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February 12, 1998

VIA HAND DELIVERY

James McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Mr. McNulty:

Enclosed please find the original and nine copies of the Joint Main Brief of Competitive Intervenors in the above-referenced matter. If you have any questions, please contact the undersigned.

Respectfully,

Alan Kohler

Alan Kohler
For WOLF, BLOCK, SCHORR and SOLIS-COHEN, LLP

AK/cln
Enclosures
cc: All Parties of Record
Hon. George M. Kashi

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Alan Kohler

Dated: February 12, 1998

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PP&L for Approval of :
its Restructuring Plan Under Section 2806 : Docket No. R-00973954
of the Public Utility Code

JOINT MAIN BRIEF OF COMPETITIVE INTERVENORS[1]

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Dated: February 12, 1998

[1] The Competitive Intervenors are Enron Power Marketing, Inc., New Energy Ventures, the Mid Atlantic Power Supply Association, and the Pennsylvania Petroleum Association.

I. STATEMENT OF THE CASE

On April 1, 1997, Pennsylvania Power & Light Company ("PP&L") filed the above-captioned petition with the Commission requesting approval of a Restructuring Plan pursuant to Section 2806 of the Electricity Generation Customer Choice and Competition Act. ("Act").[2] Enron Power Marketing, Inc. ("Enron"), New Energy Ventures ("NEV"), the Mid Atlantic Power Supply Association ("MAPSA"), and the Pennsylvania Petroleum Association ("PPA") [3] were among the many intervenors which were permitted to actively participate in this proceeding.

Pursuant to the litigation schedule established by the presiding officer, Administrative Law Judge ("ALJ") George M. Kashi, several rounds of written testimony were submitted by various litigants.[4] Hearings were held from August 8 through August 29, 1997. Following the close of the hearings, the ALJ suspended the litigation schedule to allow all parties to enter into settlement negotiations. Recently, the parties notified the

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2 66. Pa.C.S. §2806.

3 This group of parties, on whose behalf this Main Brief is submitted, is collectively referred to as the "Competitive Intervenors".

4 Of the Competitive Intervenors, Enron submitted the testimony of eight witnesses: Richard S. Shapiro (Policy), Dr. John W. Mayo (Economics of the Act), Paul D. Reising (Cost Allocations and Supplier Tariff), Malcolm W. Jacobson (Competitive Metering), Raymond W. Bowen, Jr. (Unbundling and General Implementation Issues), Michael D. Dirmeier (Competitive Safeguards), Lynn R. Coles (Reliability) and Dr. Richard Tabors (Allocation of Tie Benefits). NEV submitted the testimony of David M. Boonin (Stranded Cost Recovery and Rate Design) and Susan Day (Unbundling). MAPSA submitted the testimony of Donald E. Johnstone (General Restructuring Issues).

ALJ that settlement negotiations had broken down, that a settlement agreement would not be forthcoming and that briefing of the case would be necessary.

Pursuant to ALJ Kashi's August 25, 1997 Order, parties to these proceedings are required to file joint briefs by intervenor groups, as assigned by the ALJ. By letter dated September 3, 1997, lead counsel for the Competitive Intervenors notified ALJ Kashi that the Competitive Intervenors would be filing joint briefs which generally address the market structure issues in the proceeding and that Enron, NEV, MAPSA and PPA could each file supplemental briefs addressing party specific issues. This Main Brief is submitted by the Competitive Intervenors in compliance with the ALJ's directive.[5]

II. INTRODUCTION AND SUMMARY OF ARGUMENT

Through its decision in this proceeding, the Commission will establish a restructuring plan to govern PP&L in its transition from a monopoly environment in its service territory to a competitive retail market for generation supply. However, if PP&L has its way, as reflected in its proposed restructuring plan and its litigation positions in this proceeding, the transition will not be to a competitive market, with all of its associated consumer benefits, but instead will lead to an unregulated monopoly. While such a result may be in the best interests of PP&L's stockholders, such a result is nothing short of disastrous for electric customers in PP&L's service territory.

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[5] Supplemental briefs will each be filed under separate cover to the extent deemed necessary.

In its proposed restructuring plan, at every step along the way, PP&L advocates measures which erect barriers to entry and impede the development of a meaningful competitive environment as mandated by the General Assembly. Left to its own devices, PP&L would have the Commission approve a plan which assures little or no competition in its service territory until it has recovered every dime of its claimed level of stranded and transition costs.

PP&L assures little or no competition by designing its rates to calculate the generation or shopping credits to customers as its projections of wholesale market prices. However, because these credits are applicable to the sale of electricity in a retail market, the projections, even if relatively accurate, are below the compensatory rates that suppliers will have to charge in order to recover the retail costs incurred in addition to the wholesale price of power.

Suppliers thus would be forced to sell power at a loss just to match the generation credit offered in PP&L's plan. If they wish to offer savings to make their service attractive vis-a-vis PP&L's rates — obviously necessary for customers to consider it in their interest to switch from a company that has always served them — the rates necessarily offered would be even more non-compensatory. The result will be that suppliers simply won't participate, and most of PP&L's customers — certainly their residential and small commercial customers — will have choice in name only. This apparently is of no concern to PP&L, because its self-serving interpretation of the law is

that its markets should be protected from competitive loss until it has all but completely recovered its claimed "uneconomic investment."

However, the Act envisions and, in fact, requires a much different paradigm. Under the Act, an electric distribution company ("EDC") is not entitled to one dime of transition or stranded costs unless and until it opens up its generation supply market to competition.[6] Simply put, PP&L cannot have it both ways by asserting a claim to recover approximately $4 billion in transition and stranded costs and at the same time proposing a market structure which would assure that competition is non-existent.

The record in this case is undisputed that, if permitted to develop, a fully competitive generation supply market will deliver enormous benefits to the consuming public in the form of higher quality service, lower prices and innovative services. However, such consumer benefits are only possible in PP&L's service territory if the Commission makes far-reaching modifications to PP&L's proposed restructuring plan[7] in virtually every area to remove the anti-competitive provisions which, if permitted to become effective, will impede development of the fully competitive environment the Act demands.

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6 Under 66 Pa.C.S. §2803, "transition or stranded costs" are costs "which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market." Obviously, absent a restructuring plan which enables the development of a competitive generation market, neither PP&L nor any other EDC is entitled to any transition or stranded costs.

7 Under 66 Pa.C.S. §2806(f), the Commission may modify an EDC proposed restructuring plan as long as the modifications are supported by record evidence.

Summarily, and as set forth in more detail below or in supplemental briefs, the Competitive Intervenors request the Commission to make the following modifications to PP&L's proposed restructuring plan:

- The Commission should establish generation or "shopping" credits which assure market entry for all classes of customers by requiring unbundling of transmission, distribution and generation rates, a levelized competitive transition charge ("CTC") rate design and determination of the level of transition and stranded costs consistent with the Commission's Restructuring Order for PECO Energy Company ("PECO").[8]

- The Commission should modify PP&L's allocation of costs to assure that only transmission and distribution ("T&D"), not generation related costs, are recovered in PECO's T&D rates and that only transition or stranded costs are recovered through the CTC.

- The Commission should modify PP&L's provider of last resort ("PLR") proposal to require that all customers who are ineligible for choice or customers who choose not to choose or return to PP&L as their PLR are served by PP&L's Delivery Group under tariffed rates, not PP&L's Generation Supply Group.

- The Commission should modify PP&L's PLR proposal to preclude PP&L's Delivery Group from "flexing down" its rates and should require PP&L to charge default customers tariffed rates consistent with the PECO Restructuring Orders.

- The Commission should require submission by PP&L of a supplier tariff governing the relationship between PP&L and generation suppliers.

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[8] Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, R-00973953 (December 23, 1997), Reconsideration Order (January 16, 1998); Compliance Filing Order (February 5, 1998) (jointly referred to as "PECO Restructuring Orders").

- The Commission should adopt an accelerated phase-in and phase-in procedures consistent with the PECO Restructuring Orders.

- The Commission should modify PP&L's proposed code of conduct and should establish a code which precludes any potential for anti-competitive behavior between PP&L and its generation supply affiliates or divisions. Generally speaking, the Competitive Intervenors support adoption of the Code of Conduct ordered by the Commission in the PECO Restructuring Orders as a statewide Code of Conduct.[9]

- The Commission should modify PP&L's plan to require full embedded cost unbundling of and competitive entry into revenue cycle or "non-wire" services, like billing, metering and customer services, thereby allowing customers to take advantage of innovation and improvement without paying twice for these services.

- The Commission should modify PP&L's proposed tariff to allow suppliers to act as agents for customers in the ordering and provisioning of transmission and distribution ("T&D"), revenue cycle services and generation supply services.

- The Commission should modify PP&L's plan relative to other issues, like treatment of special tariffs and contracts, treatment of partial payments, and universal service to assure competitively neutral treatment.

Overall, it is critical for the Commission to take the steps that are required to convert PP&L's proposed plan into a final Restructuring Plan which will enable the development of a robust competitive retail market in PP&L's service territory. Otherwise, the Commission will fall short of complying with the Act's requirements and will not deliver the Act's intended benefits to Pennsylvania's consumers and businesses.

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[9] As set forth in its Supplemental Brief, Enron supports the PECO Restructuring Order Code of Conduct with an additional provision which prohibits use of PP&L's brand name by its supplier affiliate or divisions.

III. ARGUMENT[10]

A. The Commission Should Follow its Precedent in the PECO Decision for Unbundling T&D and Generation Rates and Designing the CTC Recovery.

In PP&L's proposed restructuring plan, it included a methodology for unbundling of rates "in a 'bottoms up' fashion rather than a 'top down' fashion."[11] As PP&L witness Tierney explained:

> Rather than start with a company-wide estimate of stranded costs, for example, which would then be assigned to all customer classes -- the top-down approach -- PP&L started with the individual rate structure for each customer class and unbundled that rate first in order to separate delivery costs from generated related costs, and then to separate the latter into supply costs (priced at prevailing market prices) and competitive transition charges.(See Exhibit SET 7). This is PP&L's "bottoms up" approach to unbundling.

PP&L St. No. 9 (Tierney), pp. 23-24.

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[10] As was set forth in the September 3, 1997 letter from lead counsel for the Competitive Intervenors to ALJ Kashi, this Joint Main Brief will address market structure issues, including issues pertaining to code of conduct and other competitive safeguards, agency, unbundling of and competitive entry into revenue cycle services, and the structure and operation of the PLR. This Main Brief will also address the applicability of the rate unbundling and recovery of transition or stranded costs decisions in the PECO Restructuring Orders as well as other miscellaneous issues like customer selection procedures, priority of partial payments, universal service and consumer education. All other issues identified above will be addressed in the supplemental briefs of individual competitive intervenors.

