

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Uniform Cover and Calendar Sheet**

<p><b>1. REPORT DATE:</b> October 29, 1998</p>	<p><b>2. BUREAU AGENDA NO.</b>  OCT-98-L-107*</p>
<p><b>3. BUREAU:</b> Law</p>	
<p><b>4. SECTION(S):</b></p>	<p><b>5. PUBLIC MEETING DATE:</b>  October 30, 1998</p>
<p><b>6. APPROVED BY:</b>                   Director: Pankiw 7-5000 <i>BRP</i>                  Supervisor: Moury 7-4945 <i>KOM</i></p>	
<p><b>7. PERSONS IN CHARGE:</b>                  John A. Levin 7-5978 <i>JAL</i>                  Carl S. Hisiro 3-2812 <i>CSH</i></p>	
<p><b>8. DOCKET NO.:</b> <del>R-00973953</del>  <del>1-00989978</del></p>	<p align="right"><b>DOCKETED</b>                  NOV - 4 1998 <span style="float:right">KJR</span></p>

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

(a) PECO Energy Company; Re: Chapter 28 Electricity Generation Customer Choice and Competition Act; Capacity Issues Within the PJM Interconnection

(b) On September 21, 1998, the Commission entered an Interim Order with respect to PJM jurisdictional utilities and capacity holders to address pricing and availability problems for installed capacity within the PJM market area. On October 21, 1998, PECO filed an appeal in Commonwealth Court, claiming that the Interim Order is federally preempted and violated its due process rights. Subsequently, PECO offered to settle its lawsuit by, *inter alia*, agreeing to offer to EGSs installed capacity (after the amount of capacity associated with PECO residential customers exceeds 1,050 MW to account for contracts already completed by PECO with EGSs) at the price contained in the Interim Order for PECO residential customers for calendar year 1999 in exchange for the Commission withdrawing its Interim Order as to PECO.

(c) The Law Bureau recommends approval of the settlement agreement with PECO on the installed capacity issue and the issuance of the proposed Modification Order.

**10. MOTION BY:** Commissioner Chm. Quain **Commissioner Rolka - Yes**  
**Commissioner Brownell - Yes**  
**SECONDED:** Commissioner Bloom **Commissioner Wilson - Yes**

**CONTENTS OF MOTION:** Staff recommendation adopted  
 Statement of Commissioner David W. Rolka attached.

**DOCUMENT  
 FOLDER**

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105-3265

PECO ENERGY COMPANY;  
CHAPTER 28 ELECTRICITY  
GENERATION CUSTOMER CHOICE  
AND COMPETITION ACT; ISSUES  
WITHIN THE PJM INTERCONNECTION

PUBLIC MEETING -  
OCTOBER 30, 1998  
OCT-98-L-107\*  
DOCKET NOS. R-00973953;  
I-00980078

STATEMENT OF COMMISSIONER DAVID W. ROLKA

Before us for consideration is a settlement agreement intended to resolve an appellate action and lead to a sustained competitive capacity market. In the statement PECO agrees to offer installed capacity to licensed electric generation suppliers at the price contained in the Commission's September 21, 1998 Interim Capacity Order for PECO residential customers. In exchange, the Commission agrees to withdraw its Interim Capacity Order as to PECO. This agreement is intended to facilitate the development of a visible, liquid capacity credit market.

It is important to note that both parties have agreed that a visible, liquid capacity credit market within the PJM market area is in the public interest. It is also important to note that this agreement contains a very narrow forbearance provision. The Commission is limited only from initiating formal investigations regarding PECO's capacity sales, it is in no way precluded from conducting an investigation for good cause shown. The Commission's commitment to forbear should be matched by PECO's commitment to actively support the continuation of a visible, liquid capacity credit market within the PJM market area well beyond March 1999.

Oct. 30 1998  
DATED

David W. Rolka  
COMMISSIONER DAVID W. ROLKA

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105-3265

PECO ENERGY COMPANY;  
CHAPTER 28 ELECTRICITY  
GENERATION CUSTOMER CHOICE  
AND COMPETITION ACT; ISSUES  
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Oct. 30 1998  
DATED

David W. Rolka  
COMMISSIONER DAVID W. ROLKA

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
October 30, 1998

IN REPLY PLEASE  
REFER TO OUR FILE

R-00973953  
I-00980078

TO ALL PARTIES

PECO Energy Company

Re: Chapter 28 Electricity Generation Customer Choice and Competition Act;  
Capacity Issues Within the PJM Interconnection

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To Whom It May Concern:

This is to advise you that a Modification Order has been adopted by the  
Commission in Public Meeting on October 30, 1998 in the above entitled proceeding.

A Modification Order has been enclosed for your records.

Very truly yours,

James J. McNulty NOV 03 1998  
Secretary

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Enclosure  
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PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held October 30, 1998

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
David W. Rolka, Statement attached  
Nora Mead Brownell  
Aaron Wilson, Jr.

