

**DATE:** September 3, 1997  
**SUBJECT:** R-00973954  
**TO:** Office of Special Assistants  
**FROM:** *WJZ* James J. McNulty, Acting Secretary

KJR  
**DOCKETED**  
**SEP 03 1997**

**PENNSYLVANIA POWER & LIGHT COMPANY  
RESTRUCTURING PLAN**

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Attached is copy of a Motion to Reconsider the Denial of Their Petitions to Intervene of The Quaker Oats Company and Mount Joy Wire Corporation filed in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: Law Bureau  
OALJ

wjz

**DOCUMENT  
FOLDER**

006039

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September 3, 1997

Hon. George M. Kashi  
Pennsylvania Public Utility Commission  
Room G-08, North Office Building  
P.O. 3265  
Harrisburg, PA 17105-3265

RE: Application of Pennsylvania Power & Light Company  
For Approval of its Restructuring Plan Under Section 2806  
of the Public Utility Code;  
Docket No. R-00973954

**DOCKETED**

SEP 08 1997

Dear Judge Kashi:

I am writing in my capacity as designated "lead counsel" for the Competitive Intervenor's Group in response to Your Honor's directive at the close of the hearings in the above-referenced matter to set forth a format for filing of a joint brief by each common interest intervenor group. This letter sets forth a proposal which will permit the Competitive Intervenor's group to file a joint brief without formal objection in compliance with Your Honor's wishes.

From my informal discussions with the members of the Competitive Intervenor's group, I have concluded that the bulk of the competitive issues pertaining to code of conduct and other competitive safeguards, agency, unbundling and competitive entry into non-wire or revenue cycle services can be addressed jointly by the Competitive Intervenor's. However, views on other issues are not shared by all members of the group and therefore should be addressed separately by the respective parties. A summary of these issues follows:

- Enron -- Use of the name, cost allocation and generation credit issues.
- New Energy Ventures -- Recovery of stranded costs, continuation of existing rates and tariffs, billing for distribution services by alternate suppliers and metering, billing and collection services
- MAPSA -- Market price and generation credit issues

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Hon. George M. Kashi  
September 3, 1997  
Page 2

PPA -- CTC design methodology (Section VII(A)); customized rate design (Section VIII(A)); and Code of Conduct and competition issues (Section X(A), (C), (D))

Conectiv -- Market price and generation credit issues.

I have not heard from members of the group not referenced above, and am presuming that they either intend to join in the main brief or will not be filing any brief.<sup>1</sup> As to the supplementary positions of group members, I propose that supplements be restricted to a page limitation of 15 pages.<sup>2</sup> I would also propose that supplements be submitted separately from the main brief, although a jointly bound document can be accommodated, if necessary, to address Your Honor's concerns.

Finally, although the Competitive Intervenor's group is making this proposal in order to attempt to accommodate your desire for joint briefs, the attorneys representing group members have not engaged in such an exercise in our collective legal careers. Accordingly, while we intend to take all reasonable measures to prepare briefs consistent with the foregoing, we request Your Honor to retain some flexibility to address practical concerns as they arise in the course of brief preparation and review.

I hope this proposal satisfies your prior directives. If you have any questions or concerns regarding this matter, feel free to contact the undersigned at your convenience.

Respectfully,



Alan Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

AK/cln

cc: James J. McNulty, Acting Secretary  
Competitive Intervenor Group Members  
Other Parties of Record

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<sup>1</sup> All members of the group received a draft copy of this letter for comment.

<sup>2</sup> It is presumed that the joint main brief be submitted in compliance with the normal briefing requirements contained in Commission regulations.

DUANE, MORRIS & HECKSCHER LLP

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September 3, 1997

VIA HAND DELIVERY

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PROTHONOTARY'S OFFICE

Re: Petition of Pennsylvania Power & Light Company, Docket No. R-00973954

Dear Prothonotary McNulty:

Enclosed for filing are an original and 15 copies of the Petition to Intervene of QST Energy Inc. in the above-referenced proceeding. Please have the remaining 2 copies date stamped and returned to the messenger for delivery to us.

Thank you for your attention to this matter.

