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Via Hand Delivery

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*Re: Application of PP&L for Approval of its Restructuring Plan
Docket No. R-00973954*

Dear Mr. McNulty:

Enclosed for filing with the Commission in the above captioned matter are an original, nine copies of the Reply Brief of GPU Energy. Copies of this Brief have been served in accordance with the attached Certificate of Service.

Please contact me if you require anything further in regard to this matter.

Very truly yours,

Terrance J. Fitzpatrick
Terrance J. Fitzpatrick

TJF/cc

Enclosures

c: Honorable ALJ Kashi
(2 copies and one diskette)

All parties of record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF GPU ENERGY

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Dated: February 27, 1998

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IV. MARKET PRICE OF ELECTRICITY

The Commission's findings regarding market price must be based based upon the factual record developed in this proceeding.

PECO Energy argues in its main brief that "the wholesale market prices accepted here should be the same as those utilized in the PECO case", even though PECO also contends that the Commission's market price findings in its case were not supported by substantial evidence. (PECO Main Brief, p. 2) The Large Customers argue that the market price determination made by the Commission in the PECO restructuring case should be used to determine the stranded costs for all utilities in the PJM region. (Large Customer Main Brief, pp. 19-20) The Office of Consumer Advocate ("OCA") argues that the Commission has already determined in its PECO decision that OCA witness Smith's approach to projecting market prices is appropriate for determining asset market value within PJM. (OCA main brief, p. 24)

GPU Energy asserts that the Commission's market price findings in PP&L's restructuring case must be based exclusively upon the factual record developed in this proceeding. There is no legal basis for interpreting the decision in PECO's restructuring case as a generic determination of the market price issue for the entire PJM region. Moreover, the market price findings in the PECO decision hinged in part upon the Commission's criticism of PECO's witnesses (PECO Restructuring Order at 83-90), and it cannot be assumed that these same criticisms apply to PP&L's witnesses. Regardless of whether the Commission was right or wrong in

determining market price in the PECO proceeding (based upon the record in that proceeding), PP&L has a right to a determination of market price based solely upon the record in this proceeding.

PECO's argument that the determination of market price in its case (though unsupported by substantial evidence) must also apply to PP&L, must be rejected. If, indeed, the market price findings in the PECO decision were not supported by substantial evidence, the proper remedy is to correct those findings, not to compound the error by applying those findings to PP&L.

IX. Phase-In Issues

The Customer Choice Act does not authorize the Commission to accelerate the phase-in schedule set forth in section 2806(b) of the Public Utility Code.

The main briefs of the Competitive Intervenors (pp. 26-27), PECO (pp.4-5), and the Large Customers (pp.94-95) contend that the Commission should adopt the accelerated phase-in schedule that the Commission ordered in the PECO proceeding. PECO essentially argues that the Commission acted contrary to the Customer Choice Act in accelerating the phase-in schedule in PECO's proceeding, but that, in order to be fair, the Commission must now do the same thing in PP&L's proceeding. The Large Customers interpret the January 1, 1999, 2000, and 2001 dates stated in section 2806(b) of the Act as constituting the latest dates by which direct access must be provided for specific percentages of load, rather than as the actual dates for providing direct access. The Competitive Intervenors call the decision to accelerate the phase-in the PECO

case "a sound policy decision," and contend that it should be applied to other electric distribution companies to eliminate confusion.

The above reasoning in the main briefs of the Large Customers and Competitive Intervenors will no doubt be expanded upon substantially in their reply briefs in response to the legal argument against the accelerated phase-in contained in the main brief of the electric distributors (pp. 7-12). In reviewing all of these arguments, the presiding administrative law judge should keep the following points in mind:

- First, section 2806(b) on its face establishes a logical three step phase-in process, with a full year between each of the phases.
- The Act states explicitly that January 1, 1999 is the "implementation date." This can only mean that January 1, 1999 is the date upon which the phase-in of direct access *begins*. By implication, it also means that January 1, 2000 is the earliest date for phasing in the second one-third of the load, and January 1, 2001 is the earliest date for phasing in the final one-third of the load.
- The Act also states explicitly that the phase-in period *ends* on January 1, 2001. See section 2806(a). In contrast, the accelerated phase-in advocated by the above parties would move this ending date to January 2, 2000, which is directly contrary to the plain language of the Act.
- The Act contains explicit language authorizing the Commission to delay the January 1, 1999 implementation of the phase-in. See section 2806(c). In contrast, the Act does not contain any language authorizing the Commission to accelerate the phase-in schedule.
- While § 2806(b) separates both the first and second, and second and third, phases by one full year, the accelerated phase-in schedule separates the first and second phases by a mere twenty-four hours. To argue that

this preserves the three step process set forth in § 2806(b) is to elevate form over substance.

While the Customer Choice Act may provide the Commission with discretion regarding some restructuring issues, the Act clearly does not authorize the Commission to accelerate the phase-in schedule.

With regard to PECO's argument that the Commission must apply the same illegal phase-in schedule to PP&L that the Commission earlier applied to PECO, GPU Energy suggests that the better approach would be for the Commission to comply with the Act in this case, and to take whatever steps are necessary to correct the phase-in schedule applicable to PECO.

Conclusion

WHEREFORE, GPU Energy respectfully requests that the Commission base its market price findings exclusively upon the record in this proceeding, and that the Commission comply with the phase-in schedule set forth in § 2806(b) of the Act whereby one-third of the peak load of each customer class is phased in on January 1 of 1999, 2000, and 2001.

Respectfully submitted,

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Dated: February 27, 1998

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

KJR

CERTIFICATE OF SERVICE

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

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