PECO Energy Company : Docket No. R-00973953  
: :  
Re: Chapter 28 Electricity : Docket No. I-00980078  
Generation Customer Choice :  
and Competition Act; Capacity :  
Issues Within the PJM Interconnection :

**MODIFICATION ORDER**

**BY THE COMMISSION:**

On September 21, 1998, the Commission entered an Interim Order with respect to a number of jurisdictional utilities, including PECO Energy Company ("PECO"), at the above docket numbers to address, inter alia, apparent problems raised by the imperfect market for installed capacity needed to serve end-use retail electric customers within the Pennsylvania-New Jersey-Maryland Interconnection L.L.C. ("PJM") market area. We did so in order to ensure that the Commonwealth's transition to retail electric choice meets the statutory schedule set forth in the Electricity Generation Customer Choice and Competition Act ("Electricity Competition Act").

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As we noted in that Interim Order, it is our strong preference that the parties resolve these matters in a spirit of timely cooperation. However, because of the imminence of the January 1, 1999 statutory phase-in of retail electric choice, and given, at that time, the non-resolution of the capacity issue after several meetings in September 1998 between PJM and the market participants, and the continuing appearance of similar difficulties in the East Central Area Reliability Coordination Agreement ("ECAR") market area, we believed that we had no choice but to act affirmatively to meet our statutorily-mandated duties to implement retail access under section 2806(b) of the Electricity Competition Act. We noted at the time that we took this action as an Interim Order so as to leave "open the possibility of consideration of any reasonable and acceptable alternative arrived at by the PJM membership meeting in Valley Forge on September 17, 1998." Interim Order at 2.

On October 21, 1998, PECO filed a Petition for Review in Commonwealth Court seeking appellate review of the Interim Order on the grounds that the subject matter of the order (with respect to installed capacity transfers and pricing) is preempted by the Federal Energy Regulatory Commission ("FERC") pursuant to section 201(b)(1) of the Federal Power Act, 16 U.S.C. § 824(b)(1) and that the order violates PECO's right to due process under the United States and Pennsylvania Constitutions.

Since the issuance of the Interim Order and even before the filing of PECO's appeal, the Commission has become aware that PJM and its members have finalized proposed tariff changes and procedures which will authorize PJM to facilitate a visible,

competitive capacity market for the purchase and sale of Capacity Credits, as that term is defined in the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area ("RAA"), on a day ahead and month-to-month basis. The creation of a visible capacity market is intended to address concerns of installed capacity market liquidity and transparency and is considered essential by both PJM and this Commission to facilitate retail choice in PJM's market area for 1999.

The capacity credit market, which will be administered and operated by the Office of the Interconnection ("OI"), will allow marketers to purchase Capacity Credits at market clearing prices. Capacity Credits are entitlements to generation capacity that may be used on a MW for MW basis to meet a marketer's installed capacity requirements under the RAA. The capacity credit market establishes market clearing prices through an auction process, and also permits Capacity Credits to be bought and sold bilaterally. The PJM capacity credit market proposal was unanimously approved by its membership on October 14, 1998, filed with FERC on or about the same time, and became effective on or about October 15, 1998.<sup>1</sup>

On or about October 22, 1998, PECO and this Commission entered into settlement discussions to resolve amicably the above appeal. On October 29, 1998, a settlement agreement was executed by Commission Staff and PECO, which agreement has been

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<sup>1</sup> Another proposal approved on October 14, 1998 by the RAA/Reliability Committee will, when implemented, provide for mandatory Load Serving Entity participation in the day-ahead capacity credit market to the extent of remaining uncommitted generation resources or unfilled deficiencies, so as provide a more liquid market and prevent capacity credit hoarding.

attached to this Modification Order. The salient terms of the settlement agreement are as follows:

1. When and to the extent that the total amount of capacity associated with PECO residential customers that have actually switched to Electric Generation Suppliers (“EGSs”), including PECO’s own affiliate Exelon Energy, exceeds 1050 MW,<sup>2</sup> PECO will offer Capacity Credits to EGSs that serve PECO residential customers at a price of \$19.72 per kW/year prior to June 1, 1999, and at a price of \$22.41 per kW/year from June 1, 1999, through December 31, 1999.<sup>3</sup> The amount of Capacity Credits offered to any one EGS will be limited to the amount of such EGS’s daily Accounted-For Obligation under the RAA for its PECO residential customers.

2. PECO will provide this Commission for each calendar quarter through the last quarter of 1999, a copy of its quarterly report of transactions filed with FERC that shows PECO’s Capacity Credit transactions.

3. The parties agree that they will support the visible, liquid Capacity Credit market that has been developed within PJM.

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<sup>2</sup> The 1,050 MW threshold recognizes the fact that PECO has been actively selling capacity into the PJM market and has in fact completed contracts for more than 1,850 MW of capacity for wholesale delivery in 1999 as of the date the attached settlement agreement was executed. In particular, PECO has sold capacity in PJM through a Request for Proposals, the open market, and the newly created visible, liquid capacity credit market. It is also worth noting that while existing contracts with Exelon Energy, PECO’s affiliated EGS entity, were not used to develop the 1,050 MW threshold amount, capacity associated with residential customers who actually switch to Exelon Energy will be included in the calculations to determine when the threshold level has been met, triggering PECO’s agreement to sell capacity at the \$19.72 per kW/year price prior to June 1, 1999, and at the \$22.41 per kW/year price from June 1, 1999, through December 31, 1999.

<sup>3</sup> This settlement does not limit the ability of PECO or any EGS to enter into agreements with any person for the purchase or sale of Capacity Credits under any other prices, terms or conditions.

