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February 10, 1998

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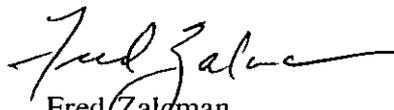
PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: Pennsylvania Power & Light Company's
Restructuring Plan
Docket No. R-00973954

Dear Mr. McNulty:

Enclosed for filing please find an original and nine (9) copies of the Main Brief of the Public Interest Parties in the above-referenced proceeding. By designation of the ALJ Public Interest Parties include the Environmentalists, The Commission on Economic Opportunity, and Eric Epstein. A copy of this document has been served on Administrative Law Judge Kashi and all parties of record, as shown on the attached certificate of service.

Sincerely,


Fred Zalcmán
Senior Attorney

FZ/dv
enc.

cc: Hon. George Kashi, ALJ (with diskette)
All parties of record

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PUBLIC INTEREST PARTIES

The Environmentalists consist of the Clean Air Council, the Sierra Club, Saucon Valley Association for a Viable Environment, Lehigh Valley Greens, Lehigh Pocono Committee of Concern, Pennsylvania Organization of Watershed and Rivers, Pennsylvania Public Interest Research Group, and the PP&L Ratepayers Association. The Environmentalists represent an important segment of the Pennsylvania community - one particularly concerned with the interrelationships between energy production, distribution and consumption, public health and the quality of our natural environment. The Environmentalists have been an active party in the utility-specific restructuring proceedings, generic rulemakings and various working groups established to restructure the Commonwealth's electric industry.

The Commission on Economic Opportunity (CEO) is a nonprofit organization serving the low income, handicapped and elderly in Northeastern Pennsylvania. It is part of our responsibility to advocate for their interests in matters that affect their ability to afford basic daily life necessities, which is key to our involvement in electric restructuring. These ratepayers are the most captive of customers; they are the least likely to share in any benefits that competition may bring to the system. CEO has been an active party in the utility-specific restructuring proceedings, generic rulemakings and various working groups established to restructure the Commonwealth's electric industry.

Eric Epstein has been actively involved with issues pertaining to nuclear decommissioning and radioactive waste management dating back to the Pennsylvania Power and Lights (PP&L) Base Rate Request before the Public Utility Commission (PUC) in 1995.

The above-named parties have worked diligently to identify areas of common interest -- with each other, and with other parties to the case. Where our position is adequately addressed by another party, we have refrained from making duplicative and repetitious arguments. Where applicable, our support for another party's testimony is noted.

However, even in areas where our interests are in alignment, the parties to this brief have different perspectives and priorities. When necessary to reflect these unique perspectives, we have presented separate statements.

I. CONTEXT OF RESTRUCTURING

Environmentalists' Introduction and Summary of the Case

The provision of electric energy has a profound impact upon the lives of everyday consumers. It is a necessity that individuals can scarcely live without, and our economy is heavily dependent upon the expectation of a highly reliable electric supply. The national "electric bill" comprises about 3% of the Gross National Product.¹ Nearly one-third of all primary energy consumed is dedicated to the production of electricity.²

The electric industry is also an important influence on the environment. Electricity production in the United States accounts for about two-thirds of sulfur dioxide emissions, a third of its nitrogen dioxide emissions, and a third of its carbon dioxide emissions. A large amount of airborne particulate matter, radionuclides and heavy metals emissions are emitted from electric power plants. Power production is a major cause of human sickness and premature death, acid rain, smog, visibility impairment and climate change. Electric power production results in a wide range of water pollution, solid waste and land use impacts which degrade Pennsylvania's fisheries, forests and waters.³

Given these economic and environmental influences, the Environmentalists attach considerable importance to implementation of the Electricity Generation Customer Choice and Competition Act (the "Competition Act" or "Act")⁴, signed into law by Governor Tom Ridge on December 3, 1996. The Competition Act marks a sea change in the way the Commonwealth's electric energy service will be delivered and regulated. In the important areas of electric power generation and retail supply, the Competition Act reflects a confidence in the ability of a properly functioning market to secure the Commonwealth's overriding interests in:

- obtaining lower cost electricity⁵;
- spurring technological innovation in both the energy producing⁶ and energy-consuming sectors⁷;
- expanding the choices of services and providers available to the consumer⁸; and

¹ Based on data derived from the U.S. Energy Information Administration's Monthly Energy Review.

² U.S. Dept. of Energy, Sustainable Energy Strategy (1995), p. 8

³ Environmentalists Statement No. 2 (Bruce Biewald), p. 9.

⁴ 1996 P.L. 802 No. 138.

⁵ 66 Pa.C.S. § 2802 (4).

⁶ *Id.*, at § 2802 (3).

⁷ *Id.*, at § 2802 (9).

- competing in the global economy.⁹

At the same time, the Competition Act reflects a recognition that there are important "transitional issues" to address. For obvious reasons, much attention has been focussed on the enormous "stranded cost" overhang, consisting mainly of utility investment in outmoded generating plant that will not be able to compete in a deregulated environment, and power purchase contracts that are no longer advantageous to utilities or their customers at prevailing and expected market prices.

On the other side of the ledger, the Competition Act calls for the maintenance of otherwise "stranded benefits"; i.e., those programs and policies instituted in a regulatory environment, and which are at risk of being overlooked in a competitive market. As enunciated by the General Assembly:

There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services...¹⁰

Other public interest objectives that must be safeguarded under the Act include environmental protection¹¹; renewable resource development¹²; and job retention.¹³ The transition to electric competition requires a balancing of economic and environmental objectives if Pennsylvania is to maintain its preeminent position in business, preserve its unparalleled natural and cultural resources, and protect the health and safety of its citizens.

It is therefore essential that the mutually reinforcing conditions of economic and environmental health be secured as the Commission transforms the legislatures' broad vision for the Commonwealth's electric industry into a concrete plan of action. This proceeding, and the Commission's decision on Pennsylvania Power and Light's ("PP&L" or "Company") proposed restructuring plan, present the Commission with an important

⁸ Id., at § 2802 (14).

⁹ Id., at §2802(7).

¹⁰ Id., at §2802 (17).

¹¹ Id. §2802 (21).

¹² Id., at §2803 (definition of "universal service and energy conservation").

opportunity to effectuate and economically and environmentally sound plan for competition. The stakes are enormous -- failure to safeguard environmental and economic policy goals with robust competition and market-compatible public purpose funding and delivery mechanisms will leave the state behind technologically, constrain consumer choice, stymie competition and degrade air quality.

The restructuring proposal advanced by PP&L fails in several important respects to achieve the interdependent objectives of the Act. The Environmentalists' brief identifies these failures, and proposes corrective measures. The focus of our brief is in the following key areas:

Stranded cost recovery and CTC design

1. The Company's proposal to collect \$4.6 billion in stranded costs is grossly exaggerated. A fundamental flaw in the Company's stranded cost analysis is the use of too low a market price for energy.
2. The future market price of electricity is a huge unknown. Rather than fix a stranded cost amount for generation assets now on the basis of administratively determined market price projections, the Commission should adopt one of two courses. First, the Commission should encourage PP&L to sell its generating plants, with the sale price constituting the market value in the plant. Second, unless and until a sale takes place, the Commission should set a *pro forma* market price of 3.25 cents/ kWh with a true-up for over- or under-collections if the *pro forma* market price turns out wrong.
3. In the event the Commission declines to adopt a true-up mechanism for stranded costs, Environmentalists recommend a total stranded cost recovery of \$892 million. This figure is based largely on OCA's stranded cost estimate of \$1.08 billion with further reductions in the following areas:
Generation: Allowing a 42.7 percent customer/57.3 percent shareholder split of the estimated \$138 million in stranded costs for generation assets will provide the company with enough revenue to fully pay off the debt

¹³ Id., at § 2802 (11).

holders without decreasing the return the stockholders have already earned.

Nuclear Decommissioning: Environmentalists recommend no recovery of nuclear decommissioning costs through the CTC at this time.

4. The Commission should reject PP&L's Customized Rate Plan. PP&L's proposed change in rate structure to collect a large portion of the CTC on a fixed charge basis will have serious environmental implications. Moreover, the change will hurt many low income customers.
5. The Commission should reject PP&L's proposal to collect the usage-related portion of the CTC using a declining block approach. Under such a rate design, the more energy a customer purchases, the lower its per kWh rate for electricity. Thus, the Company's rate structure will have the perverse effect of subsidizing high energy use and discouraging energy efficiency. In addition, this structure will result in low energy users and low-income customers bearing a disproportionate burden of the CTC.
6. The Commission should adopt a CTC recovery mechanism that: 1) is level over the recovery period; 2) is reconcilable by class; and 3) expires as quickly as possible.
7. The Commission should reject PP&L's proposed depreciation swap between generation and transmission and distribution because it will result in cost shifting from the industrial and commercial classes to residential consumers. The proposed swap would also shift cost responsibility from PP&L's wholesale to its jurisdictional retail customers.

Spent Fuel and Nuclear Decommissioning Costs

1. The Commission should reject PP&L's proposal to recover the ongoing costs of spent fuel storage and disposal through the CTC. These costs are part of the "going forward" costs of generation from nuclear facilities, and as such must be recovered from the market.
2. PP&L's proposal to extend the CTC period beyond the statutory period for nuclear decommissioning costs should be rejected as unfairly saddling

customers with an open-ended obligation for these significant, uncertain, and escalating costs.

3. The Commission should reject PP&L's proposal to assign all future costs of nuclear decommissioning to the wires business. Rather, the Commission should consider instituting a performance-based approach to nuclear decommissioning costs which provides the Company with some incentives to run Susquehanna Nuclear Generating Station in a clean manner and minimize future decommissioning costs.
4. The Commission should require PP&L to update its 1993 decommissioning study. Additionally, the Commission should require PP&L to develop a plan for the mitigation of its decommissioning costs, setting forth a plan for the mitigation of its future decommissioning costs.

Investments by PP&L in the Electric Distribution System

PP&L's Electric Distribution Company should implement cost-effective alternatives to distribution system upgrades, expansion and replacement undertaken to increase throughput. The Commission should require PP&L to conduct a detailed modeling study examining how to meet needed system upgrades with the least cost mix of capital additions, localized generation, demand-side management and renewable resources.

Universal Service and Conservation

1. The Commission should require PP&L to increase the resources available for its On Track Program. The OnTrack program should be expanded to 18,500 participants and an annual funding of \$11.7 million in accord with the Commission-recommended figure of 0.5% of gross operating revenue annual expenditure.
2. The Commission should require PP&L to increase the resources available for its WRAP Program. The WRAP Program should be expanded to 11,900 participants annually and an annual funding of \$7.2 million.
3. The WRAP program should be reconfigured to include greater participation from baseload customers (43.7% of total participation).

4. PP&L should be required to establish an Energy Conservation Loan Fund for non-low income customers, capitalized at 2% of the Company's stranded cost award.
5. The Commission should require PP&L's EDC to credit universal service funds to both the generation and the transmission & distribution portions of the bill to encourage alternative suppliers to serve the low-income segment of the market.
6. The Commission should require PP&L to implement a two-year Renewable Energy Pilot funded at \$1 million which will utilize renewable technologies including applications of solar photovoltaic (PV), solar thermal water heating units and advanced meters to participant customers' dwellings as part of LIURP.

Environmental Disclosure

In order to ensure that Pennsylvania customers are able to reap the benefits of competition without jeopardizing public health and the environment, the Commission must create a level playing field for power marketers by requiring all retail sellers to meet uniform environmental standards and to disclose the environmental characteristics of the power they sell. Only then will consumers be able to make informed and meaningful choices regarding their energy supplier.

Consumer Education

1. The Commission should direct PP&L to undertake a comprehensive program of consumer education on the environmental effects of electricity production and use.
2. The Company should be required to include the Environmentalists and other interested parties in the process of developing and reviewing consumer education plans and materials.
3. Environmentalists support the recommendations on consumer education set forth in the testimony of Barbara Alexander on behalf of the Office of Consumer Advocate.

Environmental Comparability

As recognized by the Competition Act, there is currently an unlevel regulatory playing field with respect to air quality standards. The disparate environmental standards between in-state and out-of-state generators, and between newer and older sources hurts competition and the environment. In addition to the regulatory changes called for in the Act, the Commission should take three actions:

1. In the absence of uniform federal emission standards, the Commission should require all retail sellers to ensure that the power they sell in Pennsylvania has been generated by plants that meet the state's more stringent environmental standards applicable to newer sources.
2. The Commission should exercise caution in allowing stranded cost recovery. Over-recovery will discourage the development of a competitive marketplace, and put up roadblocks to the construction of newer, cleaner plants.
3. If the Commission grants PP&L's claim for stranded cost recovery associated with Clean Air Act compliance at its fossil plants, it should do so on a dollar-for-dollar basis upon a demonstration that Company funds have been expended for this purpose.

Commission on Economic Opportunity

I. CONTEXT OF RESTRUCTURING

A. Economic and Competitive Background

The Commission on Economic Opportunity (CEO) is a nonprofit organization serving the low income and elderly in Northeastern Pennsylvania. It is part of our responsibility to advocate for their interests in matters that affect their ability to afford basic daily life necessities, which is key to our involvement in electric restructuring. These ratepayers are the most captive of customers; they are the least likely to share in any benefits that competition may bring to the system.

B. Electricity Generation Competition and Customer Choice Act: Concerns Addressed

The Act is clear in its intent regarding electric distribution utility public purpose responsibilities with respect to low income ratepayers:

Requires that the Commonwealth must, at a minimum, continue the protections, policies and services that now assist customer who are low-income to afford electric service; (§2802(10)) and

States that “[there] are public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities’ bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism. (§2802(17)).

Further, the Customer Choice Act provides each public utility will submit a plan for transitioning to customer choice, and further specifies under §2804 certain “interdependent standards that shall govern the Commission’s assessment and approval of each public utility’s restructuring plan, oversight of the transition process and regulation of the restructured electric industry,” including:

Charging the Commission with ensuring “that restructuring of the electric industry be implemented in a manner that does not unreasonably discriminate against one customer class to the benefit of another” (§ 2804(7)); and

Charging the Commission with ensuring “that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services shall be funded in each electric distribution territory by non-bypassable competitively neutral cost recovery mechanisms that fully recover the costs of universal service and energy conservation services. The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric services. Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner (§2804(9)).

1. Pennsylvania Public Utility Commission’s Response

a. Commission’s Final Order

After evaluating the comments provided by 52 parties, at a Public Meeting held July 10, 1997 the Commission issued its final order on universal service and energy conservation. The Final Order reiterated the purposes of the Tentative Order regarding the Commission’s intention that its Universal Service and Energy Conservation Guidelines are to “assist the parties in the preparation, litigation and resolution of the Restructuring Filings of each EDC by setting forth the Commission’s current views regarding how those issues should be addressed in the restructuring proceedings...” but in its Final Order, the Commission declined to offer “any precise requirements that must be a part of the universal service and energy conservation plans of any utility.” Rather, the Final Order specifies that such “decisions will be made only in the restructuring order, after the EDCs and all interested parties have had an opportunity to address the issues based upon [its] guidelines.

Specifically, the Final Order states that “in order to ensure that universal service and energy conservation programs are ‘appropriately funded and available in each service territory.’ Each EDC plan must address:

Identification of existing and proposed efforts;

Needs assessment of the market for and acceptance of universal service programming in the territory;

Identification of the greater of the current level of spending or the amounts included in existing rates to support existing efforts;

Other statutory mandates and these guidelines.

**2. Post-Restructuring Electric Market Envisioned by the Customer Choice Act -
a. Low Income Customer Concerns**

Though the Customer Choice Act envisions an electricity market in which competition bring lower price for all consumers, all low income and elderly customers are likely not to share in the benefits of a restructured industry and many low income and elderly customers may be substantially harmed unless policies are put into place to protect this sector. Further, they have virtually no discretionary income for investments in efficiency measures and have a high risk of arrearages, making them even less attractive to most aggregators. They are at high risk of being on the short end of the stick on cost shifting from larger customers, and they may suffer from neglect and avoidance by marketers because they pose more difficulties in being served. Finally, low-income households are generally less educated and informed about energy use than typical customers, reducing their ability to take advantage of what benefits may fall their way. Since the pursuit of adequate food and clothing, employment, and mere housing itself are of paramount importance to these people, it is unlikely they will become informed or take advantage of a market-based decision making (Karp, Direct, pages 3-4).

In this light, there have been actions and policies developed elsewhere that have addressed these issues. The National Association of Regulatory Utility Commissioners (NARUC) and the National Association of State Consumer Advocates (NASUCA) have each adopted principles in the form of resolutions to protect the rights of low income customers in the restructuring of the electric industry (Karp, Direct, page 5).

b. Low Income Demographics - PP&L Service Territory

In 1979, PP&L's poverty rate was 8.9% and its number of persons in poverty was an estimated 227,516. By the second year of Pennsylvania's LIURP, 1989, PP&L's poverty rate had declined slightly to 8.8% but its total persons in poverty had increased 4.8% to 238,708. By 1993, the PP&L's poverty rate had increased to 10.2%, and its total number of persons in poverty had grown 18.2% to 282,198. This represented a 24.0% increase over 1979. In terms of households in poverty, these statistics are even more telling. In 1979, PP&L had 81,747 household at or below 100% of the federal poverty guidelines. By 1993, this number had grown to an estimated 107,125, an increase of 31.0%. (Kuennen, Direct, pages 5-6).

PP&L estimates its 150% of poverty and below population at 177,464 but provides no references to reports or studies from witnesses or in response to interrogatories to back up this number. (Crandall, Direct, page 2, Kuennen, Surrebuttal, page 7). Data from the 1990 U.S. Census totals for cities, boroughs, and townships in PP&L's service territory shows that PP&L had an estimated 167,440 households at or below 149% of the 1990 federal poverty guidelines. Further, 1990 U.S. Census data for cities, boroughs, and townships in PP&L's service territory shows that estimated 12.3%, or 133,473 of PP&L's 1,081,949 customer households had incomes below \$9,999, another 8.8%, or 94,921 earned between \$9,999 and \$14,999 a year, and another 8.6%, or 93,527 earned between \$15,000 and \$19,999. In other words, close to 322,000, or nearly 30% of PP&L's customer households earned less that \$20,000 a year. The 18.2% increase in poverty in PP&L's service territory during the period 1989 to 1993 suggests these numbers and percentages are even higher. Based on the 1989 to 1993 18.2% increase in poverty, PP&L households at or below 150% of the federal poverty guidelines would be between 198,000 and 210,000. PP&L also states that 58,000 of its low income customers are payment troubled. (Kuennen, Direct, page 6). Assuming that 40% of PP&L's 150% of Federal poverty guideline households are eligible for universal service

and energy conservation programs using the Commission's methodology referred to above, this means that PP&L has between 70,986 ($=177,464*40\%$) and 84,000 ($=210,000*40\%$) eligible households.

Other PP&L residential demographics worth noting are service classification and household electricity burden, i.e., the percent of annual income a household is billed for electric during a given year. With respect to service classification, PP&L states that nearly 69.2% or 748,438 of its 1,081,949 customer households are non-electric heat baseload customers, and that approximately 120,700, or 16.1% of these baseload customers are low income. (Karp, Direct, Pages 6-7). Further, PP&L states that at least 45,000, or 37.3% of these low income baseload customers are also water heat customers. (Kuennen, Direct, Page 12).

In terms of low income electricity burden, this burden is significantly larger than that facing the average PP&L customer. The electricity burden for the estimated 594,908 PP&L residential customers earning more than \$27,500 a year is more manageable. Electric heated households in this category spend 4.8% or less of their annual incomes on electricity a year, while PP&L baseload water heat customers spend an estimated 3.0% or less, and baseload only customers spend less than 2.4%. (Kuennen, Direct, page 8) The same cannot be said for the estimated 133,473 PP&L households earning less \$9,999. Electric heated households in this group spend 13.2% or more of their annual income to meet yearly electricity needs, while PP&L baseload water heat customers in this category spend 8.1% or more, and baseload only in this group spend at least 6.7%. These energy burden figures amount to as much three times that of PP&L households earning above \$27,500 a year. (Kuennen, Direct, page 8).

Similarly, many of the estimated 94,921 earning between \$9,999 and \$14,999 have trouble meeting their electricity burden as well. Electric heated households in this category spend between 8.8% and 13.2% of their annual incomes on electricity, baseload water heat customers spend between 5.4% and 8.1%, baseload only customers spend

between 4.4% and 6.7% of the annual income to meet yearly electricity needs.

(Kuennen, Direct, page 8).

It is the estimated 228,394 PP&L households in earning less than \$14,999 a year that are most in need of PP&L universal service and energy conservation program services. The simple fact is that all too many of these households do not make enough money pay these bills, and still afford food, clothing, and medical supplies. (Kuennen, Direct, page 8-9).

Finally, PP&L estimates that 70% of its 177,464 150% of Federal poverty guideline households pay their bills on time and are not in arrears. This means that, at a minimum, 30%, or 53,100 of these low income households do not or are not able to pay their bills. In other word, they are payment troubled. In assessing universal service and energy conservation needs, at a minimum, PP&L should be proposing funding at levels sufficient to make these programs available to 30% of its 150% of Federal poverty guideline households. (Karp, Surrebuttal, page 1).

C. Conclusions

1. PP&L's Response to Concerns addressed by the Customer Choice Act

PP&L has proposed a universal service and energy conservation program for consideration in this proceeding. It is discussed in some detail in Section XII below. As proposed, PP&L's plan will not meet the concerns and needs of low income customers in the new competitive electricity market. Further, PP&L's plan meets neither the specific low income policy requirements of the Customer Choice Act, nor the Commission's Final Order guidelines. It does not take into consideration the low income concerns and demographics outlined above, and, by its own admission, was not established using a needs assessment. Therefore, PP&L's Universal Service and Energy Conservation Plan proposed herein should be rejected, and the specific relief and other relief requested in Section XIV should be granted.

2. CEO's Response to Concerns addressed by the Customer Choice Act

CEO has proposed an alternative universal service and energy conservation program for consideration in this proceeding. CEO's plan is detailed in Section XII below. CEO's plan meets the requirements of the Customer Choice Act, the Commission's Final Order, and is specifically designed to meet the concerns and needs of low income customers in the new competitive electricity market, while taking into consideration other requirements of the Customer Choice Act, and the Commission's Final Order. CEO's plan is based on a needs assessment of PP&L's service territory using U.S. Census data for PP&L cities, boroughs, and townships. This needs assessment took into consideration PP&L actual low income household numbers, household electric usage and bills with respect to income, the Act's policy declaration under Section 2904(9) that "electric service should be available to all customers on reasonable terms and conditions" (emphasis added); and the Commission's desire as expressed in its Final Order that, "within the rate caps, universal service and program funding must be appropriate to ensure the availability of meaningful and strong programs in each service territory." (Kuennen, Surrebuttal, pages 8-9).

