May 24, 2000

James McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

RE: Application of PECO Energy
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the Reply Brief of the PennFuture Parties in the referenced proceeding.

Copies of these documents have been served on all parties of record as indicated on the attached Certificate of Service.

Sincerely,

Peter Meadows Adels

Peter Meadows Adels
General Counsel
PennFuture

cc. Administrative Law Judge Rainey

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY, PURSUANT TO CHAPTERS 11, 19, 21, 22 AND 28 OF THE PUBLIC UTILITY CODE, FOR APPROVAL OF (1) A PLAN OF CORPORATE RESTRUCTURING, INCLUDING THE CREATION OF A HOLDING COMPANY AND (2) THE MERGER OF THE NEWLY FORMED HOLDING COMPANY AND UNICOM CORPORATION	:	**APPLICATION DOCKET NO. A-110550F0147**

Reply Brief Of the PennFuture Parties

I. INTRODUCTION

Most parties ("Joint Petitioners") in the referenced proceeding (the "merger") filed Main Briefs that overwhelmingly document that the record in this proceeding supports approval of the merger as modified by the Joint Petition for Settlement ("Settlement"). Only two parties, PPL Electric Utilities Corporation ("PPL") and Philadelphia City Councilman David Cohen ("Councilman Cohen") filed Briefs that do not support approval of the merger as modified by the Settlement. PennFuture and the ten named individuals joining in its Petition and Protest ("PennFuture Parties") conclude that neither PPL nor Councilman Cohen have raised any legal, factual or policy basis that could support a Commission Order other than one that approves the Settlement without modification. The PennFuture Parties respectfully submit that it should be adopted without modification because the Settlement itself and the record in this proceeding provide substantial evidence to demonstrate that approval of the Application, as modified by the Settlement, is necessary and proper for public service.

II. ARGUMENT

The issues at this point in this proceeding are incredibly narrow in scope, and this Reply Brief will not restate portions of the record and arguments that already have been made in Main Briefs. As indicated in its Main Brief, PPL no longer seeks denial of the Joint Petition. Rather, PPL asks the Commission to add a provision to the Joint Petition that it believes is necessary to "preclude the use of its terms as evidence, as well as precedent, in other proceedings" (PPL MB at 3, 32)[1]. PPL no longer argues that the record includes inadequate support for the Settlement and never argued that the Settlement was contrary to the public interest.

Councilman Cohen seeks imposition of 16 substantive terms and conditions for approval, or alternatively, to require additional evidentiary proceedings to consider such terms.

The remedies that PPL and Councilman Cohen continue to seek are incredibly broad. PPL seeks a declaration of a rule concerning evidence and/or precedent that would be a major departure from American jurisprudence, let alone Commission practice. Moreover, the Commission has no legal ability to require an addition to the Joint Petition, as requested by PPL. Joint Petitioners considered and rejected inclusion of PPL's request in various forms at various times throughout these proceedings, and the proposal simply is not part of and cannot be added to an agreement of the settling parties. As discussed in the Main Brief of PennFuture and other parties, neither does the Commission have the legal ability to preclude a party in an unknown future proceeding from citing anything from this proceeding. Councilman Cohen seeks to impose conditions that no other party

[1] As discussed in Section , PPL's distinction between "evidence" and "precedent" is not clear, although PPL appears in its Main Brief to have narrowed its request since its Objections.

agreed were necessary and appropriate components of a settlement, and several of which have not even been addressed by Councilman Cohen or any other party in the record of this proceeding. Alternatively, Councilman Cohen seeks to relitigate this entire proceeding.

A. The Record Provides Substantial Evidence That Approval of the Settlement Is In the Public Interest and No Evidence to the Contrary.

Almost all parties filing a Main Brief in this proceeding have documented that the record fully supports a finding by the Commission that the Settlement as a whole is in the public interest, as well as that each provision of the Settlement is in the public interest. No party, not even PPL, has argued or presented any evidence in this proceeding that approval of the Settlement as a whole, or any portion of it, is not in the public interest. Councilman Cohen acknowledges the substantial public benefits included in the Settlement (Cohen MB at 6) and argues only that even greater benefits should be required.

Nothing in PPL's Main Brief continues to assert that additional evidence in support of the Settlement is necessary for Commission approval. Perhaps PPL now is satisfied that the additional round of hearings have rendered this prior objection moot. To the contrary, PPL appears to acknowledge the substantial evidence in support of the Settlement, merely arguing that the record concerns PECO and not PPL (PPL MB at 18-28).[2] Of course, the record is only about the PECO merger as modified by the

[2] There remain a few portions of PPL's Main Brief in which PPL initially appears to make a substantive claim, although in each circumstance the suggestion in fact is presented only to support PPL's argument that the record does not support any finding about PPL. See, for example, PPLMB at 26, concerning the Sustainable Development Fund, and at 27 concerning Competitive Default Supply. PPL's observations merely bring them to recognize what all other parties have acknowledged through tortuous interaction with PPL: this proceeding is not about PPL or any future proceeding, it is about PECO, this merger, and the public interest.

Settlement, and no party had any reason in this proceeding to document, demonstrate or argue that a similar provision should be imposed on PPL or any other utility. Even following yet another opportunity to characterize its concerns, PPL's Main Brief again demonstrates that its concerns are neither relevant nor susceptible to resolution in this proceeding.

Councilman Cohen argues for the first time in his Main Brief that approval of the Settlement is not in the public interest because it does not include 16 provisions that he recommends.[3] While the Councilman presented testimony that raises some important concerns about nuclear generation, his testimony and the remainder of the record is insufficient to support a finding that the 16 conditions should be imposed on PECO. Councilman Cohen's Main Brief identifies no record evidence to support some of the requested conditions and no legal ability, let alone imperative, to impose others.

Alternatively, Councilman Cohen seeks additional evidentiary hearings to provide financial data regarding the "value" of the merger (Cohen MB at 7, 9). As discussed in Section II B, Councilman Cohen cannot support his argument that a record to support a finding of the total value of the merger is required.

B. Approval of the Merger as Modified by the Settlement Complies With Applicable Law.

The Main Briefs of almost all parties demonstrate that the Commission may approve the merger as modified by the Settlement in compliance with applicable law. No party argued that approval of the merger as modified by the Settlement is inconsistent with or contrary to applicable law.