4. PECO will withdraw its Petition for Review filed with the Commonwealth Court, and the Commission agrees that the settlement resolves its concerns regarding PECO's installed capacity pricing practices.

Accordingly, as this agreement resolves the Commission's concerns as to PECO with respect to the installed capacity issue in the PJM market for the calendar year 1999, the Commission withdraws its Interim Order as to PECO. The Interim Order remains in effect as to all other Pennsylvania jurisdictional entities with installed capacity within the PJM area other than PP&L, Inc., which previously entered into a similar settlement with the Commission; THEREFORE,  
IT IS ORDERED:

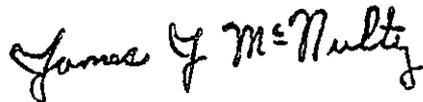
1. That the Commission herewith approves the attached settlement agreement with PECO relating to the above captioned dockets;

2. That with respect to the Commission's September 21, 1998 Interim Order regarding installed capacity pricing, particularly ¶ 1 of that order, such Interim Order is hereby withdrawn as to PECO.

3. That the provisions contained in the attached settlement agreement and our withdrawal of the Interim Order in consideration of that settlement as it pertains to PECO, along with the market amelioration measures taken by PJM and its members as described in this Order, constitute a full and complete satisfaction and accord of our installed capacity concerns with respect to PECO for the calendar year 1999.

4. That a copy of this Order, with the attached settlement agreement, shall be served upon all Commission jurisdictional electric distribution companies, electricity generation suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, the Federal Energy Regulatory Commission, the United States Department of Justice's Antitrust Division, and the Federal Trade Commission.

BY THE COMMISSION



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: October 30, 1998

ORDER ENTERED: **OCT 30 1998**

SETTLEMENT AGREEMENT  
BETWEEN PECO ENERGY  
AND  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION  
DOCKET NOS. R-00973953 AND I-00980078

This Settlement Agreement is entered into on October 28, 1998 by and between PECO Energy Company ("PECO") and the Pennsylvania Public Utility Commission ("Commission").

WHEREAS the Commission entered an Order (the "Capacity Order") on September 21, 1998 at the above dockets that in part directed holders of installed capacity resources within the meaning of the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") Reliability Assurance Agreement ("RAA"), including PECO, to release/offer capacity during 1999 at a presumptive \$19.72 per kilowatt-year level, absent PJM directed capacity deficiency findings; and

WHEREAS on September 24, 1998, Pennsylvania Power & Light Company brought an action against the Commission in Federal District Court at Docket No. 98-5083 asking the Court for: (1) a declaration that the Capacity Order on its face attempts to regulate matters within exclusive federal jurisdiction, and therefore is preempted in its entirety; and (2) a preliminary and permanent injunction against any action by the Commission to implement or enforce the Capacity Order; and

WHEREAS PECO Energy was contemplating bringing a similar action as well as pursuing other possible appeals from the Commission's Capacity Order, and on October 21, 1998 PECO filed a Petition for Review of the Capacity Order with the Commonwealth Court of Pennsylvania; and

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WHEREAS PECO and the Commission seek to settle this dispute and avoid further litigation, without such settlement constituting an admission or waiver of either Party's legal position as provided in Paragraph 7;

WHEREAS PECO has been actively offering to sell capacity in PJM through an RFP, the open market, and the newly created "visible liquid Capacity Credit market"; and

WHEREAS PECO has, as of the date of this Agreement, completed contracts for more than 1850 MW of wholesale capacity for delivery in 1999 as a result of the aforementioned activity; and

WHEREAS nothing in those contracts precludes any or all of that capacity from being used to serve residential customers in PECO Energy's territory; and

WHEREAS the Commission does not expect PECO in any way to modify or rescind those contracts; and

WHEREAS additional contracts may be completed under which PECO would sell capacity that could be used to serve residential customers in PECO's territory for the year 1999.

WHEREFORE, PECO AND THE COMMISSION AGREE AS FOLLOWS:

1. Pursuant to its market-based rate tariff on file with the Federal Energy Regulatory Commission ("FERC") and pursuant to individual service agreements to be filed with FERC as required under that market-based rate tariff, PECO will offer to sell at wholesale Capacity Credits as defined in Section 2.3 of Schedule 11 to the Operating Agreement of the PJM Interconnection, L.L.C. ("Capacity Credits") to Load Serving Entities that are Electric Generation Suppliers ("EGSs") licensed under the