Very truly yours,

Stephanie A. Sugrue  
for DUANE, MORRIS & HECKSCHER LLP

SAS:bj

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FOLDER

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BEFORE THE  
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Power & Light Company

) Docket No. R-00973954

ORIGINAL

PETITION TO INTERVENE  
OF QST ENERGY INC.

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Pursuant to the rules and procedures of the Pennsylvania Public Utility Commission ("Commission"), QST Energy Inc. ("QST") hereby petitions for leave to intervene in the above-referenced proceeding. In support of its request, QST states as follows:

**I. COMMUNICATIONS AND SERVICE**

Service and correspondence in these proceedings should be directed to the following:

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Mary Ann Ralls, Esquire  
Stephanie A. Sugrue, Esquire  
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**II. NATURE OF THE PROCEEDINGS**

Pennsylvania Power & Light Company ("PP&L") filed a proposed Restructuring Plan with the Commission on or about April 1, 1997 in the docket listed above. PP&L submitted its filing pursuant to the provisions of the Electricity Generation Customer Choice and Competition Act ("Act").<sup>1/</sup> The filing's purported goal is to further and achieve the policies set forth by the

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<sup>1/</sup> 66 Pa. C.S. § 2801 *et seq.* Section 2806(D) of the Act requires all electric utilities in  
(continued...)

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Pennsylvania General Assembly in the Act, as well as the Commission's own Guidelines for Electric Utility Restructuring Filings issued in Docket No. M-0096890, F.0003 ("Guidelines").

### **III. INTEREST OF QST**

QST is an Illinois Corporation with its principal place of business in Peoria, Illinois. QST is a wholly-owned indirect subsidiary of CILCORP Inc. QST is in the business of providing retail electricity and electric services in Illinois and other Midwest states. To effectuate this business, QST is participating in restructuring programs, similar to the instant proceeding, in Illinois.<sup>2/</sup>

As an active participant in the deregulated electric industry, QST is committed to providing electric energy at competitive prices to the emerging retail market in Pennsylvania. In this regard, QST's efforts are entirely consistent with a central tenet of the Act and the Commission's subsequent Guidelines: to provide a competitive market direct access to reliable, competitively-priced electric energy.<sup>3/</sup> Thus, QST submits that it has a substantial and direct interest in the Commission's restructuring program, as proposed by PP&L in the above-referenced proceeding.

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<sup>1/</sup>(...continued)

Pennsylvania to file restructuring plans with the Commission on a schedule to be developed by the Commission.

<sup>2/</sup> On April 23, 1997, QST filed an Application with the Commission for approval to furnish electricity and electric generation services as a marketer within Pennsylvania.

<sup>3/</sup> See Commission Opinion and Order in Docket No. M-00960890, F.0003 Re: Electric Utility Restructuring Filings (February 13, 1997).

Furthermore, QST's participation in this proceeding will be in the public interest because QST is uniquely qualified to comment in the proceeding from the perspective of a power marketer who has participated in electric restructuring in another state. QST's participation in electric restructuring in Illinois gives QST an experienced perspective that will serve to protect the public's interest in developing a truly competitive market for electricity in Pennsylvania.

In addition, existing parties to this proceeding likely will take various positions regarding the restructuring issues relevant to this proceeding. Other parties' positions, however, may be inconsistent with QST's individual interests, and accordingly, no existing party in this proceeding will adequately represent QST's substantial and individual interests.

QST, at this time, raises no issues regarding the record in this proceeding to date, intending only to participate fully in subsequent actions therein. QST reserves the right to participate as a party in any future actions that relate to QST's interest in this proceeding.

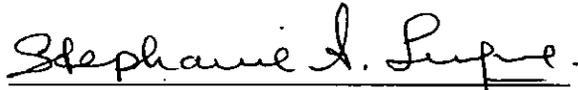
For these reasons, QST avers that its Petition satisfies the requirements set forth in the Sections 5.72, 5.73 and 5.74 of the Commission's rules and procedures.

IV. CONCLUSION

WHEREFORE, QST submits that it has a direct and substantial interest in the outcome of this proceeding, and its interest cannot be adequately represented by any other party.

Furthermore, QST's participation in this matter will be in the public interest. Accordingly, QST respectfully requests leave to intervene in this proceeding, with full rights of a party.