Therefore, CEO's Universal Service and Energy Conservation Plan, as described in Section XII below, should be substituted for the PP&L Plan, and the special and other relief requested in Section XIV should be granted.

3. CEO Support of Other Parties' Positions

CEO supports the testimony offered by the Pennsylvania Office of Consumer Advocate on the following issues:

Section II.	Legal and Policy Foundations of Stranded Cost Recovery
Section III	Stranded Cost Calculation Methodology
Section IV.	Market Price of Electricity
Section V	Revenue Under Regulation
Section VI	Determination of Present Value
Section VII.	Recovery of Stranded Cost
Section VIII	Rate Design and Tariffs
Section IX	Phase-in Issues
Section X.	Code of Conduct
Section XI.	Customer Education

Environmentalists

II. LEGAL AND POLICY FOUNDATIONS OF STRANDED COST RECOVERY

A. Legal Standard

1. Statutory

The Regulatory Contract Is A Utility Invention To Alter The Balance Of Equities In Its Favor, But Finds No Support In Law Or Public Policy.

The manner in which stranded costs are characterized may have a significant bearing on the Commission's inclinations in the awarding of a recovery. The utility industry in general, and PP&L in particular, would like the PUC to view full recovery of stranded costs as the compelled result of a "regulatory compact." However, as Peter Bradford, a former Public Utility Commissioner in New York and Maine, demonstrates quite forcefully in his testimony, no such compact has ever existed.

PP&L's invocation of the regulatory compact as a time honored and sacred agreement between utilities and their regulators is designed to place the Commission on the defensive as it carries out its duty to decide restructuring issues in the public interest. Thus, PP&L witness Joseph P. Kalt asserts that utilities such as PP&L accepted the obligation to satisfy customer demand for electricity, while submitting to regulatory review and oversight of their investment decisions. Under this formulation, regulators are compelled to "not take away the reasonable prospect for recovery of costs that utilities incurred pursuant to their obligations under the regulatory regime in place at the time of their key cost creating decisions."¹⁴

In contrast to these "implied" arrangements, the Environmentalists point to the traditional methods of determining rate base under Pennsylvania law as definitive evidence that there has never been such a compact. Further, Environmentalists point to the Act and its legislative history as evidence that the legislature has not altered long standing principles of cost of service regulation.

The Act creates only the *opportunity* for utilities to seek recovery of their stranded costs. Recovery is to be awarded based on the Commission's discretion as to what is

"just and reasonable."¹⁵ Such terms, limiting the potential recovery, do not appear consistent with interpretation of stranded cost recovery as the fulfillment of a contract.

The "regulatory compact" asserted by the Company has no basis in the law. Indeed, the case of Charles River Bridge v. Warren Bridge¹⁶ and its progeny stand for the proposition that lawmakers need not be compelled to provide compensation for assets stranded by decisions to permit competition in areas of regulated monopoly franchises. Most recently, a New York Supreme Court, considering that states' introduction of competition in the electric industry, rejected a claim by utilities that a purported regulatory compact entitled them to full cost recovery.¹⁷

PP&L's reliance upon "regulatory compact" theory is particularly inappropriate in Pennsylvania, where the "used and useful" requirement has long been interpreted to support disallowance of prudent investment that has not been "useful."¹⁸ Indeed, Pennsylvania is a clear example of a state in which investors have had explicit notice that neither recovery of prudent investments nor protection from substantial losses were part of any bargain on which they could rely.¹⁹ The Act merely restates this legal framework.

The legislative history is clear that there is no utility entitlement to 100% recovery of its stranded investment. In the Senate debate on the Act that occurred on November 25, 1996, Republican Senator Piccola cited with favor a November 14, 1996 letter from Irwin A. Popowsky, Consumer Advocate which stated that under the Act, the burden of stranded costs would be "shared" by the utilities and the customers. The OCA letter emphasized that:

[i]t is extremely important to note that utilities are not guaranteed full stranded cost recovery under this bill. With respect to utility-owned and operated generation facilities, the PUC must determine the appropriate level of stranded

¹⁴ PP&L Statement No. 1 (Joseph P. Kalt), p. 11.

¹⁵ 66 Pa.C.S. § 2804 (13).

¹⁶ 36 U.S. 420 (1837)

¹⁷ Energy Association of New York State et. al. v. New York Public Service Commission, 653 N.Y.S. 2d 502 (Sup. Ct. 1996)

¹⁸ Duquesne Light and Power v. Barasch, 488 U.S. 299, 109 S. Ct. 609 (1989)

¹⁹ Philadelphia Electric Company v. Pennsylvania Public Utility Commission, 61 Pa. Cmwlth. 325, 433 A.2d 620 (1980); Pennsylvania Electric Company v. Pennsylvania Public Utility Commission 509 Pa. 324, 502 A.2d 130, 134-36 (1985); Pennsylvania Power and Light v. Pennsylvania Public Utility Commission, 101 Pa. Cmwlth. 370, 516 A.2d 426, 430-432 (1986).

costs that is just and reasonable to recover from ratepayers....²⁰

While recognizing nothing prevents a utility from requesting 100% recovery of its stranded costs, he stated that the utility may only "receive such recovery to the extent that the PUC determines it to be just and reasonable."²¹

Republican Senator Brightbill also confirmed this recognition that the Act did not guarantee utilities a 100% recovery of their stranded investment: "...in California they guaranteed the utilities a 100-percent return on their stranded investment. Here we make no such guarantee."²²

B. Effect on Investors

The Regulatory Compact Is Not Supported By The Reasonable Expectations Of Investors.

Contemporaneous testimony, studies, articles and books by industry executives and analysts acknowledge the presence of risk in utility investment at a time when large scale construction projects were facing intensive scrutiny. As documented in the testimony of Environmentalist witness Peter Bradford, a former public utility commissioner in New York and Maine: "The possibility of substantial losses and the nonexistence (or, as many in the industry allege, the "dishonoring" or "failure") of the regulatory compact were part of the conventional wisdom of the electric utility industry as long as 15 years ago."²³ Indeed, in a 1987 study entitled "Reestablishing the Regulatory Bargain in the Electric Utility Industry", Professor Joseph Kalt, one of PP&L's own experts on stranded cost recovery, pointed to Pennsylvania's disallowance of nuclear cost overruns on the basis of a "used and useful" standard as reinforcing utility managements' and investors' understanding that the regulatory bargain had "collapsed."²⁴ Dr. Kalt's paper thus asserts that the ratemaking approach long employed by Pennsylvania was "at the heart of the breakdown in the regulatory bargain" and created a

²⁰ Legislative Journal -- Senate, 11/25/96 at 2688.

²¹ *Id.*

²² Legislative Journal -- Senate, 11/15/96, at 2692.

²³ Environmentalists' Statement No. 3 (Bradford), p. 19.

"requirement that future investments meet a market test."²⁵ This amply demonstrates that the investment community was laboring under no delusion as to the inherent risk associated with utility securities in the Commonwealth.

Professor Kalt acknowledges that the investments were made under expectations which were "certainly not without risk."²⁶ Indeed, many of the risks which threaten shareholder investments have nothing to do with "the rules of the game" enunciated by Dr. Kalt. Rather, excess capacity, wholesale competition and the improving technology of new generating facilities have made it increasingly likely that some of PP&L's generating assets would have been stranded as failing the used and useful test without the introduction of the Competition Act at all.²⁷ Regulators are not required to shield investors from the risk that generation costs would fall and that customers would find ways to take advantage of new technologies.²⁸

Alfred Kahn, another expert called by PP&L, acknowledged the "used and useful" standard in Pennsylvania has long provided fair warning of certain risks to investors (Kahn, Rebuttal, p. 11) Mr. Kahn believes that this ratemaking standard should not apply where an asset is no longer deemed "used and useful" because of changes in regulatory policy, implying that the Act alone has caused the asset to become "useless." Such an argument ignores the very real changes in the industry (technology advances) and the world economy (fuel prices) which have resulted in much lower costs of production at other facilities and excess capacity. These factors may have shortly brought the "used and useful" determination into issue without the press of deregulation.

Furthermore, Dr. Kahn's argument implies that deregulation was not foreseeable by the investment community and the industry. On the contrary, industry experts have discussed, explored, promoted, lobbied for, and now, welcomed electric competition.²⁹

²⁴ Environmentalists' Cross Exhibit No. 1 ("Reestablishing the Regulatory Bargain in the Electric Utility Industry"); Tr. at 503-4, 8/18/97 (Zalcman cross of Kalt).

²⁵ *Id.*, at 2.

²⁶ PP&L Statement No. 1-R (Kalt), p. 53.

²⁷ Environmentalists' Statement 3-S, p. 3.

²⁸ Environmentalists Statement No. 3 (Bradford), pp. 20-5.

²⁹ *Id.*, p. 19, note 31.

a. The regulatory compact is not compelled by equity or public policy considerations.

PP&L witness Kalt argues that utilities were "induce[d] and require[d]"³⁰ by regulators to undertake the large construction programs that are at the heart of today's stranded cost dilemma. As a factual and legal matter, no such compulsion occurred -- certainly none that would support the company's inviolable claim to stranded costs. The reality is, no one forced PP&L to build Susquehanna Steam Generating Station, the largest component of the Company's stranded cost claim.³¹ PP&L's duty to provide adequate margins of power to completely serve its territory could have been met in other ways, including through conservation practices, power purchases, or modern coal-fired units. PP&L was well aware that as a regulated monopoly with no electricity markets to expand into, the only way for it to grow was through building new plant, which would be paid for by the ratepayer but would be owned by the Company. Therefore, it was very much in PP&L's interest to build this plant and they did so willingly, weighing the risks of proceeding in light of the failure of cheap nuclear power to materialize.

Dr. Kalt further asserts that the Commonwealth's failure to guarantee recovery of PP&L's stranded cost "impose costs on all its citizens".³² This position is eloquently dismissed as "overstated" by none other than PP&L witness Kahn. Dr Kahn contends:

The writings...seeming to insist on the necessity of total recovery of costs in the absence of explicit findings of imprudence, clearly imply that the consuming public will lose more in higher costs of capital henceforward than they gain from illegitimate disallowances. Not only can no one make such a statement with confidence in my opinion, it is surely subject to substantial discount, in recognition of investors' notoriously short memories.

Thus, Dr. Kalt's predictions of dire consequences should the Commission disallow some portion of PP&L's stranded cost claim amounts to nothing more than scare tactics and should be summarily rejected.

³⁰ PP&L Statement No. 1, (Joseph P. Kalt) p 5.

³¹ Tr. at 505-7 (Zalcman Cross of Kalt).

³² PP&L Statement No. 1 (Joseph Kalt), p. 13.

- b. **In determining the amount of stranded costs which is "just and reasonable" for PP&L to recover from customers, the Commission should consider the extent to which the company's restructuring plan will be good for the economy and the environment**

This case marks an important milestone in the transition to greater reliance in market forces in achieving socially desired objectives. Just as there are shareholder concerns over the stranding of investments that such a transition will yield, there are surely concerns on the public's side that the benefits obtained under traditional regulation --environmental protection, low income affordability, energy conservation -- will become stranded. As Peter Bradford observed:

If some strandable investment is to be redeemed on the basis of public policy principles, such as keeping faith with investors or on the basis of political principles, such as minimizing resistance to competition, then similar considerations justify comparable treatment of the environment and other societal benefits.

The Commission should insist, as a *quid pro quo* for any allowed stranded cost recovery, that the public's interest in a robustly competitive and environmentally sustainable energy future are fully satisfied. The Environmentalists' recommendations for such a path make up the remainder of this Brief.³³

C. Mitigation

2. Post-Restructuring Mitigation

a. Depreciation Swap

The Commission should reject PP&L's proposed depreciation rate swap as a violation of the Competition Act's bar on inter-class subsidization, and is fundamentally unfair to PP&L's jurisdictional customers.

The Company has proposed to transfer \$205 million from the transmission and distribution functions to the production function, with the stated objective of mitigating

stranded costs. This adjustment results in an increase in the T&D revenue requirements with a corresponding reduction in the generation revenue requirements.

For the reasons set forth in the testimony of David Schoengold for the Environmentalists, and Lee Smith for OCA, this adjustment should be rejected for several reasons. First, this swap transfers revenue responsibility from the industrial and commercial classes to the residential class.³⁴ This is the case because industrial and wholesale customers are allocated a smaller portion of distribution costs than generation costs. This brand of cost-shifting violates the Competition Act which obligates the Commission to ensure that “restructuring of the electric utility industry does not unreasonably discriminate against one customer class to the benefit of another”.³⁵

Second, the swap results in a shifting of cost responsibility to Pennsylvania customers. This results from the fact that 97 percent of the T&D depreciation reserve is allocated to the Pennsylvania jurisdiction, whereas only 81 percent of the production depreciation is allocated to Pennsylvania.³⁶ In essence, the shift in the depreciation reserve will increase the allocation of costs to the retail jurisdiction.

Third, the swap will result in customers paying twice for the same plant. Distribution customers have already contributed, through rates, the full amount of the accumulated depreciation reserve booked at depreciation.³⁷

Finally, of particular concern to Environmentalists is the air quality impacts of the swap proposal. The upshot of the proposal will be a rate reduction for the price-sensitive industrial class, and a rate increase for the relatively price-insensitive residential class. The depreciation swap will probably lead to greater load growth, with concomitant environmental impacts.³⁸

³³For an amplification of the public interest objectives of electric utility restructuring in Pennsylvania, see *The Environmentalists' Vision for the New Electricity Marketplace*, set forth as Exhibit DS-2 to Environmentalists' Statement No. 1 (David Schoengold).

³⁴ Environmentalists' Statement No. 1 (David Schoengold), p. 24.

³⁵ 66 Pa.C.S. §2804 (7).

³⁶ OCA Statement No. 4 (Lee Smith), pp. 4-5.

³⁷ *Id.*, p. 6.

³⁸ Environmentalists' Statement No. 1 (David Schoengold), pp. 24-5.

D. Allocation of Stranded Costs

The Commission Should Limit The Recovery Of Stranded Costs Through The CTC In Order To Ensure That The Burden Of The Company's Stranded Investments In Generating Plant Is Appropriately Allocated Between Shareholders And Customers.

One of the policy declarations contained in the Act is that:

[i]n moving toward greater competition in the electricity generation market, the Commonwealth must resolve certain transitional issues **in a manner that is fair** to customers, electric utilities, investors, the employees of electric utilities, local communities, nonutility generators of electricity and other affected parties.³⁹ [emphasis added]

In responding to this theme of a fair sharing of the responsibility,

Environmentalists' witness David Schoengold testified:

The amount of stranded generation assets represents a huge economic loss. There are billions of wasted dollars which will not produce anything of value, but must be dealt with. I do not believe it is correct to hold the customers entirely responsible for this loss. To do so would be to treat the PP&L stockholders as if there were no economic loss at all. I believe a sharing of the economic loss is appropriate.⁴⁰

The Company proposes to implement a CTC in order to charge its customers for the costs of investments in generating plant that it does not expect to recover in a competitive marketplace. The amount of stranded cost recovery is itself staggering -- over \$3.5 billion.⁴¹

Equally disturbing, however, is the Company's proposal that customers bear the lions' share⁴² of these estimated stranded costs. The Company's customers have been

³⁹66 Pa.C.S. § 2802(8).

⁴⁰ Environmentalists' Statement No. 1 (David Schoengold), pp. 18-19, l. 22.

⁴¹ Consisting of \$2.852 billion in above-market nuclear generation and \$718 million in above market fossil generation. PP&L Statement No. 8 (Joseph Schadt), p. 32.

⁴² Out of an estimated \$4.6 billion in stranded costs, the Company contends that approximately \$401 million will not be recovered due to the rate cap imposed by the Competition Act. PP&L Statement No. 2 (Ronald Hill), p. 23.

paying the company back for its investments through already booked depreciation, and paying a return on their ratebased investments. As noted by Mr. Schoengold:

In a situation such as PP&L's where there is a multi-billion dollar economic loss to address, it is not appropriate for the customers to have to bear the full responsibility for that loss and for the stockholders to receive a full return *on* their investment as well as return *of* their investment. Declaring 100 percent recovery of the stranded generating asset costs puts 100 percent of the responsibility for the economic losses on the customers and 0 percent on the stockholders.⁴³

Environmentalists submit that these factors should be taken into account in arriving at an equitable accounting of stranded cost responsibility.

Mr. Schoengold developed a model that examines depreciation, remaining rate base and returns on rate base year by year. He determined that stockholders made an initial investment of \$2.83 billion in generating assets and have been allowed a total recovery of \$3.89 billion, or 137.6% of the original investment and an internal rate of return of their investment to date of 7.0%.

There is no reason that customers should continue to shoulder the entire burden of these uneconomic investments. Rather, the Commission should adopt a 42.7% customer/57.3% shareholder split in stranded generation asset responsibility. First, as noted by Mr. Schoengold, this is "a fairly decent return on their investment"⁴⁴, especially in view of the fact that the assets have turned out to be valueless to customers. Second, this amount will permit the Company to pay off the remaining debt on its generating plants. Third, this amount will allow customers to see real reductions in their cost of their electricity. Fourth, this level of stranded cost recovery will facilitate the development of a robust wholesale power market by limiting the Company's ability to subsidize its own generation with extra-market revenues.⁴⁵

⁴³ Environmentalists' Statement No. 1 (David Schoengold), p. 23.

⁴⁴ Id., at p. 19, l. 9-11.

⁴⁵ Id., at p. 23, l. 18-22.

III. STRANDED COST CALCULATION METHODOLOGY

THE COMMISSION SHOULD ADOPT A METHOD OF CALCULATING THE CTC THAT ALLOWS FOR ADJUSTMENTS BECAUSE AT THIS TIME IT IS NOT POSSIBLE TO ACCURATELY VALUE THE COMPANY'S STRANDED GENERATING ASSETS, WHICH COMPRISE A SUBSTANTIAL PORTION OF IT STRANDED COSTS.

A. The Problem

At the present time, no one knows, and no party can accurately project, what portion of the value of the Company's generating assets will be "stranded". The Company has attempted to quantify the value of its stranded generating assets by estimating the cost of running each plant, including a return to shareholders on the investment in the plant and certain other items, and subtracting from that figure the Company's estimate of the market value of such plant. The Company has calculated the market value by estimating the future revenues of the plant on the basis of the Company's estimate of the future market price of electricity. On the basis of this methodology, the Company seeks to recover from consumers over \$3.5 billion of anticipated generation-related stranded costs.

As detailed in the testimony of David Schoengold,⁴⁶ the Company's approach is likely to lead to a gross overestimation of the value of the Company's generating assets. Mr. Schoengold has provided a thorough explanation of the difficulties of accurately projecting the market price of electricity over a period of 30 to 40 years, the expected life of many of the Company's plants. Given the Company's past inability to accurately estimate the future price of electricity (and, consequently, its investment in generating assets that are now stranded), it would be foolhardy to now rely on such projections to determine the value of the Company's stranded generating assets.⁴⁷

⁴⁶ Environmentalists Statement No. 1 (David Schoengold), pp. 6-9.

⁴⁷ Witness after witness testified as to the inevitability of forecasts for future market prices and underlying variables turning out wrong. See, e.g., NEV Statement No. 1 (David Boonin), p. 14, 1.22-3 (Without a reconciliation, "everyone is building their transition plans on mere estimates and speculation of future market conditions."); Tr. at 710, 8/19/97 (Donald Johnstone) (it is "difficult to have a point forecast that you can rely on"); Tr. at 793, 8/19/97 (Robert D. Knecht) ("energy fuel price forecasting is a very uncertain business and electricity prices are even more uncertain because the market has not yet developed."); Tr. at

On cross-examination, Dr. Jones acknowledged that his analysis rests on a single point estimate of market price; that is, he has not explored how alternative combinations of key input assumptions (e.g., fuel prices, environmental compliance costs, technological change, inflation) would effect the market price of energy.⁴⁸ Nor has PP&L analyzed the impact of alternative market price scenarios on the value of its generating assets.⁴⁹

This is not a situation in which shareholders and consumers are equally at risk for errors in analysis. As cogently demonstrated by OCA witness La Capra, this risk fall disproportionately on the consumer. In the event stranded costs turn out too low, the Competition Act permits the company to seek relief from the rate cap. By contrast, where experience demonstrates that stranded cost estimates were set too high:

The Company also obtains substantial generating assets for virtually no cost to operate in a market that has market prices very much higher than those used as a basis for establishing stranded cost...The Company, in fact, could end up with a significant windfall if stranded cost recovery is set too high. In contrast, the consumers pay higher stranded costs in the transition period and higher market prices in the ensuing competitive market.⁵⁰

The Commission should be wary of redistributing wealth from consumers to PP&L shareholders on the basis of such a shaky estimate. Moreover, the Commission should also be cognizant of the impact such over-collections will have on competition. The excess funds collected through the CTC will in effect subsidize the Company's generation, seriously undercutting the development of a competitive market in Pennsylvania.

1721-25, 8/26/97 (Randall Falkenberg) ("the electric utility industry has missed the mark quite often" on important projections over the years.)

⁴⁸ Tr. at 1441, 8/25/97.

⁴⁹ OCA Statement No. 2 (Douglas Smith), p. 3, l. 12.

⁵⁰ OCA Statement No. 1-S (Richard La Capra), pp. 5-6.

B. The Solution

Instead of accepting the Company's point estimate of the value of its stranded generating assets, the Commission should adopt one of two approaches that will more accurately determine this value. The first approach is to encourage the Company to sell its generating assets in order to allow the market to determine the value of each plant. Until such time the sale occurs, the Commission should administratively determine a short-term, *pro forma* market price for each generating unit in order to calculate the CTC. Since this is only a temporary estimate, the Commission also would need to set up a tracking account to monitor shortfalls or over-collections of revenues which would result whenever the actual market price is below or above the *pro forma* value. At the time the plants are sold, the Commission can determine a final CTC based on the actual market price of each plant and a true-up based on the tracking account balance.⁵¹

A second option is to require the Company to create a mechanism for calculating the value of its stranded generating assets that allows for adjustment as the values become known. Again, the Commission could administratively determine a short-term, *pro forma* market price for each generating unit and a tracking system to monitor shortfalls or over-collections of revenues based on possible over-collections or under-collections that result from the actual market price being below or above the *pro forma* value. However, instead of determining the actual market value by sale of the plant, the Commission would determine the value of the plants by observing the actual market price of electricity over time. In this way, the Company would be required to true-up the CTC charge annually.⁵²

C. The Outcome: Environmentalists' Recommendations on Stranded Costs

For the reasons stated in the testimony of David Schoengold, the Environmentalists propose that the Commission adopt a *pro forma* market price of electricity of 3.25 cents per kWh beginning in 1998, to be increased at the rate of inflation thereafter.