Pennsylvania Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. 2801, et seq., under the following terms and conditions:

a. PECO will, on a weekly basis through March 31, 1999, quantify the amount of PJM installed capacity requirement which is associated with its PECO Residential Customers that have contracted with an EGS; and

b. PECO will report this data to the Commission weekly on a strictly confidential basis; and

c. When and to the extent that the total amount of capacity associated with PECO Residential Customers that have actually switched to an EGS (including Exelon Energy) exceeds 1050 MW, then PECO will offer wholesale Capacity Credits under the terms and conditions of this Agreement for sale to EGSs for use to serve additional PECO Residential Customers, and PECO will notify the Commission when this condition has been met; and

d. For Capacity Credits to be offered under Paragraph 1c above and to be delivered between January 1, 1999 and June 1, 1999, the price of such Capacity Credits will be at \$54.03 per megawatt-day (\$19.72 per kilowatt-year) for increments of not less than 0.1 megawatt and not less than one day; and

e. For Capacity Credits to be offered under Paragraph 1c above and to be delivered between June 1, 1999 and December 31, 1999, to reflect the revised definition of Capacity Credits in Article 7 and Schedule 7 of the RAA, the price of such Capacity Credits will be at \$61.40 per megawatt-day (\$22.41 per kilowatt-year) for increments of not less than 0.1 megawatt and not less than one day; and

f. The EGS must utilize, and demonstrate to PECO that it is so utilizing, the Capacity Credits purchased pursuant to PECO's offer herein to serve customers who receive electric distribution service under the residential rate schedules (Rates R and RH, and associated OP load to the extent that service of that OP Load requires Capacity Credits) of PECO's General Tariff Electric on file with the Commission (collectively, "PECO Residential Customers") and who switch from PECO's provider of last resort service and contract for service from the EGS after the date the condition in Paragraph 1c is met (PECO agrees that disputes under this Paragraph 1f may be brought before the Commission); and

g. For the period from January 1, 1999 prior to April 1, 1999, the amount of Capacity Credits offered to any one EGS will be limited to the amount of such EGS's daily Accounted-For Obligation under the RAA for its PECO Residential Customers who switch from PECO's provider of last resort service and contract for service from the EGS after the date the condition in Paragraph 1c is met; and

h. For the period from April 1, 1999 through December 31, 1999, the amount of Capacity Credits offered to any one EGS will be limited to the amount of such EGS's daily Accounted-For Obligation under the RAA for its PECO Residential Customers who switch from PECO's provider of last resort service and contract for service from the EGS after the date the condition in Paragraph 1c is met, but shall not exceed such EGS's obligation on March 31, 1999; and

i. Any disputes under this offer will be resolved in accordance with the procedures under the PECO market-based rate tariff and the service agreement under that tariff with the individual EGS; and

j. PECO's offer to sell Capacity Credits hereunder expires on March 31, 1999, provided the EGS complies with applicable agreements, tariffs and Commission regulations requiring PECO to be notified of a PECO Residential Customer's selection of the EGS 16 days prior thereto (March 15, 1999 at 5:00 p.m., Eastern Standard Time); and

k. PECO reserves its right to withdraw the offer under this Paragraph 1 if the FERC or any court or agency of competent jurisdiction determines that this offer or this Agreement violates applicable law or regulations or requires that it be modified or conditioned; and

l. Nothing in the offer under this Paragraph 1 is intended to limit the ability of PECO or any EGS to enter into agreements with any entity at any time for the purchase or sale of Capacity Credits under prices, terms, conditions other than those contained in this Paragraph 1.

2. PECO will provide to the Commission for each calendar quarter through the last quarter of 1999 a copy of its quarterly report of transactions filed with the FERC pursuant to the *FERC's Order Conditionally Accepting for Filing Market-Based Rates*, 74 F.E.R.C. ¶ 61,336 (1996).

3. This Settlement Agreement is binding and valid upon its execution by the Parties. PECO's obligations under Paragraph 1 of this Agreement will become effective upon the completion of the Commission's obligations under this Paragraph 3 and Paragraph 4 of this Agreement. At the first public meeting of the Commission following execution of this Agreement, the Commission will (a) approve and ratify this Settlement

Agreement; and (b). withdraw the Capacity Order in its entirety as to PECO and take no further action to apply or enforce the Capacity Order or any of its terms as to PECO.

4. This Agreement resolves all of the Commission's concerns with respect to the subject matter of the Capacity Order with respect to PECO for the calendar year 1999, and the Commission will immediately terminate or cause to cease any related investigation of PECO and will not initiate any formal investigation pertaining to PECO's activity related to Capacity Credit sales made for 1998 or 1999. The Commission may, within its authority, informally investigate PECO's actions with respect to the subject matter of the Capacity Order, but the Commission shall not initiate any proceeding before it or another agency or court as a consequence of such informal investigation, and the Commission shall not share any information that it obtains in connection with its informal investigation with another party, entity, or agency. Upon execution of this Agreement, the Commission will take no action to apply or enforce the Capacity Order or any of its terms as to PECO. If the Commission or its representatives have formally or informally requested any other government agency, including but not limited to the FERC, the United States Department of Justice, the Federal Trade Commission, or the Office of the Attorney General of the Commonwealth of Pennsylvania, to initiate any proceeding or investigation with respect to such matters, within 5 business days after execution of this Agreement the Commission shall notify such government agency of this Agreement and shall provide a copy of this Agreement to such government agency. The Parties acknowledge that PECO's actions in compliance with this Settlement Agreement are protected under state action immunity from the antitrust laws because

those actions are undertaken pursuant to clearly articulated state policies and are actively supervised by the Commission.

5. PECO and the Commission agree that they will support the visible, liquid Capacity Credit market that has been developed within PJM.