[11] PP&L St. No. 9 (Tierney), p.23.

PP&L then proposes to recover its Commission approved level of transition or standard costs over whatever period necessary, given the residual amount of CTC annual collections.

Such an approach, while in furtherance of PP&L's objective to impede competitive development, is not consistent with the Act's objectives. By unbundling rates from the bottom up, PP&L "pegs" the generation or shopping credit at its estimate of prevailing market prices for each year of the CTC recovery period.[12] PP&L's estimate of prevailing market prices for the residential class starts at 2.967 cents/kwh in 1999 and increases slowly over time, but never reaches a projected rate of 4 cents/kwh by the end of the year 2005.[13] As MAPSA witness Johnstone concluded, under this scenario "new suppliers would have little or no realistic opportunity to compete. The access of

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12 Under PP&L's unbundling and rate design proposal, the amount of Commission approved transition and standard costs does not impact and, in fact, is completely irrelevant to the level of the generation or shopping credit which remain at PP&L's projection of prevailing market prices regardless. The level of approved stranded cost recovery only impacts the duration of CTC recovery. PP&L St. No. 9-R (Tierney), pp.22-23.

13 PP&L St. No. 9 (Tierney), Exhibits SET 9 and SET 10. By way of comparison, in the PECO Restructuring Orders, the Commission estimated that the system wide shopping credit resulting from the decision would equal 4.46 cents/kwh in 1999. Because of line loss and load capacity factors, the residential market price for all EDCs is significantly above the system wide average and the system wide average for PP&L's proposed shopping credits would be much less than its 2.96 cents/kwh residential shopping credit in 1999 and would be below the system wide average of 2.8 cents/kwh contained in the PECO Partial Settlement rejected by the Commission. This should come as no surprise, since as PP&L's witness Tierney admitted, PP&L's prevailing market prices are "largely wholesale prices" being applied to a retail market. Tr. 835 (August 19, 1997).

customers to a 'competitive market' would likely be a fiction since the access would likely be in name only."[14]

Of course, this is exactly PP&L's design. Unfortunately for PP&L, but fortunately for the consuming public in PP&L's service territory, PP&L's proposed plan is not compliant with the Act's mandate to open up the generation supply market to competition. PP&L misinterprets the Act's paradigm and attempts to delay competition until after it has collected its claimed level of stranded costs rather than opening up its market as a condition to standard cost recovery as the Act demands. As Enron witness Mayo stated:

> While these and other questions will certainly continue to arise and be debated, it is important at this early stage of

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[14] MAPSA St. No. 1, pp.16-17. The Commission agrees. In evaluating the 2.8 cents/kwh system wide generation credits contained in the PECO Partial Settlement, the Commission stated:

> . . .Yet even without the testimony of the opposing witnesses, we must at least conclude that the Partial Settlement's ECC [energy and capacity credits] will be below the market prices available to many customers from 2000 to 2003 and is therefore at odds with the record in this case.
>
> * * *
>
> Given the testimony of witness Hieronymous and other witnesses, the record can only support the conclusion that the Partial Settlement's EEC will protect PECO's present monopoly position at least for the period 2000 to 2003. As such, the Partial Settlement's Energy and Capacity Credits hinder creating a competitive retail electric generation market, a major purpose of the Act.

Opinion and Order, p. 18.

> opening electricity markets to competition for the Commission to not lose sight of the basic premise of those who champion the collection of such stranded costs. Specifically, the presumption is that such costs arise from the emergence of competition. Testifying on behalf of PP&L, Mr. Schadt has defined stranded costs consistent with the Act's definition which provides: "An electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be *recoverable in a competitive electric generation market* and which the commission determines will remain following mitigation by the electric utility." (emphasis added) Similarly, the 1996 Economic Report of the President defined stranded costs as "[T]hose unamortized costs of prior investments that are scheduled for recovery through regulated monopoly rates but would not be recovered *under competition.* (p.186) (emphasis added) Clearly, it is "the advent of competition" that is seen as the catalyst of the creation of stranded costs. Thus, independent of the resolution of essentially any other issue surrounding stranded costs, the Commission must condition the recovery of any stranded costs on an affirmative showing by the incumbent provider that it has, indeed, opened its markets fully to competitive supply. That is, if stranded costs arise because of competition then the recovery of any such costs must be forthcoming only if it can be clearly demonstrated that the competition that gives rise to such costs has, indeed, arisen.

Enron St. No. 2 (Mayo) pp.28-29 (footnote omitted).

Fortunately, the Commission has demonstrated through its PECO Restructuring Orders that it understands the Act's paradigm very well. Through its PECO decision, the Commission rejected PECO's "bottoms up" approach and, instead, adopted

a "tops down" approach applicable to unbundling of rates and CTC recovery of transition and stranded costs. The Commission adopted a 5 step methodology as follows:

1. First, transmission and distribution rates are unbundled through evaluation of the EDC's proposed allocation of costs. Costs which are not properly allocated to transmission and distribution are reallocated to generation.[15] Opinion and Order, pp. 49-63.[16]

2. Next, the level of known and measurable transition or stranded costs is calculated based upon evaluation of which costs in the EDC's claim "would be recoverable under a regulated environment, but which may not be recoverable in a competitive electric generation market."[17] Opinion and Order, pp, 63-172.

3. Once the Commission approved level of transition and stranded costs is established, a revenue requirement analysis is conducted to determine the level of CTC collections which are necessary to

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15 Although, transmission and distribution rates are unbundled and costs associated with these function allocated, transmission rates remain exclusively under the jurisdiction of the Federal Energy Regulatory Commission ("FERC") and the Commission should expressly defer to FERC for establishing transmission rates for PP&L or any other EDC. However, once transmission rates are established by the FERC, the Commission established distribution rate becomes the residual of the T&D rate established in a given restructuring proceeding.

16 In the PECO Restructuring Orders, the Commission reallocated a portion of PECO's Administrative and General ("A&G") costs to generation. One aspect of the Commission's Opinion and Order with which the Competitive Intervenors strongly disagree is whether, once reallocated to generation, these A&G costs should be recovered as transition or stranded costs. In the view of the Competitive Intervenors, the law is clear that A&G costs associated with generation do not qualify as transition or stranded costs because these costs are fully recoverable in a competitive environment. Enron has appealed the PECO Restructuring Orders to the Commonwealth Court on these grounds.

17 66 Pa.C.S. §2803. In determining the level of stranded costs, the Commission utilized the Office of Consumer Advocate's ("OCA") market price projections. While PECO and PP&L depart in their approach to stranded cost calculation, (PECO utilized an asset valuation approach and PP&L proposed a revenue requirement approach) both approaches require reference to market prices as the benchmark for evaluation of stranded cost levels.

recover all transition and stranded costs. The revenue requirement analysis should include a cost of capital equal to the EDC's long term debt rate.[18] Opinion and Order, pp. 103-109.

4. The CTC rate is then designed to recover the CTC revenue requirement on a levelized basis, over a set period of time, on a "per Kwh" basis assuming annual sales with a presumed growth rate (subject to reconciliation).[19] Opinion and Order, pp. 109-113.

5. The residual of T&D and the CTC (as compared to current bundled rates) becomes the generation or shopping credit.[20] None of this residual should be converted into short term tariffed rate decreases to be provided to consumers outside of the competitive marketplace since such short-term rate decreases are not consistent with the Act and are not an acceptable replacement for a competitive market.[21]

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18 PP&L's long term debt rate is identified by the Company on the record as 7.89%. PP&L St. No. 6 (Moul), Exhibit PRM 2, Schedule 1.

19 In the PECO case, the Commission established an 8½ year recovery period. However, the length of the recovery period should be established based upon consideration of the amount of stranded costs to be recovered -- to balance the desire for as short a recovery period as possible with the need to establish generation or shopping credits which enable market entry and provide for the desired level of discounts for consumers.

20 As the Commission described its methodology, "The shopping credit is not a selected number. It is the number that results from the difference between a particular customer's total rate as of January 1, 1997 and the sum of T&D and CTC rates established pursuant to this order." Opinion and Order, p. 42. It is noteworthy that this residual does not necessarily track market prices. Nor should it! While utilization of undependable long term market price projections is an unavoidable component of determining the level of stranded costs, nothing in the Act requires or even explicitly or implicitly links the unbundling of rates and the design of the CTC to market prices.

21 As the Commission stated in reaching this determination:

> Relying principally on changing rate tariffs to deliver price benefits to ratepayers will not foster the competitive retail electric market that the Act requires for all customers, not just the largest users. In fact, providing temporary rate cuts through tariffed generation rate reductions will leave the customers without a competitive market that is their only real protection under the Act.

(continued...)

This 5 step "tops down" approach closely tracks the Act by unbundling and designing distribution, transmission and generation rates in a manner which promotes, not impedes, the development of meaningful competition. In fact, it is arguably the only methodology which fully complies with the Act. There is absolutely no distinction which could reasonably justify departure from this approach in this restructuring proceeding. The structure of the PECO Restructuring Orders as to the unbundling of distribution, transmission and generation rates and CTC design should be considered binding precedent and should be followed by the Commission in reaching a decision in this proceeding.

B. PP&L's Scheme for Serving Ineligible Customers and Default Customers is Anti-Competitive.

1. Ineligible Customers.

Under PP&L's proposed restructuring plan, customers who are ineligible for customer choice during the phase-in[22] will "continue to receive generation supply

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[21](...continued)

> Indeed, once the temporary rate cuts expire, customers would experience the equivalent of a horrible hangover if little or no competition exists to provide the competitive benefits the Act intends.

Opinion and Order, p. 43.

[22] Under PP&L's plan, 66% of its customer load would be ineligible for direct access in 1999, and 33% would be ineligible in the year 2000.

from the Generation Supply Group."[23] The Generation Supply Group, a division of PP&L, is the licensed electric generation supplier competing in the retail market in PP&L's service territory. The result will be that, under PP&L's proposal, at the time of commencement of retail access on January 1, 1999, the Generation Supply Group will be both a monopoly provider and a competitive provider.[24]

In addition to violating the functional separation requirements of its own proposed code of conduct and the Commission's PECO Restructuring Orders, the scheme proposed by PP&L is anti-competitive and should not be approved by the Commission. By allowing the Generation Supply Group ("GSG")[25] to serve as a monopoly provider to a large base of ineligible customers, PP&L is essentially giving its affiliate participating in the marketplace a huge embedded customer base — obviously a benefit not enjoyed by any other market participants.[26] Such an arrangement will provide several very significant competitive advantages to the GSG. First, it will allow the GSG to develop a business arrangement and associated goodwill with this large base of customers. Second, as these customers become eligible for choice, it will place the GSG in the enviable

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23 PP&L St. No. 10-R (Krall), p.24.