⁵¹ Environmentalists Statement No. 1 (David Schoengold), p. 14.

The Commission should take great care to ensure that it does not permit the Company to collect a CTC in an amount greater than the Company's stranded costs. If the Company overestimates the value of its stranded costs, and the Commission allows the Company to collect this inflated amount through the CTC, the Company will be able to use this windfall to subsidize its generation costs. Such a subsidy will seriously limit the ability of competitors to enter the market and reduce the potential for consumers to benefit from competition.

Finally, in the event the Commission rejects the option of a CTC that tracks the differences between projected and actual market prices and endeavors to adopt a binding stranded cost number as an outcome of this proceeding, then it should adopt the OCA stranded cost analysis as set forth in the testimony of Richard La Capra,⁵³ as modified herein. Estimated stranded costs are comprised of:

TABLE 1

CATEGORY	OCA AMOUNT⁵⁴	ENVIRONMENTALISTS
Generating Assets	\$138,121	58,977 ⁵⁵
Regulatory Assets	\$259,249	259,249
NUG Contracts	\$574,708	574,708
Nuclear Decomm.	\$108,125	No current award ⁵⁶
TOTAL	\$1,080,203	\$892,935

⁵² *Id.*, pp. 14-17.

⁵³ OCA Statement No. 1-S (Richard La Capra), Exhibit RLC-8.

⁵⁴ Per RLC-8.

⁵⁵ Customer fractional allocation of OCA stranded cost estimate for generation (\$138,121*42.7%).

⁵⁶ Environmentalists Statement No. 2 (Bruce Biewald), p. 28.

Environmentalists

IV. MARKET PRICE OF ELECTRICITY

A. Price of Energy

3. Choice and Use of Models

a. Realism or Reliability of Output

Please refer to discussion at Section III., supra.

V. REVENUE UNDER REGULATION

Environmentalists

A. PUC Jurisdictional Allocation

Please refer to discussion under Section II.D.2.b), supra.

Environmentalists

VII. RECOVERY OF STRANDED COSTS

Once the stranded costs have been quantified, the task is then to design the recovery mechanism which will "...provide the investors in Pennsylvania electric utilities with a fair opportunity to fully recover the amount of transition or stranded costs that the commission determines to be just and reasonable."⁵⁷ The Environmentalists recommend the following principles in designing this mechanism:

A. CTC Design Methodology, including Fixed, Variable or Levelized CTC

The Recovery Should Be Level Over The Recovery Period.

The Act implies straight amortization of stranded costs⁵⁸ and this is appropriate. Reconciliation should be structured to recover the stranded costs in equal annual amounts. This will conform to §2808(f) and will most closely resemble the market, where prices fluctuate because of natural market conditions but not because of a misplaced attempt to engineer rates.

B. Prohibition on Inter and Intra Class Cost Shifting

The Recovery Should Be Reconcilable By Class.

In designing the reconciliation mechanism, it is critical to prevent cost shifting between customer classes. CTC recovery should be set for each class and reconciliation should occur within each class.⁵⁹ This is important because of the different growth rates for the different classes. For example, if high growth is experienced in the residential class, and low growth in the industrial class and

⁵⁷ 66 Pa.C.S. §2804(14).

⁵⁸ 66 Pa. S.C. §2808(f).

⁵⁹ This position is shared by others. See OCA Statement No. 4 (Lee Smith), pp. 17-18.

reconciliation was calculated on a system-wide basis, CTC recovery would be shifted to residential customers from the industrial customers. With reconciliation by class, the residential CTC charge under this scenario would be reduced or shortened (to reflect the faster recovery) and the industrial CTC charge would be increased or lengthened (to make up to the under-recovery). The Commission recently endorsed this approach.⁶⁰

C. CTC and Rate Cap Extension

1. The Recovery Period Should Be No Longer Than Necessary.

The Act provides for a CTC collection period which would end on December 31, 2005.⁶¹ Since the CTC charge is a stone around the necks of ratepayers and a distortion of the true competitive market, it should be with us no longer than necessary. The Environmentalists support the seven year recovery period contained in the Act in order to finish up stranded cost collection and to accelerate realization of the full benefits of competition.

2. The Commission Should Not Allow The Company To Recover The Ongoing Costs Of Spent Fuel Storage And Disposal For Nuclear Facilities Through The CTC.

The ongoing costs to store and dispose of spent fuel for the Company's nuclear facilities are not properly considered stranded costs and should not be collected through the CTC. These costs are part of the process of generating energy from nuclear plants and the Company should recover them through the sale of energy from such plants. The Commission should not allow customers to subsidize the cost of generating power at the Company's nuclear facilities by paying for the costs of spent fuel storage and disposal through the CTC.

⁶⁰ Opinion and Order, R-00973953 *et. seq.*, 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, dated December 11, 1997, (hereinafter cited as "PECO Opinion and Order") p. 112.

⁶¹ 66 Pa.C.S. §2808(b). A longer recovery period is permitted for "good cause."

3. The CTC Should Not Be Extended Beyond The Statutory Period To Permit Recovery Of Nuclear Decommissioning Costs.

PP&L proposes that the Commission extend the CTC “beyond the nine-year window provided by the Act to permit recovery of its nuclear decommissioning costs of the remaining life of the Susquehanna generating plant.”⁶² As set forth below, the Commission should reject this proposal. It is unreasonable to have the wires charge be the sole means for funding the Company’s nuclear decommissioning obligations. This would provide a subsidy to the continued operation of the plant; and relieve all incentives for PP&L, as the plant’s operator, to control future decommissioning costs. Customers should not be saddled with an open-ended obligation to bear these costs, which are likely to escalate if the nuclear units continue to operate over the remainder of their existing licenses. Instead, the Commission should adopt a framework for decommissioning -- as set forth in the testimony of Environmentalist witness Bruce Biewald -- that ensures that the needed funds will be available in a timely manner; that provides for customers and shareholders to bear their fair share of the costs over time, and that provides incentives for the plant owner to control the magnitude of decommissioning costs.

The Company currently estimates that it will spend \$724 million (in 1993 dollars) to decommission its nuclear facilities.⁶³ As the unchallenged testimony of Bruce Biewald⁶⁴ reveals, this amount is:

- *large and likely to grow:* The nuclear decommissioning cost estimates for dismantling a large pressurized water reactor are today about 15 times higher (6 times higher after adjusting for inflation) than they were in 1976. Indeed, Environmentalists’ witness Biewald has analyzed approximately 180 site -specific nuclear decommissioning cost estimates that have been conducted by PP&L’s decommissioning consultant. The analysis demonstrates that decommissioning cost estimates are escalating at an alarming rate, doubling every 7-8 years;
- *very uncertain:* Dismantling a large, highly radioactive nuclear unit is a large, complex undertaking for which experience is quite limited, and for which regulations continue to evolve. A number of technical, economic and regulatory uncertainties

⁶² PP&L Statement No. 3 (Joseph Kleha), p. 14.

⁶³ PP&L Response to Interrogatories of the Environmentalists, Set 3, Attachment 1, page 4.

will confound development of an accurate estimate prior expiration of the plant's licenses in 2014 and 2029.

- *within the control of the plant owner*: There is a clear relationship between routine plant operation and future nuclear decommissioning costs. Thus, running the plant today in a very clean manner (e.g., regular decontamination of equipment, removal of radioactive waste) will somewhat increase current operation costs, but lower decommissioning costs. Moreover, good planning and cost control measures for the decommissioning process that reduce the total exposure for decommissioning would translate into stranded cost reductions. Unfortunately, PP&L has offered no evidence that it has a program in place to minimize the cost of its nuclear deconstruction program. While the Environmentalists fully support the principle that adequate funds be made available to decommission the plants in a safe and timely manner, we are concerned that the allocation of these costs be equitable between shareholders and customers and that the Company mitigate these costs to the greatest extent practicable.

Based on the foregoing considerations, Environmentalists urge the Commission to take the following actions:

First, the Commission should not, at this point, extend the cost recovery for decommissioning beyond nine years. Instead, the Commission should address the complicated technical and policy issues of decommissioning in a generic case, in which limited regulatory resources can be used efficiently and a consistent statewide policy can be fashioned.⁶⁵

Second, the Commission should reject, at this time, the Company's proposal for assigning all future costs of nuclear decommissioning to the wires business. Rather, the Commission should consider the benefits of an incentive framework for nuclear decommissioning costs, in which the risks are shared between the Company and its customers. While it may be reasonable to fund some portion of decommissioning costs in this fashion, the Commission should carefully weigh the costs, benefits and risks of this approach. The Commission should consider the problems that occurred in the past

⁶⁴ Environmentalists' Statement No. 2 (Bruce Biewald), p. 30-33.

⁶⁵ *Id.*, p. 37.

when cost-based regulation was applied to the large, complex, expensive and uncertain project of nuclear plant construction.⁶⁶

Third, the Commission should direct PP&L to undertake certain actions. Specifically, the Commission should require PP&L to update its 1993 nuclear decommissioning study. Additionally, the Commission should require PP&L to develop a plan for the mitigation of its decommissioning costs, setting forth, among other things, the procedures that the Company will put in place to ensure that the plant is operated in such a way that the decommissioning cost obligation is not increased.⁶⁷

⁶⁶ *Id.* p. 28.

⁶⁷ *Id.* pp.34-5.

Eric Epstein Separate Statement on Nuclear Decommissioning Costs

Eric Epstein has been actively involved with issues pertaining to nuclear decommissioning and radioactive waste management dating back to the Pennsylvania Power and Lights (PP&L) Base Rate Request before the Public Utility Commission (PUC) in 1995. Mr. Epstein does not dispute the Company's contention as evidenced in 1995 Base Rate Proceedings that radiological decommissioning and radioactive waste isolation expenses are subject to change and likely to increase. At issue, is the undisputable fact that PP&L's rate recovery proposal for nuclear decommissioning at the Susquehanna Steam Electric Station (SSES) is technically flawed and based on unproven assumptions. PP&L's plan for stranded cost recovery of nuclear decommissioning costs must be recomputed and resubmitted to the Public Utility Commission (PUC). The Company's must submit a timely and realistic site specific study of nuclear decommissioning study that employs empirically verifiable data including: Cost projections for nuclear decommissioning funding linked to the unequivocal history of premature closure of nuclear power plants and the well documented record of operation-limiting mechanical issues; Compute "low-level" radioactive waste costs based on the reality that Barnwell is open and being utilized by PP&L; and Premise spent fuel disposal costs on the Company's recent decision to suspend dry cask operations.

PP&L's management aggressively and recklessly pursued the construction, licensing and operation of the Susquehanna Steam Electric Station (SSES) (This is substantiated in the present case in PP&L Company, Response to Interrogatories of the Consumer Advocate, Set III, Dated April 17, 1997, R.E. Hill, D.A. Krall, Response and Answer to Question 13.). The Company was fully cognizant that no commercial nuclear reactor had been decommissioned and that a solution to nuclear waste disposal did not exist. Furthermore, PP&L (1) has not actively sought a solution to the permanent storage and isolation of low-level and high-level radioactive waste. The Company willfully pursued a financial investment in nuclear energy which was knowingly fraught with huge uncertainties. (2) Therefore, it is grossly unfair and inequitable to request the rate payers to provide a financial safety net for PP&L's risky nuclear investment strategy. Mr. Epstein argues that rate payer equity and corporate accountability necessitates that a substantial portion of what is being referred to as "stranded costs," (3) relating to nuclear decommissioning and nuclear waste disposal, should be borne by the entities that are traditionally held responsible for imprudent and unreasonable management decisions --

the electric industry shareholder

1. Planned Operating Life for Nuclear Generating Stations

Experience at large commercial nuclear power plants over 200 MWe has clearly demonstrated that TLG's assumption that nuclear units will operate for 40 years, i.e., "PP&L expects that Susquehanna will operate for its full license life"⁶⁸ contradicts existing nuclear reactor experience. The Company's witness, Thomas LaGuardia, was asked by Mr. Epstein: "[H]ow many commercial nuclear power plants in this country have completed their full operating lives?" Mr. LaGuardia replied: "[N]one, essentially." (PP&L Base Rate Case, Page 1023, Lines 20-22.) Additionally, George T. Jones, Vice-President of Nuclear Engineering, was asked by Mr. Epstein:

Q: "In your experience, which is rather extensive at TVA, Entergy and CE, can you at least let me know what is the longest life of a plant you've been associated with?"

Additionally, PPL admitted (in the same set of Interrogatory Response of the Environmentalists) that TLG "has not performed, nor is he aware of, any generic studies or studies that address the premature closure of a nuclear unit and the cost of decommissioning under such a scenario." (Q. & A. p. 190.)

Moreover, PP&L believes that while the SSES may operate for 40 years, they are not confident that this critical assumption applies to other commercial nuclear power plants.

Q. 9. "Is the Company aware that if the Susquehanna Steam Electric Station operated for 40 years, it will be retired at the same time as the majority of nuclear reactors in America?"

A. 9. "This question is premised upon an assumption that the majority of other nuclear reactors in America will operate for their full license lives. **There is no evidence that this premise is correct.**" (Boldface type added.) (PP&L's Response to Interrogatories of Eric Joseph Epstein, Set I, Dated June 3, 1997.)

⁶⁸ Pennsylvania Power & Light Company, Response to Interrogatories of the Environmentalists, Set 3, Dated May 19 1997, Question and Answer: 167 (Also see, Pennsylvania Power & Light Company, Response to Interrogatories of the Office of Consumer Advocate, Set III, Dated April 17, 1997 and PP&L's Response to Interrogatories of Eric Joseph Epstein, Set I, dated June 3, 1997.)

Mr. Jones: I've never been associated with one that -- none of them have ever reached the end of their licensed life. There has been a lot of work done and continues to be done on life extension, not by us but by the industry. I don't know." (Page 2272, Lines 8-16.)

Even Mr. MacGregor, PP&L's attorney wavered on Susquehanna's ability to operate for its full-life. Mr. Epstein asked him: "But his [LaGuardia] methodology is based on the fact the plant will operate for 40 years; is that not correct." Mr. MacGregor answered, "I'm not sure that's true." (Page 456, Lines 15-18.)

The Company reconfirmed the 40 year assumption in the present case. "PP&L expects that Susquehanna will operate for its full license life. Moreover, the Company believes that it can meet 'higher than expected decommissioning costs,' if they arise, and can avoid 'financial difficulties at the responsible entity' by operating its system in a efficient and cost effective manner. The Company has not contemplated additional measures at this time." (Pennsylvania Power & Light Company Response to Interrogatories of the Environmentalists, Set 3, Dated May 19, 1997. Q. & A. 167.) This assertion **contradicts PP&L's direct testimony** about their apprehension and financial vulnerability if the Company is no longer defined as an "electric utility."

Mr. LaGuardia's and Mr. Jones's acknowledgments are confirmed by empirical data. The following reactors have been shut down prematurely:

- Shoreham, 809 MWe, operated for two full-power days (which is .000136986% of the estimated life of the Susquehanna Steam Electric Station) and closed before it could begin commercial operation in May 1989;
- Trojan, 1095 MWe which operated for 40% of its operating life (May 1976 to November 1992);
- Three Mile Island-2, 792 MWe which operated for 1/120 of its operating life (December 1978 to March 1979),
- Dresden, 200 MWe which operated for 45% of its operating life (July 1960 to October 1978);

- Indian Point-1, 257 MWe which operated for 30% of its planned operating life (January 1963 to October 1974);
- San Onofre-1, 436 MWe which operated for 35% of its expected life (from January 1968 to November 1992);
- Fort Saint Vrain, 330 MWe which operated for 27.5% of its expected life (January 1979 to to August 1989) and
- Big Rock Point a 67 MWe General Electric BWR which began commercial operation in March 1963 prematurely shut down on August 29, 1997. [World List of Nuclear Power Plants: Operable, Under Construction, or on Order (30 MWe and Over) as of December 31, 1994, "Nuclear News," March, 1995, pp. 38-42.]
- On December 4, 1996, Haddam Neck, a 582 MWe Pressurized Water Reactor operated by Connecticut Yankee Atomic Power Company, closed prematurely in the hope of saving rate payers \$100 million ("Nuclear Monitor", p. 4, December 1996.) The plant came on-line in January 1968 and operated for 72.5% of its predicted life.
- Six months later, on May 27, 1997, Main Yankee was shut down and became the first Combustion Engineering reactor to be prematurely retired. The plant, an 860 MWe Pressurized Water Reactor, opened in December 1972 and was scheduled to operate through 2008.
- Two months ago, the Connecticut Department of Public Utility Control removed Millstone-1 from the rate base on December 31, 1997. Millstone-1, a 660 MWe General Electric Boiling Water Reactor operated by Northeast Utilities, began operation in March 1971 before being prematurely retired. More importantly, the decision prevents Northeast Utilities from charging rate payers for costs associated with the shutdown.
- Finally, on January 15, 1998, Commonwealth Edison announced it was permanently shutting down Zion-1 and Zion-2, 1040 MWe Westinghouse PWRs. Zion-1 began commercial operation in December 1973 followed by Zion-2 in September 1974. Com Ed also reported this decision will cost shareholders \$515 million or \$2.38 per share. With the shutdown of Zion, premature closure has occurred for every nuclear reactor type and supplier in the United States of America.

A sense of fiduciary accountability and fair play dictate that PP&L plan for decommissioning based on the assumption that their nuclear units will be prematurely shut down. The chief indicators that the nuclear industry relies on to measure plant longevity are spurious and imprecise. There is no clear nexus between operating capacity (measure of electricity actually produced compared to what would have been

generated if the plant had operated continuously at full power) and plant longevity. As previously noted, operating capacity and historical evidence from commercial nuclear power plants give no indication that the SSES nuclear generating station will operate for 40 years. On the contrary, nuclear reactor history has resoundingly demonstrated that nuclear power plants have not operated for the term of their license. Obviously, there is chronic shortfall between “targeted” funding levels and actual costs for nuclear decommissioning. The burden of proof rests squarely on the shoulders of PP&L to demonstrate that a 40 year operating life, which they predicate their financial planning upon, is realistic. Furthermore, the nuclear industry has exasperated this problem by resolutely refusing to put aside adequate funds for nuclear decontamination and decommissioning.

2. Spent Fuel Disposal

There is no location to permanently store spent fuel generated by nuclear power plants. This is a significant problem for the Susquehanna Steam Electric Station where the fuel storage capacity will be exhausted before their license expires, in 2020. The SSES has become a *de facto* high-level, radioactive waste (HLW) disposal site and are is currently proposing to increase storage capacity through an untested commercial waste technology, i.e., dry cask storage. “The Company plans to continue storing spent fuel in its spent fuel pool. When the pools are full, the Company will utilize a Dry Storage facility designed to support operation to end of plant's life, if necessary.” (Pennsylvania Power & Light Company Response to Interrogatories of the Environmentalists, Set 3, Dated May 19, 1997, Q. & A. 172.) PP&L projected that spent fuel pools at SSES-1 will be full in 2001 and at SSES-2 in 2002. (Ad Crable, *Lancaster New Era*, A-6.)

Even if spent fuel storage capacity is increased, the additional cost will have a significant impact on decommissioning. For example, at the Susquehanna Steam Electric Station **spent fuel costs were omitted from TLG’s decommissioning estimate**: “None

of the estimates we have prepared include the cost of disposal of spent nuclear fuel,” PP&L Base Rate Case, Page 1032, Lines 20-12). But spent fuel is the main contributing factor in the escalation of decommissioning costs at Yankee Rowe. Thomas LaGuardia, the Company’s witness, admitted the increase during cross examination:

Mr. Epstein: “Are you aware that the cost has increased for the decommissioning of Yankee Rowe from \$247 million to \$370 million over the last two years?”

Witness: “Yes. I’m aware of what the estimate concludes.”

Mr. Epstein: “And half of the cost was attributable to spent fuel storage?”

Witness: “That’s correct.” (PP&L Base Rate case, Page 1029, Lines 16-22.)

Isolation of high-level radioactive waste, which is primarily composed of spent nuclear fuel, **can not be separated from nuclear decommissioning**. At the earliest, Yucca Mountain will be available in 2010; **eight and nine years after capacity will be exhausted at the SSES**. Pennsylvania nuclear generating stations can not be immediately decontaminated and decommissioned with the presence of spent fuel on-site or inside the reactor vessel. Aggressive and destructive decontamination clean-up processes will be unavailable until the spent fuel is removed the nuclear generating stations’ temporary storage facilities. Additionally, front-end decommissioning tasks require skilled workers for site-specific tasks. Labor costs are erratic and should be linked to inflationary indices. The NRC and the nuclear industry devote scant resources to decommissioning research and development. This laissez-faire approach should not be rewarded by financially penalizing rate payers.

If a long term solution to spent-fuel isolation is not found in the next several years, Susquehanna will be shut down prematurely due to a lack of storage space.

3. Low Level Radioactive Waste Disposal

All of Pennsylvania's nuclear generating stations currently serve as "temporary" repositories for low-level radioactive waste (LLRW). (The term "low-level" is not analogous to low-risk.) TLG provided nuclear waste storage and nuclear decommissioning costs estimates for all Pennsylvania utilities regulated by the Public Utility Commission. However, TLG's recent testimony during the PP&L Base Rate Proceeding discredits their projections. Mr. La Guardia based his cost estimates for low-level radioactive waste disposal on the assumption that the Appalachian Compact would be available when the SSES closes (PP&L Base Rate Case, Page 1034, 17-20). He concluded that the disposal of LLRW is the most expensive component in the decommissioning formula (Page 2091, Lines 21-25.) Furthermore, Mr. LaGuardia conceded it may be necessary to recompute cost estimates for disposal because it now appears imminent that Barnwell will open for seven to ten years for all states except North Carolina (Page 2108, Lines 4-9.) However, the Company has not yet taken the step of reconfiguring costs of LLRW disposal now that Barnwell has been open since **July 5, 1995**. (Bold face type added.)

Q. 7. "Has TLG or the Company recomputed decommissioning estimates since Barnwell has reopened?"

A. 7. "No." (Pennsylvania Power & Light Company Response to Interrogatories of Eric Joseph Epstein, dated June 3, 1997.)

Barnwell is currently operating and has the capacity to function through 2006. In a response to a formal inquiry posed by Mr. Eric Epstein, Chairman of Three Mile Island Alert (May 18, 1996), concerning Barnwell's operating and capacity status, Chem-Nuclear Systems, Incorporated, the owners and operators of the Barnwell, declared:

Our analysis is based on the insights and understanding that come from having a major operation in South Carolina. The

realities are that Chem-Nuclear LLRW disposal facility in Barnwell, S.C. has sufficient disposal capacity to remain open to the nation for approximately 10 years based on volume received. (Walter E. Newcomb, Ph. D., Vice President and Project Manager, CNSI Pennsylvania Office, May 18, 1996.)