Councilman Cohen suggests that the Settlement does not provide "substantial value" necessary for approval but does not provide legal support for his conclusion that "substantial value," as he defines it, is legally necessary for approval. Councilman Cohen argues that the Commission must make a specific finding of the "value" of the merger benefits in order to find that the Settlement provides "substantial value" to the public. (Cohen MB at 6). As discussed in the Main Brief of PennFuture and other parties, however, Section 1103(a) of the Public Utility Code requires a finding that approval is in the public interest. Councilman Cohen's reference to City of York provides no support for his argument that the Commission must find a total value of the merger to PECO in order to find that that the value to the public is substantial.

By any account, the approximately $300 million in quantifiable public benefits in the Settlement are substantial enough for the Commission to find that the merger benefits the public, without even considering most of the benefits in the Settlement that cannot readily be quantified. Indeed, it may be that the non-quantifiable benefits of the Settlement provide greater public benefit than the quantifiable benefits. For example, the rate cap extension, the customer service and reliability improvements, the enhancements to Universal Service Programs, the net metering and interconnection provisions, and the improvements to the competitive market are clear, very substantial benefits to public service, as summarized in the Main Briefs of PennFuture and other parties. Under such circumstances, there is no reason, let alone utility, for a Commission finding of the total value of the benefits to PECO, many of which themselves are not quantifiable.

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[3] Prior to filing the Main Brief, Councilman Cohen appeared to argue only that additional terms could make the Settlement more beneficial to the public without suggesting that the Settlement was inadequate for approval without them.

PPL's Main Brief does not suggest that the Settlement may not be approved in compliance with applicable law but in two cases does suggest that specific individual provisions of the Settlement may not be consistent with applicable law. In neither case does PPL attempt to argue that the Settlement may not be approved on such grounds, however. Rather, PPL's argument is solely that the Settlement provisions in question may not be imposed on PPL. As with the evidentiary record discussed previously, of course no party has attempted to argue that the terms in question may be legally imposed on PPL as a result of this proceeding, which is about PECO and not PPL. Moreover, in neither case has PPL presented anything close to a legal argument that the two Settlement provisions are in fact inconsistent with applicable law.

The first is PPL's discussion in its Main Brief at 26-27 that "None of the testimony by the Joint Petitioners justifies for (sic) bypassing the SDF process." PPL provides no explanation for its assertion that "bypassing SDF" is in any way inappropriate or inconsistent with Commission Orders, or how providing SDF with $28.5 million in additional funding, more than tripling its principal pursuant to this Settlement, in any way bypasses SDF or its Board. To the contrary, the plain language of the Settlement specifies that "the SDF shall use its best efforts to implement the program as described herein and to maximize effective use of the funds to install photovoltaic systems, consistent with its chartered purpose and its normal operating procedures managed by its Board of Directors."[4] It is incomprehensible that such a directive for the use of substantial additional funding for broad categories of new wind development, photovoltaic development, or renewable education could in any way be considered to impose inappropriate constraints. PPL's suggestion that such additional SDF funding is

somehow undermining Commission policy, as opposing to fully implementing it, is equally incomprehensible.[5]

PPL's second suggestion that a specific provision of the Settlement is somehow inconsistent with applicable law is more direct, but equally inapposite: PPL directly states that the Competitive Default Supply provisions "would appear to be inconsistent with the electric Competition Act" (PPL MB at 27). Yet, perhaps PPL cites no provision of the Act allegedly offended because it merely is arguing that this record "provides no basis for imposing this revised CDS construct on the customers of any other utility."

C. There Is No Factual, Legal, or Policy Basis to Support PPL's Demand that Nothing in this Proceeding May Be Evidence or Precedent in Future Proceedings.

The substance and form of PPL's present demand concerning "evidence" and "precedent" are both unclear. PPL's Main Brief includes a specific demand that a provision be inserted in the Settlement to preclude use of this proceeding as evidence in future proceedings (PPL MB at 3, 32). The requested provision does not mention precedent, only evidence, and portions of the PPL Main Brief suggest recognition that its concerns about the precedential value of Settlements have now been addressed to the

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[4] Paragraphs 39(d), 41(c) and 42(c).

[5] PPL presented footnote 55 at PPLMB solely in support of its statements that the record in this proceeding does not support comparable "relief" concerning PPL. However, PPL's footnote misrepresents the terms of the Settlement as well as the law and Commission policy concerning generation resources that that are not economic. First, nothing in the Settlement requires that the funds must be provided as "subsidies" rather than equity investments, market rate loans, or otherwise. Second, no Commission policy or principle of law precludes "subsidies" for renewable generation. Third, the Restructuring Act and Commission policy specifically encourage support for renewable energy, as well as subsidies for uneconomic nuclear and coal generation, as evidenced by PPL's authorized recovery of $5 billion in stranded costs. It is in fact the subsidy for uneconomic generation that constrains the economic development of new wind generation. If consumers were not required to pay about 1.5 cents per kwh for 11 years to subsidize PPL's nuclear and other uneconomic generation, a consumer would be able to buy wind power at rates about the same as PPL's own rates.

fullest extent possible (e.g. PPL MB at 17). PPL nevertheless also demands a declaration of policy concerning both evidence and precedent (PPL MB at 14).

Whether in fact demanding a response concerning evidence, precedent, or both, and whether the request is for a modification to the Settlement, a provision in the Commission Order in this proceeding, dicta in this proceeding, a declaratory order, a policy statement or a regulation, PPL continues to seek a Commission policy "that it will not entertain evidence or arguments by participants before the Commission justifying relief on the grounds that such relief was incorporated in a settlement with another utility (PPLMB at 33). While the confusion over substance and form may indicate a possible limitation of the demand by PPL, any such limitation makes PPL's demands no more reasonable, relevant, or susceptible to satisfaction in this proceeding.

However articulated, PPL's concern is to assert that nothing that PECO does in this proceeding should be expected of PPL or imposed on PPL in the future. The Main Briefs filed by PennFuture and other parties make clear that the Commission has no ability to proscribe the future positions of parties or future Commissions concerning evidentiary rulings or how the fact(s) of this proceeding may or may not be relevant or material in future proceedings. Although PPL now formulates its demand as a change to *the agreement of the parties*, the Commission is no more able to change an agreement than it is to impose the previously articulated Order.

