup> Street, NW - Suite 600  
Washington, DC 20036-3006  
(Duke Energy Trading and Marketing, Vastar, & Electric Clearinghouse)

Joseph A. Dworetzky, Esquire  
John P. Lavelle, Jr., Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 12<sup>th</sup> Floor  
Philadelphia, PA 19102  
(Counsel for New Energy Ventures)

Stephanie A. Sugrue, Esquire/Sheila S. Hollis, Esquire  
Mary Ann Rallis, Esquire  
Duane, Morris & Heckscher LLP  
1667 K Street, N.W. - Suite 700  
Washington, DC 20006-7800  
(Counsel for QST Energy)

Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

John Gallagher, Esquire  
Michael Klein, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
200 North Third Street - Suite 300  
Harrisburg, PA 17108-2105  
(Counsel for Enron Energy Services Power, Inc.)

Kenneht G. Hurwitz, Esq.  
Maureen Z. Hurley, Esq.  
Venable, Baetjer, Howard & Civiletti, LLP  
1201 New York Ave., Suite 1100  
Washington, DC 20005-3917

Dated: March 5, 1998

Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(Counsel for Allegheny Power)

Terence Fitzpatrick, Esquire  
David Desalle, Esquire  
Ryan, Russell, Ogden & Seltzer  
800 North Third Street, Suite 101  
Harrisburg, PA 17102  
(Counsel for GPU)

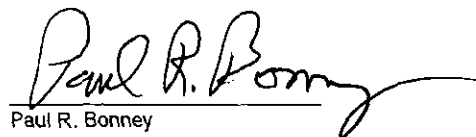
Joseph J. Malatesta, Jr., Esquire  
Lillian Smith Harris, Esquire  
Malatesta Hawke & McKeon LLP  
Harrisburg Energy Center  
100 North Tenth Street - P.O. Box 1778  
Harrisburg, PA 17105  
(Municipal Group)

Usher Fogel, Esquire  
Roland, Fogel, Koblenz & Carr, LLP  
1 Columbia Place  
Albany, NY 12207  
(Counsel for Pennsylvania Petroleum Association and Pennsylvania Association of Plumbing, Heating, Cooling Contractors, Inc.)

Vickiren S. Aeshleman  
Director - Regulatory Policy  
QST Energy, Inc.  
300 Hamilton Blvd.; Suite 300  
Peoria, IL 61602

John Klauberg, Esquire  
Bruce Miller, Esquire  
LeBoeuf, Lamb, Greene & MacRae, LLP  
125 West 55<sup>th</sup> Street  
New York, NY 10019-5389  
(Counsel for Enron Energy Services Power, Inc.)

Vincent J. Walsh, Jr., Esq.  
SouthEastern Pennsylvania Transportation Authority  
1234 Market Street - Fifth Floor  
Philadelphia, PA 19107-378-0



Paul R. Bonney  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252



# HISTORICAL DOCUMENTS

- |   |  |
|---|--|
| <input type="checkbox"/> Administrative Order                 | <input type="checkbox"/> Permit                        |
| <input type="checkbox"/> Annual Report                        | <input type="checkbox"/> Rate Filing                   |
| <input type="checkbox"/> Application                          | <input type="checkbox"/> Recommended Decision          |
| <input type="checkbox"/> Bench Decisions                      | <input type="checkbox"/> Report Folder                 |
| <input type="checkbox"/> Certificate of Public<br>Convenience | <input checked="" type="checkbox"/> Secretarial Letter |
| <input type="checkbox"/> Document Folder                      | <input type="checkbox"/> Tariff                        |
| <input type="checkbox"/> Exhibits                             | <input type="checkbox"/> Tentative Decision            |
| <input type="checkbox"/> Initial Decision                     | <input type="checkbox"/> Transcript (Testimony)        |
| <input type="checkbox"/> Orders                               |  |
| <input type="checkbox"/> Oversized Documents                  |  |



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

IN REPLY PLEASE  
REFER TO OUR FILE

March 6, 1998

**Application of PECO Energy Company, Docket No. R-00973953**  
**Application of ENRON Energy Services, Docket No. P-00971265**

TO ALL PARTIES:

By letter dated February 6, 1998, addressed to all parties, the Commission offered to convene a Settlement Conference to discuss potential settlement of the various state court appeals and federal court action that have arisen from the Commission's December 23, 1997 and January 15, 1998 orders in the PECO Restructuring Proceeding. The Commission received many positive responses to this invitation from the active parties to that Commission proceeding.

Please be advised that on March 5, 1998, an initial meeting was held in Harrisburg at which the participants agreed upon procedural ground rules for the conduct of the settlement negotiations. Attached is a copy of the Pre-Settlement Agreement which sets forth, in detail, the ground rules for participation in the Settlement Conference. In general, the ground rules address (1) confidentiality of the process, (2) unanimous consent to any settlement reached, and (3) waiver of any objections to the participation of Chairman Quain and Commissioner Hanger as facilitators.

The next Settlement Conference is scheduled for **Monday, March 16, 1998 at 10 AM** in Harrisburg. The participants will be expected to come to the table in good faith, with full authority to negotiate and to resolve substantive issues. If you wish to participate in the Settlement Conference, you must first agree to be bound by the Pre-Settlement Agreement, as evidenced by signing the enclosed Consent to Pre-Settlement Agreement. The signed consent form must be received by the Commission's Secretary no later than the close of business on Friday, March 13, 1998. The Commission will accept faxed consent forms at (717) 783-9526.

Parties who have not signed the Pre-Settlement Agreement will not be permitted to participate in the Settlement Conference. A complete list of parties who have agreed to the Pre-Settlement Agreement as of March 13, 1998 will be compiled by the Commission and provided to all other signatories.