In addition to recomputing the cost of LLRW disposal downwards, the reopening of Barnwell could further postpone the siting of a waste facility in Pennsylvania. Marc Tenan, Appalachian Sates LLRW Commission executive director observed: "If Barnwell's going to open to the entire country for at least the next 10 years, is there really a pressing need to continue work on regional disposal facilities?" ("ACURIE Newsletter, About Low-Level Radioactive Waste Management," May 1995, Page 1.)

4. Conclusion

Pennsylvania Power & Light's stranded cost recovery proposal for nuclear decommissioning at the Susquehanna Steam Electric Station is unsupported by the history of commercial nuclear power plants in America. The Company's proposal is based entirely on TLG's 1995 Base Rate Case projections which have been demonstrated to be inherently flawed and based on unrealistic expectations and variables. **PP&L's stranded cost recovery plan for nuclear decommissioning must necessarily be recomputed before the Public Utility Commission can seriously consider PP&L's request.** TLG, or the Company, must conduct a revised and updated site specific analysis based on prevailing realities that include a recognition that the Nuclear Regulatory Commission is redefining the concept of "electric utility"; scientifically verifiable cost projections for the nuclear decommissioning "target"; premature shutdowns of a substantial number of commercial nuclear generating stations; current mechanical challenges that remain unresolved at the SSES; PPL's suspension of dry cask storage planning; and, the reality that Barnwell is operating a "low-level" radioactive waste facility.

Environmentalists

VIII. RATE DESIGN AND TARIFFS

The Act requires the “unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution.”⁶⁹ Other charges included in the fully bundled rate would include the CTC, and where applicable ITC. The unbundling of rates is where the rubber meets the road for ratepayers, for this tells customers what part and how much of their bill they can take shopping for alternative suppliers, and what part and how much will continue to be tied to the monopoly utility.

The unbundling of rates is also crucial to the emergence of competition, for the generation charge will have a direct bearing on the level of competition at the retail level. As recently recognized by the Commission in the context of the PECO restructuring plan:

“Setting the [generation credit] below price levels at which even the most efficient competitors could sell electricity or below market prices strangles competition by making it economically impossible to compete for retail customers. Simply put, if set too low, the [generation credit] will mean that customers in PECO’s service territory will have few or no competitors competing for their business. To use witness Silkman’s term, PECO would be a “de facto monopoly”.⁷⁰

Overrecovery of stranded costs will have a similar chilling effect on the level of competition. This problem was identified by Environmentalists’ witness Schoengold: “[T]he retail T&D customers paying the CTC would, in effect, subsidize the wholesale and retail market customers. It will undercut other providers and hinder the development of a robust and thriving market.”⁷¹

From the Environmentalists’ perspective, we are keenly interested in seeing such barriers to entry obliterated, for the introduction of new, and relatively cleaner generation technology holds the promise of significant environmental improvement.

⁶⁹ 66 Pa.C.S. § 2804 (3).

⁷⁰ Opinion and Order, R-00973953 *et. seq.*, 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, dated December 11, 1997, p. 16.

⁷¹ Environmentalists’ Statement No. 1 (David Schoengold), p. 16.

Based on the foregoing, Environmentalists support unbundling of rates which: 1) accelerates the introduction of lower-cost, and lower-emitting generation (including renewable technologies); 2) best reflect the market price of electricity; 3) provides a real, cost-justified incentive for customers to seek out alternative providers; 4) promotes competition at the generation and retail services level; 5) confers the advantages of a competitive bulk power market, including significant rate reductions, to those who remain with the EDC for fully bundled service; and 6) allows the utility to recover its revenue requirements for the remaining monopoly functions. It is the Environmentalists' position that the OCA recommendations for unbundling, with a few minor modifications described here, best satisfies these interrelated objectives. Table 2 sets forth our recommendations for unbundling. Unbundled prices for T&D and delivery, market price, and the A&G adder derive from OCA Exhibit LS-11. The OCA CTC component has been : 1) reduced consistent with Environmentalists' recommendation to reduce stranded cost recovery, to \$892 million, (see discussion, Section III., supra); and 2) Environmentalists' recommendations for levelized structured cost recovery over the seven year transmission period.

TABLE 2
OCA EXHIBIT LS-11 AS MODIFIED PER ENVIRONMENTALISTS
RECOMMENDATIONS ON CTC AMOUNT AND RECOVERY METHOD

	1999	2000	2001	2002	2003	2004	2005
Unbundled Average Rates Per PII							
T&D	\$ 0.0170	\$ 0.0169	\$ 0.0169	\$ 0.0169	\$ 0.0169	\$ 0.0168	\$ 0.0168
Delivery/kWh							
Market/kWh	\$ 0.0320	\$ 0.0370	\$ 0.0432	\$ 0.0449	\$ 0.0473	\$ 0.0491	\$ 0.0529
A&G Adder/kWh	\$ 0.0018	\$ 0.0017	\$ 0.0017	\$ 0.0017	\$ 0.0017	\$ 0.0018	\$ 0.0018
CTC/kWh	\$ 0.0050	\$ 0.0050	\$ 0.0049	\$ 0.0048	\$ 0.0047	\$ 0.0047	\$ 0.0046
Total Rev/kWh	\$ 0.0558	\$ 0.0606	\$ 0.0667	\$ 0.0683	\$ 0.0706	\$ 0.0723	\$ 0.0761

A. Customized Rate Design

The Commission Should Require the Company to Structure the CTC on a Mils/kWh Basis in Order to Encourage Energy Efficiency Rather Than to Subsidize High Energy Use.

The Company proposes to collect half of the CTC on a per kWh basis and half as a fixed charge for all commercial and industrial customers and for those residential customers who choose the “Customized Rate Plan.” The Company baldly asserts that this is a more “efficient” rate design,⁷² yet has proffered no marginal cost study to back its claim.⁷³ The use of a fixed charge serves to artificially reduce the cost of electricity the more a customer purchases, reducing the incentive for energy efficiency. It also causes the burden of stranded cost recovery to disproportionately affect low energy users and low-income customers.⁷⁴ The Commission should not approve a fixed charge rate mechanism for the CTC but rather should require that the Company collect the entire CTC on a per kWh basis. The Company can insure against the risk of under-collection by implementing a true-up at the end of each year.

For the same reasons, the Commission should reject any proposal to collect transmission and distribution costs on a fixed charge rather than a per kWh basis.

⁷² PP&L Statement No. 9 (Susan F. Tierney), p.20.

⁷³ Response to OCA-II-36.

⁷⁴ Environmentalists’ Statement No. 1 (David Schoengold), p. 27; OCA Statement No. 4 (Lee Smith), p. 15-16.

XI. CUSTOMER EDUCATION

Customer education is very important and should be coordinated with disclosure (See discussion at Section XIII.A.) so that consumers have the information they need to make decisions and the knowledge to understand that information. Properly conceived and implemented, customer education programs supplements disclosure requirements in fostering informed choice of electric supply. A comprehensive program of consumer education should be developed to assist buyers in comprehending electricity restructuring, comparing offers, and understanding the environmental impacts of their choices.⁷⁵ This section of the brief sets forth the standards that should be applied to PP&L's proposed customer education program, identifies areas where the PP&L program falls short, and offers specific recommendations.

In evaluating the PP&L customer education program, guidance should be taken from Section 2807(d)(2) of the Act which requires:

each distribution company, electricity supplier, marketer, aggregator and broker to provide **adequate** and **accurate** customer information to enable customers to make informed choices regarding the purchase of all electricity service offered by that provider. Information should be provided to consumers in an **understandable** format that enables consumers to compare prices and services on a uniform basis.⁷⁶ (bold not in original)

Additionally, Section 2807(3) of the Act requires that, prior to the implementation of a restructuring plan, the distribution utility develop and implement "a consumer education program informing customers of the changes in the electric industry."⁷⁷ The purpose of the program is to "provide consumers with information necessary to help them make appropriate choices as to their electric service."⁷⁸

⁷⁵ Environmentalists' Statement No. 2 (Bruce Biewald), pp. 17-18.

⁷⁶ 66 Pa.C.S. §2807 (d) (2).

⁷⁷ Id., at § Section 2807(d)(3).

⁷⁸ Id.

Thus the Act focuses on the scope, substance, style and effectiveness of the communication. In order to be worthy of Commission approval, an education program must be effective, accurate, accessible, comprehensive and unbiased.⁷⁹

In general, Environmentalists positions in this area parallel those of the OCA, and adopt the OCA brief on this topic. Briefly, Environmentalists concur with OCA that an approved education plan for PP&L must:

- Be designed to motive consumers to participate in the competitive market;
- Be predicated on customer research to determine what information its customers already know and what they would like to know about electric competition;
- Remove any subliminal message to the consumer to stay with the incumbent utility, and its retail sales marketing arm.⁸⁰

Although the Company proposes to provide “educational” materials to customers in connection with the transition to a competitive marketplace the Commission has no guarantee that such materials will be designed to do anything other than promote the marketing efforts of the Company. The Commission should not allow customers to foot the bill for the marketing efforts of incumbent utilities and therefore should set precise protocols and content requirements with respect to any such education program. Such protocols should require that the program cover a broad range of issues and assist consumers in understanding electricity restructuring and be able to compare offers and understand the environmental impacts of their energy purchases. The Commission must ensure that educational materials do not contain any language that could inappropriately influence customers to choose to remain with their incumbent utility.

Finally, The record in this case reveals that PP&L has not discussed with customers or survey customers as to their preferences for different energy management services.⁸¹ The company’s customer information literature does not mention renewable

⁷⁹ Environmentalists’ Statement No. 2 (Bruce Biewald), p. 17.

⁸⁰ OCA Statement No. 5 (Barbara Alexander), pp. 16-17.

⁸¹ Id., p. 8.

sources of electricity or alternatives to fossil fuel and nuclear plants,⁸² although it offers to include such information.⁸³

The Commission should not approve an education plan for PP&L until mechanisms are put in place to inform consumers of the environmental implications of their choice, and of the clean alternatives that may be available to them in the competitive marketplace. The Company indicates that its customer will form a “Customer Choice Education Advisory Committee made up of representatives from community-based development organizations which will work in partnership with the Company to develop approaches to presenting such information.”⁸⁴ The Commission’s approved education program should explicitly include Environmentalists as a part of this process, given their perspective and expertise on environmental issues.

⁸² Id., p. 8.

⁸³ Environmentalists' Statement No. 2 (Bruce Biewald), p. 18.

⁸⁴ Id., (citing PP&L Response to Interrogatories of the Office of Consumer Advocate, Set IV, Question 10)

CEO Statement on Customer Education

CUSTOMER EDUCATION

F. Other Specific Customer Education Recommendations

Consumer education will be vital to successful industry restructuring and the design and implementation of such will be particularly important for low income participation. As such, low income consumer education programs must be funded by PP&L and delivered by the same agencies that provide existing low income energy services. Distribution through the network of independent low income assistance agencies is necessary to ensure that low income, handicapped and elderly customers have the knowledge and tools needed to objectively evaluate information presented and make informed choices, as well as their rights. (Karp, Direct, page 21).

Further, it should be required that restructuring education be delivered as a component to all other public purpose programs and include information on the efficient use of heating, hot water, appliance, and air conditioning, the meaning, environmental effects, and availability of "Green Power" generating choices, health and safety measures, and customer rights and responsibilities. Additionally, such consumer education programs should include, multilingual materials, budget management counseling, targeted energy education for children, specific component for high usage and remedial needs customers, and certification/training for education providers. (Karp, Direct, page 21). To facilitate the accomplishment of these functions, PP&L should create Electric Competition Consumer Information and Customer Assistance Program to be delivered through its existing network of existing low income assistance organizations within its service territory. Initially, this program should be funded \$150,000 per year in each of its divisions with provisions for renewal upon positive evaluation. (Karp, Direct, pages 21-22).

To make potential participants aware of the availability of these programs and services, PP&L should be required, at a minimum, to provide space for presentation of

consumer information regarding these programs in its September, December, March and July billings by independent agencies. This space should be large enough to provide adequate information, in a clear and understandable format regarding program availability, benefits, rights, customer information etc. Otherwise EDC mailings will not be designed to provide proper customer notice for Universal Service and Energy Conservation and Education services. (Karp, Direct, page 22)

CEO

XII. UNIVERSAL SERVICE AND CUSTOMER ASSISTANCE PROGRAMS

A. Increased Funding

As established Section I above, to be in compliance with the Customer Choice Act and the Commission's Final Order, funding for PP&L's universal service and energy conservation programs must be established using a needs assessment, while taking into consideration other provisions of the Customer Choice Act. Further, such funding cannot be established after other needs of the Customer Choice Act have been met. Minimally, a needs assessment would require an analysis of PP&L's service territory with respect to low income demographics and an estimation of potential universal service and energy conservation market penetration.

1. PP&L's Funding Proposal

PP&L's restructuring plan calls for the continuation of five existing low income programs. Four of these programs are to be funded at historic funding levels. The remaining program--its OnTrack CAP--is to receive increased funding beginning in 1999. PP&L's proposed funding levels for each program is as follows:

(A) Programs	(B) 1999	(C) 2000	(D) 2001	(E) Ongoing
CARES	\$260,000	\$260,000	\$260,000	\$260,000
Operation HELP	\$856,000	\$877,000	\$899,000	\$922,000
WRAP	\$3,023,000	\$3,023,000	\$3,023,000	\$3,023,000
Keep Warm	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
OnTrack	\$5,875,000	\$7,750,000	\$9,625,000	\$9,100,000
Total	\$11,015,999	\$12,912,000	\$14,809,001	\$14,305,000

(A), (B), (C), (D), (E) = PP&L Statement 16.

By its own admission, PP&L's proposed funding levels were not established using a needs assessment (Crandall, Direct, page 3, Kuennen, Surrebuttal, page 7). As such, PP&L's proposed universal service and energy conservation does not meet the Customer Choice Act and Commission's Final Order requirements.

2. CEO's Funding Proposal

CEO has proposed alternative funding levels for the following programs as follows:

(A) Programs	(B) 1999	(C) 2000	(D) 2001	(E) Ongoing
CARES	\$500,000	\$500,000	\$500,000	\$500,000
Operation HELP	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
WRAP	\$7,220,000	\$7,220,000	\$7,220,000	\$7,220,000
OnTrack	\$23,100,000	\$23,100,000	\$23,100,000	\$23,100,000
Total	\$32,821,999	\$32,822,000	\$32,822,001	\$32,820,000

(B), (C), (D), and (E) = Kuennen, Direct, pages 16, 29-30.

CEO's proposed funding levels were established using a needs assessment in accordance with the Customer Choice Act and Commission Final Order requirements. In addition to the low income demographic analysis provided in Section I above, this needs assessment included a detailed analysis of the "appropriateness" and of PP&L's proposed funding levels for its WRAP and OnTrack Programs.

a. CEO WRAP Funding Needs Assessment

According to PP&L's universal service and energy conservation plan, PP&L projects total WRAP funding at \$39,000,000 based on the need to provide services to 32,500 electric heated homes at an average cost of \$1,200 per home. On an annual basis, PP&L projects WRAP spending at \$3,023,000 for years 1999, 2000, 2001, and beyond. These figures work out to approximately 2,500 WRAP completions a year for the next 13 years. (Kuennen, Direct, page 9).

There are at least three other ways to evaluate PP&L's WRAP with respect to need. One way is to look at the level of WRAP completions and funding relative to the level of poverty over the life of the program. If the numbers of homes in need of services is increasing, but the level of WRAP completions and funding have remained constant or declined, then in some sense we can conclude that PP&L's proposed plan does not meet the requirements of the Customer Choice Act and Commission's Final Order. (Kuennen, Direct, page 10).

In terms of completions, PP&L's WRAP program maxed out during its first year, and declined steadily through at least 1995. One might argue this is because WRAP has been successful and there are simply fewer electric heat homes in need of service, but given that PP&L estimates that it has 32,500 low income electric heat homes still in need of service, this cannot be the case. Similarly, in terms of funding, WRAP maxed out at \$3,158,930 during the first year of the program, declined steadily through 1992 to a low of 2,864,914, and it is projected to remain at the 1995 level of \$3,023,300 through 2002, and beyond. (Kuennen, Direct, page 10).

At the same time completion and funding were declining 22.0% and 6.0% respectively, the need for WRAP services was increasing by 18.2%. Put another way, during the period 1989 to 1993, WRAP annual completions per person in poverty declined 34.0% from 0.013 to 0.008, and annual funding per person in poverty declined 20.5% from \$12.98 to \$10.32. (Kuennen, Direct, pages 10-11)

At a minimum, these figures suggest that PP&L's WRAP plan should be designed to meet the needs of at least 3,628 electric heated households per year with annual funding set at between \$3,662,946 ($=3,628 * \12.98) and \$4,353,735 ($=3,628 * \$1,200$). As proposed, PP&L's WRAP plan in terms of annual completions is 45.1% below the need and, in terms of annual funding, it is between 21.2% and 44.0% below the need. (Kuennen, Direct, page 11).

A second way to gauge the "appropriateness" PP&L's WRAP in terms of funding and annual completions is to look at PP&L's low income household numbers and

ascertain how long a PP&L household will have to wait for service given PP&L's annual funding and completion projections. (Kuennen, Direct, page 11).

According to its current plan, PP&L estimates that it has 32,500 electric heated household in need of service. At PP&L's stated penetration rate of 2,500 completions per year, this means that 20,000 PP&L households will have to wait 5 years or more for service, and 7,500 will have to be on the waiting list for 10 years or more. If you take into consideration that PP&L's average penetration rate for electric heated homes during the period 1988 to 1995 was just over 2,000 households per year, and not the 2,500 PP&L projects, this means that as many as 12,500 will wait 10 years and at least 2,500 will wait as much as 15 years for service. (Kuennen, Direct, page 11).

A third way is to look at the total number of "untreated" or "under treated" homes within PP&L's low income housing stock at any given time since each "untreated" and "under treated" homes represents an additional unnecessary risk with respect to increased demand for other universal service and energy conservation programs such as OnTrack, Help, and CARES. An "untreated" home being one that has never received WRAP service and an "under treated" home being one in which 10 years or more have elapsed since it received WRAP treatment; hence, it could benefit from additional WRAP services given the fact that installed WRAP measures have limited life spans of between 7 and 12 years. Based on these definitions and PP&L's historic and projected completions, beginning in 1999 and continuing through years 2000, 2001, 2002 and beyond, PP&L's total untreated and under treated WRAP electric heat household population will never drop below 30,000 in any given year. These homes represent a significant potential but unnecessary risk in terms of demand for other PP&L low income services because as the Commission's LIURP studies have consistently shown WRAP households pay significantly higher percentages of their own electric bills after receiving these services. (Kuennen, Direct, pages 11-12).

The level of unnecessary additional risk is of even greater concern when we take into consideration the fact that PP&L's WRAP program continues to be essentially silent

on the energy conservation and efficiency needs of its low income baseload customers. PP&L's 122,756 low income baseload only customers represent 69% of PP&L total low income customer base, 45,000 of which are water heat baseload customers that PP&L Witness Dahl has conceded could benefit from cost-effective WRAP water heating services. Between the year 1988 and 1995, PP&L has only provided WRAP service to 4,917 water heat baseload customers and 846 baseload only customers even though cost-effective baseload programs are available. (Kuennen, Direct, page 12-13, Crandall, Direct, pages 2-8). Combining the untreated and untreated low income household numbers, the PP&L Plan sets up a situation in which as many as 146,000, or more than 82% of PP&L's estimated 177,464 low income households are in need of WRAP services during any given year. (Kuennen, Direct, pages 12-13).

Equally important is that fact each day a low income household remains untreated or under treated, it represents a potential and unnecessary additional cost to PP&L's OnTrack program, and ultimately PP&L's general ratepayers as they are the ones that will pay the bill for PP&L's universal service and energy conservation programs. (Kuennen, Direct, page 13).

b. CEO OnTrack Funding Needs Assessment

As a matter of policy, Pennsylvania's Electric Restructuring and Customer Choice Act states that "electric service is essential to the health and well-being of residents, to public safety and to orderly economic development; and electric service should be available to all customers on reasonable terms and conditions" (§2802(9)). Charging and billing low income customers for the "essential service" of electricity in amounts that many of them cannot afford to pay is not consistent with this policy. Reasonable terms and for low income PP&L electricity service should not exceed the charging and billing

of customers in excess of 8.0% of annual household income for electric heat customers, 5.0% for baseload water heat customers, and 4.0% of annual household income for baseload only customers. (Kuennen, Direct, page 20).

As pointed out in Section I above, the electricity burden for all too many of PP&L's low income population is significantly larger than that facing the average PP&L customer, and this is perhaps the biggest contributing factor to their inability to pay their electric bills. It is those PP&L individuals and families in these lowest income categories that are in desperate need of universal service and energy conservation program services.

By its own estimates, PP&L has 177,646 OnTrack income eligible households in its service territory and at least 58,000 of them are payment troubled by PP&L's own definition. Based on the 177,646 number and penetration rates of 40% to 50% due to non-income related eligibility criteria, and self-selection factors, etc., it is conceivable that PP&L should be looking at a minimum of between 70,986 and 88,732 OnTrack Participants once the program is expanded to full scale operations. At these participation rates, and given PP&L stated costs of between \$900 and \$1,000 per customer, PP&L could be looking at an OnTrack budget of between \$64 million and \$88 million annually. (Karp, Direct, page 15-19).

On the surface, these program participation rates and costs may seem high. It must be noted, therefore, they do not take into consideration the estimated historical costs and cost savings associated with providing low income households electric service under the monopoly system as mentioned above. It is very conceivable that actual OnTrack program costs for PP&L's estimated 58,000 payment troubled customers would be much lower. In fact, a meaningful OnTrack program could be developed and delivered with the help of community-based organizations with a annual budget in the neighborhood of \$23 million annually. (Karp, Direct, page 19)

B. Availability of Universal Service and Customer Assistance Programs

As established in Section I above, to be in compliance with the Customer Choice Act and the Commission’s Final Order, universal service and energy conservation programs must not only be appropriately funded, they must also be “available,” and both are to be determined through a needs assessment. To ensure availability according to need, CEO proposes that WRAP and OnTrack funding proposed above be further earmarked for programs designed to target low income households according to their representation within PP&L’s service territory.

1. PP&L WRAP and OnTrack Availability Plan

With respect to WRAP, the following availability levels are proposed by PP&L:

(A) WRAP Service/Program Category				
Electric Heat	1,700	68.0%	31.0%	37.0%
Baseload Water Heat	700	28.0%	25.0%	3.0%
Baseload Only	100	4.0%	44.0%	-40.0%
Total	2,500	100.0%	100.0%	
(B) = 2,500 from Kuennen, Direct, Page 11, 1,700 = 2,500 * 68%, 700 = 2,500 *28%, and 100 = 2,500 *4%. (C) = Historical availability percentages, PP&L rebuttal testimony Statement 16-R, page 18 (D) = Established in Section I, above. (F) = (C) - (D)				

As column (F) shows, PP&L’s proposed WRAP Plan severely restricts availability of WRAP services for baseload only customers. Funding and participation are almost exclusively directed to meeting the needs of electric heat customers, despite the existence of cost-effective baseload measures and programs. (Crandall, Direct, page 3, Kuennen, Surrebuttal, page 7).

