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July 2, 1998

VIA HAND DELIVERY

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

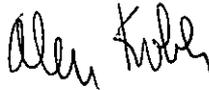
RE: Application of Pennsylvania Power & Light Company
For Approval of its Restructuring Plan Under Section 2806
of the Public Utility Code;
Docket No. R-00973954

Dear Mr. McNulty:

Enclosed please find the original and three copies of Enron Power Marketing, Inc.'s Answer to PP&L, Inc.'s Reconsideration Petition 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,



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

AK/cln
Enclosures
cc: All Parties of Record

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57 DSH:11441.1

CERTIFICATE OF SERVICE

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

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Alan Kohler

Dated: July 2, 1998

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ENRON POWER MARKETING, INC.'S
ANSWER TO PP&L, INC.'S RECONSIDERATION PETITION**

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Enron Power Marketing, Inc. ("Enron"), by its counsel, submits this Answer in response to the petition filed by PP&L Inc. ("PP&L") on June 26, 1998 seeking reconsideration and other related relief pertaining to the Commission's June 15, 1998 Opinion and Order establishing a restructuring plan for PP&L at the above-captioned docket. PP&L has requested expedited treatment and seeks Commission adjudication of its petition at its July 9, 1998 Public Meeting.¹

In responding to PP&L's petition, Enron is focusing on paragraphs 37 and 38 of the petition which requests the Commission to reconsider a requirement included in PP&L's Code of Conduct under which PP&L must seek and receive regulatory approval

¹ Enron strongly supports PP&L's request for expedited treatment. As set forth below, if the Commission has any hopes for market entry by electric generation suppliers ("EGS") into PP&L and other electric distribution companies ("EDC") service territories, it must finalize the restructuring rules immediately. Further delays simply cannot be tolerated.

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of transactions between affiliated divisions.² PP&L's request for elimination of this requirement is based on completely inaccurate and misleading assertions and should be summarily denied.

PP&L's reasons for reconsideration fall into two general categories. First, it claims that the relief ordered by the Commission was not requested by any party and that it therefore violated PP&L's due process rights. In addition to conveying a complete misunderstanding of Pennsylvania due process requirements, PP&L's claim is a complete misstatement. The fact of the matter is that Enron introduced testimony supporting such relief and the Competitive Interveners specifically requested the Commission to implement such a requirement in its briefs in the proceeding.³ PP&L's due process rights have been fully protected and its complaint represents nothing more than an unsupported "second shot at the apple" at an issue which it fully litigated and lost.

Second, PP&L contrives a "hodgepodge" of practical concerns which it alleges could result from the need for regulatory approval of divisional transactions. Stripped of

² PP&L refers to its divisions as its EGS division and its EDC division. PP&L's EGS division, PP&L Energy Plus, is a licensed supplier and also owns and operates PP&L's generation assets. The EDC division serves the distribution and transmission functions and also serves as the provider of last resort ("PLR").

³ Enron St. 6.0 (Dirmeier), pp. 6-7; Competitive Interveners' Main Brief, p. 34-35, Reply Brief, p. 20. The Competitive Interveners are Enron, New Energy Ventures, the Mid-Atlantic Power Supply Association and the Pennsylvania Petroleum Association. The Competitive Interveners filed joint briefs at the direction of ALJ Kashi. Apparently, PP&L did not take the time to review the positions of the parties before making its erroneous assertions.

their rhetoric, the concerns are empty and are an attempt to relitigate issues already considered and decided. It must be remembered that PP&L, unlike all other major EDC's, chose not to structurally separate and to organize its licensed EGS as an affiliated division of the EDC rather than a corporate affiliate. However, this does not mean that the Code of Conduct, including review of affiliate or divisional transactions, should be applied equally to PP&L as other EDCs. All other major EDCs are, by operation of law, subject to the regulatory review procedures provided for by Chapter 21 and have not complained or raised concerns regarding its practical application. PP&L should be treated no different and should not be permitted to evade the Commission's regulatory oversight through manipulation of its corporate organization.

Finally, the Commission must not permit further delays in the compliance process for implementing PP&L's Restructuring Order. Not only should the Commission summarily deny PP&L's reconsideration petition on July 9, 1998, but the Commission and stick to its present deadline of July 15, 1998 for submission of its compliance filing.⁴ Furthermore, the Commission should direct PP&L to immediately schedule meetings with all interested parties, including EGSs, to resolve any potential disputes regarding its proposed tariffs so that the rules applicable to PP&L's service territory can be finalized as soon as possible.

⁴ By Order entered June 26, 1998, the Commission extended PP&L's compliance filing deadline until July 15, 1998.

In response to PP&L's petition, Enron asserts as follows:

1. Enron asserts that the relief requested pertaining to PP&L's Code of Conduct lacks merit and should be summarily denied.

2. Enron is not taking any position on the allegations contained in paragraphs 2 through 36 of PP&L's petition.

3. Enron strongly denies and opposes the allegations set forth in Paragraphs 37 and 38 of PP&L's petition as specifically set forth below:

37. PP&L's assertion that the issue of regulatory approval of divisional transactions was not raised or requested by any party is a complete misstatement by PP&L. PP&L's decision not to structurally separate its EGS functions from its EDC functions was of grave concern to Enron and other suppliers from the outset of PP&L's restructuring proceeding. As Enron with witness Michael Dirmeier explained in testimony introduced into the underlying record in this proceeding:

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

* * *

Not only should [the] functional separation requirement be equally applicable to PP&L's Delivery Group and Generation Supply Group as to separate corporate affiliates, but the separation requirement must be more clearly defined and more strictly enforced since the potential for abuse is much greater without the clear boundaries provided by structural corporate division."

Enron St. 6.0 (Dirmeier), pp. 6, 15.

Following the close of the record, in their Main Brief, the Competitive Interveners specifically requested the Commission to impose a regulatory approval requirement for transactions between PP&L's EDC and EGS divisions. As the Competitive Interveners clearly and concisely stated:

As to PP&L's proposed Code of Conduct, many of the modifications and clarifications to PECO's proposed Code of Conduct addressed by the Commission in PECO Restructuring Orders are also relevant here. First, the Commission required that "The Commission must assert the same level of review of transactions between an EDC and its competitive entity, whether it is separately incorporated or not." [PECO Opinion and Order, p. 128.] Such a requirement is particularly important, since PP&L is not proposing to separately incorporate the Generation Supply Group [EGS division], and will prevent PP&L from evading Commission review of transactions between the Delivery Group [EDC division] and the Generation Supply Group. Such a provision is missing from PP&L's proposed code and should be added to satisfy the Commission's standard.

Competitive Intervener Main Brief, pp. 34-35 (footnotes omitted).⁵

Furthermore, in its Reply Brief, the Competitive Interveners reasserted their request for "regulatory review requirement for transactions between PP&L divisions when it stated:

"Structural separation through the establishment of fully independent entities is preferable, whenever possible Functional separation without legal separation must not provide a basis for any competitive advantage or opportunities for the marketing entity." For example, the Commission required that transactions between an EGS and an affiliated supplier should be subject to the same level of Commission scrutiny whether or not the affiliate is structurally separated from the EDC. PECO Restructuring Order, p. 128. This requirement is equally applicable to PP&L and should be included in its final restructuring plan.

Competitive Intervener' Reply Brief, p. 20, fn. 50.

Accordingly, not only was the request for relief raised by the Competitive Interveners, but it was raised as one of the most critical aspects of an adequate Code of Conduct for PP&L — particularly given PP&L's refusal to structurally separate its operations. PP&L's assertions to the contrary are complete misstatements and should be disregarded.

⁵ PP&L would have the Commission think that it "dreamed up" this requirement just for PP&L. However, the fact of the matter is that this requirement was included as a part of PECO's Code of Conduct in the PECO Restructuring Order and was an adoption of similar testimony by Enron witness Dirmeier as that introduced into the PECO restructuring proceeding.

38. PP&L's practical concerns regarding the requirement of regulatory approvals for divisional transactions are no more convincing than its misplaced due process claims. PP&L first complains that the requirement places its EGS in a different position than other market participants since other EGSs would not require regulatory approval of transactions with the EDC.

PP&L completely misses the point. It is the affiliated nature of the two PP&L divisions which creates the need for competitive safeguards in the first place and led the General Assembly to require regulatory approval of affiliate transactions generally for all public utilities through enactment of Chapter 21 of the Code. The fact that PP&L has not structurally separated its operations creates the potential for further abuse and is further reason why regulatory oversight is necessary. Nonaffiliated entities simply have no incentive to engage in anti-competitive or otherwise inappropriate transactions which provide any advantage or benefit to the utility and regulatory review would serve no purpose. Although the General Assembly did not require that utility EDC and EGS operations be structurally separated, it also did not intend that a utility be able to evade application of the law — including Chapter 21 — through manipulation of its corporate structure.

PP&L, by its own admission, is trying to avoid essential protections for the competitive market which are a critical component of the PECO Settlement and which are pending in for generic implementation in the Commission's competitive safeguards rulemaking docket.⁶ The generation component of the code of conduct agreed to by PECO and the other parties for its generation facilities has several basic principles but focuses on prohibiting the entity that controls the generation assets from utilizing those assets in a way that gives the EDC or the affiliated supplier an unreasonable preference over a non-affiliated EGS.⁷ The specific rules in the PECO Code are designed to prevent the incumbent from being able to utilize its monopoly position with respect to generation to undercut the retail market. It prohibits PECO's generation affiliate from selling what would otherwise be wholesale generation services directly into the retail market in the affiliated EDC's service territory and prohibits any anti-competitive or discriminatory conduct which would prevent retail electricity customers

⁶ Notice of Proposed Rulemaking Regarding the Establishment of Competitive Safeguards for the Pennsylvania Electric Industry, L-090132. See June 12, 1998 Enron Comments, pp. 16-18.

⁷ Joint Petition for Full Settlement, R-0097953, Appendix H.

from obtaining the benefits of a properly functioning and workable competitive electricity market.⁸

Again, PP&L's potential for abuse is much greater and, if anything, requires additional protections. Unlike PECO which has agreed to structurally separate its generation asset function, in addition to its EDC and EGS functions, PP&L has not even functionally separated its generation asset function from its EGS. Accordingly, permitting transactions between PP&L's divisions without strict regulatory oversight will be potentially disastrous to competition regardless of any other market conditions adopted by the Commission.

While Enron is advocating a requirement in the Competitive Safeguards Rulemaking that all EDCs, including PP&L, be required to functionally separate their generation assets function which would then be subject to a Genco Code of Conduct similar to PECO's, the Commission's requirement for regulatory review of PP&L's divisional transactions provides some protection to the competitive market in the meantime.⁹ Accordingly, the Commission should maintain the requirement until such

⁸ Full Settlement, Appendix G, Rule 5.