Even if the concern were considered legitimate, PPL's demands for addressing the concern are based on erroneous assumptions, misstatements of fact, bad policy and contrary to law.

PPL's entire participation and demand in this proceeding may be based upon erroneous assumptions. PPL suggests that failure to agree to PPL's demands will force other utilities to intervene in all proceedings, treating them all like rulemakings in order to protect their interests (PPL MB at 2). This proceeding may instead demonstrate that the assumption is false. Besides PPL, only APS among Pennsylvania utilities intervened in this proceeding, and APS does not object to the Settlement. Moreover, it is PPL that is seeking a policy statement that would turn this proceeding into one more like a rulemaking. Additionally, the Commission can readily prevent the "problem" now and in the future by only permitting parties with standing to participate in a particular case.[6]

PPL's argument and presentation in support of its demands also are based on statements of fact that are either false or cannot be found to be true based on the record of this proceeding. The basic premises underlying PPL's demands are unsupportable::

> "a number of participants in Commission proceedings have sought to use of (sic) settlements entered into with one public utility to support similar relief against other utilities" (PPL MB at 1).

> "Once they (other parties) secure agreement to a favored settlement provision by a utility anxious to avoid a contested proceeding, they seek to characterize that settlement provision as the "model" which all other utilities must follow. All too often utilities that did not actively participate in the settled proceedings find themselves forced to defend against provisions that are justified on the basis that they already were agreed to or implemented by another utility" (PPL MB at 14-15).

Despite the opportunity to do so in testimony and/or Briefs and other filings in this proceeding, PPL has identified no evidence that supports its assertions. To the

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[6] PennFuture reiterates its arguments and supports those of other parties presented in the Main Briefs that PPL does not have standing to object to the Settlement in this proceeding. While no party objected to PPL's standing to participate at the outset of this proceeding,, we note that a party may have standing to address some issues while not others. We do not argue that a utility does not as a matter of law have standing to participate in the proceeding of another utility. However, a party that cannot demonstrate any direct, immediate interest in a proceeding has no standing to block a settlement solely out of fear that it might be asked to agree to similar terms at some future time in some future proceeding.

contrary, assuming that PPL refers to its own Restructuring Settlement, it must be assumed that PPL agreed to the terms included therein or it would not have agreed to settle the proceeding. Given the lack of evidence provided by PPL in this proceeding and the lack of any support for PPL's position in this proceeding by any other utility, there is no factual basis to assume that the alleged "events" have even occurred once. Surely there is no basis to assume that such "events" occur "all too often" or constitute a "problem" that must be addressed.

PPL cites statements in this proceeding to document the "intent" of parties in this proceeding to fulfill PPL's prophecy. Yet the statements cited at pages 15-17 of PPL's Main Brief provide no support whatsoever for PPL's assertions. Indeed, PPL has cited no evidence whatsoever that parties in this proceeding intend to argue that provisions of this Settlement must be agreed to by PPL or required by the Commission solely based on the fact of settlement in this proceeding:

- Penn Future did indeed characterize the Settlement as "unprecedented" and a "landmark," but the citation suggests no intent to argue that provisions of this Settlement must be agreed to by PPL or required by the Commission solely based on the fact of settlement in this proceeding.

- Epstein did say the Settlement "established a constructive and useful paradigm for other communities and nuclear utilities," but the citation indicates no intent to argue that provisions of this Settlement must be agreed to by PPL or required by the Commission solely based on the fact of settlement in this proceeding.

- OCA did refer to the CDS change as "important in working toward a successful competitive default service in Pennsylvania," but the citation indicates no intent to argue that provisions of this Settlement must be agreed to by PPL or required by the Commission solely based on the fact of settlement in this proceeding.

- MAPSA did state that some terms of the Settlement could provide a model elsewhere, even nationally, but the citation indicates no intent to impose comparable changes on PPL or any other utility, let alone to do so based solely on the fact that PECO agreed to certain provisions in this proceeding.

Pennsylvania officials, and many familiar with electric restructuring, rightfully argue that Pennsylvania's electric restructuring model has been the best of any state thus far, and therefore provides a national model. Nothing in that fact or the statements cited by PPL suggest any intent whatsoever to argue that PPL, any other utility, or any other state should adopt comparable provisions, with or without a future proceeding merely because PECO did so in this case.

Yet, there is nothing inappropriate or contrary to PPL's rights or interests, if the parties, the Commission, or parties and officials in other states learn from experience. Experience in other service territories must be considered as relevant, material, or dispositive on the merits. Blanket preclusion of experience in other areas as evidence is wholly inappropriate.

For these reasons, PPL's evidentiary demands are vastly overbroad. No party in this proceeding has suggested that the fact that PECO agreed to a particular provision in the Settlement should on its own constitute binding precedent or sufficient evidence in another proceeding. The fact that another utility settlement included X, Y, or Z, may or may not be relevant, material, or substantial evidence to support a future decision in another utility proceeding. Even PPL witness Gioia supports consideration of evidence on the merits: "...consideration of those terms in any subsequent proceeding should be on their own merits, in the context of the facts and circumstances of that proceeding." (PPL Statement 1 at 7-8).

Lastly, PPL's "policy argument" that its demands must be granted in order to promote and facilitate settlements flies in the face of the experience in this proceeding. PPL argues that "the relief sought by PPL Utilities would encourage settlements, prevent

delay and unnecessary costs, and protect the rights of all interested partied to reasonable notice, a fair opportunity to be heard, and an appropriate decision- making process before being bound by a regulatory decision" (PPL MB at 29). Granting PPL's demands would likely have just the opposite effect. Some, if not all parties in this proceeding agreed to settle this proceeding on terms that fall short of what they would have demanded in litigation. That is inherently the nature of settlements, as is the motivation to settle in order to avoid the time, expense and uncertainty of continued litigation. PPL's successful effort to extend these proceedings thus far already has reduced the value of this Settlement to at least some parties, and certainly raises questions about the value of settlements in the future. The Commission would strongly discourage future settlement if it provided any support for PPL's demands or role in this proceeding.

For the foregoing reasons, the PennFuture Parties submit that the Joint Petition should be approved without modification and that the Objections of PPL and Councilman Cohen should be dismissed.