Very truly yours,

*James J. McNulty*  
James J. McNulty  
Secretary

cc: Chairman Quain  
Vice Chairman Bloom  
Commissioner Hanger  
Commissioner Rolka  
Commissioner Brownell

**DOCKETED**  
APR 20 1998

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KJR

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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) : Docket No. P-00971265  
of the Public Utility Code to Serve as the :  
Provider of Last Resort in the Service :  
Territory of PECO Energy Company :

---

**PRE-SETTLEMENT AGREEMENT**

---

This Pre-Settlement Agreement sets forth the terms and conditions under which the undersigned Parties hereby agree to participate in a "post decision" settlement conference convened by the Pennsylvania Public Utility Commission ("PUC" or "Commission") in an effort to determine whether the appeals and other proceedings<sup>1</sup> and issues arising from the various orders issued by the Commission in the above captioned PECO Energy Restructuring case (hereinafter the "PECO Restructuring Proceeding), can be amicably and finally resolved through a settlement of all Parties (hereinafter, "the Settlement Conference"). In order to facilitate such discussions, the Parties have determined to enter into this Pre-Settlement Agreement to assure

---

<sup>1</sup> Hereinafter, "Appellate or Other Proceeding" include all present or subsequent appeals to Commonwealth Court of the PECO Restructuring Orders as well as the present action filed by PECO in Federal District Court at 98 CV 335 (E.D. PA.) or any present or future state or federal court challenge arising from the PECO Restructuring Proceeding.

that: (1) all discussions and any information and/or documents produced as part of such discussions are kept strictly confidential; (2) any settlement resulting from this Settlement Conference will be concurred in by all Parties; and (3) no legal or other issues are created as a result of the participation of any Public Utility Commissioners in such settlement discussions. Therefore, in consideration of the mutual provisions contained herein, intending to be legally bound hereby, and as a condition for their participation in the Settlement Conference and any associated settlement discussions, the undersigned parties (hereinafter "the Parties")<sup>2</sup> agree as follows:

**A. Confidentiality.**

1. The Parties shall keep confidential all communications and information exchanged (written, oral, or otherwise) in connection with this Settlement Conference and any associated settlement discussions, whether produced or generated by the Parties, by the Commissioners or PUC staff, or by any other person, including notes, summaries, extracts or other information derived from these communication information exchanges (hereinafter "Confidential Settlement Information"). The Parties shall keep Confidential Settlement Information strictly confidential, and the Parties shall not disclose it to any other person or entity, except the Parties' employees, counsel, or consultants; provided, however, that Parties may make disclosure with the express written consent of all the other Parties and the Commissioners who elect to participate in the Settlement Conference. The Confidential Settlement Information shall not be disclosed or offered for admission in any administrative, civil, legislative, or other

---

<sup>2</sup> Parties are limited to entities which have formally participated in the underlying PECO Restructuring Case, and have executed this Pre-Settlement Agreement.

proceeding or action, specifically including any Appellate or Other Proceeding, nor may Confidential Settlement Information be the subject of discovery in any such proceeding or action, except that such Confidential Settlement Information may be disclosed or offered for admission to the extent properly discoverable in the absence of this Pre-Settlement Agreement. The release or dissemination of Confidential Settlement Information among the Parties is not limited by this agreement and does not constitute the waiver of the confidentiality or proprietary status of the information.

2. The Parties agree to use, handle and store the Confidential Settlement Information in a manner that prevents any unauthorized use or disclosure. The Parties agree to take affirmative steps to limit access to the Confidential Settlement Information to only their authorized representatives who need to use the Confidential Settlement Information for settlement purposes. Every person to whom disclosure is made of any Confidential Settlement Information subject to this Agreement shall be informed of the terms of this Agreement by counsel for its Party and shall agree in writing to be bound by it. The Parties agree that the Parties, and all such persons or entities to whom Confidential Settlement Information is disclosed, may use such Confidential Settlement Information solely for settlement purposes and in accordance with this Pre-Settlement Agreement.

**B. Unanimous Consent to the Settlement Agreement.**

3. No Party is obligated to accept a proposed settlement or specific terms proposed by another Party or Parties. The Parties agree that no settlement agreement resulting from the Settlement Conference will be presented for approval to the Pennsylvania Public Utility

Commission or to any court unless all Parties state, in writing, that they either agree to the proposed settlement agreement, do not oppose such agreement, or agree to a different treatment of their concerns.

**C. Waiver of Any Challenge to Participating Commissioners.**

4a. The Parties hereby agree to waive any objections arising from this Settlement Conference to Chairman John M. Quain or Commissioner John Hanger voting or participating in any subsequent proceeding, or, if that conference is not successful, in any remand of these cases by any appellate court.

4b. If any Party raises a challenge not otherwise waived to the participation of Chairman John M. Quain or Commissioner John Hanger in the Settlement Conference or any portion of the PECO Restructuring Proceeding, the Settlement Conference shall terminate. If the Parties are considering reinstating the Settlement Conference after a termination, or if either Chairman John M. Quain or Commissioner Hanger withdraws or is removed from participation in the Settlement Conference, or is replaced by another Commissioner, all Parties shall be required to sign a new waiver of objections to each Commissioner's participation, as set forth in (4a) above prior to the reinstatement or continuation of the Settlement Conference as the case may be.

**D. Other Terms.**

5. This Pre-Settlement Agreement is effective at the time of its execution by all Parties electing to participate in the Settlement Conference and, other than paragraph B.3. above (pertaining to unanimous consent), shall continue in full force and effect even if settlement discussions terminate. If a settlement agreement is reached and executed in accordance with the

terms of this Pre-Settlement Agreement, the confidentiality provision in this agreement shall not preclude any Party from discussing the contents of such executed settlement agreement but in no event shall the execution of such an agreement, waive or release the confidentiality of settlement discussions or of Confidential Settlement Information previously communicated or produced.

6. No Party shall use the existence of the Settlement Conference, the fact that settlement discussions are ongoing, the substance of the discussions or the participation of Chairman John M. Quain or Commissioner John Hanger as grounds for challenging the validity of the PECO Restructuring Order or as a basis for claiming or retaining jurisdiction or review by a court in any Appellate or Other Proceeding or seeking to advance any other position (including delay, unless all Parties agree) in any Appellate or Other Proceeding.