⁹ The filing of transactions between the divisions will give the Commission and market participants a "fighting chance" to identify anti-competitive behavior before it occurs and to address it through the transaction review process.

time as it can be strengthened, not eliminate the requirement and provide PP&L unfettered ability to manipulate the marketplace.

38(a). PP&L claims that the requirement will interfere with the PLR responsibilities because of the regulatory delays in reviewing divisional transactions. Such a concern is exaggerated out of proportion and is no more than an attempt to avoid critical regulatory oversight of its operations.

It must be remembered that the procedures contained in Section 2101(b) regarding review of affiliate transactions, includes "deemed approved" language which results in approval of contracts within 30 days of submission unless the Commission affirmatively rejects the transaction or extends the review period.¹⁰ PP&L will have plenty of opportunity to finalize and receive regulatory approval of arrangements between its divisions in a timely manner which will have no impact on its PLR functions as long as its actions and business strategy are proper. However, if PP&L attempts to provide opportunities to its division or itself which are not available to other market participants, regulatory delay is justified so that the activity can be brought to a halt before it begins.

¹⁰ PP&L would have the Commission think it will encounter months of regulatory delay.

38(b). Again, PP&L's concerns are greatly over exaggerated and represent an attempt to evade oversight, not a legitimate practical concern. Every other major EDC in the Commonwealth has voluntarily structurally separated its EDS operation from its EGS and generation asset operations and as a result of the structural separation, has placed itself within Chapter 21's purview. No other EDC has raised a concern about its ability to transact with its affiliate as a result of Chapter 21 regulatory delay. The only requirement placed on PP&L is that pertaining to regulatory approval of the service arrangement between divisions — an arrangement which can be established and submitted in advance. While each transaction must be consistent with and per authority of the Commission approved arrangement, hourly approvals are not at issue here as PP&L appears to claim. Again, PP&L is attempting to evade a requirement which will be in effect for other utilities, by operation of law, and, if anything, is more critical for a company which has not structurally separated. Such evasion is completely inappropriate and should be rejected by the Commission.

Furthermore, PP&L's passing reference that such a requirement will increase rates to its PLR customers or jeopardize reliability is misleading. PP&L's PLR customers are required to pay existing tariffed rates for generation for the foreseeable future and are protected by a rate cap.

Furthermore, it is inconceivable that a 30 day review process which will be applicable to every other utility will somehow adversely impact PP&L's reliability of service.

38(c). While there is no provision in the Act which expressly provides for the application of Chapter 21 to PP&L's divisions, there is nothing that prevents Chapter 21 requirements and procedures from being included as a component of PP&L's restructuring plan. Whether Chapter 21 directly applies to PP&L's divisions is not at issue. What requirements must be included in PP&L's restructuring plan to enable the transition to competition in PP&L's service territory is at issue. As set forth above, required regulatory approval of divisional transactions is a critical aspect of PP&L's Code of Conduct which is supported by the underlying record of this proceeding and should be maintained by the Commission.

38(d). The Code of Conduct provisions cited by PP&L provide some protection for non-power goods and services, but provide no protection for power or generation related goods and services. Furthermore, it is difficult to predict the type of ant-competitive behavior which divisions under the same corporation will engage in. The regulatory oversight requirement will give the Commission and market participants a "fighting chance" to deter anti-competitive behavior before it becomes widespread. Furthermore, the

requirement is already imposed on other major electric utilities by operation of law and is appropriate for application to PP&L.

38(d). PP&L does nothing more than repeat its exaggerated and alleged concerns pertaining to PLR service and system reliability. While PP&L clearly understand that these two areas are "regulatory attention getters," they have nothing to do with the pending issue and PP&L's references should be disregarded.

4. Reconsideration of a Commission order is appropriate at this time. As the Commission stated in Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1992) in establishing the applicable standard:

A petition for reconsideration under the provisions of 66 Pa.C.S. §703(g) may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Duick at 559.

Here, shed of its rhetoric and misstatements, PP&L does nothing more than attempt to relitigate issues already decided by the Commission based on the evidence before it. No new evidence or new or novel arguments have been presented. The relief

ordered by the Commission is supported by evidence of record and reconsideration should be denied.

5. In addition to rejecting the relief requested by PP&L at its July 9, 1998 Public Meeting, the Commission should take strong and affirmative steps to assure that the implementation of PP&L's restructuring plan moves forward. Although under any schedule, PP&L's proposed supplier tariff will be due in the near future, PP&L has yet to schedule meetings with suppliers in order to resolve disagreements and to keep disputes before the Commission to a minimum. This sort of collaborative process was critical to finalizing PECO's rules in a timely fashion. Unless the Commission takes strong and affirmative steps and avoids any further delays, PP&L's rules will not be finalized in time to allow EGSs to enter the market on January 1, 1999 and direct access in PP&L's territory will be delayed indefinitely.

WHEREFORE, for all of the foregoing reasons, Enron respectfully requests the Commission to issue an order denying PP&L's reconsideration petition.

Respectfully submitted,



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Dated: July 2, 1998

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July 6, 1998

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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 are the original and three (3) copies of the Answer in Opposition of the PP&L Industrial Customer Alliance to the Petition of PP&L, Inc., for Reconsideration, Clarification, Amendment, Correction, and Supersedeas in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties are being duly served with the exceptions. Please date stamp the extra copy of this letter and return it for our filing purposes.

Very truly yours,

McNEES, WALLACE & NURICK

By *Pamela C. Polacek*
Pamela C. Polacek

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Counsel to the PP&L Industrial Customer Alliance

PCP/clc
Enclosures

- c: Chairman John M. Quain (via hand delivery)
- Vice Chairman Robert K. Bloom (via hand delivery)
- Commissioner David W. Roka (via hand delivery)
- Commissioner Nora Mead Brownell (via hand delivery)
- Commissioner Aaron Wilson, Jr. (via hand delivery)
- Cheryl Walker Davis, Office of Special Assistants (via hand delivery)
- Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Docket No. R-00973954

Pennsylvania Power & Light Company

Application of PP&L for Approval
of its Restructuring Plan Under
Section 2806 of the Public Utility Code

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**ANSWER IN OPPOSITION OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE TO THE
PETITION OF PP&L, INC., FOR RECONSIDERATION,
CLARIFICATION, AMENDMENT, CORRECTION,
AND SUPERSEDEAS**

Air Products and Chemicals, Inc.
Alumax
Appleton Papers Inc.
Armstrong World Industries, Inc.
Bethlehem Steel
CertainTeed Corporation
Hercules Cement Company
Hershey Foods Corporation
Horsehead Resource Development Co., Inc.
Lafarge Corporation - Whitehall Plant

Lucent Technologies
Magee Carpet Company
Mount Joy Wire Corporation
Praxair, Inc.
R.R. Donnelley & Sons Company, Inc.
The Stroh Brewery Company
Thomson Consumer Electronics, Inc.
Titanium Hearth Technologies, Inc.
Victaulic Company of America
WEA Manufacturing

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Dated: July 6, 1998

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Customer Alliance

have been overlooked or not addressed by the Commission.” PP&L Petition, ¶ 7 (quoting Duick v. Pennsylvania Gas & Water Company, 56 Pa. P.U.C. 553, 559 (1982) (“Duick”)). In large part, PP&L’s Petition presents arguments that are neither new nor novel and that have been fully addressed by the Commission in reaching its decision in this proceeding (e.g., the \$70 million adjustment to rates agreed upon by PP&L in the 1994 base rate proceeding and the arguments regarding the understatement of PP&L’s stranded costs). These requests for reconsideration must be denied.

In addition, although some topics are “new” (e.g., the nuclear decommissioning tracker and the use of January 1, 1999, rates as the starting point for unbundling), the burden was clearly on PP&L to substantiate and make such affirmative proposals in its testimony. PP&L’s Petition cites no testimony or evidence in support of these new proposals because it did not raise the proposals at the appropriate time. The Commission should not sanction such drastic substantive changes to the Final Order based upon the Company’s Petition for Reconsideration which, for the first time in this lengthy proceeding, is raising new proposals unsupported by record evidence. The PP&L request for reconsideration or clarification of these issues must be denied.

Furthermore, PP&L’s allegations that the Commission’s Final Order in this proceeding uses “incorrect data” should be viewed with extreme skepticism. The Commission based its calculations on the record evidence. Assuming the data is incorrect, PP&L never clarified or corrected the record to submit “correct” data.¹ PP&L should not now be permitted to selectively update record evidence

¹The possible exceptions to this statement are PP&L’s allegation that the incorrect amortization rate was used for the CTC and the apparent error by the Commission in establishing the shopping credits for the years after 2002. PP&L Petition, ¶ 16-18. As explained below, PP&L’s observations may have merit, but have not yet been adequately substantiated.

after the issuance of a Final Order by the Commission when it suits the Company's interests. The PP&L presentation of a single schedule recalculating the system average transmission and distribution, competitive transition charge ("CTC"), and shopping credits for each year of recovery based on these aggregate errors must be ignored.

Moreover, PP&L has not made a sufficient showing for supersedeas of a Commission Final Order pursuant to the standards enumerated in Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 467 A.2d 805, 520 Pa. 545 (1983) ("Process Gas"). The Final Order must remain intact and the transition to competition must proceed unhindered by supersedeas or stay of the Final Order. The PP&L request for a stay must be denied.

A. The Commission's Final Order Unbundled PP&L's Rates Based On The Record Evidence Submitted In The Proceeding.

PP&L alleges that the rate unbundling performed by the Commission in "Attachment A" to the Final Order is deficient. PP&L Petition, ¶¶ 8-18. According to PP&L, this deficiency arises because the Commission used "incorrect data." PP&L submits a recalculation of Attachment A correcting all of these alleged errors. Id. at Attachment 2.² While certain PP&L adjustments may be proper, such as the observation that the shopping credit in 2002 appears to be miscalculated, the validity of other proposed adjustments, such as the sales volumes and the CTC amortization rate used by the Commission, remain unclear. On the whole, however, PPLICA notes that the Commission appropriately relied on the record evidence in this proceeding in unbundling rates. PPLICA discusses each of the proposed adjustments below. In general, to the extent that PP&L

²Attachment 2 reflects the unbundled rates that would apply if all of its proposed revisions are accepted by the Commission including reconsideration and reversal of the \$70 million rate reduction that PP&L agreed to in its last base rate proceeding.

seeks to introduce "revised" calculations or evidence at this stage of the proceeding, PP&L's request for reconsideration or clarification must be denied.