Respectfully submitted,

The PennFuture Parties

Peter Meadows Adels, General Counsel
PennFuture

DATED: May 24, 2000

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the Matter of PECO Energy Company's Application For Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation by e-mail and or U.S. mail.

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Dated: May 24, 2000

COMMONWEALTH OF PENNSYLVANIA

DOCUMENT FOLDER

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Small Business Advocate

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May 24, 2000

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Re: Application of PECO Energy Company
Docket No. A-110550F0147

Dear Mr. McNulty:

Enclosed for filing are the original and nine (9) copies of the Reply Brief on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Bernard A. Ryan, Jr.
Small Business Advocate

Enclosures
cc: Hon. Charles E. Rainey, Jr.
Administrative Law Judge

Parties of Record

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, For Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation	: : : : : : : : :	Docket No. A-110550F0147

REPLY BRIEF

OF THE

OFFICE OF SMALL BUSINESS ADVOCATE

Bernard A. Ryan, Jr.
Small Business Advocate

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Date Served: May 24, 2000

The Main Brief of the Office of Small Business Advocate (filed and served May 17, 2000) explains how the Joint Petition for Settlement now before the Presiding Officer fully satisfies the "public interest" test the Commission must apply when reviewing such proposals. Other Joint Petitioners have similarly demonstrated in their main briefs how the various provisions in this settlement agreement produce significant benefits to PECO's customers, its employees and the communities it serves. Those briefs also show why the objections to this settlement that PPL and Councilman Cohen have advanced should be rejected.

The persuasive arguments in the main briefs filed by the various Joint Petitioners (who represent a diverse cross-section of interests directly affected by PECO's proposed restructuring and merger) will not be repeated here. The OSBA is compelled, however, to offer a few brief comments about the proposal by PPL that the Joint Petition for Settlement be modified by the Commission to include an uncalled for and impertinent prohibition against any mention or consideration whatsoever of this settlement in any future PUC proceeding.[1]

A careful reading of PPL's suggested condition reveals that it goes far beyond simply acknowledging what both the Joint Petition and prior Commission cases already stipulate about the non-precedential nature of this settlement. If PPL's suggested wording merely confirmed existing Commission policy and practice in that regard, the OSBA would find it acceptable, although unnecessary and redundant. But PPL now asks Judge Rainey and the Commission to go much further than that, in a direction that would unfairly and unwisely handicap the Commission and those who appear before it in future cases.

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[1]See pages 3 and 32 of the Initial Post-Hearing Brief of PPL Electric Utilities Corporation for the wording PPL suggests for the protective (for PPL) clause that it asks the Commission to engraft upon the Joint Petition for Settlement here.

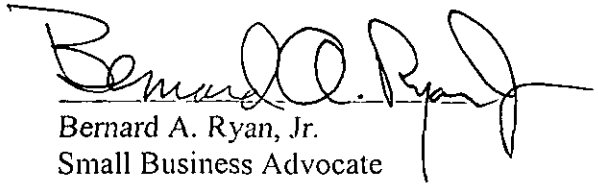
In its main brief PPL asks that the PUC convert its consistent "no precedential effect" approach regarding the legal significance of negotiated settlements into a binding evidentiary rule that would declare any reference whatsoever to this Joint Petition for Settlement to be irrelevant and immaterial "...in any other proceeding." PPL's audacious proposal thus would insure that no party in a later case could ever, under any circumstances, take into account any aspect of this settlement in making its case in that subsequent proceeding before the Commission. That PPL request must be denied.

By suggesting that the Commission include such a declaration of nullity in its Order approving this Joint Petition, PPL obviously hopes to place any evidence about the resolution of this PECO proceeding completely beyond the reach of the Commission's Administrative Law Judges (and, indeed, of the Commissioners themselves). There simply is no justification for imposing such an unprecedented and unwise limitation on the forum, a limitation that would forever foreclose future Judges and Commissioners from deciding for themselves, at that future time and in the context of that future proceeding, just what evidence has or does not have probative value regarding the controversy before the Commission at that time. PPL is trying to rig the rules in its favor before the contest even begins. The condition it suggests would handcuff all protestants and intervenors in future PPL proceedings by placing unwarranted restrictions on their advocacy and their litigation (or settlement) strategies in those as-yet hypothetical PUC cases.[2]

[2]More comprehensive discussions of the compelling public policy and due process considerations that require the rejection of PPL's overreaching proposal will be found in the Main Briefs of the Office of Trial Staff (at pages 11-17), the Office of Consumer Advocate (at pages 30-34) and PECO Energy Company (at pages 21-22).

The Office of Small Business Advocate respectfully requests that the Presiding Officer and the Commission reject the objections of PPL and Councilman Cohen and approve the Joint Petition for Settlement without any modification of its terms.

Respectfully submitted,



Bernard A. Ryan, Jr.
Small Business Advocate

Dated: May 24, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Certificate_of_Service

I certify that I am serving a copy of the Main Brief on behalf of the Office of Small Business Advocate in the manner indicated upon the persons addressed below:

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VIA MESSENGER DELIVERY

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PA.P.U.C.
SECRETARY'S BUREAU

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

Re: Application of PECO Energy Company Pursuant to Chapters 11, 19, 21, 22, and 28 of the Public Utility Code for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) Merger of the Newly Formed Holding Company and Unicom Corporation:
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of Reply Brief of the National Railroad Passenger Corporation in Support of the Joint Petition for Settlement. Please return one time-stamped copy with our messenger.

Thank you for your attention in this matter.

Sincerely,

John A. Greenbaum

Enclosures
cc: Charles E. Rainey, Jr., Administrative Law Judge (via fax & messenger delivery, w/enc.)
All parties to this proceeding (first class mail, w/enc.)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY, PURSUANT TO CHAPTERS 11, 19, 21, 22 AND 28 OF THE PUBLIC UTILITY CODE, FOR APPROVAL OF (1) A PLAN OF CORPORATE RESTRUCTURING, INCLUDING THE CREATION OF A HOLDING COMPANY AND (2) THE MERGER OF THE NEWLY FORMED HOLDING COMPANY AND UNICOM CORPORATION	:	Docket No. A-110550147

REPLY BRIEF OF THE
NATIONAL RAILROAD PASSENGER CORPORATION
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT

On May 17, 2000, PPL Electric Utilities Corporation ("PPL") and Councilman David Cohen filed briefs opposing the Joint Petition for Settlement ("Joint Petition" or "Settlement"). Echoing their prior testimony, these parties ask the Commission either to reject the Joint Petition or, in the alternative, to impose additional conditions.