Respectfully submitted,



Sheila S. Hollis, Esquire

Mary Ann Ralls, Esquire

Stephanie A. Sugrue, Esquire

(Pa. Supreme Court ID No. 76303)

Duane, Morris & Heckscher, LLP

1667 K Street, N.W., Suite 700

Washington, DC 20006-1608

Attorneys for QST Energy Inc.

September 4, 1997

WSH6281.1

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below:

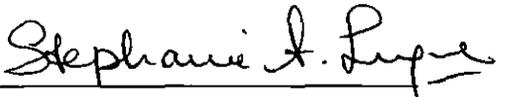
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and to those listed on the attached service lists in accordance with the requirements of Section 1.57.

  
Stephanie A. Sugrue

Date: September 4, 1997

AFFIDAVIT

District of Columbia

) ss:

Stephanie A. Sugrue, being duly sworn according to law, deposes and says that she is counsel to QST Energy Inc. and, in this capacity, she is authorized to and does make this affidavit for them, and that the facts set forth in the foregoing Petition to Intervene are true and correct to the best of her knowledge, information and belief.

*Stephanie A. Sugrue*

Stephanie A. Sugrue, Esquire  
Pa. Supreme Court I.D. No. 76303

SWORN TO and subscribed

before me this 4th day

of September, 1997

*Jean Chiudioni*  
Notary Public

Jean Chiudioni  
Notary Public District of Columbia  
My Commission Expires September 14, 1998

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Bruce A. Connell  
General Counsel

## DOCUMENT FOLDER

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September 5, 1997

Mr. John G. Alford, Sec.  
Pennsylvania Public Utility Commission  
Room B20 North Office Bldg.  
Commonwealth and North Street  
Harrisburg, PA 17109

**Re: Service List Changes**  
**Docket No.:** P-00971173 - Pennsylvania Power Company  
R-00973953 - PECO Energy Company  
R-00973954 - Pennsylvania Power & Light Company  
R-00974008 - Metropolitan Edison Company  
R-00974009 - Pennsylvania Electric Company

Dear Mr. Alford:

With regard to the subject proceedings, please make the following change in the service list

Replace: Gordon E. Goodman, President  
DuPont Power Marketing Inc.

With: H. Allan Knopp  
Director, Regulatory Affairs  
P.O. Box 2197, CH-1038  
Houston, Texas 77252  
(281) 293-3753

Please call me if I can answer any questions.

Yours truly,

cc: All Parties on the Official Service Lists

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PROTHONOTARY'S OFFICE

525 Sixth Avenue  
Bethlehem, Pennsylvania 18018  
610 758-3341 (w)  
September 6, 1997

KJR

Judge George Kashi  
Public Utilities Commission  
PO Box 3265  
Harrisburg, Pennsylvania 17105-3265

R. 00973954

Dear Judge Kashi:

I would like to submit this written supplement as an elaboration of my sworn public testimony on the Restructuring Plan filing of Pennsylvania Power and Light Company, originally given at the hearing in Bethlehem on September 3, 1997.

I understand that I should not expect this submission to be considered as expert testimony due to the limited time for rebuttal before the closing of this stage of the process. I simply want to have as clear a statement of my public testimony as possible entered on the public record.

The supplemental statement is enclosed.

Thank you for the opportunity to present testimony. If I can be of any assistance or if any of my comments need clarification, please feel free to contact me.

Sincerely,



Albert H. Wurth, Jr.

cc: John M. Quain, Chairman, PUC  
Jay McNulty Prothonotary, PUC

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Supplemental Statement to public testimony of 9/3/97 on Restructuring Plan submitted to the Public Utilities Commission by Pennsylvania Power and Light Company

— Albert H. Wurth, Jr. 9/6/97

The proposals for electric competition place a great responsibility on the PUC. The commission is being asked to bring us the benefits of competition while preserving the advantages of regulated natural monopoly. Though retail competition is likely of little benefit, on average, to consumers once wholesale competition in generation is widespread, the proposal could make some sense in that electric distribution is still a natural monopoly while generation is and has been competitive, not to mention the wider possibilities of competition in efficiency and conservation. Still, in such regulation-competition combinations we want to achieve the "best of both worlds" and avoid ending up with a hybrid of regulation and competition that recalls John Kennedy's description of Washington DC as a town with all the charm of a northern city and all the efficiency of a southern one.