1. The Commission Used The Appropriate Starting Rate For Unbundling Based On Record Evidence.

The first data error cited by PP&L is the Commission's use of a system average bundled rate of 7.21¢ per kWh in calculating the unbundled components of PP&L's rates after restructuring. PP&L Petition, ¶¶ 9-12. PP&L argues that rate unbundling should be based on the system average bundled rate at January 1, 1999. Id. ¶ 12. PP&L asserts that specific changes should be factored into arriving at the system average bundled rate of 7.42¢ per kWh at January 1, 1999. Id. ¶¶ 11-14 & Attachment 1. The Company's recalculation of the system average bundled rate to be used for rate unbundling must be rejected.

First, PP&L's assertion that a system average bundled rate at January 1, 1999, should be the basis for unbundling is clearly inappropriate and a violation of the Act's rate cap. See PP&L Petition, ¶ 12. The Act requires that rates are capped at their January 1, 1997, levels. 66 Pa. C.S. § 2804(4). Clearly, the rates in effect as of January 1, 1997, must be used to unbundle rates during the initial rate cap period of direct access. Importantly, PP&L in its Petition has not demonstrated that the capped rate effective as of January 1, 1997, differs from that used by the PUC or that its January 1, 1997, rate should not govern unbundling.

Second, PP&L's insertion of this new proposal to unbundle rates at January 1, 1999, (or to unbundle rates based on any information other than that submitted by the Company as part of its original filing) is inappropriate. PP&L notes that it never suggested that its system average bundled rate in 1995 "was appropriate for the determination of unbundled rate components in 1999." PP&L

Petition, ¶ 10. At no point, however, did PP&L argue that the unbundled rates submitted as part of its restructuring plan would be inappropriate for the determination of unbundled rate components in 1999. Chapter 28 clearly required PP&L to include in its restructuring plan "unbundled prices or rates for generation, jurisdictional transmission, distribution and other services." 66 Pa. C.S. § 2806(e). The Commission's Order on restructuring filing guidelines required submission of the filing by PP&L based on a 1996 pro forma test year. See Re Electric Utility Restructuring Filings, Docket No. M-00960890F0003, Order entered on February 13, 1997, Appendix A, 176 PUR 4th 45, 55 (1997). The reason that the 1996 test year was required is the cap on rates at their January 1, 1997, levels. 66 Pa. C.S. § 2804(4). If the information submitted into the record by PP&L was deficient and the Company did not intend for the Commission to rely on the cost information, PP&L should have stated so. Because it did not, the Company must live with the evidence it submitted in this proceeding showing that the correct starting point for rate unbundling is 7.21¢ per kWh. PP&L's new assertion of the argument to unbundle rates at the inflated January 1, 1999, level is both disingenuous and is extra-record evidence that the Commission must ignore.

Similarly, PP&L's claim that other parties did not rely on the cost information and unbundled rates submitted with the Company's filing is false. See PP&L Petition, ¶ 10. The Company's arguments belie reality and must be rejected. PP&L, as the petitioner in this proceeding, presented a cost of service study ("COSS") that purportedly resulted in the unbundled rates shown in the tariff it submitted as part of the proceeding. See PP&L Exhibits JMK 1 & JMK 2 & PP&L Exhibit OGK 2. Some of the parties in this proceeding (including PPLICA) specifically relied on and adopted

the PP&L COSS and unbundling results. PPLICA did, however, suggest that PP&L's rates should be further unbundled into separate transmission and distribution charges. As PPLICA witness Baron explained:

Q. Would you please discuss the specific methodology that you are recommending to unbundle PP&L's rate schedules?

A. The basic methodology that I am recommending to unbundle PP&L's rate schedules is similar computationally to the framework utilized by the Company. Beginning with the current bundled rates for each rate schedule, cost of service results are utilized to remove or unbundle the transmission and distribution components (delivery charge) of the rate. The residual amount remaining in the bundled rate reflects the generation component of the rate and forms the generation rate cap under the Act.

The next step in the specific methodology establishes expected market prices for each of the seven years during the transition period, leaving a residual amount that forms the CTC.

Q. In your unbundling analysis, did you utilize the distribution and transmission costs that were developed by PP&L?

A. Yes. With respect to the allocation of distribution and transmission costs to rate schedules for use in unbundling, I specifically adopted PP&L's analysis and results. However, utilizing the same functional distribution and transmission revenue requirements developed by PP&L to calculate its recommended delivery charge, I further unbundled the delivery charges for each rate schedule into separate distribution and transmission components. In each case (i.e., rate schedule), the sum of my unbundled distribution and transmission rate equals the corresponding delivery charge produced by PP&L for the rate.

PPLICA Statement No. 1, pp. 32-33. PPLICA specifically adopted and used the information provided by PP&L in this case in presenting its case. If this information was not the results that PP&L intended to employ for its unbundled rates in effect as of January 1, 1999, (assuming all of the Company's proposals were accepted by the Commission), it was incumbent on PP&L to state so on the record and to update the record with the appropriate costs and rates. PP&L submitted no

testimony on either issue. Apparently, while other parties were attempting to assess the impact of PP&L's proposals on the competitive market as part of this proceeding, PP&L was attempting to obfuscate the real impact (as shown by the rates it intended to use on January 1, 1999) from the other participants. The only record evidence in this proceeding is the cost study presented by PP&L; consequently, that cost study showing the 7.21¢ per kWh starting rate must be used to set unbundled rates in this proceeding.

Third, PP&L's attempt to update the record evidence it submitted as to its costs must be rejected. PP&L claims that the 7.21¢ per kWh is based on 1995 data. PP&L now claims that six changes have occurred since January 1, 1995, that would impact its system average bundled rates. PP&L Petition, ¶ 11. PP&L had the opportunity to submit evidence regarding the impact of these changes as part of its case. Clearly, by the time the proceeding went to evidentiary hearings in August 1997 PP&L had data regarding these events. In fact, many of these events occurred prior to the submission of PP&L's direct case and should have been addressed in its original filing. If the Company had done so, the parties would have had the opportunity to examine PP&L's proposed modifications to its 1996 test year based on these events. Moreover, the parties would have had the opportunity to determine whether the alleged impact of these events were properly accounted for by PP&L. PP&L submits no evidence with its Petition that these events were not considered in the original filing. The speculative changes must be rejected.

Fourth, PP&L's Attachments to its Petition must be ignored. Attachment 1 provides insufficient support for the Company's use of 7.42¢ per kWh as the starting point for unbundled rates. The Attachment is extra record evidence for which the parties in this proceeding have not had a sufficient opportunity to examine, engage in discovery regarding, and cross-examine the

Company's witnesses upon. Consequently, the parties' due process rights will be impinged if the Commission adopts PP&L's revised system average unbundled rates as reflected in that Attachment.

The Company's request that the Commission revise its system average bundled rate must be denied. The Commission appropriately relied on the record evidence in this proceeding. PP&L has not demonstrated that the system average bundled rate used by the Commission does not reflect the rate in effect as of January 1, 1997, which is the appropriate starting date for unbundling. PP&L's belated attempt to inflate its system average bundled rate must be rejected.

2. The Commission And OCA Appropriately Relied On The Sales Figures Provided By PP&L.

PP&L also faults the Commission for relying on "incorrect sales figures." PP&L Petition, ¶¶ 13-14. PP&L states that an interrogatory response it submitted to the OCA did not include certain rate classes in developing the system average projected sales for 1999. PP&L recalculates its 1999 sales figures including those classes and accelerates growth yearly by 1.5 percent to determine the unbundled rates for the remainder of stranded cost recovery. See id. at Attachment 2.

PPLICCA submits that it is unclear whether any of the sales figures provided by PP&L are accurate. On April 17, 1997, the Office of Consumer Advocate requested in an interrogatory that PP&L "show the projected CTC revenues for each year of the transition period, including class/specific revenues and projected billing determinants (customer, energy and demand as appropriate)." In response, PP&L submitted numerous schedules for each rate class showing anticipated growth and CTC revenue. See PP&L Response to OCA-III-39. To PPLICCA's knowledge, PP&L never updated any alleged "incorrect" figures, despite its continuing obligation to do so.

The OCA and the Commission relied on the information submitted by the Company. See OCA Exhibit LS-11-R, note a. If, as the Company now asserts, the interrogatory response was incomplete or inaccurate, the Company must bear that responsibility. The Commission, the OCA and all other parties are forced to rely on the accuracy of interrogatory responses provided by the Company in this proceeding, and PP&L provided no evidentiary support or citation for the sales figure modification.

3. Regardless Of The Commission's Determination Regarding The System-Average Transmission And Distribution Rates, The Integrity Of The Rate Cap Must Be Maintained.

PP&L alleges that the Order uses the incorrect transmission and distribution rate in developing the system average unbundled rates for each year of stranded cost recovery. PP&L Petition, ¶ 15. PP&L states that OCA Exhibit LS-11-R incorrectly assumed that the Company's proposed transmission and distribution depreciation reserve swap was accounted for in the rates presented in its filing and that the OCA adjusted the rate to remove the impact of the swap. Id. PP&L alleges that the swap was not reflected in its transmission and distribution rates. PPLICA takes no position regarding the accuracy of the OCA exhibit.

In a footnote to this section, however, PP&L states that its transmission service rates are currently on review before the Federal Energy Regulatory Commission ("FERC"). PP&L Petition, ¶ 15 n. 3. PP&L asserts that it "must" reflect those new rates in its charges to customers purchasing transmission service from the Company. Id. Although the Company is correct that it must charge the FERC-approved rates, the Company must also ensure that the Act's transmission and distribution rate cap is not violated when it charges the new transmission rates. See 66 Pa. C.S. § 2804(4)(i). The Act clearly states that the charges for transmission and distribution cannot exceed those in

customer's rates as of January 1, 1997. *Id.* If the imposition of the FERC-approved transmission rates will cause a violation of the rate cap, PP&L's distribution rates must be decreased.

4. The Commission Appears To Have Erred In Calculating The Residual Shopping Credit In 2002.

PP&L asserts that the Commission's Final Order incorrectly calculated the shopping credit for the year 2002. *PP&L Petition*, ¶¶ 16-17. PP&L notes that the credit increases dramatically by 11.68 percent from 2001 to 2002. *Id.* ¶ 17. PP&L states that the increase violates the generation rate cap. *Id.* PP&L's criticisms in this regard seem to be correct. Any revision to Attachment A that the Commission may make as a result of this Petition for Reconsideration must ensure that this aberration is corrected.