The National Railroad Passenger Corporation ("Amtrak") hereby submits this Reply Brief supporting the proposed Settlement and responding to the points raised by PPL and the Councilman. As explained below, these parties have failed to rebut the prior testimony establishing that the proposed Settlement is in the public interest, and they

have raised objections that either are premature or beyond the jurisdiction of this Commission.

First, PPL's challenge to the Settlement relates solely to the potential use of the Settlement as "relevant or material evidence" in a later proceeding. Yet the proposed Settlement is very unlikely to qualify as "evidence" that is relevant to disputed facts in another proceeding. Consequently, the merger condition proposed by PPL appears to be unnecessary. Furthermore, since PPL's evidentiary objections could legitimately be raised in a future proceeding in which PPL is the applicant, the utility's claim is not ripe for consideration at this time.

Second, Councilman Cohen continues to focus on the alleged health risks associated with the operation of nuclear power plants, but he fails to establish a direct nexus between these concerns and the proposed merger. The Councilman disregards the fact that the Nuclear Regulatory Commission ("NRC") has exclusive jurisdiction over health and safety standards at nuclear power plants. In addition, regardless of whether the proposed merger and restructuring is approved, PECO Energy Company ("PECO") and its affiliates have ample incentive to apply for relicensing of eligible nuclear power plants at the NRC. The Councilman has presented no evidence showing that the proposed merger and restructuring will affect the utility's relicensing decisions, prolong the operations of PECO's existing nuclear plants, or lead to the construction of additional nuclear plants in PECO's service territory. Accordingly, his assertions regarding the

health risks associated with nuclear power do not provide a basis for rejecting the proposed Settlement.

I. PPL'S EVIDENTIARY OBJECTION REGARDING THE PROPOSED SETTLEMENT IS NOT RIPE FOR DISPOSITION AT THIS TIME

In its latest submission, PPL effectively concedes that the substantive terms of the Settlement are in the public interest. (*See* PPL Br. at 13-27.) Furthermore, PPL does not question the fact that Commission policy strongly favors voluntary settlements. (*See* 52 Pa. Code § 5.231(a); 52 Pa. Code § 69.391; 52 Pa. Code § 60.401.)

At this point, PPL argues only that it is theoretically possible that some party might refer to the Settlement in a later proceeding (which has not been initiated, may never be initiated, and, if initiated, may not involve PPL.) On that basis, the utility argues that the Commission should impose a condition forbidding any use of this Settlement as "relevant or material evidence." Essentially, PPL seeks to hold this proceeding hostage in order to advance an agenda that is unrelated to the terms of the Settlement.[1]

PPL's position should be rejected on several independent grounds. To start with, PPL has not shown that it has a direct and substantial interest in the proposed

[1]PPL advances this objection despite the Commission's unequivocal statement that "we vigorously, and without equivocation, reject considering a settlement as precedent, as to any subsequent issue, in any proceeding." Pa.PUC v. The Bell Telephone Company of Pennsylvania, 1988 Pa.PUC LEXIS 572 at *19 (November 10, 1988).

Settlement. Nowhere in its post-hearing brief does PPL attempt to show that approval of the Settlement would result in any immediate harm.[2] Indeed, the condition proposed by PPL would state only that the provisions of the Settlement "shall not constitute or be cited as relevant or material evidence" in any subsequent proceeding. (PPL Br. at 32.)

In any future proceeding, however, PPL would be free to oppose use of this Settlement as precedent or as "evidence" on disputed facts. Nowhere in its post-hearing brief does PPL attempt to show that it would be incapable of protecting its legitimate interests in a later proceeding. At this point, then, the question of whether the Settlement qualifies as "relevant or material evidence" is entirely hypothetical and is not ripe for review.

In Pennsylvania, an issue may not be adjudicated unless it is ripe for determination. "The ripeness doctrine is a concept of standing premised on the notion that 'judicial machinery should be conserved for problems which are real and present or imminent, not squandered on problems which are abstract or hypothetical or remote.'" Van Doren v. Mazurkiewicz, 695 A.2d 967, 971 (Pa. Cmwlth. 1997) *citing* Western

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[2]As Amtrak has previously explained, PPL lacks standing to challenge the proposed Settlement. *See* In re T.J., 739 A.2d 478, 481 (Pa. 1999)(standing is required before a party may assert a legal challenge). To have standing to challenge the Joint Petition, PPL must meet three criteria: (1) it must have a substantial interest in the subject matter of the litigation; (2) the interest must be direct; and (3) the interest must be immediate and not a remote consequence. George v. Pa. Public Utility Commission, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999) *citing* Ken R. ex rel. C.R. v. Arthur Z., 546 Pa. 49, 682 A.2d 1267 (1996); *see also* William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975). Since the harm alleged by PPL is merely hypothetical, it cannot meet any of the prerequisites for standing.

Pennsylvania Water Co. v. Pennsylvania Public Utility Commission, 471 Pa. 347, 361, 370 A.2d 337, 344 (1977) (Roberts, J., dissenting). In this case, PPL has not identified any "injury" that is real, present, or imminent. For that reason alone, the Commission need not, and should not, address PPL's argument.