24 Tr. 742-43 (August 19, 1997).

25 The Generation Supply Group has operated under the brand name PP&L Energy Plus in the pilot programs.

26 In fact, 66 Pa.C.S. §1102 requires that the transfer of EDC assets, including the EDC's customer base, requires specific regulatory approval.

position of having only to retain those customers or by convincing existing customers to continue to subscribe to its generation supply services.[27]

Such an arrangement essentially makes a complete sham of functional separation requirements by setting up PP&L's competitive affiliate/division as a quasi-monopoly during the phase-in period — the most critical stage of market entry in the transition to a competitive market. Permitting such an arrangement would not only impede market development, but would virtually assure that the GSG maintains a dominant market share during the early years of the transition.[28] Simply put, PP&L's scheme is a perfect example of a utility attempt to leverage its historic monopoly to create a competitive advantage for itself in an emerging competitive environment.[29]

To maintain the integrity of the phase-in period, the Commission should modify PP&L's plan to require that monopoly customers be served by the EDC, in this

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27 Enron St. No. 6.0 (Dirmeier), pp.26-27.

28 The Commission recognized this in PECO Restructuring Order when it stated:

> Thus the EDC retains the existing duty to serve all customers who do not yet have the opportunity to shop. This duty is derived from EDC status, not as a PLR.

PECO Restructuring Order, p. 133. Clearly, the Commission interprets the Act to require PP&L's EDC, the Electric Delivery Group, provide service to ineligible customers and PP&L's proposed scheme violates the Act.

29 As described by Enron witness Dirmeier, the Company's scheme for serving ineligible customers is completely "backwards" and violates every reasonable notion of functional separation in a competitive market structure, Enron St. 6.0 (Dirmeier), pp. 25-26; St. 6.1 (Dirmeier), pp. 20, 31-32.

case PP&L's Delivery Group, not the competitive supplier affiliate or division.[30] When those customers become eligible for direct access, the Generation Supply Group and other suppliers, including members of the Competitive Intervenors, will have an equal opportunity to attract those customers to their businesses. Allowing one market participant, PP&L's affiliate, a head start may be consistent with PP&L's interests, but is contrary to the directives of the Act and the interests of the public in development of a meaningful competitive market.

2. Default Customers

Default customers are customers who are eligible for direct access, but who choose not to choose or who make a choice and then return to the PLR for any reason. In its restructuring plan, PP&L properly proposes that this group of customers be served by the monopoly EDC — PP&L's Delivery Group.[31] The dispute in this proceeding relates to what rates PP&L will charge default customers in its PLR role.

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30 This does not preclude PP&L's Delivery Group from acquiring power from the Generation Supply Group for delivery to ineligible customers. It does preclude the Generation Supply Group from establishing a direct retail business relationship with ineligible customers. From discussions with PP&L's counsel, it is possible that this was PP&L's intent regarding implementation of its proposed restructuring plan. However, given the state of the record, and, in particular, the statements of PP&L witness Krall in response to cross-examination (Tr. 742-43, August 19, 1997), it is necessary for the Competitive Intervenors to raise this issue and for the Commission to clarify this issue in its final restructuring order. If PP&L wishes to resolve any ambiguity regarding its actual intent, it can do so in its reply brief.

31 The PLR may also be a Commission-approved alternative supplier. 66 Pa.C.S. §2807(c)(3). Since no proposal is before the Commission to competitively select an alternative PLR by January 1, 1999, it appears PP&L will serve as the PLR, at least, during the phase-in period.

Under its proposed restructuring plan, PP&L will provide generation supply to default customers through its "Basic Utility Supply Service."[32] Under this PLR service, PP&L proposes to provide generation service to default customers "at prevailing market rates — as a pass through, without a markup. Essentially, the Electric Delivery Group must obtain supplies from the market at prevailing market rates, and pass this cost through to consumers."[33] Pushed further, PP&L witness Tierney explained that PP&L's view of the generation rates it charges default customers are "largely wholesale prices,"[34] and that PP&L would act essentially as a "buying group" for default customers.[35]

Procedurally, PP&L has projected and included in its proposed tariff generation supply rates it would charge default customers in 1999 and 2000.[36] In subsequent years, PP&L would develop generation supply rates to default customers through an annual computation of prevailing market prices under the purchased gas cost

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32 PP&L St. No. 9 (Tierney), pp. 34-35.

33 PP&L St. No. 9 (Tierney), p. 17.

34 Tr. 835 (August 19, 1997).

35 Tr. 878-80 (August 19, 1997). In PP&L St. No. 3-R (Kleha), Exhibit JMK-7, PP&L defines generation purchases upon which the generation rate to default customers is based as "amounts associated with generation purchase, including all applicable energy-related and capacity and/or demand-related costs, plus any electricity (generation supply) procurement costs incurred by the Company."

36 In 1999, PP&L proposes to charge residential ("RS") default customers an energy charge of 2.381¢/kwh and a capacity charge equal to 0.586¢/kwh for a total energy and capacity rate of 2.967¢ per kwh. In 2000, PP&L proposes to charge residential RS default customers an energy rate of 2.414¢/kwh and a capacity rate of 0.772¢/kwh for a total energy and capacity charge of 3.186¢/kwh. Exhibit OGK-2, Electric Pa. PUC No. 201, original page nos. 19K-19L.

rate ("PGCR") methodology to be submitted to the Commission on March 1 of each year.[37]

PP&L proposes this scheme under cover of law. Its witnesses unanimously stated that the Company had no choice under the Act but to charge default customers generation supply rates at the levels it proposes.

PP&L misreads the Act to support an anti-competitive result which would virtually assure that its monopoly remains intact through the transition period. The provision which PP&L relies on is Section 2887(e) which provides as follows:

> (e) **Obligation to Serve** — An electric distribution company's obligation to provide electric service following implementation of restructuring and the choice of alternative generation by a customer is revised as follows:
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> * * *
>
> (2) At the end of the transition period, the commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.
>
> (3) If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

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[37] PP&L St. No. 3-R (Kleha), JMK-7.

PP&L's proposed scheme in its restructuring plan is completely inconsistent with the Commission's stated interpretation of Section 2807(e) and is noncompliant with the Act for a whole array of reasons. First, PP&L is improperly attempting to implement Section 2807(e)(3) through this restructuring proceeding. Subsection (e)(2) expressly mandates that the provisions of Subsection (e)(3) pertaining to the connection, delivery and acquisition of electricity for default customers be implemented through the promulgation of regulations. No other authority is provided to the Commission as to implementation of this portion of the statute. Furthermore, Subsection (e)(2) dictates that the mandatory rulemaking to implement Subsection (e)(3) establish the EDC's "obligations that will exist at the end of the phase-in period"[38] as ordered by the Commission in this proceeding.[39] Subsection (e)(3) sets the standard governing the Commission's promulgation of regulations and states that, under the regulations, the PLR is required to "acquire electric energy at prevailing market prices to that customer and shall recover fully all reasonable costs." Read together, the two subsections require the Commission to promulgate rules following restructuring which

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38 Subsection (e)(2) indicates that the rules should be promulgated at the "end of the transition period" to establish the EDC's obligation "at the end of the phase-in period." To make sense of this provision, it appears that the General Assembly's reference to the end of the transition period was intended to refer to the close of Commission restructuring proceedings. Such an interpretation is consistent with the language of Section 2807(e) which indicates that the various underlying subsections are intended to be carried out by the Commission "following implementation of restructuring."

39 Under PP&L's proposed restructuring plan, the phase-in period would extend through December 31, 2000. However, the Competitive Intervenors are advocating that the phase-in period be accelerated and extend only until January 2, 2000.

define the EDC's obligation to serve including the terms and conditions under which it will acquire and sell power to default customers. Until such regulations are finalized, the EDC must charge default customers current unbundled tariff rates unless the Commission finds that rate reductions are warranted under Chapter 13 procedures.

As to the substance of the obligation to serve default customers, Section 2807(e)(3) does not require the EDC to sell energy to default customers at prevailing market prices as PP&L apparently believes. Instead, the Subsection requires EDCs to "**acquire**" energy at prevailing market prices. Furthermore, it requires that the EDC "**shall** recover fully all reasonable costs." Presently, EDCs recover all reasonable costs associated with providing generation supply to customers through regulated rates and should continue to do so in the rates they charge default customers until such time as the Commission finds justification for reducing those rates through ratemaking activity or until the Commission promulgates regulations which establish an alternative methodology for computing market based rates for default customers.

PP&L's proposal should be rejected. No party has introduced evidence that PP&L's existing tariffed rates should be reduced under traditional ratemaking principles. Even if the Commission could implement a market based pricing scheme without a rulemaking, PP&L has not met its burden of demonstrating that its proposed default prices for 1999 and 2000 recover all reasonable costs.[40]

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[40] PP&L's witnesses had no idea which costs should be included, much less, which costs (continued...)

This is exactly the interpretation reached by the Commission in its PECO Restructuring Orders. First, in its December 23, 1997 Opinion and Order, the Commission stated that "pursuant to Section 2807(e)(2), the Commission will adopt regulations defining the terms and conditions of service for the provision of PLR service at market prices."[41] Furthermore, in response to petitions for reconsideration on this issue, the Commission resolved its interpretation of Section 2807(e) once and for all when it conclusively stated:

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[40](...continued)

actually were included in its proposed default generation rates of 2.967¢ per/kwh in 1999 and 3.186¢/kwh in 2000. After providing very little guidance as to PP&L's position, witness Tierney deferred the issue to witness Kleha. Tr. 883-85 (August 19, 1997). Witness Kleha was not much more helpful. As he stated:

> I don't have a laundry list. What we're talking about here is a conceptual product that was put forth in the exhibit here, a conceptual product of the makeup of the mechanism that would be used by the provider, the T&D company, provider of last resort, to procure generation supply services for the customer who was in need of those. It's not a situation where we have a broad laundry list of things or cost elements that would be included in these, but rather a conceptual product that would be further developed as we all come to understand what costs would be incurred in the procurement of generation supply needs as a provider-of-last-resort.

Tr. 1117 (August 20, 1997).