In calculating the yearly shopping credit, the Commission took the total amount of stranded costs awarded to PP&L and determined an appropriate amount to be recovered in each year of the transition period. In determining the yearly recovery, the Commission balanced the desire to allow full recovery by PP&L of the properly claimed and quantified stranded cost with the desire to allow sufficient shopping credits for customers to effectively participate in the market during each year of stranded cost recovery. To ensure that the generation rate cap is not violated, the sum of the CTC and the shopping credit for each year of stranded cost recovery must equal the charges for generation that were embedded in each customer's rates as of January 1, 1997. *See* 66 Pa. C.S. § 2804(4)(ii). Based on the unbundling analysis in the Commission's Attachment A, the sum of the CTC plus the shopping credit must equal 5.51¢ per kWh in each year of recovery. In 2002, the Commission uses a CTC of 1.45¢ per kWh and a shopping credit of 4.40¢ per kWh. This equals a generation

component of 5.85 ¢ per kWh, which violates the rate cap. To ensure compliance with the rate cap, the Commission should reduce the system average shopping credit to 4.06¢ per kWh in 2002 (5.51¢ - 1.45¢ = 4.06¢).

5. PPLICA Lacks Sufficient Information To Determine The CTC Amortization Rate Used By The Commission.

PP&L argues that the Commission employed the incorrect CTC amortization rate in calculating the annual CTC revenue requirements shown on Attachment A. PP&L Petition, ¶ 18. PPLICA lacks sufficient information to either support or deny the Company's allegation; however, PPLICA notes that the Company's Attachment 2, Schedule I purportedly reflects the use of 10.86% amortization rate, a revised yearly sales forecast, and the reversal of the \$70 million rate reduction agreed to by PP&L in the 1994 base rate proceeding. Consequently, if the Commission erred in its original amortization calculation, it cannot simply rely on the revenue requirements and system average CTCs depicted on PP&L's Attachment 2.

B. The Commission's Treatment Of The \$70 Million Reduction In Rates Agreed To By PP&L In The 1994 Base Rate Proceeding Is Proper.

As part of PP&L's last base rate proceeding, the Company proposed to decrease base rates in 1999 by \$70 million in return for Commission approval for the Company to change the accounting of the depreciation expense for its *Susquehanna Steam Electric Station* ("SSES"). PP&L now reneges on the deal it made in its last base rate proceeding and seeks to maintain its rates at the full level. PP&L categorizes the Commission's actions in this proceeding that require the Company to fulfill the bargain made in the last base rate proceeding as a prospective mitigation adjustment. PP&L Petition, ¶ 24. PP&L's arguments on this issue are factually inaccurate and must be rejected. In addition, the Commission fully considered this issue in its Final Order. PP&L raises no new or

novel arguments regarding why the Commission should change its determination. Consequently, the Company fails to meet the standard under Quick for reconsideration of this issue.

First, it is inaccurate to term the \$70 million reduction agreement as a prospective mitigation adjustment. The reduction in rates was proposed by PP&L in its 1994 base rate proceeding. See Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Co., Docket No. R-00943271, Opinion and Order entered on September 27, 1995 ("PP&L 1994 Base Rate Order"). PP&L requested authorization to change its accounting treatment of SSES depreciation from a modified sinking fund ("MSF") methodology to a traditional straight-line depreciation methodology. To transition between the two methodologies, PP&L requested to recover from September 30, 1995, through December 31, 1998, a levelized annual amount of approximately \$173 million. On January 1, 1999, the Company will switch to the straight-line accounting, which will reduce the Company's annual depreciation expense to \$102 million. The Commission's Order in the 1994 base rate proceeding described the PP&L proposal as follows:

PP&L first states that its present modified sinking fund method was used in the two Susquehanna proceedings as a means of moderating rate increase associated with putting those plants into rate base. Under the existing approach, the depreciation expense begins well below the straight-line amount and increases each year until the end of 1998 when (1) annual MSF depreciation expense will substantially exceed the straight-line amount and (2) total accrued depreciation on pre-1989 investment will equal the amount that would have accrued if straight-line depreciation had been used since Susquehanna 1 and Susquehanna 2 were first placed into service.

PP&L states that it is requesting permission to set depreciation expense for pre-1989 Susquehanna investment at a levelized annual total company amount of approximately \$173 million. This proposal is calculated to recover the same amount of depreciation that would have been recovered by the MSF method from September 30, 1995, to December 31, 1998. At January 1, 1999, there would be a switch to straight-line depreciation and the annual expense would fall to \$102 million.

PP&L agrees to automatically adjust retail rates as of January 1, 1999, to reflect this switch. PP&L states that this proposal will result in a more equitable distribution of depreciation expense during the remaining MSF period. It stresses that only the timing is changed from the existing plan. PP&L suggests that this method will smooth the transition from MSF to straight-line depreciation and avoid more rate filings.

PP&L 1994 Base Rate Order, slip op. at 106-107 (emphasis added). The mitigation strategy to reduce rates by \$70 million in 1999 was a past effort agreed to by PP&L. It is clearly proper for the Commission to require PP&L to adhere to its prior commitment.³ Furthermore, because the Commission was simply implementing a prior agreed upon rate reduction, the Commission's actions on this issue do not constitute single expense or "line item" ratemaking. See PP&L Petition, ¶ 27. The Company's arguments must be rejected.

Second, it is just and equitable that ratepayers get the advantage of this anticipated reduction. PP&L proposed to give ratepayers the reduction in exchange for the change in depreciation accounting. PP&L 1994 Base Rate Order, pp. 106-107. PP&L has gotten the benefit of the depreciation change. PP&L's depreciation expense will decrease on January 1, 1999, by approximately \$70 million. The ratepayers are entitled to the quid pro quo promised by the Company in return for authorization to change depreciation methodologies.

³Although this issue was addressed in the Final Order section regarding mitigation, the actual prospective mitigation proposed by PP&L was to forego the agreed upon rate decrease and to use those monies to accelerate amortization of regulatory assets and post-transition NUG costs. PP&L M.B., pp. 36-37. PP&L argued that it is unreasonable to flow through to ratepayers the impact of the change in depreciation method because PP&L cannot increase base rates on January 1, 1997. Id. at 37. The Commission rejected the proposal. Final Order, slip op. at 25-26. Consequently, the decrease in rates was not a prospective mitigation strategy; rather, the decrease in rates results from the Commission's rejection of PP&L's proposed prospective mitigation strategy.

It should be noted that some parties in the base rate proceeding (including PPLICA) opposed the PP&L proposal to change methodologies. See PP&L 1994 Base Rate Order, slip op. at 107-112. PPLICA (and other parties) argued that the MSF methodology should remain in use because it resulted in lower revenue requirements. Id. If PPLICA had prevailed, rates at January 1, 1997, would have been lower to reflect the lower revenue requirement. As PPLICA and the others did not prevail on this issue in the base rate proceeding, it is just and reasonable to require PP&L to adhere fully to its proposal.

Third, the Commission's decision to force PP&L to adhere to the dictates of the prior Order is consistent with the Commission's treatment of other utilities. See PP&L Petition, ¶ 20. In fact, the Commission has consistently adhered to the concept that prior Commission or party actions on issues implicated in the restructuring proceedings are relevant. For example, in ruling on a proposed "deferred coal cost" stranded regulatory asset for Duquesne Light Company, the Commission denied recovery as a stranded cost because the Company had not met the standards for recovery set forth in a prior Order on the deferred coal costs. See Application of Duquesne Light Company for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00974104, Opinion and Order entered on May 29, 1998, slip op. at 163. The Commission thus has been consistent in requiring EDCs to abide by agreements and conditions for cost recovery established in prior orders.

If anything, the Commission has been overly generous to PP&L in the treatment of issues that arose both in the PP&L proceeding and in the PECO Energy Company proceedings. For example, the Commission permitted PP&L to recover a regulatory asset for anticipated unrecovered fuel costs that may occur after the ECR roll-in, but denied recovery for a similar request by PECO.

Compare Final Order, slip op. at 61-62 to Pennsylvania Public Utility Commission v. PECO Energy Co., Docket Nos. R-00973953 & R-00971265, Opinion and Order entered on December 23, 1997, 181 PUR 4th 517 ("PECO Restructuring Order"), Opinion and Order on Reconsideration entered on January 16, 1998, slip op. at 11 ("PECO Restructuring Reconsideration Order") (stating that recovery for fuel costs incurred after the ECR roll-in circumvents the rate cap). In addition, the Commission used inconsistent plant retirement dates for jointly owned generating units. See Final Order, slip op. at 56-57. It is incredulous for PP&L to claim that it has not been treated fairly by the Commission's Order.

Fourth, PP&L's claim that the agreed-to rate reduction should be voided because the Act prevented the Company from offsetting the reduction with additional expenses in 1999 is specious. If the Act had not been passed, the only way that PP&L could deny the ratepayers the benefit of the 1994 bargain would be to file a base rate case demonstrating offsetting increases. If it had done so, the proposed increases would be litigated and, most likely, would be actively opposed by the parties. It is speculative to claim that the Company could prove sufficient additional expenses to offset the rate reduction. In addition, the Company made the proposal to reduce its rates in 1999 by \$70 million; the passage of the Act has no impact on the Company's unequivocal obligation to reduce rates as it proposed. Furthermore, although the Company correctly observes that on January 1, 1999, the competitive market will determine the rates for generation facilities (PP&L Petition, ¶ 31), the Company ignores the existence of an interference in the operation of the competitive market at January 1, 1999, imposed by the Act (i.e., PP&L's stranded cost recovery). See PECO Restructuring Order, slip op. at 15 & 30, 181 PUR 4th at 529 & 535 (acknowledging the intrusion in the competitive market by stranded cost recovery). The Commission correctly ascertained that the rate

reduction should be applied to PP&L's stranded cost recovery to reduce this intrusion. The Act does not change PP&L's obligation to provide ratepayers the rate reduction that it agreed to provide in 1999.

Finally, the Company's claim that it can be awarded \$2.865 billion in stranded cost recovery without "material change" to the shopping credit is misleading. PP&L Petition, ¶ 32. The PP&L scheme would include a further extension of stranded cost recovery. As implemented by the Final Order, the Company will already be recovering stranded cost beyond the date established by the Act. Compare PP&L Final Order, slip op. at 80 (extending recovery through June 30, 2007) to 66 Pa. C.S. § 2808(b) (establishing December 30, 2005, as the deadline for recovery of stranded cost unless good cause is shown). In addition, it appears that the Company will be recovering stranded cost beyond the Act's recovery period without a concurrent extension of the rate cap. See 66 Pa. C.S. § 2804(4)(ii). Furthermore, the yearly system average rates shown in PP&L's Attachment 2 are material changes from the yearly system average rates calculated by the Commission.

| | Commission Attachment A (¢ per kWh) | PP&L Attachment 2 (¢ per kWh) | Increase in rate under PP&L plan (¢ per kWh) |
|--------------------|---|-------------------------------------|--|
| Total Bundled Rate | 7.21 | 7.42 | .21 |
| T&D Rate | 1.70 | 1.74 | .04 |
| CTC (1999) | 1.78 | 1.96 | .18 |

The PP&L request for the Commission to reverse the \$70 million adjustment to rates that it agreed in its last base rate proceeding is inappropriate and will have a material impact on customer rates. Furthermore, the request does not meet the standard for reconsideration set forth in Quick:

(1) the issue of whether PP&L should be required to adhere to its prior commitment was fully considered by the Commission in arriving at its decision; and, (2) PP&L presents no new or novel arguments in favor of its request for reconsideration. See PP&L M.B., pp. 36-37; Final Order, slip op. at 25-26. The PP&L request for the Commission to reconsider its ruling on the \$70 million adjustment must be denied.