6. PECO will offer for sale during 1999 any unsold or uncommitted Capacity Credits in the PJM Daily Capacity Credit Market as that Market is defined in Paragraph 2.9 of Schedule 11 to the Operating Agreement of the PJM Interconnection, L.L.C. Nothing in this Agreement is intended to preclude PECO from participating in any other PJM Capacity Credit market or engaging in sales of Capacity Credits or other products that require the commitment of capacity outside of the PJM Capacity Credit markets.

7. The Parties acknowledge that their actions pursuant to this Agreement are undertaken on an entirely voluntary basis and that this Agreement is made without admission against or prejudice to any factual or legal position which any Party has asserted or may assert. No Party may cite, refer, or rely on this Agreement or the offer set forth in Paragraph 1 as precedent in a proceeding, other than a proceeding to enforce an obligation under this Agreement.

8. PECO will be released from all obligations under this Agreement, if the Capacity Order is:

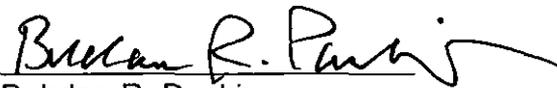
a. Modified, vacated, or withdrawn, other than in accordance with this Agreement, or other than pursuant to settlement or compromise with one or more Pennsylvania public utilities; or

b. Not enforced by the Commission.

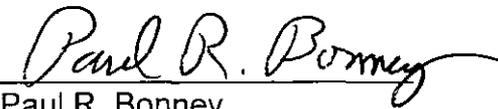
9. The Parties will cooperate to support and defend this Agreement if it is challenged before the FERC or any court or agency of competent jurisdiction. If a complaint or protest with respect to the offer set forth in Paragraph 1 is filed with the FERC, the Commission will intervene in such proceeding to support approval of the terms set forth herein.

10. Upon the completion of the Commission's obligations under Paragraphs 3 and 4 and upon the Commission's Order approving and ratifying this Settlement Agreement becoming final, without modification, and no longer subject to appeal, PECO will within 5 business days withdraw its Petition for Review of the Capacity Order with the Commonwealth Court.

11. This Agreement is not intended to confer and does not confer any benefits or rights to any person not a named party hereto, nor may anyone not a party to this Agreement initiate an action or proceeding to seek the enforcement of any obligation of any Party under this Agreement.

By:   
Bohdan R. Pankiw  
Karen Oill Moury  
John A. Levin

Attorneys for the Pennsylvania Public  
Utility Commission

By:   
Paul R. Bonney

Attorney for PECO Energy Company

Dated: October 28, 1998

MARYMICHAEL O SKUBEL ESQUIRE  
FEDERAL TRADE COMMISSION  
ROOM 328  
SIXTH & PENNSYLVANIA AVE NW  
WASHINGTON DC 20580

CONSTANCE K ROBINSON  
DIRECTOR OF OPERATIONS  
US DEPARTMENT OF JUSTICE  
ANTI-TRUST DIVISION  
950 PA AVE NW ROOM 321  
WASHINGTON DC 20530

DAVID P BOERGERS SECRETARY  
FEDERAL ENERGY REGULATORY  
COMMISSION  
888 FIRST ST NE  
WASHINGTON DC 20426

J. ALAN CRUTTENDEN ESQUIRE  
GARY M. JENNIFRIES ATTORNEY  
ONE PARK RIDGE CENTER  
P O BOX 11146  
PITTSBURGH PA 15244-0746

CNG RETAIL SERVICES CORP  
CNG TOWER  
625 LIBERTY AVENUE  
PITTSBURGH PA 15222

DAVID J BONENBERGER  
JESSE A DILLON ESQUIRE  
PA POWER & LIGHT COMPANY  
TWO NORTH NINTH STREET  
ALLENTOWN PA 18101

JOHN G. REEK ATTORNEY  
VICKI REN AESCHLEMAN  
QST ENERGY INC  
300 HAMILTON BLVD STE 330  
PEORIA IL 61602

STEPHANIE A SUGRUE ESQ  
DUANE MORRIS & HECKSCHER  
1667 K NORTHWEST STE 700  
WASHINGTON DC 20006

LARRY GUNN ATTORNEY  
KEITH M SAPPENFIELD II  
NORAM ENERGY MANAGEMENT  
1600 SMITH STREET  
HOUSTON TX 77002-7345

MICHAEL J CONNOLLY ESQUIRE  
GPU ADVANCED RESOURCES INC  
PO BOX 1911  
MORRISTOWN NJ 07962-1911

PHILIP M MARSTON ESQUIRE  
COUNSEL FOR XENERGY INC  
LAW OFFICES PHILIP MARSTON  
218 NORTH LEE STREET 3RD FL  
ALEXANDRIA VA 22314

SCOTT R MCCORRY VICE PRESIDENT  
BRUIN ENERGY INC  
P O BOX 623  
BERWYN PA 19312

CRAIG P. WELLS ESQUIRE  
214 STATE STREET  
HARRISBURG PA 17101-1132

HENRY E REICH JR ESQUIRE  
ELLIOT GILL ESQUIRE  
EQUITABLE POWER SERVICES  
COMPANY  
420 BOULEVARD OF THE ALLIES  
PITTSBURGH PA 15219

STEPHEN L FELD ATTORNEY  
FIRST ENERGY CORP  
76 SOUTH MAIN STREET  
AKRON OH 44308-1890

JAMES F. MELIA ESQUIRE  
KIRKBERGER & LOCKHART LLP  
PAYNE-SMITHMAKER BUILDING  
240 N 3RD STREET  
HARRISBURG PA 17101-1507

