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April 7, 1998

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Pennsylvania Public Utility Commission
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PROTHONOTARY'S OFFICE

Re: Application of Pennsylvania Power & Light
Company for Its Restructuring Plan Under Section
2806 of the Public Utility Code
Docket No. R-00973954

Dear Secretary McNulty:

Please change your records in the above captioned proceeding to reflect the new
address for the Office of Consumer Advocate, effective May 1, 1998:

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Our phone number and fax will remain the same.

Sincerely,

James A. Mullins
Assistant Consumer Advocate

cc: See attached service list

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ORIGINAL

Re: Application of Pennsylvania Power & Light Company
for Its Restructuring Plan Under Section 2806 of the
Public Utility Code
Docket No. R-00973954

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I hereby certify that I have this day served a true copy of the foregoing documents,
Change of Address Letter, upon parties of record in this proceeding in accordance with the requirements of
52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 7th day of April, 1998.

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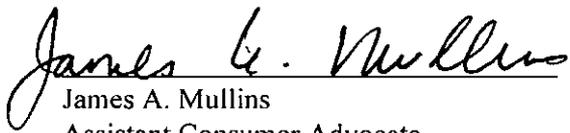
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APR 23 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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

Dear Mr. McNulty:

Enclosed for filing in the above-referenced proceeding are an original and nine (9) copies of the "Exceptions of the Pennsylvania Petroleum Association and the Pennsylvania Association of Plumbing, Heating, Cooling Contractors, Inc." Please date stamp our "File Copy" and return in the enclosed self-addressed, postage pre-paid envelope.

A diskette containing said Exceptions in WordPerfect 5.1 format has been filed with the Office of Special Assistants.

A Certificate of Service upon all active parties via first class mail is attached.

DOCUMENT
FOLDER

Very truly yours,

Usher Fogel

UF/mac

Enclosures

cc: Office of Special Assistants (by Federal Express - diskette enclosed)
Active Parties to Docket No. R-00973954 (by first class mail)

25

ORIGINAL

Before the
Pennsylvania Public Utility Commission

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PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PENNSYLVANIA POWER & LIGHT COMPANY

(Application of Pennsylvania Power & Light
Company for Approval of its Restructuring Plan
Under Section 2806 of the Public Utility Code)

APR 23 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Docket No. R-00973954

**EXCEPTIONS OF
PENNSYLVANIA PETROLEUM ASSOCIATION
and the
PENNSYLVANIA ASSOCIATION OF
PLUMBING, HEATING, COOLING CONTRACTORS, INC.**

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Before the
Pennsylvania Public Utility Commission

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APR 23 1998

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

v.

Docket No. R-00973954

PENNSYLVANIA POWER & LIGHT COMPANY

(Application of Pennsylvania Power & Light
Company for Approval of its Restructuring Plan
Under Section 2806 of the Public Utility Code)

ORIGINAL

EXCEPTIONS OF
PENNSYLVANIA PETROLEUM ASSOCIATION
and the
PENNSYLVANIA ASSOCIATION OF
PLUMBING, HEATING, COOLING CONTRACTORS, INC.

I. INTRODUCTION

The exceptions of the Pennsylvania Petroleum Association (PPA) and the Pennsylvania Association of Plumbing, Heating and Cooling Contractors, Inc. (PHCC), are hereby filed in accordance with the direction of the Hon. James J. McNulty, Secretary, by letter dated April 7, 1998.

II. PRELIMINARY STATEMENT

On April 7, 1998, the Recommended Decision of Administrative Law Judge George M. Kashi, was issued for review and exceptions by the parties.¹ As directed by the Secretary, exceptions are to be filed by April 27, 1998, and Reply Exceptions by May 7, 1998.

The PPA and PHCC take exception in connection with two aspects of the Recommended Decision. First, issue is taken with the failure by the ALJ to direct that the competitive safeguards and Code of Conduct established in this proceeding be applied to all competitive services offered by Pennsylvania Power & Light (PP&L or Company) and its affiliates. Second, the PPA and PHCC join in and support the exceptions on the issues of Code of Conduct and competition issues specifically delineated and addressed in detail in the exceptions filed by Enron Power Marketing, Inc. As addressed below, the ALJ's recommendations with respect to these matters are inconsistent with the best interests of consumers and the Commission's stated goal of creating a viable and robust competitive energy market.

¹ References to the Recommended Decision are cited as "RD, p. ____".

III. EXCEPTION NO. 1

THE ALJ ERRED BY FAILING TO RECOMMEND THAT THE COMPETITIVE SAFEGUARDS AND CODE OF CONDUCT ESTABLISHED IN THIS PROCEEDING BE APPLIED TO ALL THE COMPETITIVE SERVICES OFFERED BY PP&L AND ITS AFFILIATES

In their Supplemental Initial Post-Hearing Brief, the PPA and PHCC proposed that the competitive safeguards and Code of Conduct established in this restructuring proceeding govern the sale of electricity, and all other competitive services offered by the utility and its affiliates.² As this issue is neither identified nor specifically addressed in the RD, it is, pursuant to the ALJ's direction, deemed "rejected without discussion" (RD, p. 2). Accordingly, exception is taken with the ALJ's rejection of this proposal on the grounds that it ill serves the ratepayers' interests and will undermine the stated goals of this proceeding.

This proceeding involves consideration of the restructuring plan submitted by Pennsylvania Power & Light Company ("PP&L" or "Company") in accordance with the Electric Generation Competition and Customer Choice Act, 66 Pa. C.S. §2801 et seq. ("Act"). The underlying goal of the Act is to expose the monopolistic structure which has governed the provision of utility service in the Commonwealth to competitive

² See, Docket No. R-00973954, Supplement Initial Post-Hearing Brief of the Pennsylvania Petroleum Association and Pennsylvania Association of Plumbing, Heating, Cooling Contractors, Inc., dated February 9, 1998, p. 3.

forces thereby enabling consumers to experience lower rates, greater choice and additional flexibility. This goal can only be achieved if PP&L is prevented from leveraging its monopolistic position in the competitive markets now developing for the provision of electricity and other related competitive services and is undermined by the ALJ's failure to direct that the Code of Conduct be applied to all competitive services.

The success of the statutorily mandated restructuring process is contingent upon creation of a market environment in which vendors can compete on a level playing field unencumbered by a competitively advantaged utility. The importance of establishing competitive safeguards and a related Code of Conduct to maintain an effective balance in the competitive market, was most recently underscored in the Commission's Restructuring Order for PECO Energy Company,³ wherein the Commission stated:

"As we enter the era of generation competition, this Commission must ensure that competition can occur on a level playing field without discrimination or inappropriate competitive advantage to any market participant" (PECO Order, p. 123).

With respect to transfers of assets between the utility and its competitive affiliates, the Commission further underscored that it must ensure that such transfers do not "provide any inappropriate cross-subsidization of the competitive affiliate, and is

³ Application of PECO Energy Company For Approval Of Its Restructuring Plan Under Section 2806 of the Public Utility Code, R-00973953 (Dec. 23, 1997), Reconsideration Order, (January 16, 1998) (collectively referred to as "PECO Order").

accompanied by...safeguards to protect the public interest" (*Id.*, p. 124). Therefore, successful restructuring of the electric utility industry requires the creation of a viable competitive market which is protected by competitive safeguards and codes of conduct governing the relationship between the utility and its competitive affiliates.

The Legislature and the Commission have also noted the importance of assuring a level competitive playing field in connection with all competitive services offered by the utility, not merely the provision of electric generation.

In Section 2806(e) of the Act the Legislature specifically directed each electric utility to file a restructuring plan which includes

"unbundled prices or rates for generation, jurisdictional transmission, distribution and other services." (emphasis added).

This language requires identification of all types of competitive services offered by a utility associated with the sale of electricity. To assure compliance with this statutory requirement, it is, of course, necessary to elucidate all services the utility offers in connection with the sale of electricity, determine whether they will be performed on a regulated or unregulated basis, and establish competitive safeguards to assure that such services are provided in a manner that maintains a level playing field.

The Commission has also affirmed the relevance and importance of identifying all regulated and non-regulated services each utility will provide.

By its Order adopted on February 13, 1997 in Docket No.

M-00960890, F/3, Electric Utility Restructuring Filings Pursuant to 66 Pa. C.S.

§2806(e), the Commission ordered each utility restructuring plan to include information and data related to corporate structure issues. Specifically each utility was directed to:

"Provide a discussion of any contemplated acts of merger, consolidation, acquisition or disposition by the company",
and

"Provide a discussion and description of the utility's proposed functional separation between regulated and non-regulated operations."

Docket M-00960890, F/3, Order adopted 2/13/97, Appendix A, p. 31, Items O(2) and O(6).

Through its solicitation of this data, the Commission has recognized that competition will be directly affected by each utility's policy concerning the provision of unregulated services.

Most recently, the Commission in the PECO Order clearly stated in a number of contexts that a regulated utility must be prevented from undermining competitive markets in which they operate, and this concern applied with the same force to all competitive services regardless of whether they involve or are directly related to the sale of electric generation.

Initially, the Commission made reference to various sections of the Code which have general applicability to all competitive transactions. Specifically, the Commission noted that pursuant to Section 2101 of the Public Utility Code a contract or agreement, whether written or verbal, involving a transaction between a utility and its

affiliate is not valid unless approved by the Commission. Additionally, the provisions of Section 2101(b) of the Code obligate the Commission to approve an affiliate transaction "only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest," and Section 2103 requires the Commission to exercise continuing jurisdiction as necessary "to protect the public interest" (PECO Order, p. 125).

After discussing the applicability of these sections of the Code to the restructuring process, the Commission emphasized:

"Among other issues affecting the public interest, the Commission must insure that affiliate transactions are not inappropriately cross-subsidizing competitive affiliates or divisions." (PECO Order, p. 125).

On the basis of this conclusion, the Commission directed PECO to "review all of its affiliate transactions and submit requests for approval as necessary" (*Id.*, emphasis added).

In connection with the issue of functional separation, the Commission firmly emphasized that anti-competitive cross-subsidies would be prohibited with respect to all goods and services, not merely electric generation:

"Any transaction between PECO and an affiliate must be approved pursuant to Chapter 21 of the Public Utility Code. In order to ensure a 'level playing field', proposed affiliate contracts for all goods and services, including power, must not involve any anti-competitive cross-subsidy" (PECO Order, p. 127, emphasis added).

It is evident that both the Commission and the Legislature have recognized that cross-subsidization and other anti-competitive activities by a utility in connection with all competitive services are inappropriate and inconsistent with the public interest. As there is a need to ensure that such unlawful conduct is prescribed and prevented, it is necessary in this proceeding to apply competitive safeguards to all competitive services.

The ALJ avers that the differences between PP&L and PECO are significant and that he viewed the PECO decision as a stand alone determination that was "not controlling precedent" (RD, p. 2). Notwithstanding the broad nature of this conclusion, the ALJ fails to specifically address the alleged lack of precedential value to the PECO decision, which it must be underscored, also involved restructuring of an electric utility pursuant to the legislative mandate contained in the Act. More specifically, this assessment of the PECO decision is clearly unfounded in connection with the issues of competitive safeguards and Code of Conduct. Obviously, the legal and regulatory standards identified by the Commission in the PECO Order apply equally and with the same force to all utilities under its jurisdiction including PP&L.

The need to ensure that cross-subsidization does not occur is not a unique concern with respect to PECO, but is also applicable and relevant to the competitive services offered by PP&L and every other electric utility in the Commonwealth. Both PECO and PP&L provide a variety of competitive services and products unrelated to the independent sale of electricity to consumers within and without their service territories.

Can it be seriously argued that cross-subsidization should be prohibited in PECO's service territory but not with respect to PP&L, or that PECO's competitive operations should have access to utility customer lists while access to such data on PECO's system is denied? Obviously such differing and discriminatory treatments are illogical, irrational and inconsistent with the law and the public interest.

Without question, the PECO decision is controlling precedent with respect to the issues of competitive safeguards and the Code of Conduct, and is directly applicable to deliberations in this proceeding which involve similar considerations except that the particular utility is different. Accordingly, the ALJ's assessment that the PECO decision is not controlling precedent is erroneous as a matter of fact and law, and further underscores the error of his determination not to apply the Code of Conduct established in this proceeding to all of PP&L's competitive services.

The ALJ also appears to have mistaken the proposal submitted by PPA and PHCC. At page 186 of the RD, the ALJ states that several intervenors argued that the PP&L's electric delivery group be prohibited from marketing products such as electric thermostats, comfort controls and other types of competitive products. Based upon this erroneous assumption, the ALJ declares that such prohibition is not required under the Act because the Legislature did not object to utility involvement in non-generation products and services (RD, p. 186).

In point of fact, no party proposed that PP&L's electric delivery group be

barred from marketing competitive products such as electric thermostats and temperature controls, as alleged by the ALJ. The concern expressed by independent suppliers, including PPA, PHCC and Enron, was that the marketing of such services and products be subject to a Code of Conduct thereby preventing cross-subsidization between regulated and unregulated operators. As firmly underscored in the PECO decision, the Legislature has already expressed a significant concern over the possibility of cross-subsidization between competitive and non-competitive services and therefore subjected such types of activities to regulation and review by the Commission (See, Public Utility Code §2101).

In sum, no ban on the provision of specific services is proposed; all that is sought here is that competitive activity be subject to a workable and adequate Code of Conduct.

It is also apparent that the development of a competitive generation market - one of the primary goals of the Act - and an area of great concern to the Legislature, will be directly impacted by the various electric services each utility will offer either on a regulated or unregulated basis through utility personnel or by an affiliate or subsidiary. For example, PP&L could use the sale of appliances or energy management services (activities which are highly competitive) at prices which are subsidized by regulated operations, to leverage its position in the generation market. In essence, as the goal of competition is affected by all services offered by the utility, there is a clear and pressing

need to ensure that all such services are governed by appropriate safeguards.

Moreover, establishment of competitive safeguards for all competitive services is especially relevant as we enter the era of utility restructuring. The Commission is now in the process of considering the electric restructuring plans filed by the electric utilities throughout the Commonwealth in response to the directives contained in the Act. As the electricity utility industry as we know it will be fundamentally changed and each utility will now attempt to compete in a more competitive unregulated environment, implementation of safeguards that ensure a competitive level playing field is extremely vital at this sensitive time.

It is important to underscore that the restructuring process will not only affect the sale of electricity but will be expanded to cover a variety of related products and services associated with the sale of electricity such as appliance sales and repair, energy consulting and many others. The same concerns underlying the need to establish competitive safeguards with respect to the sale of electricity apply equally as well to other related competitive services in which the utility is able to leverage or bundle its corporate assets, name and market position to secure an undue competitive edge.

Under these circumstances, application of competitive safeguards to all competitive services is eminently timely, reasonable and prudent.

IV. EXCEPTION NO. 2

**THE ALJ ERRED BY FAILING TO ADOPT THE PROPOSALS
OF THE SUPPLIER INTERVENORS WITH RESPECT TO THE
CODE OF CONDUCT AND COMPETITION ISSUES**

The ALJ concludes that the rules and protections codified in PP&L's proposed Code of Conduct will assure a fair and open market without unfairly handicapping the utility as a competitor (RD, p. 179). He then rejects all modifications to the Code of Conduct proposed by the intervenors (See, RD, pp. 179-186). PPA and PHCC respectfully submit that the ALJ has erred in this matter and has adopted a Code of Conduct which does not sufficiently protect the competitive marketplace and the interests of ratepayers. A detailed exposition of the errors of the Recommended Decision in this regard is included in the Exceptions of Enron Power Marketing, Inc., with which we join in and fully support.

V. CONCLUSION

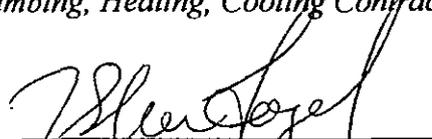
For the foregoing reasons, the Commission should direct that the competitive safeguards adopted in this proceeding be applied to all competitive services,

and that the Code of Conduct be modified consistent with the exceptions raised by
Enron Power Marketing, Inc.

Respectfully submitted,

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

By:



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Dated: April 23, 1998
Albany, New York

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
v.
Pennsylvania Power & Light Company
(Application for Approval of a Restructuring Plan)
Docket No. R-00973954

I hereby certify that I have this day served the "Exceptions of Pennsylvania Petroleum Association and the Pennsylvania Association of Plumbing, Heating, Cooling Contractors, Inc." upon the participants, listed below, in accordance with the requirements of §1.54 (relating to service by a participant).

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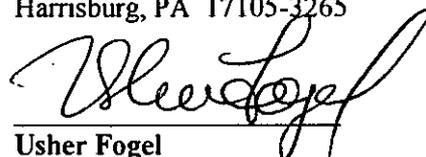
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April 24, 1998

REPLY TO: PAOLI

Secretary of the Commission
Pennsylvania Public Utility Commission
Room B-20, North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17120

**Re: Application of Pennsylvania Power & Light Company
For Approval of Its Restructuring Plan
Docket No. R-00973954**

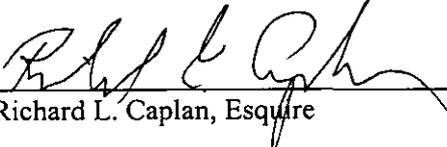
Dear Mr. McNulty:

Enclosed for filing in the above-referenced proceeding, please find an original and nine (9) copies of the Exceptions of Schuylkill Energy Resources, Inc. and Gilberton Power Company, Active Intervenors, To The Recommended Decision By The Honorable George M. Kashi, Administrative Law Judge.

Kindly date stamp and return the additional copy of the first page in the self-addressed envelope provided.

Very truly yours,

CAPLAN & LUBER, LLP.


Richard L. Caplan, Esquire

RLC\dmf

Enclosures

cc: Honorable George M. Kashi
Office of Special Assistants (with computer disk)
All parties on Certificate of Service

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51

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

Application of Pennsylvania Power & Light Company for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code :

Docket No. R-00973954

APR 23 1998
PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

EXCEPTIONS OF SCHUYLKILL ENERGY RESOURCES, INC. AND GILBERTON POWER COMPANY, ACTIVE INTERVENORS, TO THE RECOMMENDED DECISION BY THE HONORABLE GEORGE M. KASHI, ADMINISTRATIVE LAW JUDGE

Schuylkill Energy Resources, Inc. and Gilberton Power Company, active intervening parties in the above-captioned electric utility restructuring proceeding (collectively hereinafter the "intervenors"), mandated by the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2812 (hereinafter the "Act"), respectfully interpose the following exceptions, pursuant to 52 Pa. Code §5.533, to the Recommended Decision by Administrative Law Judge George M. Kashi (hereinafter the "Decision").

I. The Decision Errs In Rejecting, As Incompatible With The Act, Any Periodic Adjustment To The CTC That Would Ensure PP&L's Recovery Of Only Those Stranded Costs Actually Incurred.

Intervenors take exception to the failure of the Decision to address the merits, and, by so doing, its rejection without comment, Decision at 2, of their argument that the inherently speculative nature of PP&L's stranded cost projections and the enormous size of PP&L's stranded cost claim, more than \$4 billion, strongly militate in favor of allowing periodic reviews of stranded costs actually incurred. Such reviews would determine whether adjustments to the CTC were required to prevent over or under-recovery, predictable eventualities equally inimical

DOCKETED

APR 24 1998

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to the intent of the Act.¹ In particular, intervenors find fault with the following relevant findings of fact and conclusions of law:

1. Finding of Fact No. 189 (Decision at 27): Intervenor except to this finding to the extent that it presumes “the lack of any true-up under the Act of actual costs against the estimated costs used to calculate stranded costs” and fails to recognize any reciprocal risk to PP&L’s ratepayers and to the genesis of a fair competitive retail electric market, if future economic conditions confirm that the Commission inadvertently approved a level of stranded cost recovery that provides a windfall to PP&L. Decision at 27. As intervenors argued in their original brief, Brief at 27-28, and reply brief, Reply Brief at 2-7, while it is true that section 2808(f) of the Act expressly provides only for an annual reconciliation of actual CTC revenues against the amount of stranded costs originally approved for recovery during that interval, other provisions of the Act would be rendered nugatory if the Commission were without the implicit authority to modify the level of approved stranded costs to respond to the reality of future market conditions.

These provisions, the existence of which the Decision fails even to acknowledge, belie Judge Kashi’s bald assertion that “[n]o provision of the Act indicates that the reconciliation process should provide an opportunity for all parties to relitigate the stranded costs issues” Decision at 152. For example, section 2808(c)(4) of the Act imposes upon the restructured utility the duty, during the transition period, “to mitigate generation-related transition or stranded

¹ The proposed reviews would not be initiated automatically. Rather, there would be an annual window of opportunity during which any interested party could petition the Commission for reconsideration of PP&L’s approved stranded costs upon the submission of credible evidence that a discrepancy existed, between approved and actual stranded cost recovery, exceeding a minimum threshold to be determined by the Commission. Reply Brief at 6.

costs to the extent practicable.” Were the Commission foreclosed from adjusting in the future the amount of stranded costs originally approved, such mitigation efforts, if successful, would reward the utility at the expense of its ratepayers. Similarly, section 2808(a) of the Act, by making the recovery of stranded costs “associated with existing generating facilities . . . contingent on [their] *continued operation* at reasonable availability levels,” 66 Pa. C.S. §2808(a) (emphasis added), presumes that the Commission will retain the power to reduce the amount of stranded costs originally approved to back out the contribution of any generating unit that ceases to exhibit reasonable availability.

Finally, and perhaps most significantly, the Decision’s failure to recognize both the legal feasibility and benefit (to PP&L and ratepayers alike) of a substantive, stranded cost “true-up” procedure would place the Commission in the untenable position of having to sit idly by, should PP&L’s approved CTC recovery be found to substantially exceed costs actually incurred, in derogation of its duty, under section 1301 of the Public Utility Code, to ensure that all “rates” charged by regulated utilities are “just and reasonable.” 66 Pa. C.S. §1301.

2. Finding of Fact No. 289 (Decision at 39): Intervenors except to this finding because it is patently untrue. Because the CTC will be a “nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network” of PP&L, 66 Pa. C.S. §2803, the potential annual recalculation of the CTC that the intervenors recommend would introduce no greater uncertainty for the shopping retail consumer than PP&L’s proposed CTC, which would change yearly in step with its increasing retail market price projections. Finding of Fact No. 284 (Decision at 39).

3. Finding of Fact No. 290 (Decision at 39): Intervenors except to this finding because it is a half-truth. It fails to acknowledge that, if retail electric generation prices turn out

to be higher than PP&L now projects them to be (as a consequence of unforeseen perturbations in fuel costs and other production variables as well as the potential exercise by the incumbent providers of monopoly power), PP&L's proposed CTC would provide more than "full recovery of its stranded costs." Therefore, the Decision, in focusing exclusively upon the economic uncertainties faced by PP&L, erroneously fails to acknowledge reciprocally that a CTC that is not "recalculated periodically could [also] substantially defeat the benefits of competition for customers," *Id.*, by unfairly burdening them with unjustified CTC expense and by illegally subsidizing PP&L's efforts to forestall competitive inroads within its existing service territory. Reply Brief at 6.

4. Conclusions of Law Nos. II, G, and H. (Decision at 206-207): Intervenors except to these related conclusions of law because, as suggested by the enormous discrepancies between the gross amount of stranded costs claimed by PP&L and those lower estimates, proffered by the parties to this proceeding that have challenged PP&L's methodology and operative assumptions², no CTC immune from periodic adjustment in response to market conditions can rationally be said to comply with section 2808 of the Act or to ensure "an orderly transition to a competitive generation market." Any over-recover or under-recovery of alleged stranded costs postpones, if not defeats, the development of a robust, fair competitive market by placing PP&L or its competitors at an economic disadvantage with respect to one another. Furthermore, should

² The inherently speculative nature of *all* of the estimates of PP&L's generation-related stranded costs is perhaps best demonstrated by the fact that, in opposition to PP&L's claim of \$3.63 billion, PP&L's "large customers" have calculated the properly recoverable amount to be \$798 million, Joint Main Brief of Large Customers at p. 22, while the OCA has independently derived a figure of \$138 million. OCA Main Brief at p. 25. Where parties, acting in good faith, can disagree by more than \$3.5 billion in defining costs appropriately recoverable from ratepayers, the Commission cannot reasonably dismiss the curative impact of a mechanism capable of tempering current projections by future realities.

PP&L recover costs that future market conditions demonstrate to have not been “stranded” in fact, those customers forced to pay the inflated CTC will be unconscionably burdened. Reply Brief at 2-7. The Commission should not knowingly countenance this inevitable injustice.

II. The Decision Errs In Adopting PP&L’s Projections Of Future PJM Energy/Capacity Market Prices, Fuel Costs And Inflation Factors That Significantly Differ From Those Approved By The Commission In The PECO Restructuring.