C. PP&L's Attempt To Reargue The "Adjustments" Necessary To The Asset Value Methodology To "Fully" Compensate The Company For Stranded Cost Fails The Duick Standard And Must Be Rejected.

PP&L requests that the Commission reconsider the rejection of certain "adjustments" to the market value of its generating units determined pursuant to the asset value method for valuing stranded cost. PP&L Petition, ¶¶ 33-34. PP&L claims that the Final Order overstates the market value of its units (and thus understates its stranded cost) because the Commission overlooked or did not address several important adjustments it proposed to the asset value methodology.

PP&L is wrong. The Commission fully considered and rejected both PP&L's "lost revenues" approach to stranded cost valuation, PP&L's proposed adjustments to the asset value methodology, and PP&L's model inputs. PP&L Final Order, slip op. at 27-45. All of the arguments raised by PP&L in this section were fully developed by the parties and decided by the PUC. See PP&L M.B., pp. 42-87 & Table D; PP&L R.B., pp. 21-39; PPLICCA M.B., pp. 22-50; PPLICCA R.B., pp. 15-20 & 24-33; OCA M.B., pp. 8-43; OCA R.B., pp. 4-31. Thus, reconsideration of these adjustments is improper under the Duick standard.

Although PPLICCA will briefly address each individual issue raised by PP&L in this section, a general discussion of the Commission's decision on the stranded cost methodologies proposed in this proceeding is warranted. The Commission specifically found that PP&L's lost revenues

methodology was “not conceptually sound.” Final Order, slip op. at 28. One of the main reasons stated by the Commission for rejection of the lost revenues methodology is that it “would guarantee PP&L revenues in the competitive market that were never guaranteed under traditional ratemaking.” Id. at 29. It is apparent that PP&L seeks in this Petition for Reconsideration to recover revenues in excess of its true stranded cost.

Faced with the obvious deficiencies of its methodology, PP&L for the first time in its Main Brief attempted to reconcile its calculation of stranded cost under the lost revenues methodology with the OCA’s calculation under the asset value method by “adjusting” the asset value methodology. See PP&L M.B., Table D. Not surprisingly, when its proposed “adjustments” were considered, PP&L’s application of the asset value methodology conveniently yielded the identical stranded cost calculation to its claim under the lost revenues methodology. Compare PP&L M.B., Table B, p. 1 to Table C, p. 1. In this Petition, PP&L selectively seeks reconsideration of some of the identical “adjustments” that were raised by PP&L in its Main Brief. Ironically, the PP&L adjustments will raise its total stranded cost recovery to the identical amount contained in its original filing.⁴

⁴PP&L originally claimed that it would recover \$4 billion in stranded costs through the CTC (taking into account the “foregone recovery” necessitated by operation of the rate cap). PP&L M.B., p. 33. The adjustments requested by PP&L in this Petition for Reconsideration, when added to the Commission’s determination in the Final Order, yield almost an identical result:

| | |
|------------------------|--|
| \$2.864 billion | Final Order |
| + \$159.298 million | Oil/gas unit fuel usage |
| + \$226.296 million | Decline in imports after 2005 |
| + \$230.157 million | Oil/gas price divergence from coal price |
| + <u>\$600 million</u> | Discount rate |
| \$4.079 billion | Total with PP&L Reconsideration Issues |

Regarding the specific issues raised by PP&L in this section, a review of the Commission's Order and the parties' briefs shows that each issue was fully litigated and considered by the Commission. See PP&L M.B., pp. 42-87 & Table D; PP&L R.B., pp. 21-39; PPLICA M.B., pp. 22-50; PPLICA R.B., pp. 15-20 & 24-33; OCA M.B., pp.8-43; OCA R.B., pp. 4-31. PP&L's observation that OCA's market price forecast was based on dual-fired generating units using oil one-half of the time and gas the other half was also raised in PP&L's Main Brief. PP&L M.B., p. 59. The OCA addressed and rebutted this criticism. OCA M.B., p. 27. PP&L raised its objection to the OCA's reduction of energy imports into PJM after 2005 in Main Brief. PP&L M.B., p. 60. The OCA responded. OCA M.B., pp. 27-29. PP&L also raised its "coal divergence" criticism in its Main Brief. PP&L M.B., pp. 65-68 & 71-74. Again, the OCA responded and rebutted the criticism. OCA M.B., pp. 12-14. PP&L even advocated the extreme position that the nationally recognized DRI and EIA fuel price forecasts are "unreliable inputs to any model." Id. at 74. The Final Order demonstrates that the Commission fully considered these criticism in adopting the OCA analysis:

The OCA forecasted energy and capacity prices, as adjusted herein, provide a consistent and reasonable basis to determine PP&L's stranded costs of generation. The record in this proceeding demonstrates that the ENPRO model is a realistic and reliable model for projecting energy prices. While numerous issues have been raised by various parties concerning the appropriate inputs to the model, the record demonstrates that inputs selected by OCA witness Smith are consistent and properly reflect expectations in the competitive market. Many facts and assumptions are necessary to make this determination, and it is the total approach used by OCA witness D. Smith that we find the most credible and reasonable in the record in this proceeding.

We adopt the OCA pricing methodology for fuels, fuel price spread, and inflation. The OCA use of the DRI published estimates of fuel prices and inflation is a reasonable projection of future conditions. For all of these reasons, we conclude that OCA witness D. Smith's presentation is the most credible in the record of this case. Accordingly, we conclude that the OCA presentation is the most well-founded and credible, and it is adopted.

Final Order, slip op. at 44-45 (emphasis added). PP&L was the only party criticizing the OCA analysis. PP&L's request for reconsideration of these issues contains no new arguments not previously asserted by PP&L and considered and properly rejected by the Commission; consequently, the request for reconsideration must be denied.

PP&L's request for reconsideration of the discount rate used to determine the net present value of PP&L's future after-tax margins from the sale of generation is without basis. See PP&L Petition, ¶ 34.d. The Commission appropriately maintained consistency with its adoption of the asset value methodology and the OCA market price forecast by using the OCA discount rate. See Final Order, slip op. at 60-61. The Company fails to raise any arguments that are new, novel or overlooked by the Commission on this issue. Importantly, the Company cites no record evidence in support of its request. Rather, the Company simply asserts that the 10% discount rate is inappropriate because of the "risks and uncertainty inherent in the projected stream of future revenues." PP&L Petition, ¶ 34.d.⁵ The Company fails to realize, however, that the 10% discount is appropriate because a large portion of PP&L's revenues will remain regulated for the next eight and one-half years (i.e., transmission and distribution rates and the CTC). In addition, transmission and distribution rates will remain regulated indefinitely. Consequently, the use of the 10% discount rate is appropriate. Furthermore, the Company fails to state what it would view as an appropriate rate, only requesting a rate "substantially higher than the 10% rate that the Commission used."

⁵If PP&L views the return on equity provided by the Commission as inappropriate because PP&L faces greater risk in recovering costs than PECO, then the Company has the option of reducing its risk to the level of PECO by also pursuing securitization of its allowed level of stranded cost.

PP&L Petition, ¶ 34.d. Given the failure to cite a specific rate and the reality that a portion of the Company's revenues will remain regulated, the Commission's adoption of the OCA discount rate was clearly appropriate.⁶

D. The Request For A Nuclear Decommissioning Tracking Mechanism Is Not A Clarification Because PP&L Never Proposed A Tracker As Part Of Its Case.

PP&L requests a "clarification" of the Final Order to institute a tracking mechanism to ensure that the Company's nuclear decommissioning expense recovery matches its nuclear decommissioning expenses. PP&L Petition, ¶¶ 35-36. Although PP&L attempts to categorize the absence of a tracking mechanism as an oversight by the Commission, the Company never requested institution of a nuclear decommissioning tracker. See PP&L M.B., pp. 109-113. Noticeably, PP&L's Petition fails to cite any record evidence, or portion of its brief or exceptions requesting the nuclear decommissioning tracker. Any "oversight" appears to be the fault of PP&L in failing to ever request the tracking mechanism.

It is clearly inappropriate for the Company to request a substantive change to its nuclear decommissioning recovery proposal at this time. In addition, the institution of a tracker eviscerates

⁶PP&L's footnote in this section explaining its use of a regulated discount rate is misleading. See PP&L Petition, ¶ 34.d. n. 8. PP&L claims its presentation was consistent despite the use of the regulated discount rate "because it applied a regulated return to regulated annual revenue requirements which PP&L would not recover under competition." Id. PP&L explains that the Commission errs by applying the regulated return to competitive margins. The Company fails to acknowledge, however, that its analysis applied the regulated return to the "lost revenues," which were equal to the difference between the anticipated competitive market revenues and the annual revenue requirement. Thus, the Company also applied the regulated return to the competitive margin.

the Company's motivation to moderate or reduce nuclear decommissioning expenses.⁷ The Commission must reject PP&L's belated substantive change to its nuclear decommissioning recovery proposal.

E. The Company's Petition Fails To Satisfy The Standard For Issuance Of A Stay Or Supersedes Of The Final Order.

The Company requests that the Commission take final action on its Petition by July 9, 1998, or that the Commission issue an Order temporarily staying the Final Order pending final action on the Petition. PP&L Petition, ¶¶ 39-42. Although PPLICA supports the concept that the parties and Commission should act in an expeditious manner to ensure a smooth transition to the competitive market on January 1, 1999, staying the Final Order is inappropriate and would frustrate that objective. The Company's request must be denied because it has not met the standard for supersedeas under the Process Gas test.

The Pennsylvania Supreme Court set forth the relevant criteria for the stay of a final Order in Process Gas. According to the Process Gas test, the party requesting the stay must establish the following criteria:

1. The party must make a strong showing that it is likely to prevail on the merits.
2. The party must show that it will suffer irreparable injury if the stay is not issued.
3. The party must show that the issuance of a stay will not substantially harm other interested parties in the proceeding.

⁷It is unclear how the PP&L Petition's Attachment 2, Schedule 1 treats nuclear decommissioning recovery. In the event a separate tracker is established and the recovery of decommissioning is separated from the normal stranded cost recovery, the integrity of the rate cap must be maintained. 66 Pa. C.S. § 2804(4)(i) & (ii). Nuclear decommissioning cost recovery was included in customers' rates at January 1, 1997. A separate nuclear decommissioning charge cannot result in customers' total charges being more than the bundled rate at January 1, 1997.