II. COUNCILMAN COHEN'S OBJECTIONS DO NOT PROVIDE A BASIS FOR DISAPPROVING THE SETTLEMENT

A. Councilman Cohen's Objections Relating To Nuclear Energy Are Not Directly Linked To The Proposed Merger And Are Beyond The Jurisdiction Of This Commission

In his post-hearing brief, Councilman Cohen has confirmed that his primary concerns relate to nuclear power, and he makes a half-hearted effort to link those concerns to the proposed merger and restructuring. (*See* Councilman Cohen Br. at 1-3) Councilman Cohen points out that PECO "is aggressively seeking to purchase additional [nuclear] plants.'" (*Id. citing* Cohen Testimony at 3.) He then asserts that "'[t]he merger will further increase the incentive to continue [such] plants in operation . . . .'" (*Id.*)

The Councilman's testimony on this point is internally inconsistent. While asserting that PECO will have increased "incentives" to continue its nuclear operations, he acknowledges that long before the PECO-Unicom merger was announced, PECO and its affiliates were buying nuclear power plants. (Councilman Cohen Testimony at 3; Councilman Br. at 3.) His own testimony supports the conclusion that regardless of whether the merger is approved, PECO is likely to continue implementation of its pre-

existing business strategy. Similarly, the Councilman has never been able to establish a linkage between the proposed merger and the relicensing of PECO's existing nuclear plants. The utility has previously made a huge capital investment in nuclear generating stations, and it obviously has a strong incentive to apply for relicensing to the extent allowed under the standards and procedures established by the NRC. Thus, contrary to the Councilman's assertions, there is no evidence in the record supporting the assertion that the merger "increase[s] the incentive" to seek relicensing.[3]

The Councilman also claims that the NRC has not performed its regulatory functions to his satisfaction. (*See* Councilman Cohen Brief at 2 and Cohen Testimony cited therein). He insists that because the NRC is not doing a sufficient job of protecting public health, this Commission should assert jurisdiction over PECO's nuclear operations. As Amtrak has previously explained however, this Commission has no authority to regulate in this area. Pacific Gas & Elec. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 212 (1983); In re TMI, 67 F.3d 1103, 1108 (3d Cir. 1995). The Councilman has not identified any case law or statutory authority to the contrary. Consequently, regardless of whether the Councilman's assessment of the NRC is correct or not, the Settlement should be approved.

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[3]In any relicensing proceedings at the NRC, Councilman Cohen may seek to intervene and may then present his views on the health effects of PECO's nuclear operations. The NRC presumably has the expertise necessary to evaluate the Councilman's theories.

B. Approval Of This Settlement Does Not Require Additional Evidence Quantifying Future Cost Savings Or Revenue Gains

Next, Councilman Cohen argues that the Commission cannot determine whether the public benefits of the Settlement are "substantial" unless it can determine with specificity the economic benefits will inure to PECO. (Councilman Cohen Br. 6). He focuses specifically on the "revenue enhancements" that PECO may attain in the years ahead. (*Id.*)

This argument suffers from several basic flaws. First, parties settle complex cases such as this one precisely to avoid having to litigate over issues such as projected "revenue enhancements." If the settling parties now had to incur the costs of litigating over such questions, one of the principal advantages of the settlement process would be eliminated.

Second, the settling parties did not negotiate in the dark. Many, if not all, of the intervenors obtained information relating to the merger through formal and informal discovery. Many, if not all, of the intervenors also retained economic consulting firms for the purpose of providing advice during the negotiations. Accordingly, the intervenors were perfectly capable of evaluating the potential impacts of this merger, including the expected "revenue enhancements."[4]

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[4]If the case were litigated, there would inevitably be disputes about the relevance of "revenue enhancements" in PECO's unregulated businesses. By reaching a comprehensive settlement, the parties and the Commission have avoided the need to resolve such questions.

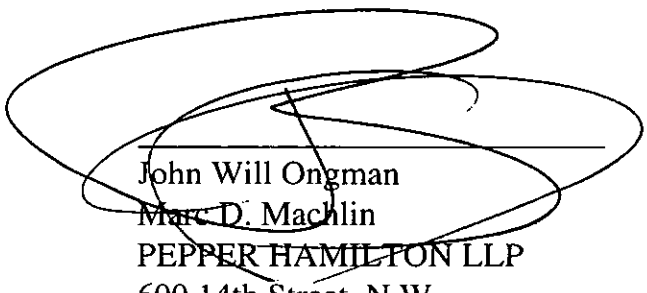
Third, as the Councilman effectively concedes, many witnesses have already presented testimony documenting the ways in which this Settlement serves the public interest. (*See, e.g.*, Testimony of Stanley Forczek; Testimony of Thomas P. Hill, Jr.; Testimony of Richard LaCapra.) The Councilman does not cite to any authority which holds that settling parties must go beyond this and quantify all the economic benefits that may be obtained by the applicant. The imposition of any such requirement would discourage parties from engaging in negotiations, which would be contrary to the Commission's policy strongly encouraging voluntary settlements.

Ultimately, the evidence of record shows that the Joint Petition provides benefits to the public which are "substantial" by any definition of that term. The Councilman's challenge to the Settlement should therefore be rejected.

II. CONCLUSION

For the reasons stated above, the proposed Settlement covering PECO's merger and restructuring should be approved.

Respectfully submitted,



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Dated: May 24, 2000

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May 24, 2000

VIA HAND DELIVERY

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Pennsylvania Public Utility Commission
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Re: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, For Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation; Docket No.A-110550F0147

Dear Secretary McNulty:

In accordance with the procedural schedule, please be advised that the City of Philadelphia will not be filing a Reply Brief in the above-referenced proceeding. The City reserves the right, however, to file exceptions or reply exceptions, as necessary.

As evidenced by the attached Certificate of Service, all parties in this proceeding are being duly served with a copy of this letter. If you have any questions, please contact the undersigned.

Very truly yours,

MCNEES, WALLACE & NURICK

By Charis M. Burak
Charis M. Burak

CMB/lhe
c: Administrative Law Judge Charles E. Rainey, Jr. (via federal express)
Certificate of Service

CERTIFICATE OF SERVICE

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

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May 24, 2000

VIA HAND DELIVERY

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

Re: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, For Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation; Docket No.A-110550F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of the Reply Brief on behalf of the Philadelphia Area Industry Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it for our filing purposes.