Intervenors take exception to the Decision’s acceptance, for purposes of calculating PP&L’s generation-related stranded costs, of PP&L’s long term forecasts of future prices for energy and capacity within the PJM tight power pool, PP&L’s projected fuel costs to generate electricity and its estimate of the future rate of inflation, all of which differ markedly from those accepted by the Commission in the PECO Energy restructuring. Given that PECO and PP&L are both utility members of PJM with physically adjacent service territories within the same state, there is no credible rationale for assuming material deviations in the values of future market variables that are likely to impact both companies equally. Reply Brief at 8-11.

5. Finding of Fact No. 111 (Decision at 18): Intervenors except to this finding because the Commission has accepted in the PECO restructuring proceeding a rising forecast of future real fuel prices. In the absence of any evidence in the record that PP&L will enjoy preferential access to fuels at a significantly lower cost than those available to PECO, this finding must be rejected.

6. Finding of Fact No. 131 (Decision at 20): Intervenors except to this finding because it deviates significantly from the inflation rate accepted by the Commission in the PECO restructuring proceeding. Given the absence of evidence in the record of this proceeding that PP&L and PECO are not likely to experience the same rate of inflation in the future, the Commission would appear legally constrained to apply a uniform projection of inflation rates to

both companies.

7. Finding of Fact No. 169 (Decision at 24): Intervenor except to this finding because Dr. Jones' forecasted energy and capacity prices within PJM cannot "provide a consistent and reasonable basis to determine PP&L's stranded costs of generation" because they differ substantially from those values for the same variables already approved by the Commission in the PECO restructuring proceeding. PJM is a single, unified power pool that maintains but one energy spot market and sustains an active and relatively coherent market for capacity. It would defy both logic and reason for the Commission to approve significantly different projections of PJM market variables in calculating the generation-related stranded costs to be incurred by two PJM member utilities.

III. The Decision Errs In Approving A Schedule For The Phase-in Of Retail Access That Is More Restrictive Than The One Approved By The Commission For PECO.

Intervenor take exception to the failure of the Decision to acknowledge and eliminate the improper, market skewing effect of any incompatibility between utilities in the phase-in of customer retail access. By accepting PP&L's proposal to provide retail access in three phases, to be completed on January 1, 2001, with knowledge that the Commission has already approved PECO's plan to complete that process one year earlier, the Decision would afford PP&L an unfair competitive advantage. It would shield one-third of PP&L's current retail customers from competition for one year while allowing PP&L unfettered competitive access, during that same period, to all of PECO's current retail customers.

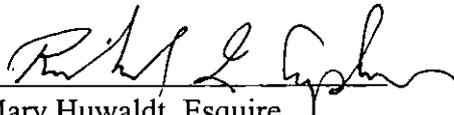
8. Finding of Fact Nos. 347 and 353 (Decision at 46-47): Intervenor except to these findings (which are really conclusions of law) because they misconstrue the relevant provisions of the Act. The language of section 2806 (b) of the Act sets deadlines for the phase-in of retail

access, but does not constrain the Commission's discretion, as exercised in the PECO restructuring, to accelerate the process upon a showing of good cause. The section's repetitive use of the phrase "[a]s of [a date]" confirms that its three dates were intended to define the most conservative implementation schedule envisioned by the Legislature rather than to impose a mandatory obligation. Where slavish adherence to the dates set forth in section 2806 (b) would destroy a level competitive playing field, by exposing a segment of one utility's customer base to competition before that of another, considerations of market fairness demand a single phase-in strategy of general applicability.

IV. Conclusion

For the foregoing reasons, the Recommended Decision in this proceedings should not be adopted by the Commission.

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Dated: April 24, 1998

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of Pennsylvania Power & :
Light Company's Restructuring Plan : Docket No. R-00973954

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

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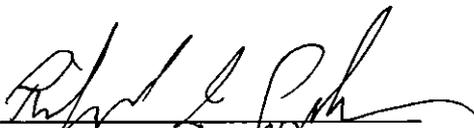
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Dated: April 24, 1998



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

IN REPLY PLEASE
REFER TO OUR FILE

April 24, 1998

JAMES McNULTY SECRETARY
PA PUBLIC UTILITY COMMISSION
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Re: Pennsylvania Public Utility Commission
v.
Pennsylvania Power & Light Company
Docket No. R-00973954

RECEIVED
98 APR 27 AM 9:00
PA P.U.C.
PROTHONOTARY'S OFFICE

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the **Exceptions** of Office of Trial Staff for filing in the above-docketed proceeding. In accordance with the Secretary's instruction, a Table and Microsoft Excel disk has been included based on Administrative Law Judge Kashi's modification to the Office of Trial Staff's adjustments. Copies are being served upon all parties of record.

Very truly yours,
Johnnie E. Simms
Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

JES:sjh

c: Honorable George Kashi
Parties of Record

DOCUMENT
FOLDER

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF THE OFFICE OF TRIAL STAFF
TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE KASHI

RECEIVED
93 APR 27 AM 9:00
PA.P.U.C.
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DOCKETED
APR 28 1998

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Scott H. DeBroff
Prosecutors
Office of Trial Staff

DOCUMENT
FOLDER

P.O. Box 3265
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(717) 787-1976

Dated: April 24, 1998

ORIGINAL

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APPENDIX A

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
George M. Kashi, Presiding

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

EXCEPTIONS OF THE OFFICE OF TRIAL STAFF
TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE KASHI

AND NOW, comes the Office of Trial Staff ("OTS"), by its prosecutors, files the following Exceptions to the Recommended Decision of Administrative Law Judge George M. Kashi, dated April 1, 1998, and transmitted to the parties by cover letter of the Secretary of the Pennsylvania Public Utility Commission ("Commission"), dated April 7, 1998.

I. INTRODUCTION

Administrative Law Judge Kashi indicated in the introductory remarks of his Recommended Decision that "by and large" he found Pennsylvania Power & Light Company's ("PP&L" or "Company") "petition to be just, reasonable, balanced and in compliance with the intent of the Act." The major problem that was of concern to Administrative Law Judge Kashi with PP&L's petition was the issue of stranded costs. In that regard, Administrative Law Judge Kashi found that OTS' adjustments to PP&L's stranded costs, "as modified" by his Recommended Decision, "to most nearly reflect his own position". R.D. at 2. While recognizing and appreciative that Administrative Law Judge Kashi's Recommended Decision by-and-large adopted the adjustments of OTS, there are certain modifications that were made to OTS' adjustments that must be addressed by way of Exceptions. These Exceptions are supplemental to the arguments presented in OTS' Main and Reply Briefs, the relevant pages of which are cited under specific headings below in accordance with the Commission's prescribed format for Exceptions and incorporated herein by reference. For ease of reference, OTS by-and-large has utilized the same headings as used in the Recommended Decision.

In the Secretarial transmittal cover letter of April 7, 1998, the Secretary McNulty requested that all parties, if possible, should provide the Commission with appropriate tables incorporating the adjustments contained in the Recommended

Decision. OTS has endeavor to comply with this request, and prepared Table I, (accompanied with a Microsoft Excel 3 1/2 disk incorporated the Tables), which is attached to these Exceptions. By way of further explanation, as previously discussed, Administrative Law Judge Kashi has by-and-large adopted the adjustments of OTS with certain modifications. Accordingly, OTS has provided a Table in Appendix A that reflects our adjustments with an incorporation of Administrative Law Judge Kashi's modifications to those adjustments. By way of summary, the OTS recommended stranded cost based upon Administrative Law Judge Kashi's modifications results in a Recommended Decision stranded cost allowance of \$3,715,274 billion for PP&L. It must be noted that the computer model provided by the Company is based on a stranded cost claim of \$4.64 billion. The Company subsequently reduced the claim to \$4.49 billion, reflecting a reduction in fuel expense. This is a reduction to claimed operating expenses for stranded cost purposes.

II. EXCEPTIONS

III. STRANDED COST CALCULATION METHODOLOGY

A. PP&L's Calculation Of Stranded Costs

OTS Main Brief, at Pages 13 through 21, inclusive

OTS Reply Brief, at Pages 4 through 5, inclusive

Recommended Decision, at Pages 26 through 27, inclusive

1. OTS Excepts to the Recommended Decision Findings of Fact Numbers 187, 188, 189 and 190 that relate to OTS' Position on the Appropriate Common Equity Return For the Determination of Stranded Costs.

On Pages 80 through 83 of the Recommended Decision, in the section heading for "Stranded Cost Calculation Methodology", ALJ Kashi fails to address the entire OTS argument relating to the appropriate methodology for calculating a Common Equity return for the Determination of Stranded Costs. The only response made by the ALJ relating to the OTS position fostered by OTS witness Mr. Gruber is found in his Findings of Fact (FOF) section on Pages 26-27 in the Recommended Decision.

OTS excepts to the ALJ's FOF Number 187. The ALJ was correct when he quoted from Mr. Gruber's testimony, that "the risk faced by the Company in recovering its stranded cost is near zero" OTS Statement 1, Page 10.

The revenue requirement in the Company's last base rate proceeding was based upon a traditional regulatory environment. In that context, revenues approved by the Commission are not guaranteed. Under regulation, rates are set to provide the Company with the opportunity to recover the calculated revenue requirement. If a company does not earn the revenues allowed, no allowance is

made to alter future rates to insure the collection of the revenues not collected. Therefore, in its calculation of the common equity component of the cost of capital, the Commission allows for a certain amount of risk. As described by PP&L in their testimony in this proceeding, the level of stranded costs determined by the Commission will be amortized over a nine year period with a true up at the end of each year. Therefore, the Company is *guaranteed* recovery of its stranded costs and the risk involved drops to zero. (See 66 Pa.C.S. Section 2808 (F) of the Act)

In other words, a common equity return in a regulated environment is based upon a level of risk. Once the Commission determines an appropriate Competitive Transition Charge (CTC) for PP&L, there will be no risk related to its recovery. Therefore, a common equity return percentage, in OTS' perspective, should reflect this risk-free scenario.

Another portion of FOF 187 (as well as FOF 190) that OTS excepts to is the ALJ's statement that "The OTS' proposed adjustment would result in a 7.25% pre-tax WACC and a 5.71% after-tax WACC, and would reduce PP&L's stranded cost claim to \$3,671,499,000. OTS St. 1, Page 11." R.D. at Page 26.

The ALJ is incorrect as to his interpretation of the OTS position as OTS did not use PP&L's Weighted Average Cost of Capital (WACC) after-tax number of

5.71% in calculating the OTS recommendation for an appropriate stranded cost claim.

OTS used 7.36% as our **discount rate** as found in OTS witness Deardorff's OTS Exhibit SR-3, Schedule 1, Updated.

OTS excepts to the ALJ's FOF Number 188. OTS contends that the ALJ does not understand Mr. Gruber's recommendation. As opposed to the ALJ's interpretation, Mr. Gruber is not confusing "the cost of common equity relevant to a calculation of PP&L's stranded costs on the one hand, with the carrying charge applicable to the CTC and the recovery of such stranded costs on the other." R. D. at 26.

As a result of the Act providing for recovery of a utility's stranded costs through a CTC mechanism, there is no doubt that PP&L will be able to recover 100% of the stranded costs that the Commission determines in its Final Order. The ALJ is again confusing the Company's WACC with the OTS' determination of a 6.6% risk-free return on Common Equity.

OTS excepts to the ALJ's FOF Number 189. The ALJ again fails to properly analyze the situation of PP&L as it embarks upon full competition. The record evidence does *not* show that "...PP&L in fact faces significant risk in recovering its full stranded costs." R.D. at 26. ALJ Kashi then goes on to adopt

PP&L's 5 reasons that this "risk" is attributable to, as quoted from PP&L Statement 6-R, Page 24. OTS excepts to all of them.

First, the rate cap will not limit the Company's total charge to customers during the CTC collection period, because if PP&L needs a longer period to recover such charges, the Company may come to the Commission for an extension of that period.

Second, OTS based its calculation for stranded cost recovery on the many assumptions made by PP&L. These are the same assumptions that PP&L used to calculate the stranded costs upon which the CTC is based. If PP&L believed that somehow the stranded cost numbers are deficient or inaccurate, it should have provided better estimates. OTS relied on the data PP&L supplied as the input to OTS' stranded cost position.

Third, the lack of a true-up under the Act, of actual costs against estimated costs used to calculate stranded costs, is what competition will inevitably bring about. Again, if the Company feels its estimates are inaccurate, the Commission should use another party's estimates to determine stranded costs. However, the Company, under the Act, may petition the Commission to be able to request recovery of those stranded costs when such costs are incurred.

Fourth, PP&L's estimated cost of capital at December 31, 1996, is what the Act requires that the Commission use as a starting point for moving the Company

into competition. This cost of capital was never meant as a marker by which to judge the actual capital costs from 1999 to 2005.

Fifth, OTS disputes the Company's characterization of its self-serving use of a lower rate of return on common equity than it believes is required by investors. OTS is not concerned with attracting investors. Our only concern is an accurate gauge of stranded costs.

OTS excepts to the ALJ's FOF Number 190. ALJ Kashi again completely misinterprets the OTS position on common equity return by confusing the Common Equity return requirement for the guaranteed recovery of the Commission-determined CTC and the unguaranteed recovery in a Rate Base/Rate of Return proceeding.

Mr. Gruber recommended the use of a 6.6% return for Common Equity. Mr. Gruber developed the 6.6% rate as supplied to him by OTS witness Kevin Deardorff and such rate is the currently projected interest on a 9 year Treasury note.

One component of the common equity return allowed in a traditional rate proceeding is an allowance for risk. It is the OTS position that the risk faced by PP&L in recovering its stranded costs is near zero, and therefore, the common equity return should reflect a near zero risk. OTS recognized that some return was necessary or the Company could have trouble getting investors to invest in the

Company, and as a result, OTS is using the 9 year Treasury note rate as a zero risk return given that time period. (See OTS Statement No. 3)

As set forth in OTS witness Mr. Gruber's testimony, using the Company's methodology and a 6.6 % return for common equity, the Company's stranded costs are \$3,671,499,000. This number is a decrease of \$939,462,000 (\$4,610,961,000 - \$3,671,499,000) from the Company's stranded cost calculations (See OTS Exhibit No. 2, Schedule 2, Page 2)

It is OTS' position that in reviewing the issue of the appropriate cost rate for Common Equity, the Commission should not be concerned that the newly formed generation company does or does not earn the common equity rate of return permitted by this Commission for a regulated utility in the Company's last rate proceeding. The Commission, at that point, will have no interest or involvement in the degree of profits which an electric generation company will garner in a deregulated competitive environment.

V. REVENUE UNDER REGULATION

B. Cost of Capital

OTS Main Brief, at 32 through 36, inclusive

Recommended Decision, at 112 through 125, inclusive.

1. OTS Excepts to the Recommended Decision
Recommended Growth Rates For Return On
Equity Allowance.

On page 117 of the Recommended Decision, Administrative Law Judge Kashi agreed with OTS that the Commission precedent clearly supports a return on equity allowance based upon the DCF methodology. On page 125 of the Recommended Decision, Administrative Law Judge Kashi indicates that "we agree with OTS that the growth rates do consider "market factors" and that no adjustment for "market factors" is required.

The problem arises when Administrative Law Judge Kashi while agreeing with OTS that growth rates need not be adjusted for "market factors", includes PP&L's growth rate, which includes a "market factor" adjustment that results in a recommended high growth rate range of 3.50 percent (e.g., 2.75 percent to 3.50 percent). Since Administrative Law Judge Kashi has agreed that growth rates do consider "market factors", consistency would dictate that the highest growth rate range that could be utilized for analysis is 3.0 percent, which represents either OTS witness Deardorff's highest growth rate or PP&L witness Moul's highest growth rate.

In correcting this issue, Administrative Law Judge Kashi's recommended growth rate should be 2.88 percent, which is determined by $(2.75 \text{ percent} + 3.0 \text{ percent})/2$.

It must be noted that 2.88 percent is more than adequate, since Administrative Law Judge Kashi failed to recognize OTS' revised growth rate of 2.5 percent for

PP&L, which was presented in OTS Exhibit SR-3, Schedule 5 at 1-2. If recognition had been afforded to OTS' revised growth rate, the recommended growth rate would have been 2.75 percent, which is determined by $(2.50 \text{ percent} + 3.0 \text{ percent})/2$.

Consequently, based upon OTS' exceptions, the adopted growth rate should be no higher than 2.88 percent.

2. OTS Expects to the Recommended Decision Reliance of Spot Yield and/or Data For Return On Equity Allowance.

On page 122, Administrative Law Judge Kashi, recommended that spot data be utilized due to his belief that "spot data is the best indication of PP&L's future capital costs." Administrative Law Judge Kashi recommends relying upon spot data, although he recognizes that August 1, 1997 spot dividend yield may be an aberration. R.D. at 122. OTS submits that it is the aberration characteristic that is associated with spot data that makes all spot data unacceptable in determining PP&L's future capital costs.

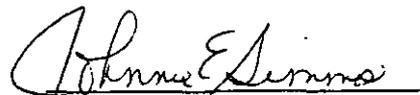
In that regard, PP&L's own witness, Mr. Moul acknowledged that the increase in the cost of capital was attributed to the uncertainty surrounding PP&L's restructuring case, and that this uncertainty was short term in nature. PP&L St. 6-R at 5. It is axiomatic that the uncertainty surrounding PP&L's restructuring case will end when the Commission enters its Order in this case.

Consequently, OTS is advocating that PP&L's cost of equity recommendation be based upon a 52 week dividend yield. It must be noted that the Commission in PECO's securitization proceeding, based PECO's cost of equity on the 52 week dividend yield, due to a similar aberration in PECO's spot dividend yield. See PECO Securitization, (R-00973877) at 58. Accordingly, the Commission should adopt OTS' 52 week dividend yield in determining a proper cost of equity for PP&L.

III. CONCLUSION

Administrative Law Judge Kashi's Recommended Decision should be modified in accordance with the Office of Trial Staff's Exceptions. The Office of Trial Staff respectfully requests the Pennsylvania Public Utility Commission to issue an order allowing Pennsylvania Power & Light Company to recover no more than \$3,171,875,000 in stranded cost.

Respectfully submitted,



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APPENDIX A

Stranded Cost Summary
Office of Trial Staff

<u>NPV (thousands of \$)</u>	<u>1/1/99</u>
NUCLEAR	(2,336,737)
FOSSIL	(489,009)
NUG's	(656,870)
REGULATORY ASSETS	<u>(373,474)</u>
NPV TOTAL	(3,856,091)
REDUCTION FROM ORIGINAL FILING*	<u>140,817</u>
OTS RECOMMENDED STRANDED COST BASED ON ALJ'S ADJUSTMENTS TO OTS POSITION IN RECOMMENDED DECISION	<u>(3,715,274)</u>

*The computer model provided by the Company is based on a stranded cost claim of \$4.64 billion. The Company subsequently reduced the claim to \$4.49 billion, reflecting a reduction in fuel expense. This is a reduction to claimed operating expenses for stranded cost purposes.

TABLE 1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility
Commission**

v.

Pennsylvania Power & Light Company

:
:
:
:
:
:

**Docket No.
R-00973954**

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I hereby certify that I am serving the foregoing, the Exceptions of the Office of Trial Staff dated April 24, 1998, either personally, by first class mail, express mail or by fax upon the persons addressed below:

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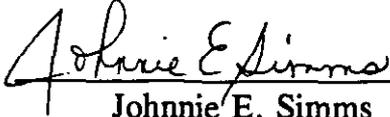
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R-00973954



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PROTHONOTARY'S OFFICE

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

Dear Mr. McNulty:

Enclosed for filing please find an original and nine (9) copies of the Brief on Exceptions to the Recommended Decision of Administrative Law Judge, George M. Kashi of the Environmentalists in the above-referenced proceeding.

A copy of this document has been served on Administrative Law Judge Kashi and all parties of record, as shown on the attached certificate of service.

Sincerely,

DOCUMENT
FOLDER

Fred Zalcm
Fred Zalcm
Senior Attorney

FZ/dv
enc.

cc: Hon. George Kashi, ALJ
All parties of record

92

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Power & Light Company)
Restructuring Plan)

Docket No. R-00973954

**BRIEF ON EXCEPTIONS OF THE ENVIRONMENTALISTS
TO THE RECOMMENDED DECISION
OF ADMINISTRATIVE LAW JUDGE GEORGE M. KASHI**

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COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Power & Light Company)
Restructuring Plan) Docket No. R-00973954

**BRIEF ON EXCEPTIONS OF THE ENVIRONMENTALISTS
TO THE RECOMMENDED DECISION
OF ADMINISTRATIVE LAW JUDGE GEORGE M. KASHI**

I. INTRODUCTION

Environmentalists¹ respectfully submit this Brief on Exceptions to the April 7, 1998 Recommended Decision ("Recommended Decision" or "R.D.") rendered by Administrative Law Judge (ALJ) George M. Kashi regarding Pennsylvania Power & Light Company's ("PP&L" or "Company") restructuring plan.

Environmentalists strenuously oppose several features of the ALJ's Recommended Decision. First and foremost, Environmentalists contend that the decision to grant PP&L nearly all its quantified generation-related stranded costs is deeply flawed. This decision rests on several methodological errors, the most significant being the ALJ's endorsement of PP&L's market price projections. R.D., p. 112. As documented by several parties in the case, PP&L's market price projections are skewed in a manner that serves the twin objectives of boosting its

¹ For purposes of this proceeding, Environmentalists consist of the Clean Air Council, the Sierra Club, Saucon Valley Association for a Viable Environment, Lehigh Valley Greens, Lehigh Pocono Committee of Concern, Pennsylvania Organization of Watersheds and Rivers, Pennsylvania Public Interest Research Group, and the PP&L Ratepayers Association. The Environmentalists represent an important segment of the Pennsylvania community - one particularly concerned with the interrelationships between energy production, distribution and consumption, public health and the quality of our natural environment.

The Environmentalists have been an active party in the utility-specific restructuring proceedings, generic rulemakings and various working groups established to restructure the Commonwealth's electric industry. Environmentalists have participated in all facets of the instant proceeding, sponsoring three expert witnesses, undertaking cross examination, filing post-hearing briefs, and offering statements at public input hearings.

stranded cost numbers, while simultaneously thwarting retail competition. Blanket endorsement of the PP&L market price estimate is indefensible based on the record evidence.

Other findings also serve to inflate the stranded cost burden shouldered by Pennsylvania jurisdictional consumers -- especially those in the residential and small commercial classes. Thus, the ALJ approves (p. 112) PP&L's ever-escalating jurisdictional allocation of generation costs, on the unproven and untested assumption that resources freed up by expiring wholesale contracts will be needed to serve existing load in a competitive environment. Similarly, approval (p. 76) of PP&L's proposal to shift accumulated depreciation from transmission and distribution accounts ("the depreciation swap") places a greater burden on residential customers who are allocated a relatively higher share of generation costs. Under these circumstances, a reallocation of depreciation reserves violates the Electric Generation Customer Choice and Competition Act's, 66 Pa.C.S §§ 2801 et. seq. ("the Competition Act" or "Act"), prohibition on inter-class cost shifting. 66 Pa.C.S. § 2808 (a).

The stranded cost award also rests on several legal infirmities insofar as the ALJ gleans from the Competition Act, Pennsylvania ratemaking principles, and constitutional doctrine a "regulatory compact" demanding full recognition of PP&L's claim of a return "of" and "on" bad generation investments. R.D., pp. 65-67. Predicating the Company's stranded cost award on a non-existent bargain between regulators and Pennsylvania investor-owned utilities constitutes reversible error.

Environmentalists also believe the decision to permit PP&L to recover of all future nuclear decommissioning costs through the distribution charge (p. 135) to be ill-advised. This feature of the Recommended Decision will entirely impose on captive customers a significant long-term responsibility for clean-up and decommissioning of PP&L's Susquehanna nuclear

units. The uncontroverted evidence in this case is that PP&L's decommissioning cost estimates are highly uncertain, continue to escalate, and are to some extent within the control of the plant operator. Environmentalists Statement No. 2, pp. 30-33. These facts dictate that PP&L be required to develop a mitigation plan to minimize the incurrence of decommissioning costs. Further, the Commission should establish a financial incentive framework so that the risks and costs of future cost increases are shared between customers and the company, and to assure that the company takes all reasonable steps to minimize decommissioning costs.

Beyond these economic repercussions, the environment is dealt a severe blow by the Recommended Decision. First, although the Recommended Decision does reject the Company's proposed Customized Rate Design, (p. 157) in part because it inappropriately promotes energy use, other features of the Company petition having the same effect (e.g., the depreciation swap) are left to stand.

Second, the Recommended Decision rejects Environmentalists' proposal to extend the Commission's policy on fuel mix disclosure to encompass disclosure of environmental impacts. R.D., pp. 201-202. Under the R.D., customers will not be provided with the information they desire regarding the environmental attributes of alternative supply options. As a result, customers who wish to vote for renewables with their pocketbooks will lack the objective information they need to sort out providers "green" claims.