4. The issuance of a stay must not adversely affect the public interest.

Process Gas, 467 A.2d at 808-09, 502 Pa. At 552-554; accord Reading Anthracite Co. v. Rich, 577 A.2d 881, 884, 525 Pa. 118, 125 (1990). PP&L's Petition satisfies none of these criteria.

The only reason stated by PP&L in support of its request for a stay is that its compliance filing may need to be changed based on this Petition. PP&L Petition, ¶ 40. PP&L states that marketers and others will rely on the compliance filing to develop marketing materials that may prove to be inaccurate after the Commission considers the issues raised in its Petition. The Company cites increased costs of replacing the marketing materials and customer confusion that may result.

The PP&L explanation satisfies none of the Process Gas standards. PP&L has not shown that it will be irreparably harmed by submitting its compliance filing according to the extended schedule established by the Commission in its June 26, 1998, Order. Moreover, many issues that will arise in the compliance filing are not impacted by the PP&L Petition, such as ensuring that PP&L provides special customer classes with the appropriate opportunity to access competitive suppliers. The public interest is not served by delaying the compliance filing any further. To the contrary, some customers may be delaying a decision of whether to participate in the first two phases of competitive supply pending final resolution of issues unrelated to this Petition for Reconsideration. In this situation, it is clearly against the public interest and harmful to the interests of other parties in this proceeding to stay the Final Order. The submission by PP&L of its compliance filing should not be further delayed; the request for stay or supersedeas must be denied.

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Commission deny the portions of the PP&L Petition for Reconsideration addressed above and deny the request for a stay of the Final Order.

Respectfully submitted,

McNEES, WALLACE & NURICK

By *Pamela C. Polacek*

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Dated: July 6, 1998

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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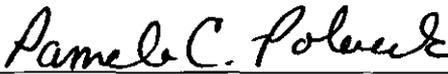
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Dated this 6th day of July, 1998, at Harrisburg, Pennsylvania.

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July 6, 1998

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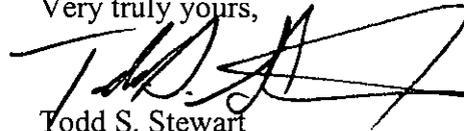
RE: Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00973954; ANSWER TO PETITION FOR RECONSIDERATION

Dear Secretary McNulty:

The Mid-Atlantic Power Supply Association ("MAPSA") will not be filing a separate Answer to the Petition for Reconsideration filed by PP&L in the above-captioned proceeding. However, MAPSA joins in the Answer to the Petition for Reconsideration filed on July 2, 1998 by Enron Power Marketing, Inc. MAPSA supports the positions taken by Enron in its Answer.

If you have any questions pertaining to this matter, please direct them to me.

Very truly yours,



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

TSS/bes
Enclosure
cc: Attached Certificate of Service

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JUL 08 1998

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I hereby certify that I have served a copy of the foregoing document upon the person(s) named and in the manner indicated below.

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Todd S. Stewart

DATED: July 6, 1998

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COMMONWEALTH OF PENNSYLVANIA

DATE: July 7, 1998

SUBJECT: R-00973954

TO: Office of Special Assistants

FROM: *WJP* James J. McNulty, Secretary

KJR

APPLICATION OF PENNSYLVANIA POWER & LIGHT COMPANY FOR
APPROVAL OF RESTRUCTURING PLAN

Attached is copy of Anthracite Region Independent Power Producers Association's Petition for Reconsideration and Clarification of the Commission's June 15, 1998 Order filed in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: Law Bureau
BFUS

wjz

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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IN REPLY PLEASE
REFER TO OUR FILE

July 7, 1998

The Honorable Gibson E. Armstrong
Senate of Pennsylvania
Senate Post Office - Main Capitol
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R-973954

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Dear Senator Armstrong:

Thank you for your letters of July 1, 1998 to Chairman John Quain and Vice Chairman Robert Bloom and the enclosed letter from the Executive Council for Economic Leadership, City of Lancaster, regarding Pennsylvania Power and Light Company's (PP&L) restructuring case. PP&L filed a Petition for Reconsideration on June 26, 1998. Since the Petition is pending before the Commission, your letter was referred to me for a response.

Please know that I have taken the liberty of forwarding your letter and the enclosed correspondence to the Secretary of the Commission for inclusion into the official record of this proceeding.

Thank you for the benefit of your thinking on this matter.

Sincerely,

Rosemary Chiavetta

Rosemary Chiavetta, Esq.
Director of Legislative Affairs

cc: Chairman Quain
Vice Chairman Bloom
Commissioner Rolka
Commissioner Brownell
Commissioner Wilson
Secretary McNulty

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Senate of Pennsylvania

July 1, 1998

John M. Quain, Chairman
Public Utility Commission
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Dear John:

It is my understanding that PP&L Resources is asking you to reconsider your final order in the company's restructuring case. Leaders in my senatorial district (letter enclosed) are extremely concerned that PP&L will be harmed to such an extent that it could in fact jeopardize the future of our local electric utility. If they are forced to eliminate or drastically cut their earnings and dividend, we would see the equity evaporate to such an extent that PP&L could be put in play. We don't want to lose one of the few remaining Fortune 500 companies in our Commonwealth.

I know the procedure is extremely complicated and you have a difficult job deciphering all the information, but I would ask you to re-examine the final order which will be before you July 9th, 1998.

Sincerely,

Gibson E. Armstrong, Senator
Lancaster and York Counties

GEA/lah

Enclosure

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TRANSPORTATION
FINANCE
COMMUNICATIONS AND HIGH TECHNOLOGY

STATE EMPLOYEES' RETIREMENT BOARD
STATE UNEMPLOYMENT COMPENSATION
ADVISORY COMMITTEE
STATE JOB TRAINING COORDINATING COUNCIL
CAPITOL PRESERVATION COMMITTEE

July 1, 1998

RECEIVED

JUL 2 - 1998

Robert K. Bloom, Vice Chairman
Public utility Commission
Room 112, North Office Bldg.
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Bob:

It is my understanding that PP&L Resources is asking you to reconsider your final order in the company's restructuring case. Leaders in my senatorial district (letter enclosed) are extremely concerned that PP&L will be harmed to such an extent that it could in fact jeopardize the future of our local electric utility. If they are forced to eliminate or drastically cut their earnings and dividend, we would see the equity evaporate to such an extent that PP&L could be put in play. We don't want to lose one of the few remaining Fortune 500 companies in our Commonwealth.

I know the procedure is extremely complicated and you have a difficult job deciphering all the information, but I would ask you to re-examine the final order which will be before you July 9th, 1998.

Sincerely,

Gibson E. Armstrong, Senator
Lancaster and York Counties

GEA/lah

Enclosures

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58 JUL - 7 PM 12:14
PA.P.U.C.
SECRETARY'S BUREAU

JUN 24 1998



June 19, 1998

Senator Gibson Armstrong
122 South Queen Street
Lancaster PA 17603

RECEIVED
98 JUL -7 PM 12:14
P.A.P.U.C.
SECRETARY'S BUREAU

THE
LANCASTER
CAMPAIGN

Dear Senator Armstrong:

100 N. Queen St.
PO Box 1764
Lancaster, PA
17608-1764
Phone (717) 291-3491
Fax (717) 291-3476

As members of the Executive Council for Economic Leadership, a group dedicated to the economic revitalization of the City of Lancaster, we write to offer our support for a strong community partner and employer, Pennsylvania Power & Light (PP&L), and ask for your assistance in ensuring their viable future.

Recently, the Public Utility Commission ruled against an administrative law judge's recommendation that would have permitted PP&L to recover about \$4 billion in stranded costs needed to cover the expenses associated with transitions in the utility industry. The PUC ruling, allowing for only \$2.86 billion in recovery costs, will not only impose a significant hardship on our local utility, it will almost certainly end the strong community partnership PP&L has long offered to the citizens and businesses of Lancaster County.

With our interest focused on spurring economic development in the City of Lancaster, you should be aware that PP&L has been a valuable partner in working with the business community, targeting specific areas for economic development and assisting with pro-active marketing efforts. In addition, PP&L has long demonstrated a strong and active commitment to many quality-of-life issues, not just in the City of Lancaster but within our entire region. In short, community partners like PP&L are very few and far between and our area would be significantly hurt by their lack of involvement.

On behalf of our community, we ask that you involve yourself in this PUC decision in order to ensure that PP&L remains the strong corporate and community citizen that we have relied on and benefited from for many years.

Sincerely,



Charles Smithgall, Mayor
City of Lancaster



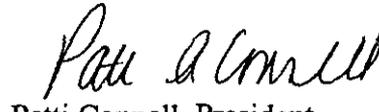
Ronald Bailey, Director
Lanc. Co. Planning Comm.



Thomas Baldrige, Exec. Dir.
The Lancaster Alliance



John M. Buckwalter, Pres.
Lancaster Newspaper, Inc.



Patti Connell, President
Land Transfer Company



Clarence (Ted) Darcus, Pres.
Lancaster City Council



Philip Wenger, President
Isaac's Deli, Inc.



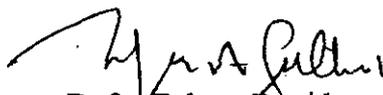
Ed Drogaris, President
The Drogaris Companies



Rob Ecklin, President
The Ecklin Group



Patrick Egan, President
Select Security, Inc.



Rufus Fulton, President
Fulton Financial Corp.



Wm. "Smoker" Glover
Training Consultant
Fulton Bank



Carlos Graupera, Exec. Dir.
Spanish American Civic Assn.



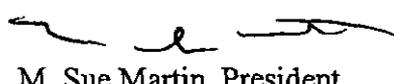
S. Dale High, President
High Industries, Inc.



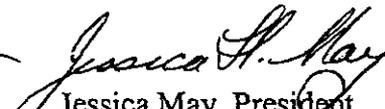
Terry Kauffman, Chairman
Lanc. Co. Commissioners



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Barley Snyder Senft & Cohen



M. Sue Martin, President
Sharp Jewelers



Jessica May, President
National Bearings Company



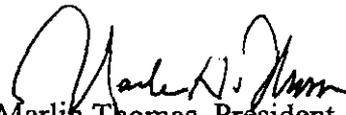
James Pickard, Ec. Dev. Dir.
City of Lancaster



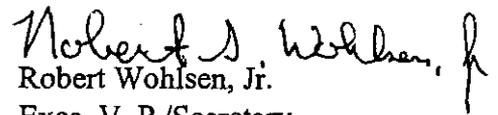
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Uptown Econ. Dev. Co.