The only conclusion which can be drawn from the evidence introduced by PP&L is that it doesn't have the slightest idea what costs will be incurred or should be included in the rate charged to default customers and has little idea what the proposed default rates included in its proposed tariff (Exhibit OGK-2, Electric Pa. PUC No. 201, original pages 19K-19L) are based on. Given the state of the record on this issue, deferral to a rulemaking seems like a very wise idea.

[41] Opinion and Order, p. 134.

> PECO, as an EDC, remains a regulated utility and may only offer Commission-approved, tariffed rates. In this proceeding, no party provided evidence that PECO's regulated rates should be reduced under traditional ratemaking. Protected by the statutory rate caps, customers who do not shop remain regulated rate customers of PECO on the same terms and conditions of services unless changed by Commission Order. As summarized on page 46 of the December 23, 1997 Order, the "shopping credit" is not relevant to a customer who does not shop. Customers who do not shop pay the approved tariffed rate divided into unbundled generation, transmission and distribution charges.

January 16, 1998 Reconsideration Order, p. 21.

Read together, the PECO Restructuring Orders require each EDC, including PP&L, to charge default customers existing tariffed rates: (1) unless the Commission issues an order reducing those rates based on traditional ratemaking principles; or (2) until the Commission promulgates final regulations establishing the terms and conditions under which the EDC, as PLR, will offer service to default customers at market based prices.

Indeed, the Commission's determinations regarding the provision of service to default customers accurately reflects the legislative intent of 66 Pa.C.S. §2807(e).[42] Placed in its proper context, PP&L's proposed scheme represents nothing more than an attempt to "denigrate the market" and insert itself as the competitor with the price that

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[42] As explained by MAPSA witness Johnstone, "the only reason that PP&L can propose such a scheme in which the EDC or Delivery Group offers below market prices, is because of its affiliation with the Generation Supply Group which has the benefit of CTC revenues.' MAPSA St. No. 1 (Johnstone), p. 7.

can't be beat[43] by offering a wholesale price to retain customers in a retail market. Such an attempt should not be tolerated by the Commission and the Commission should follow its precedent as established in the PECO Restructuring Orders in deciding this issue.

C. PP&L Should Be Directed to Submit A Supplier Tariff.

Through the PECO Restructuring Order, the Commission required PECO to submit a compliance filing which includes "a separate tariff for alternative generation suppliers."[44] When PECO failed to comply with this directive in its initial compliance filing, the Commission stated as follows, reaffirming the necessity for a separate supplier tariff:

> PECO contends that it has satisfied the Commission's directive that it include a separate supplier tariff with its Compliance Filing. PECO states that it is in compliance with the Act's requirement that a utility's restructuring plan include "procedures for insuring direct access to suppliers" (66 Pa.C.S.A. Section 2806(e).) PECO argues that one provision will require PECO and the EGS to enter into an agreement containing extensive and detailed policies and procedures including procedures for customer sign-up, switching, balancing, billing and data exchange. PECO believes that it would be an error to replace its agreement based process with a tariff based process . . . .
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> We conclude that PECO's short list of EGS rights and obligations without submittal of the referenced documents [separate supplier tariff] lacks the specific details necessary . . . .

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43 PP&L's proposed default prices of 2.967¢/kwh in 1999 and 3.186¢/kwh in the year 2000 are well below the retail market prices in 1999 projected by MAPSA witness Johnstone (3.87¢/kwh). MAPSA St. 1.0 (Johnstone) p. 20.

44 Opinion and Order, p. 162, Ordering ¶176.

> . . . We required the filing of a Supplier Services Tariff as a means to establish the basic requirements for EGS/EDC interactions in a standard format through a standardized consistent process. This would provide specific useful information to all current and future market participants concerning protocols and other requirements.
>
> PECO is directed to file an appropriate Supplier Services Tariff which delineates supplier obligations, provides definition of terms, fully discloses the Company's EGS "Policies and Procedures" and specifies its procedures for customer sign-ups, switching, balancing, billing and data exchange. The tariff should be consistent with applicable PJM and FERC requirements and Commission orders.

Compliance Filing Order, pp. 37-38.

The record of this proceeding contains only one proposal regarding the submission of a Supplier Services Tariff. Enron witness Coles introduced a Supplier Services Tariff which closely tracks the type of tariff required by the Commission.[45] The Supplier Services Tariff provides standardized protocols for EDC/EGS interactions. These include provisions governing the supply obligations of, and defining the verifying data which must be provided to the EDC by, suppliers;[46] as well as procedures specifying the timing of and means by which EDCs and suppliers will exchange specific types of information. For example, the tariff clearly states the time by which both EDCs and suppliers must provide relevant load information to each other.[47]

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45 LRC-2, Exhibit 7.

46 Enron St. 7.0 (Coles Direct) Exhibit 7, LRC-2 at §4.2.4.

47 Enron St. 7.0 (Coles Direct) Exhibit 7, LRC-2 at §4.2.3.

The Supplier Services Tariff also satisfies the Commission's requirement that such a tariff should specify policies and procedures for handling customer sign ups, switching, balancing, and billing. The supplier is obligated by the terms of the tariff to provide the EDC with proof of a customer's consent to delivery from the supplier at least seven days before commencing service.[48] To address balancing, particularly for customers with only energy meters, the tariff outlines how EDCs will develop and adjust an Aggregated Daily Load Curve (ADLC) for each supplier.[49] Additionally, procedures are provided for EDCs to notify suppliers of, and for suppliers to deal with, energy imbalances. These procedures include giving suppliers the opportunity for a limited period of time, when appropriate, to trade under- or over- amounts with other suppliers before paying the applicable charges.[50] Finally, the tariff allows for three different billing options, including both supplier-single bill, in which the supplier would bill for all services, including the EDC charges, and also for the EDC to bill for the supplier's generation charges.[51] The third option contemplated by the tariff is for the EDC and the supplier to bill separately for their services. The tariff specifies which entity is responsible for billing and collection functions in various circumstances, including when the customer switches to another supplier.

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48 Enron St. 7.0 (Coles Direct) Exhibit 7, LRC-2 at §3.4.

49 Enron St. 7.0 (Coles Direct) Exhibit 7, LRC-2 at §§4.2.1 and 4.2.2.

50 Enron St. 7.0 (Coles Direct) Exhibit 7, LRC-2 at 4.3.2.

51 Enron St. 7.0 (Coles Direct) Exhibit 7, LRC-2 at §4.5.

Clearly, the Supplier Services Tariff endorsed by Mr. Coles is generally what the Commission had in mind when it ordered PECO to file such a tariff to "establish the basic requirements for EGS/EDC interactions." In fact, such a tariff is necessary in order to make clear to all suppliers what their rights and obligations are, and to make those rights and obligations consistent within PP&L's service territory. The Commission should direct PP&L to file a supplier tariff which is generally consistent with that endorsed by Enron witness Coles and with PP&L's FERC tariff, and with any applicable PJM requirements.

D. The Commission Should Accelerate the Phase-In Period to Comport with its PECO Decision.

In its proposed restructuring plan, PP&L included a phase-in period of two years in which 33% of the peak load of each customer class would be available for direct access on January 1, 1999; another 33% on January 1, 2000; and the remaining 33% on January 1, 2001.[52] Presumably, at the time of its restructuring filing and during record development in this proceeding, PP&L presumed that there would be a two-year phase-in for all EDCs in the Commonwealth.

However, in the PECO Restructuring Orders, the Commission ordered an accelerated phase in for PECO. In reaching its determination after quoting the language of 66 Pa.C.S. §2806(b), the Commission stated as follows:

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52 PP&L St. No. 14 (Baumann), p. 3.

> The language in the Act quoted above permits the Commission to adopt a more rapid phase-in schedule than proposed by PECO. We conclude that the most rapid phase-in permitted under the Act is in the public interest and should be adopted. PECO is directed to conduct an open enrollment period beginning March 1, 1998. The first 33% of customers to volunteer from each tariff class may shop on January 1, 1998. PECO shall notify such customers through a Commission approved letter. Up to 66% may volunteer to shop as of January 2, 1999 . . . . All customers will have the opportunity to shop as of January 2, 2000.

Opinion and Order, pp. 49, 50.

While not every resolution of every issue in the PECO case applies to this case, certainly the length of the phase-in period is a determination which should apply consistently for EDC service territories throughout the Commonwealth. One can only imagine the public confusion if the length of the phase-in period varies from service territory to service territory. The Commission's decision in the PECO case to accelerate the phase-in because such acceleration is in the public interest is a sound policy decision since it will bring the benefits of competition to more customers sooner. The Commission's determination is equally applicable to the case at hand and should be considered binding precedent as to this proceeding.

E. The Commission Should Approve a Strong Code of Conduct to Prevent Anti-Competitive Behavior.

Through passage of the Act, the General Assembly set forth a statutory foundation for bringing the full benefits of retail competition to Pennsylvania consumers and businesses. However, unless the Act is implemented in a manner which creates a

"level playing field" between all generation suppliers, utility affiliates and non-affiliated suppliers alike, the promise of the Act will not be realized. While complete divestiture or structural separation is the preferred safeguard, at a minimum, complete functional separation enforced by a strong Code of Conduct is critical to meaningful competitive development.[53]

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[53] The Commission and Enron witness Dirmeier are in total agreement on this point. As Mr. Dirmeier stated:

> The fundamental prerequisite to true and effective competition is that regulated and non-regulated activities should be as physically, financially and legally separated as is possible under the Act. Ideally, the EDC would no longer have any relationship, other than as between totally separate companies, with its present affiliated generation and marketing businesses. The Commission should mandate the maximum level of separation possible to ensure that EDCs treat all participants in the electric markets, including generation undertaken by related companies, in precisely the same manner.

Enron St. 6.0 (Dirmeier), p. 6.

In strikingly similar fashion, the Commission stated as follows in the PECO Restructuring Order:

> In our view, functional separation of regulated EDC functions and competitive generation functions is essential for the development of a vibrant competitive market. Structural separation through the establishment of fully independent entities is preferable whenever possible. With the development of competitive generation, the EDC must not have reason to treat its competitive suppliers differently than any other competitive supplier. Functional separation without legal separation must not provide a basis for any competitive advantage or opportunities for the marketing entity.

Opinion and Order, p. 128.