Third, the Recommended Decision rejects proposals to enhance PP&L's universal service budget. Inexplicably, the Recommended Decision declines to adopt a renewable pilot program for low-income customers, although this mechanism is explicitly identified in the Act, 66 Pa.C.S. § 2803, and was just adopted by the Commission in its PECO restructuring decision.

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2806 of the Public Utility Code, Docket No. R-0097395 et. seq. (hereinafter "PECO Orders"), p. 147. The Recommended Decision also rejects recommendations to increase PP&L's universal service budget in a way that would provide more low-income customers a meaningful opportunity to lower their energy bills through conservation.

Fourth, the Recommended Decision rejects without discussion Environmentalists common sense recommendation for "targeted area planning" at the distribution system level. The Environmentalists' recommendation would require PP&L's Electric Distribution Company ("EDC") to formally analyze and invest in alternatives to avoid, defer, or reduce the scope of more costly and environmentally damaging transmission and distribution system investments.

Fifth, the Recommended Decision rejects the requirement that all suppliers selling into Pennsylvania meet comparable environmental standards as a condition of doing business in this state. R.D., pp. 202-203. Failure to adopt this recommendation will reward older, and generally dirtier generation located upwind of Pennsylvania and negate the Commonwealth's ongoing efforts to come into attainment with federal and state air quality standards. See 66 Pa.C.S. § 2802 (21).

In reaching his decision, the ALJ readily acknowledges that the PECO decisions "were treated as stand alone decisions and were not regarded as controlling precedent." R.D., p. 2. Indeed, time after time the Recommended Decision finds reason to distinguish the instant proceeding from PECO. Invariably, these distinctions work against consumer interests to the obvious advantage of PP&L and its shareholders. As set forth more fully below, the resolutions offered by the ALJ mark a clear departure from the policy choices recently made by the Commission. Such a sweeping departure from PECO cannot be sustained based on the record presented.

Finally, Environmentalists ask the Commission to take notice of the extensive quotation set forth in the Recommended Decision at pages 204 through 205. We concur with the ALJ that this statement by Nancy Tate, offered at the June 7, 1997 public input hearing on behalf of LEPOCO, speaks volumes, and is representative of the concerns of many throughout the PP&L service territory. We further ask the Commission to consider whether the Recommended Decision allows it to answer in the affirmative the many questions and concerns posed by Ms. Tate:

"What unbiased review will be available to the consumer to assist in making an intelligent, wise choice in electric service? For starters, such information should weigh the environmental benefits or hazards of such service, how fair the service will be to the poorest in our community. What protection will you give to assure that the small and environmentally friendly producer of power has a good opportunity to be among the electric generators? What measures will be taken to guarantee that this new system encourages rather than discourages energy conservation? And what protection is there that the large power customers don't get savings at the expense of the average electric consumer?"

Finally...it is grossly unfair to the average consumer to be asked to pay for the decision by PP&L management and stockholders to pay for the decision to build the nuclear power plants that are located near Berwick, Pennsylvania. It was an unsafe and uneconomical decision at the time it was made, and remains so...These stranded costs should be borne by those who were the advocates of nuclear power [-] management and the stockholders.

Tr, 176-184 (June 2, 1997), cited at R.D., pp. 204-5.

II. ARGUMENT

EXCEPTION #1

The Administrative Law Judge's Conclusion to Ground PP&L's Stranded Cost Recovery Amount on a "Regulatory Compact" Is Not Supported by the Competition Act, Traditional Ratemaking Principles, or Constitutional Doctrine.

The ALJ divines a "requirement of mutual obligations" in which "utilities had opportunity to recover their prudently incurred investments in facilities used to meet their obligations to serve all customers." R.D. at 66 This asserted regulatory compact provides the backdrop for the Recommended Decision's grant of full stranded cost recovery to PP&L. As set forth fully in Environmentalists' Main Brief (pp. 15-20), the assertion of a regulatory compact presents a distorted picture of past regulatory practice, constitutional principles and the Competition Act. As such, it provides scant support for the proposition that the utility has an entitlement to full recovery of its calculated stranded costs.

There is nothing in the Competition Act that supports the Recommended Decision's assertion of a regulatory compact necessitating full stranded cost recovery. Instead, the Act creates only the *opportunity* for utilities to seek recovery of their stranded costs. Recovery is to be awarded based on the Commission's discretion as to what is a "just and reasonable" amount of the appropriately classified and calculated stranded costs. 66 Pa.C.S. §2804 (13).

The phrase "just and reasonable" does not trigger an automatic recovery of all prudently incurred costs as asserted by advocates of the regulatory compact, but confers on the Commission broad discretion. As the Commission concluded in the PECO decision, the Act reflects a continuation of, rather than a departure from the just and reasonable standard that "has

long been the benchmark in regulated utility ratemaking”. PECO Order at 64. In PECO, the Commission followed these broad guidelines articulated by the Pennsylvania Supreme Court:

the term “just and reasonable” was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between the prices charged to utility consumers and returns on capital to utility investors consonant with constitutional protections applicable to both.

PECO Order at 64, citing Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co., 492 Pa. 337; 424 A. 2d 1213, 1219 (1980) cert. denied, 454 U.S. 824, 102 S. Ct. 112, 70 L.Ed. 2d 97.

That the Commission is given broad discretion within the limits of law and fairness to strike a balanced disposition regarding stranded generation assets is confirmed by the policy declaration of the Act that:

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

66 Pa.C.S. § 2802 (8).

Contrary to the Recommended Decision, nothing in the Fifth and Fourteenth Amendments to United States Constitution impels full recognition of PP&L’s calculated stranded costs resulting from the transition to competition. In the landmark case of FPC v. Hope Natural Gas Company, 320 U.S. 591 (1944), the Supreme Court rejected the invitation to adopt a single constitutionally mandated methodology or theory for determining utility rates:

“[I]t is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry ... is at an end.”

Id., 320 U.S. at 602.

These principles were reaffirmed in Duquesne Light Company v. Barasch, 488 U.S. 299 (1989), wherein the Supreme Court upheld a rate order of this Commission disallowing cost recovery in prudent, but not used and useful, plant investments. More specifically, Duquesne explicitly rejected the prudent investment rule, advanced by PP&L here, as the constitutional standard for a *fair rate of return*.

The Recommended Decision's reliance on Duquesne is seriously flawed. The instant proceeding, prompted by the legislature's desire to introduce competition in the electric industry, is hardly the kind of regulatory gaming the Supreme Court had in mind when it warned, in dicta, against "a State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others."² As argued above, the Competition Act represents a continuation of Pennsylvania traditional ratemaking policies and practices.

Further, the "regulatory compact" has no basis in law. The case of Charles River Bridge v. Warren Bridge, 36 U.S. 420 (1837) and its progeny stand for the proposition that lawmakers need not be compelled to provide compensation for assets stranded by decisions to permit competition in areas of regulated monopoly franchises. More recently, a New York Supreme Court, considering the states' introduction of competition in the electric industry, rejected a claim by utilities that a purported regulatory compact entitled them to full stranded cost recovery. Energy Association of New York State et. al. v. New York Public Service Commission, 653 N.Y.S 2d 502 (Sup. Ct. 1996).

² Notably, the Court's refused to adopt a single methodological standard, in part, to preserve the possibility that "the emergent market for wholesale electric energy could provide a readily available objective basis for determining the value of utility assets." 488 U.S. 299, 316, fn. 10. The subject of this proceeding validates the Supreme Court's expectations.

Indeed, Pennsylvania is a clear example of a state in which investors have had explicit notice that neither recovery of prudent investment nor protection from substantial losses were part of any bargain on which they could rely. A string of court cases could not have been clearer:

"It does not follow that a unit prudently constructed must always be included in rate base." Philadelphia Electric Company v. Pennsylvania Public Utilities Commission, 433 A.2d. 620, 623 (Pa. Cmwlth, 1981) (citing cases from 1952 forward).

"The express language of the *Hope* decision weighs against regarding utilities as a protected class of business enterprise which are to be relieved of such normal business risks...If the *Hope* decision were to be interpreted as providing constitutional guarantees for the achievement of investor interests the "used and useful" principle would have to yield, at least in the situation where the financial integrity of a utility is imperiled, but we do not perceive from *Hope* that investor interests are to be accorded such a guaranteed status." Pennsylvania Power & Light v. Pennsylvania Public Utilities Commission, 502 A.2d. 130, 134-136 (Pa., 1965)

"In the instant case, the Commission has interpreted the word 'useful' as requiring that: the plant and its associated capacity contribute no more than necessary to system reliability in the accepted, technical sense...because we determined that the Commission's interpretation of the phrase 'used and useful' is a reasonable one, we will not overturn it...the Commission determined that such a balancing of competing interests was fair, in that the risk of excess capacity is properly laid more heavily on PP&L's shareholders who voluntarily assumed that risk..." Pennsylvania Power and Light v. Pennsylvania Public Utilities Commission, 516 A.2d. 430-32 (Pa. Cmwlth., 1986).

Moreover, the fact that the subject plants "were used and useful in providing public service", R.D. at 68, (underline added), does not save them from continuing scrutiny. Investors had no guarantee that the used and useful rule is restricted to a one-time application at the time the plant is ready for service. Such a result risks violating elementary statutory construction principles by concluding that the word "useful" is a mere redundancy of used. Philadelphia Electric Company v. Pennsylvania Public Utilities Commission, 433 A.2d 620, 622-23 (Pa.

Cmwlth., 1980). The Pennsylvania Supreme Court reached the same result in applying the used and useful rule to both Three Mile Island units, even though both had been in rate base and even though only one was destroyed in the 1979 accident. Pennsylvania Electric Company v. Pennsylvania Public Utilities Commission, 59 Pa. 324, 334, 502 A.2d 130, 135 (1985).

Professor Joseph Kalt, a witness for PP&L in this proceeding, himself warned in 1987 that adoption of the used and useful approach by a state indicated that the regulatory bargain was no longer in effect in that jurisdiction and created the possibility that prudent investment would not be recovered. His paper thus asserts that the ratemaking approach long employed by Pennsylvania was "at the heart of the breakdown in the regulatory bargain" and "created a requirement that future investments meet a market test." Environmentalists' Cross Exhibit No. 1 ("Reestablishing the Regulatory Bargain in the Electric Utility Industry"), p. 2.

Finally, the Recommended Decision submits that changes in the "rules of the game" by which electric generation services are provided compels recovery of investments in facilities made uneconomic by the change in regulatory policy. R.D. at 69. However, many of the risks which threaten shareholder investments have nothing to do with "the rules of the game" enunciated in the Recommended Decision. Rather, excess capacity, wholesale competition and the improving technology of new generating facilities have made it increasingly likely that some of PP&L's generating assets would have been stranded as failing the used and useful test without the introduction of the Competition Act at all. As the Supreme Court stated in Market Street Railroad Company v. Railroad Commission of California, 324 U.S. 548, 567 (1945), the Contitution does not apply "to insure values or to restore values that have been lost by the operation of economic forces."

As argued by Environmentalists witness Peter Bradford, a former Chairman of the New York Public Service Commission:

The risk that generation costs would fall and that customers would find ways (including demanding governmental changes to the market structure) to take advantage are not risks from which utility investor have ever been entitled to complete protection.... That these risks have been greater than they perceived or have come from a different direction scarcely compels the imposition by regulators of an unconditioned strandable investment tax to assure full recovery.

Environmentalists' Statement No. 3, p 20.

Environmentalists strongly urge the Commission to overturn the lopsided result that flows inexorably from the fulfillment of a non-existent regulatory compact. Consistent with the above principles, fundamental fairness requires a sharing of the huge economic loss embodied in PP&L's stranded generation assets. We urge the Commission to consider the formulation developed by Environmentalists' witness Schoengold -- a 42.7% customer/57.3% shareholder split in stranded generation asset responsibility. Environmentalists Statement No. 1, p. 23

Among the many beneficial aspects of this split, Mr. Schoengold calculates that this recovery level would maintain stockholders currently achieved return on investment (7%), without having to generate their own funds to pay off debt holders. Id. Under these terms, customers would have some opportunity to realize rate reductions -- an opportunity that simply does not exist under the Recommended Decision.

EXCEPTION #2

THE RECOMMENDED DECISION PREDICTS MARKET PRICES FOR ENERGY THAT ARE ENTIRELY SPECULATIVE, WHOLLY OUT OF LINE WITH THE RECORD EVIDENCE, AND INCONSISTENT WITH THE RECENT FINDINGS OF THIS COMMISSION.

One of the most critical errors made by the ALJ is to adopt a market price forecast (p.112) that will inevitably prove wrong, and will in all likelihood turn out to be lower than the

actual clearing prices revealed by the market over time. This single error has far-reaching consequences to the outcome of this case, canceling any rate relief PP&L's current customers reasonably expect to result from passage of the Competition Act, and potentially chilling the development of competitive markets in generation and supply in Pennsylvania.

The ALJ's adoption of too low a market price leads to a significant overstatement of PP&L's generation-related stranded costs. PP&L has calculated its stranded cost as the differential between its allowed revenues were it to remain under regulation, and the market revenues it expects under a competitive regime. Obviously, since estimated market revenues are so dependent on the price PP&L expects to fetch for energy and capacity, the ALJ's embrace of PP&L's erroneously low market price translates into an inflated stranded cost claim.

The Recommended Decision's treatment of market price cannot be squared with the Commission's recent findings in the PECO case. In PECO, the Commission explicitly endorsed the OCA stranded cost estimate and underlying market price analysis. PECO Order at 89-90. Inexplicably, OCA's materially similar presentation -- same witness, same model, same input assumptions -- are rejected here in favor of an analysis leading to much higher stranded costs.³

In order to reconcile these facially different outcomes, one of two conclusions have to be reached. First, the Commission would have to accept as appropriate the concurrent adoption of different market price estimates for PP&L and PECO. Insofar as both utilities are participants in a single (PJM) market, there can be no basis for utilizing differing market price estimates.

Alternatively, the Commission would have to conclude that its earlier PECO decision was in

³ Unfortunately, the Recommended Decision gives short shrift to the Commission's PECO analysis. The conclusion that the ENPRO model suffers certain inherent limitations is belied by the Commission explicit finding that the "the ENPRO model...[is] quite suitable to the task of estimating the generation market revenues for PECO." Similarly, the Recommended Decision is inconsistent with the considered finding of the Commission that "witness Smith's

error (or is no longer valid). This conclusion would imply that PECO is entitled to a finding that its stranded costs are larger than had been assumed.⁴

More than anything, Environmentalists submit that the Recommended Decision illustrates the frailties of basing stranded cost calculations on an administrative determination of future market prices. Such estimates are dependent upon assumptions regarding myriad model inputs including fuel price projections, operation and maintenance expenses for generating units in the PJM pool, customer demand for energy, and anticipated imports from outside the PJM pool. R.D. at 87. Given the utility industry's past inability to accurately estimate the future price of electricity, it is folly to now rely on such projections to determine the value of the Company's stranded generating assets, calculated in the billions of dollars.⁵

Environmentalists have proposed a simple, straightforward and fair solution that would mitigate the inherent uncertainty of future market price projections and its economic consequences. Under the Environmentalists proposal, the value of PP&L's generating plants based on the actual market price of electricity as it is observed over time. A short-term *pro forma* market price would be set and a tracking system instituted to monitor shortfalls or over-collections that result from the actual market price being above or below the *pro forma* value. The CTC would be periodically readjusted for over-recovery or under-recovery against the

model fairly represents several important matters such as unit commitment, NUG operations, *fuel prices*, imports and exports, and heat rates." PECO Order at pp. 87-88.

⁴ This is not a position endorsed by Environmentalists', nor do we believe that such a conclusion is supported by the record evidence in this or the PECO case.

⁵ Witness after witness testified as to the inevitability of future market prices and underlying variables turning out wrong. See, e.g., NEV Statement No. 1 (Boonin), p. 14 ("Without a reconciliation, "everyone is building their transition plans on mere estimates and speculation of future market conditions."); Tr. at 710, 8/19/97 (Donald Johnstone) (it is "difficult to have a point forecast that you can rely on"); Tr. at 793, 8/19/97 (Robert D. Knecht) ("energy fuel price forecasting is a very uncertain business and electricity prices are even more uncertain because the market has not yet developed."); Tr. at 1721-25 (Randall Falkenberg) ("the electric utility industry has missed the mark quite often" on important projections).

administratively determined *pro forma* value.⁶ Similar processes have been offered by other intervenor groups. NEV St. No. 1, pp. 3-4, MAPSA St. 1, p. 2.

The Recommended Decision erroneously rejects these proposals. The ALJ's apparent concerns for effective competition (Finding 289) and accurate stranded cost recovery (Finding 290) would be better served under intervenors' true-up proposal than under the Company's point estimate prediction. If, as is likely, the market price turns out higher, the Company reaps a windfall by collecting higher than anticipated market revenues and inappropriately high stranded costs.

EXCEPTION #3

THE ALJ ERRED IN ADOPTING THE COMPANY'S PROPOSED "DEPRECIATION SWAP".

The Recommended Decision would authorize the transfer of \$205 million in depreciation reserve from the transmission and distribution plant accounts to its nuclear generation account. The Recommended Decision has not refuted the Environmentalists' objection to the swap as transferring revenue responsibility from the industrial and commercial classes to the residential class.⁷ This result ensues because industrial customers are allocated a smaller portion of distribution costs than generation costs. The fact that the Company's 1995 cost of service study was not modified to accomplish the swap is completely besides the point.

The attempt to distinguish between the proposed depreciation swap in the instant case and the one recently rejected by the Commission in its PECO restructuring decision is misplaced.

⁶ In the alternative, the Environmentalists have suggested that the Commission encourage PP&L to divest its generating assets. This would enable the market to determine the value of each plant. Environmentalists Statement No. 1, p. 14.

The PP&L proposed depreciation will have very similar results as troubled the Commission in rejecting PECO's proposed depreciation swap: increasing future distribution expenses to subsidize generation costs. PECO Order, p. 97.

The Recommended Decision also dismisses the environmental objection to the depreciation swap, finding it "difficult to imagine" the resulting change in rates to affect customer usage patterns. R.D., p. 75. However, simple common sense suggests that customers who are price sensitive will increase consumption when rates go down. It is precisely this principle which underlies the ALJ's rejection (p. 156) of the Company's Customized Rate Design, intended to encourage marginal energy use.

As noted by Environmentalists' in our Main Brief (p.21), this brand of cost shifting violates the Competition Act which obligates the Commission to ensure that "restructuring of the electric industry does not unreasonably discriminate against one customer class to the benefit of another." 66 Pa.C.S §2804 (7) The depreciation swap should be rejected by the Commission in its Final Order.

EXCEPTION #4

THE ALJ ERRED IN ALLOCATING AN INCREASING SHARE OF GENERATION TO JURISDICTIONAL CUSTOMERS.

The Recommended Decision adopts PP&L's stranded cost methodology which presupposes that as the Company's wholesale contracts expire, the dedicated capacity *automatically* becomes the cost responsibility of Pennsylvania jurisdictional customers. This adjustment should be rejected by the Commission in its Final Order as it imposes an ever-mounting stranded cost burden on retail customers as the Company's bulk power contracts

⁷ Similarly, the swap will result in shifting of cost responsibility to Pennsylvania customers. This results from the fact that a larger proportion of T&D depreciation reserve is allocated to Pennsylvania than with respect to generation

expire. Such an unwarranted shift in cost responsibility will saddle PP&L's jurisdictional customers with an even greater stranded cost burden, while subsidizing PP&L's wholesale business. Environmentalists' Statement No. 1, p. 18.

There are at least three problems with the R.D.'s analysis. First, PP&L has not demonstrated that the capacity represented by these *wholesale* contracts will be necessary to serve *retail* load under the principles of traditional regulation. OCA Statement No. 1 (La Capra), p. 9. Second, especially as regards potentially stranded costs, a retrospective analysis of cost responsibility is appropriate. Here, we are dealing with assets that were built to serve certain loads. As OCA witness LaCapra remarked, "to the extent costs that had been allocated to the wholesale jurisdiction becomes stranded in the future, it is inappropriate to charge these costs to retail customers." *Id.*, p. 9.

Finally, to assimilate resources now dedicated to the wholesale market into the retail revenue requirement, is to fundamentally ignore the paradigm shift engendered by the Competition Act. As Environmentalists' witness Schoengold stated in response to the Company's proposal:

This position ignores the important point that stranded costs are not generating assets, but rather economic losses of no value. Therefore, it makes much more sense to make a jurisdictional allocation of those costs based on the last point at which they did represent generating assets--that is the point in time at which the decision was made to end the generation monopoly, restructure the utilities, and move towards competition.

Environmentalists' Statement No. 1-SR, p. 7.

For the foregoing reasons, the Commission should reject the ALJ's adoption of an escalating PUC-jurisdictional allocation in determining stranded cost levels charged to Pennsylvania consumers.

EXCEPTION #5

PLACING ALL RISKS AND COSTS OF NUCLEAR DECOMMISSIONING ON CAPTIVE CUSTOMERS AS HAS BEEN RECOMMENDED BY THE ALJ IS INEFFICIENT AND INEQUITABLE.

The Recommended Decision errs in adopting PP&L's proposal for recovery of nuclear decommissioning costs as a wires charge over the remaining life in the plant. R.D., pp. 132-135 The Commission should reject this proposal in its Final Order. As Environmentalists argued in its Main Brief, it is unreasonable to have the wires charge be the sole means for funding PP&L's nuclear decommissioning obligations. Environmentalists M.B. p. 32 This would provide a subsidy to the continued operation of the plant, and relieve all incentives for PP&L to control future decommissioning costs. Customers should not be saddled with an open-ended obligation to bear these costs, which are likely to escalate if the nuclear units continue to operate for the next 15 to 25 years as permitted under existing licenses.

The Company currently estimates that it will spend \$724 million (1993 dollars) to decommission its nuclear facilities. Environmentalists' M.B, p. 32. As the unchallenged testimony of Environmentalists' witness Bruce Biewald reveals, this amount is:

- *very uncertain:* Dismantling a large, highly radioactive nuclear unit is a large complex undertaking for which experience is quite limited, and for which regulations continue to evolve. A number of technical, economic and regulatory uncertainties will confound the development of an accurate estimate prior to expiration of the plant's licenses;

- *large and likely to grow.* Decommissioning cost studies conducted by PP&L's consultant demonstrate that decommissioning cost estimates are escalating at an alarming rate, doubling every 7 to 8 years;
- *within the control of PP&L:* There is a clear relationship between routine plant operation and future nuclear decommissioning costs. Running the plant today in a very clean manner (e.g., regular decontamination of equipment, removal of radioactive waste) will somewhat increase current operating costs, but lower decommissioning costs. Good planning and cost control measures for the decommissioning process that reduce the total exposure for decommissioning would translate into stranded cost reductions. Unfortunately, PP&L has offered no evidence that it has in place a program to minimize the costs of its nuclear deconstruction program. Environmentalists Statement No. 2, pp. 30-33.

Thus, Environmentalists recommended the adoption of an incentive framework in which the risks of future nuclear decommissioning cost escalations are shared between customers and shareholders. Additionally, Environmentalists recommended that PP&L be required to develop a plan for mitigation of its decommissioning costs, setting forth, among other things the procedures that the Company will put in place to ensure that the plant is operated in a way that the decommissioning cost obligation is not increased.

The Environmentalists' proposal was rejected on two grounds by the ALJ. First, the ALJ concluded that the Environmentalists risk-sharing proposal is inconsistent with the Act, which the Judge seemingly interprets as affording the Commission no latitude on nuclear decommissioning cost recovery. R.D. at 134. This is a misread of the Act. First, the Environmentalists' proposal is completely consistent with the duty placed on the utility to mitigate generation-related stranded costs. 66 Pa.C.S. §2808 (c)(4) Second, as with utility costs

generally, there is no special entitlement to the recovery of nuclear decommissioning costs. As set forth more fully above, the Act does not alter the traditional ratemaking standards of reasonableness insofar as recovery on potentially strandable costs are concerned.

A second ground stated by the Recommended Decision in rejecting the Environmentalists' risk-sharing proposal, is that it might trigger NRC financial assurance obligations. Environmentalists submit that NRC financial assurance obligations should not take precedence over the interests of equitable distribution of nuclear decommissioning costs. Putting customers on the hook for all future decommissioning costs is neither efficient nor equitable.

Finally, the Recommended Decision draws an unwarranted parallel between the PP&L proposal and the nuclear decommissioning cost recovery mechanism adopted for PECO. Unlike PECO, the Recommended Decision would permit PP&L to collect not only its existing under-recovery, but all estimated decommissioning costs over the remaining life of the Susquehanna nuclear facility. PP&L Statement No. 3, p. 14. In contrast to the PECO mechanism -- which shifted future decommissioning responsibility to the plant owner⁸ -- the wires charge mechanism endorsed by the RD will have the effect of subsidizing the continued operation of the plant, and relieve from PP&L any responsibility to control decommissioning costs.