James Shultz, President
Housing Development Corp.



Marlin Thomas, President
Willow Valley Associates



Robert Wohlsen, Jr.
Exec. V. P./Secretary
Wohlsen Construction



ORIGINAL

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Consumer Advocate

FAX (717) 783-7152
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DOCUMENT July 8, 1998
FOLDER

James J. McNulty, Secretary
PA Public Utility Commission
Room B-20, North Office Bldg.
Harrisburg, PA 17105-3265

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

RECEIVED
98 JUL - 8 PM 3:51
PA.P.U.C. BUREAU
SECRETARY'S OFFICE

Dear Secretary McNulty:

Enclosed please find for filing an original and three copies of the Office of Consumer Advocate's Answer to the Petition of Anthracite Region Independent Power Producers Association for Reconsideration and Clarification in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Craig R. Burgraff
Senior Assistant Consumer Advocate

Enclosures
cc: All parties of record

45

ORIGINAL

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

RECEIVED
 98 JUL -8 PM 3:51
 PA.P.U.C.
 SECRETARY'S BUREAU

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
 TO THE PETITION OF ANTHRACITE REGION
 INDEPENDENT POWER PRODUCERS ASSOCIATION
 FOR RECONSIDERATION AND CLARIFICATION

**DOCUMENT
FOLDER**

Pursuant to Section 5.572 of the Pennsylvania Public Utility Commission's ("Commission") Rules of Practice and Procedure, 52 Pa. Code § 5.572, the Office of Consumer Advocate ("OCA") respectfully submits this answer to the Anthracite Region Independent Power Producers Association's ("ARIPPA") Petition for Reconsideration and Clarification ("Petition") filed with the Commission on June 30, 1998. The Petition is in response to the Commission's June 15, 1998 Opinion and Order in PP&L, Inc.'s restructuring case. Application of Pennsylvania Power & Light Company For Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00973954, Slip op., (June 15, 1998). ("PP&L"). The OCA respectfully submits that ARIPPA's Petition should be denied.

DOCKETED

JUL 10 1998

I. INTRODUCTION

In this proceeding ARIPPA and two of its members, Schuylkill Energy Resources, Inc. and Gilberton Power Company, advanced the recommendation that the recovery of PP&L Inc.'s ("PP&L") non-utility generation ("NUG") stranded costs recovered through the Competitive Transition Charge (CTC") should be subject to a true-up mechanism to track payments actually made under contracts with NUGs. Petition at 2. ARIPPA argued that, absent a true-up for NUG-related stranded costs, PP&L would have a significant economic incentive to curtail or eliminate purchases from NUGs through inappropriate means. Such activity would allow PP&L to recover from ratepayers but retain for its shareholders those payments that were included in the valuation of the CTC to capture the estimated future cost of NUG power purchases. Schuylkill Energy and Gilberton Power advanced similar arguments. See ARIPPA February 10, 1998 letter/brief; Schuylkill Energy/Gilberton Power M. B. at 27-28, R. B. at 2-7.

ARIPPA posits that this concern is caused by the extreme variability of the costs to PP&L of NUG power purchases created by NUG mWh generation and price, mWh sales and the market value of the NUG output at the time power is delivered. Petition at 7. Thus, ARIPPA argues again that actual payments cannot be known until incurred, thereby making NUG costs uncondusive to recovery through a fixed CTC. *Id.* Without guaranteed recovery of actual costs, ARIPPA postulates that the estimates adopted by the Commission provide PP&L the economic incentive and means to game the projects, affording the NUGs no real recourse except costly litigation. *Id.* at 7-8.

ARIPPA argues that the Commission failed to consider its concerns raised in the case and, thus, it meets the standards for reconsideration enunciated in Quick v. Pennsylvania Gas and Water Company, 56 Pa. PUC 553, 559 (1982). ARIPPA asks the Commission to revise its PP&L

order and allow for a reconcilable component to the CTC to account fully for PP&L's incurrence of these costs. Petition at 18. Specifically, ARIPPA proposes that the NUG costs be treated separately from other stranded costs and amounts and be recovered under a separate non-bypassable charge over the life of the NUG projects. *Id.* at 17.

While the OCA shares ARIPPA's concerns that PP&L may ultimately overrecover stranded NUG costs, the treatment requested by ARIPPA violates the Electric Generation Customer Choice and Competition Act ("ACT"), and is not required by the Public Utility Regulatory Policies Act of 1978 ("PURPA"). As such, ARIPPA's request should be denied.

II. ANSWER

A. The Act Does Not Countenance A Separate Non-Bypassable NUG Charge.

The Act clearly states that cost obligations under contracts with non-utility generating projects are a stranded cost, the recoverability of which shall be determined under Section 2808(c)(1) of the Act. 66 Pa. C.S. § 2803. The Act requires that an electric utility's stranded costs are to be determined on a net present value basis, over the life of the asset or liability as part of its restructuring plan. *Id.* Section 2808(c)(1) of the Act states that the Commission shall allow recovery of cost obligations under contracts with non-utility generating projects that have received a Commission order in determining the level of stranded costs that an electric utility may recover through the CTC. 66 Pa. C.S. § 2808(c)(1). Therefore, from the plain language of the statute it is clear that the appropriate cost recovery mechanism for NUG-related stranded costs is through the CTC.

The Act does distinguish regulatory asset and NUG stranded cost recovery from recovery of stranded costs for Company owned generation assets. The Act provides that stranded

costs for company owned generation “may” be recovered through the CTC, thus giving the Commission the discretion to disallow a portion of or all of an electric utility’s claim for owned-generation stranded costs. 66 Pa. C.S. § 2808(c)(3). However, Sections 2808(c)(1) and (2) provide that the Commission “shall” allow recovery of NUG-related stranded costs and regulatory assets 66 Pa. C.S. § 2808(c)(1) and (c)(2).

The OCA submits that this language does not support the imposition of a different type of recovery mechanism. The plain meaning of Sections 2808(c)(1) and (c)(2) of the Act is that, once these types of costs are determined to be stranded, the Commission has no discretion but to allow full recovery of the calculated stranded amount through the CTC. This is in contrast to the provisions of Section 2808(c)(3) of the Act which would allow a sharing of owned-generation related stranded costs between ratepayers and the electric utility’s shareholders.

In addition, the only expressed reconciliation of the CTC is for the difference between actual annual revenues received from the CTC charge and the annual amortization of transition or stranded costs approved by the Commission through the CTC, or essentially a volumetric reconciliation. 66 Pa. C.S. § 2808(f).

Thus, there are no provisions in the Act that justify the imposition of a separate non-bypassable charge for NUG costs outside of the CTC. By definition, the Act requires that stranded costs are to be determined during the electric utility’s restructuring proceeding. The requirement in the Act for a determination of stranded costs in the restructuring plan on a net present value basis over the life of the asset or liability is a clear requirement for a one-time determination of stranded costs in this proceeding. There simply is no provision in the Act for a separate recovery mechanism, or for an annual reconciliation of stranded costs to actual market price or to NUG payments. The

OCA submits that the Commission's treatment of NUG related stranded costs in the CTC in this proceeding is appropriate. The Commission also so held in Application of Metropolitan Edison Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, R-00974008, Slip op. at 48 (June 30, 1998) and in Application of Pennsylvania Electric Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, R-00974009, Slip op. at 48 (June 30, 1998).

B. The Application Of A Separate Charge Over The Life Of The NUG Projects Also Is Contrary to The Act.

ARIPPA proposes that its suggested separate NUG charge be collected over the life of the NUG projects. It cites Section 2804(4)(iii)(B) of the Act, 66 Pa. C.S. § 2804(4)(iii)(B), as support for its proposition.

Section 2808(b) of the Act, 66 Pa. C.S. § 2808(b), provides that the CTC shall not extend beyond January 1, 2006 although the Act does provide the Commission with discretion to extend the CTC beyond that date upon a showing of good cause. For the duration of the CTC collection period (or until January 1, 2006, whichever is earlier), the ratepayers are protected by a rate cap which caps rates at their January 1, 1997 levels. 66 Pa. C.S. § 2804(4)(i). The gravamen of ARIPPA's request for a long-term separate transition charge constitutes the violation of the intent of the Act and would give PP&L the opportunity to collect transition costs from ratepayers after the rate cap expires.

The OCA submits that Section 2804(4)(iii)(B) of the Act offers no support for such a result. That subsection allows the approval of an exception to the rate caps for NUG contract stranded costs that arise after the establishment of the CTC or an Intangible Transition Charge

("ITC"), i.e. were not previously included in the establishment of the CTC or ITC. ARIPPA has not alleged nor demonstrated that its members' contracts with PP&L were not included as part of the Commission established CTC. Thus, there is no support for ARIPPA's requested life of the NUG project clause.

C. The Commission's Action Is Not Inconsistent With Federal And State Law.

ARIPPA opines that the Commission's order in PP&L is inconsistent with federal and state law which requires the Commission to afford full and current dollar-for-dollar recovery of purchase power costs to non-utility generators. Petition at 9-13. ARIPPA argues that the Commission is precluded from modifying contractual provisions affording utilities the full, complete and timely recovery of NUG payments approved in these contracts. It states that a non-reconcilable CTC has the same effect as altering the NUG contracts' payment terms, and therefore must fail under federal law (Section 210(e) of PURPA), citing Freehold Cogeneration Associates, L.P. v. Board of Regulatory Commissioners of New Jersey, 44 F.3d 1178 (3d Cir. 1995), cert. denied sub nom. Jersey Central Power & Light Company v. Freehold Cogeneration Associates, L.P., 116 S. Ct. 68 (1995) ("Freehold"). Id. at 10.

The OCA submits that the Commission's allowance of stranded costs associated with NUG obligations through the CTC does not deny PP&L recovery of their NUG stranded costs. The Act in no way impacts on the Commission's prior orders approving the Company's contracts with NUG's and recovery of the costs. The Act does require a one time estimate of stranded costs, including NUG-related stranded costs, and recovery of those stranded costs within a CTC. Simply put, the Act has superseded the Commission's prior orders regarding NUG-related costs if those costs are found to be stranded. The Act now provides the appropriate mechanism for recovery of

such NUG-related stranded costs.

The failure to approve full and current cost recovery through a separate non-bypassable charge over the life of the NUG projects is not a violation of federal law under Freehold. In Freehold, the Court held that once the Board approved rate recovery for the costs associated with the project, it could not later force the utility and NUG to enter into a settlement or buy-out agreement. Such action was preempted by PURPA, since the Board's action would have the effect of literally terminating a valid PURPA contract. Unlike the situation in Freehold, the Commission in the instant case is not ordering PP&L to renegotiate or buy-out its NUG obligations. The Commission is not being asked to deny the Company full recovery of costs which are found to be stranded.