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2. CEO Wrap and OnTrack Availability Plan

With respect to WRAP, the following funding and participation levels are proposed to ensure availability according to need:

TABLE 5				
(A) WRAP Program/Service Category	(B) Proposed Annual Availability	(C) Proposed Annual Availability %	(D) Actual Service Territory Representation %	(E) Difference Between Proposed Avail. & Act. Representation
Electric Heat	2,700	22.7%	22.7%	0.0%
"Under Treated" Pilot	1,000	8.4%	8.4%	0.0%
Baseload Water Heat	3,000	25.2%	25.0%	0.2%
Baseload Only	5,200	43.7%	44.0%	-0.3%
Total	11,900	100.0%	100.1%	
(B) = Kuennen, Direct, pages 15-16.				
(C) = Derived from (B), i.e., 2,700/11,900, 1,000/11,900, 3,000/11,900, 5,200/11,900.				
(D) = Established in Section I, above.				
(E) = (C)-(D)				

With respect to OnTrack, the following availability targets are proposed to ensure availability according to need:

TABLE 6			
(A) OnTrack Service Category	(B) Proposed Annual Availability %	(C) Actual Service Territory Representation %	(D) Difference Between Proposed Avail. & Actual Representation
Electric Heat	31.0%	31.0%	0.0%
Baseload Water Heat	25.0%	25.0%	0.0%
Baseload Only	44.0%	44.0%	0.0%
Total	100.0%	100.0%	
(B) = Kuennen, Direct, page 22. (C) = Established in Section I, above. (D) = (B)-(C)			

CEO's proposed participation levels were established using a needs assessment in accordance with the Customer Choice Act and Commission Final Order requirements.

a. **CEO's WRAP Availability Needs Assessment**

PP&L has 1,081,979 households, of which 748,438 non-electric heat customers. This means that PP&L's residential customer base is approximately 31% electric heat customers and 69% baseload customers. PP&L has approximately 177,464 low income households. Assuming the same 31% and 69% ratio, this means PP&L has an estimated 54,708 low income electric heat customers, and an estimated 122,756 low income baseload customers. (Karp, Direct, pages 6-7). PP&L's proposed WRAP funding does not include specific estimates of funding requirements necessary to meet the needs of its 122,756 low income baseload customers, 45,000 of which PP&L has conceded are in need of such services. (Kuennen, Direct, page 12). As a percentage of income, these baseload households are spending as much as three times that of the moderate income PP&L households. (Kuennen, Direct, page 8) and even though cost effective baseload programs and measures are available for inclusion in PP&L's WRAP Plan (Crandall, Direct, pages 2-8).

One example of a cost-effective baseload program is Duquesne Light's Smart Comfort Program. With a levelized cost of \$0.03/kWh of saved energy, this program has been highly successful in meeting low income baseload customer needs in Duquesne's service territory for a number of years as documented in the Commission's own LIURP studies and an independent reviews by the American Council for an Energy Efficient Economy and IRT (The Results Center). The baseload measures used in the Duquesne program are not unique and are readily available for use in developing and implementing baseload programs for PP&L customers. (Crandall, Direct, page 7).

Finally, PP&L should be required to transfer the provision of all LIURP/WRAP energy education program services to the network of community-based organizations (CBO's) currently providing other LIURP/WRAP program services. Integration and coordination of all low income programs and services, including LIURP/WRAP energy education, will be vitally important to ensure that low income ratepayers benefit from

industry changes. (Karp, Direct Testimony, page 21). PP&L's existing network of CBO's is the logical level at which integration and coordination of all low income services, including all LIURP/WRAP program services, should occur. Section 2804(9) of the Customer Choice Act not only specifically encourages integration and coordination at the CBO level, but, in response to RP-P.11, PP&L acknowledges such as well in stating that all of the CBO's in its existing LIURP/WRAP network have the necessary technical and administrative experience to provide low-income energy education services (Enclosure 2, Statement 16).

b. CEO's OnTrack Availability Needs Assessment

As established in the WRAP Availability Needs Assessment above, PP&L has an estimated 54,708 low income electric heat customers, and an estimated 122,756 low income baseload customers.

PP&L's existing and proposed OnTrack Program does not include specific estimates of funding or participation targets designed to make the OnTrack program available to meet the needs of its 122,756 low income baseload customers. (Dahl, Rebuttal, page 11, Kuennen, Surrebuttal, pages 10-11) As shown in Section I above, PP&L has an estimated 133,473 PP&L households earning less \$9,999 could benefit most from OnTrack participation. As many as 92,000 ($=133,473 \times 69\%$) of these customers are facing electricity burdens as much as three times that of the average PP&L residential customer. Baseload water heat customers in this category are spending in excess of 8.1% of their annual incomes on electricity, while baseload only households in this category are spending at least 6.7% of their annual incomes on electricity.

Similarly, as shown in Section I above, an estimated 94,921 low income households earning between \$9,999 and \$14,999 are baseload water heat and baseload only customers that have trouble meeting their electricity burden. These customers could also benefit from OnTrack participation. As many as 65,000 ($=94,921 \times 69\%$) are baseload water heat and baseload only customers. Baseload water heat customers in this

category are spending between 5.4% and 8.1% of their annual income on electricity, while baseload only customers spending between 4.4% and 6.7% of the annual incomes on electricity.

C. Allocation of Universal Service [and Energy Conservation] Program Costs

Though the Customer Choice Act has a Rate Cap requirement, as explained in Section I above, its purpose is not to limit the size of PP&L's universal service and energy conservation programs to \$14.3 million a year. Both the Customer Choice Act and the Final Order allow for an increase in total Universal Service and Energy Conservation Program spending as long as the rate caps are maintained.

Additionally, as shown in Section I above, the Commission makes it clear that expenditures for universal service and energy conservation programs must be examined in conjunction with other requirements of the Act., and that EDCs are not to determine universal service and energy conservation funding levels after other funding requirements are met. Rather, "the total amount of dollars available under the rate cap should be adjusted to meet the requirements of the Act including universal service and energy conservation" funding.

Further, in its Final Order, the Commission specifically allows for the shifting of programs between current accounts that support low income access to electricity, including gross write-offs, collection costs, and dunning letter postage costs.

PP&L states that it spent an estimated \$32,388,472 in gross write-offs, collection costs, and dunning letter postage costs on low income customers during 1996. PP&L could transfer \$22.8 million, or just under 71% of these funds to its universal service and energy conservation programs to finance the program expansions outlined in this testimony without any adverse effect on the rate caps. (Kuennen, Direct, page 29).

Specifically, \$4.2 could be transferred to new and expanded WRAP services bring the program total to \$7.2 million, \$14.0 million could be transferred to OnTrack

expenditures to bring that program to \$23.1 million, \$0.24 million could bring annual CARES to \$0.5 million, and another \$1.4 million could bring Operational Help expenditure to \$2.0. These increases would go a long way toward ensuring low income customers make a successful transition to a market based electric system. Again, these increases in expenditures should have no adverse effect on the rate cap. (Kuennen, Direct, page 29-30).

D. Other Universal Service and Customer Assistance Program Recommendations

To ensure that universal service and energy conservation programs offer the highest quality service available, effective training & technical assistance (T&TA) will be necessary. In this regard, PP&L should establish a \$50,000 annual budget for T&TA within each of its geographical divisions to be used to provide up to date training and technical assistance for its network of service providers. Further, to help ensure that the measures offered in PP&L's programs are the most "cutting edge" of technologies available, PP&L should establish a \$100,000 annual budget to fund a central research and development program to seek out new techniques, evaluate national trends, etc. Finally, to help ensure efficient and effective exchange ideas, information, suggestions, techniques, etc., PP&L should provide for semi-annual meetings of Universal Services and Conservation Providers. (Karp, Direct, page 22).

To ensure that low income ratepayers receive the maximum level of consumer education and universal service and energy conservation benefits possible, there must be measures in place to ensure that funds budgeted during any given year are actually spent during that year. One means for helping ensuring such would be to require PP&L to rollover any unused funds to next budget year. For example, in 1996, PP&L budgeted \$7,077,946 for universal and energy conservation programs but provided only \$6,279,699 in services. (RP-P-1, Enclosure 2, Statement 16). Given a rollover requirement, PP&L would be required to add the \$798,247 difference to its 1997 program budget. Assuming

an initial 1997 budget at 1996 levels, this would require that the 1997 budget be set at \$7,876,919 instead of \$7,077,946.

To ensure that the intent of Section 2804(9) of the Customer Choice Act specifically encouraging the use of community-based organizations (CBO's) in the delivery of low income program services is met, PP&L must be required to use CBO's to deliver all low income consumer education and universal service and energy conservation program services, including LIURP/WRAP energy education service. Further, the use of CBO's in the delivery of such services should be the norm in all of PP&L's in each of its divisions.

E. Conclusions

1. PP&L' Universal Service and Energy Conservation Plan

PP&L's universal service and energy conservation plan is inadequate to meet the concerns and needs of low income customers in the new competitive electricity market. It meets neither the basic low income policy requirements of the Customer Choice Act, nor the Commission's Final Order guidelines. It does not take into consideration the low income concerns and demographics outlined above, and, by its own admission, it was not established using a needs assessment as required. (Crandall, Direct, page 3, Kuennen, Surrebuttal, page 7). Therefore, PP&L's Universal Service and Energy Conservation Plan should be rejected.

2. CEO's Universal Service and Energy Conservation Plan

CEO has proposed an alternative universal service and energy conservation program for consideration in this proceeding. CEO's plan is detailed in Section XII below. CEO's plan meets the requirements of the Customer Choice Act, the Commission's Final Order, and it is specifically designed to meet the concerns and needs

of low income customers in the new competitive electricity market, while taking into consideration other requirements of the Customer Choice Act.

CEO's plan is based on a needs assessment of PP&L's service territory using U.S. Census data for PP&L cities, boroughs, and townships. This needs assessment took into consideration PP&L actual low income household numbers, household electric usage and bills with respect to income, the Act's policy declaration under Section 2904(9) that "electric service should be available to all customers on reasonable terms and conditions" (emphasis added); and the Commission's desire as expressed in its Final Order that, "within the rate caps, universal service and program funding must be appropriate to ensure the availability of meaningful and strong programs in each service territory."

Therefore, CEO's Universal Service and Energy Conservation Plan, as described in Section XII below, should be approved.

Separate Statement of Environmentalists

UNIVERSAL SERVICE AND CUSTOMER ASSISTANCE PROGRAMS

A. Increased Funding

The Act recognizes that electricity is an essential provision of life in Pennsylvania.⁸⁵ (66 Pa C.S. §2802(9)) The proposed expansion of PP&L's universal service and conservation programs is simply not adequate to address the needs of the low-income population in PP&L's service territory. Although PP&L's proposal represents a modest expansion of its existing commitments, too many needy customers will remain without assistance should the PUC adopt it.

CAP:

Timothy Dahl for PP&L testifies that the Company intends to ultimately enroll 10,000 customers in its On Track program for CAP-eligible customers and maintain that number over time through the expenditure of \$9.1 million annually.⁸⁶ Yet, 177,464 households in the PP&L territory fall within the income eligibility for the program.⁸⁷ PP&L's proposal to enroll roughly 6% of those struggling households reflects an unwillingness to marshal the resources necessary to meet the Company's Universal Service and Conservation obligations.

However, the number of participants could be nearly doubled to 18,500 if PP&L is ordered to provide the Commission-recommended figure of 0.5% of gross operating revenue for an annual expenditure of \$11.7 million.⁸⁸

LIURP:

The Low Income Usage Reduction Program (LIURP) serves several important functions. The Program offers low income customers an opportunity to become

⁸⁵ 66 Pa.C.S. §2802(9).

⁸⁶ PP&L Statement No. 16 (Timothy Dahl), pp. 18-19.

⁸⁷ CEO Statement No. 1 (Craig R. Kuennen), p. 13.

successful at managing their electricity bills by lowering them. In so doing, the Program creates a more self-sufficient customer who is less likely to require CAP funds. LIURP also provides a significant environmental benefit in the form of lowered consumption of electricity, the production of which results in air pollution. In addition, the energy efficiency achieved in PP&L's main LIURP, the Winter Relief Assistance Program (WRAP) reduces the peak demand in the Company's territory. A reduction in peak demand would tend to diminish the need for transmission and distribution upgrades and additional generating plant construction. As with transmission and distribution needs, the avoidance of new plant investment also holds down costs to ratepayers.

On the basis of these benefits, the Environmentalists support the \$7.2 million annual funding level advanced by CEO.⁸⁹ Further, the expansion of LIURP to the levels proposed by CEO should prove to be a strong preventative measure against the need for On Track participation for these customers. In light of this positive effect, a sensible step for the purpose of diminishing both On Track program reliance and the transmission and distribution and generating plant investments is to front-load LIURP funding.

Energy Conservation:

The Environmentalists recommend that PP&L establish an energy loan fund to help its non-low-income customers improve their energy efficiency. The initial capitalization for the fund should be the equivalent of 2% of the Company's stranded cost award.

C. Allocation of Universal Service Program Costs

The cost of providing universal service is recognized as a "public service cost" in the Act.⁹⁰ As such, it should be borne by all sectors of the public. The Environmentalists adopt the OCA position that the allocation for universal service and conservation should be assessed on a fixed per kilowatt hour basis upon all end users, at the same tariff regardless of customer class.⁹¹

⁸⁸ OCA Statement No. 6 (Nancy Brockway), p. 28.

⁸⁹ CEO Statement No.1 (Craig Kuennen), pp. 29-30.

⁹⁰ 66 Pa. C. S. §2802(17).

⁹¹ OCA Statement No. 6 (Nancy Brockway), pp. 43-44.

The Environmentalists share the concern expressed by Michael Karp, testifying for CEO, that alternative suppliers may not offer service to low income customers.⁹² As an incentive for these suppliers to provide power to the low income segment of the market, the funding for participants should be credited to both the generation, and the transmission and distribution portions of the bill. The Commission has Ordered that the funds for universal service and conservation programs be collected through distribution rates. The EDC would therefore have the ability to transfer the generation portion of a participant's subsidy to the chosen supplier. Such an arrangement would guarantee some percentage of payment to the supplier even in the event that the participant customer failed to make co-payments.

Susan Tierney, on behalf of PP&L, has testified on rebuttal that suppliers will be providing financial assistance to program participants comparable to the Company's contributions.⁹³ Dr. Tierney's statement does not appear to be consistent with the Commission's Order nor is such a requirement reflected in the Act under Requirements for Electric Generation Suppliers⁹⁴. The suggestion is patently unfair where PP&L alone holds the authority to collect funds for universal service through a non-bypassable charge.

D. Other Universal Service and Customer Assistance Program Recommendations

We support CEO's reconfiguration of WRAP recipients to place greater emphasis on baseload-only customers. PP&L's WRAP focuses almost entirely on ensuring prevention of heat loss. This emphasis is too great, however, because it ignores the overall efficiency of a dwelling which requires a greater consideration of the consumption of energy by appliances and lighting. The savings achieved by a program that improves baseload efficiency is substantial and accrues all year long. CEO has recommended that baseload-only customers participate in WRAP at 43.7% of total WRAP participants, a number which closely corresponds to baseload-only customers as a

⁹² CEO Statement No. 2 (Michael Karp), pp.3-4).

⁹³ PP&L Statement No. 9-R (Susan F. Tierney), p. 41.

⁹⁴ 66 Pa. C. S. §2809.

percentage of total PP&L customers. The Environmentalists agree that such a balance is appropriate.

Through the utilization of community-based organizations (CBOs), PP&L would possess the institutional resources to carry out an expanded and front-loaded LIURP. This recommendation for greater CBO involvement in the universal service and conservation program is in accord with the Act and Commission policy.⁹⁵

A further expansion in the numbers of participants from the baseload-only segment could be gained through the use of the "lease" concept set forth in the testimony of OCA witness Brockway.⁹⁶ Under this plan, customers would receive highly efficient, new appliances for their home in return for a monthly copayment. However, this plan should not substitute for appliance replacement made available to customers who have no ability to pay such a fee. The lease approach or some other customer-favorable method of financing efficient appliances should be extended to those customers who are in the range of 151-200% of the federal poverty guidelines.

E. Administration

The Environmentalists recommend that PP&L contract out both the delivery and the administration of the universal service programs to non-profit CBOs with experience in the provision of energy assistance and conservation and education programs.

⁹⁵ 66 Pa. C.S. §2804(9).

⁹⁶ OCA Statement No. 6 (Nancy Brockway), p. 38-40.

XIII. ENVIRONMENTAL ISSUES

A. Disclosure of Fuel Mix and Waste Discharge Information

The Commission should require retail sellers to disclose the environmental characteristics of the power they sell.

In adopting the Competition Act, Pennsylvania lawmakers were keenly aware that customers need ample and accurate information in order to exercise informed choice about their electric supply options. Thus, under terms of the Act, the Commission is required to facilitate informed customer choice, by issuing regulations ensuring that the information supplied to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.⁹⁷

On July 10, 1997, and during the pendency of the instant proceedings, the Commission issued interim requirements, but not final regulations, pertaining to customer information.⁹⁸ These interim requirements include, *inter alia*, the obligation that suppliers disclose the source and fuel mix of their supply. This requirement will ensure that customers receive basic information about the sources of their supplier's electricity. This policy also includes the requirement that suppliers verify specific environmental claims.⁹⁹ The latter requirement should supplement commercial law in protecting consumers from fraudulent environmental claims.

The Commission should be applauded for joining the other pro-active states of Vermont¹⁰⁰, Massachusetts¹⁰¹ and Maine¹⁰² in including mandatory disclosure provisions as an element of the electric industry restructuring. This policy provides an excellent foundation upon which to build a comprehensive environmental disclosure process.

⁹⁷ 66 Pa.C.S. §2807(d)(2).

⁹⁸ 1997 Interim Requirements for Customer Information, Docket No. M-00960890F0008.

⁹⁹ *Id.*, Appendix B., Section III.C.6.

¹⁰⁰ Order, *Investigation into the Restructuring of the Electric Industry in Vermont*, Vermont Public Service Board, Docket No. 5854, p. 108.

¹⁰¹ Order, *Electric Industry Restructuring Plan: Model Rules and Legislative Proposal*, Massachusetts Department of Public Utilities, D.P.U. 96-100, p. 162.

¹⁰² Order, *Electric Utility Industry Restructuring Report and Recommendation Plan*, Maine Public Utilities Commission, December 31, 1996, pp. 88-89.

In this section of the brief, Environmentalists propose a modest extension of the Commission's interim requirements. Environmentalists' testimony in this case speaks to the need to address additional aspects of informed customer choice; namely, the need for disclosure of key air and other waste emissions to consumers in a standard and easy to comprehend label. These requirements should pertain to all suppliers selling into the PP&L service territory, if not the entire state of Pennsylvania.

Extension by the Commission of its interim requirements to add of environmental disclosure would represent sound public policy for the following reasons:

- Electricity generation has a tremendous environmental footprint, accounting for roughly two-thirds of all SO₂ emissions, nearly one-third of total NO_x emissions, and more than one-third of total CO₂ emissions. Electricity generation is responsible for a host of other land-, water- and air-related environmental costs and risks. These environmental considerations are related to, but not entirely addressed by fuel mix disclosure;¹⁰³
- Survey data reveals that many consumers are interested in the environmental implications of their purchasing decisions, and would be willing to pay more for electricity from less harmful sources;¹⁰⁴
- Many electricity suppliers are positioning themselves to fill the “green power” niche. Many suppliers are interested in marketing a clean product. Unfortunately, others will be green in name alone. Mandatory disclosure of environmental attributes: 1) will allow verification of claims; 2) provide customers with information on “dirty” suppliers, and not just those who make environmental claims; and 3) make comparisons between suppliers easier;¹⁰⁵
- In order for customer choice to be most meaningful, customers should have basic information about the suppliers in a standardized, easy-to-understand format. Fuel mix and environmental information can be disclosed along with standardized information on price and price volatility.¹⁰⁶

¹⁰³ Environmentalists' Statement No. 2, p. 9.

¹⁰⁴ *Id.*, p. 9.

¹⁰⁵ *Id.*, p. 10.

¹⁰⁶ *Id.*, p. 10.

- The fuel mix disclosure requirement already endorsed by the Commission will require a system of tracking transactions to attribute generation at power plants to sales at retail. As pointed out by Mr. Biewald, it is a relatively simple (and inexpensive) matter to extend the fuel mix disclosure system to key environmental attributes, since the basic protocols for tracking will be in place.¹⁰⁷

In sum, the Commission should require all retail suppliers to provide accurate, verifiable and uniform information about the sources and environmental impacts of the power they sell. The generation of electricity has tremendous impacts on the environment and customers are interested in the environmental implications of their electricity purchases. The Commission should not simply rely on commercial law to protect consumers from fraudulent claims. Rather, it should take affirmative steps to ensure that every supplier provides customers with uniform and reliable information about the power they purchase. Only in this way can the Commission ensure that customers can make informed and meaningful choices in a competitive marketplace.

At a minimum, the Commission should require retail suppliers to disclose the fuel mix and emission rates (lbs/MWH) of NO_x, SO_x and CO₂ of the power they sell. Most power generators must report emissions data for these substances and will have the information readily available to supply to retail sellers for the purpose of compliance with a disclosure requirement. To the extent that other major environmental impacts, such as waste creation, can be quantified, these should be included as well. A standardized point of comparison, such as the regional average level of pollution per kWh, should be indicated for reference.

B. Renewables Pilot Program

The PUC's Final Order on Universal Service Guidelines encourages a Renewable Pilot program¹⁰⁸ and the Act authorizes the inclusion of renewable resources as a component of Universal Service and Conservation programs. The Commission recently

¹⁰⁷ Environmentalists' Statement No. 2-S, p.3, Tr. at 1844 (Biewald Redirect by Zalcman), 8/27/97.

¹⁰⁸ Docket No. M-00960890-f-0010, July 10, 1997.

required inclusion of a renewables pilot program as a component of PECO's LIURP program.¹⁰⁹

In its Plan, PP&L has not proposed a renewables pilot. The Environmentalists urge the Commission to direct the Company to do so. Solar photovoltaic (PV) and solar thermal water heating are technologies which should be included in any plan.