7. A Party may withdraw from this Settlement Conference upon written notice to the Commission and the Parties for any reason and at any time.<sup>3</sup> Upon receipt of such written notice, this Settlement Conference shall terminate. Withdrawal by a Party does not relieve it or other Parties from the agreements, obligations or waivers, other than paragraph B.3. above, otherwise agreed to pursuant to this Pre-Settlement Agreement, including the obligation to *maintain the confidentiality of Confidential Settlement Information obtained prior to the Party's withdrawal from the Settlement Conference.*

8. The Parties agree that this Pre-Settlement Agreement may be executed in one or more counterparts each of which shall be deemed an original and all which taken together shall constitute one and the same agreement.

---

<sup>3</sup> A Party's non-participation in the Settlement Conference shall not constitute a withdrawal unless the Party provides notice of withdrawal to the Commission pursuant to this paragraph.

9. This Settlement Conference shall end at 5:00 pm on April 16, 1998 ,  
unless the Parties agree to extend in writing the date.

For Allegheny Power:



Paul E. Nordstrom, Esq.  
Verner Liipfert Bernhard McPherson & Hand  
901 - 15th Street, N.W.  
Washington, DC 20005-2301

3/5/98  
Date

For CEPA:

\_\_\_\_\_  
Steven P. Hershey, Esq.  
Community Legal Services  
1424 Chestnut Street, 4th Fl.  
Philadelphia, PA 19102


\_\_\_\_\_  
Date

For Conectiv:

\_\_\_\_\_  
Craig A. Doll, Esq.  
214 State Street  
Harrisburg, PA 17101

\_\_\_\_\_  
Date

For Delaware Valley Energy Consortium:

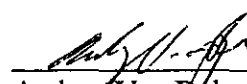
  
\_\_\_\_\_

Paul L. Zeigler, Esq.  
Zeigler & Zimmerman, PC  
355 N. 21st St., Suite 304  
P.O. Box 1080  
Camp Hill, PA 17011-3707

5 March 1998

Date

For Department of Navy:

  
\_\_\_\_\_

Audrey Van Dyke, Esq.  
Department of the Navy  
Naval Facilities Engineering Command  
Litigation Headquarters 09L  
Washington Navy Yard Bldg. 218  
901 M Street SE  
Washington DC 20374-5018

3/5/98

Date

For Environmentalists:

*MICHAEL FIORENTINO, ESQ.*

  
\_\_\_\_\_

Roger Clark, Esq.  
The Environmentalists  
905 Denston Drive  
Ambler, PA 19002-3901

3/5/98

Date

For Enron Power Marketing, Inc.:

\_\_\_\_\_  
Daniel Clearfield, Esq.  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

\_\_\_\_\_  
Date

For Senator Vincent J. Fumo:

\_\_\_\_\_  
Christopher B. Craig, Esq.  
Senate Democratic Appropriations Committee  
Room 545, Main Capitol Bldg.  
Harrisburg, PA 17120

\_\_\_\_\_  
Date

For GPU Energy:

\_\_\_\_\_  
Terrance J. Fitzpatrick, Esq.  
Ryan, Russell, Ogden & Selter LLP  
800 North Third St., Suite 101  
Harrisburg, PA 17102

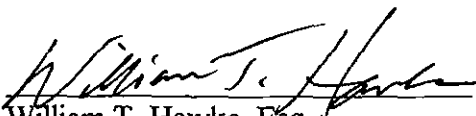
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For Lance Haver:

\_\_\_\_\_  
Lance S. Haver  
6048 Ogontz Avenue  
Philadelphia, PA 19141

\_\_\_\_\_  
Date

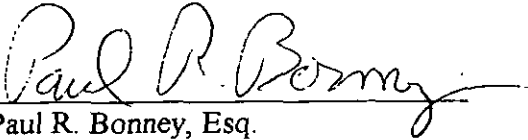
For Mid-Atlantic Power Supply Association:

  
\_\_\_\_\_  
William T. Hawke, Esq.  
Malatesta Hawke & McKeon LLP  
200 North Tenth St.  
Harrisburg, PA 17101

\_\_\_\_\_  
Date



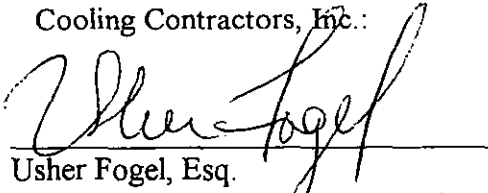
For PECO Energy:



Paul R. Bonney, Esq.  
Assistant General Counsel  
2301 Market Street, S23-1  
Philadelphia, PA 17120

\_\_\_\_\_  
Date

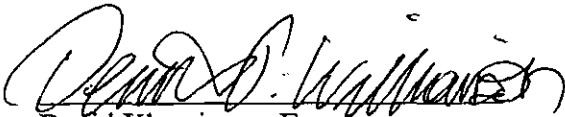
For Pennsylvania Petroleum Association  
and Pennsylvania Association of Plumbing, Heating,  
Cooling Contractors, Inc.:



Usher Fogel, Esq.  
Roland, Fogel, Koblenz & Petrocione, LLP  
1 Columbia Place  
Albany, NY 12207

3/5/98  
\_\_\_\_\_  
Date

For Philadelphia Area Industrial  
Energy Users Group:



David Kleppinger, Esq.  
Derrick P. Williamson, Esq.  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

5 MAR 98  
\_\_\_\_\_  
Date

For PP&L:

\_\_\_\_\_  
Paul E. Russell, Esq.  
PP&L, Inc.  
Two North Ninth St.  
Allentown, PA 18101

\_\_\_\_\_  
Date

For Pennsylvania Retailers' Association:

---

Kenneth Zielonis, Esq.  
Stevens & Lee  
208 N. 3rd Street, Suite 310  
Harrisburg, PA 17101

---

Date

For QST Energy Inc.:

---

Stephanie A. Conaghan  
Duane, Morris & Heckscher LLP  
1667 K Street, NW, Suite 700  
Washington, DC 20006-1608

---

Date

# Consent to Pre-Settlement Agreement

**Application of PECO Energy Company, Docket No. R-00973953**  
**Application of ENRON Energy Services, Docket No. P-00971265**