The Code of Conduct issue is particularly prominent in this restructuring proceeding because PP&L has proposed that its affiliated supplier, the Generation Supply Group, have no structural or corporate separation from the EDC, the Delivery Group.[54] Accordingly, absent strict functional separation, the potential for preferences and other anti-competitive behavior presents a serious threat to marketplace viability.[55]

Furthermore, it is critical that the Commission establish a Code of Conduct applicable to PP&L in this proceeding for immediate effectiveness. As Enron witness Dirmeier explained:

> The rules should apply immediately to PP&L and to any affiliate or division operating in PP&L's service territory. Immediate application is necessary because of the ability of PP&L to circumvent the rules if their application is delayed. For example, if PP&L and its non-regulated marketing or supply affiliate or division were able to freely exchange information today and for the next 1 1/2 years until the first phase-in period of direct access begins, its marketing or supply affiliate division should be in a position of obtaining a wealth of customer-specific information and would enable it get the jump on its future competitors. If competition is to flourish, the Commission must establish and begin immediate enforcement of prohibitions against special dealing between

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54 PP&L St. No. 13 (Geneczko), pp. 5-7.

55 As MAPSA witness Johnstone stated:

> Comparable service is a very important issue because new market entrants must use the delivery system that is controlled by PP&L. Any favoritism by the PP&L delivery organization as to price, access, information or any other aspect of delivery service would inhibit the development of a competitive supply market.

MAPSA St. 1.0 (Johnstone), p. 24.

> the monopoly business and any affiliated business unit employed in non-monopoly products and services, including but not limited to generation.

Enron St. 6.0 (Dirmeier), p.10.

This is particularly true of this restructuring proceedings since, because of the delay in the proceedings to pursue settlement discussions, this case will not come before the Commission until the summer of 1998 — approximately six months from the initiation of direct access. Accordingly, marketing activity will commence almost immediately upon Commission entry of a final PP&L Restructuring Order.[56]

While the Competitive Intervenors understand that the Commission has recently initiated a proposed rulemaking docket to codify a generic statewide code of conduct, it is likely that due to its controversial nature, the rulemaking will require 12-18 months prior to final promulgation of regulations. In no case will the rulemaking be completed in time to govern the initial marketing activity preceding direct access on January 1, 1999. Accordingly, it is critical that the Commission establish a Code of Conduct to govern the activities of PP&L and its affiliates/division during the pendency of a binding regulation.[57]

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[56] PP&L acknowledges the need for immediate application of a Code of Conduct. Tr. 556 (August 18, 1997).

[57] Of course, the Commission recognized the necessity to implement competitive safeguards immediately by establishing an interim code of conduct applicable to PECO and its affiliates in the PECO Restructuring Order. As the Commission stated in reaching a determination to establish an interim Code of Conduct for immediate application to PECO:

(continued...)

As to the content of the interim Code of Conduct for PP&L, it is appropriate to follow the precedent established in the PECO Restructuring Order. As the Commission has now recognized on numerous occasions, the content of competitive safeguards is a generic issue which must be determined on a statewide basis.[58] The Commission has established an interim Code of Conduct for PECO.[59] That interim Code of Conduct is fully supported by the record in this proceeding.[60] Accordingly, the

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[57](...continued)

> . . . The rules adopted herein shall be applicable in PECO's distribution territory until changed. In particular, we note that the Commission is in the process of adopting regulations covering competitive safeguards in Docket L-0097 and Customer Supplier Intervention at Docket No. M-00960890F0011.

Opinion and Order, p. 129.

[58] As Enron witness Dirmeier stated:

> I firmly believe that a uniform code of conduct should be established for electric utilities. As explained by Dr. Mayo in his testimony, the incentives to engage in anti-competitive [behavior] does not vary between utilities — the incentive is equally present for all monopolies. What is anti-competitive for one is anti-competitive for another. Necessary safeguards to preclude anti-competitive behavior do not vary from utility to utility but are equally applicable to all. Accordingly no legitimate purpose would be served by allowing each utility a specific opportunity to design its own code of conduct to evade as many safeguards as possible.

Enron St. 6.0 (Dirmeier), pp. 47-48.

[59] In the February 5, 1998, the Commission set forth in great detail the required language of PECO's interim Code of Conduct.

[60] As set forth in Enron's Supplemental Brief, the record in this proceeding also supports a prohibition on the use of the PP&L brand name by PP&L's supplier affiliates or division.

Commission should adopt the PECO interim code for application to PP&L pending codification of final regulations.[61]

The PECO interim Code of Conduct reads as follows:

> The Company and its divisional and/or affiliated EGSs ("PECO Supplier") shall comply with the following Interim Code of Conduct:
>
> 1. The Company, in its role as the Electric Distribution Company ("PECO EDC"), shall not give a PECO Supplier preference over a non-affiliate in the provision of goods and services, such as processing requests for information, complaint processing and responses to service interruptions. PECO EDC shall provide comparable treatment without regard to the customer's chosen supplier.
>
> 2. PECO EDC shall supply services and apply the rules and other provisions of its Tariffs to non-affiliates in the same manner it applies them to a PECO Supplier.
>
> 3. PECO EDC shall not sell non-power goods or services to a PECO supplier at a price below the cost or market price, whichever is higher, for said goods or services. PECO EDC will not purchase non-power goods or services from a PECO Supplier at a price above the market price for said goods or services. No transaction between PECO EDC and a PECO Supplier shall involve an anti-competitive cross-subsidy, and all such transactions shall apply with applicable law.
>
> 4. PECO EDC shall simultaneously make available to all EGSs any market information, not in the public domain, that it provides to a PECO Supplier.

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[61] PP&L's proposed conduct introduced at PP&L St. No. 13 (Geneczko), Exhibit RMG-3 is substantially similar to PECO's proposed code of conduct which the Commission modified and clarified in the PECO Restructuring Orders. Given the need for uniformity, rather than modify the language proposed by PP&L, it seems appropriate to adopt the PECO interim Code of Conduct for application to PP&L.

5. Employees of PECO EDC who have responsibility for operating the distribution system, such as receiving requests for power, purchasing power, scheduling delivery, or billing and metering, shall not be shared with a PECO Supplier, and their offices shall be physically separated from the office(s) used by those working for the PECO Supplier. Such employees of PECO EDC may transfer to a PECO Supplier provided such transfer is not used as a means to circumvent this Interim Code of Conduct. Any PECO Supplier shall have its own direct line management. Any shared facilities shall be fully and transparently allocated between the PECO EDC function and the PECO Supplier function. PECO EDC accounts and records shall be maintained such that the costs a PECO Supplier incurs may be clearly identified.

6. PECO EDC shall not condition the provision of any PaPUC jurisdictional regulated services on the purchase of power from a PECO Supplier.

7. Neither PECO EDC nor a PECO Supplier may directly or by implication falsely and unfairly represent:

- that the PaPUC jurisdictional regulated services provided by PECO EDC are of a superior quality when power is purchased from a PECO Supplier; or
- that the merchant services (for power) are being provided by PECO EDC rather than a PECO Supplier;
- that the power purchased from an EGS that is not a PECO Supplier may not be reliably delivered;
- that power must be purchased from a PECO Supplier to receive PECO EDC PaPUC jurisdictional regulated services.

7b. PECO EDC shall not jointly market or jointly package its PaPUC jurisdictional regulated services with the services of PECO's Suppliers unless it offers the same promotion of services to non-affiliated Suppliers.

8. PECO EDC shall establish and file with the Commission a dispute resolution procedure to address complaints alleging violations of these rules.

The Competitive Intervenors acknowledge that the Commission's February 5, 1998 Compliance Filing Order did not include the underlined portion of Rule 7 above. However, the Compliance Filing Order did reaffirm that Rule 7 must be interpreted to preclude the EDC from promoting "its competitive affiliate any differently than non-affiliated suppliers." Of course, such an interpretation does preclude any joint marketing or joint packaging of services between the EDC and its affiliated suppliers unless the same opportunity is provided to non-affiliated suppliers. PP&L apparently agrees to or does not oppose inclusion of such a rule,[62] and while the Competitive Intervenors accept and strongly support the Commission's declaration of its intended interpretation of Rule 7, it appears preferable to clarify the rule through the additional proposed language to avoid future disagreement.

As to PP&L's proposed Code of Conduct, many of the modifications and clarifications to PECO's proposed Code of Conduct addressed by the Commission in the PECO Restructuring Orders are also relevant here. First, the Commission required that

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62 As PP&L witness Geneczko explained:

> The Electric Delivery Group may engage in joint marketing of energy supply products with PP&L's Generation Supply Group but will only do so as long as comparable opportunities are available to other suppliers and the purpose of the joint effort is economic development.

PP&L St. No. 13-R (Geneczko), p.24.

"The Commission must assert the same level of review of transaction between an EDC and its competitive entity, whether it is separately incorporated or not." [63] Such a requirement is particularly important here, since PP&L is not proposing to separately incorporate the Generation Supply Group, and will prevent PP&L from evading Commission review of transactions between the Delivery Group and the Generation Supply Group.[64] Such a protection is missing from PP&L's proposed Code and should be added to satisfy the Commission's standard.

Second, the Commission has mandated that affiliate or divisional transactions "for all goods and services, including power, must not involve anti-competitive cross-subsidy."[65] Furthermore, the Commission barred EDCs from making available any goods and services to its supplier affiliate unless those goods and services are also made available to other suppliers on comparable terms and conditions.[66] Such provisions appropriately preclude contribution to the efforts of the competitive business sector. PP&L's proposed code does not include such a prohibition on cross-subsidization

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63 Opinion and Order, p.128.

64 As noted by Enron witness Dirmeier. "Not only should [the] functional separation requirement be equally applicable to PP&L's Delivery Group and Generation Supply Group as to separate corporate affiliates, but the separation requirement must be more clearly defined and more strictly enforced since the potential for abuse is much greater without the clear boundaries provided by structural corporate division." Enron St. No. 6 (Dirmeier), p.15.

65 Opinion and Order, p. 130.

66 For examples of abuse of preference in the provision of goods and services by the EDC see Enron St. 6.0 (Dirmeier) pp. 17-21.

and should be modified to satisfy the Commission's standard. Third, all EDC functions must be separately staffed from all competitive supplier functions including management responsibility. Furthermore, all employee transfers are made subject to functional separation requirements.[67] While PP&L has included a rule on "Assignment of Responsibilities" in its proposed code, the provision is not broad enough to comply with the Commission's standard in that it only applies to employees "directly involved in marketing energy to customers," does not include the individuals which maintain management responsibility over such employees and does not contain appropriate restrictions on employee transfers.[68]

Third, the Commission has required that comparable treatment be provided to both affiliated and non-affiliated suppliers and supplier customers for all customer goods and services.[69] The comparability provisions in PP&L's proposed code of conduct only apply to specific services like meter reading, billing and other customer assistance

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67 Opinion and Order, p.130.