OCA witness Nancy Brockway has proposed a renewables program.¹¹⁰ The Environmentalists concur in the design of her proposal but recommend that the two-year proposed budget of \$787,250 be increased to \$1 million . This increase will accommodate a number of additional 1 kw PV procurements and allow a quantity of 2 kw PV cells to be purchased and utilized. The advantage of including 2 kw units is that these customers could be equipped with advanced meters to allow for net metering to take place, providing useful experience to the Company and allowing the customer to more easily defray her electricity costs through the recovery.

C. PP&L's Electric Distribution Company Should Implement Cost-Effective Energy Efficiency and Distributed Generation Alternatives to Distribution System Upgrades.

There is widespread recognition that the distribution system will remain a regulated monopoly into the foreseeable future. As such, an important consideration for the Commission is how it will regulate PP&L's distribution function as much of the rest of the system is subjected to market discipline.

Environmentalist witness David Schoengold recommends an "integrated" approach to regulation of the distribution system that encourages the utility to identify and implement the least cost option in meeting system requirements. Thus, as explained by Mr. Schoengold, and integrated approach to T&D planning means focusing on finding

¹⁰⁹ PECO Opinion and Order, R-00973953, p. 146.

the least expensive solution to T&D problems. Sometimes the least cost way to solve a distribution problem is not by building new distribution facilities, but rather by siting generation or targeting demand-side management approaches in local areas so that the need for new distribution facilities is reduced. In other situations, the lowest cost method may be to reconfigure existing distribution facilities rather than build new ones. As Mr. Schoengold testified, simply assuming that distribution system investment is the appropriate solution to system needs may well lead to higher costs to customers and negative environmental impacts.¹¹¹

Mr. Schoengold recommends a process for turning this common sense principle into a workable system for minimizing distribution system costs and environmental impacts. According to Mr. Schoengold, the Company will need to begin formally and systematically collecting data to support a thorough understanding of its distribution capabilities and limitations, forecasted needs and capital additions, area specific avoided costs, and the costs and characteristics of a range of alternatives to traditional system reinforcements.¹¹²

PP&L witness Douglas Krall, acknowledges the merits of attempting to reduce the costs of distribution service through cost-effective renewables, energy efficiency and distributed generation resources.¹¹³ Mr. Krall's opposition rests on the untested contention that it will be difficult to coordinate the benefits of distributed generation alternatives among the disaggregated generation, transmission and distribution companies. Indeed, Mr. Krall's concern was squarely addressed by Environmentalists' witness Schoengold who identified several approaches to recognize and capture the generation and distribution related benefits, including: 1) the offering of credits by the wires company to providers who build generation sited to reduce T&D expenditures, and 2) allowing the distribution company to build and/or own generation where it alleviates distribution problems.¹¹⁴

¹¹⁰ OCA Statement No. 6 (Nancy Brockway), pp. 34-37.

¹¹¹ Environmentalists' Statement No. 1 (David Schoengold), pp. 31-32.

¹¹² *Id.*, at pp. 31-32.

¹¹³ PP&L Statement No. 10-R (Douglas Krall), pp. 21-22.

¹¹⁴ Environmentalists' Statement No. 1-SR (David Schoengold), pp.3-4.

In sum, the Commission should require the Company to conduct detailed modeling studies of the distribution system to facilitate investments in the distribution system that are good for the economy and for the environment.

D. The Commission Should Require All Retail Sellers to Meet Comparable Environmental Standards With Regard to the Power they Sell in the Pennsylvania Market.

In order to create a level playing field for all market participants, the Commission should implement uniform environmental standards that all retail suppliers must meet in order to sell power in Pennsylvania. At present there is considerable disparity between the emission standards applied to generating units of different vintages or located in different states or regions. Restructuring could have a dramatic impact on the air quality in Pennsylvania if it encourages generators of relatively dirty power who are subject to less stringent environmental regulations to increase production.¹¹⁵

The prior testimony of one of PP&L's own witnesses before the New Jersey Board of Public Utilities, undercuts the company's claims that this Commission is powerless to take concrete steps in this case remedy the environmental problems and market distortions created by an unlevel regulatory playing field. In her New Jersey testimony, Dr. Tierney, a former Assistant Secretary for Policy at the Department of Energy, exhorts utility regulators "to do what [they] can to address these local sources of pollution, so that restructuring of the electric industry...does not make the environmental situation worse."¹¹⁶ Dr. Tierney identifies two distinct, and mutually reinforcing courses state utility regulators should take to promote environmental comparability. First, Dr.

¹¹⁵ Section 2803 (21) of the Competition Act states the problem thusly:

Under Federal and State clean air laws and regulations, electricity generators located in states to the west and south of this Commonwealth are not subject to requirements as stringent as those which apply to generators...operating in this Commonwealth and that different regions within the Commonwealth are subject to varying air emission requirements. Under some scenarios, competition among electricity generators located in different states and different regions within this Commonwealth could make it more difficult for areas in this Commonwealth to demonstrate attainment with Federal and State air quality standards.

66 Pa.C.S.A. § 2803 (21).

¹¹⁶ Exhibit DS-6 (Testimony of Susan F. Tierney on Behalf of Intercontinental Energy Corporation, New Jersey Board of Public Utilities Docket No. EX94120585Y, July 26, 1996), p. 6. Exhibit DS-6, p. 2.

Tierney recommends that state utility regulators participate in regional and national efforts to help address and solve the problem of excessive levels of pollution being transported from dirty plants located in upwind states.¹¹⁷ In this sense, Dr. Tierney's testimony echoes the provisions of the Competition Act.

Second, and more significant for purposes of this proceeding, Dr. Tierney recommends that state utility regulators take steps to remediate the significant air quality problems associated with local sources of pollution. Recognizing the limits of utility regulators direct authority to order pollution reductions, Dr. Tierney nonetheless concludes that state regulators can indirectly achieve the same ends by rewarding good environmental performance.

While the Board may not have direct authority over environmental problems, the Board should not lose sight of the potential for industry restructuring to foster a cleaner environment. The Board should create explicit incentives for the use of cleaner generation, incentives that allow utilities to return to ratepayers what are essentially "stranded benefits" associated with cleaner generating sources. Utilities should also be encouraged to make good business decisions about whether to continue to operate their power plants, or to shut them down should prudent business practice dictate.¹¹⁸ [emphasis added]

In hearings, Dr. Tierney makes a vain attempt to distance herself from her New Jersey position, arguing that the "situation" in Pennsylvania is different.¹¹⁹ It is hard to imagine, however, that Pennsylvanian's or their elected officials are any less concerned about air quality impacts than their neighboring states.

The Commission must take three steps to ensure that the introduction of competition to the electric industry in Pennsylvania does not result in dirtier air and the attendant harm to the environment and public health.

First, in the absence of uniform federal emission standards, the Commission should require all retail sellers to ensure that the power they sell in Pennsylvania has been generated by plants that meet the state's more stringent environmental standards applicable to newer sources. *Second*, the Commission should exercise caution in allowing stranded cost recovery. Over-recovery will discourage the development of a

¹¹⁷ Id., at 1.

¹¹⁸ Id., at 6.

¹¹⁹ Tr. at 829-30 (Direct by Paul Russell), 8/19/97.

competitive marketplace, and put up roadblocks to the construction of newer, cleaner plants.¹²⁰

Third, the Commission should create explicit incentives for the Company to improve its environmental performance. Roughly one-tenth of the Company's generation-related stranded cost claim relate to plant improvements deemed necessary by the Company to meet more stringent environmental regulation and still keep the plant in operation.¹²¹ To the extent the Commission allows any stranded cost recovery for such expenditures, it should only be permitted on a dollar-for-dollar basis for upon a demonstration that Company funds have been expended for this purpose.

¹²⁰ Environmentalists' Statement No. 1 (David Schoengold), pp. 36-37.

¹²¹ See PP&L Statement No. 10-R (Douglas Krall), pp. 33-37; Exhibit JRS-1, Tab H.

CEO

XIV. CONCLUSION

A. Compliance of PP&L's Universal Service and Energy Conservation Plan with Respect to the Customer Choice Act and Commission's Final Order.

PP&L's proposed a universal service and energy conservation program meets neither the specific low income policy requirements of the Customer Choice Act, nor the Commission's Final Order guidelines. It does not take into consideration the low income concerns and demographics outlined above, and, by its own admission, was not established using a needs assessment. Therefore, PP&L's Universal Service and Energy Conservation Plan proposed herein should be rejected.

CEO has proposed an alternative universal service and energy conservation program for consideration in this proceeding. As shown, CEO's plan meets the requirements of the Customer Choice Act, the Commission's Final Order, and is specifically designed to meet the concerns and needs of low income customers in the new competitive electricity market, while taking into consideration other requirements of the Customer Choice Act, and the Commission's Final Order.

Therefore, CEO's Universal Service and Energy Conservation Plan, as described in Section XII above, should be substituted for the PP&L Plan. As such, the specific and other relief requested below should be granted.

B. Relief Requested - 1. Specific relief

WRAP Expenditure Levels—minimally, WRAP funding should be ramped up to \$7,200,000 by 2000, and continue at this level through at least 2009. This would place WRAP funding at an amount equal to 0.25% of 1996 gross operating revenues of \$2,909,087,000 and would ensure that this program is "appropriately funded" as required by §2804 (9) of the Act. Further, PP&L would be mandated to roll over unexpended funds to the next year.

WRAP Program Penetration—minimally, WRAP program penetration should be ramped up from existing levels to 2,700 electric heated homes, 3,000 baseload water heat homes, 5,200 baseload only homes annually, and 1,000 under treated electric heated homes annual by the year 2000. These penetration levels should continue through at least 2009.

WRAP Program Offerings—WRAP should be redesigned to provide program services for electric heated homes, baseload water heat homes, and baseload only homes. Further, PP&L should be required to develop and implement a pilot program that would provide remedial WRAP services to all low incomes households in which more than 10 years have elapsed since initial service were provided. Further, PP&L would be mandated the offer on each service territory of the company, the Energy Education Component to Community Based organizations.

OnTrack Expenditure Levels—initially, annual OnTrack funding should be ramped up to \$23.1 million by 2000 and continue at this level until it is determined by the Commission that a different level is needed. This would place OnTrack funding at an amount equal to 0.80% of 1996 gross operating revenues of \$2,909,087,000 and would ensure that this program is “appropriately funded” as required by §2804 (9) of the Act.

OnTrack Penetration Levels—Initially, OnTrack penetration levels should be ramped-up from existing levels to an amount equal to 40% of PP&L’s total 150% of federal poverty household base; and every effort should be made to target the poorest electric heat, baseload water heat, and baseload only households at levels equal to their representation within the low income population as a whole;

OnTrack Program Offerings—OnTrack should be designed to provide payment assistance to all low income PP&L households in amounts such that no electric heated household is billed more than 8% of their annual income for annual electricity needs, no baseload water heat household is billed more than 5% of their annual household income for annual electricity needs, and no baseload only household is billed more than 4.0% of their annual income for annual electricity needs;

Electric Competition Consumer Information and Customer Assistance—PP&L should be required to create a program that would be delivered through its existing network of low income assistance organizations within its service territory. Initially, this program should be funded \$150,000 per year in each of its divisions with provisions for renewal upon positive evaluation; It be amended that the program would be operated by experienced Community Based organizations.

Training & Technical assistance (T&TA)—PP&L should establish a \$50,000 annual budget for T&TA within each of its geographical divisions to be used to provide up to date training and technical assistance for its network of service providers; and

Research and Development (R&D)—PP&L should establish a \$100,000 annual budget to fund a central research and development program to seek out new techniques, evaluate national trends, etc., and to support semi-annual meetings of its Universal Services and Conservation Providers to facilitate the exchange of ideas. A first step in ensuring that "cutting edge" technologies are made available to low income households would be to institute a renewables pilot program along the lines of that described in OCA Witness Brockway's testimony (Brockway, Direct, pages 35-37). As Brockway points out, the General Assembly authorized the use of renewable technologies in universal

service and energy conservation programs (Brockway, Direct, page 34). The Commission should require PP&L to develop and institute a low income renewables pilot program.

Compliance with Rate Cap Requirements—to ensure that the recommended funding increases for WRAP and OnTrack meet the Rate Cap requirements of the law, PP&L should be required to transfer \$22.8 million from its stated \$32,388,472 in 1996 gross write-offs, collection costs, and dunning letter and postage costs to finance the additional Universal Service and Energy Conservation Costs beyond that which PP&L has proposed in the following manner: \$4.2 in additional annual WRAP expenditures, for an annual total of \$7.2 million, \$14.0 million in additional annual OnTrack expenditures, for an annual total of \$23.1 million, \$0.24 million to CARES for an annual total of \$0.5 million, and \$1.4 million to Operation HELP expenditures for a total of \$2.0 million. These transfers should begin in 1999 and continue thereafter.

Add Renewable Energy Demonstration of \$250,000 annually.

1. Other Relief

CEO requests any other relief that the Court deems appropriate.

Environmentalists

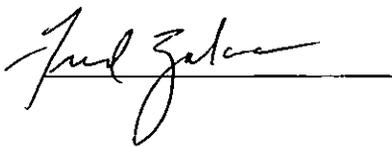
CONCLUSION

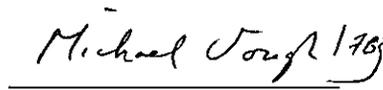
The Commission is confronted with a daunting challenge. It must do no less than fundamentally transform a service that is a significant factor in the economic vitality and environmental health of the Commonwealth. And the Commission must render its decision in a politically charged environment, without the benefit of omniscience as to how its decisions will turn out.

Environmentalists have, in this brief, made several recommendations which, if adopted, will assist the Commission in its endeavor. Taken together, these recommendations will foster a robust market place in energy services, while preserving the societal benefits that citizens of the Commonwealth have come to expect and for which government exists to advance. The recommendations will result in immediate, significant benefits to PP&L's current customers, while remaining faithful to shareholders reasonable expectation of an economic return. And, where possible, the Environmentalists' recommendations seek to mitigate the effects of uncertainty so that no stakeholder is harmed if, as so often happens, the future defies our best laid strategies.

Respectfully submitted,

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION FEB 11 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

In the Matter of)
Pennsylvania Power & Light Co.) Dkt. No. R-00973954
Restructuring Plan Filing)

CERTIFICATE OF SERVICE

I hereby certify that I have on the 10th day of February, 1998, served the enclosed document in the above-referenced docket upon the following persons, in the manner specified and on the dates indicated:

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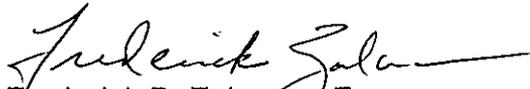
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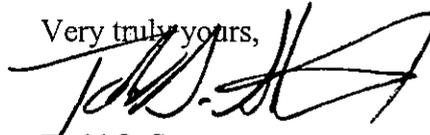
RE: Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plans; Docket No. R-00973954; **SUPPLEMENTAL BRIEF OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION TO THE JOINT MAIN BRIEF OF THE COMPETITIVE INTERVENORS**

Dear Mr. McNulty:

Enclosed, for filing with the Commission, please find an original and nine (9) copies of the Supplemental Brief of the Mid-Atlantic Power Supply Association to the Joint Main Brief of the Competitive Intervenors. As reflected on the attached Certificate of Service, all parties to the above-referenced docket have been served with a copy of this document.

If you have any questions regarding filing, please direct them to me.

Very truly yours,



Todd S. Stewart
Counsel for
Mid-Atlantic Power Supply Association

TSS/bes
Enclosure

cc: Attached Certificate of Service
Honorable George M. Kashi (Via Hand Delivery) (2 copies and diskette)

21

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Application of Pennsylvania Power & Company :
Company for Approval of its Restructuring Plan : Docket No. P-00973954
Under Section 2806 of the Public Utility Code :

**SUPPLEMENTAL BRIEF OF THE
MID-ATLANTIC POWER SUPPLY ASSOCIATION
TO THE JOINT MAIN BRIEF OF THE
COMPETITIVE INTERVENORS**

MARKET PRICE AND GENERATION CREDIT ISSUES

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Dated: February 11, 1998

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1. Introduction

The Electricity Generation Customer Choice and Competition Act ("Competition Act" or "Act"), 66 Pa. C.S. §2801, *et seq.* requires each jurisdictional electric utility to file a restructuring plan. Each utility's plan, *inter alia*, must contain: unbundled transmission, distribution and generation rates, and rates for other services; a proposed competitive transition charge ("CTC"); procedures for ensuring direct access to all licensed electric generation suppliers; and, revised tariffs and rate schedules implementing the enumerated requirements. 66 Pa. C.S. §2806(e).

The CTC is a discrete charge intended to allow a utility an opportunity to collect its stranded or generation costs. 66 Pa. C.S. §2808(a). In order to set the CTC, the Commission must first determine the level of a utility's stranded costs, which are defined as "a utility's known and measurable net electric generation-related cost, determined on a net present value basis over the life of the asset or liability ...which traditionally would not be recoverable under a regulated environment, but which may not be recoverable in a competitive electric generation market ...". 66 Pa. C.S. §2803.

The sum of the Commission-determined unbundled transmission, distribution, and generation charges, and a CTC (to recover reasonable and non-mitigatable stranded costs), results in the utility's total non-bypassable rate -- this is the charge which all customers, whether they choose or not, will pay. For those customers that elect an alternate supplier, the non-bypassable charges will be the only rates they pay to PP&L. The difference between the sum of the non-bypassable charges and the Rate Cap establishes a de facto "shopping credit." That is, the shopping credit is not derived, rather it is the result (or fallout) of a mathematical calculation.

The shopping credit, which is the number which alternate suppliers will have to “beat” in order to make a sale (assuming that price is the only consideration), is not analogous to the market price assumptions used to project stranded costs. Rather, the shopping credit will reflect a fully-delivered retail market price. In short, if a supplier cannot procure energy and capacity and all the necessary additional (or ancillary) services, and sell them to a customer at less than the “shopping credit,” that supplier will not gain any customers.

It is MAPSA’s position in this proceeding that PP&L’s restructuring plan is seriously flawed and contrary to both the public interest and the Competition Act’s mandate for competition among the electric generation suppliers (“EGS”). Most notably, the restructuring plan, if adopted, will result in the complete failure of electric generation competition, with the concomitant loss of benefits and price decreases which competition produces. PP&L’s restructuring plan obstructs retail competition by allowing PP&L to retain market power in the restructured marketplace. PP&L’s proposed restructuring plan effectively eliminates the opportunity for entry into PP&L service territory by EGSs because it contains an effective generation rate component (“shopping credit”) that is simply too low for alternative suppliers to compete.

2. PP&L’s Proposal

PP&L proposes to unbundle its generation, transmission and distribution rates. PP&L’s proposal sets forth a competitive transition charge (“CTC”) which is calculated by subtracting its proposed market price forecast from the generation component of the unbundled rates. In other words, the CTC is a fallout number based upon PP&L’s projected market price. (MAPSA St. No. 1, p. 10). PP&L’s market price forecast is represented as being a forecast of the market

clearing prices in the PJM control area. (PP&L St. No. 7, p. 4) (Jones) A PJM market clearing price is a short-term wholesale market price which supposedly will "clear" the wholesale market on an hourly basis in response to supply and demand. Tr. 1430 (August 25, 1997). PP&L's forecasted "market price" simply is designed to recover incremental fuel costs, incremental operation and maintenance expense, and other short-term costs for producing electricity. Tr. 1430 (August 25, 1997).

MAPSA's witness, Johnstone, testified that PP&L's short-term market price-based forecast will result in customers having no savings and in customers having no practical way to buy power in the market if actual prices are higher than the PP&L forecast. (MAPSA St. No. 1, p. 10). Further, witness Johnstone testified that PP&L has an incentive to forecast the market price below the actual level of those prices. (Id., p. 11). According to Mr. Johnstone, customers will receive no benefits if PP&L is the only real choice because its forecast prices turn out to be artificially low and thereby effectively undercut the market. (Id., p. 12). Additionally, MAPSA witness Johnstone testified that PP&L's market price forecast is based upon a current excess of capacity which has therefore depressed capacity prices in the PJM area. (MAPSA St. No. 1, p. 13). In fact, Mr. Johnstone points out the detrimental effects of basing the development of a competitive market upon PP&L's market forecast stating that "competition could be stifled, the competitive market could develop slowly, and PP&L could maintain a very high market share." (Id.) Witness Johnstone also states that PP&L's market price does not include the other costs a supplier will encounter in attempting to engage in the business of electric generation supply, including transaction costs, marketing and administrative costs, and billing costs. (MAPSA St. No. 1, p. 15).

MAPSA witness Johnstone proposes several important considerations for determining an appropriate competitive generation rate. First of all, the rates resulting from the unbundling process must be just and reasonable. Secondly, the implicit generation rate (“shopping credit”) must be high enough to provide a “reasonable opportunity for the competitive market to develop.” And, third, the price paid by consumers should be determined by market forces, not an artificially low implicit generation rate which would undercut the market. (MAPSA St. No. 1, p. 18). MAPSA witness Johnstone recommends that the generation rate components, at a minimum, be based upon a forecast of market energy prices, with the addition of a market forecast for the cost of new capacity. Under this methodology, Mr. Johnstone recommended an adoption of a residential credit of 3.87¢/kWh. (MAPSA St. No. 1, p. 20; MAPSA Exh. No. 1). Mr. Johnstone’s recommendation is based upon a combination of PP&L’s forecast of market price and PP&L’s forecast of capacity prices, but does not endorse those forecasts.

3. The Appropriate Methodology For Calculation of CTC and a Competitive Generation Component

As previously discussed, PP&L’s proposal calculates a level of stranded costs based upon a “market price projection.” The resulting CTC rate, when added to PP&L’s unbundled transmission and distribution rates, forms the basis of PP&L’s proposed non-bypassable charges. When these non-bypassable charges are subtracted from PP&L’s overall rate cap, the remainder is the implicit generation rate.¹

¹ MAPSA’s Testimony labels the resulting “generation credit” as an “implicit generation rate.” In Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00973953 (Order entered December 23, 1997), (hereinafter “PECO”), this component was labeled as an “energy and capacity credit” (“ECC”) and in the recent Duquesne and West Penn cases, these were termed the competitive generation credit (“CGC”). In this brief, this term shall be noted as the “shopping credit.”

It is axiomatic that an electric utility's restructuring plan must promote the development of a competitive market in accordance with the policy of the Commonwealth as set forth in the Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. §2801 et seq.. Indeed, a restructuring plan which had been agreed to by many stakeholders and which provided only for rate cuts and other significant "concessions" by an electric utility, but which was also found to hinder the development of a "competitive retail electric market and [which made] competition for many residential and other low-load factor customers economically impossible until 2003 at the earliest," was rejected by the Commission as being contrary to the public interest. (PECO).