I have read the Pre-Settlement Agreement which sets forth, in detail, the ground rules for my participation in the Settlement Conference. I understand that these ground rules address (1) confidentiality of the process, (2) unanimous consent to any settlement reached, and (3) waiver of any objections to the participation of Chairman Quain and Commissioner Hanger as facilitators. I agree to be bound by all of the terms contained in the Pre-Settlement Agreement as a condition to my participation in the Settlement Conference.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

ROBIN L KRUNGOLD PARALEGAL  
PAUL BONNEY ESQUIRE  
WARD SMITH ESQUIRE  
MARY MCFALL HOPPER ESQUIRE  
NOEL H TRASK ESQUIRE  
PECO ENERGY COMPANY  
2301 MARKET STREET  
PHILADELPHIA PA 19101-8699

CHRISTOPHER B CRAIG ESQ  
SENATE DEMOCRATIC  
APPROPRIATIONS COMMITTEE  
ROOM 545 MAIN CAPITOL  
BLDG  
HARRISBURG PA 17120  
MESSENGER

KENNETH L MICKENS  
ESQUIRE  
CHARLES DANIEL SHIELDS  
ESQ  
OFFICE OF TRIAL STAFF  
P O BOX 3265  
HARRISBURG PA 17105-3265

TANYA J MCCLOSKEY  
STEVEN K STEINMETZ  
OFFICE OF CONSUMER ADVOCATE  
1425 STRAWBERRY SQUARE  
HARRISBURG PA 17120

WALTER W COHEN ESQUIRE  
ANDREW J GIORGIONE  
ESQUIRE  
OBERMAYER REBMAN MAXWELL  
& HIPPEL  
204 STATE STREET  
HARRISBURG PA 17102

ALAN J BARAK ESQUIRE  
KATHLEEN O'REILLY  
ESQUIRE  
ENVIRONMENTAL ENERGY  
PROJECT  
3700 VARTAN WAY  
HARRISBURG PA 17110

CRAIG A DOLL ESQUIRE  
214 STATE STREET  
HARRISBURG PA 17101

RANDALL V GRIFFIN ESQUIRE  
DELMARVA POWER & LIGHT CO  
800 KING STREET  
WILMINGTON DE 19899

DANIEL CLEARFIELD  
ESQUIRE  
ALAN KOHLER ESQUIRE  
ROBERT LONGWELL ESQUIRE  
212 LOCUST STREET  
SUITE 300  
HARRISBURG PA 17101

ROGER E CLARK ESQUIRE  
THE ENVIRONMENTALISTS  
905 DENSTON DRIVE  
AMBLER PA 19002-3901

DERRICK WILLIAMSON  
ESQUIRE  
DAVID KLEPPINGER ESQUIRE  
MCNEES WALLACE & NURICK  
100 PINE STREET  
P O BOX 1166  
HARRISBURG PA 17108-1166

BERNARD A RYAN JR  
ESQUIRE  
OFFICE OF SMALL BUSINESS  
ADVOCATE  
300 N SECOND STREET  
SUITE 1102  
HARRISBURG PA 17101

SAM DEFRAWI DIR NAVY RATE  
INTERVENTION  
DEPARTMENT OF NAVY  
WASHINGTON NAVY YARD  
BLDG 212 CODE 00RI  
901 M STREET NE  
WASHINGTON DC 20374-5018

WILLIAM T HAWKE ESQUIRE  
JANET L MILLER ESQUIRE  
TODD S STEWART ESQUIRE  
MALATESTA HAWKE & MCKEON  
P O BOX 1778  
HARRISBURG PA 17105-1778

LANCE HAVER  
6803 LAWNTON AVENUE  
PHILADELPHIA PA 19126

THE MCFARREN GROUP  
200 N THIRD STREET  
SUITE 1100  
HARRISBURG PA 17101

DAVID M BOONIN ESQUIRE  
NEW ENERGY VENTURES INC  
1845 WALNUT STREET  
SUITE 2525  
PHILADELPHIA PA 19103

DONALD A KAPLAN ESQUIRE  
PRESTON GATES & ELLIS  
1735 NEW YORK AVENUE  
WASHINGTON DC 20006

BRUCE A CONNELL ESQUIRE  
DUPONT POWER MARKETING INC  
600 N DAIRY ASHFORD ML-1034  
HOUSTON TX 77079

JOHN L MUNSCH ESQUIRE  
WPP COMPANY ALLEGHENY POW  
800 CABIN HILL DRIVE  
GREENSBURG PA 15601-1689

DEBORAH SWANSTROM ESQUIRE  
JOEL D NEWTON ESQUIRE  
PAUL E NORDSTROM ESQUIRE  
VERNER LIIPFERT BERNHARD  
MCPHERSON HAND  
901 15TH STREET N W  
WASHINGTON DC 20005-2301

TERRANCE FITZPATRICK ESQ  
DAVID DESALLE ESQUIRE  
RYAN RUSSELL OGDEN &  
SELTZER  
800 N THIRD STREET STE 101  
HARRISBURG PA 17102

PAUL RUSSELL ESQUIRE  
PP&L  
TWO NORTH NINTH STREET  
ALLENTOWN, PA 18101

H ALLAN KNOPP DIRECTOR  
REGULATORY AFFAIRS  
DUPONT POWER MARKETING  
P O BOX 2197 CH-1038  
HOUSTON TX 77252

BILLIE RAMSEY EXEC DIR  
ARIPPA  
1300 MARKET STREET  
LEMOYNE PA 17043

PAUL L ZEIGLER ESQUIRE  
ZEIGLER & ZIMMERMAN  
355 N 21ST STREET STE 304  
P O BOX 1080  
CAMP HILL PA 17011-3707

LINDA C SMITH ESQUIRE  
FREDERICK D OCHSENSHIRT  
DILWORTH PAZSON KALISH &  
KAUFFMAN LLP  
305 N FRONT STREET STE  
403  
HARRISBURG PA 17101-1236

MICHAEL L KESSLER  
AMERICAN ENERGY SOLUTIONS  
INC  
111 SOUTH ALFRED STREET  
ALEXANDRIA VA 22314

GARY A JEFFRIES ESQ  
CNG ENERGY SERVICES  
ONE PARK RIDGE CENTER  
PO BOX 15746  
PITTSBURGH PA 15244-0746

RUFUS L MILEY  
22 LEOPARD RUN  
GLEN MILLS PA 19342

JOHN P LAVELLE JR  
JOSEPH A DWORETZKY  
HANGLEY ARONCHICK SEGAL &  
PUDIN  
ONE LOGAN SQUARE 12TH FLOOR  
PHILADELPHIA PA 19103