68 As Enron witness Dirmeier explained:

> [C]ontacts between system operation employees of the EDC and its affiliates should be limited in the same manner that normal caution and care is taken by competitors to ensure that they do not share information with their opponents. Moreover, crucial information can be transferred as easily, if not more easily, by transferring an employee rather than making data files available through affiliates.

Enron St. 6.0 (Dirmeier), p.42.

69 Opinion and Order, p.131.

services and should be modified. Overall, the Commission established the general standard that the EDC must "treat all competitive suppliers in a comparable non-discriminatory manner with similar terms, conditions and access to information, goods and services." [70] This Commission mandate provides for equal access, both in terms of timing and method of disseminating information, for all information not just certain types of information as included by PP&L in its proposed code.[71]

Fourth, the Commission has prohibited the tying of the EDC service with any other goods or services both as a condition of the provision of service and as a condition on the availability of certain terms and conditions.[72] Such a required provision is much broader than the provision in PP&L's proposed code which only precludes tying pertaining to the availability of discounts and only applies to the purchase of energy.

Fifth, the Commission required a provision which bars the EDC from using its name or any other method to imply, directly or indirectly, that EDC service will be superior if an affiliate is subscribed to, that the reliability of service is inferior if an non-affiliate is subscribed to or that generation services are in fact being provided by the

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70 Opinion and Order, p.131.

71 As Enron witness Dirmeier testified, PP&L's proposed code inappropriately designated itself to determine which information should be disseminated to suppliers. As Mr. Dirmeier concluded, "The potential for discrimination is obvious and should be eliminated by a broader provision that any information made available from the EDC to any affiliated non-monopoly business unit shall be available to all competitors." Enron St. 6.0 (Dirmeier), p.40.

72 Opinion and Order, p.131.

EDC.[73] PP&L has no comparable provision in its proposed code and its code must be modified to achieve compliance.[74]

Finally, the Commission barred EDCs from promoting their competitive affiliate any differently than non-affiliated suppliers.[75] As explained above, PP&L seems to agree to such a restriction in its proposed code.

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[73] This latter restriction is similar to the restriction that the Commission has recognized on the incumbent's use of its brand name in the telecommunication area. In the telecommunication area, the Commission has precluded the long distance affiliate of an ILEC from using the logo of the ILEC in marketing activity, engaging in any activity which could confuse or mislead customers into believing that the long distance provider and the ILEC are the same entity and requires that if the affiliate uses the ILEC's brand name in marketing activities, it must affirmatively inform customers that the affiliate and the incumbent are not the same entity. In imposing these restrictions, the Commission concluded that these restrictions were necessary "to prevent anti-competitive behavior." See, Application of Palmerton Long Distance Company, A-310147 (April 29, 1983).

[74] PP&L seemed to agree to such a provision in the oral rejoinder of witness, Geneczko in which he stated:

> Following up on Dr. Kalt's testimony and basically confirming a point Mr. Dirmeier had made, PP&L will make sure that there is no confusion among customers by establishing clear product branding. In other words, in dealing with customers, we will clearly and explicitly distinguish delivery service and generation supply services as separate operations.

Tr. 553 (August 10, 1993). However, PP&L refrained from modifying its proposed code to include such a provision.

[75] This bar against joint packaging or joint marketing between an EDC and an affiliated supplier in a manner which is not available to all suppliers has also been adopted by the Commission in the telecommunication area between ILECs and long distance affiliates. In re Implementation of the Telecommunications Act of 1996, M-00960799 (June 4, 1996); AT&T Communication of Pennsylvania, Inc. v. GTE North, Inc., G-00968172 (September 6, 1996).

Clearly, to the extent the Commission considers PP&L's proposed code of conduct, far reaching modifications are necessary to achieve compliance with the standards set forth in the PECO Restructuring Orders.[76] PP&L expert witness, Dr. Kalt, endorsed a code of conduct which contains broad provisions with less specificity. As Dr. Kalt explained:

> In fact, it is consistent with sound principles of public policy which recognize that the enforceability of rules can be inversely proportional to their specificity, that Codes of Conduct and the regulations that stand behind them (e.g. including open access tariffs and the Act itself) are clear and crisp in their edicts: no discrimination, no cross-subsidization, no tying, no "channeling," no denials of access, no discriminatory transfer of monopoly-acquired information, no joint operations and so on. With these edicts, it is then the proper role of regulatory oversight to require and enforce codes of conduct of precisely the type that PP&L is putting forth.

PP&L St. No. 1-R (Kalt), pp. 35-36.

However, when faced with trying to identify a clear and crisp edict against "no discrimination," Dr. Kalt had to combine numerous provisions of PP&L's proposed code which, when combined and when he "interpreted these as an economist", prohibited certain types of discrimination.[77] Likewise, when questioned about "no cross-

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[76] In addition to the provisions required to achieve compliance, PP&L expert, Dr. Kahn, stated that it was also appropriate to include an imputation requirement in PP&L's code of conduct which requires PP&L and its affiliated supplier to charge retail prices which "at least covers the imputed cost of the unbundled delivery service elements (T&D, etc.) plus the incremental cost of the generation to be sold." PP&L St. No. 18-R (Kahn), p.35.

[77] Tr. 449-50 (August 18, 1997). The Competitive Intervenors suggest that if the edicts (continued...)

subsidization," Dr. Kalt referenced provisions in PP&L's proposed code that dealt with information sharing but could not point to any prohibition against cross-subsidization of costs.[78]

The Competitive Intervenors agrees with Dr. Kalt that a code of conduct should include broad language which conveys clear and crisp edicts. However, the fact of the matter is that PP&L's proposed code contains no clear and crisp edicts and is filled with extremely specific, carefully crafted language designed to prohibit only very specific activity and not to preclude, or worse to create ambiguity, as to other activity. Upon careful review, it becomes clear that PP&L's proposed code is just the opposite of the broad, clear and concise code that Dr. Kalt endorses. In contrast, the Commission, through its PECO Restructuring Orders has required broad, clear and crisp prohibitions against preferences, discrimination, cross-subsidization, tying and joint marketing. It is these broad and clear prohibitions which must be incorporated into PP&L's code to develop a Code of Conduct which will enable the development of the "level playing field." the Commission has demanded.

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[77](...continued)
were "clean and crisp," they would require neither combination nor interpretation.

[78] Tr. 450-53 (August 18, 1997). Again, Dr. Kalt had to combine several code provisions to reach any sort of meaningful prohibition.

F. The Record Supports Unbundling of and Competitive Entry into Revenue Cycle Services.

In its proposed restructuring plan, PP&L has proposed to limit its unbundling of services to the three broad categories of distribution, transmission and generation. Although the Act mandates that each restructuring plan contain this minimum level of unbundling, "the Commission may require the unbundling of other services."[79] Indeed, the record in this proceeding provides ample support for the unbundling of and competitive entry into revenue cycle or "non-wire" services, like metering, billing and collection and customer services. Unbundling of these service functions, which are necessary to provide distribution, transmission and generation services, is an important step in expanding customer choice and fulfilling the promise of the fully competitive environment that the Act envisions.[80] Providing Pennsylvania electric customers with these competitive options is particularly important in the early stages of direct access,

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79 66 Pa. C.S. §2804(3).

80 As Enron witness Dr. Mayo testified, "these non-wire functions do not appear to exhibit the traditional characteristics of natural monopoly supply." Enron St. No. 1 (Mayo), p. 24. Furthermore, as NEV witness Day explained:

> Over time, the primary benefits from electric industry restructuring will come, not from commodity cost savings, but from changes at the customer's premises. The provision of these value added services is key to establishing sustainable business relationships with customers. Moreover, the types of services customers want and are willing to pay for are highly competitive, not monopoly services.

NEV St. No. 2 (Day), p. 2.

because pure price competition will be restricted by the imposition of CTCs and ITCs which will be assessed on all customers regardless of their selection of generation supplier and regardless of the market price of electricity.[81]

As Enron witness Jacobsen explained in describing the potential consumer benefits of opening these service functions to competition:

> Direct access and the benefits of generation supply competition will be immeasurably enhanced by the unbundling and competitive provision of these services. The Commission should promote competition in non-wire services because such competition will lower the costs of these services to consumers and stimulate innovative responses to customer specific requirements. Moreover, if the Commission were to attempt to preserve PP&L's monopoly in metering and billing services, it would miss a dramatic opportunity to foster the growth of a technology and information-based industry which can bring substantial benefits to consumers.

Enron St. 4.0 (Jacobson), p. 3.

Of the few states which have made serious advancements towards opening up retail electric markets to competition, at least one has already taken aggressive action to provide for unbundling of and competitive entry into revenue cycle services. On May 6, 1997, the Public Utilities Commission of the State of California issued a comprehensive Opinion regarding the unbundling of revenue cycle services.[82] In

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81 Enron St. 4.0 (Jacobsen), p. 3-4.

82 Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, Decision No. 97-05-039, Docket No. R. 94-04-031.

determining to unbundle and provide for the competitive entry into revenue cycle services, the California Commission stated conclusively as follows:

> The question, here, goes to whether or not energy suppliers should be allowed to provide their customers with retail services that include consolidated billing, metering and related services and, if so, whether the distribution utility should reduce its charges to reflect any resulting savings.
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> * * *
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> There are long-run issues that might motivate this Commission to consider the merits of allowing energy suppliers to offer these services some time in the future. What prompts us to ask these questions now is a concern that direct access opportunities to residential and small commercial customers in 1998 might be severely limited if we fail to allow energy providers to provide these services and to offer their customers the resulting savings.

May 6, 1997 Decision, p. 8.

This Commission should have an equal concern regarding assurances that the benefits of a competitive market are shared by residential and small commercial customers. As explained by NEV witness Day and Enron witness Jacobson, the California Commission learned its lesson from its experience in the gas industry where competition in California was limited to the "commodity" in the early 90's and consumers were denied the full benefits of competition, leading to market failure and the retention of a dominant market share by the monopoly.[83] The Commission should not make the same

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[83] NEV St. 2 (Day), pp. 7-8, Enron St. 4.0 (Jacobson), pp. 4-5. Ms. Day participated actively in the natural gas proceedings in California and has concluded that, given its (continued...)

mistake as the California Commission and should act aggressively in the context of this restructuring proceeding to open up revenue cycle services to competition. As Mr. Jacobson explained "If new entrants are limited from bringing the full range of potential competitive offerings to consumers, consumers will see fewer benefits and the direct access market will be that much less competitive, that much less efficient and provide correspondingly less service innovation and cost savings to consumers."[84]

Not surprisingly, PP&L opposes opening up revenue cycle services to competition in its service territory. However, it is also not surprising that PP&L apparently has a much different view when it comes to structuring the retail electric market outside of its service territory. As the record in this proceeding reflects, PP&L is a member of the national advocacy group Americans for Affordable Electricity ("AAE"), which was formed to advocate "the passage of federal legislation during the 105th Congress to create an efficient, reliable, equitable, interstate system for transmitting and distributing competitively priced electricity, including a date certain provision to assure that citizens in every state receive the benefits in the near future."[85] In a brochure sponsored by the AAE, it advocates the following pertaining to revenue cycle services:

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[83](...continued)
natural gas experience, the California Commission's unbundling decision "recognized that without revenue cycle service unbundling the competitive [electric] market in California would not flourish." Mr. Jacobson explained that "while nearly fifty marketers entered the [California Gas] market, only three survived fitfully at the end of 1996."