For the foregoing reasons, the Commission should modify the Recommended Decision by rejecting the proposed distribution charge for funding PP&L's future nuclear decommissioning costs. Any disposition of this issue must: 1) include a requirement that PP&L develop and follow a plan to mitigate decommissioning costs and 2) involve some sharing of responsibility by shareholders for the cost of decommissioning its nuclear capacity.

⁸ The Commission agreed with the PECO position that "[PECO], or its affiliate or future owners of each plant, should be responsible for that portion of the decommissioning costs related to its remaining useful life." PECO Order, p. 78.

EXCEPTION #6

THE ALJ ERRS BY FAILING TO FOLLOW COMMISSION POLICY ON CLASS-BASED CTC RECONCILIATION.

In the recent PECO decision, the Commission directed PECO to reconcile CTC revenue requirement with actual revenues received on a class basis. PECO Order, p. 112 The Commission concluded that a class-based reconciliation was necessary "in order to minimize any possible cost shifting" that results from the classes' differing level of demand growth over the transition period." Id.

Environmentalists' take strong exception to the ALJ's conclusion that this issue "be given fresh consideration" in the instant proceeding. R.D., p. 152, fn. 49. Nothing in the record or Act compels reversal of the policy enunciated by the Commission in PECO, or in its uneven application across utilities. The annual reconciliation called for under § 2808(f) must be read consistent with, and is controlled by, the general prohibition against inter-class cost shifting set forth in § 2808 (a). Thus, the fact that § 2808(f) is itself silent on this issue is inapposite.

The OCA proposal for CTC reconciliation by rate class should be adopted by the Commission here, as it was in PECO.

EXCEPTION #7

THE ALJ'S REJECTION OF ENVIRONMENTAL DISCLOSURE WILL INHIBIT CUSTOMER CHOICE OF RENEWABLE ENERGY OPTIONS.

Environmentalists except to the ALJ's rejection of the requirement that all retail suppliers provide accurate, verifiable and uniform information about the sources and environmental impacts of the power they sell. R.D. p. 201-2 The generation of electricity has tremendous impacts on the environment and survey data indicates that customers are interested in the environmental implications of their electricity purchases. Environmentalists' Statement No. 2,

pp. 9-10. Only by requiring environmental disclosure can the Commission ensure that customers have the ability to make informed and meaningful choices in a competitive marketplace.

The ALJ juxtaposes the Commission's recent endorsement of fuel mix disclosure to Environmentalists' proposal for fuel mix *and* environmental disclosure, contending that [t]he Commission's rulemaking is a more workable system than the one proposed by [Environmentalists]." R.D., p. 202. However, the two mechanisms are entirely complementary. Both will require a system of tracking transactions to attribute generation at power plants to sales at retail. As Environmentalists's witness Bruce Biewald testified, " it is a relatively simple matter to extend the fuel mix disclosure system to key environmental attributes since the basic protocols for tracking will be in place." Environmentalists' Statement No. 2-S, p. 2.

More importantly, the ALJ erroneously finds that fuel mix disclosure alone will satisfy consumers' basic informational needs. R.D., p. 202 This is simply not the case. Electricity generation is responsible for a host of land-, water-, and air-related environmental costs and risks. These environmental considerations are related to, but not entirely addressed by fuel mix disclosure. Environmentalists M.B., p. 71.

Finally, the ALJ rejects environmental disclosure because the Commission lacks the power "to require" the PJM ISO to implement environmental disclosure. R.D., p. 202 This is clearly an insufficient basis upon which to reject environmental disclosure. The fuel mix disclosure protocol recently proposed by the Commission, Customer Information Disclosure for Electricity Providers, Docket No. L-00970126, *Pa. Bulletin* 501-507, January 31, 1998, requires a similar degree of cooperative federalism. Moreover, as other PJM states such as New Jersey⁹

⁹ See, e.g., New Jersey Board of Public Utilities, Restructuring the Electric Power Industry in New Jersey: Findings and Recommendations, Docket No. EC94120585Y, April 30, 1997, p. 134 ("We endorse and will explore the development of a rating system to allow customers to compare the environmental impact of different suppliers.

move to mandatory environmental disclosure, the ISO will be obliged to implement a system of tracking in accord with state rules.

Environmentalists' urge the Commission to require suppliers to disclose the environmental impacts of their respective portfolios. In the alternative, the Commission should include such a requirement in its final rule on customer information disclosure.

EXCEPTION #8

THE ADMINISTRATIVE LAW JUDGE ERRED IN REJECTING THE PROPOSED RENEWABLE ENERGY PILOT.

The ALJ declines to take the Commission's lead in the PECO restructuring case and direct PP&L to fund a renewables pilot program. This abrupt policy shift is premised on the ALJ's misread of the Competition Act and the Commission's clear intentions as set forth in its final guidelines for universal service programs.

§2803 of the Electric Generation Customer Choice and Competition Act defines universal service and energy conservation to include renewables. Finding that the application of renewable resources is a requirement of the Act, the Commission encourages the development of renewable energy pilots in its Final Order Re: Guidelines for Universal Service and Energy Conservation Programs Made Pursuant to 66 Pa. C.S. 2803, 2802(17), 2804(8) and 2804(9), Appendix B, Section B 2, p. 30. (Docket No. M-00960890F0010) Indeed, contrary to the ALJ's belief, the Final Order does in fact state that the application of renewable resources is a requirement of the Act.

The ALJ mischaracterized the program sought by Ms. Brockway and the Environmentalists. A renewable energy pilot would not represent "research and development."

Energy providers could be required to identify sources of purchased energy, including emission rates and/or other

Rather, the solar photovoltaic and solar thermal technologies contemplated for the program are already in existence and available for residential application. The program would provide for the deployment of renewable energy technologies on a scale not seen before in this state and would provide useful information about the distribution needs and net metering requirements of these applications in the low-income residential context. The Environmentalists suggest that a renewable pilot is a highly desirable, forward-thinking additional tool for low income usage reduction, especially in this heavily electric-heat territory. The Commission should require a pilot as it has done in the PECO decision.

EXCEPTION #9

THE ADMINISTRATIVE LAW JUDGE ERRED IN ACCEPTING PP&L'S ANALYSIS AS TO THE APPROPRIATE LEVELS OF PARTICIPATION IN UNIVERSAL SERVICE AND CONSERVATION PROGRAMS.

Judge Kashi reiterates PP&L's position that CEO witness Mr. Kuennen overestimates the problem of unaffordable energy (and the corresponding need for universal service and conservation measures) by including all 177,000 low income households regardless of their payment history in his analysis. R.D. p, 197. Dismissing Mr. Kuennen on this basis misses the point. It is merely suggested that poverty is a widespread condition in the territory and that serving only a fraction of the actually payment-troubled households is unacceptable in light of the much larger number who are clearly needy in terms of Keep Warm and could become payment-troubled very easily.

The ALJ's opposition to increases in the number of participants based on the company's claims of impracticality is simply unsupported. PP&L is a company perfectly capable of managing accounts for a customer base of 1.2 million with many diverse needs which are also

information which may be necessary.").

serviced by the company, and yet it is asserted they cannot handle identifying less than 20,000 of them for a special program. Such a claim is particularly disconcerting when one considers that PP&L is currently planning structural expansions of its On Track program, "ramping up" from 1,040 to 10,000 participants in three years.

In embracing PP&L's view, Judge Kashi states the funding levels sought by consumer parties were not envisioned in the Act, and he cites to Pa. C. S. §2802(10) for support. Yet that subsection merely requires the continuation of currently available universal service and conservation program levels as the *minimum* responsibility of an electric distribution company. Furthermore, §2804(9) of the Act states, in pertinent part:

"The commission shall ensure that universal service and energy conservation policies, activities and services are *appropriately funded* and available in each electric distribution territory."

(Emphasis added.)

The meaning of the word "appropriately" is not indicated, but there is no reason to believe that it is artificially tethered to a description of existing universal service and conservation programs. A more reasonable interpretation is that appropriate funding is that level of funding which approximates the need. Otherwise, the Commission is asked to accept that under a policy goal to assist low-income populations to maintain a service "essential to health and well-being" (66 Pa C.S. 2802(9)) it is "appropriate" to leave the vast majority of financially eligible and payment-troubled customers without assistance.

The Commission should require annual funding of On Track at its Final Guidelines level of 0.5% of operating revenue, or \$11.7 million, and for Keep Warm and WRAP at the Commission on Economic Opportunity figure of \$7.2 million.

EXCEPTION #10

THE ADMINISTRATIVE LAW JUDGE ERRED IN ACCEPTING PP&L'S ARGUMENTS FOR EXCLUDING BASELOAD ONLY CUSTOMERS FROM THE WRAP PROGRAM.

The ALJ rejects (p.199) proposals for extension of the WRAP program to baseload-only customers, leaving a significant gap in the conservation benefits that might otherwise be received by non-space heating, low-income customers. Under the ALJ's decision, 2/3 of the households will be passed over for consideration if an electric heat home is the prerequisite. OCA St. 6 at 33. There is nothing in 69 Pa. Code § 58.10, cited by the ALJ, that would be inconsistent with the extension of WRAP to baseload-only customers. Thus, several conservation programs, including but not limited to, identifying and replacing inefficient refrigerators are consistent with the Code's emphasis on the greatest opportunities for bill savings among the low-income population. The Commission should increase the WRAP funding level to allow baseload-only customers to participate.

EXCEPTION #11

THE ADMINISTRATIVE LAW JUDGE ERRED IN ACCEPTING PP&L'S CONDITIONS UPON SUPPLIER CHOICE FOR ON TRACK RECIPIENTS.

The pursuit of universal service for economically struggling residents will be achieved more readily where programs address not only affordability but also encourage customer choice. Universal service and conservation program benefits must be portable. OCA St. No. 6, pp. 46-47. The course prescribed in the Recommended Decision may effectively deny participants the ability to choose a supplier.

The ALJ has adopted (RD, p. 200) PP&L's argument that suppliers must reduce the energy charges by amounts equal to PP&L's 53% on-average On Track reductions because such a step is deemed equitable and because without a proportional energy reduction the amount available in the participant's payment for T & D would be less than zero. In the very next paragraph the Judge acknowledges the generation portion of the bill is only 25%. Presuming the accuracy of these numbers, roughly half of a participant's expected payment would still flow to PP&L to cover T & D charges, and therefore, the second half of the judge's conclusion is invalid. With regard to the equitable concern raised, the funding for On Track reductions comes through non-bypassable rate mechanisms authorized by the Commission and collected by PP&L. The Act provides for full recovery of universal service and conservation program costs to electric distribution companies in this manner. 66 Pa. C. S. 2802(17) Consequently, it is difficult to see how the ALJ can find equity in calling upon suppliers--who have no power to collect such rates--to accept reductions to their charges for which no reimbursement is forthcoming, or contribute to utility write-offs for "revenue shortfalls" met by ratepayers.

Preventing choice for this many customers runs counter to the development of a healthy competitive market and therefore the Commission should reject PP&L's conditions.

EXCEPTION #12

THE ALJ TOOK AN OVERLY NARROW VIEW OF THE COMMISSION'S AUTHORITY IN REJECTING ENVIRONMENTALIST'S RECOMMENDATION FOR AN EMISSIONS PORTFOLIO STANDARD.

In our direct case, the Environmentalists called on the Commission to consider the many linkages between economic and environmental policy as it undertakes a restructuring of the electric industry. In particular, we urged the Commission to be vigilant to the threats that differential environmental regulatory standards will have on the development of a robust and

competitive generation market, and on the environmental health and sustenance of the Commonwealth. Environmentalists Statement No. 1, pp. 34-37 We called on the Commission, in exercising its authority to license and regulate "electricity suppliers", to require a certification by such suppliers that the power they sell has been generated by plants meeting Pennsylvania's more exacting standards applicable to new sources (hereinafter referred to as "emissions portfolio standard" or "EPS").

The Recommended Decision offers three arguments for rejecting Environmentalists' proposal for an emissions portfolio standard. First, the R.D. contends that the Commission lacks jurisdiction to implement an EPS. R.D., p. 202 Second, the R.D. points to the significant capital expenditures that PP&L anticipates making in the near future to meet applicable environmental regulations. R.D., p. 203 Third, the R.D. argues that there is no evidence supporting a "claim that existing plants enjoy a competitive advantage under the current environmental regulatory scheme." R.D., p. 203

As discussed below, these objections have no basis in law or fact and should be dismissed. There is ample evidentiary and legal support for the Commission to adopt Environmentalists' proposed Emission Portfolio Standard.

First, the R.D.'s contention that there is no support for Environmentalists' claim of uneven environmental regulation between older and newer sources of generation is belied by the language of the Competition Act. Contrary to the R.D., the General Assembly explicitly found that:

Under Federal and State clean air laws and regulations, electricity generators located in states to the west and south of this Commonwealth are not subject to requirements as stringent as those which apply to generators...operating in this Commonwealth and that different regions within the Commonwealth are subject to varying emissions requirements. Under some scenarios, competition among

electricity generators located in different states and different regions within this Commonwealth could make it more difficult for areas in this Commonwealth to demonstrate attainment with Federal and State air quality standards.

Second, the cases cited by the Recommended Decision for the proposition that the PUC has limited authority in the environmental area are readily distinguishable. In both Country Place Waste Treatment Co., Inc. v. Pa. P.U.C., 654 A. 72 (Pa. Commonwealth Ct. 1995) and Rovin v. Pa. P.U.C., 502 A. 2d 785 (Pa. Commonwealth Ct. 1986) the Commission was acting on complaints filed by the respective petitioner to abate nuisances emanating from the respondents' facilities. In both cases, the Commonwealth Court found that the Commission lacked broad environmental enforcement authority.

By contrast, Environmentalists' proposal amounts to no more than an additional condition on electricity suppliers in order to receive a license to do business in Pennsylvania. Such a condition falls squarely within the PUC's purview under 66 Pa.C.S. § 2809 (Requirements for electric generation suppliers); to wit:

(b)...

A license shall be issued to any qualified applicant, authorizing the whole or any part of the service covered by the application, if it is found that the applicant is fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations of the commission under this title, including the commission's regulations regarding standards and billing practices, *and that the proposed service, to the extent authorized by the license, will be consistent with the public interest and the policy declared in this chapter...*

66 Pa. C.S. §2809(b) (italics added).

Further, the R.D. correctly identifies § 2802(21) as an explicit grant of authority for the Commission to work with state regulators to promote changes to federal law and regulation

creating disparate environmental standards. However, contrary to the R.D., nothing in § 2802(21) should be construed as taking away the Commission's plenary jurisdiction over the terms and conditions of power supply offered in the Commonwealth. While the Commission may not have direct authority over environmental problems, it can exercise its oversight of the Pennsylvania electric industry restructuring process in a manner that does not exacerbate environmental problems.

Third, the Clean Air Act Amendment's (CAAA) phase-in of additional control requirements that affect PP&L's generation improves, but does not eliminate, the imbalance between old and new generation. Significant disparities in control costs and emissions rates will continue notwithstanding the CAAA. There is ample record evidence, including the prior sworn testimony of PP&L's own witness, to support the Environmentalists' claim that older plants derive a significant competitive advantage by virtue of their exemption from more stringent Clean Air Act requirements. Thus, the whole thrust of PP&L witness Tierney's New Jersey testimony was to suggest ways of eliminating a "gross distortion in the present market [represented by] the subsidy enjoyed by older plants in New Jersey and elsewhere in the region that have been grandfathered from the full effect of clean air laws." Exhibit DS-6, pp. 7-8¹⁰

In sum, the Commission has ample authority to institute Environmentalists' proposal for an emissions portfolio standard. Adoption of such a measure will ensure that electric industry

¹⁰ As further noted by Dr Tierney:

Newer generating plants...operate according to much more stringent standards. Many older plants have been sheltered from modern environmental standards, under the expectation that these plants would be retired before long, and would be replaced over time by a fleet of cleaner plants. This assumption no longer is valid as we stand on the eve of a more competitive electricity market. We now expect that many existing plants, because of their economics and their insulation from clean air laws, will continue to operate well beyond their original retirement dates. Without an incentive to induce electric generators to operate under comparable emissions standards, those generators that are subject to less stringent environmental standards will have an undue advantage in the competitive generation market -- an advantage that we think the Board should remove.

restructuring will not disadvantage newer, cleaner technologies and further degrade

Pennsylvania's air quality.

EXCEPTION #13

THE ALJ ERRED IN REJECTING, SUB SILENTIO, THE ENVIRONMENTALISTS' RECOMMENDATION THAT THE EDC PURSUE THE LEAST-COST DISTRIBUTION INVESTMENTS.

The Recommended Decision's rejects, without discussion, the Environmentalists' proposal to require PP&L' Electric Distribution Company ("EDC") to analyze and implement cost-effective alternatives to distribution investments. The Environmentalists' urge the Commission to adopt, as part of its Final Order in this proceeding, a requirement that PP&L's EDC undertake a regular, formal and systematic review of the least expensive means of meeting distribution system needs.

While restructuring will eventually bring many changes to PP&L's current customers, there will still be a regulated local distribution company responsible for bringing power from distant generators into homes, businesses, and public buildings. Moreover, because the local distribution system will remain a monopoly for the foreseeable future, the Commission will need to ensure that distribution costs are no higher than necessary.

Simply assuming that expanding the distribution infrastructure is the appropriate solution to system needs may well lead to higher costs to customers and negative impacts to the environment. Environmentalists' Statement No. 1, pp. 31-2. In certain situations, energy efficiency and distributed generation (e.g., fuel cells, solar panels) may be more cost-effective.

The Commission should require PP&L to prepare annual forecasts of distribution system budget requirements and to evaluate and implement cost-effective technologies as alternatives to major distribution system upgrades, expansions, or additions.

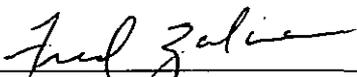
III. CONCLUSION

For the reasons set forth above, Environmentalists respectfully requests the Commission to adopt its exceptions to the Recommended Decision.

Respectfully submitted,

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Dated: April 24, 1998

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have on the 24th day of April, 1998, served the enclosed document in the above-referenced docket upon the following persons, in the manner specified and on the dates indicated:

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R-973954

April 24, 1998

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RE: Exceptions To Recommended Decision of
PP&L's Application For Approval of
Restructuring Plan

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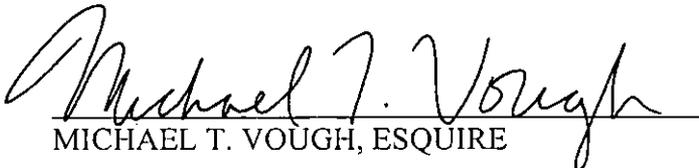
To Whom It May Concern:

Please find enclosed an original and nine (9) copies of the Exceptions that I wish to file on behalf of the Commission On Economic Opportunity (CEO). Also enclosed, please find an original certificate of service indicating the appropriate parties that are being served the aforementioned Exceptions.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

VOUGH & ASSOCIATES


MICHAEL T. VOUGH, ESQUIRE

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cc: see respective service list

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKET NO. R-00973954

EXCEPTIONS OF CEO

The Commission of Economic Opportunity
165 Amber Way
Wilkes-Barre, Pennsylvania 18701

ACTIVE INTERVENER AND COMPLAINANT

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PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Dated: April 24, 1998
Date Due: April 27, 1998

ORIGINAL

I. INTRODUCTION

The Commission on Economic Opportunity (CEO) has been a Complainant and active party throughout this proceeding. CEO has a long history of advocating for low income and elderly rights in such proceedings. Along with numerous other parties, we invested considerable time and effort in developing and presenting expert testimony and our brief in support of these very important issues. The fundamental premise of CEO's involvement in this proceeding was to ensure that there will be adequate protections for low income and elderly PP&L customers in the approved plan of PP&L to restructure under Section 2806 of the Public Utility Code.

On April 1, 1998, a Recommended Decision in this case was issued by Administrative Law Judge George M. Kashi. These Exceptions to the Administrative Law Judge's Recommended Decision are filed in accordance with the instructions issued April 7, 1998.

II. SUMMARY

The ALJ accepts the company's Universal Service proposals as appropriate even though needs assessment evidence clearly demonstrates PP&L's plan to be deficient in terms of participation and funding. The Recommended Decision fails to recognize the intent of the Governor and General Assembly in wording of the Customer Choice Act that low income citizens are to be protected as the industry restructures. PP&L's Universal Service and Energy Conservation Plan limits program participation and funding, thereby leaving substantial numbers of its low income customers unprotected and subject to the whim of market forces.

The decision ensures that PP&L's restructuring plan does not result in "stranded

stockholders” by finding \$4,500,000,000 in stranded costs and approving recovery of \$4,000,000,000 through a CTC, much of which will be paid by PP&L’s 177,000 to 210,000 low income customer households. But it does little to ensure that those same low income customers do not become “stranded ratepayers”.

III. EXCEPTIONS.

Exception No.1 **The ALJ erred in finding that the funding levels proposed by the intervenors are not supported by the Act or the evidentiary record in this case. (AJL Recommended Decision p 53, Number 408).**

The Customer Choice Act states that:

- Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and *electric service should be available to all customers on reasonable terms and conditions* (emphasis added, § 2802(9));

The Act also charged the Commission with ensuring that:

- *Universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory.* These policies, activities and services shall be funded in each electric distribution territory by non-bypassable competitively neutral cost recovery mechanisms that fully recover the costs of universal service and energy conservation services. (emphasis added, § 2804 (9));

In its Final Order issuing Guidelines for Universal Service and Energy Conservation Programs, the Commission explicitly stated that programs should be meaningful and strong, and that participation and funding should be determined through a process that addresses:

- Identification of existing and proposed efforts;

- Needs assessment of the market for and acceptance of universal service programming in the territory;
- Identification of the greater of the current level of spending or the amounts included in existing rates to support existing efforts; and
- Other statutory mandates and these guidelines.

Further, the Commission made it clear in that expenditures for universal service and energy conservation programs must be examined in conjunction with other requirements of the Act, and EDCs are not to determine universal service and energy conservation funding levels after other funding requirements are met.

PP&L data showed that PP&L has at least 177,000 low income households in its service territory for which we should be concerned. (CEO St. 1, p. 6). CEO estimated this figure at between 198,000 and 210,000 based upon an objective needs assessment utilizing U.S. Census data for PP&L's service territory. (Id.) This estimate was not disputed by PP&L. (PP&L St. 16-R, p. 7). PP&L also stated that at least 33%, or 58,000 of its low income customers are also payment troubled. (PP&L Filing Requirement, RP-P.7, CEO St. 1, p. 7).

Despite the level of need, the ALJ endorsed PP&L's proposal to limit LIURP services to 2,500¹ households annually, and funding at \$3,000,000. (PP&L St. 16, p. 18). Further, the ALJ endorsed PP&L's proposal despite the fact that it failed to recognize the legitimate needs of low income water heat and baseload customers in its service territory.

In testimony, CEO showed that an "appropriately funded and available" LIURP would be one that conservatively targeted 7% of PP&L low income population for LIURP service each year, and one that provided service to all low income customer classes based on representation

¹Equals \$3,000,000 proposed funding / PP&L's \$1,200 historical per household LIURP cost; historical data from CEO St. 1, Exh. CRK-13).

within PP&L's service territory. (See CEO Sts. 1, 1SR, 2, 2SR, 3, and 3SR).

PP&L seeks to limit annual CAP participation to 10,000, and its annual CAP budget to \$9,100,000. (PP&L St. 16, p. 18). These figures equate to a CAP participation target of only 5.6%² of PP&L's income eligible population, with an average CAP household benefit of \$910.00.³ PP&L conceded that at least 33%, or 58,000 of its low income customers are also payment troubled. (PP&L Filing Requirement, RP-P.7, CEO St. 1, p. 7).

Exception 2: **The AJL erred in finding that because PP&L has the highest electric heat saturation rate of the eight major Pennsylvania electric utilities, PP&L has properly chosen to focus its weatherization activities on electric heat customers. AJL Recommended Decision, p. 54, Number 418).**

CEO established that, contrary to PP&L's general assertion that it is more cost-effective for it to concentrate nearly all of its LIURP dollars on electric heat customers, PP&L could develop and implement cost effective water heat and baseload only programs. (See CEO Sts. 3 and 3SR).

Also, the Customer Choice Act declares that "electric service should be available to all customers on reasonable terms and conditions" (§2802(9)), and LIURP is the means by which to help ensure such. Finally, as established in this proceeding, PP&L has at least 122,000 low income baseload customers that are essentially being denied LIURP services, despite the fact that cost-effective programs are available. (CEO St. 1, p. 12). Taken together, these facts suggest that an "appropriately funded" and "appropriately available" PP&L LIURP program would be

²Equals 10,000 / 58,000.

³Equals 9,100,000 / 10,000

required to recognize the legitimate needs of these 122,000 low income customers.