USHER FOGEL ESQUIRE  
ROLAND FOGEL KOBLENZ &  
CARR LLP  
1 COLUMBIA PLACE  
ALBANY NY 12207

JOHN P ZINKAND EXEC V P  
PA PETROLEUM ASSN  
SUITE 121 BLDG 2  
2001 N FRONT STREET  
HARRISBURG PA 17102

ETHAN GIDDINGS  
217 RODMAN AVENUE  
JENKINTOWN PA 19046

SUSAN SHANAMAN  
212 N. THIRD STREET  
SUITE 203  
HARRISBURG, PA 17101

JAMES H NORRIS ESQUIRE  
ECKERT SEAMANS CHERIN &  
MELLOTT  
600 GRANT STREET 42ND FL  
PITTSBURGH PA 15219

JOELLE OGG  
GORDON J SMITH ESQUIRE  
JOHN & HENGERER  
1200 17TH STREET NW SUITE  
600  
WASHINGTON DC 20036

GERALD GORNISH ESQUIRE  
12TH FLOOR PACKARD BLDG  
111 S 15TH STREET  
PHILADELPHIA PA 19102-2678

KENNETH HURWITZ  
MAUREEN HURLEY  
VENABLE BAETJER HOWARD &  
CIVILETTI LLP  
1201 NEW YORK AVE NW SUITE  
1000  
WASHINGTON DC 20005-3917

JOHN R ORR ESQUIRE  
ONE WESTCHASE CENTER  
10777 WESTHEIMER  
SUITE 650  
HOUSTON TX 77042

ROBERT A MILLS COUNSEL  
ROBERT WEISHOAR JR ESQ  
PA RETAILERS ASSN  
100 PINE STREET BOX 1166  
HARRISBURG PA 17108-1166

BRIAN A RIDER PRES  
PA RETAILERS ASSN  
224 PINE STREET  
HARRISBURG PA 17101-  
1325

KEITH SAPPENFIELD II  
DIRECTOR OF MARKETING SUPPORT  
P O BOX 2628  
HOUSTON TX 77252-2628

NORMA ROSNER ESQUIRE  
VASTAR POWER MARKETING INC  
200 WESTLAKE PARK BLVD  
HOUSTON TX 77079

DAVID CRUTHIRDS  
ELECTRIC CLEARINGHOUSE  
INC  
1000 LOUISIANA  
SUITE 5800  
HOUSTON TX 77002-5050

CRAIG G GOODMAN ESQUIRE  
3333 K STREET NW  
SUITE 425  
WASHINGTON DC 20007

JOHN HAUCKE EXEC V P  
PA ASSN PLUMB HEAT COOL  
CONTRACTORS  
4015 JONESTOWN ROAD  
HARRISBURG PA 17109-9109

ALBERT M BENINCASA DIR  
REGULATORY AFFAIRS  
SKIPPING STONE  
46 9TH AVENUE  
SEA CLIFF NY 11579

VICKIREN S AESCHLEMAN  
DIRECTOR  
OST ENERGY INC  
300 HAMILTON BLVD STE 330  
PEORIA IL 61601

SHEILA S HOLLIS ESQ  
MARY ANN RALLS ESQS &  
STEPHANIE A SUGRUE ESQ  
1667 K STREET N W SUITE  
700  
WASHINGTON PA 20006-1608

HONORABLE STEWART J  
GREENLEAF  
SENATE BOX 203012  
HARRISBURG PA 17120-3012

MICHAEL BANTA ESQUIRE  
DANIEL W MCGILL ESQUIRE  
INDIANAPOLIS POWER & LIGHT  
ONE MINNIT CIRCLE  
INDIANAPOLIS IN 46051

EDWARD B CANNON PRESIDENT  
BLDG OWNERS & MANAGERS  
ASSN  
SUITE 1560 CENTER CITY  
TOWER  
650 SMITHFIELD STREET  
PITTSBURGH PA 15222

HONORABLE CONNIE WILLIAMS  
110 SOUTH OFFICE  
HOUSE BOX 202020  
HARRISBURG PA 17120-2020

ROBERT I FREEMAN RPA PRES  
BLDG OWNERS & MANAGERS ASSN  
TWO PENN CENTER PLAZA  
SUITE 310  
PHILADELPHIA PA 19102

SCOTT J. RUBIN  
PUBLIC UTILITY  
COUNSULTING  
3 LOST CREEK DRIVE  
SELĪNSGROVE, PA 17870

PATRICIA ARMSTRONG  
ESQUIRE  
REGINA L MATZ ESQUIRE  
JOHN A ALZAMAORA ESQUIRE  
ROBERT F YOUNG ESQUIRE  
212 LOCUST ST P O BOX  
9500  
HARRISBURG PA 17108-9500

PA. RURAL ELECTRIC ASSOCIATION  
212 LOCUST STREET  
P.O. BOX 1266  
HARRISBURG, PA 17108-1266

AUDREY VAN DYKE ASSOC  
COUNSEL  
DEPT OF NAVY  
WASHINGTON NAVY YARD BLDG  
218  
ROOM 200  
901 M STREET SE  
WASHINGTON DC 20374-5018

STEVEN P HERSHEY ESQUIRE  
PHILIP A BERTOCCI ESQUIRE  
COMMUNITY LEGAL SERVICES  
1424 CHESTNUT STREET  
PHILADELPHIA PA 19102

DEPT OF NAVY  
NAVAL FACILITIES ENGINEER  
COMMAND NAVY RATE INTERVENTION  
901 M STREET SE BLDG 212  
WASHINGTON DC 20374-5018