Very truly yours,

MCNEES, WALLACE & NURICK

By Charis M. Burak
Charis M. Burak

CMB/lhe
c: Administrative Law Judge Charles E. Rainey, Jr. (via federal express)
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY, PURSUANT TO CHAPTERS 11, 19, 21, 22 AND 28 OF THE PUBLIC UTILITY CODE, FOR APPROVAL OF (1) A PLAN OF CORPORATE RESTRUCTURING, INCLUDING THE CREATION OF A HOLDING COMPANY AND (2) THE MERGER OF THE NEWLY FORMED HOLDING COMPANY AND UNICOM CORPORATION	:	Docket No. A-110550F0147

REPLY BRIEF OF
THE PHILADELPHIA AREA
INDUSTRIAL ENERGY USERS GROUP

Bethlehem Steel Corporation
The Boeing Company
The Budd Company
Ford Motor Company
Franklin Mills Associates Limited Partnership
Kimberly-Clark Corporation
Nabisco, Inc.
Rohm and Haas Company
Sunoco, Inc. (R&M)
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Dated: May 24, 2000

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I. INTRODUCTION

On November 22, 1999, PECO Energy Company ("PECO" or "Company") filed an Application with the Pennsylvania Public Utility Commission ("PUC" or "Commission") requesting approval of (1) a plan of corporate restructuring, including the creation of a holding company, and (2) the merger of the newly formed holding company and Unicom Corporation ("Unicom"), the parent company of Commonwealth Edison Company ("ComEd").

After intensive settlement negotiations, a Joint Petition for Settlement ("Joint Petition" or "Settlement") was signed by all but two of the intervening parties. In order to address the concerns of these two parties, a procedural schedule was established for evidentiary hearings and the filing of briefs. The Philadelphia Area Industrial Energy Users Group ("PAIEUG") submitted a Main Brief and received Main Briefs from: Office of Consumer Advocate ("OCA"); Office of Trial Staff ("OTS"); Office of Small Business Advocate ("OSBA"); City of Philadelphia ("City"); Mid-Atlantic Power Supply Association ("MAPSA"); PennFuture Parties ("PennFuture"); PPL Electric Utilities Corporation ("PPL"); PECO; Eric Joseph Epstein; Clear Air Council ("CAC"); and the National Railroad Passenger Corporation.

Pursuant to the procedural schedule, PAIEUG hereby submits this Reply Brief in order to address and refute issues raised by PPL in its Main Brief regarding the precedential value of the Joint Petition and the need for the PUC to issue a policy statement concerning the evidentiary treatment of settlements.

II. ARGUMENT

A. PPL's Request to Condition or Modify the Settlement Should Be Rejected as Immaterial, Unnecessary, and Unsubstantiated.

The Joint Petition addresses the use of its provisions in future proceedings, and specifically notes that the Settlement will not constitute controlling precedent. See Joint Petition, ¶ 72. PPL argues, however, that the Joint Petition does not go far enough in restricting the ability of the parties to present the terms of the Joint Petition as evidence in future proceedings. See PPL Main Brief (hereinafter "M.B."), pp. 13-14. As a result, PPL argues that the Joint Petition should be modified to include a provision preventing the Settlement's use in justifying relief in subsequent proceedings involving other Pennsylvania public utilities. See id. at 13.

PPL's introductory argument states that "a number of participants in Commission proceedings have sought to use of settlements [sic] entered into with one public utility to support similar relief against other utilities." PPL M.B., p. 1. PPL provides no specific examples or cites regarding the use of other settlements by parties in this proceeding, but rather, bases this assertion on nothing more than sheer speculation.

PPL next attempts to broaden this assertion by arguing that several of the Joint Petitioners have indicated an intent to use the Joint Petition filed in this proceeding in order to seek similar concessions from other Pennsylvania public utilities in future proceedings. See PPL M.B., p. 15. PPL attempts to substantiate this argument by citing, out of context, statements made by several of the Joint Petitioners regarding the benefits of the Joint Petition. Specifically, PPL cites the Statements in Support of the OCA, Eric Joseph Epstein, PennFuture, and MAPSA regarding those provisions of the Joint Petition that will benefit the public interest. See id. PPL suggests

that the terms used to describe the provisions of the Joint Petition are indications by the parties of their intent to utilize these provisions in future proceedings.

PPL's concerns seem to be based on nothing more than sheer paranoia. The statements cited by PPL were put forth to support the Settlement, specifically to substantiate for the PUC why the Joint Petition is in the public interest. In fact, the evidentiary record for this proceeding contains no indications from any party of an intent to use the Joint Petition as a means of obtaining concessions from other utilities in future proceedings. Although PPL has implied its concern, on many occasions, that it would be required to provide its ratepayers the same benefits provided by PECO in this proceeding, no party has indicated that it would utilize the provisions of the Joint Petition to force PPL to provide ratepayer benefits.

Moreover, PPL has previously argued that the parties to this proceeding failed to establish that the Joint Petition is in the public interest. Now, PPL has chosen to take the statements put forth by the Joint Petitioners regarding the benefits of the Settlement, and twist them to suit PPL's own needs. Instead of recognizing these statements for what they are, i.e. evidence of the benefits resulting from the Settlement, PPL instead implies that the Joint Petitioners have an agenda above and beyond the settlement of PECO's merger. These implications are unsubstantiated and baseless, and for these reasons must be denied.

PPL also suggests that the terms of the Joint Petition are relevant and material only in PECO's merger proceeding, and thus must automatically be declared irrelevant and immaterial if raised in any subsequent proceeding involving another Pennsylvania public utility. See PPL M.B., p. 17-18. Based upon this reasoning, PPL requests that the PUC modify the Joint Petition and restrict the use of its terms as evidence in future proceedings to justify relief. See id. at 13.

PAIEUG submits that PPL's request is too broad, and fails to acknowledge the ability of the PUC to properly conduct proceedings. PPL, through its modification, suggests that the Commission lacks the ability to determine in future proceedings whether evidence is relevant and material, or how much weight evidence should be accorded.

Unlike PPL, PAIEUG has the utmost confidence in the PUC's ability to examine, on a case-by-case basis, whether presented evidence is relevant and material, and the amount of evidentiary weight it must be accorded. Additionally, PPL's request amounts to nothing more than speculative relief for a future, hypothetical proceeding. Attempts to raise the Joint Petition in other proceedings has not occurred yet, and PAIEUG submits that if such an attempt is made, the Commission has the ability, authority and expertise to determine whether the evidence is being offered for a relevant and material purpose, as well as the amount of weight that the evidence must be accorded.

PAIEUG concurs with the OCA that "the decision as to whether evidence of this Settlement is relevant, or material, and what weight it should be accorded in any future proceeding, is one that this Commission and the ALJ's are fully capable of deciding in that future proceeding. To restrict the Commission's future consideration of evidence at this time is simply improper." See OCA M.B., p. 31. PPL's lack of trust in the Commission's ability to determine the proper weight evidence should be accorded is misplaced, and must be rejected.