Exception 3: **The ALJ erred in finding that the intent of the act is solely to restructure the electric utility industry to reflect competitive forces in the marketplace. (ALJ Recommended Decision, p. 53, Number 409).**

This finding is contradicted by the excerpts of the Act cited in Exception 1, which clearly signify the intention of the Governor and General Assembly to protect low income citizens as the industry restructures. It allows for expansion of Universal Service Programs by referring to the existing programs as that level which must be continued *at a minimum*.

Exception 4: **Developing, implementing, and evaluating the OCA's proposed pilots would be time consuming and expensive for the level of benefits received, and therefore should be rejected. (ALJ Recommended Decision, p. 56, Number 433).**

In essence this is the purpose of a “pilot”, to determine whether, in fact, the technology is feasible, meaningful and cost-effective.

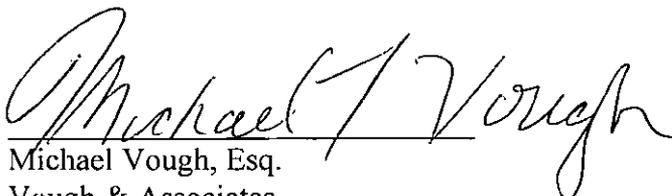
IV. CONCLUSIONS

For the reasons stated above, we believe Judge Kashi erred in accepting the proposal for Universal Service as offered by PP&L in total and not considering the objective needs assessment offered by the Commission on Economic Opportunity, AARP and the Office of Consumer Advocate in the proceedings. We ask the Commission to provide modest increases to the companies Universal Service Programs with the following stipulations:

	<u>1999</u>	<u>2002</u>	<u>2005</u>
LIURP	\$ 3,000,000	\$ 3,750,000	\$ 4,500,000
Keep Warm	\$ 1,000,000	\$ 1,500,000	\$ 2,000,000
CAP	\$ 9,000,000	\$10,500,000	\$12,500,000

- PP&L should establish a Universal Service Renewable Energy Demonstration Project. The aforementioned program will be a PP&L funded renewable energy retrofit program established in order to demonstrate examples of working solar systems in de-centralized residential applications that reinforce green marketing efforts for benign electricity generation. Community Based Organizations from the PP&L distribution service area with a background in providing low income energy services will be asked to respond to a request for a proposed amount of two hundred and fifty thousand dollars (\$250,000.00) per year, for each of four (4) years, in order to fund a mix of renewable applications of twenty-five (25) low income homeowners per year. Although the retrofits would be limited to the homes of low-income residents in order to leverage other residential retrofit resources, it should be recognized that the community at large will benefit as the visibility of these projects will raise awareness and reinforce other attempts necessary for market transformation.
- The operation of all components of the respective Universal Service programs shall be assigned to Community Based Organizations;
- All appropriate funds budgeted for the respective programs must be utilized within the year allocated or be otherwise rolled over into the following year;

Respectfully submitted,



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For
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Dated: April 24, 1998

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: R-00973954

PENNSYLVANIA POWER AND LIGHT
APPLICATION FOR APPROVAL OF RESTRUCTURING PLAN

THE COMMISSION ON ECONOMIC OPPORTUNITY'S
CERTIFICATE OF SERVICE

I, Michael T. Vough, Esquire, hereby certify that on this day, April 24, 1998, I served true and exact copies of the Commission On Economic Opportunity's Exceptions To The Recommended Decision upon the active participants to this action listed below by providing the same to their respective addresses:

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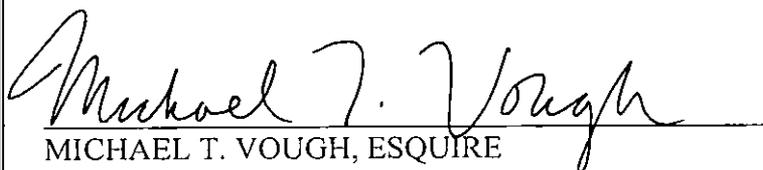
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DATED THIS DAY, April 24, 1998:



MICHAEL T. VOUGH, ESQUIRE
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ANTHRACITE REGION INDEPENDENT POWER PRODUCERS ASSOCIATION

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April 24, 1998

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APR 24 1998

PA PUBLIC UTILITY COMMISSION
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Re: Application of Pennsylvania Power & Light Company for
Approval of a Restructuring Plan
Docket No. R-00973954

BY FEDERAL EXPRESS

Members:

Archbald Power Company
Archbald, PA

Ebensburg Power Company
Ebensburg, PA

Foster Wheeler Mt. Carmel, Inc.
Mt. Carmel, PA

Gilberton Power Company
Frackville, PA

Inter-Power/Ahicon Partners, LP.
Colver, PA

Northeastern Power Company
Mc Adoo, PA

Penther Creek Partners
Nesquehoning, PA

Schuykill Energy Resources
Shenandoah, PA

U. S. Generating Company
Northampton, PA

U. S. Generating Company
Scrubgrass, PA

Westwood Energy Properties
Tremont, PA

Wheelabrator Frackville Energy Co.
Frackville, PA

Dear Mr. McNulty:

Enclosed for filing please find the original and nine (9) copies of the Exceptions of the Anthracite Region Independent Power Producers Association to the Recommended Decision of Administrative Law Judge Kashi.

Copies of this document are being served upon the parties to this proceeding in accordance with the attached Certificate of Service.

Very truly yours,

Billie E. Ramsay
Billie E. Ramsey

Enc.

cc: As per Certificate of Service
Administrative Law Judge George M. Kashi

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Affiliate Member:

Air Products & Chemicals, Inc.
Cambria, PA

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF THE ANTHRACITE REGION
INDEPENDENT POWER PRODUCERS ASSOCIATION TO THE
RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE KASHI

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I. INTRODUCTION

APR 24 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

1. The Anthracite Region Independent Power Producers Association ("ARIPPA") is a trade association comprised of eleven Pennsylvania waste coal-fired power plants, all of which are selling wholesale power to Pennsylvania electric utilities under long-term contracts that have been approved by the Public Utility Commission ("Commission"). Five (5) ARIPPA members are selling power to Pennsylvania Power & Light Company ("PP&L") as follows: Foster Wheeler Mt. Carmel, Inc.; Gilberton Power Company; Northeastern Power Company; Schuylkill Energy Resources, Inc.; and Wheelabrator Frackville Energy Co., Inc.

2. ARIPPA intervened in the above-captioned proceeding, as did two of its individual members. These two members, Gilberton Power Company ("GPC")

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and Schuylkill Energy Resources ("SER"), actively participated in the proceeding before the Administrative Law Judge ("ALJ"), and filed a brief and a reply brief for his review and consideration. ARIPPA filed a letter in lieu of a brief indicating that it was joining in the brief filed under separate cover by GPC and SER.

3. The critical issue to ARIPPA in this proceeding is the need for a mechanism whereby projected payments to qualifying facilities ("QFs"), also known as "non-utility generators" ("NUGs") or "independent power producers" ("IPPs"), continue to be reconciled with actual payments. The reasons underlying the need for such a true-up mechanism were briefed extensively by GPC and SER. "Of particular concern to [GPC and SER] and other NUGs is the possibility that PP&L might be tempted, by the prospect of pocketing hundreds of millions of dollars with no business risk, to put economic pressure on its independent wholesale suppliers, whether operationally or through bogus regulatory compliance litigation, to force them into compromising their PURPA contract rights for sums substantially less than PP&L's aggregate CTC income attributable to these contracts. Under such a scenario, unless the commission were to step in and disallow PP&L's further recovery of stranded costs attributable to NUG contract avoidance, the utility would reap unconscionable financial rewards." GPC/SER Replay Brief at 7. The need for a true-up mechanism was characterized by GPC/SER as the issue of "paramount concern" to them.

4. Similarly, ARIPPA's letter of February 10, 1998 indicating that it was joining in the brief filed by GPC and SER stated that "ARIPPA in particular supports the need for a true-up mechanism for payments that are made under contract with independent power producers ("IPPs"). Without such a true-up mechanism, PP&L would have an economic incentive to curtail or eliminate purchases from IPPs through inappropriate means, thereby allowing PP&L to retain projected payments as a windfall to shareholders."

5. Despite the importance of this issue to the waste coal projects selling power to PP&L, and the emphasis placed on this issue by GPC, SER and ARIPPA, the ALJ's Recommended Decision does not even address it.

II. THE COMMISSION MUST CONTINUE THE CURRENT PRACTICE OF MATCHING RATE RECOVERY BY PP&L TO ACTUAL PAYMENTS TO IPPS.

1. The absence of a true-up mechanism for payments to IPPs would, ARIPPA submits, lay the groundwork for future unwarranted attacks upon IPP contracts. In the absence of a true-up mechanism, PP&L would have a huge economic incentive to devise, by inappropriate means, the curtailment or discontinuance of power purchases from waste coal and other IPPs.

2. Payments to IPPs always have been recovered by PP&L and other utilities from ratepayers on a dollar-for-dollar basis through the Energy Cost Rate ("ECR") mechanism. Under the current practice, which has worked flawlessly, PP&L has recovered from PP&L ratepayers no more and no less than the amounts actually paid to IPPs. Conversely, PP&L ratepayers never have paid more than the actual costs incurred for power delivered by IPPs to the grid. Unlike utility plants in rate base, IPPs rather than ratepayers have always borne the risk of operational failures. If IPPs do not run, they are not paid.

3. There is no bar in the Electric Generation Customer Choice and Competition Act ("Act") to the continuation of a true-up mechanism for payments to IPPs. In fact, Metropolitan Edison Company and Pennsylvania Electric Company (collectively "GPU") have proposed a true-up mechanism for payments to IPPs in their restructuring proceedings at Docket Nos. R-00974008 and R-00974009, respectively. ARIPPA is supporting the GPU companies' efforts to continue an ECR-type mechanism for recovering payments to IPPs.

4. It would be a mistake for the Commission to assume that IPPs are sufficiently protected by their existing, Commission-approved contracts, and that the absence of a true-up mechanism would not substantially threaten their continued viability. By all appearances, Grays Ferry Cogeneration Partnership felt secure in relying upon its Commission-approved contract, and did not feel

threatened by PECO Energy Company's ("PECO") restructuring proceeding, where NUG contract costs were not even an issue. As the Commission is aware, within a few short weeks of the Commission's final order in the PECO restructuring proceeding, PECO informed Grays Ferry that it would not purchase power from the project under the parties' Commission-approved contract. Litigation over this matter is continuing. Grays Ferry Cogeneration Partnership v. PECO Energy Company, Civil Action No. 98-1243, 1998 WL 129934 (March 19, 1998) (Memorandum and Order of Judge Dalzell, U.S. District Court, E.D. Pa., dismissing complaint for lack of subject matter jurisdiction); Grays Ferry Cogeneration Partnership v. PECO Energy Company, Court of Common Pleas of Philadelphia County, April Term, 1998, No. 544 (Complaint filed April 9, 1998).

5. PECO exercised the regulatory out clause in its contract with Grays Ferry based on the supposed "denial" by the Commission of its continued ability to recover contract payments from ratepayers. PECO's apparent underlying motivation was that of avoiding the contract payments to enhance its own economic position.

6. In PP&L's case, PP&L has made a claim for stranded costs attributable to future contract payments to IPPs. However, in the absence of true-up mechanism, PP&L would be able to continue collecting these IPP stranded costs regardless of whether PP&L actually incurred the costs by making payments to

IPPs. Therefore, if an IPP were forced to curtail or cease operations, or if PP&L refused to make contract payments for delivered power, in the absence of a true-up mechanism PP&L would retain the IPP stranded costs as a windfall profit.

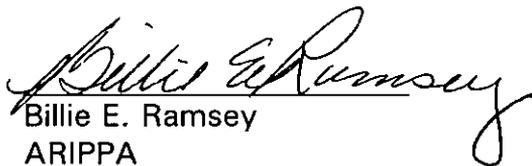
7. The Grays Ferry case illustrates the lengths to which utilities may go to avoid contract payments to IPPs if there is an economic incentive to do so. ARIPPA simply is requesting that the Commission remove the economic incentive for “contractual gamesmanship” through the continuation of a true-up mechanism.

8. A true-up mechanism for IPP payments will not harm ratepayers and, in fact, will shield them from stranded costs that are not actually incurred by PP&L. A true-up mechanism will not harm PP&L, which will be assured that it will recover all future payments to IPPs under existing, Commission-approved contracts. Finally, a true-up mechanism for IPP payments will provide ARIPPA’s members the regulatory framework to support the contractual security required to remain in operation.

III. CONCLUSION

For the foregoing reasons, ARIPPA respectfully excepts to the ALJ's Recommended Decision and requests that the Commission require PP&L to include a true-up mechanism for payments to IPPs as part of its compliance filing in this proceeding.

Respectfully submitted,



Billie E. Ramsey
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Dated: April 24, 1998

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania Power :
& Light Company for Approval of a : Docket No. R-00973954
Restructuring Plan :

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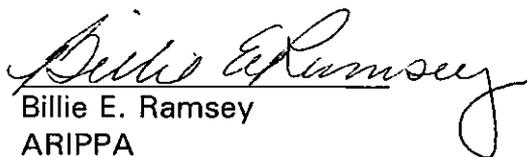
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APR 24 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: **PP&L Restructuring**
Docket No. R-00973954

Dear Mr. McNulty:

I enclose for filing an original and nine copies of the Exceptions of Intervenor NEV East, LLC in the above matter.

Sincerely,



Luke E. Dembosky

DOCUMENT
FOLDER

LED:pk

Enc.

cc: Honorable George Kashi, ALJ (via federal express)
Office of Special Assistants (via federal express)
Parties and Counsel of Record (per attached Certificate of Service)
(w/enc.)

ORIGINAL



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of
Pennsylvania Power & Light Co.
Restructuring Plan Filing

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)
)

Dkt. No. R-00973954

EXCEPTIONS OF NEV EAST, LLC

RECEIVED

APR 24 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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APR 28 1998

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I. INTRODUCTION AND SUMMARY OF EXCEPTIONS

NEV East, LLC ("NEV") submits these Exceptions in response to the Recommended Decision (the "R.D.") issued by the ALJ in the above-captioned proceeding. The basis for these Exceptions is, first and foremost, the complete failure of the ALJ even to address -- let alone make a recommendation on -- the important issue of requiring Pennsylvania Power & Light Company ("PP&L") to implement consolidated billing for customers with multiple meters.

This omission from the R.D. is particularly surprising in light of the clear precedent of the Pennsylvania Public Utility Commission (the "Commission") on this issue in the PECO Energy Company restructuring proceeding.¹ In the PECO proceeding, the Commission specifically approved consolidated billing for multiple meter customers, holding that it is "inappropriate" in a competitive generation market to charge more for multiple meter customers who place no more load on the system than a single meter customer within the same tariff. (December 23 Order and Opinion, at 140). The Commission's ruling in the PECO proceeding recognized the same principles of fair billing and competition emphasized in the testimony in this proceeding of NEV witness David M. Boonin. Unfortunately, the ALJ in this proceeding ignored both.

NEV also joins in their entirety the Exceptions filed in this proceeding by Enron Power Marketing, Inc. ("Enron"), which address concisely the numerous additional errors and omissions of the ALJ related to issues vital to the success of the Electricity Generation Customer Choice and

¹ Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, R-00973953 (December 23, 1997), reported as Pa. PUC v. PECO Energy Co., 181 PUR4th 517 (the "December 23 Order and Opinion"); Order on Reconsideration (January 16, 1998) (the "January 16 Order"); Order on Compliance Filing (February 5, 1998) (the "February 5 Order"); Order on Revised Compliance Filing (February 26, 1998) (the "February 26 Order").

Competition Act, 66 Pa. C.S.A. § 2801 et seq. (the "Act"), particularly the structure of PP&L's unbundled rates (most notably the "shopping credit"), CTC design, supplier of last resort and the schedule for phase-in of competition. In handling these issues, the ALJ simply disregarded the principles set forth in the Commission's orders in the PECO restructuring proceeding and virtually rubber-stamped PP&L's proposed plan and all of the anti-competitive provisions it contains.

II. EXCEPTIONS

A. Exception No. 1

Customer Billing - The ALJ Erred In Failing To Recommend That PP&L Be Required To Implement Consolidated Billing For Multiple Meter Customers In Accordance With The Commission's Order And Opinion In The PECO Restructuring Proceeding.

Exception To: R.D. 187-188., Recommended Order ¶8.

The ALJ erred by completely ignoring in the R.D. the issue of whether PP&L should be required to implement consolidated billing for customers with multiple meters. Therefore, if adopted, the R.D. would permit PP&L to continue discriminating against customers with multiple meters as against single meter customers who place an identical load on the system. As addressed below, this substantial impediment to competition was addressed by the Commission in the PECO restructuring proceeding and testified to and briefed by NEV in this proceeding. The R.D. should be modified to require PP&L to implement consolidated billing for multiple meter customers.

Under the current regulatory system, the many customers who receive service on multiple meters throughout an EDU's service territory are discriminated against when compared to customers with similar loads served through a single meter. (Boonin, Direct Testimony, at 17). In particular, a customer with multiple meters who is on the same rate schedule and who places the same type of non-distribution related load on the system as a single-meter customer is being charged more than that single-meter customer. (*Id.* at 18). Although the Act is silent on this specific issue, the Commission addressed the problem in the PECO restructuring proceeding by exercising its authority "to approve flexible pricing and flexible rates, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and address competitive alternatives." Section 2806(h); see also Section 2804(2) ("Customers should be able to choose among alternatives such as

. . . flexible pricing. . ."). Specifically, in its December 23 Opinion and Order the Commission approved billing consolidation, such that aggregated customers will be billed based on the load that they place on the system. In its restructuring plan, PECO had defined "customer" to include a single point of delivery. In rejecting that definition, the Commission stated:

In challenging PECO's position, it was asserted that EGSs should be permitted to treat customers with multiple locations as a single service for purposes of billing for transmission and CTC-related charges. In other words, transmission and CTC-related charges would not change with the number of installations or meters, as they currently do, but with the amount of load placed on the system.

PECO's restriction is inappropriate in a competitive generation market because it makes it more difficult with multiple sites to aggregate their load with a single EGS. Accordingly, we shall permit billing consolidation. For administrative ease, billing consolidation should only apply to customers who have multiple meters on the same rate tariff. This change shall not apply to distribution charges because customers with multiple meters may impose a cost on the system that is different than a similar load from a single location associated with the distribution of the service.

December 23 Order and Opinion, at p. 140 (emphasis added).²

The Commission's December 23 Opinion and Order is consistent with NEV's testimony in this proceeding regarding the need to eliminate the current discriminatory effect on customers with multiple meters by permitting alternative generation providers to treat these customers as a single service for purposes of billing for transmission and CTC-related charges. (Boonin, Direct Testimony, at 17). In particular, when a customer has multiple metering locations,

² The Commission reaffirmed its intention that billing consolidation be implemented in its subsequent Opinion and Order on Compliance Filing, adopted and entered on February 5, 1998, in the same restructuring proceeding involving PECO Energy Company (at pp. 12 and 14).

the customer should be permitted to elect to consolidate the bills for any or all of its meters served under the same rate. Transmission and CTC-related charges would not change with the number of installations or meters, as they currently do, but with the amount of load placed on the system. (Id. at 18). As stated by the Commission in its December 23 Opinion and Order, for administrative ease, this billing consolidation should only be for customers of record who have multiple meters on the same rate tariff. (Boonin, Direct Testimony, at 19).³

Elimination of this present discriminatory effect on multiple meter customers is particularly important now that competition -- and the innovation it will inevitably bring -- has been introduced into the system. (Id. at 19). More and more customers will be metered so that hourly loads can be determined, enabling consolidated billing. (Id.). Competition also challenges the necessity of demand-based billing, particularly if customers are paying for the burden they place upon the system virtually on an hourly basis. (Id.). At bottom, competition highlights the importance of electric prices in economic competitiveness, and eliminates any excuse for the type of blatant discrimination which exists under the current system. (Id.).

Accordingly, NEV proposes that the Commission modify the R.D. to provide for consolidated bills for customers with multiple meters within a single tariff, in accordance with the Commission's December 23 Opinion and Order in the PECO restructuring proceeding. (Boonin,

³ The Commission would not need to take action with respect to generation itself because the price of generation is deregulated and the EDU already has the right to issue a customer a bill for its generation services on a consolidated basis. (Id. at 17). Nor would this proposed change apply to distribution charges, as the Commission noted in its December 23, 1997 Order in the PECO proceeding, because customers with multiple meters may impose a cost on the system that is different than a similar load from a single location associated with the distribution of the service. (Id.). Therefore, distribution charges should be billed as they are currently. (Id.).

Direct Testimony, at 19). Only through this modification can the Commission prevent the discrimination that exists under the current system. (Id. at 20). PP&L did not introduce any evidence in this proceeding against the adoption of consolidated billing and therefore apparently does not contest its adoption by the Commission.

B. Exception No. 2

**The ALJ Erred In Failing To Recommend That PP&L Implement The Proposals Of The Alternative Suppliers Group, As Set Forth In The Exceptions Filed Herein By Enron Power Marketing, Inc.
Exception To: R.D. 64-207., Recommended Order ¶¶1-16.**

In the proceeding before the ALJ, a group of alternative suppliers, including NEV, submitted a joint post-hearing brief that addressed the restructuring plan proposed by PP&L and, in turn, counter-proposed a broad range of recommendations designed to protect customers, promote formation of the competitive market consistent with the Act, and ensure PP&L full recovery of its reasonable stranded costs. The recommendations addressed such vital subjects as PP&L's unbundled rate structure, CTC design, the appropriate generation or "shopping credit," mitigation of stranded costs, issues related to the supplier of last resort, and the schedule for phase-in of competition. The R.D. ignored these recommendations almost without exception, instead adopting in all material respects PP&L's proposed plan and the many anti-competitive provisions that it contains.

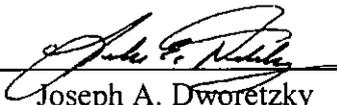
Enron Power Marketing, Inc. has addressed in its Exceptions filed in this proceeding each of the errors contained in the R.D. with respect to the above-listed issues and several others. Rather than repeat those Exceptions here, NEV hereby joins in Enron's Exceptions in their entirety and urges the Commission to modify the R.D. accordingly.

CONCLUSION

For all of the foregoing reasons, NEV East, LLC requests that the Commission modify the R.D. to require consolidated billing for multiple meter customers and to implement the recommendations set forth in the Exceptions of Enron Power Marketing, Inc.

Respectfully submitted,

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Dated: April 24, 1998

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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I hereby certify that on April 24, 1998, I caused a true and correct copy of the Exceptions of Intervenor NEV East, LLC to be served by federal express upon:

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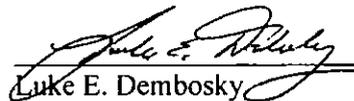
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RE: Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plans; Docket No. R-00973954; **EXCEPTIONS OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION**

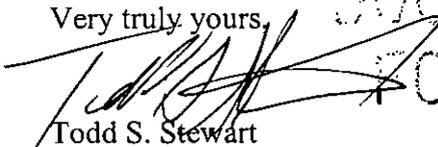
Dear Mr. McNulty:

Enclosed, for filing with the Commission, please find an original and nine (9) copies of the Exceptions of the Mid-Atlantic Power Supply Association in the above-captioned proceeding.

All parties to this proceeding are being served with the foregoing document, in accordance with the Certificate of Service, attached to MAPSA's Exceptions.

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

Very truly yours,



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

DOCUMENT
FOLDER

TSS/bes
Enclosure
cc: All Parties of Record
Honorable George M. Kashi

ORIGINAL



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania Power & Light :
Company for Approval of its Restructuring Plan :
Under Section 2806 of the Public Utility Code :

Docket No. R-00973954

EXCEPTIONS OF
THE MID-ATLANTIC POWER
SUPPLY ASSOCIATION
("MAPSA")

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Dated: April 27, 1998

ORIGINAL

Exception No. 1

MAPSA excepts to the finding of the ALJ (R. D. at 38, 39, 81, Ordering ¶5) that PP&L's proposed competitive transition charge is appropriate and consistent with the law; on the contrary, PP&L's proposal, approved by the ALJ, is contrary to the Statute and will eliminate the potential for competition in PP&L's service territory. (MAPSA M. B. at 4-8; MAPSA Reply Brief at 1-7).

Administrative Law Judge Kashi ("ALJ") recommended approval of PP&L's "regulatory method" for calculating stranded costs and the so-called "bottom-up" methodology for calculating the CTC. PP&L's methodology involved making a determination as to the company's appropriate transmission and distribution rates, adding to those rates a market price component which the company alleges represents a retail price of electricity,¹ and subtracting the sum of those three components from the company's fully bundled rate. The result is a CTC which is a "fallout" from the calculation.

The stranded cost calculation methodology adopted by the ALJ will not produce a shopping credit which will lead to the development of a robust competitive market in PP&L's service territory. On the contrary, if the proposed CTC/shopping credit scheme is imposed, there will be a no competition in PP&L's service territory.