ANGELO P TERANA  
STATE ANALYSIS CORP  
1911 NORTH FRONT MEYER  
DRV  
SUITE 702  
ARLINGTON VA 22209

JOHN KLAUBERG ESQUIRE  
BRUCE MILLER ESQUIRE  
LEBOEUF LAMB GREEN &  
MCRAE  
125 W 55TH STREET  
NEW YORK NY 10019-5389

EDWARD G RENDELL MAYOR  
CITY OF PHILADELPHIA  
ROOM 215 CITY HALL  
PHILADELPHIA PA 19107-3295

VERONICA A SMITH DEPUTY  
EXECUTIVE DIRECTOR  
PA PUC  
P O BOX 3265  
HARRISBURG PA 17105-  
3265

JOHN GALLAGHER ESQUIRE  
MICHAEL KLEIN ESQUIRE  
LEBOEUF LAMB GREENE &  
MCRAE  
200 N THIRD STREET STE  
300  
P O BOX 12105  
HARRISBURG PA 17108-2105

G ROGER BOWERS ESQUIRE  
VINCENT WALSH JR ESQUIRE  
SEPTA  
1234 MARKET STREET  
5TH FLOOR  
PHILADELPHIA PA 19107-3780

JAMES CUNNINGHAM  
DAVID EPPLE  
PA ELECTRIC ASSOCIATION  
301 APC BLDG  
800 N 3RD STREET  
HARRISBURG PA 17102

FRANK NADOLNY  
DUQUESNE LIGHT COMPANY  
P O BOX 1930  
PITTSBURGH PA 15230-1930

LAWRENCE GODLASKY  
GPU ENERGY  
100 APC BUILDING  
800 N 3RD STREET  
HARRISBURG PA 17102

DAVID LANGER  
BEVERAGE & DIAMOND  
477 MADISON AVENUE  
NEW YORK NY 10002

DONALD A KAPLAN  
LISA M HELPERT EQS  
PRESTON GATES ELLIS &  
ROUVELAS MEEDS LLP  
SUITE 500 1735 NEW YORK  
AVENUE NW  
WASHINGTON DC 20006

STEPHEN L FELD ESQUIRE  
PA POWER COMPANY  
1 EAST WASHINGTON STREET  
PO BOX 891  
NEW CASTLE PA 16103-0891

ALFRED MILLER  
JAN FREEMAN DIR OF PUBLIC  
POLICY  
PECO ENERGY COMPANY  
2301 MARKET STREET S21-1  
PHILADELPHIA PA 19101

JOHN LITZ  
UGI UTILITIES  
400 STEWART ROAD  
P O BOX 3200  
WILKES-BARRE PA 18773-3200

EASTERN ENERGY MARKETING INC  
REGULATORY AFFAIRS MANAGER  
2800 EISENHOWER AVENUE  
ALEXANDRIA VA 22314

HONORABLE SAMUEL MCCULLOUGH  
SECRETARY  
DEPARTMENT OF COMMUNITY &  
ECONOMIC DEVELOPMENT  
433 FORUM BUILDING  
HARRISBURG PA 17120

STANLEY LASKOWSKI ACT  
REGIONAL ADMINISTRATION  
EPA  
841 CHESTNUT BUILDING  
PHILADELPHIA PA 19107

JAMIE WINEBRAKE  
US DOE  
1880 JFK BOULEVARD  
SUITE 501  
PHILADELPHIA PA 19103

DANIEL TUNNELL, PRESIDENT  
PENNSYLVANIA GAS ASSOCIATION  
800 N. 3RD STREET, 2ND FLOOR  
HARRISBURG, PA 17102

JUDITH L. MONDRE  
CITY OF PHILADELPHIA  
MUNICIPAL ENERGY OFFICE  
1401 JFK BOULEVARD  
PHILADELPHIA, PA 19102-1665

WICK HAVENS  
DIV OF AIR RESOURCE MGMT  
400 MARKET STREET 12TH FL  
P O BOX 8468  
HARRISBURG PA 17105-8468

MIKE WELSH,  
SECRETARY/TREASURER  
UTILITY WORKERS/PENNSYLVANIA  
UTILITY CAUCUS  
408-412 BROAD STREET  
JOHNSTOWN, PA 15906

EUGENE M. TRISKO  
ATTORNEY FOR UMWA  
P. O. BOX 596  
BERKELEY SPRINGS, WV 25411

DAN ROSENBLUM  
MID-ATLANTIC ENERGY PROJECT  
203 W. 22ND ST., APT. 3  
NEW YORK, NY 10011-2748

RICHARD H. COUNIHAN, VP  
GOVERNMENT AFFAIRS  
EDISON SOURCE  
13191 CROSSROADS PARKWAY  
NORTH  
CITY OF INDUSTRY, CA 91746