Moreover, PPL argues that its proposed modification to substantially limit the ability of parties to introduce the Settlement into evidence in future proceedings is necessary to protect the due process rights of other Pennsylvania public utilities; however, no other public utility has raised complaints regarding this issue. See PPL M.B., p. 13. Additionally, PPL ignores that the

modification is too broad and would compromise all parties' interests in future proceedings. Specifically, PPL's proposed modification would prevent parties from introducing evidence regarding the Joint Petition during a proceeding and allowing the PUC to determine the applicability and usefulness of the evidence. Instead, PPL is asking the PUC to prejudge every possible use the Joint Petition may have in any possible future proceeding. As noted previously, the Joint Petition already provides that its terms cannot be used as controlling precedent, and, as cited by the OTS, Pennsylvania law states that settlements cannot be used as precedent in other proceedings. See OTS M.B., pp. 9-10. As a result, PAIEUG agrees with the OCA that "PPL's proposed conditions are unnecessary, a violation of the due process rights of the parties, and bad regulatory and public policy." See OCA M.B., p. 31.

Based upon the aforementioned conclusions, PAIEUG submits that PPL's proposed modifications are unnecessary and improper. The terms of the Joint Petition, as well as Pennsylvania law, protects PPL from being subject to the terms of PECO's Joint Petition. Moreover, should a party attempt to present the terms of the Joint Petition in a future proceeding, PPL has the ability to challenge this presentation on a case-by-case basis. For these reasons, PPL's overbroad and stifling proposal must be rejected.

B. PPL's Request for a "Policy Statement" is Improperly Raised in this Proceeding.

As noted previously, the Joint Petition and Pennsylvania law restrict the use of the Settlement as controlling precedent in future proceedings. PPL, however, argues that the Commission should also set forth, in this proceeding, a policy statement, which specifies that the terms of a settlement will not be accorded precedential effect or be admitted in any subsequent

proceeding on the basis of prior approval of those terms in a settlement. See PPL M.B., pp. 29-32. PAIEUG submits that PPL's request is inappropriate, misplaced and unnecessary in this proceeding.

If PPL truly believes that a policy statement on this issue is necessary, then PPL, along with any other concerned utilities, should formally request the Commission to issue a policy statement outside the context of this proceeding, where the necessary procedures can be followed. PAIEUG agrees with the OTS that PPL, through the guise of a policy statement, is requesting the PUC to promulgate a regulation. See OTS M.B., pp. 14-15. As noted by the OTS, certain legal requirements must be satisfied before a regulation becomes valid, including giving public notice, providing for a commentary period, obtaining legal approval of the proposed regulation, and publishing the text of the proposed regulation in the Pennsylvania Bulletin. See id. at 15. PPL has failed to account for these requirements in its proposal. Moreover, a merger proceeding is not the appropriate forum to institute a rulemaking. See id. at 16. As a result, PAIEUG submits that PPL's proposal must be denied at this time.

Additionally, PPL suggests that its proposed "policy statement" would encourage settlements, prevent delays and reduce unnecessary costs. See PPL M.B., p. 29. PPL seems to overlook the current proceeding in which, due to PPL, the Joint Petitioners have suffered the incurrence of substantial additional costs, time and resources, all of which occurred after all but two parties signed the Joint Petition. For this reason, PAIEUG submits that PPL's proposal would have the opposite of its "intended" result, and instead, lead to a chilling effect on all settlements by allowing disinterested parties to obstruct negotiations and increase the time and expense that would otherwise be avoided through the settlement process.

PPL also posits that its proposed policy statement must be approved in order to ensure that all parties receive reasonable notice, a fair opportunity to be heard, and an appropriate decision-making process before being bound by a decision. See PPL M.B., pp. 30-31. PPL implies that unless the PUC sets forth a policy statement, the Commission will not accord any parties' their necessary due process rights in future proceedings. PPL ignores the fact that all parties are provided reasonable notice and a fair opportunity to argue the relevancy of evidence, in proceedings before the PUC, on a case-by-case basis. Accordingly, PAIEUG submits that PPL's proposed policy statement is unnecessary and unwarranted at this time.

Finally, PPL argues that the restructuring of the electric power industry, and the accompanying implementation of a competitive electric market may be at stake if the Commission does not issue the proposed policy statement. PAIEUG submits that PPL's concerns regarding consumer competition is misplaced, as it is the representatives of the consumers, not the utilities, that must be concerned about the impact on consumer competition. In this proceeding, PECO consumers have been amply represented, with the majority agreeing that the Joint Petition will improve the competitive market, rather than harm it. Moreover, PPL is the least credible advocate of the "consumer" benefits of competition and providing customers with the widest ranges of choice. PPL is seeking, in one proceeding before the PUC, to increase its stranded costs above the level agreed to in its Restructuring Settlement, to the obvious detriment of its customers.[1] In a separate PUC proceeding, PPL is attempting to deprive one class of its customers from the ability to access the free and competitive market guaranteed under the

[1] See PP&L, Inc., 1999 Competitive Transition Charge Reconciliation Filing; Docket No. M-FACE9908.

Electricity Customer Choice and Competition Act.[2] Accordingly, PAIEUG submits that PPL's concerns regarding the impact of the Joint Petition and the need for a policy statement with respect to the competitive marketplace ring hollow, and must be dismissed by the Commission.

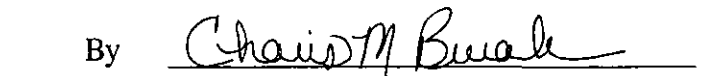
For the aforementioned reasons, PAIEUG submits that PPL's proposed policy statement is inappropriate and unnecessary in this proceeding. As a result, PAIEUG posits that PPL's request be denied.

III. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission approve PECO's Joint Petition for Settlement in full, without modification, and deny the requests by PPL Electric Utilities Corporation concurrent with PAIEUG's Main and Reply Briefs.

Respectfully submitted,

McNEES, WALLACE & NURICK

By 

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Dated: May 24, 2000

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[2]See Petition of PP&L Industrial Customer Alliance for a Declaratory Order Prohibiting Implementation of Tariff Interpretation Change for Billing PP&L Rate Schedule IS-P and IS-T Customers, or in the Alternative, Formal Complaint; Docket No. P-00001788.

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