HUGH M DAVENPORT ESQUIRE  
TROUTMAN SNADERS LLP  
600 PEACHTREE STREET NE  
SUITE 5200  
ATLANTA GA 30308-2216

CHRISTINE PALLENIK ATTY  
DUKE ENERGY TRADING &  
MARKETING  
10777 WESTHEIMER SUITE 650  
HOUSTON TX 77077

CHRISTIAN A FARMAKIS ATTY  
BARST CANNLAND CLEMENTS &  
ZOMNIR PC  
TWO GATEWAY CENTER  
PITTSBURGH PA 15222

ROBERT J CASSANDRO  
ESQUIRE  
WHEELED ELECTRIC POWER CO  
50 CHARLES LINDBERGH BLVD  
SUITE 207  
UNIONDALE NY 11553

PAUL R BONNEY ASST GENERAL  
COUNSEL  
PECO ENERGY COMPANY  
2301 MARKET STREET S23-1  
PHILADELPHIA PA 19103

SHAWN P LEYDEN VP  
ENERGIS RESOURCES INC  
499 TECHNALL STREET  
FIFTH FLOOR  
EDISON NJ 08837

MICHAEL A DANDREA V P  
PATRICIA J CLARK ESQUIRE  
ALLEGHENY ENERGY  
SOLUTIONS  
1 NORTH SHORE CENTER  
12 FEDERAL STREET  
PITTSBURGH PA 15212

GEORGE M GALLOWAY ATTY  
STOEL RIVES LLP  
SUITE 2300  
900 SW FIFTH AVE  
PORTLAND OR 97204-1268

CAROL REES ATTORNEY  
JOHN L REHSCH ATTORNEY  
WEST PENN POWER COMPANY  
800 CABIN HILL DRIVE  
GREENSBURG PA 15601

JAMES R POPE ESQUIRE  
1000 EAST MAIN STREET  
PLAINFIELD IN 46168

BRENDAN P BOVAIRD ESQUIRE  
MARK C MORROW ESQUIRE  
KENT D MURPHY ESQUIRE  
UGI ENERGY SERVICES INC  
460 NORTH GULPH ROAD  
KING OF PRUSSIA PA 19406

MR HAY SIBBY ATTY  
DETROIT MI  
2000 SECOND AVENUE  
688 WCB  
DETROIT MI 48226

MS PAULINE DOOHAN ATTY  
MCN ENERGY GROUP INC  
500 GRISWOLD STREET  
DETROIT MI 48226

MICHAEL L KESSLER VP  
AMERICAN ENERGY SOLUTIONS  
867 BERKSHIRE BLVD STE 101  
WYOMISSING PA 19610

DENNIS F MCKINS ESQUIRE  
ZEIGLER COAL HOLDING CO  
50 JEROME LANE  
FAIRVIEW HEIGHTS IL 62208

DAVID A MIKELONIS ATTY  
212 WEST MICHIGAN AVENUE  
JACKSON MI 49201

JAMES J SEELEY ESQUIRE  
163 WEST COMMERCE STREET  
BRIDGETON NJ 08302

DOUGLAS A OGLESBY VP  
345 CALIFORNIA STREET  
32ND FLOOR  
SAN FRANCISCO CA 94104

HAROLD T JUDD  
CHIEF COUNSEL  
ONE CAPITOL STREET  
CONCORD NH 03301

SHAWN HUEY  
REGIONAL DIRECTOR  
230 SOUTH TYRON STREET  
CHARLOTTE NC 28202

JAMES HAYNES DIRECTOR  
DUKES COMPANY  
230 S TAYLOR STREET STE 200  
CHARLOTTE NC 28202

JAMES CAWLEY ESQUIRE  
JAN PADEN ESQUIRE  
RHODS & SINON  
DAUPHIN BANK BLDG 12TH FL  
ONE S MARKET SQUARE  
HARRISBURG PA 17108-1146

A GILLIS ALLEN II  
ALLEN AND ASSOCIATES  
CHARTERED  
P O BOX 990 207 DOWNTOWN  
PLAZA  
SALISBURY MD 21803-0990

KEVIN L  
READ W COMSTOCK  
ROBERT H HILLMAN V P SALES &  
MARKETING  
MILCON BROS - SERVICES CORP  
3030 EAST 11TH FREEWAY  
HOUSTON TX 77027

EMMITT C HOUSE  
READ W COMSTOCK  
SHARON M HILLMAN SR V P  
MC SQUARED INC  
701 EAST 22ND STREET  
LOMBARD IL 60148

NORMAN JAMES KENNARD ESQ  
TODD STEWART ESQUIRE  
WILLIAM T HAWKE ESQUIRE  
MALATESTA HAWKE & MCKEON  
P O BOX 1778  
HARRISBURG PA 17105

RUSSELL A BRITCA ESQUIRE  
ANDREW D LBS ESQUIRE  
ANTHONY C ADONIZIO ESQUIRE  
OTTO HOEHLER ESQUIRE  
212 LOCUST STREET  
P O BOX 1111  
HARRISBURG PA 17108-1266