[84] Enron St. No. 4.0 (Jacobson), pp. 6-7.

[85] Enron Cross Examination Exhibit No. 3; Tr. 1997 (August 29, 1997).

> 2 **Consumers Will Enjoy New Services.** Today it's one meter, one price. With competition, consumers will benefit from new, easy to read meters that will allow them to adjust their electrical needs to use more power when costs are lower and to use less when costs are higher. Electric providers also will offer new billing options such as a monthly fixed rate which can be incorporated into your mortgage or rent to simplify bill paying.

Enron Cross Examination Exhibit No.3; Tr. 1990 (August 29, 1997).

PP&L's strategy is obvious. It will fight at every turn to impede competition in its service territory while at the same time advocating a pro-competitive market structure, including the competitive provision of revenue cycle services, in other regions where it can take advantage of those pro-competitive conditions as a new entrant supplier. While well conceived to protect its stockholders' interests, such a plan is inequitable and is not in the best interests of customers in its service territory. PP&L's national advocacy demonstrates that it knows very well that the competitive provision of revenue cycle services is an essential component of retail competition and will provide wide ranging and far-reaching benefits to consumers. Clearly, the statements of its witnesses to the contrary in this proceeding should be viewed within this context.

1. Single Supplier Bill.

The Act governs the provision of customer billing through 66 Pa.C.S. §2807(c) which provides as follows in relevant part:

> (c) **Customer billing** — Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company

> 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. (Emphasis added.)

This subsection expressly provides for customer choice in the billing area by requiring that any EDC responsibility for billing be subject to the customer's right to have its generation supplier provide a portion of (commodity bill) or all of the customer's billing requirements. Accordingly, the most reasonable interpretation of this statutory provision is that the Commission is required to allow suppliers to issue a single supplier bill, which includes the EDC's charges for customers who select this consolidated service.

At a minimum, Section 2807(c) requires the Commission to permit dual billing, if chosen by the customer, and enables the Commission to allow full competitive provisioning of billing services, including consolidated single supplier billing. As the Commission stated in addressing interpretation of Section 2807(c):

> We will not repeat our prior comments in their entirety, but we will reiterate some of the key points which we believe make it appropriate, both legally and as a matter of policy to sustain this guideline so that parties may continue to explore in the Restructuring Filing of each utility the contingency of allowing a supplier single bill. Concerning the legal interpretational issues raised in comments about the supplier single bill option, we simply disagree with the conclusions reached that only EDCs can provide this customer service function. We submit that there is nothing in the Act that would prohibit the supplier single bill option. Although §2807(c) recognizes that the EDC "may be" responsible for the billing of all electric services, there is nothing in this

passive provision or anywhere else in the Act that makes the EDC the exclusive provider of this customer service function.

Final Order re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa.C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(E) and (F), M-00960890F0011 (July 11, 1997), p 29.

Accordingly, any arguments made by PP&L or other parties to this proceeding that permitting provision of a single bill by suppliers is illegal have already been soundly rejected. The Competitive Intervenors are of the view that the statute provides the Commission with no discretion and that the Commission must enable customers to choose a supplier single bill. However, at a minimum, based on evidence of record, the Commission has clear authority to implement a fully competitive market for billing service in furtherance of the customer choice objectives of the Act.

The record is replete with support for the fully competitive provision of billing services. The fully competitive provision of billing services will serve to maintain present levels of service and customer protection and at the same time will allow suppliers to add value by enhancing and improving current levels of customer service.[86] Customers should be provided as much choice in the billing area as possible. Customers should have the opportunity to (1) continue to get a single bill from the EDC; (2) receive

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86 Enron St. 5.0 (Bowen), p. 7.

two bills — a T&D bill from the EDC and a commodity bill from the supplier; or (3) receive a single, consolidated bill from the supplier.[87]

Of the three billing options, the supplier complete or single bill option is the option which allows suppliers to add the most value for customers. The supplier single bill option would enable the provision of service functions such as advanced metering, demand management and all "TLC" customer services, plus a host of unforeseen products and services to fulfill consumer desires. Furthermore, specialized or customized billing can provide or enable detailed information about electric use for customers who choose time-of-use pricing, information about the amount of energy certain appliances utilize, automatic notification to customers when electric use reaches a pre-specified level and many other products and enhancements which customers desire and find valuable.[88]

Furthermore, in addition to enhancing the availability of customized and innovative products and services, the competitive provisioning of billing services creates further potential for reduced rates to consumers. Since a necessary component of enabling fully competitive billing services is to unbundle the costs associated with EDC billing from distribution rates and establish a billing credit for customers who do not utilize the EDC's billing services, suppliers which can provide more efficient billing

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87 NEV St. 2 (Day), p. 4; Enron St. 5.0 (Bowen), p. 6.

88 Enron St. 5.0 (Bowen), pp. 7-8.

services will be able to "beat the credit" and pass through additional savings to customers they serve.[89]

Maybe most importantly, there is no potential downside for customers which could result from the fully competitive provisioning of billing services. Allowing suppliers to be the single point of contact with customers is a relatively simple and risk-free step which merely permits these opportunities to be offered to customers. No customer will be required to take a single supplier bill or any other billing option. If a given customer does not see the value and benefits of being billed by its chosen supplier, that customer will merely retain billing services from the EDC. If a customer subscribes to a supplier's billing services and is dissatisfied, that customer may switch suppliers completely or switch the provision of billing services back to the EDC.[90]

Finally, EDCs are not adversely impacted by the fully competitive provisioning of billing services. Additional security could be required of suppliers which provide consolidated bills to customers to assure that the EDC is paid its portion of the bill in a timely manner.[91]

Assuming the Commission orders the fully competitive provisioning of billing and permits the suppliers to issue single, consolidated bills to customers in

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89 Costs associated with PP&L's billing services for secondary voltage customers equates to $2.46 per month of present bundled rates. Enron St. 3.1 (Reising), pp. 8-9, Enron St. 3.0 (Reising), Exhibit PDR-6.

90 Enron St. 5.0 (Bowen), pp. 8-9.

91 Enron St. 5.0 (Bowen), p. 10.

PP&L's service territory through its decision in this case, it is critical that the Commission unbundle the embedded costs associated with billing and collection and establish a billing credit applicable to customers who do not continue to subscribe to or utilize PP&L's billing services.[92] Otherwise, customers would be required to pay billing and collection costs twice and would pay for the EDC's billing and collection services even though they are not utilizing the EDC's billing services and have chosen to receive billing services from their preferred supplier. Furthermore, absent bill unbundling, consumers will be unaware of what amount they are presently paying the EDC for billing and collection functions and will have no basis for comparison of the competitive billing options offered by the supplier. Such a result would clearly frustrate the development of a competitive market.[93] Enron witness Reising, a nationally recognized expert in cost allocation matters, has calculated a billing credit of $2.46 a month for PP&L which should be adopted by the Commission in this proceeding.[94]

2. **Metering Services.**

The provision of metering services is another revenue cycle service which requires unbundling and competitive entry into a fully competitive retail market. Clearly, one of the potential benefits of a competitive retail electric market is elimination of the

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92 NEV St. 2 (Day), p. 3; Enron St. 5.0 (Bowen), pp. 3-4; Enron St. 3.0 (Reising), pp. 11, 13, 31; Enron St. 3.1 (Reising), pp. 8-9. The billing credit can either be a component of a revenue cycle services credit or a stand alone credit. Enron St. 3.0 (Reising), p. 30.

93 Enron St. 5.0 (Bowen), p. 4.

94 Enron St. 3.1 (Reising), pp. 8-9, Enron St. 3.0 (Reising) Exhibit PDR-6.

"one size fits all" approach to metering and enabling the customer, not the EDC, to determine what type of meter and metering services meets that customers needs. This does not mean that the Commission should mandate new more sophisticated meters like real time meters ("RTMs"), it means the Commission should enable customers to choose what type of meter meets their needs.[95]

In addition to expanding customer choice, the introduction of competition into the metering area will result in the availability of new, innovative services including appliance monitoring, latchkey services, time-of-use pricing and outage detection.[96] More universally available remote meter reading will provide a huge benefit to customers and through time-of-use pricing, will allow customers to reduce energy costs by monitoring when they consume electricity and restricting demand to the times of the day when electric prices are the lowest.[97] In fact, given the availability of remote or advanced meter reading technology today, the fact that a "dumb," manually read meter remains the "utility choice" for the vast majority of customers is ample evidence of how "monopoly regulation obstructs the introduction of new, innovative technologies and promotes the continue utilization of technologies which would otherwise be obsolete."[98]

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95 Enron St. 4.0 (Jacobsen), pp. 7, 12.

96 Enron St. No. 4 (Jacobsen), p. 10, Exhibit MUJ-3.

97 Enron St. 4 (Jacobsen), pp. 13-14.

98 Enron St. 4 (Jacobson), pp. 12-13.

Furthermore, the traditional impediment to advanced metering — cost to the customer — will be reduced if not completely eliminated in a competitive environment. New time-of-use meters with advanced meter reading technology are now being advertised at less than $100 per unit. It is very possible that competitive forces will dictate that suppliers will install and provide remote-read, time-of-use meters at no initial cost to consumers.[99]

The need to unbundle the costs and establish a credit for customers who do not use the EDC's metering services is equally important for metering as it is for billing. Requiring customers to pay twice and for services they are not using or receiving any benefit from is obviously unfair, will dramatically reduce consumer benefits, and is an inappropriate impediment to development of a fully competitive market.[100] Enron witness Reising has identified metering related costs embedded in PP&L's distribution rates equal to $2.33 per month for secondary voltage customers.[101] The Commission should adopt Mr. Reising's allocation and establish a metering credit of $2.33 per month for secondary voltage customers who choose to receive their metering services from their preferred supplier rather than the EDC.

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99 Enron St. 4.0 (Jacobson), pp. 13-14.