Specifically, it is the "level of the ECC ["shopping credit"] [which] impacts whether the Act is a success or failure." PECO, p. 15. As further stated by the Commission:

If the ECC [or "shopping credit"] in any year is too low, competition will be harmed or even destroyed. 'There are many ways in which a restructuring plan can result in a de facto monopoly in the electric supply market. Perhaps, the most important of these is the establishment of generation credits that are set below market prices for electricity.'

PECO, p. 16.

Thus, contrary to the position of PP&L as expressed in this proceeding, the Commission has made it clear that, in the context of reviewing the level of the shopping credit in determining whether a restructuring plan promotes competition under the Act, it is the market retail price of fully-delivered power (and not the wholesale price) which is the key determinant:

Setting the ECC or [shopping credit] below price levels at which even the most efficient competitors could sell electricity or below market prices strangles competition by making it economically impossible to compete for retail customers. Simply put, if set too low, the ECC or [shopping credit] will mean that electric customers in PECO's [or PP&L's] service territory will have few or no competitors competing for their business.

PECO, p. 16.

Where the record establishes, as it did in PECO, that a proposed shopping credit protects a utility's present monopoly position, even for the period from now until 2003, it must be found that the proposed shopping credit hinders the creation of a competitive retail electric generation market, which is a major purpose the Act. PECO, p. 18.

In order to rectify a restructuring plan (as proposed in the settlement) which contained a shopping credit that was too low to allow for competition, the Commission set the CGC as the residual of non-bypassable charges under the rate cap. PECO. This method identifies the utility's rates that should be subject to competition, after adequately compensating the utility for the use of its distribution transmission systems, and allowing recovery of 100% of its non-mitigatable stranded costs.

Once the CTC and the resulting shopping credit is derived, it is appropriate for the Commission then to review the record testimony in order to determine whether the resulting shopping credit itself, as well as the "mechanism of the shopping credits," will provide a competitive market. As stated by the Commission:

The Commission is convinced from the record testimony that the shopping credits [4.46¢/kWh, on a system-average basis] and the mechanism of the shopping credits [levelized] will provide a competitive market. Again, it is only genuine competition that will deliver long-term price benefits to the customers of the PECO service territory. The Commission's approach avoids creating a de facto monopoly that delivers temporary and short-term rate cuts. It creates real incentives for electric suppliers to compete for customers and for customers to shop for electricity. As such, this decision will create a market featuring many buyers of electricity and many sellers of electricity.

PECO, p. 44.

Using the PECO method, however, may raise an additional question in this case, because the credit in PECO was found to be large enough to allow for competition, namely: What are the

Commission's options if the resultant shopping credit is not sufficient to enable full workable and robust retain competition, as was the case in PECO? Clearly, there are two immediate remedies if it is found that a shopping credit is not large enough to promote robust competition. First, the level of the CTC can be adjusted; for example, in PECO, wherein the utility had proposed a "front-end loaded" CTC (higher in the earlier years and lower in the latter years), the Commission directed that the CTC should be levelized or flattened. PECO, p. 41. In addition, under the terms of the statute, 66 Pa. C.S. §2808(b), the length of the period for recovery of the CTC can be extended. PECO, p. 104, fn. 102. Either of these tools, levelizing the CTC or extending the recovery period, has the effect of lowering the CTC, thereby increasing the mathematically-related shopping credit to a level which will support the development of a workable competitive market.

In summary, the following steps are involved in determining an appropriate CTC and shopping credit:

- First: Calculate the electric utility's costs in accordance with the record evidence in the methodology set forth in PECO.
- Second: Derive a CTC to collect those reasonable and non-mitigatable costs over an appropriate period (for example, the 9-year period provided for in 66 Pa. C.S. §2808(b)).
- Third: Calculate the appropriate T&D rates.
- Fourth: Mathematically calculate the shopping credit by adding the transmission, distribution and CTC charges and subtracting the total of these three charges from the level of rates in effect on January 1, 1997.

- Fifth: Determine whether the resulting shopping credit will allow for competition, based upon the record evidence of what a fully-delivered retail price of power is.
- Sixth: Make appropriate adjustments to the CTC/shopping credit if the shopping credit is not large enough to allow for competition (e.g., flatten the CTC, “back-and-load” the CTC, lengthen the recovery period, or provide for an additional credit).

Because MAPSA has taken no position as to the appropriate level of PP&L’s stranded costs, the first, second, third and fourth steps of this analysis must be based upon the CTC and T&D levels proposed by other intervenors in this proceeding. However, when arriving at the fifth stage of the analysis that was approved in the PECO decision, namely analyzing the shopping credit to determine whether it would allow for competition, MAPSA’s concerns are implicated.

Simply stated, PP&L’s proposed shopping credit will not allow for competition because it is too low to allow suppliers to compete. PP&L’s shopping credit is based upon a wholesale market price, which fact is not disputed by PP&L. In fact, PP&L’s own witnesses acknowledge that its “market price estimate” does not include the additional costs which suppliers will be required to pay in order to arrive at a fully-delivered retail price. It is this fully-delivered retail price which is the “bogey” against which suppliers should be required to compete. Under PP&L’s proposal, the shopping credit would be less than 3¢/kWh. In other words, if a supplier is unable to deliver energy and capacity and the necessary additional services at a price that is equal to, or less than PP&L’s proposed shopping credit, the supplier will not be able to gain customers and there will be no competition. Obviously, it is PP&L’s intention to thwart competition, because PP&L does not believe that it is necessary for it to lose market share under the statute.

Tr. 473 (August 18, 1997). PP&L appears to defy the Statutes' mandate for the development of a competitive market and does not even attempt to disguise the fact that its "market price" is a wholesale market price and that competitors will be unable to deliver power at that price or below it. Therefore, PP&L's proposed shopping credit is contrary to the law and must be modified.

In modifying PP&L's shopping credit, the Commission should look at the record evidence in order to determine what level of shopping credit would be sufficient to allow for the development of a competitive market. The only evidence of what fully-delivered retail charge would satisfy the development of a competitive market was presented by MAPSA witness Johnstone. Mr. Johnstone testified that the preferred approach for setting the shopping credit is to determine it based upon the long run cost of energy added to the long run cost of capacity. (MAPSA St. No. 1, p. 21). Mr. Johnstone testified that, at a minimum, an energy and capacity credit would have to be at the level of 3.87¢/kWh. (MAPSA Exh. No. 1).² Further, a credit for the additional services which suppliers are required to provide should be added to Mr. Johnstone's energy and capacity credit to obtain a shopping credit that will allow for the development of a robust competitive market.

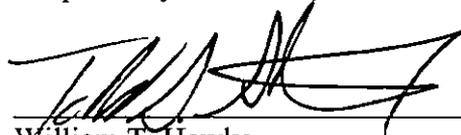
CONCLUSION

PP&L has proposed a shopping credit based upon a short-term wholesale market price. It is clear from the testimony in this case that a short-term wholesale market price will be insufficient to allow for the development of a robust competitive market for the sales of electric

² However, it should be noted that Mr. Johnstone's calculation was based upon PP&L's forecasts which are not endorsed by Mr. Johnstone and if this Commission finds other intervenors' forecasts to be more appropriate, MAPSA would not object to their use, as long as those forecasts produce a result at least equal to that proposed by Mr. Johnstone.

generation at retail in PP&L's service territory. This Commission has set forth the appropriate methodology for reviewing a utility's proposed shopping credit to determine whether it will indeed allow for the development of a competitive market. In applying that analysis to PP&L's proposed shopping credit, it is apparent that PP&L's credit is insufficient and that it must be modified. The Commission's approach, as adopted in PECO would require that the CTC, once the appropriate level of stranded costs is determined, be adjusted either by levelizing the recovery, or extending the recovery period, to allow for a resultant shopping credit which is sufficient to allow for the development of a competitive retail market. It is MAPSA's recommendation that the Commission reject PP&L's proposed credit, in favor of a credit at a level proposed by MAPSA, which will guarantee the development of a robust competitive market.

Respectfully submitted,



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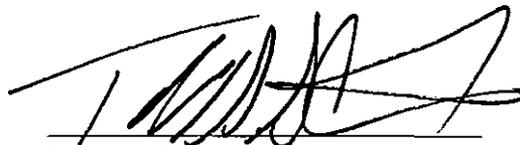
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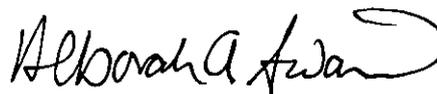
**Re: Application Of Pennsylvania Power
And Light Company For Approval Of Its
Restructuring Plan Under Section 2806
Of The Public Utility Code,
Docket No. R-00973954**

Dear Mr. McNulty:

Enclosed for filing in the above-captioned proceeding are an original and nine copies of the Joint Initial Brief of Electric Distributors. Please note that GPU Energy joins only in Section IX of this Brief.

Also enclosed is an additional copy to be stamped and returned to us in the enclosed self-addressed envelope. Thank you for your assistance.

Very truly yours,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**APPLICATION OF PENNSYLVANIA POWER AND :
LIGHT COMPANY FOR APPROVAL OF ITS :
RESTRUCTURING PLAN UNDER SECTION 2806 : DOCKET NO. R-00973954
OF THE PUBLIC UTILITY CODE :**

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**JOINT INITIAL BRIEF
OF ELECTRIC DISTRIBUTORS**

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**APPLICATION OF PENNSYLVANIA POWER AND :
LIGHT COMPANY FOR APPROVAL OF ITS :
RESTRUCTURING PLAN UNDER SECTION 2806 : DOCKET NO. R-00973954
OF THE PUBLIC UTILITY CODE :**

**JOINT INITIAL BRIEF
OF ELECTRIC DISTRIBUTORS**

Pursuant to 52 Pa. Admin. Code §§ 5.501, 5.502, and the Presiding Judge's Order issued February 2, 1998, the Electric Distributors hereby submit their Joint Initial Brief. The Electric Distributors submitting this Brief are Allegheny Power, PECO Energy Company, and GPU Energy. GPU Energy joins only in Section IX of this Brief.

STATEMENT OF THE CASE

It is the Electric Distributors' understanding that PP&L is providing a uniform statement of the case. Therefore, the Electric Distributors will not repeat such statement here.

SUMMARY OF THE ARGUMENT

The Electric Distributors urge the Presiding Judge to implement faithfully the provisions of the Electricity Generation Customer Choice and Competition Act ("Competition Act") that were intended to ensure the transition to competition proceeds in a fair and orderly manner, and that service reliability is maintained. Consistent with the commands of the Legislature, the Presiding Judge should reject the proposals of intervenors that would: (1) deny PP&L a "fair opportunity to fully" recover its fossil plant decommissioning costs; (2) unilaterally accelerate and

reduce the three-step customer choice phase-in process to essentially a two-step process; (3) impose unduly restrictive code of conduct requirements on PP&L and its affiliates; and (4) force PP&L to unbundle and make competitive its customer service functions, including metering and billing. As explained in this Brief, the intervenors' proposals are unlawful. Moreover, in many instances, the issues they raise are more properly the subject of generic policy statements and rulemaking proceedings initiated by the Commission.

ARGUMENT

V. REVENUE UNDER REGULATION

C. REGULATORY ASSETS AND LIABILITIES

4. Fossil Plant Decommissioning

In accordance with Sections 2803(c)(3)(iv) and 2803(14) of the Competition Act -- which are intended to give PP&L a “fair opportunity to fully recover” its stranded costs -- PP&L included stranded fossil plant decommissioning costs in its CTC. 66 Pa. C.S.A. §§ 2803(3)(iv), 2803(14).^{1/} Two intervenors in this proceeding, the Pennsylvania Power & Light Company Industrial Customer Alliance (“PPLICA”) and Office of Consumer Advocate (“OCA”), however, have requested that the Presiding Judge deny PP&L any opportunity to recover these costs.

^{1/} PP&L St. No. 8 at 17; PP&L Exhibit JRS-1A (Revised).

According to OCA, fossil plant decommissioning costs “do not fit the definition of stranded costs.”^{2/} OCA acknowledges that fossil plant decommissioning costs traditionally would be recoverable in a regulated environment.^{3/} However, OCA claims that these costs are not really stranded, as a result of the transition to competition, because decommissioning costs will still exist in the competitive market and other competitors will incur this same general type of cost.^{4/}

PPLICA argues that PP&L should be denied the opportunity to recover any fossil plant decommissioning costs because these costs have not yet been incurred by PP&L and are simply projected to be incurred in the future. PPLICA acknowledges that the Commission traditionally has allowed utilities to recover fossil plant decommissioning costs. However, PPLICA asserts that the Commission has allowed these costs to be collected based only on actual cost experience. According to PPLICA, the Commission is precluded by the Court’s decision in *Penn Sheraton Hotel v. Pennsylvania Public Utility Commission*, 184 A.2d 324 (1962), from allowing utilities to recover decommissioning costs that have not yet been incurred, but instead are projected to occur in the future.^{5/}

The Electric Distributors oppose the proposals of OCA and PPLICA.

^{2/} OCA St. No. 1 at 18.

^{3/} Tr. 1783 (Aug. 27, 1997).

^{4/} Tr. 1785-88 (Aug. 27, 1997).

^{5/} PPLICA St. No. 3 at 30-35; Tr. 1488-89 (Aug. 25, 1997).

IN ACCORDANCE WITH THE COMPETITION ACT, ELECTRIC UTILITIES SHOULD BE ALLOWED TO RECOVER THEIR STRANDED FOSSIL PLANT DECOMMISSIONING COSTS

Contrary to OCA’s assertion, the Competition Act expressly includes costs associated with the retirement of a utility’s fossil generating plants within the definition of stranded costs to be collected through a utility’s CTC. Section 2803 states that the term “transition or stranded costs” includes:

(1) Regulatory assets and other deferred charges typically recoverable under current regulatory practice, the unfunded portion of the utility’s projected nuclear generating plant decommissioning costs and cost obligations under contracts with nonutility generating projects which have received a commission order, the recoverability of which shall be determined under section 2808(c)(1)

* * *

(3) The following costs, the recoverability of which shall be determined pursuant to section 2808(c)(3):

* * *

(iv) Retirement costs attributable to the utility’s existing generating plants other than the costs defined in paragraph (1).

66 Pa. C.S.A. § 2803 (emphasis added).

The fact that other competing generation suppliers may also have to incur decommissioning costs in the future is not a proper basis for denying PP&L any recovery of these costs. The Pennsylvania Legislature made the policy determination to allow electric utilities to recover stranded costs associated with the retirement of their existing generating plants. Therefore, the recovery of these decommissioning costs should be allowed. Whether

or not other suppliers also will incur these costs (or may lack a similar stranded cost mechanism for the recovery of these costs in their own states) is not relevant.

Indeed, many of the costs which were included by Legislature within the definition of stranded costs also may be incurred by other competing generation suppliers. For example, other generation suppliers may incur costs related to “nuclear generating plant decommissioning,” “disposal of spent nuclear fuel,” and “purchase power commitments.” See 66 Pa. C.S.A. § 2803(1),(3)(i),(ii),(iii). Yet, OCA does not dispute that these types of cost are properly recoverable by PP&L. Thus, OCA’s proposal to deny PP&L any opportunity to recover its fossil decommissioning costs lacks merit.

Moreover, approval of PP&L’s claim will not give it a competitive advantage over other suppliers as OCA implies, but rather will serve to level the playing field. This is because Pennsylvania is unique in that its ratemaking practice precludes the recovery of prospective net negative salvage. In other words, by the time competition emerges, utilities in other jurisdictions will have already recovered through regulated rates a significant percentage of their future fossil decommissioning costs while PP&L, and other Pennsylvania utilities, will have recovered none of those costs.

PPLICA’s proposal to disallow any recovery of fossil decommissioning costs similarly lacks merit. The Court’s 1962 decision in *Penn Sheraton* -- which dealt with the rates of a steam heating company under an entirely different statute -- is not controlling in this proceeding. The Competition Act controls the outcome of this proceeding.

When the Legislature enacted the Competition Act, it recognized that Pennsylvania utilities constructed generating plants to meet their existing service obligations and that the

utilities would need to spend money to retire these plants in the future. *See* 66 Pa. C.S.A. §§ 2802(15), 2803(3)(iv). Therefore, the Legislature included a provision in the Competition Act to allow for the recovery of future retirement costs in a utility's CTC. *Id.* at § 2803(3)(iv). Contrary to basic principles of statutory construction, PPLICA is effectively asking the Commission to read this provision out of the Competition Act. If a utility were precluded from recovering plant retirement costs simply because these costs will be incurred in the future, as PPLICA now purports, Section 2804 (3) (iv) of the Competition Act would be rendered meaningless.

Further demonstrating the fallacy of PPLICA's argument, its position on the recovery of stranded decommissioning costs is inconsistent with its position on the recovery of other stranded generation costs. PPLICA's own witnesses submitted projections of the stranded generation plant costs to be incurred by PP&L in the future and advocated the recovery by PP&L of these prospective costs. PPLICA St. Nos. 1 and 2.

Aside from the fact that OCA and PPLICA have misinterpreted the Competition Act, there are good public policy reasons for allowing PP&L to recover its decommissioning costs. If PP&L's plants are left in a state of disrepair, due to a lack of adequate funding for decommissioning, health and safety risks could be presented to the public. Utilities should be encouraged to take all possible precautions against these health and safety risks through the proper funding of decommissioning costs, not discouraged from doing so as OCA and PPLICA now advocate.

IX. PHASE-IN ISSUES

THE COMPETITION ACT DOES NOT AUTHORIZE THE COMMISSION TO ORDER AN ELECTRIC UTILITY TO DEVIATE FROM THE PHASE-IN SCHEDULE IN THE ACT, UNDER WHICH ONE-THIRD OF THE PEAK LOAD OF EACH CUSTOMER CLASS WILL BE OFFERED THE OPPORTUNITY FOR DIRECT ACCESS ON JANUARY 1 OF THREE SUCCESSIVE YEARS -- 1999, 2000, AND 2001

In its decision in the PECO restructuring case (Opinion and Order entered December 23, 1997 in Docket No. R-00973953), the Commission ordered that "33% of the peak load of each customer class shall have the opportunity for direct-access as of January 1, 1999 and that 66% of the peak load of each class shall have direct access as of January 2, 1999. All customers shall have direct access as of January 2, 2000." (Opinion, p. 45). Stephen Baron, a witness for PPLICA in this proceeding, advocated a similar phase-in plan for large industrial and commercial customers to avoid possible competitive disadvantage.⁶⁷ PPLICA St. No. 1 at 58-59.

The phase-in schedule adopted by the Commission in the PECO restructuring decision and advocated by Mr. Baron in this proceeding is contrary to the plain language of Section 2806(b) of the Competition Act, which reads as follows:

(b) **Schedule.** - Recognizing that approximately 5% of the peak load will have retail access through pilot programs, the following schedule for phased implementation of retail access shall be adhered to unless a determination is made by the Commission under subsection (c):

(1) As of January 1, 1999, a maximum of 33% of the peak load of each customer class shall have the opportunity for direct access.

⁶⁷ While Mr. Baron advocated acceleration of the phase-in for large industrial customers, he did not advocate such an acceleration for residential or small commercial customers. Moreover, with respect to Mr. Baron's argument, the Competition Act authorizes the Commission to depart from the "first-come-first-served" approach to alleviate competitive disadvantages, but, for reasons set forth below, the Act does not authorize the Commission to accelerate the phase-in.

(2) As of January 1, 2000, a maximum of 66% of the peak load of each customer class shall have the opportunity for direct access.

(3) As of January 1, 2001, all customers of electric distribution companies in this Commonwealth shall have the opportunity for direct access.

(4) The Commission shall establish regulations specifying that, within each customer class, the customers that are eligible for direct access prior to full direct access shall be determined on a first-come-first-served basis unless otherwise determined by the Commission through regulation, in the context of restructuring plans, or in other appropriate administrative proceedings, to prevent competitive disadvantages among similarly situated customers within a customer class.

66 Pa. C.S.A. § 2806(b).

On its face, the above language expressly establishes a mandatory schedule in which one-third of the peak load of each customer class is given the opportunity for direct access in January of three successive years - 1999, 2000, and 2001.^{2/} Clearly, the purpose of such a phase-in is to introduce competition gradually to minimize the impact of any unforeseen problems when direct access is implemented, and to minimize the administrative burdens and any financial impacts on Electric Distribution Companies ("EDCs").

The phase-in schedule advocated by Mr. Baron and adopted by the Commission in the PECO proceeding cuts one full year (minus one day) out of the phase-in schedule established in Section 2806(b). The Commission did not provide the rationale for its accelerated phase-in in the PECO decision - leaving considerable room for speculation about the legal basis for such a conclusion. However, it appears that the Commission may have adopted this schedule based on

^{2/} When the language of a statute is unambiguous, any further deliberation regarding its meaning is unwarranted. 1 Pa. C.S.A. § 1921(b); Meier v. Maleski, 670 A.2d 755 (Pa. Commw. 1996).

an interpretation of the words "as of", which appear at the beginning of subparagraphs (b)(1), (2), and (3), to mean "at the latest" rather than "beginning on." Under this interpretation, the Commission apparently believed that it could order an EDC to phase-in direct access to the second one-third of the peak load of each customer class on January 2, 1999, and the final one-third on January 2, 2000.

This interpretation of Section 2806(b) of the Act is erroneous. Section 2806(b) establishes a three step phase-in beginning in January 1999 and ending January 1, 2001. While an EDC and its customers may agree in a settlement to expedite the phase-in of direct access, thereby waiving the Company's right under the Act to a more gradual phase-in, the Commission may not unilaterally cut a year out of the process.

It is clear that the Commission's interpretation of the phase-in language in its PECO decision is erroneous when one reads subsections (b) and (c) of Section 2806 together. Section 2806(c) reads as follows:

(c) Additional time. -

(1) The Commission may determine that an additional six-month transition period is necessary **prior to the January 1, 1999, implementation date**. A determination under this subsection must be made at least 45 days in advance of the scheduled date for implementation and must be based on one or more of the following considerations:

* * *

(2) Consistent with the considerations listed in paragraph (1), the Commission may determine that an additional six-month transition period is necessary. This determination must be made by the Commission by May 15, 1999.

66 Pa. C.S.A. § 2806(c) (emphasis supplied).

The language of Section 2806(c) supports the Electric Distributors' argument for two reasons. First, Section 2806(c) establishes beyond doubt that January 1, 1999 is the "implementation date." In other words, January 1, 1999 is the date upon which the phase-in to direct access *begins*. There is no dispute over this point. No one in this proceeding or elsewhere has advocated that the phase-in to direct access may begin before January 1, 1999.^{8/} Thus, the words "as of" at the beginning of Section 2806(b)(1) can only mean "beginning on."