It is axiomatic that an electric utility's restructuring plan must promote the development of a competitive market, as set forth in the Electric Generation Customer Choice and Competition Act ("Act"), 66 Pa. C.S. §2801, et seq. This Commission has made it abundantly

¹ PP&L alleged and the ALJ appears to have accepted the argument that PP&L's energy price contained in its stranded cost calculation mechanism represents a retail market price of electricity. MAPSA, however, argues below that the competitive market price used in determining PP&L's stranded costs is a wholesale market price and is not appropriately used for calculating stranded costs in a "bottoms-up" approach methodology; nor is it an appropriate "shopping credit" against which suppliers can conceivably compete in order to develop robust competition in PP&L's service territory.

clear that an electric utility's restructuring plan which hinders the development of a "competitive retail electric market and [which made] competition for many residential and other low-load factor customers economically impossible until 2003 at the earliest" should be rejected as being contrary to the public interest. Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Pennsylvania Public Utility Code, Docket No. R-00973953, et al., (Order entered December 23, 1997) ("PECO"). The Commission's preferred approach for ensuring that a restructuring plan contains a shopping credit which will guarantee the development of a robust market is to set the CTC, and allow the shopping credit to the fallout number.

What the ALJ's adopted methodology has done is to use an artificially depressed "market price," which is not even close to a fully-delivered retail price of electricity, as the shopping credit. The ALJ's methodology then subtracts that number from the company's fully-imbedded costs of generation to produce a resulting CTC. The ALJ otherwise wholly fails to justify the CTC result. This calculation methodology should be found by the Commission not to be appropriate, and the PECO methodology should be adopted as the appropriate interpretation of the Competition Act.

Exception No. 2

MAPSA excepts to the decision of the ALJ (R. D. at 38, 81, 147-148) which has failed to develop a residual shopping credit which will allow for the development of a robust competitive market for retail sales of electric energy in PP&L service territory; rather, MAPSA proposes that the shopping credit should be set at a level which is capable of producing robust competition. (MAPSA Reply Brief at 4-5).

From MAPSA's perspective, the ALJ's Recommended Decision is most objectionable in what it has failed to address. Particularly, the ALJ has failed to state the need for, or to provide any support for, a competitive generation component which will allow for the development of a robust competitive market for retail sales of electric energy in PP&L's service territory. The ALJ's failure to specifically address the need for a competitive market in PP&L's service territory stands in contrast to the mere payment of "lip service" to the requirement that a restructuring proposal establish a "active and viable retail market for electric generation". MAPSA has argued consistently in this proceeding that it is the implicit generation rate or "shopping credit" which is the bellwether of a restructuring plan's ability to produce a competitive retail market, and which this Commission has recognized is absolutely necessary. PECO. While the ALJ acknowledges the need for competition, he ignores this most significant aspect of ensuring the development of competition.

As previously stated, as the ALJ goes to great lengths and attempts to justify the level of stranded costs which he recommends allowance in this case. The ALJ fails to recognize, however, that without the development of a competitive market, there are no stranded costs. MAPSA recognizes that this Commission is faced with a schizophrenic task -- on one hand, PP&L must be allowed an opportunity to recover its reasonable and known and measurable stranded costs (and, the CTC is the mechanism for that recovery); on the other hand, the statute creates a clear mandate that a restructuring plan must *guarantee* the development of a robust

competitive market. Indeed, one cannot exist without the other; that is, it is by reason of competition that a utility has any stranded costs in the first instance. Therefore, it is absolutely essential that any restructuring plan allow for competition, if the corollary stranded costs are to occur.

In several instances (R. D. at 38, 148), the ALJ recognizes that, in PP&L's stranded cost calculation methodology, the price which PP&L asserts must be used to determine stranded cost, is a retail market price. However, as uncontroverted in the testimony of this proceeding reveals, "market price" used by PP&L in this calculation is a wholesale market price. This wholesale price does not include any of the additional charges that suppliers must incur in making purchases of wholesale electricity in order to bring that power to the retail market. (MAPSA M. B. at 4-6; MAPSA Reply Brief at 4). And, as this Commission has recognized, a wholesale price is wholly inappropriate to use as a shopping credit. PECO.

This Commission has developed a specific methodology consistent with the statute, for ensuring the development of robust competition in calculation of an appropriate CTC and shopping credit. First, the ALJ should have calculated the electric utility's costs in accordance with the record evidence and the methodology set forth in the PECO decision. Second, the ALJ should have derived the CTC to collect those reasonable and non-mitigatable costs over an appropriate period (for example, the 9-year period provided for in 66 Pa. C.S. §2808(b)). Third, the ALJ should have calculated the appropriate transmission and distribution rates. Fourth, the ALJ should have mathematically calculated the shopping credit by adding the transmission, distribution and CTC charges, then subtracting the total of these three charges from the level of rates in effect as of January 1, 1997. Fifth, the ALJ should have determined whether that shopping credit would allow for competition based upon the record evidence of what a fully-

delivered retail price of power actually is. Rather, the ALJ has completely failed to examine the competitive bogey in this case, and only has paid “lip service” to the idea that the market price must be a retail market price; there is not even one line of text examining whether PP&L’s proposed price is, in fact, a fully-delivered retail price of power. Sixth, the ALJ should have adjusted the CTC and shopping credit, if he determined that the shopping credit was not large enough to allow for competition, as it is in the case of PP&L. Such adjustments can take the form of levelizing the CTC, or extending the recovery period, or providing for an additional credit.

In summary, PP&L’s proposed shopping credit will not allow for competition because it is too low to allow for suppliers to compete. The recommended shopping credit is based upon a wholesale market price. In fact, PP&L’s own witnesses have acknowledged in this case that its market price estimate does not include these additional costs which suppliers will be required to pay in order to arrive at a fully-delivered retail price. Under PP&L’s proposal, the shopping credit would be less than 3¢/kWh; with this credit, suppliers will not be able to gain any customers, and there will be no competition.

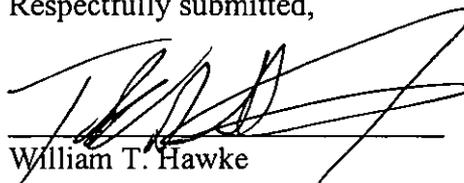
The only evidence of record in this case which indicates the magnitude of a fully-delivered retail price, was presented by a MAPSA witness. That witness has testified that, at a minimum, the shopping credit would have to be at least 3.87¢/kWh in order to cover energy and capacity, plus an additional credit to cover the additional services and costs which suppliers will be required to cover in order to deliver energy to a retail customer.²

² In this case, the ALJ has acknowledged that the PJM is the relevant market for retail sales of electricity. Therefore, this Commission should adopt the *de facto* standard for the PJM as to what constitutes an appropriate shopping credit for retail customers in the PJM area. In this regard, the shopping credit, as found by this Commission to be reasonable in the PECO case, would be an appropriate level to use in this case.

CONCLUSION

It is clear that the ALJ has failed to consider the anti-competitive impact of adopting PP&L's proposed "retail market price." This Commission previously has recognized that restructuring plans must guarantee the development of a competitive market before stranded costs become an issue. MAPSA requests that the Recommended Decision of the ALJ be modified to provide for a shopping credit which will guarantee the development of a robust competitive market in PP&L's service territory.

Respectfully submitted,



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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 Exceptions of Enron Power Marketing, Inc. in the above-referenced matter. As indicated on the attached Certificate of Service, copies of this document are being served this day on the parties in the manner indicated.

If you have any questions, please contact the undersigned.

Respectfully,

Robert J. Longwell

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

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PP&L for Approval of :
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I. INTRODUCTION AND SUMMARY

These Exceptions are submitted by Enron Power Marketing, Inc. ("Enron") in response to the Recommended Decision issued in the above-captioned proceeding. On December 23, 1997, the Commission took a historic step towards restructuring of the electric industry in Pennsylvania through the issuance of its landmark decision in the PECO Energy Company ("PECO") restructuring proceeding.¹ The Commission's decision established a framework for implementing the Electricity Generation Customer Choice and Competition Act ("Act")² and clearly intended to provide interpretations of the Act and to establish comprehensive underlying policies governing all electric distribution company ("EDC") restructuring proceedings.³

Undeterred, Administrative Law Judge ("ALJ") George Kashi has issued a Recommended Decision ("R.D.") in PP&L, Inc.'s ("PP&L") restructuring proceeding⁴ which

¹ Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code (December 23, 1997) R-00973953 ("PECO Order"). The Commission has also issued three other decisions in the PECO Restructuring case: Reconsideration Order (January 16, 1998); Compliance Filing Order (February 5, 1998); Revised Compliance Filing Order (February 26, 1998). The four Commission orders are jointly referred to as the "PECO Restructuring Orders".

² 66 Pa.C.S. §2801 et seq.

³ This is not to say that each EDC restructuring proceeding does not require resolution of a multitude of factual issues based on the record of each proceeding. However, the Commission clearly intended that the PECO Restructuring Orders provide a foundation for electric restructurings in Pennsylvania.

⁴ Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code, R-00973954.

completely ignores the precedent established by the Commission,⁵ as the governing body, and with certain minor modifications adopts PP&L's proposed restructuring plan as filed. In fact, the ALJ did more than adopt PP&L's proposed restructuring; the ALJ for the most part, adopted verbatim the Company's Main Brief and proposed findings of fact as his discussion and decision.⁶ Indeed, it is not surprising that the R.D. reads more like a brief than a judge's decision — it is.⁷

The result is an extreme decision which not only directly contradicts the Commission's established interpretations of the Act and underlying policies, but would eliminate

⁵ Enron cannot locate a single instance in which the R.D. gives any weight to, much less follows, the Commission's PECO Restructuring Orders.

⁶ The R.D. adopts 443 findings of fact; 441 of which are adopted verbatim from PP&L's proposed findings of fact. (The remaining two address procedural matters). The findings not only include factual matters but legal conclusions, descriptions of testimony and policy determinations. Furthermore, the ALJ has not included any findings supporting the minor modifications to PP&L's proposed plan. Apparently, PP&L was rewarded for being the only party to submit proposed findings of fact.

To make matters worse, of the 210 pages in the R.D., over 150 of them are taken verbatim from PP&L's main brief and attributed to the ALJ. (At certain points in these copied pages, PP&L's briefing language is modified slightly to change the attribution from PP&L to the ALJ). Another five pages are adopted from the Office of Trial Staff's ("OTS") brief and again attributed to the ALJ. Overall, the 210 page decision contains less than 25 pages which are not copied directly from PP&L's or OTS's main briefs.

⁷ For example, on page 60 of the R.D., the ALJ demonstrably stated as followed in summarizing the content of the Act:

The purpose of the Act is to mandate competition and create a transition to a competitive market for the generation of electricity. 66 Pa.C.S. §2802(12). Within this general purpose there are several other critical concerns expressed by the General Assembly which are relevant to this proceeding. The most important of these concerns are summarized here and will be referenced as applicable to specific issues later in this Brief. (Emphasis added.)

any possibility of competition in PP&L's service territory for the foreseeable future.⁸

Summarily, the R.D. is irrelevant, should be disregarded and should be assigned no more weight than that assigned to the brief of any litigant.⁹ Unfortunately, the R.D. has provided the Commission with no assistance in deciding this case and the Commission must "start from scratch" in developing a restructuring plan for PP&L.

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 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.

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

⁸ While the R.D. makes several references to the primary purpose of the being to mandate and create a competitive market. The context of the R.D. does not contain any "inkling" of concern for actually enabling the development of competition. This should come as no surprise since essentially the words are not the ALJ's, but PP&L's.

⁹ As compared to the absence of any concern for the development of competition, not surprisingly, the R.D. is filled with concerns pertaining to "regulatory compacts," and protection of revenue streams.

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 rate, in a manner rejected outright by the Commission in its PECO Order, to calculate the generation or shopping credits to customers as its projection of wholesale market prices. However, because these credits are applicable to the sale of electricity in a retail market, the projections, even in the unlikely event they are relatively accurate, are well below the compensatory prices that electric generations supplier ("EGSs") will have to charge in order to recover the retail costs incurred in addition to the wholesale price of power.

Suppliers would be forced to sell power at a substantial loss just to match the generation credit proposed in PP&L's plan. Suppliers would be forced to incur additional losses in order to offer any savings to make their services attractive to customers. The result will be no competition in PP&L's service territory and PP&L's customers will have choice in name only.¹⁰ This apparently is of no concern to PP&L, because its self serving interpretation and application

¹⁰ This is particularly true when one considers the more favorable market condition which will exist in other service territories as a result of the PECO Restructuring Orders. Both PP&L and the ALJ appear to rely on the statements of Enron witness Shapiro that Enron has a nationwide business plan to enter retail electric markets around the Country (Tr. 1605-07) apparently believing the implication that Enron will enter and compete regardless of how bad the market conditions are in a given area. R.D. at 180, f.54 and identical PP&L M.B. at 169, f.84. Nothing could be further from the truth. Enron is doing its best to convince the Commission to create market conditions which will enable it and other EGSs to enter and compete in Pennsylvania retail markets and provide far-reaching benefits to Pennsylvania electric customers. However, it will not enter and compete unless market conditions are implemented which justify its market participation. To conclude otherwise is to assume that Enron would engage in economically irrational behavior.

of the law is that its markets should be protected from competitive loss until it has completely recovered its claimed "uneconomic investment."

However, the Act and this Commission recognize a much different paradigm. Both recognize that no EDC is entitled to one dime of transition or stranded costs unless and until it opens up its generation supply market to competition.¹¹ Simply put, PP&L cannot have it both ways by asserting a claim to recover approximately \$4 billion in transition costs and, at the same time, propose a rate design and market structure which would assure that competition is non-existent.

Fortunately, the Commission has already designed a "fix" to anti-competitive restructuring proposals like PP&L's and should resolve market structure and rate design issues consistent with the principles established for application to PECO, unless a strong pro-competitive case can be made for a different result. In many cases, the Commission's determination in the PECO Restructuring Orders resulted from a legal interpretation and application of the Act — the same legal issues which are at issue here. In other areas, the evidentiary record in this case does not support a different result.

Departing from the affirmative policy pronouncements made just a few months ago in its PECO Restructuring Orders would do nothing more than create confusion and the development of unbalanced markets for electricity across the Commonwealth and between service territories — potentially creating unfair competitive burdens or advantages between

¹¹ 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.

EDCs.¹² Such a discriminatory application of the Act on major restructuring issues would be in no party's best interests and would create total chaos as various markets open to competition.

The ability of EGSs to compete and consumers to understand their competitive options will also be severely hampered if widely disparate market conditions are in place across the Commonwealth. The Commission should avoid this potentially disastrous consequence by using its PECO Restructuring Orders as a template for this restructuring proceeding.

II. EXCEPTIONS

A. **Rate Unbundling and CTC Design - The ALJ Erred in Recommending the Rejection of the Commission Endorsed "Top Down" Approach to Rate Unbundling and CTC Design and the Adoption of a Commission-Rejected and Anti-Competitive "Bottoms Up" Approach.** **Exception to: R.D. 147-150, 207-208, Ordering ¶5.**

1. On the issue of rate unbundling and competitive transition charge ("CTC") design, the ALJ adopted the language in PP&L's main brief verbatim as his own and adopted the PP&L proposal for unbundling of rates "in a 'bottom up' fashion rather than a 'top down' fashion" which designates the CTC as the residual between the generation credit set at prevailing, largely wholesale, market prices and delivery charges, unbundled consistent with allocation factors utilized in PP&L's last rate case.¹³ This "bottoms up" approach is the exact

¹² On this point, Enron agrees with PECO, whose position in this case is that the rules applicable to PECO must be applied to all EDCs. As PECO states in its Main Brief in this case, "PECO's interest in this proceeding, therefore, is to ensure that its ability to compete is not compromised by factual determinations and/or legal conclusions which are at odds with the treatment it received in its recently concluded restructuring case at Docket No. R-00973953 (the "PECO Case") and that its shareholders are not treated unfairly vis-a-vis other EDCs. Quite simply, the Commission's resolution of key issues must be consistent." PECO M.B. at 1.

¹³ PP&L St. No. 9 (Tierney), p. 23.

approach which was proposed by PECO and outright rejected by the Commission in the PECO Restructuring Orders.¹⁴

2. Neither the ALJ nor PP&L, in its main brief, reference or address the Commission's rejection of the "bottoms up" methodology proposed by PP&L. Furthermore, no legal or evidentiary support is cited as to why the ALJ believes this case is distinguishable. This is for good reason — none exists.

3. The rate design methodology applicable to the CTC has become one of the most crucial issues to be determined in EDC restructuring proceedings since the rate design of the CTC has a direct and substantial impact on the level of the shopping or energy and capacity credit ("ECC").¹⁵ Because the level of this credit is critical both to the development of a meaningful competitive retail electric environment and to the level of savings available to

¹⁴ As the Commission explained:

The shopping consumer pays only the T&D rate and the CTC to the EDC when purchasing generation in the competitive market. The addition of the T&D rate and the CTC produces a total sum of charges that when compared to the customer's rate in effect as of January 1, 1997, gives rise to the concept of a "shopping credit." 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.

PECO Order, p. 42 (emphasis added).

¹⁵ The credit applicable to customers who shop is also frequently referred to as the "generation credit".

shopping customers, the CTC must be designed carefully in furtherance of the pro-competitive objectives of the Act.¹⁶

4. Although the Commission's determinations in its PECO Restructuring Orders are only directly applicable in PECO's service territory, the principles and standards governing the rate design of the CTC and the shopping credit are clearly generic determinations which were intended as the Commission's interpretation of the Act and are not distinguishable between EDC service territories. While the level of T&D rates and the amount recovered by the CTC will vary significantly from EDC to EDC, the Commission should require adoption of the methodology endorsed in the PECO Restructuring Orders for all EDC restructuring proceedings.

5. Both the Act and the record of this proceeding support application of the Commission endorsed "top down" approach to rate design in this case. The primary purpose of the Act is to enable and create a competitive retail market in each EDC service territory.¹⁷ The approach advocated by PP&L and the ALJ simply will not fulfill this purpose and is not consistent with the Act's objectives.

¹⁶ As the Commission stated in its PECO Order at 16:

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

¹⁷ As the Commission recently stated, "By creating a vibrant competitive market at the retail level, the General Assembly has adopted the position that competition yields greater benefits to the public than even the most diligent and careful rate regulation." Electric Distribution Utility Rates, rules, Regulations and Practices, M-00971032 (December 18, 1997), 28 Pa.B.1425.

6. Under the PP&L/ALJ approach, the shopping credit is calculated first by "pegging" the shopping credit at PP&L's projection of prevailing market prices, which market prices are "largely wholesale prices" being applied to a retail market.¹⁸ The CTC then becomes the residual of its prevailing market price projections and the generation rate cap.¹⁹

7. 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 2005.²⁰ As MAPSA witness Johnstone concluded, under this scenario "new suppliers would have little or no realistic opportunity to compete. The access of customers to a 'competitive market' would likely be a fiction since the access would be in name only."²¹

¹⁸ PP&L Main Brief, pp. 135-36. 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).

¹⁹ R.D. at 147-148; PP&L M.B., at 135-136.

²⁰ 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 likely below the system wide average of 2.8 cents/kwh contained in the PECO Partial Settlement rejected by the Commission.

²¹ 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

(continued...)

8. Of course, this is exactly PP&L's design. However, PP&L's proposal 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.²²

²¹(...continued)

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.

PECO Order, p. 18.

²² As Enron witness Mayo explained:

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

(continued...)

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

- (a) 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.²³ PECO Order, pp. 49-63.²⁴

²²(...continued)

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).

²³ Although, transmission and distribution rates are unbundled and costs associated with these functions 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.

²⁴ 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 PECO 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
(continued...)

- (b) 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."²⁵ PECO Order, pp, 63-172.
- (c) 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 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.²⁶ PECO Order, pp. 103-109.
- (d) 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).²⁷ PECO Order, pp. 109-113.
- (e) The residual of T&D and the CTC (as compared to current bundled rates) becomes the generation or shopping credit.²⁸ None of this residual should

²⁴(...continued)

because these costs are fully recoverable in a competitive environment. Enron has appealed the PECO Restructuring Orders to the Commonwealth Court on these grounds.

²⁵ 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.

²⁶ 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.

²⁷ 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.

²⁸ 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
(continued...)

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.

10. This five step "top down" approach closely tracks the Act by unbundling and designing distribution, transmission and generation rates in a manner which promotes 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 is the only sound approach consistent with the Act and should be followed by the Commission in reaching a decision in this proceeding.

B. Default Customers - The ALJ Erred in Recommending A Scheme for Serving PLR Customers Which is Inconsistent with the Law and the Evidence.

Exception to: R.D. 159-163.

11. In his Recommended Decision, the ALJ designed a two tier scheme for the provision of service to default or "choose not to choose" customers by PP&L as the provider of last resort ("PLR"). Prior to the close of the phase-in period, the ALJ proposed that the rates charged by PP&L be set at PP&L's largely wholesale market prices with a rate floor set at the price for generation supply charged by PP&L's affiliated EGS at any point in time. After the

²⁸(...continued)

total rate as of January 1, 1997 and the sum of T&D and CTC rates established pursuant to this order." PECO 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.

phase-in, the ALJ recognizes that pursuant to Section 2807(e)(2) of the Act the development of the PLR's prices should be governed by regulations promulgated by the Commission. Again, the ALJ's recommendation violates the Act, is inconsistent with the Commission's express interpretation of the Act and is not supported by the record.

12. 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.²⁹ The dispute in this proceeding relates to what rates PP&L will charge default customers in its PLR role.

13. The ALJ misread the Act and recommends an anti-competitive result which would virtually assure that PP&L's monopoly remains intact through the transition period. The provision which the ALJ apparently relies on is Section 2807(e) which provides as follows in relevant part:

(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:

* * *

(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.

²⁹ 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.

(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.

14. The ALJ's proposed scheme in the Recommended Decision 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, the ALJ 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.³⁰ 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."³¹ 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

³⁰ The ALJ recognized that the implementation of Section 2807(e)(3) after the phase-in period required the promulgation of regulations. However, the ALJ apparently believed that he or the Commission had independent authority to permit or require PP&L to reduce its regulated rates to market based levels outside of the Commission's Chapter 13 ratemaking authority. The ALJ has not identified where he thinks this authority comes from with good reason -- no such authority exists.

³¹ 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."

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 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.

15. 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 the ALJ 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.

16. The ALJ's proposal should be rejected. No party has introduced evidence that PP&L's existing tariffed rates should be reduced under traditional ratemaking principles.³²

³² Linking PP&L's regulated PLR rates to its affiliated EGS's unregulated rates, if anything, worsens the scenario. Under the ALJ's proposal, PP&L's affiliated EGS is provided complete control over the prices charged to PLR customers and is provided an opportunity to control the market through its pricing decisions which it, but no one else, knows in advance. The scheme also provides increased incentives for price collusion between the EDC and its affiliated EGS. Overall, it would be impossible to dream up a
(continued...)

Even if the Commission could implement a market based pricing scheme without a rulemaking, no party has introduced substantial evidence that any level of proposed default prices for 1999 and 2000 recover all reasonable costs.³³

17. This is exactly the interpretation reached by the Commission in its PECO Restructuring Orders. First, in its December 23, 1997 PECO Order, the Commission stated that "pursuant to Section 2807(e)(2), the Commission will adopt regulations defining the terms and

³²(...continued)

more anti-competitive market structure.

³³ PP&L's witnesses had no idea which costs should be included, much less, which costs 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.

conditions of service for the provision of PLR service at market prices."³⁴ 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:

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.

18. 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 and/or EGS as PLR, will offer service to default customers at market based prices.

19. 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).³⁵

³⁴ PECO Order, p. 134.

³⁵ 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.

Placed in its proper context, the ALJ's proposed scheme would "denigrate the market" by inserting PP&L EDC as the competitor with the price that cannot be beat by allowing it to offer a wholesale price to retain customers in a retail market (controlled only by the unregulated prices of its own affiliate). 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. Ineligible Customers -- The ALJ Erred by Recommending That PP&L be Permitted to Serve Ineligible Customers Through its Affiliated EGS. Exception to: R.D. 188.

20. Under PP&L's proposed restructuring plan and the ALJ's recommendation, customers who are ineligible for customer choice during the phase-in³⁶ will "continue to receive generation supply from the Generation Supply Group."³⁷ The Generation Supply Group, a division of PP&L, is the licensed EGS competing in the retail market in PP&L's service territory. The result will be that, under the ALJ/PP&L 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.³⁸

21. In addition to violating the functional separation requirements of PP&L's own proposed code of conduct and the Commission's PECO Restructuring Orders, the scheme proposed by the ALJ is anti-competitive and should not be approved by the Commission. By

³⁶ Under PP&L's plan and the ALJ's Recommendation, 66% of its customer load would be ineligible for direct access in 1999, and 33% would be ineligible in the year 2000.