BILL SHANE, ESQUIRE  
440 SCHOOL STREET  
INDIANA, PA 15701

MR. GEORGE ELLIS  
PENNSYLVANIA COAL ASSOCIATION  
212 N. 3RD ST., SUITE 102  
HARRISBURG, PA 17101

MR. GEORGE EMMONS  
17 N. LANCASTER LANE  
NEWTOWN, PA 18940

MR. PHIL PATITSAS  
AIR PRODUCTS & CHEMICALS  
WINDSOR 2  
7201 HAMILTON BLVD.  
ALLENTOWN, PA 18195-1501

JAMES STEFFES DIR GOV'T AFFAIRS  
ENRON CAPITAL & TRADE RESOURCES  
1400 SMITH STREET  
ED #2408  
HOUSTON TX 77002

CHARLES ESTES  
APPALACHIAN PACIFIC  
1600 WILSON BOULEVARD  
ARLINGTON VA 22209

THOMAS BROGAN ESQUIRE  
KLETT LIEBER ROONEY & SCHORLING  
240 NORTH THIRD STREET  
SUITE 600  
HARRISBURG PA 17101-1503

JAMES BRODT  
SMITH BARNEY INC  
390 GREENWICH STREET  
5TH FLOOR  
NEW YORK NY 10013

EDWARD PERMAR  
UNIVERSITY OF PITTSBURGH  
3400 FORBES AVENUE  
PITTSBURGH PA 15260

JAMES ROYAL  
PRESIDENT & C.O.O  
NOBLE GROUP CORPORATION  
3121 NORRIS STREET  
PHILADELPHIA, PA 19121

TIMOTHY MCNULTY  
DEPT. OF ECONOMIC AND  
COMMUNITY DEVELOPMENT  
471 FORUM BUILDING  
HARRISBURG, PA 17120

RODNEY R AKERS ASST CITY SOL  
DEPT OF LAW  
313 CITY COUNTY BLDG  
414 GRANT STREET  
PITTSBURGH PA 15219

ELLIOT M. LOYLESS, P.E.  
ENERGY COST MANAGEMENT  
1901 CAMP FLORIDA ROAD  
BRANDON, FL 33510

BILL MCCUE  
MERCK & CO., INC.  
SUMNEYTOWN PIKE  
P.O. BOX 4, WP2-1  
WEST POINT, PA 19486-0004

MICHAEL WALKER  
BRADFORD STERN  
BUCHANAN INGERSOLL-COLLEGE CENTRE  
500 COLLEGE ROAD EAST  
PRINCETON, NJ 08540

PETER THOMPSON  
ANDREWS & KURTH LLP  
1701 PA AVENUE NW  
WASHINGTON DC 20006

BYRON WILLIAMSON  
ENGELHARD POWER MARKETING INC  
101 WOOD AVENUE  
ISELIN NJ 08830-0770

BRIAN HICKEY  
MED AMERICAN NATURAL RESOURCES  
2005 WEST 8TH STREET SUITE 201  
ERIE PA 16505

HARRY GELLER ESQUIRE  
PA UTILITY LAW PROJECT  
118 LOCUST STREET  
HARRISBURG PA 17101-1414

GLENN WINTER PE  
1847 RADNOR ROAD  
YORK PA 17402

ANTHONY LISANTI  
CONSOLIDATED EDISON COMPANY  
511 THEODORE FREMD AVENUE  
ROOM 112  
RYE NY 10580

JOHN MOLINDA  
STRATEGIC ENERGY LTD  
2 GATEWAY CENTER  
PITTSBURGH PA 15222

MICHAEL KARP  
31 APPALOOSA ROAD  
BELLINGHAM WA 98226

DAN DELANEY  
KIRKPATRICK & LOCKHART  
240 N. THIRD STREET  
HARRISBURG, PA 17101

AMY LEADER  
LEGISLATIVE DIRECTOR  
DECHERT PRICE & RHOADS  
30 N. 3RD STREET  
HARRISBURG, PA 17101

DEBORAH SCHACHTER  
163 SILK FARM ROAD  
CONCORD, NH 03301

ERIK HANSEN  
DELMARVA POWER  
800 KING STREET  
WILMINGTON, DE 19899

TRAVIS PEYTON, PE  
BALLINGER  
2005 MARKET ST., STE. 1500  
PHILADELPHIA, PA 19103-7088

TIMOTHY W. MERRILL, JR.  
ENSERCH ENERGY SERVICES, INC.  
PENN CENTER WEST, BLDG. 4,  
SUITE 200  
PITTSBURGH, PA 15276

FRANK K. GATES  
GREENLEE ASSOCIATES  
P.O. BOX 291  
HARRISBURG, PA 17108

JOHN V. KULIK, VP  
GOVERNMENT RELATIONS  
PA. FOOD MERCHANTS ASSN.  
1029 MUMMA ROAD  
P.O. BOX 870  
CAMP HILL, PA 17011

RALPH L. LENTZ, REGISTRAR  
CHM., POLITICAL EDUCATION COMM.  
I.B.E.W. LOCAL UNION 777  
740 ANNA MAY STREET  
YORK, PA 17404-1366

RICHARD W. BAIN  
CENTERIOR ENERGY  
5761 WEST AVENUE  
EDINBORO, PA 16412-1342

DENIS E. GEORGE, VP  
STAND ENERGY CORPORATION  
1077 CELESTIAL STREET  
ROOKWOOD BLDG., SUITE 110  
CINCINNATI, OH 45202

STEVE R. CORWELL  
ST ENERGY, INC.  
300 HAMILTON BLVD.  
SUITE 330  
PEORIA, IL 61602

RICH HEIDORN, JR.  
THE PHILADELPHIA INQUIRER  
P.O. BOX 8263  
PHILADELPHIA, PA 19101

GINNY KREITLER  
KREITLER CONSULTING  
1004 HAMPSTEAD ROAD  
WYNNEWOOD, PA 19096

NEAL K. CODY  
MAPSA  
ENERGY INVESTMENT ADVISORS  
7004 CLIFTON FOREST DRIVE  
CLIFTON, VA 20124

TROND GRENAGER, PRES./CEO  
LEBANON METHANE RECOVERY, INC.  
920 ROSSTOWN ROAD  
LEWISBERRY, PA 17339

FRANK E. SPARROW  
EQUITABLE GAS  
423 WALNUT STREET  
SUITE 220  
HARRISBURG, PA 17101

CHRISTOPHER ZETTLEMOYER  
REED SMITH SHAW & MCCLAY  
213 MARKET STREET  
P.O. BOX 11844  
HARRISBURG, PA 17108

DONNA GEHLHAART  
REGULATORY PUB. AFFRS. MGR.  
INTERNATIONAL PAPER  
320 W. MARKET ST., SUITE 600  
HARRISBURG, PA 17101

JOHN EARWOOD  
PA. DEPARTMENT OF AGING  
400 MARKET STREET  
HARRISBURG, PA 17101

SCOTT HELM  
EXPENSE AUDIT & CONSULTING  
516 KENHORST BLVD.  
READING, PA 19610

LOUIS CARTER ESQUIRE  
7300 CITY LINE AVENUE  
PHILADELPHIA PA 19151

GARY STOCKBRIDGE VP  
STEPHEN HUNTOON ESQUIRE  
HORIZON ENERGY COMPANY  
2301 MARKET STREET S20-1  
PHILADELPHIA PA 19103