100 Enron St. 4.0 (Jacobsen), p. 8.

101 Enron St. 3.1 (Reising), p. 9; Enron St. 3.0 (Reising), Exhibit PDR-6.

G. Suppliers Should be Permitted to Act as an Agent for Customers to Procure all Electricity Needs.

It is undisputed in marketing circles, regardless of the commodity, that the vast majority of consumers, if provided the choice, will seek and subscribe to a provider which can offer a comprehensive service package to the customer. In a competitive market, market pressures will require market participants to provide products and services which meet customers needs.[102]

Given this scenario, most customers will want their preferred provider to serve as not only their supplier of electricity, but also their "single point of contact" with the utility. Under the Act, given the retention of a monopoly for the provision of transmission and distribution services, suppliers can fulfill these customer preferences by acting as agent for the customer for the procurement of distribution, transmission, generation and revenue cycle services.[103]

Under an agency arrangement, suppliers would be able to accept orders for service from customers and, through contact with the EDC, initiate or continue service at the customer's location. Essentially, through the agency agreement, the supplier would become the customer of record and would be directly responsible for payment to PP&L of the EDC's charges associated with distribution and transmission. Such an arrangement

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102 Enron St. 2.0 (Mayo), pp. 3-4.

103 Enron St. 5.0 (Bowen), p. 12.

allows suppliers to offer the "soup to nuts" service that most customers want and will allow suppliers to bring the greatest value to customers.

Clearly, agency is a critical component of the transition to a competitive retail market. As Enron witness Mayo explained:

> Yet another critical component of the elimination of barriers to entry is for the Commission to allow alternative electricity suppliers to opt to be the full service provider for customers. That is, under a Competition-Enabling Policy, alternative electricity companies such as Enron may choose to directly solicit retail-level customers and take responsibility for the quality of service provided to those retail customers as agent for the customer. In this case, the alternative provider of retail-level power would have the option of serving as a customer's primary point of contact and would retain responsibility for ensuring that the customer is satisfied. The alternative supplier then should be able to provide retail-stage non-distribution functions along with generation while purchasing the wire-service distribution services of the traditional public utility (as agent for the end-user). The consequence of this is that alternative suppliers be given the latitude to serve as the primary, responsible point of contact for residential, commercial and industrial customers. That is, a necessary step on the path to full enabling competition is to grant alternative suppliers complete authority to provide (independent of the incumbent) all of the types of utility/supplier/residential customer interactions identified by the Commission in its "Tentative Order" entered on April 25, 1997.[13]

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[13] See Tentative Order, Docket No. M-00960890F0011, p. 5.

Enron St. 2.0 (Mayo), pp. 25-26.

Such an agency relationship is not new to the Commission or to Pennsylvania utilities. In the natural gas industry, consumers have this option available to

them in those markets which have been subject to competition. In fact, industrial natural gas customers have been able to enter into an agency relationship with their supplier for over ten years.[104] The continued development of agency in the natural gas market over this period of time demonstrates both that consumers have been eager to obtain such service, and that it has functioned to their benefit. For example, Columbia Gas introduced an "Experimental Special Agency Service Rate" in 1986.[105] This rate was extended each year until 1990, when it was made permanent by Commission Order.[106] Peoples' Gas, among other companies, today offers agency service to residential as well as to industrial customers.[107] The fact that agency is now the rule, rather than the exception, in the natural gas market indicates that consumer needs are being met and that the Commission is satisfied that agency has been an enhancement to customer choice and the development of a competitive retail market.

In addition to the use of agency by the regulated industry in the natural gas industry, all unregulated natural gas suppliers utilize an agency arrangement with

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104 See, e.g., Pennsylvania Public Utility Commission v. Equitable Gas Company, R-00963858 et seq. (Dec. 4, 1997) at 59. Equitable successfully argued that through two rate cases, that "the Commission has not ever found that agency service . . . serves any purpose other than to allow Equitable to satisfy its customers by meeting competition and maximizing recovery of fixed costs."

105 Petition of Columbia Gas for Permission to File Tariff Supplement on Less than Statutory Notice Period, Docket No. R-00860351.

106 Docket No. R-00891536 (Feb. 2, 1990).

107 Peoples' Tariff Gas Pa-PUC No. 42, at Rate GS-T.

customers as the predominant method of providing and procuring service.[108] Again, such an arrangement allows market participants to bring the most value to customers and is consistent with the preferences of the vast majority of end users.

Presuming that the natural gas experience is repeated on the electric side and agency becomes the predominant method of conducting business, it is necessary for EDCs to include in their general tariff a supplier tariff section which is available to suppliers acting as the agent for customers. Enron witness Reising has introduced just such a supplier tariff into the record of this proceeding which provides a valid and reasonable template for PP&L.[109] The pro forma tariff properly allocates costs between services and service functions and excludes costs which should be avoided by PP&L in instances when the supplier acts as agent for the customers. The Commission should require PP&L to submit such a tariff and should adopt the Reising tariff proposal as supported by the record of this proceeding.

H. Miscellaneous Issues.

1. Special Customer Classes.

In the PECO Restructuring Orders, the Commission established standards governing the application and continuance of certain tariffs and riders available to special customer classes. As a general rule, the Commission required that "all existing tariffs shall remain available throughout the transition period and all special contracts shall

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108 Enron St. 5.0 (Bowen), p. 13.

109 Enron St. 3.0 (Reising), Exhibit PDR-7.

remain in effect, except as modified by this Opinion and Order or other tariff modifications approved by the Commission.[110] The Commission went on to conclude the following:

1. No class of customers can be denied the opportunity to shop.

2. Interruptible service must be made available to all classes of customers.

3. The EDC "must file tariffs for distribution and transmission service applicable to customers in all classes who choose to shop."

4. The EDC must allocate all existing discount provisions between the T&D and the generation components of the service and make each tariff or rider available as a T&D service with the allocated T&D discounts so that an eligible customer can purchase the discounted T&D service and still shop for generation service.

5. "Competitively priced" tariff offerings will be eliminated and will remain available only to those customers who are not yet eligible for choice.

6. All existing EDC contracts will be honored and need not be assigned.

7. For contracts which do not preclude shopping, the EDC must unbundle the contract and allocate the discounts as set forth for tariffs above; and

8. No customers may avoid the CTC obligation.[111]

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110 Opinion and Order, p. 117.

111 Opinion and Order, pp. 117-121.

Clearly all of these standards pertain to Commission policy decisions which should not vary from case to case or from EDC to EDC. Accordingly, they should be adopted by the Commission in this proceeding.

2. Application of Partial Payments.

PP&L's proposed restructuring plan is silent, or at least unclear on how partial payments received by the EDC when the EDC provides a single consolidated bill to a supplier's customer, should be distributed between the EDC and the supplier. In his rebuttal testimony, PP&L witness Bujonowski made it clear that he opposed the distribution proposal endorsed by Enron witness Bowen but did not put forward a proposal of his own.[112]

The only request the Competitive Intervenors have of the Commission in determining the distribution of partial payments received by the EDC is that payment application be fair and nondiscriminatory. The only reasonable way to assure equitable application of partial payments is to apply payments on a *pro rata* basis. As explained by Enron witness Bowen:

> There is no reason why PP&L's charges should be given priority over a supplier's. Distribution, transmission, and generation are three necessary components of the same service. Without both the distribution and transmission service provided by the utility and the generation service provided by the supplier, the customer cannot turn on his or her lights or heat his or her home. PP&L should therefore be required to implement a billing system in its tariff which

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[112] PP&L St. 15R (Bujonowski), p. 8.

> accommodates a *pro rata* application of payments between distribution, transmission and generation, independent of the supplier of that service.

Enron St. 5.0, p. 17.

If payments are not applied on a *pro rata* basis, a disproportionate amount of delinquencies will be allocated to suppliers leading to likely early discontinuance of service by the supplier and, through return to the PLR, elimination of competitive benefits to those customers — customers who may most need the price reductions offered by the competitive environment. Furthermore, EDCs, including PP&L, are already recovering all uncollectibles, including those uncollectibles associated with the generation portion of the bill, in current rates. Since in a competitive environment, suppliers will assume the risk of generation-related uncollectibles, assigning a disproportionate amount of potential uncollectibles to suppliers will result in double recovery of uncollectible expense by PP&L.[113]

3. Universal Service.

PP&L's proposed restructuring plan includes a universal service proposal which it asserts meets the requirements of the Act. However, under its proposal, all universal service support towards payment of universal service customer bills would be

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[113] Enron St. 5.0 (Bowen), p. 18.

retained by PP&L and no portion would be allocated to suppliers serving customers eligible for universal service support.[114]

The Competitive Intervenors strongly support initiatives to maintain universal service programs to provide support to low income, payment troubled Pennsylvanians, however, such programs should be designed on a competitively neutral basis as required by the Act. In order to achieve a competitively neutral universal service program, universal service support must be portable and should be allocated to each component of a low income customer's electric bill on a *pro rata* basis in proportion to the average comparative level of charges on customer bills.[115]

To allocate all support to the T&D portion of the bill, as PP&L proposes would unfairly disadvantage both suppliers and customers. With portable support that is fairly allocated, suppliers would have increased incentives to aggressively pursue low income markets. Low income customers would have increased potential to experience the benefits of the competitive market and will receive the same amount of assistance regardless of how the funds are credited on the bill. Because of the existence of the PLR, in no case will a customer's service be terminated sooner under a universal service plan

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[114] Tr. 1936-37 (August 29, 1997).

[115] Enron St. No. 5 (Bowen), p. 32-33.

with portable support. There is simply no downside risk and considerable benefits associated with portable support.[116]

The Commission apparently agrees. PECO's proposed restructuring plan included portable support within its universal service plan proposal.[117] In its PECO Restructuring Orders, the Commission approved PECO's proposed universal service program without modification.[118]

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116 Enron St. 5 (Bowen), pp. 32-33.

117 In the PECO case, Enron witness Bowen testified as follows:

> In its answer to Interrogatory IV-6, PECO agreed that its Customer Assistance Program or other universal service funds should be allocated on a *pro rata* basis regardless of the supplier.

Docket No. R-00973958, Enron St. 5.0 (Bowen), p. 34. PECO did not rebut this statement made by Mr. Bowen.

118 In fact, this is one of the few component of PECO's proposed restructuring plan which the Commission approved.

III. CONCLUSION

For all of the foregoing reasons, the Competitive Intervenors respectfully requests the Honorable Commission to require modification of PP&L's proposed restructuring plan to comply with the foregoing discussion.

Respectfully submitted,

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