³⁷ R.D. at 188; PP&L St. No. 10-R (Krall), p.24.

³⁸ Tr. 742-43 (August 19, 1997).

allowing the Generation Supply Group³⁹ to serve as a monopoly provider to a large base of ineligible customers, the ALJ is essentially proposing to provide PP&L's affiliated EGS participating in the marketplace with a huge embedded customer base — obviously a benefit not enjoyed by any other market participant.⁴⁰ Such an arrangement will provide several very significant competitive advantages to the Generation Supply Group. First, it will allow the Generation Supply Group 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 Generation Supply Group in the enviable position of having only to retain those customers or by convincing existing customers to continue to subscribe to its generation supply services.⁴¹

22. 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 Generation Supply Group maintains a dominant market share during the early years of the transition.⁴² Simply put, PP&L's scheme is a perfect

³⁹ The Generation Supply Group has operated under the brand name PP&L Energy Plus in the pilot programs.

⁴⁰ In fact, 66 Pa.C.S. §1102 requires that the transfer of EDC assets, including the EDC's customer base, requires specific regulatory approval.

⁴¹ Enron St. No. 6.0 (Dirmeier), pp.26-27.

⁴² 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.

(continued...)

example of a utility attempting to leverage its historic monopoly to create a competitive advantage for itself in an emerging competitive environment.⁴³

23. In adopting PP&L's proposal, the ALJ apparently relied on PP&L's representation that serving ineligible customers through the Generation Supply Group was not anti-competitive because the ineligible customers would still be charged regulated rates. Such a rationale completely misses the point. The ALJ/PP&L proposal is anti-competitive because it assigns to a market participant (PP&L's affiliate) a block of customers which it did not earn in the competitive marketplace (and which other EGSs would be delighted to serve if given the same opportunity). Such an embedded advantage will be difficult, if not impossible, to overcome as those customers become eligible for direct access.

24. To maintain the integrity of the phase-in period, the Commission should modify the Recommended Decision to require that monopoly customers be served by the EDC, in this case PP&L's Delivery Group, not the competitive supplier affiliate or division.⁴⁴ When those customers become eligible for direct access, the Generation Supply Group and other

⁴²(...continued)

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. Despite this clear pronouncement, the ALJ somehow determined that assigning ineligible customers to PP&L's affiliated EGS is consistent with the Commission's PECO Restructuring Orders. R.D. at 188.

⁴³ 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.

⁴⁴ 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.

suppliers 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 shareholders' interests, but is contrary to the directives of the Act and the interests of the public in development of a meaningful competitive market.

D. Acceleration of the Phase-In -- The ALJ Erred in Ruling That the Commission Does not Have Authority to Accelerate the Phase-In.
Exception to: R.D. 171-173; 207 Ordering ¶3.

25. Enron excepts to the ALJ's recommendation that the Commission's determination to accelerate the phase-in to direct access in the PECO Restructuring Order is inconsistent with Section 2806(b) and should not be applied in PP&L's service territory. In his Recommended Decision, the ALJ adopted the position of certain EDCs other than PP&L,⁴⁵ and, with virtually no discussion, determined that a three year phase-in should be ordered for application in PP&L's service territory, regardless of the fact that a two year phase-in has already been ordered by the Commission for application in PECO's service territory.

26. In adopting his recommendation, the ALJ erred by ignoring the plain language of the statute and by questioning and second guessing the Commission's careful consideration of the legality of an accelerated phase-in its PECO Restructuring Order. The ALJ also completely ignored the arguments made by the Competitive Intervenors⁴⁶ in response to the EDCs' arguments in their Reply Brief. Review of these arguments reveals that the ALJ's conclusion regarding the legality of an accelerated phase-in is completely erroneous and that the

⁴⁵ These EDCs are Allegheny Power ("Allegheny"), PECO and GPU Energy ("GPU").

⁴⁶ The Competitive Intervenors are Enron, the Middle Atlantic Power Supply Association ("MAPSA"), New Energy Ventures ("NEV") and the Pennsylvania Petroleum Association ("PPA").

Commission's decision in its PECO Restructuring Orders should be reaffirmed for application to this case.

27. In addition to its erroneous legal determination, the ALJ's recommendation would create a different phase-in period for PP&L than for PECO and potentially other EDCs. Accordingly, as an initial matter, the ALJ's recommendation is completely unsound as a matter of public policy. 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 permitted by the clear language in the Act, and will bring the benefits of competition to more customers sooner. The Commission's determination in the PECO case is equally applicable to the case at hand and should be considered as binding precedent in this proceeding.

28. As the ALJ correctly points out, interpretation of whether an accelerated phase-in is permitted rests on interpretation of Section 2806(b) of the Act. While Section 2806(b) certainly restricts the Commission's implementation of direct access, the plain language of the subsection provides the Commission with discretion to both accelerate the phase-in or extend the phase-in under certain circumstances. As to acceleration of the phase-in, Section 2806(b), by its express terms, establishes the maximum "peak load of each customer class" which can be provided the opportunity for direct access "**as of**"⁴⁷ or, in other words, no later than January 1, 2001. Despite the ALJ's conclusion, the plain meaning of the statutory language does not state that 33% of the peak load of each customer class be provided the opportunity for direct

⁴⁷ Emphasis added.

access "beginning on", or "no sooner than" January 1, 1999 or 66% beginning on January 1, 2000.⁴⁸ Instead, the plain language states that "as of" a date certain, the maximum penetration of direct access shall not exceed a certain level. It follows that by any reasonably reading, at any time after that date certain, the Commission has discretion to increase the penetration as long as it does not exceed the next cap.

29. The EDCs' claim, which apparently was accepted by the ALJ, that the phrase "as of" should be interpreted as meaning "beginning on" is completely inconsistent with the plain language of the Act as the phrase "as of" is normally understood.⁴⁹ Furthermore, a proper interpretation of Section 2806(b) to enable acceleration of the phase-in period does not require an inconsistent interpretation of the term "as of" as it appears in the three subsections under Section 2806(b). Such a view, advanced by the EDCs and apparently adopted by the ALJ, is based on the unsupportable premise that Section 2807(c) establishes the implementation date for direct access as January 1, 1999 and precludes the Commission from advancing the January 1, 1999 date. This interpretation reads meaning into Section 2807(c) which is not supported by the statutory language. Section 2807(c) is the subsection which allows the Commission to extend the initiation date for customer choice and has no bearing on the clear

⁴⁸ If the General Assembly had intended to preclude Commission discretion to accelerate the phase-in, it could have easily adopted language for Section 2807(c) that "Beginning on January 1, 1999, 33% of the peak load of each customer class shall be provided the opportunity for direct access," or "Beginning on January 1, 2000, 66% of the peak load of each customer class shall be provided the opportunity for direct access."

⁴⁹ *Webster's II New College Dictionary* defines the term "as of" as "on" not as "beginning on." Accordingly, the plain language of Section 2807(a) establishes the maximum penetration for direct access "**on**" January 1, 1999 and does not affect the Commission's discretion to advance the initiation of direct access or to accelerate the phase-in.

language of Section 2807(a) which provides the Commission with clear discretion to accelerate the January 1, 1999 date.⁵⁰ Section 2807(c)(1) merely requires that the first phase of direct access be implemented by January 1, 1999 unless the Commission extends that date for a "six month transition period" for the reasons set forth in the subsection.⁵¹

30. Indeed, this case is not the first time that Enron has opposed the unsupported notion advanced by certain EDCs that the initiation of direct access on January 1, 1999 can not be accelerated.⁵² On October 6, 1997, Enron Energy Services Power, Inc. ("EESPI") filed a petition with the Commission requesting approval of its Choice Plan for the restructuring of PECO.⁵³ As part of the Choice Plan, Enron proposed not only to accelerate the

⁵⁰ Interpretation of the phrase "as of January 1, 1999" contained in Section 2807(a)(1) as meaning "beginning on January 1, 1999" is critical to the ALJ's conclusion since his recommendation is based the premise that the term "as of" should be interpreted consistently. While Enron agrees the term should be interpreted consistently, it is clear that ALJ consistently and completely misinterprets the term.

⁵¹ Postponement of the implementation of direct access until after January 1, 1999 can only occur if the Commission makes such a determination by no later than November 16, 1998. Technically, the Commission could still postpone the date for implementation of the phase-in if circumstances so dictate.

⁵² Enron is not advocating that the January 1, 1999 initiation date be advanced in PP&L's service territory, but merely that because Section 2806(b)(1) requires that the phase-in to direct access be commenced "as of" January 1, 1999 that the Commission is provided discretion to advance that date if it determines that such advancement is in the public interest.

⁵³ Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Choice Plan and for Authority Pursuant to Section 2887(E)(3) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, P-00971265. Shortly after filing, EESPI's petition was consolidated by the Commission with the PECO restructuring proceedings for litigation and decision making purposes.

phase-in but also to advance the initiation of direct access to September 1, 1998.⁵⁴ GPU, PECO and West Penn participated actively in the PECO proceedings and each filed a comprehensive brief which identified areas where each believed the Choice Plan was in violation of the Act. Neither PECO, GPU nor West Penn raised a legal objection to Enron's proposal to advance the initiation of direct access in their respective briefs. Furthermore, while the Commission did not adopt the Choice Plan, the Commission declined to accept the Choice Plan on other grounds.⁵⁵ The fact that the Commission did not comment on the legality of advancement of the commencement date has no bearing on whether such advancement is permitted by the Act. While advancement of the January 1, 1999 commencement date for direct access may not be in the public interest given the time constraints, acceleration of the phase-in schedule is and should be ordered in this proceeding.

31. The legality of the Commission's accelerated phase-in contained in its PECO Restructuring Orders is further supported by the fact that this exact accelerated phase-in was included in PECO's Partial Settlement. Since it is beyond reasonable dispute that entering into a partial settlement does not excuse the settlement parties from complying with applicable law in all respects, every provision of the Act, including Section 2807(a), had to be complied

⁵⁴ As paragraph 23(f) of EESPI's Choice Plan Petition stated:

(f) The phase-in of direct access to competitive generation services will be accelerated as follows:

9/1/1998 - 33% of load per class is eligible.

1/2/1999 - 66% of load per class is eligible.

1/2/2000 - 100% of load is eligible.

⁵⁵ PECO Order at 36-38.

with and could not be evaded by its signatories.⁵⁶ As a result, PECO, through its participation in the Partial Settlement, has accepted the Commission's authority to order an accelerated phase-in. Furthermore, GPU and West Penn filed a brief in the PECO proceeding which raised various concerns with the Partial Settlement but did not raise one word of protest regarding the accelerated phase-in.

32. Finally, no party has suggested that the Commission's acceleration of the phase-in is not in the public interest. It is undisputed that the sooner customers have the opportunity to shop, the sooner they will receive the far-reaching benefits provided by the competitive market. Overall, the Act authorizes the Commission to accelerate the phase-in as provided for in the PECO Restructuring Orders and the Commission should expand its phase-in policy to all EDC service territories since such a policy is undeniably in the best interests of Pennsylvania's consumers and businesses.

**E. Competitive Safeguards -- The ALJ Erred by Recommending That PP&L's Code of Conduct Be Adopted As An Interim Code Of Conduct.
Exception to: R.D. 173-186.**

33. Enron excepts to the ALJ's recommendation that PP&L be permitted to retain its proposed code of conduct as an interim code of conduct pending establishment of a permanent code of conduct in the Commission's rulemaking on this subject.⁵⁷ The ALJ

⁵⁶ The Commission agreed with the applicability of the Act to the Partial Settlement in its PECO Order, pp. 26-29. The statement of the EDCs on pages 8-9 of its Main Brief that "an EDC may agree to an expedited phase-in pursuant to a settlement with its customers" is simply unsupported unless the Act permits acceleration of such a phase-in. Nothing in the Act can be interpreted to provide the EDC authority to accelerate the phase-in which is not provided to the Commission.

⁵⁷ Notice of Proposed Rulemaking Regarding the Establishment of Competitive Safeguards
(continued...)

acknowledges that the Commission should establish a permanent, uniform, statewide code of conduct,⁵⁸ but then recommends that PP&L should be permitted to utilize its proposed, interim code of conduct for the phase-in to direct access despite the fact that the Commission has designed and finalized a completely different interim code of conduct for PECO in its PECO Restructuring Orders. The ALJ reaches this conclusion without citing to evidence or law which could be relied on to distinguish the Commission's decision in the PECO case from the case at hand. Overall, there is simply no rational reason why PP&L should have a more "watered down" code of conduct than PECO or any other EDC in the early stages of direct access prior to the promulgation of final rules.⁵⁹

34. The early stages of marketing activity leading up to direct access on January 1, 1999 are critical and will determine the extent to which competition in Pennsylvania develops. Simply put, the need for a uniform code of conduct starts now and the PECO model should be applied to PP&L and other EDCs pending the promulgation of final regulations.

⁵⁷(...continued)

for the Pennsylvania Electric Industry, L-980132.

⁵⁸ R.D. at 186.

⁵⁹ If anything, a stronger code of conduct is appropriate for PP&L due to its insistence on not structurally separating its monopoly and competitive businesses. In the PECO Order, the Commission expressly identified its preference for structural separation, but noted that if an EDC insisted on functional separation, that separation should be at least as effective as structural separation. PECO Order at 128. The OCA agrees. As OCA witness Alexander testified, "This approach [to PP&L's common corporate structure proposal] has the significant potential for cross-subsidy and unfair trade practices which will mean that the Code of Conduct will be crucial to the prevention of these charges." OCA St. 5 (Alexander), p. 50.

35. The ALJ/PP&L's belief that PP&L's affiliated supplier(s) should be advantaged by its relationship to the monopoly is best summarized by reference to a statement in PP&L's Main Brief which was adopted verbatim by the ALJ. As the ALJ/PP&L claim:

Enron witness Dirmeier is simply wrong when he argues that: "My position does not handicap anyone; rather it is intended to place all competitors on the same initial footing recognizing that, in reality, PP&L has a decided advantage that it seeks to prolong." Enron St. 6.1, p. 8. To make all competitors equal at the outset, the Commission would have to take into account the numerous inherent advantages and disadvantages of competitors, some based on efficiency and some based on basic cost differences.

R.D. at 175-176; PP&L Main Brief, p. 164.

36. The ALJ/PP&L completely miss the point. Mr. Dirmeier is not recommending that all competitors (including PP&L's affiliated supplier(s)) be identical; he is pointing out that in order to have meaningful competition, EDC affiliates must not be able to take advantage of their unique relationship to the monopoly EDC.⁶⁰ PP&L's proposed code of conduct reflects its determined attempt to have its competitive business inherit advantages stemming from its EDC monopoly.⁶¹ Consistent with the Act and the Commission's recent

⁶⁰ Of course, the Commission disagrees with the ALJ and agrees with Mr. Dirmeier. See PECO Order at 130, in which the Commission recognizes that affiliated and unaffiliated suppliers must be placed on a "level playing field."

⁶¹ Notwithstanding the need for a uniform code of conduct, Enron continues to advocate that the PECO interim code of conduct and the final code of conduct be modified to clearly prohibit affiliated suppliers from utilizing the EDC's brand name. See Enron Supplemental Brief, pp.8-11.

actions, such an attempt must be rejected and the Code of Conduct adopted for application to PECO, at a minimum, should be incorporated into PP&L's final restructuring plan.⁶²

F. Supplier Tariff -- The ALJ Erred By Not Recommending That PP&L Be Required To Submit A Supplier Tariff.
Exception to: Not Addressed By Recommended Decision.

37. Despite the arguments of Enron and other Competitive Intervenors, the ALJ failed to address whether PP&L should be required to file a Supplier Tariff to govern its relationship with affiliated and unaffiliated EGSs. This is despite the fact that the Commission has expressly identified the need for EDCs to submit Supplier Tariffs in the PECO Restructuring Orders.

38. Through the PECO Restructuring Orders, the Commission required PECO to submit a compliance filing which includes "a separate tariff for alternative generation suppliers."⁶³ 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

⁶² On a brighter note, the Competitive Intervenors are pleased to see that PP&L agrees that joint marketing between PP&L and its affiliated supplier(s) should be prohibited unless comparable opportunities are provided to other EGSs. PP&L Main Brief, pp. 173-74.

⁶³ PECO Order, p. 162, Ordering ¶176.

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

. . . 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.

39. The Enron — sponsored Supplier Tariff is the only supplier tariff supported by the record of this proceeding and the Commission should direct that PP&L submit such a tariff in its compliance filing.

**G. Unbundling of Non-Wire Services — At a Minimum, the Commission Should Initiate a Rulemaking Now and Require PP&L to Unbundle and Permit Competitive Entry into All Non-Wire Services, as an Interim Measure, Pending Promulgation of Final Rules.
Exception to: R. D. 187-188.**

40. Enron excepts to the ALJ's refusal to recommend that the Commission require PP&L to unbundle billing services in this proceeding. In his Recommended Decision, the ALJ cited the Commission's PECO Order and adopted PP&L's position that the unbundling of non-wire services should be done in a generic rulemaking proceeding.⁶⁴ In the PECO Restructuring Orders, the Commission determined that it was not appropriate or necessary to

⁶⁴ Rec. Dec. at 187.

unbundle non-wire services at that time, but held out the possibility of addressing this matter in a later proceeding.⁶⁵

41. The ALJ erred by failing to recognize that the possibility of addressing this issue in a future rulemaking is no reason to deny customers the substantial benefits of unbundling non-wire services now. There is no longer any question that the Commission has the legal authority to do so.⁶⁶ Enron understands the Commission's reluctance to unbundle non-wire services in the PECO case, the first restructuring case, considering the unique circumstances under which that record was developed.⁶⁷ However, the PECO Order was adopted on December 11, 1997, and the Commission will be more than five months closer to direct access when this restructuring proceeding is resolved. At the same time the possibility of a comprehensive rulemaking on this issue remains just that, a possibility. There is no question now that such a rulemaking cannot be completed before direct access begins on January 1, 1999.

42. The substantial customer benefits of the unbundling of — and the competitive provision of non-wire services, include reduced costs, expanded choice, increased innovation of products and services, and added value. The OCA⁶⁸ and OTS agree with Enron that customers should have the option now of choosing alternatives to EDC non-wire services. No party has offered persuasive reasons why customers should be denied these substantial

⁶⁵ PECO Order at 138-39.

⁶⁶ In PECO, the Commission relied upon Section 2804(3) in finding that it had authority to open services such as billing and metering to competition. PECO Order at 138.

⁶⁷ The negotiations that produced the PECO "Partial Settlement" delayed evidentiary hearings, while proper consideration of both the Partial Settlement and Enron's "Choice Plan" further compressed the time for developing the evidentiary record.

⁶⁸ OCA M.B. at 98-100.

benefits now.⁶⁹ Indeed, the unbundling of and competitive entry into non-wire services at the beginning of direct access is crucial to the establishment of a competitive market and the success of restructuring because that is when pure pricing competition for generation services will be restricted by the imposition on all customers — regardless of their selection of an electric generation supplier — of CTCs and ITCs.

43. At a minimum, the Commission should initiate a generic rulemaking on this matter now and require PP&L to immediately unbundle its non-wire services and allow customers to obtain these services competitively, as an interim measure, pending promulgation of final rules. This approach has several advantages and no disadvantages. First, appropriate rules will be in a place when direct access begins on January 1, 1999. Second, the Commission will be able to observe how this process can promote the development of the competitive market while maintaining appropriate customer protections. Finally, these observations will provide valuable experience that will benefit the Commission and the parties during the rulemaking proceeding. Direct access is fast approaching, and the electricity consumers of Pennsylvania deserve the full benefits envisioned by the Act at the beginning of competition, not at the end. There is simply no reason that customers be required to wait for competitive benefits.

⁶⁹ The preservation of reliability and service standards will be guaranteed by the Commission's order in the Customer Services Rulemaking Docket, which provides proposed guidelines for maintaining customer services at the same level of quality now enjoyed by customers. 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), Docket No. M-00960890F.0011 (July 11, 1997) (Customer Services Order).

H. Transmission and Distribution Rates — The ALJ Erred by Rejecting the Enron Adjustments to Remove Retail Sales-Related Costs from PP&L's Unbundled Distribution Rate.
Exception to: Not Addressed in Recommended Decision.

44. The ALJ declined to accept or even address Enron's recommendation to reduce PP&L's proposed unbundled distribution rate to exclude a host of retail sales-related costs that PP&L had improperly included as part of the "distribution function." In PP&L's proposed restructuring plan, through the cost of service study sponsored by PP&L witness Kleha, it has improperly allocated costs by treating its distribution services as a "catch-all" or "dumping ground" for recovery of costs and has included costs in that category "which have nothing to do with actual delivery of electric power and energy to the ultimate consumer."⁷⁰ For example, the Kleha cost of service study inappropriately assigns the following costs of service categories entirely to the "distribution" function even though the costs are clearly associated with all aspects of PP&L's service:

- (a) Sales expenses;⁷¹
- (b) Customer information and assistance expenses;⁷²

⁷⁰ Enron St. 3.0 (Reising), p.10.

⁷¹ Approximately \$5 million in sales expenses are allocated to distribution services despite the fact that these activities are clearly associated with the sale of electricity — a competitive generation function — not the monopoly distribution function. Enron St. 2.0 (Mayo), p. 14. Of course, suppliers will incur their own sales expenses. Enron St. 3.0 (Reising), p. 14. Accordingly, allowing PP&L to foist its sales expenses on distribution customers will enable it to sell energy services in the market without having to recover these costs through its competitive operations like its competitors must do.

⁷² Likewise customer information and assistance expenses will be incurred by suppliers to "respond to customer inquiries and requests for assistance in parallel with or in lieu of similar services provided by the EDC." Enron St. 3.0 (Reising), p. 14. Accordingly, these costs pertain to distribution, transmission and generation services and should be

(continued...)

(c) Uncollectibles expense.⁷³

Another allocation issue arises pertaining to ancillary services.⁷⁴ FERC Orders 888 and 888a require transmission providers, like PP&L, to permit their customers (including suppliers) to self-provide ancillary services to the extent that it is technically feasible under applicable reliability council standards. While PP&L agrees ancillary services must be unbundled and priced on the basis of FERC-approved rates under the PJM Open Access Transmission Tariff, PP&L fails to recognize that an associated adjustment is required to remove

⁷²(...continued)

allocated fairly between those functions -- not loaded entirely on the distribution function as PP&L proposes.

⁷³ In an unbundled environment, uncollectibles clearly must be allocated fairly between distribution, transmission and generation services to prevent anti-competitive cross-subsidization. As Enron witnesses Reising explained:

"... If an Electric Supplier is responsible for billing all services or billing separately for the services it provides, it will have its own Uncollectible Accounts to deal with. Treating Uncollectible Accounts as part of "distribution" functional costs and continuing to roll these costs into "unbundled" rates will mean that Electric Suppliers, and in turn their customers, will end up paying twice for Uncollectible Accounts — once as a result of their own direct dealing with their customers and a second time in..." PP&L's distribution rates.

Enron St. 2.0 (Reising) pp. 13-14.

⁷⁴ Ancillary services are the generation support services that are needed, along with transmission services, to maintain reliability within and among control areas affected by the transmission service. Each ancillary service is identified and defined in Enron St. 3.0 (Reising), PDR-1, Exhibit 3.

the embedded generation cost of ancillary services from the company's retail rate revenue requirement.⁷⁵

In addition, in a competitive retail environment, the Commission should require EDCs, including PP&L, to progress to a more appropriate rate design which reflects evolving market conditions. Presently, PP&L and other EDCs have designed rates for electric service on the basis of service classifications — residential, general service, large high voltage, lighting, etc. In the restructured industry, the important pricing distinctions between customers will be the timing of electricity consumption, the voltage level at which customers take service and whether that service entails single-phase or poly-phase facilities. Basing an EDC's rate design on voltage level differentiation rather than traditional rate class factors provides a number of advantages, including the following:

- It results in a simplification of rates which better enables the customer to determine the basis for the charges imposed.
- It results in a more direct attribution of costs to the type of facilities actually used by the customer instead of the traditional class-differentiated rates.
- Most of the motivation for class rates has to do with generation-related costs, which will now be provided via a competitive market through which suppliers will be free to establish energy pricing mechanisms to meet specific customer needs and desires.⁷⁶

Finally, Enron witness Reising sponsored a pro forma distribution tariff which includes and demonstrates the appropriate allocation of costs, treatment of ancillary services and

⁷⁵ Enron St. 3.0 (Reising), p. 16-17; Enron St. 3.1 (Reising), p.1.

⁷⁶ Enron St. 3.0 (Reising), p. 24.

competitive rate design as outlined above.⁷⁷ The pro forma tariff designates distribution rates and revenue cycle credits which result from a proper allocation of costs between transmission, distribution and generation and provides a sample rate design for Energy Delivery Services. Revenue requirements attributed to Energy Delivery Services are summarized into customer and demand related service categories and then are further segregated by customer voltage.