I would like to make three general points regarding the challenge facing the PUC in dealing with this and other restructuring proposals. They are recommendations, in general form, regarding (1) the social and private costs of competition in electric and energy services, (2) the impact of "stranded cost" calculation on the quality of life and economic future of Pennsylvania, and, (3) the warrant and method of calculating the "stranded costs" in the PP&L proposal and in all retail competition plans.

#### 1) EXTERNAL AND INTERNAL (SOCIAL AND PRIVATE) COSTS

"Competition" in electric generation necessarily means competition in smoke, resource depletion, waste generation, water pollution, efficiency and conservation. All those markets must be fostered to achieve any real economic benefits of competition.

#### EXTERNAL COSTS AND BENEFITS MUST BE "INTERNALIZED"

Any "deregulation" or movement toward competition must recognize that market regulation can "internalize" what would otherwise be external costs that unregulated markets invariably and inevitably seek to socialize. As the representative of the society at large, the state and its citizens, the PUC's responsibility is to minimize these external costs in its plan for retail competition.

The mandate from the legislature to provide retail competition demands the creation of markets and competition in areas that were previously regulated. This is dramatically different from simply reducing regulation. It also demands a level playing field for electric generation, including markets in externalities. The PUC is in perfect position to create markets in costs that unregulated markets would likely externalize or socialize onto the citizens of the Commonwealth. These costs include, among others, smoke, waste generation, nonrenewable resource depletion and powerplant decommissioning costs. Whatever practical form they take, whether they be sulfur dioxide charges, or carbon dioxide quotas, or prepayment of

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nuclear decommissioning costs, or any of the myriad other possibilities, if these costs to the public are not "internalized" by the PUC, the retail markets for generation will be inefficient and unnecessarily costly to the citizens of Pennsylvania.

These externalities are not only in markets for external costs, but also in benefits that are external to conventional markets for kilowatts. The efficiency and conservation or demand-reduction markets must be fostered along with the market for competition in kilowatt hours or many benefits of competition will go unrealized. At minimum, "negawatts" and efficiency improvements must have equal access to distribution through the regulated utility as various providers of kilowatts.

#### MARKETS REQUIRE INFORMATION

The information offered by the conservation sellers who reduce electric demand (and thereby fuel use, pollution and energy (dollar) cost per unit of output) would not be the only kind of information necessary to provide real competition. All markets require perfect information to achieve efficiency; this is the reason, for example, for the reporting requirements of the Securities and Exchange Commission in financial markets. Since the PUC will be responsible for creating markets in Pennsylvania for energy services, it is necessary that they provide consumers with similar accurately-reported information about their market choices in electric generation. This demands, at minimum, fuel, pollution and other waste reports from all generators, as well as region of origin of generated power, and principal owners, taxes paid, and other financial information about the companies. These kinds of information provision have been proposed to promote "green" power markets., but are simply a market efficiency requirement, especially in light of the types of pricing structures that are likely to emerge. If the long distance telephone and airline experiences can be any guide, "premiums," advertising, and other complicated marketing linkages will be widespread, complicating or displacing clear price competition. To avoid the telephone world with complex pricing structures that are almost impossible to compare, the PUC must insist on clear pricing reporting, along with the relevant information about fuel source etc.. Without such provision, consumers could be subsidizing a local polluter without even knowing what their consumer "dollar-votes" were supporting.

#### BILLS NOT RATES

It is most important, both for the Pennsylvania economy and for the citizen and consumer interest that the commission remember that it is the bill not the rate that purchasers of electricity seek to minimize. This is true for all sizes of consumers, so that both quantity and price of kilowatts should be subjected to competition in the marketplace.

The treatment of externalities offers two potential futures:

If we have more pollution and less cost for producers and the same or higher average bills, we've just socialized costs onto the weak and privatized benefits for the strong.

If we have more efficiency and lower bills and less smoke and higher profits for electric generators, we have begun to realize the possible benefits of competition.

The choice between these two possibilities will be a result of PUC decisions.

## 2) WINNERS AND LOSERS, BUT THE REAL WINNER SHOULD BE PENNSYLVANIA

It is clear that in this introduction of competition, all PUC decisions will make winners and losers. The division of the proposed "stranded" costs is a choice between shareholders (and perhaps other creditors of the utilities) and customers.