If the words "as of" in Section 2806(b)(1) mean "beginning on," then those words must be given the same meaning in (b)(2) and (3). Commonwealth v. Maloney, 73 A.2d 707, 712 (Pa. 1950) ("the rule is well established that a word or phrase, the meaning of which is clear when used in one section of an Act, will be construed to mean the same thing in another section of the same Act"). Applying this interpretation to Section 2806(b), beginning on January 1, 1999, a maximum of 33% of the peak load of each customer class shall be given the opportunity for direct access (Section 2806(b)(1)); beginning on January 1, 2000, a maximum of 66% of the peak load of each customer class shall be given the opportunity for direct access (subsection (b)(2)); and beginning on January 1, 2001, all customers shall be given the opportunity for direct access (subsection (b)(3)).

Second, it is clear that Section 2806 does not delegate discretion to the Commission to adopt the accelerated phase-in schedule advocated by Mr. Baron and adopted by the Commission in its PECO decision. The introductory language to subsection (b) states clearly that "....the

^{8/} The Commission's Opinion and Order in the PECO proceeding referred to the phase-in schedule ordered therein as "the most rapid phase-in permitted under the Act...." (p. 45). While the Electric Distributors disagree that this schedule is permitted under the Act, this statement shows that the Commission has treated January 1, 1999 as the earliest date for beginning the phase-in.

following schedule for phased implementation of retail access shall be adhered to unless a determination is made by the Commission under subsection (c):" The use of the word "shall" in this language indicates that the schedule was intended to be mandatory, not subject to the Commission's discretion. See Commonwealth v. Baker, 690 A.2d 164, 167 (Pa. 1997).

The only possible exception to the three year phase-in schedule is under subsection (c), which authorizes the Commission to delay the implementation of the direct access phase-in by two separate six-month periods. Thus, while the Legislature expressly authorized the Commission to delay the phase-in, it did not authorize the Commission to accelerate the phase-in. The express inclusion of this one exception to the phase-in schedule set forth in Section 2806(b) indicates that other exceptions were not intended. See Andrus v. Glover Construction Co., 446 U.S. 608, 617-618 (1980).

If any additional evidence of legislative intent regarding the phase-in schedule is necessary, it is contained in subsection (a) of Section 2806, which reads as follows:

(a) General rule. - The generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter at the conclusion of a transition and phase-in period beginning on the effective date of this chapter and ending, consistent with the Commission's discretion under this section, January 1, 2001. As of January 1, 2001, consistent with the Commission's discretion under this section, all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of electric generation supplier is to rest with the customer.

This language leaves no doubt that the General Assembly intended the phase-in schedule to end on January 1, 2001 (not January 2, 2000). The language "consistent with the Commission's discretion" refers to the explicit authorization granted to the Commission in Section 2806(c) to delay the phase-in; as stated above, however, the Commission has not been authorized to

accelerate the phase-in. Accordingly, subsection (a) of Section 2806 reinforces the view that the accelerated phase-in schedule ordered by the Commission in the PECO proceeding violates the Competition Act.

Finally, the Commission itself, prior to its PECO decision, had interpreted Section 2806(b) in the manner urged by the Electric Distributors in this Brief. In its Order directing jurisdictional electric utilities to submit transition plans, *Re Electric Utility Restructuring Filings*, Docket No. M-00960890, F.0003, 176 PUR 4th 45 (Feb. 13, 1997), the Commission stated:

We are mindful that the Act itself requires the restructuring of the Commonwealth's electric utilities in three phases, 66 Pa. C.S. § 2806(b)(1)-(3) [footnote deleted], culminating in a fully restructured industry with full customer access to competitive sources of electric energy *beginning January 1, 2001*. 66 Pa. C.S.A. § 2806(b)(3).

(emphasis supplied.) This language establishes clearly that the Commission interpreted Section 2806(b) as providing for full customer access to competitive energy on January 1, 2001, not January 2, 2000, as in the PECO order.^{2/}

Thus, it is clear that while an EDC may agree to an expedited phase-in pursuant to a settlement with its customers, the Commission may not unilaterally order such a company to phase-in the second one-third of its peak load to direct access prior to January 1, 2000, and the final one-third prior to January 1, 2001.

^{2/} The Electric Distributors note that the statutory construction issue raised by the Commission's resolution of the phase-in issue in the PECO proceeding was not briefed by the parties in that case. Since the issue has not been fully briefed before, the Electric Distributors urge the Commission to approach the issue with an open mind.

X. CODE OF CONDUCT AND COMPETITION ISSUES

**A. PURPOSE AND GOAL OF CODES OF CONDUCT
AND COMPETITIVE ACCESS RULES**

The Electric Distributors submit that a code of conduct should provide clear and simple ground rules that are narrowly tailored to prevent unlawful abuses of monopoly power. The Electric Distributors support the adoption and application of a statewide code of conduct. Along with the protections offered by such a statewide code of conduct, the Commission's complaint process will be available to address any grievances that occur. No more should be required in this proceeding.

**THE UNDULY BURDENSOME AND RESTRICTIVE CODE
OF CONDUCT REQUIREMENTS PROPOSED BY ENRON
SHOULD NOT BE ADOPTED IN THIS PROCEEDING**

The Electric Distributors oppose the additional operating and competitive restrictions which Enron Power Marketing, Inc. ("Enron") seeks to impose upon PP&L in this proceeding. These unduly burdensome and overly restrictive requirements would preclude electric utilities from operating efficiently. They also would force electric utilities to compete with other alternative generation suppliers with one arm tied behind their back.

In any event, the Commission indicated at its January 29, 1998 public meeting that it will address code of conduct issues generically as part of a statewide rulemaking proceeding. Thus, the Presiding Judge need not impose Enron's unreasonable competitive restrictions in this proceeding.

D. ADDITIONAL COMPETITIVE RESTRICTIONS PROPOSED

(See Section X. A. above.)

* * *

8. Require PP&L To Permit Alternate Suppliers To Bill For Distribution Services And Be The Sole Contact For Customer Service

(See Section X.E.1. below.)

* * *

E. FURTHER UNBUNDLING OF DISTRIBUTION RATES OR SERVICES

1. Metering, Billing And Collection Services

THE COMMISSION LACKS THE NECESSARY STATUTORY AUTHORITY TO GRANT ALTERNATIVE GENERATION SUPPLIERS THE RIGHT TO PERFORM CUSTOMER SERVICE FUNCTIONS, INCLUDING METERING AND BILL COLLECTION, IN LIEU OF EDCs

The Competition Act directs the Commission to unbundle charges for generation from transmission and distribution services. 66 Pa. C.S.A. § 2804 (3). Enron, New Energy Ventures (“NEV”), and Mid-Atlantic Power Supply Association (“MAPSA”) want the Commission go beyond the Legislature’s directive. They assert that the Commission should order PP&L to unbundle its charges for all customer service functions, including metering and billing, so that other alternative suppliers can provide these services in lieu of an EDC.^{3/} Enron, in particular, asserts that it should have the right to serve as the “exclusive agent” for a

^{3/} Enron St. No. 1 at 4-6; Enron St. No. 3 at 22-23; Enron St. No. 4 at 2-17; Enron St. No. 5 at 3-6; MAPSA St. No. 1 at 2, 25-27; NEV St. No. 2 at 2-8.

customer. Among other things, Enron wants to provide customers with a single bill that contains not only Enron's supply charges, but also the distribution charges and CTC of an EDC.

The Electric Distributors respectfully submit that the Commission lacks the necessary authority, under the Competition Act, to grant the marketers' requests. Moreover, even if the Commission could lawfully transfer customer service functions from EDCs to other alternative generation suppliers, it would not be prudent regulatory policy to do so at this time.

**AS THE LEGISLATURE DIRECTED, EDCS "SHALL"
CONTINUE TO PROVIDE CUSTOMER SERVICE
FUNCTIONS, INCLUDING METER READING,
COMPLAINT RESOLUTION AND BILL COLLECTION**

In Section 2807(d) of the Competition Act, the Legislature clearly mandated that:

The electric distribution company shall continue to provide customer service functions consistent with the regulations of the Commission, including meter reading, complaint resolution and collections.

66 Pa. C.S.A. § 2807 (d) (emphasis added). Therefore, the Commission lacks the necessary statutory authority to unbundle these particular functions.

Section 2807(c) of the Competition Act further makes clear that the Legislature did not intend to allow the charges of an EDC to be collected in a single bill submitted to a customer by an alternative generation supplier, as Enron now proposes. Section 2807(c) grants customers the option to receive a separate bill from their alternative generation supplier for the generation services provided by that supplier. However, this Section does not grant alternative generation suppliers the right to bill customers for the services provided by an EDC. Only an EDC "may be responsible for billing customers for all electric services, consistent with the

regulations of the Commission, regardless of the identity of the provider of those services.”

66 Pa. C.S.A. § 2807 (c) (emphasis added).

Further evidencing the Legislature’s intent to retain the EDCs’ responsibility to bill for their own charges, Section 2807(c) expressly requires alternative generation suppliers to “furnish to the electric distribution company billing data sufficient to enable the electric distribution company to bill customers.” 66 Pa. C.S.A. § 2807(c)(2). However, there is no corresponding obligation on the part of an EDC to furnish billing data to an alternative generation supplier to enable that supplier to bill customers for the EDC’s charges.

The Electric Distributors recognize that, in Section 2804(3) of the Competition Act, the Legislature stated that the Commission “may require the unbundling of other services.” 66 Pa. C.S.A. § 2804(3). However, metering and bill collection are not among the other services which the Commission has the authority to unbundle, let alone make subject to competition. The Legislature decided to preserve the EDCs’ responsibility for these customer service functions in order to ensure that the transition from regulation to competition proceeds in an orderly manner, and that the safety and reliability of the electric system is maintained. 66 Pa. C.S.A. §§ 2807(d), 2802(12).

**EVEN IF THE COMMISSION DID HAVE THE STATUTORY
AUTHORITY TO ORDER ADDITIONAL UNBUNDLING, IT
WOULD NOT BE WISE PUBLIC POLICY TO DO SO AT THIS TIME**

Even if the Commission did have the statutory authority to order the additional unbundling advocated by Enron and other marketers, it would not be wise public policy to do so at this time. The transition from regulation to competition in the generation market will be confusing enough for consumers (and other electric industry participants). It would not be

prudent to add even more layers of confusion by opening up metering and bill collection to competition at the same time.

Moreover, there are important reliability and safety reasons for maintaining these functions within the control of the EDCs. As the Commission recognized in its *Final Order Regarding Guidelines for Maintaining Customer Services at the Same Level of Quality*, metering is directly linked to the safety, reliability, and integrity of an EDC's electric system. Final Order, Docket No. M-00960890F.011 at 26 (July 11, 1997). As the witness for the International Brotherhood of Electrical Workers, Mr. Schmitt, also testified in the proceeding:

. . . [A]n electric meter is not just an appliance that can be unplugged. The work is potentially hazardous, must be done properly, and should not be frequently avoided to avoid the possibility of wear or damage to the customer's meter base.

IBEW St. No. 1 at 4. Thus, it is important that metering continue to be performed by the EDCs.

In order to comply with Chapter 56 of the Commission's regulations, governing the quality of service provided to residential customers, EDCs also must continue to handle customer billing and customer service inquiries. EDCs must have control over the bills for their own charges to ensure that payments are received and credited properly, and that service is not wrongfully terminated.

IF FURTHER UNBUNDLING IS REQUIRED, ELECTRIC UTILITIES MUST BE ALLOWED TO RECOVER THE ADDITIONAL COSTS WHICH WOULD BECOME STRANDED AS A RESULT OF THIS REQUIREMENT

The Electric Distributors believe that the decision to unbundle metering and bill collection remains within the province of the Legislature. The Legislature is, of course, free to pass

additional legislation authorizing the unbundling of these functions after experience has been gained in the competitive retail generation market. If the Commission nevertheless proceeds to order the unbundling of these additional functions at this time, the Electric Distributors respectfully submit that it must evenhandedly allow electric utilities to recover the additional stranded costs that would result from such a decision.

As PP&L's witness, Mr. Bujnowski, testified, electric utilities have invested money in the infrastructure and technological equipment needed to support customer service functions, such as metering and bill collection. They invested this money in order to meet their traditional regulatory obligation to serve consumers. If these costs now become stranded, as a result of the Commission's decision to open up customer service functions to competition, utilities should be allowed to collect the costs in their CTCs. PP&L St. No. 15-R at 12.

XIV. CONCLUSION

WHEREFORE, the Electric Distributors request that the Presiding Judge reject the intervenors' unlawful proposals which would: (1) deny PP&L a "fair opportunity to fully recover" its fossil plant decommissioning costs; (2) unilaterally accelerate and reduce the three-step customer choice phase-in process to essentially a two-step process; (3) impose unduly restrictive code of conduct requirements on PP&L and its affiliates; and (4) force PP&L to unbundle its customer service functions, including metering and billing.

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application Of Pennsylvania Power :
And Light Company For Approval Of Its :
Restructuring Plan Under Section 2806 : **Docket No. R-00973954**
Of The Public Utility Code :

CERTIFICATE OF SERVICE

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

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PA PUBLIC UTILITY COMMISSION
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DOCUMENT
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James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
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Re: Application of PP&L, Inc. For Approval of Its Restructuring Plan Under
Section 2806 of the Public Utility Code
PUC Docket No. R-0097~~354~~
3954

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and nine copies of PECO Energy Company's Main Brief in the referenced matter.

Sincerely,

Mary McFall Hopper

MMH/mtg

enclosures

cc: Hon. George M. Kashi
Parties of Record

45

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FEB 11 1998

**PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE**

**APPLICATION OF PENNSYLVANIA
POWER & LIGHT COMPANY FOR
FOR APPROVAL OF ITS
RESTRUCTURING PLAN UNDER
SECTION 2806 OF THE PUBLIC
UTILITY CODE**

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DOCKET NO. R-00973954

**DOCKETED
FEB 13 1998**

**MAIN BRIEF
OF
PECO ENERGY COMPANY**

**DOCUMENT
FOLDER**

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Dated: February 11, 1998

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Ever since it was enacted fourteen months ago, the Electricity Generation Customer Choice and Competition Act (the "Electric Competition Act") has been subjected to intense examination, with parties of diverse interests offering conflicting interpretations of its various provisions. On one point, however, all stakeholders seem to agree -- the overriding goal of the Electric Competition Act is to establish a level playing field on which customers can freely choose their generation supplier and generation suppliers can fairly compete for their business without impairing the reliability of existing service. As an electric distribution company ("EDC") and an electric generation supplier ("EGS"), PECO expects to compete with PP&L in Eastern Pennsylvania and in other retail electric markets. PECO's interest in this proceeding, therefore, is to ensure that its ability to compete is not compromised by factual determinations and/or legal conclusions which are at odds with the treatment it received in its recently concluded restructuring case at Docket No. R-00973953 (the "PECO Case") and that its shareholders are not treated unfairly vis-a-vis other EDCs. Quite simply, the Commission's resolution of key issues must be consistent.

IV. STRANDED COST CALCULATION METHODOLOGY

PECO takes no position with respect to the overall level of stranded costs to which PP&L is entitled. Instead, PECO merely urges the Commission to be even-handed in its determination. Thus, to ensure consistent treatment and to avoid a situation whereby one utility reaps an unfair advantage (or suffers an unfair disadvantage), stranded costs should be quantified in all restructuring proceedings on the basis of the "valuation" method used in the PECO Case and not the "lost revenues" method proposed by PP&L.

V. MARKET PRICE OF ELECTRICITY

Not surprisingly, Pennsylvania's restructuring proceedings have produced a wide range of conflicting and fiercely defended opinions regarding future retail market prices for energy and capacity. And, as has become evident, virtually any scenario can be constructed depending upon the assumptions employed.

In the PECO Case, the Commission adopted OCA witness Smith's market price projections for purposes of quantifying stranded costs.^{1/} PECO submits that the Commission's findings are not supported by substantial evidence and it has challenged them on appeal. That being said, there is no reason to believe that different wholesale market prices will prevail in PECO's and PP&L's respective service territories. Indeed, Messrs. Smith and Falkenberg, who appeared in both utilities' restructuring proceedings, as well as the pending GPU Energy case, have explicitly assumed that all of Pennsylvania's PJM members will be competing in the same market. Consequently, the wholesale market prices accepted here should be the same as those utilized in the PECO Case.

VI. REVENUE UNDER REGULATION

C. Regulatory Assets And Liabilities

4. Fossil Plant Decommissioning

The Electric Competition Act defines transition or stranded costs to include "retirement costs attributable to the utility's existing generation plants" (66 Pa. C.S. § 2803).

Notwithstanding this unequivocal language, the Commission, in the PECO Case, concluded that it could not approve the recovery of future fossil decommissioning costs because "future or

^{1/} At the same time, however, the Commission ignored those market values when it designed PECO's unbundled tariff rates.

prospective fossil plant decommissioning expenses are not traditionally recognized in rates in Pennsylvania” (December 23, 1997 Order, p. 91). PECO believes that the Commission’s treatment of this issue is wrong as a matter of law, rewrites the Electric Competition Act in a way that could not possibly have been intended by the General Assembly and, therefore, will be quickly reversed by the Commonwealth Court. Until then, however, there is no basis for approving PP&L’s or any other utility’s fossil decommissioning claim.

8. Earnings On Recovered SFAS 106 Costs

In the PECO Case, Mr. Kollen, appearing there on behalf of the Philadelphia Area Industrial Energy Users Group, proposed that the Commission recognize, as a regulatory liability, earnings that PECO’s actuaries projected its SFAS 106 trust fund would generate on deposits made to the fund prior to the advent of retail competition. Even though PECO pointed out that such future earnings had already been taken into account in calculating its ongoing generating plant costs for market value purposes, the Commission adopted Mr. Kollen’s adjustment. PECO has appealed this issue and has also petitioned the Commission to reconsider and correct this obvious error. Unless that is done, consistency would require that similar offsets to SFAS 106 claims be made in all electric restructuring proceedings.

**VII. DETERMINATION OF PRESENT VALUE
AND
VIII. RECOVERY OF STRANDED COSTS**

The Commission, in the PECO Case, decided that the restructuring process should not simply produce a level, competitive playing field, but rather should put in place real incentives for customers to leave their incumbent utility by providing them what the Commission perceived to be an opportunity to reduce their rates by 15.0%. It accomplished this objective through a series of interrelated steps:

- The creation of artificial “shopping credits” which far exceed and, indeed, bear no relationship to anyone’s projected market prices in the near term.
- The extension of the CTC recovery period to make the inflated “shopping credits” fit under the rate cap.

and

- The requirement that PECO charge default customers the higher “capped” rates and deny them the benefit of lower market prices if they fail to shop.

PECO does not believe that the General Assembly intended to penalize incumbent utilities or their customers in furtherance of retail competition and will ask the Commonwealth Court to reverse these aspects of the Commission’s decision. But, regardless of the outcome, whatever rules are applied to PECO must be imposed on other utilities as well. Otherwise, the playing field will be anything but “level” and PECO’s ability to compete will be severely hampered.

In addition, PECO makes no specific recommendation regarding PP&L’s cost of capital, its appropriate after-tax discount rate or the return it should be allowed to earn on the unamortized balance of its stranded costs. PECO notes, however, that it was granted a pre-tax return on stranded costs equivalent to its embedded cost of long-term debt on the grounds that the recovery of CTC revenues is essentially risk-free. The Commission’s reasoning, although unsupported and contrary to the Electric Competition Act’s promise of stranded cost recovery, would unfortunately apply with equal force to all other incumbent utilities.

IX. PHASE-IN ISSUES

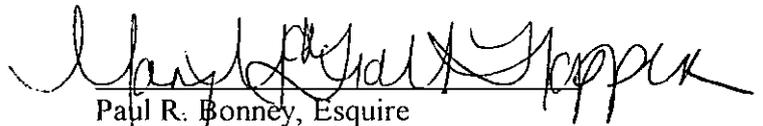
The General Assembly recognized that the restructuring of the electric utility industry and the introduction of retail competition was a daunting and complex task. With that in mind, it adopted a series of provisions which clearly contemplate that customer choice will be phased in gradually over a three-year period (see 66 Pa. C.S. § 2806(b)). In the PECO Case, the

Commission departed from the course plainly marked by the Legislature and effectively accelerated the introduction of customer choice by a year for those customers who, under the statute, would not become eligible to shop until January 1, 2000 and January 1, 2001, respectively. PECO strongly disagrees with this aspect of the Commission's decision and has appealed it to the Commonwealth Court. See also the discussion of this issue in the joint utilities' brief, in which PECO concurs. However, if that requirement is to hold, fairness dictates that similar phase-in schemes be imposed on all of Pennsylvania's electric utilities. Otherwise, the spirit, and arguably the letter, of the Electric Competition Act's reciprocity feature (66 Pa. C.S. § 2805(b)(2)) would be violated.

X. CODE OF CONDUCT AND COMPETITION ISSUES

It is absolutely critical that all electric generation suppliers adhere to the same set of competitive safeguards and rules regarding the unbundling of metering and billing services. PECO assumes that such issues will be resolved on a generic basis and that the restrictions imposed on it will also apply to PP&L's and other incumbent utilities.

Respectfully submitted,



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**BEFORE THE
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Application of PP&L, Inc. For Approval of Its :
Restructuring Plan Under Section 2806 of the : Docket No. R-00973954
Public Utility Code :
: :
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CERTIFICATION OF SERVICE

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

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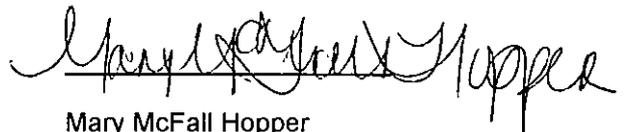
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RE: Application of Pennsylvania Power & Light Company for Approval of its
Restructuring Plans; Docket No. R-00973954
Letter of Conectiv Energy in Lieu of Supplemental Brief

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Dear Mr. McNulty:

Conectiv Energy would like to thank Administrative Law Judge Kashi for affording Conectiv Energy the opportunity to file a Supplemental Brief in the above matter. In light of the Main Brief filed by the Competitive Intervenors, Conectiv Energy does not deem it necessary to file a Supplemental Brief on market pricing.

A copy of this letter is being forwarded to all parties of record. Thank you for your time and cooperation.

DOCKETED
FEB 18 1998

Respectfully,

Craig A. Doll
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Pennsylvania Public Utility
Commission

Commission Docket No.
R-00973954

v.

Pennsylvania Power & Light Company

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CERTIFICATE OF SERVICE

I, Craig A. Doll, attorney for Intervenor Conectiv Energy, hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below, in accordance with the requirements of § 1.54.

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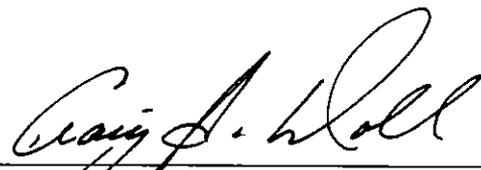
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