Enron's proposed Distribution Service Tariff is new and different — admittedly. But we are also entering a new and different environment and Enron's DST better suits the needs of customers and allows PP&L to track costs in a way that appropriately accommodates the new competitive environment.

**I. Partial Payments — Enron Excepts to the ALJ's Recommendation Regarding Partial Payments.
Exception to: R. D. 189.**

45. Enron excepts to the ALJ's refusal to recommend that partial payments be applied on a *pro rata* basis. In his Recommended Decision, the ALJ stated that the Commission's Customer Services Order specifically rejected Enron's proposal. Notwithstanding the Customer Services Order, the ALJ erred by failing to recognize pro rata application of partial payments as the only reasonable way to assure that a disproportionate amount of delinquencies are not allocated to suppliers, and to prevent double recovery of uncollectible expenses by PP&L.

⁷⁷ Enron St. 3.0, Exhibit 3, PDR-7.

**J. PJM Intertie Capacity -- The ALJ Erred by Completely Misunderstanding Enron's Request for Relief in this Area.
Exception to: R.D. 189.**

46. In the PP&L evidentiary hearings, Enron introduced the testimony of Dr. Richard D. Tabors, a nationally known expert on power pool intertie capacity issues, to describe an anti-competitive scenario pertaining to the allocation of intertie capacity on the PJM system. In his Recommended Decision, the ALJ (and PP&L) misunderstood Dr. Tabors' testimony (and Enron's Supplemental Brief) and found that the relief requested is jurisdictional to FERC and is outside the Commission's jurisdiction.

47. PP&L, as a member of the PJM, participates in an arrangement which allocates the intertie capacity, known as capacity benefit margins ("CBMs"), between PJM and adjoining control areas. At present, however, the tie lines between PJM and the surrounding control areas have a maximum total transfer capability of approximately 4000 MW — 3500 MW of which is reserved as a CBM for reliability purposes as a substitute for capacity that would otherwise have to be installed within the PJM control area.⁷⁸ These tie benefit margins are allocated between PJM members, including PP&L, based on the absolute size of the member's load.⁷⁹ These tie margins are a benefit to transmission owning utilities for which they do not pay.⁸⁰

48. The system of allocation of PJM tie benefits is based on the presumption of a monopoly generation retail market and does not accommodate the evolving retail market in

⁷⁸ Enron St. 8.1 (Tabors), p. 1. Recently, the allocation factor was modified from one based on load ratio share to one based on actual size of load.

⁷⁹ Enron St. 8.1 (Tabors), p. 1.

⁸⁰ Enron St. 8.0 (Tabors), p. 3.

Pennsylvania. These reliability requirements need to be re-evaluated in the context of a competitive retail electric market. EDCs are presently receiving the benefits of these ties through capacity credits while continuing to use the ties for non-firm transactions. Under the current system, new entrants will simply not be able to acquire any significant quantity of firm capacity, placing them at a competitive disadvantage. Enron is not requesting the Commission to modify these PJM procedures, but merely to require PP&L and other PJM utilities to work together with suppliers to eliminate this unfair scenario and produce an equitable solution.

III. CONCLUSION

Enron respectfully requests the Commission to grant its Exceptions and to reject or modify the ALJ's Recommended Decision consistent with the foregoing discussion.



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Dated: April 27, 1998

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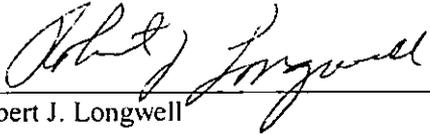
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ORIGINAL

April 27, 1998

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17120

VIA HAND DELIVERY

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 Secretary McNulty:

Enclosed, for filing, in the above-referenced proceeding, are an original and nine (9) copies the "Exceptions of PP&L, Inc. to the Recommended Decision of Administrative Law Judge George M. Kashi." Included in the Exceptions are tables incorporating the adjustments contained in the Recommended Decision.

Copies of the Exceptions are being provided to parties of record as indicated on the enclosed certificate of service. In addition, a copy is being provided to the Office of Special Assistants in electronic format on a computer disk, 3½ in size in Microsoft Word for Windows 6.0 format.

If there are any questions concerning this matter, please contact the undersigned as indicated above.

**DOCUMENT
FOLDER**

Respectfully submitted,

Paul E. Russell
Associate General Counsel

PA P U C
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Enclosures

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ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF PP&L, INC.
TO THE RECOMMENDED DECISION
OF ADMINISTRATIVE LAW JUDGE GEORGE M. KASHI**

DOCKETED
APR 28 1998

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I. INTRODUCTION

In accordance with the Electricity Generation Customer Choice and Competition Act (the "Act") and the schedule established by the Pennsylvania Public Utility Commission ("PUC" or the "Commission"), PP&L, Inc. ("PP&L") filed its Restructuring Plan on April 1, 1997, to introduce retail competition for the sale of electricity in its service territory. After extensive technical and public input hearings and full briefing, Administrative Law Judge George M. Kashi (the "ALJ") issued his Recommended Decision on April 7, 1998. PP&L files herewith its Exceptions to the Recommended Decision.

As explained in PP&L's Initial Brief, there are four critical components to a fair and balanced transition to competition:

1. Appropriate terms and conditions for open access retail competition;
2. Calculation and recovery of reasonable stranded costs;
3. Just and reasonable unbundled rates for the generation, transmission and distribution of electricity; and
4. Continued customer protections, particularly the continuation of safe and reliable service and programs for the assistance of low-income customers.

The Recommended Decision, to a very large extent, determined on the record that PP&L's restructuring plan filing satisfied each of these four components. In establishing terms and conditions for open access retail competition, the ALJ adopted PP&L's proposed rules and procedures, with one important and, in PP&L's view, erroneous provision relating to the provider of last report pricing. For stranded costs, the ALJ, adopting certain Office of Trial Staff

“(OTS”) adjustments, recommended an allowance of \$4.15 billion, as compared to PP&L’s \$4.5 billion claim (see Appendix A). With respect to unbundling and rate design, the ALJ largely approved PP&L’s filing, with the exception of its proposal for a customized rate design. The ALJ also approved PP&L’s Code of Conduct describing it as another manifestation of PP&L’s strong support for competition. Finally, with respect to consumer protections, the ALJ approved PP&L’s proposals which assure continued reliable service and provide for expanded funding of universal service programs.

Given the ALJ’s general agreement with and adoption of PP&L’s position on the major issues in this case, the opposing parties can be expected to file extensive and highly critical exceptions. There also may be a more general perception that the ALJ erred because he declined to adopt a “middle ground” position or to “split the baby” on certain issues such as stranded costs or competitive market rules. These arguments should be categorically rejected. The Recommended Decision correctly recognized one clear and indisputable fact -- PP&L, unlike some other utilities, filed a restructuring plan which fairly and equitably balanced the competing interests of customers, shareholders and competing suppliers. This approach was consistent with PP&L’s strong and continued support for competition. PP&L carefully avoided taking extreme or self-serving positions and, in its view, presented a balanced and fair plan, appropriately reflecting the diverse interests of the various parties to this case.

A good example of this balanced approach is PP&L’s stranded cost claim. PP&L’s stranded cost claim in this case (\$4.5 billion) should be viewed in light of its past and proposed future mitigation efforts. With respect to past mitigation, analysis must begin with the level of

PP&L's present rates. PP&L's rates today are essentially the same today as they were 12 years ago in 1986 and are over 25% lower in real terms when adjusted for inflation. PP&L's rates are well below the Pennsylvania average and over 30% below those of the highest cost Pennsylvania supplier, PECO Energy Company. Indeed, PP&L's rates today are just marginally above the national average, and PP&L's current residential rates are below the national average. These low rates are the direct results of PP&L's aggressive and extensive mitigation efforts which are fully discussed in its Initial Brief (p. 5). In accordance with the requirements of the Act, these past efforts must be considered and were considered by the ALJ in determining the reasonableness of PP&L's stranded cost claim.

Moreover, PP&L's stranded cost claim must be viewed in light of its total stranded costs. PP&L's gross stranded costs are approximately \$5.5 billion. PP&L has projected major future mitigation efforts, including projected reductions in capital additions, O&M expense and work force reductions, NUG buyouts and a depreciation reserve transfer, which together reduce the Company's stranded costs by over \$1 billion to \$4.5 billion. Moreover, because PP&L's rates are already low, the rate caps in the Act will limit PP&L's stranded cost recovery to \$4.0 billion. Thus, the Recommended Decision's \$4.15 billion allowance represents a 25% disallowance of PP&L's gross stranded costs, and the rate caps in the Act will further limit PP&L's collection of its stranded costs to less than three-fourths of its total stranded costs.

PP&L also designed other aspects of its filing to avoid controversy and to reach a balanced result. PP&L unbundled its rates carefully to avoid cost shifting and anti-competitive results. Its proposals in this regard were largely unopposed. With respect to competitive rules

and prices, PP&L proposed shopping credits equal to full market price and proposed a strict code of conduct to assure fair and open competition. PP&L, unlike others, fully supports competition and has presented proposals designed to achieve an open competitive market, both in its own service territory and throughout the state. Finally, to protect low-income customers, PP&L proposed to further expand its already substantial programs to assist low-income customers.

The Recommended Decision also was the only appropriate response to the extreme cases presented by several opposing parties. The OCA, for example, recommended a virtual total disallowance of PP&L's stranded costs, and proposed a 32% rate decrease in 1999. As fully explained in PP&L's Briefs, the OCA's proposal was fully contradicted by the record, is based on blatantly inconsistent assumptions, would produce devastating financial results for PP&L, and was properly rejected by the Recommended Decision. The OCA proposal, if adopted, would have resulted in a negative return on equity for PP&L and would have jeopardized reliable electric service in PP&L's service territory. The PUC found that PP&L's existing rates were just and reasonable in 1995. There is no rational basis to conclude that those same rates can or should be reduced in 1999, or that PP&L can operate safely and reliably with no return on common equity. Given these extreme and essentially irrational results, it is hardly surprising that the Recommended Decision categorically rejected the OCA's proposal.

The ALJ also properly rejected as too extreme and self serving to merit adoption proposals by certain marketers which would have prohibited PP&L from using its own name and proposals by social providers for massive increases in universal service programs to customers who are already paying their bills in full.

Opposing parties also will likely point out perceived “inconsistencies” between the Recommended Decision and the PUC’s recent Order in PECO Energy’s restructuring plan proceeding.^{1/} The PUC should rejected these comparisons. Both the Act and common sense dictate that each utility’s restructuring plan proceeding must be decided on its own merits. Any effort to select isolated findings from one utility’s restructuring plan decision and apply them to another is fraught with peril. PECO is the highest cost supplier in the state and one of the highest in the nation. Moreover, PECO’s rates were last set in 1991 and do not reflect savings achieved over the last seven years. Thus, “shopping credits” or “rate reductions” that may be reasonable for PECO would be devastating for utilities such as PP&L who already have low rates and have had recent rate cases which flowed through cost savings to customers.

Further, because of time constraints and procedural complexities arising out PECO’s Partial Settlement and the filing of the “Enron Plan” late in that proceeding, the PECO Order was not based on a fully developed record. In contrast, the record in PP&L’s case was fully developed and major flaws in opposing parties’ positions were fully exposed for the first time. Market price is a good example of this difference. In the PECO case, the PUC concluded that the market price analysis of OCA witness Smith was “. . . the most reasonable determination of future market value in the record . . . ,” but noted that it found no single proposal “completely convincing.” PECO Order, p. 88. Unfortunately, the record in the PECO case was not fully developed on this issue. Indeed, the OCA’s market price witness was never even cross-examined in that proceeding. Again, in contrast, the OCA witness was fully cross-examined and rebutted

1/ Application of PECO Energy Company, Docket No. R-00973953 (Dec. 23, 1997).

in PP&L's case. As a result, several egregious errors in his analysis were uncovered, leading the Recommended Decision to completely and correctly reject the OCA market price analysis.

Moreover, as pointed out in PP&L's Reply Brief, at pages 2-5, market price is a subsidiary issue to the ultimate issue — a just and reasonable level of stranded cost recovery. Thus, while the OCA market price may in fact produce a reasonable result for PECO, it would produce an unreasonable and devastating result for PP&L. Market price projections are based on a myriad of assumptions, many of which were never contested in the PECO case because they had little or no impact on PECO's operations. These same assumptions, however, would dramatically affect PP&L's stranded costs and were aggressively challenged in this case. Fundamental fairness and due process require that these issues be fully dealt with on this record. The Recommended Decision properly recognized that fact.

In sum, PP&L respectfully requests that the Recommended Decision be affirmed in all major respects.^{2/} Such a decision would send an important signal that a utility which actively supports competition and files a balanced, fair and reasonable restructuring plan can have that plan approved without some mandatory disallowance or "split the baby" adjustments. PP&L has always tried to "play it straight" with the PUC and to present reasonable "bottom line" filings. PP&L asks the PUC to recognize this fact by adopting and approving PP&L's restructuring plan and rejecting the extreme positions advanced by opposing parties.

^{2/} As discussed in Section II, PP&L excepts to four narrow issues in the Recommended Decision.

II. SPECIFIC EXCEPTIONS

PP&L excepts to the following portions of the Recommended Decision for the reasons set forth herein and more fully explained in PP&L's Initial and Reply Briefs.

1. Provider of Last Resort. PP&L excepts to the Recommended Decision's proposed pricing for provider of last resort service, particularly during the phase-in period. PP&L proposed a rate mechanism for recovering the cost of supplying provider of last resort service. That mechanism, the Purchase Generation Cost Rate ("PGCR"), would be patterned after the Energy Cost Rate; would be established on an annual basis; would be collected on a kwh basis; and would be reconciled for overcollections and undercollections. The PGCR would include the market price of electricity purchased for last resort service customers and the costs of administering the Company's electricity procurement program for those customers. PP&L's proposal was fully consistent with Section 2807(e)(3), of the Act, which provides that the provider of last resort service shall acquire energy at "prevailing market prices" and recover "all reasonable costs." Also consistent with the Act, the PGCR would not become effective until the end of the phase-in period. Until that time, PP&L would continue to charge non-shopping customers its PUC-approved, tariffed rates. See PP&L Brief, pp. 158-59.

The Recommended Decision makes two findings with respect to PP&L's proposal. First, the ALJ finds that PP&L's proposed PGCR is premature for rates to be charged after the phase-in of customer choice. The Recommended Decision concludes that under the Act, "the Company must await the promulgation of regulations by the Commission, as required under Section 2807(e)(2) of the Act, before the provisions of Section 2807(e)(3) can be fully implemented.

Thus, we find PP&L's proposed PGCR mechanism to be premature, and we recommend that it be rejected at this time." (RD, p. 162). Second, during the phase-in period, the Recommended Decision rejects PP&L's proposal to charge regulated tariffed rates for provider of last resort service. The ALJ instead adopts a two-part pricing mechanism. First, rates for provider of last resort service would be based upon PP&L's projected market price of generation plus certain adjustments proposed by the OCA. However, the Recommended Decision also sets a floor price under which rates for last resort service "should at no time be set below the standard offer price for the same class of service marketed by PP&L's unregulated Generation Supply Group." (RD, p. 162). For the reasons set forth below, the Recommended Decision's hybrid pricing scheme for last resort service during the phase-in period should be rejected.^{3/}

First, the Recommended Decision's proposal is inconsistent with the Act. Last resort service does not begin under the Act until the end of the phase-in period. Until that time, non-shopping customers continue to pay tariffed rates. See 66 Pa.C.S. § 2807(c)(2) and (c)(3).

Second, the Recommended Decision's proposal to establish a floor price for last resort service equal to standard offer service by PP&L's unregulated generation supply affiliate violates the Act and impermissibly interferes with the competitive electricity market. The purpose of the Act is to deregulate the provision of generation services. *See* Section 2806(a). It is improper to

^{3/} PP&L also disagrees with the ALJ's conclusion that approval of the PGCR for post phase-in last resort service is premature, but does not except to that finding at this time. PP&L understands that the issue of generation rates to be charged to last resort customers after the phase-in period will be the subject of a Commission rulemaking proceeding. PP&L will participate in the rulemaking proceeding and pursue this issue at that time.

tie PP&L's obligation to offer last resort service to the conduct of its competitive generation supplier. Indeed, the Act does not require PP&L to continue to have a non-regulated competitive energy supplier or, if it does, to offer competitive service in PP&L's territory. In addition, since competitive generation suppliers are not required to follow the rate classifications of PP&L's tariffed service, PP&L's competitive generation supplier may not have a simple "stranded offer price" that is comparable to last resort service. Moreover, PP&L's competitive generation supplier may offer various services or credit terms along with energy that would put the cost above the "prevailing market price," and thus inconsistent with Section 2807(e)(3).

Finally, it is simply improper to permit PP&L's non-regulated generation supplier to be able to manipulate the floor price for last resort customers — and hence to influence their decision as to whether to shop for generation supply in the competitive market. The Act permits PP&L to charge one of two prices for last resort service: tariffed rates as they existed on January 1, 1997 until the end of the phase-in and then rates based on the prevailing market price of electricity. Neither of those rates is within the control of PP&L. Consistent with its support of the development of a free and open competitive market, PP&L has no desire to manipulate the rates for last resort service, even if it could derive some strategic advantage from doing so.

For these reasons, the Recommended Decision's pricing proposal for provider of last resort service should be rejected.

2. Taxes Other Than Income. PP&L excepts to the Recommended Decision's adoption of an OTS adjustment to Taxes Other Than Income.

PP&L properly included Taxes Other Than Income in its calculation of stranded costs. The Company's claim included two components: (1) capital stock taxes; and (2) Public Utility Realty Tax ("PURTA"). PP&L calculated the actual amount of these taxes in 1996 applicable to its fossil and nuclear generation facilities. The Company then escalated the 1996 taxes at the projected rate of inflation over the life of each generating facility. PP&L Initial Brief, p. 104. The Recommended Decision (p. 128-29) adopts an OTS adjustment under which capital stock taxes would remain constant over the life of each generating plant and PURTA taxes would decline in relation to the decline over time in net plant balances resulting from depreciation. This adjustment reduced PP&L's nuclear generation-related stranded costs by \$280.7 million and its fossil generation-related stranded costs by \$66.1 million. (Id.)

As explained in PP&L's Initial Brief (pp. 104-105), this adjustment is inconsistent with the Act and should be rejected. Section 2810 of the Act states that the transition to retail competition shall be revenue neutral as to the Commonwealth. To achieve this result, PP&L's claim reflects two assumptions. First, PP&L assumed that, similar to the Company's own costs, the cost of services provided by the Commonwealth would increase with inflation. Second, PP&L assumed that the various tax revenues collected by the Commonwealth would increase proportionately to fund this higher cost of goods and services. As PP&L witness Schadt explained "common sense would dictate that as the cost of services provided by the Commonwealth increases, tax revenues must keep pace . . ." It is simply not reasonable to project that the capital stock and PURTA taxes will remain at 1996 levels over the next 20 to 30 years, let alone decrease during this period, as projected by OTS. Adoption of the

Recommended Decision would freeze capital stock and PURTA taxes revenues to the Commonwealth at 1996 levels. This recommendation is inconsistent with the revenue neutrality goal of Section 2810 of the Act and therefore should be rejected.

3. Susquehanna Deferred Refueling Expenses. PP&L excepts to the Recommended Decision's adoption of an OTS adjustment disallowing PP&L's regulatory asset claim for Susquehanna deferred refueling expense.

As explained in PP&L's Initial Brief (p. 114), PP&L's stranded cost calculation included a claimed regulatory asset for incremental maintenance costs incurred during the first refueling and inspection outage at PP&L's Susquehanna Steam Electric Station. These costs were deferred and amortized from the end of the outage until the next scheduled refueling and inspection outage was completed. The Company determined the annual recovery that would occur through existing rates and included in its stranded cost calculation \$7.996 million on a present value basis at December 31, 1998, for the PUC-jurisdictional portion of these costs.

The Recommended Decision (pp. 136-39) rejects this claim, citing the OTS argument that refueling expenses are typical, ongoing costs that properly should be normalized, not deferred and amortized for future recovery. This conclusion is inconsistent with prior PUC orders that have permitted the Company to defer these costs and record them as a regulatory asset. Section 2802(c)((1) of the Act requires the PUC to permit recovery of regulatory assets as stranded costs. It is undisputed that this claim is recorded on the Company's books as a regulatory asset. The Company's claim therefore should be approved.

4. Deferred Rate Case Expense. PP&L excepts to the Recommended Decision's adoption of an OTS adjustment disallowing deferred rate case expense as a regulatory asset and recoverable stranded cost.

The Company included in its calculation of stranded costs the present value of the generation-related portion of the total annual recovery of rate case expenses that would occur through existing rates. The Commission authorized PP&L to recover rate case expenses associated with its last base rate proceedings at Docket No. R-0094371, over a four-year period. The Recommended Decision (pp. 143-44) rejects this claim, citing OTS arguments similar to its arguments regarding the Susquehanna deferred refueling expense. However, as with the Susquehanna deferred refueling expense discussed immediately above, this deferred rate case expense was properly recorded on the Company's books as a regulatory asset, recovery of which is mandated by the Act.

III. CONCLUSION

For the foregoing reasons, the Commission should grant the Company's Exceptions and adopt the Recommended Decision with the modifications described herein.

Respectfully submitted,



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Dated: April 27, 1998

TABLES

APPENDIX A

SUMMARY OF
STRANDED COSTS (PUC JURISDICTIONAL)
REVENUE REQUIREMENTS METHOD
(\$000)

	<u>Company Claim</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Nuclear	\$2,824,620	\$(280,700)	\$2,543,920
Fossil	670,016	(66,100)	603,916
NUG	650,960		650,960
Regulatory Assets	354,326	(8,172)	346,154
	<hr/>	<hr/>	<hr/>
Total PUC Jurisdictional Stranded Costs - NPV in 1999 Dollars	\$4,499,922	\$(354,972)	\$4,144,950

**STRANDED COST
CALCULATION - NUCLEAR (PUC JURISDICTIONAL)
REVENUE REQUIREMENTS METHOD
(\$000)**

	<u>Company Claim</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Revenue Required - NPV (1999)	\$7,704,351	\$(280,700)	\$7,423,651
Less: Market Revenue - NPV (1999)	<u>(4,879,731)</u>	_____	<u>(4,879,731)</u>
Total PUC Jurisdic- tional Nuclear Stranded Cost - NPV in 1999 Dollars	\$2,824,620	\$(280,700)	\$2,543,920

**STRANDED COST
CALCULATION - FOSSIL (PUC JURISDICTIONAL)
REVENUE REQUIREMENTS METHOD
(\$000)**

	<u>Company Claim</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Revenue Required - NPV (1999)	\$9,194,236	\$(66,100)	\$9,128,136
Less: Market Revenue - NPV (1999)	<u>(8,524,220)</u>	<u> </u>	<u>(8,524,220)</u>
Total PUC Juris- dictional Fossil Stranded Cost - NPV in 1999 Dollars	\$670,016	\$(66,100)	\$603,916

**STRANDED COST CALCULATION -
NON-UTILITY GENERATION (PUC JURISDICTIONAL)
REVENUE REQUIREMENTS METHOD
(\$000)**

	<u>Company Claim</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Cost of Purchase - NPV (1999)	\$1,141,469		\$1,141,469
Less: Market Value - NPV (1999)	<u>(543,374)</u>		<u>(543,374)</u>
Cost in Excess of Market Value - NPV (1999)	598,095		598,095
Plus: Buy-out Payments - NPV (1999)	<u>52,865</u>		<u>52,865</u>
Total PUC - Juris- dictional NUG Stranded Cost - NPV in 1999 Dollars	\$650,960		\$650,960

**STRANDED COST CALCULATION -
REGULATORY ASSETS (PUC - JURISDICTIONAL)
REVENUE REQUIREMENTS METHOD
(\$000)**

	<u>Company Claim</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Unrecovered Energy Costs	\$76,815		\$76,815
Post-Retirement Benefits	8,730		8,730
Susquehanna Operating Costs	9,830		9,830
Common Plant	7,783		7,783
Retired Miners' Healthcare Costs	6,308		6,308
DOE Assessment	16,361		16,361
Deferred Refueling Costs	7,996	\$(7,996)	--
Voluntary Early Retirement Costs	14,085		14,085
Employee Transition Costs	17,106		17,106
Rate Case Expenses	176	(176)	--
Taxes Recoverable	231,709		231,709
Regulatory Liabilities	<u>(42,573)</u>	—————	<u>(42,573)</u>
Total PUC Jurisdictional Regulatory Assets Stranded Cost - NPV in 1999 Dollars	\$354,326	\$(8,172)	\$346,154

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania Power & Light
Company For Approval of Its Restructuring Plan
Under Section 2806 of the Public Utility Code

Docket No. R-00973954

CERTIFICATION OF SERVICE

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