While this is clearly an equity issue among these parties (and the PUC must necessarily pay closer attention to the "captive" consumers who had and have no alternative than to the more flexible shareholder interests who were and are free to buy and sell their interest in the utility), it is also an efficiency issue influencing the competitiveness of Pennsylvania business and the relative cost of living in Pennsylvania.

It is equally an economic development issue affecting the future impact of billions of dollars of investment spending. The choice between customers and shareholders is between keeping those dollars in Pennsylvania and the Pennsylvania economy, since PP&L and all PUC-regulated utilities have service areas in the state, and sending those dollars to the global capital markets, likely to the pockets of large multinational holding companies that PP&L and other state utilities will either be swallowed by or become. These 4 billion or so real dollars will either stay in Pennsylvania or be siphoned off to the stockholders, who are unquestionably a less "Pennsylvanian" group than the customers. Or put another way, the people the PUC serves are more represented in the customers than in the shareholders.

## 3) STRANDED COSTS MUST HAVE MARKET VALUES OR THEY DON'T EXIST

Stranded cost valuation should be determined by market pricing, not by estimates by those seeking reimbursement. Uneconomic capacity that was required by regulators qualifies as stranded; uneconomic facilities and contracts chosen by utility management were good or bad (but not stranded) investments.

The determination of the stranded costs as proposed by PP&L cannot be considered as anything more than an estimate. Indeed, no single formula for stranded costs can unequivocally identify their dollar value. No single dollar amount in cash or net present value can possibly anticipate the future of energy markets and identify the real-world future value of the "stranded" assets.

In a realm of retail competition, the price and value of competitive assets is determined by market forces. The costs incurred from the transition from a regulatory to a competitive regime can only be determined by the willingness of investors to buy and sell those assets in an open market. The simple and obvious way to determine the stranded costs is to let the market determine them; any utility, like PP&L, that proposed a dollar amount of expected losses for any stranded costs would by such a claim obviously be willing to rid itself of the negative assets (liabilities). With such a market approach, any utility proposing stranded cost compensation or CTC would be offering the sale of the stranded assets to any bidder who

would accept a lower CTC regulatory guarantee. Another bidder might be willing to take over PP&L's liabilities for a much smaller CTC guarantee. This would more closely approximate the market value of the stranded costs. Without competitive market bids to evaluate the stranded assets, the process is inherently flawed and biased toward overestimation, with no incentive for any utility to carefully and accurately calculate its estimates of its stranded costs.

For the same reason, accurate cost accounting and pricing, the assets (liabilities) judged to be stranded must be treated in the same way in all cost accounting and balance sheet reporting. Costs are "stranded" only if they were invested in assets with no remaining economic value.

#### STRANDED COSTS OR UNWISE INVESTMENTS?

The only mandated costs were for capacity; investments in excess of that capacity and investments chosen to provide that capacity were management decisions, and attributable to the decisions made by shareholder- (not customer-) appointed leadership. Investments that were more costly than the best available practice at the time of the investment in generating capacity are not stranded costs mandated under the regulatory system, but investment choices made by management. This type of analysis applies to both utility-owned and utility-contracted generation capacity. The regulatory system is not responsible for uneconomic choices made by utility management.

In back-of-an-envelope terms, the "stranded" generating capacity is the amount of capacity that is now uneconomic times the price of such capacity at the best and most efficient price for delivered service at the time of the investment. Costs in excess of that amount are management choices that are attributable to shareholders, not customers. The utility had to invest to meet the needs of its customers; the state and its citizen-customers required that. The choice of how to meet that need was a management decision weighing risk and return of various methods of service provision. The variety of methods available to meet energy demand illustrate the nature of the choice: hydro, coal, gas, oil, wind, conservation, efficiency. Any other method of calculation will disproportionately reward the least well managed utilities.

In summary, to serve the citizens of Pennsylvania and to meet the requirements of the legislative authorization of retail competition in electric service, the PUC should take steps to establish markets in all aspects of electric generation that internalize external costs and benefits, and provide consumers with adequate information for making efficient choices in the energy market. The PUC should also limit CTC amounts to market-determined and truly mandated costs to prevent significant losses to economic development in Pennsylvania.