Indeed, the Commission's order providing for recovery of PP&L's NUG stranded costs through a CTC does not alter the relationship between the Company and the NUGs. The Company will still be able to make purchases in accordance with the terms of the NUG contracts. Freehold only stands for the proposition that once rate recovery of NUG stranded costs was approved, the Commission could not revoke that recovery. It does not apply to the type of mechanism which the Commission authorizes to recover NUG costs from ratepayers. Therefore, Freehold is inapplicable to this case.

Concerning ARIPPA members' concerns as opposed to PP&L's cost recovery, those NUGs still are parties to binding, enforceable contracts with PP&L. If PP&L attempts to terminate those contracts in violation of the terms thereof, or attempts to breach requirements of those contracts, the NUGs have a remedy in the courts for such actions.

III. CONCLUSION

For all of the above reasons, the OCA submits that ARIPPA's petition should be denied.

Respectfully submitted,



Craig R. Burgraff
Senior Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut St.
Harrisburg, PA 17101
(717) 783-5048

Dated: July 8, 1998

47411

CERTIFICATE OF SERVICE

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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98 JUL - 0 PM 3:51
PA. P.U.
SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the foregoing documents
Office of Consumer Advocate's Answer to the Petition of Anthracite Region Independent Power
Producers Association for Reconsideration and Clarification, 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 8th day of June, 1998.

SERVICE BY INTER-OFFICE MAIL OR FIRST CLASS MAIL, POSTAGE PREPAID

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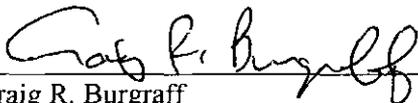
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http://www.papl.com/

DOCKETED

JUL 22 1998

July 8, 1998

ORIGINAL

Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building
New Filing Section, Room B-20
Commonwealth Avenue & North Streets
Harrisburg, PA 17120

DOCUMENT
FOLDER

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98 JUL -8 PM 3:46
PA.P.U.C.
SECRETARY'S BUREAU

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

Dear Mr. McNulty:

PP&L, Inc. ("PP&L") herein responds briefly to the Petition for Reconsideration of Anthracite Region Independent Power Producers Association ("ARIPPA") dated June 30, 1998 ("Petition"). This response addresses: (1) ARIPPA's serious mischaracterization of ongoing litigation between one of ARIPPA's members, Schuylkill Energy Resources, Inc. ("SER"), and PP&L; and (2) ARIPPA's proposal for a tracking rate for payments to non-utility generators ("NUGs").

1. Mischaracterization of SER Litigation

Although ARIPPA expressly states that "ARIPPA does not intend to impugn PP&L by association with PECO's repugnant behavior" (Petition, ¶ 12), it proceeds at some length in an effort to accomplish that very result. ARIPPA focuses a great deal of attention on PECO's litigation with one of its independent power producers, Grays Ferry, and then likens PECO's efforts in that matter to PP&L's ongoing litigation with SER. *See, e.g., id.* at ¶¶ 11 (lengthy discussion of Grays Ferry matter) and 38 (referring to Grays Ferry matter and SER litigation with PP&L as "two instances in which a utility has sought to invalidate or otherwise impair its NUG contracts"). *See also id.* at page 7 n.3 (referring to Grays Ferry matter and PP&L's FERC action against SER as two examples of utility's "attempt[ing] to profit from electric restructuring"). Without in any manner addressing or conceding the validity of ARIPPA's accusations against PECO, PP&L respectfully submits that ARIPPA's characterization of the ongoing litigation between SER and PP&L is inaccurate and unfair.

First, ARIPPA's attempt to characterize the SER litigation as an outgrowth of electric restructuring ignores the reality that PP&L's effort to ensure payment of the proper contract rate under its Power Purchase Agreement ("PPA") with SER began well before passage of the

James J. McNulty, Secretary
July 8, 1998
Page 2

Competition Act in December 1996 and the Act's effective date of January 1, 1997. In fact, PP&L began its audit of SER in 1994, filed its state court action in 1995, and filed its FERC action in July 1996. PP&L has and will continue to ensure proper payment under the PPA, through continued litigation if compelled.

Second, ARIPPA's description of PP&L's FERC action brought against SER suggests that "the net effect of [that action] will be to enrich PP&L's shareholders, at the expense of the Schuylkill Energy NUG project and PP&L's ratepayers." Petition, at page 7 n.3 (emphasis added). That characterization of the FERC action fails to recognize that which ARIPPA's Petition elsewhere concedes -- that the FERC granted PP&L's July 1996 motion for revocation of SER's certification as a qualifying cogeneration facility. Petition, ¶ 29, and Exhibit B. Given that the FERC rejected SER's position and confirmed PP&L's position, PP&L's FERC action is designed to ensure that SER is not unjustifiably enriched at the expense of PP&L under the PPA. If PP&L prevails (as it has so far) in the final adjudication, that adjudication will not be at the expense of the SER project. The SER project will receive that to which (and only to which) it is entitled.

Third, ARIPPA expressly, but erroneously, asserts that "PP&L reduced [the May 29, 1998] monthly payment in direct contravention of FERC's statement in the order that the determination was without prejudice to Schuylkill Energy's cogeneration status for calendar year 1996 and forward." Petition, ¶ 30. Contrary to SER's assertion, the FERC Order did not make any determination of SER's current entitlement to payment at the highest contract rate under the PPA so that PP&L's subsequent payment of the lower contract rate did not contravene, whether directly or otherwise, the FERC Order. Immediately after receiving the FERC Order, PP&L filed a motion to dissolve the state court's April 30, 1996 preliminary injunction order, which had obligated PP&L to pay the highest contract rate until the FERC resolved PP&L's challenge to SER's non-compliance.^{1/} In its motion to dissolve the preliminary injunction, PP&L expressly "request[ed] expedited briefing and argument, if any, of this Motion so that it may immediately cease making unjustified overpayments to SER exceeding \$800,000 per month" (emphasis added) and advised the Court that its next monthly payment would be made on May 29, 1998. Fully aware of PP&L's intent to cease making payments at the highest contract rate, and of the FERC's affirmation of PP&L's longstanding position, the Court granted expedited briefing and heard argument on May 28, 1998. Knowing that PP&L would make its next payment on May 29, 1998, the Court signed an Order on May 28, 1998 dissolving the preliminary injunction. Therefore, PP&L's payment of the lower contract rate is entirely consistent with the FERC's

1/ As a result of the April 30, 1996 preliminary injunction order, PP&L was compelled to pay SER nearly \$20 million in excessive payments between May 1, 1996 and late April, 1998 which PP&L believes it should ultimately recover from SER.

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May 19, 1998 Order, the state court's subsequent May 28, 1998 Order, and the absence of information satisfactory to PP&L to justify payment at the highest contract rate.

Fourth, ARIPPA asserts that "[i]n the PP&L/Schuylkill Energy case, the utility [*i.e.*, PP&L] has already taken steps to undermine its contractual commitments". Petition, ¶ 38. Quite to the contrary, PP&L has honored its SER contract. However, it has taken steps to ensure that SER does not receive unjustified excess payments under the parties' PPA. As noted above, the FERC's May 19, 1998 Order granted PP&L's July 1996 Motion challenging SER's non-compliance with the operating standard for qualifying cogeneration facilities. As such, FERC's Order supports PP&L's position that SER received more than \$52 million during 1990 through 1995 alone to which SER was not entitled under the PPA. That PP&L seeks to ensure full recovery of those amounts in no way supports (and indeed belies) ARIPPA's contention that PP&L seeks to undermine its contractual commitments.^{2/}

For these reasons, the Commission should give no weight to ARIPPA's totally erroneous characterization of the PP&L/SER litigation.

2. ARIPPA NUG Tracker Proposal

ARIPPA repeatedly asserts that a tracker is necessary to prevent PP&L from over-recovering its payments to NUGS.^{3/} There are, however, also a variety of reasons that could result in an under-recovery of NUG payments and could cause an increase in rates under ARIPPA's proposal. For example, under the Act and the Commission's Order, PP&L will under-recover its NUG costs if purchases from NUGs exceed the forecast in the Commission's Order or if actual market prices are lower than those projected by the Commission. If any tracker proposal is to be

^{2/} The FERC Order sustaining PP&L's position is not the first occasion on which PP&L's position has prevailed in litigation between PP&L and SER. In August 1995, SER filed a non-meritorious federal antitrust complaint against PP&L. Ultimately, Chief Judge Cahn of the U.S. District Court for the Eastern District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit held that SER failed to state a viable antitrust claim against PP&L. The U.S. Supreme Court thereafter denied SER's petition for writ of certiorari. Schuylkill Energy Resources, Inc. v. Pennsylvania Power & Light Co., 1996 WL 284994 (E.D. Pa. May 21, 1996), aff'd, 113 F.3d 405 (3d Cir.), cert. denied, 118 S. Ct. 435 (1997).

^{3/} PP&L takes no position at this time on the constitutionality of the Act or the Commission's Order regarding the recovery of NUG contract payments. PP&L reserves all rights to raise these issues on appeal or in any other appropriate forum.

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adopted, it should clearly apply to both over and under recoveries, it should include a true up of all elements used in determining NUG stranded costs, including market price, and there must be an express exception to the rate caps in the Act to permit full collection of any under-recovery.^{4/} Without these provisions, any NUG tracker would be fundamentally unfair and unlawful.

Sincerely,



Paul E. Russell
Counsel for PP&L, Inc.

cc: Certificate of Service

^{4/} It also should be noted that the Commission has rejected requests for NUG trackers in other restructuring proceedings, as well as PP&L's request for a tracker for its nuclear decommissioning costs. If the Commission were favorably disposed to ARIPPA's Petition, then it would have to reconsider its rulings on these other tracker proposals.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 1998, I served a true copy of the foregoing letter as indicated below upon the following participants, in accordance with the requirements of Section 1.54 (relating to service by a participant):

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July 8, 1998

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RE: PP&L Restructuring Plan and Cost Recovery

Dear Public Utilities Commissioners:

I am writing to you on behalf of the Macungie Borough Council. We urge you to reconsider PP&L's cost recovery request. It is our opinion that PP&L should be given the same opportunities as PECO has been given in the past.

We feel that in order to have freedom of choice in electricity, it is imperative that all electricity producers be afforded the same opportunity to recover their costs.

If PP&L is forced into a weak financial position they cannot play a strong role in economic development and neighborhood revitalization. If PP&L cannot recover its cost it will become a ripe victim for a takeover by a competitive electric producer, which will limit our choices in electricity suppliers in the future.

Sincerely,

Doris Horner
Assistant Secretary/Treasurer
for Macungie Borough Council

DOCKETED

JUL 16 1998

/dh
cc: Representative Paul Semmel

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