DANIEL CLEARFIELD ESQUIRE  
ALAN KOHLER ESQUIRE  
WOLF BLOCK SCHORR SOLIS-  
COHEN  
212 LOCUST STREET STE 300  
HARRISBURG PA 17101

FRANK A SCHILLER ESQUIRE  
VIRGINIA ELECTRIC & POWER  
COMPANY  
701 EAST CARY STREET  
RICHMOND VA 23219

JOSEPH LYBRETZKY ESQUIRE  
HARLENE WENCHICK SEGAL &  
PUBLIN  
ONE LOCUST SQUARE 12TH FL  
PHILADELPHIA PA 19103-6933

DAVID M BOONIN ESQUIRE  
1845 WALNUT STREET  
SUITE 2525  
PHILADELPHIA PA 19103

NORMAN H STARK ESQUIRE  
MACDONALD ILLIG JONES &  
BRITTON  
100 STATE STREET  
ERIE PA 16507-1498

LAURENCE J BRUNAS SR ATTY  
SYNERGY ENERGY SERVICES & GENERAL  
COUNSEL  
PHILADELPHIA PA  
800 WEST 11TH AVENUE  
PHILADELPHIA PA 19122

JOHN HERBERT ATTORNEY  
DOUG MACLEAN ATTORNEY  
ELECTRIC CLEARINGHOUSE INC  
1000 LOUISIANA SUITE 5800  
HOUSTON TX 77002

RICHARD GREENE ESQUIRE  
REID & PRIEST LLP  
40 WEST 57TH STREET  
NEW YORK NY 10012

KATHLEEN L. JONES ESQUIRE  
DAVID H. FELDMAN ESQUIRE  
111 MARKET PLACE  
SUITE 111  
BALTIMORE MD 21201

WILLIAM J LAVELLE ESQUIRE  
2301 GRANT BUILDING  
PITTSBURGH PA 15219-2383

BRADFORD M STERN ESQUIRE  
BUCHANAN INGERSOLL  
500 COLLEGE ROAD EAST  
PRINCETON NJ 08540

DENBY LEE DUFF ADMINISTRATOR  
COLUMBIA ENERGY POWER MARKETING  
CORPORATION  
6905 CARLANT MILLS ROAD SUITE B  
COLUMBIA MD 21045

JON SILVA  
EDISON SOURCE  
13191 CROSSROADS PARKWAY  
NORTH SUITE 405  
CITY OF INDUSTRY CA 91746

JEFFREY T SIMPSON  
ENERGY SALES COORDINATOR  
SHIPLEY OIL COMPANY INC  
550 EAST KING STREET  
P O BOX 946  
YORK PA 17405

USHER FORT ESQUIRE  
ROLAND FORT ROBLENZ &  
PETROCCIO LLP  
1 COLUMBIA PLACE  
ALBANY NY 12207

JANET LUSSENHOP  
ENERGY COOPERATIVE ASSN OF PA  
1924 ARCH STREET  
PHILADELPHIA PA 19103

GARY A MORGANS ESQUIRE  
THOMAS BARLETTA ESQUIRE  
STEPHENS & JOHNSON  
1330 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036-1795

GREGG ROBINSON VICE PRESIDENT  
FCI SERVICES INC  
417 WALNUT STREET  
HARRISBURG PA 17101-1902

SCOTT SPIEWAK VICE PRESIDENT &  
GENERAL COUNSEL  
METROMEDIA ENERGY INC  
3 FAIRWAY LANE  
OLD TAPPAN NJ 07675

MICHAEL T BAKAS MANAGER  
ENERGY SERVICE  
NORTHEAST ENERGY SERVICES INC  
NORESKO POINT WEST PLACE  
111 SPEEN STREET SUITE 500  
FRAMINGHAM MA 01701

STEVEN A. RYAN DIRECTOR OF  
REGULATORY PLANNING  
COMMERCIAL MARKETING INC  
ONE MAIN STREET P O BOX 425-  
099  
CAMBRIDGE MA 02142-0003

DOUGLAS E FRIEDMAN ESQUIRE  
AMERADA HESS CORPORATION  
1 HESS PLAZA 6TH FLOOR  
WOODBRIIDGE NJ 07095

MICHAEL F DEBERDINE III  
JEROME H RHOADS  
T/A RHOADS ENERGY CORP  
1300 LOOP ROAD  
LANCASTER PA 17601

MATTHEW J FICARDI ESQUIRE  
PLUM STREET MARKETING INC  
507 PLUM STREET  
SYRACUSE NY 13204

JAY MOLYNEAUX ESQUIRE  
FLORIDA POWER & LIGHT  
700 UNIVERSE BLVD  
PO BOX 14000  
JUNO BEACH FL 33408-0420

MICHAEL GANG ESQUIRE  
MORGAN LEWIS & BOCKIUS  
ONE COMMERCE SQUARE  
417 WALNUT STREET  
HARRISBURG PA 17101-1904

ROBERT A RENZO ESQUIRE  
RHOADS & STONER  
15 NORTH LIME STREET  
LANCASTER PA 17602

WILLIAM O STOUT MANAGER  
MARKETING SERVICES  
PENNSYLVANIA POWER CO  
P O BOX 891  
NEW CASTLE PA 16103-0891

LORI SPENCE ESQUIRE  
CINERGY SERVICES INC  
1000 EAST MAIN STREET  
PLAINFIELD IN 46168

CORTLAND T CHOATE JR ESQ  
2800 POSTVILLE PIKE  
P O BOX 10001  
READING PA 19440-0001

MATTHEW J RYAN ESQUIRE  
JOHN W NILON ESQUIRE  
KASSAB ARCHBOLD & O'BRIEN  
214 NORTH JACKSON STREET  
P O BOX 626  
MEDIA PA 19063