TAMASIN STERNER  
PURE ENERGY  
531 W FREDERICK STREET  
LANCASTER PA 17603

DANIEL DESMOND  
SUSTAINABLE SYSTEMS RESEARCH  
1303 WHEATLAND AVENUE  
LANCASTER, PA 17603

DIANE S. MEYER  
VP - RATES & REGULATORY AFFAIRS  
PEOPLES GAS  
625 LIBERTY AVENUE  
PITTSBURGH, PA 15222-3197

JOEL BLAU REG CNS  
WHEELED ELECTRIC POWER  
32 WINDSOR COURT  
DELMAR NY 12054

DR JOHN O'BRIEN PRES  
WHEELED ELECTRIC POWER  
50 LINDBERGH BLVD  
SUITE 400  
UNIONDALE NY 11553

JOSEPH GOLDBERG  
CHIEF DEPUTY ATTORNEY GENERAL  
DIR., BUR. OF CONSUMER  
PROTECTION  
14TH FLOOR- STRAWBERRY SQUARE  
HARRISBURG, PA 17120

DAVID HUGHES  
4037 LUDWICK STREET  
PITTSBURGH, PA 15217

SUSAN WEINSTOCK  
AARP  
601 E STREET, NW  
WASHINGTON, DC 20049

ANTHONY MIRABILE  
UNITED REGIONAL ENERGY  
3200 MELLON BANK CENTER  
1735 MARKET STREET  
PHILADELPHIA, PA 19103

NORMAN H. STARK  
MACDONALD, ILLIG, JONES & BRITTON  
SUITE 700  
100 STATE STREET  
ERIE, PA 16507

DENNIS KALBARCZYK  
UTILITY RATES RESOURCES  
910 PIKETOWN ROAD  
HARRISBURG, PA 17112

JOSEPH WYDRA  
TUMAKER WILLIAMS GOVERNANCE  
RESOURCE GROUP  
P.O. BOX 88  
HARRISBURG, PA 17108

JAY LAYMAN  
CAPITAL ASSOCIATES, INC.  
200 NORTH 3RD STREET, SUITE 1402  
P.O. BOX 1085  
HARRISBURG, PA 17108-1085

ROCCO PUGLIESE  
PUGLIESE ASSOCIATES  
208 N. 3RD STREET  
SUITE 410  
HARRISBURG, PA 17101

JACK JOHNSON  
GEOPHONICS  
332 SPRINGFIELD AVENUE  
SUMMIT, NJ 07901

JOE DUDICK  
PA RURAL DEVELOPMENT COUNCIL  
506 FINANCE BUILDING  
HARRISBURG, PA 17120

ELISA J. GRAMMER  
MONIQUE PENN-JENKINS  
GRAMMER KISSEL ROBINS  
SKANCKE & EDWARDS  
1225 EYE ST., NW, STE. 1225  
WASHINGTON, D.C. 20005

WILLIAM KAHOC  
NORSTAR ENERGY  
26 TOLCHESTER LANE  
BEL AIRE, MD 21014

DAN KENNEDY  
GOVERNOR'S ACTION TEAM  
439 FORUM BUILDING  
HARRISBURG, PA 17120

ROGER ODISIO  
170 DRAKE ROAD  
BETHEL PARK, PA 15102

STEVEN B. LOUX, RESEARCH  
ASSOCIATE  
THE COMMONWEALTH FOUNDATION  
3544 NORTH PROGRESS AVENUE  
SUITE 101  
HARRISBURG, PA 17110

MARY LAYSHOCK  
DOWNES ASSOCIATES, INC.  
2129 NORTHWOOD DRIVE  
SALISBURY, MD 21801

JAMES H. CAWLEY  
RHOADS & SINON, LLP  
ONE SOUTH MARKET SQUARE  
P.O. BOX 1146  
HARRISBURG, PA 17108-1146

GLENN BERGER  
1440 NEW YORK AVENUE, NW  
SIXTH FLOOR  
WASHINGTON, D.C. 20005

ANDREW ALTMAN  
CLEAN AIR COUNCIL  
135 S. 19TH STREET  
SUITE 300  
PHILADELPHIA, PA 19103

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FALLS CHURCH, VA 22046-2735

TOM SCOTT  
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218 PINE STREET  
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HARRISBURG, PA 17108

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100 SOUTH 21ST STREET  
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HILLS DEPARTMENT STORES  
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RALPH J. WEED, CPA  
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ERIC WOYCHIK  
SI  
9901 CALODEN LANE  
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RICH LUCZKO  
LEGISLATIVE COORDINATOR  
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PITTSBURGH, PA 15236

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1216 - 16TH STREET, NW  
WASHINGTON, DC 20036

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P.O. BOX 8464  
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RICHMOND, VA 23219

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PLAINFIELD, IN 46168

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1515 MARKET STREET  
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JOE FISHER ASSOC EDITOR  
NATURAL GAS INTELLIGENCE  
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FAIRFAX VA 22033-3804

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LOMBARD IL 60148-5072

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PLUM STREET ENERGY MARKETING  
P.O. BOX 5001  
507 PLUM STREET  
SYRACUSE, NY 13204

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NORAM ENERGY  
1600 SMITH STREET  
SUITE 1161  
HOUSTON, TX 77002-7345

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1740 MAIN STREET LISBURN  
MECHANICSBURG PA 17055

FRANK FELDER SR CONSULTANT  
THE ECONOMICS RESOURCE GROUP  
1 MIFFLIN PLACE  
CAMBRIDGE MA 02138

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P O BOX 7955  
PHILADELPHIA PA 19101-7955

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CYNTHIA DATIG  
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P.O. BOX 42329  
PITTSBURGH, PA 15203

BROOKS MOUNTCASTLE  
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3700 VARTAN WAY  
HARRISBURG, PA 17110

LIZ ROBINSON EXECUTIVE  
DIRECTOR  
ENERGY COORDINATING AGENCY  
OF PHILADELPHIA  
1924 ARCH STREET  
PHILADELPHIA PA 19103

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ROOM 20 EAST WING  
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ITRON INC  
2218 N SULLIVAN ROAD  
SPOKANE WA 99216

ROBERT YOUNG  
MCQUAIDE BLASKO  
811 UNIVERSITY DRIVE  
STATE COLLEGE PA 16801

MARGARET MURDOCH MAYOR  
MUNICIPAL BLDG  
100 GARRETT ROAD  
UPPER DARBY PA 19082-3135