PETER J SCANLON ESQUIRE  
NATIONAL FUEL RESOURCES INC  
P O BOX 2081  
ERIE PA 16512

MICHAEL SPONTANEOUS MANAGER  
PETROLEUM MANUFACTURING  
CORPORATION POWER MARKETING  
CORPORATION  
1330 POST OAK BLVD 20TH FL  
HOUSTON TX 77056

RICHARD M EARLY SENIOR COUNSEL  
DAVID R PELOQUIN JURISDICTIONAL  
CONSULTANT  
SELECT ENERGY  
107 SELDEN STREET  
BERLIN CT 06037

KATHY T PUCKETT SENIOR COUNSEL  
SHELL ENERGY SERVICES CO LLC  
200 N DAIRY ASHFORD  
HOUSTON TX 77079

EVANNE MOFFITT & HECKSCHER LLP  
301 N FRANKLIN STREET 5TH FLOOR  
HARRISBURG PA 17108-1003

BRUCE C ROSENTHAL ESQUIRE  
ROSENN JENKINS & GREENWALD  
15 SOUTH FRANKLIN STREET  
WILKES-BARRE PA 18711

KIRK RAMSAUER ESQUIRE  
NEW ENGLAND ELECTRIC SYSTEM  
25 RESEARCH DRIVE  
WESTBORO MA 01581

BRIDGET K RAPOZA ESQUIRE  
BLACKWELL SANDERS PEPER &  
MARTIN  
13710 FNB PARKWAY STE 200  
OMAHA NE 68154

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

MARTIN J CERULLO ESQUIRE  
CERULLO DATTE & WALLBILICH  
450 W MARKET STREET  
GARFIELD SQUARE  
POTTSVILLE PA 17931

JOHN GROEBER ESQUIRE  
KAGEY ALBERT & DIEHL  
849 HARMON AVENUE  
PO BOX 23041  
COLUMBUS OH 43223-0041

ERIC J. HOFFMAN PRESIDENT  
CITIZENS ELECTRIC CO OF  
LEWISBURG  
1775 INDUSTRIAL BLVD  
LEWISBURG PA 17837

SCOTT L GUIBORD LEGAL  
METROPOLITAN EDISON COMPANY  
D/B/A GPU ENERGY  
300 MADISON AVENUE  
MORRISTOWN NJ 07962

SCOTT L GUIBORD LEGAL  
PENNSYLVANIA ELECTRIC CO  
D/B/A GPU ENERGY  
300 MADISON AVENUE  
MORRISTOWN NJ 07962

WYATT F MORRISON SECRETARY AND  
TREASURER  
SAFE HARBOR WATER POWER CORP  
1 POWERHOUSE ROAD  
CONESTOGA PA 17516-9651

ROLAND PIRCE JR BORO SEC  
BOROUGH OF ST CLAIR  
39 NORTH SECOND STREET  
ST CLAIR PA 17970

ALLAN W HOLMAN JR ESQUIRE  
BOROUGH OF DUNCANNON  
16 EAST MAIN STREET  
NEW BLOOMFIELD PA 17068

JAY S PIPER PRESIDENT  
MONONGAHELA POWER COMPANY  
1310 FAIRMONT AVENUE  
FAIRMONT WV 26554

JOSEPH HRACH PRESIDENT  
PENNSYLVANIA POWER COMPANY  
ONE EAST WASHINGTON STREET  
P O BOX 891  
NEW CASTLE PA 16103

D LOUIS PEOPLES VICE CHIEF  
EXECUTIVE OFFICER  
PIKE COUNTY LIGHT & POWER CO  
ONE BLUE HILL PLAZA  
PEARL RIVER NY 10965

DOUGLAS F WINTERFIELD  
BOROUGH OF SCHUYLKILL HAVEN  
12 WEST MAIN STREET  
SCHUYLKILL HAVEN PA 17972

JAMES W DURHAM SENIOR VICE  
PRESIDENT  
SUSQUEHANNA ELECTRIC COMPANY  
2301 MARKET STREET  
PHILADELPHIA PA 19101

SCOT F BOYCE MANAGER,  
ADMINISTRATION & FINANCE  
WELLSBORO ELECTRIC COMPANY  
33 AUSTIN STREET  
WELLSBORO PA 16901-0138

VICTOR A MOQUE VICE PRESIDENT  
& GENERAL COUNSEL OF LEGAL AND  
EXTERNAL AFFAIRS  
DUQUESNE LIGHT COMPANY  
411 SEVENTH AVENUE (16-006)  
PITTSBURGH PA 15230-1930

PATRICIA C FAY SEC-TREAS  
BOROUGH OF SMETHPORT  
412 WEST WATER STREET  
SMETHPORT PA 16749