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January 2, 2001

VIA HAND DELIVERY

James McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120-3265

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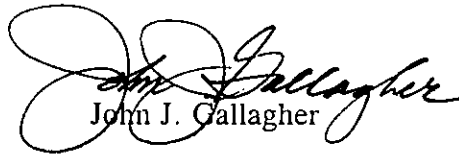
Re: PECO Energy Company Competitive Default Service Program Bidding
Answer to Petition for Reconsideration
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of The New Power Company, Inc.'s Answer to Green Mountain Energy Company's Petition for Reconsideration in the above-referenced matter. A certificate of Service is also enclosed.

Should you have any questions regarding this filing please contact me at your convenience.

Sincerely,


John J. Gallagher

Enclosures

cc: All parties on Service List
James L. Malone, III
John G. Klauberg

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: PECO Energy Company
Competitive Default Service
Program Bidding

Docket No. A-110550F0147

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ANSWER OF THE NEW POWER COMPANY, INC.
TO GREEN MOUNTAIN ENERGY COMPANY'S
PETITION FOR RECONSIDERATION

AND NOW COMES The New Power Company, Inc. ("New Power"), pursuant to 52 Pa. Code § 5.572(e), to file this Answer to the Petition for Reconsideration ("Petition") filed by Green Mountain Energy Company ("Green Mountain") on December 15, 2000.

I. Background

1. The Joint Petition for Settlement in 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, ("Merger Settlement"), and the Public Utility Commission ("PUC") Order approving said Merger Settlement, are written documents that speak for themselves.

By way of further answer, New Power notes that the Joint Petition for Settlement in Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al., Docket Nos. R-00973953 and P-

00971265, ("Restructuring Settlement"), which was approved by the PUC two and one-half years ago, continues in effect, except to the extent modified by the Merger Settlement.

Merger Settlement ¶ 52b.

The Restructuring Settlement, at ¶ 38a, provides "on January 1, 2001, 20% of all of PECO's residential customers . . . shall be assigned to a provider of last resort-default supplier other than PECO that will be selected on the basis of a Commission-approved energy and capacity market price bidding process." Green Mountain's Petition asks this Commission to delay implementation of PECO's CDS program indefinitely in order to hold hearings. The PUC should not countenance such a delay without good reason for doing so. As demonstrated in the following paragraphs, Green Mountain failed to demonstrate a good reason for further delay.

Additionally, it should be noted at the outset that the CDS contract approved by the PUC states:

. . . in the event that the Commission has not so approved this Agreement on or before November 30, 2000, the CDS Provider shall have the right, exercisable within 20 business days of such date upon the furnishing of written notice to [PECO], to terminate this Agreement.

Joint Petition for Approval of Competitive Default Service Coordination Agreement, Appendix C, ¶ 1. If the PUC would grant the Petition and rescind its approval of the PECO-New Power contract, said contract could be terminated. The PUC should not jeopardize the deal already reached by New Power and PECO in order to reconsider claims previously raised by Green Mountain and rejected by the PUC.

2. To the best of New Power's knowledge, information and belief, the Secretarial letter of August 22, 2000 stated that the only bid received in response to the April

request for proposal was non-conforming. New Power believes Green Mountain is incorrect in its assertion that the bid was rejected because it "was not the best bid for customers."

3. The Merger Settlement is a written document that speaks for itself. By way of further answer, New Power denies that the Restructuring Settlement and the Merger Settlement required PECO to submit multiple proposals to the Commission. The Commission correctly decided this point in its November 30, 2000 Order. Order, at 21-22. PECO properly entered into a contract with New Power and submitted said contract to the PUC for approval, disapproval or modification.

4. New Power has no first-hand information concerning Green Mountain's response to PECO's request for proposal.

5. In awarding the CDS contract, PECO complied with its obligations under the process mandated by prior PUC decisions.

6. PECO, acting within its authority under the Restructuring Settlement and the Merger Settlement, selected New Power as the sole CDS contractor on October 3, 2000. PECO also acted within its authority under those Settlements in submitting the selected contract (and only the selected contract) to the PUC for approval, disapproval, or modification.

7. Green Mountain filed an Answer and Protest asking the Commission to award all or part of the CDS contract to it. Green Mountain did not request a hearing. Green Mountain's Answer and Protest recognized that time was of the essence in awarding a contract and implementing CDS service. See, Green Mountain Answer and Protest, at page 9 (Green Mountain makes certain concessions "in order to expedite the review and implementation process"). Green Mountain now retreats from that position and seeks indefinite delay by

requesting evidentiary hearings. Such relief is not only inconsistent with Green Mountain's previous position in this case, it is inconsistent with the Merger Settlement and the Restructuring Settlement, neither of which contemplated that evidentiary hearings would be required to obtain PUC approval of the CDS contract.

8. Shell Energy Services Co., L.L.C. ("Shell"), like Green Mountain, filed an Answer and Protest asking the Commission to award all or part of the CDS contract to it. Like Green Mountain, Shell did not request a hearing on its factual allegations that PECO failed to negotiate in good faith.

9. The Clean Air Council filed an Answer in which it expressed "concern about the allegations made in the October 23, 2000 Protest of Green Mountain Energy Company that PECO conducted the CDS process without requisite fairness." Clean Air Council Answer at ¶ 4. The factual matters that Green Mountain now relies on as the basis for its request for hearings were fully addressed in the original proceedings before this Commission. The Commission explicitly found that Green Mountain's allegations (even if proved) did not demonstrate that PECO deviated from the process required by the PUC-approved Merger Settlement and Restructuring Settlement. PUC Order, at 21. Under these circumstances, there is no need for hearings to gather evidence on this issue.

10. The parties do not entirely agree on all the facts surrounding PECO's award of the contract. Yet, despite a large number of filings by numerous parties in this case, not one document filed prior to the Commission's November 30 decision requested hearings to resolve the alleged factual disputes. Even Green Mountain's Reply to PECO's Answer did not request a hearing; it merely stated (at page 5) "If the Commission believes that evidentiary hearings are required to resolve the factual dispute concerning the good faith negotiations

between PECO and Green Mountain, Green Mountain would not oppose such hearings."

These facts, in and of themselves, demonstrate that no hearings are necessary to resolve the alleged factual disputes.

11. The Commission's Order is a written document that speaks for itself.
12. Duick v. Pennsylvania Gas and Water Co., 56 Pa. PUC 553, 559 (1982)

sets the following standard for granting reconsideration:

A petition for reconsideration, . . . , may properly raise any matters designed to convince the Commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . ." 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 or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

II. The PUC Should not Reconsider its Order of November 30, 2000

13. The Commission should not grant reconsideration because Green Mountain has not satisfied the Duick standard. Green Mountain relies on the same factual allegations that it (and Shell and Clean Air Council) previously raised. The Commission explicitly addressed the substantive issue, and implicitly addressed the need for hearings by deciding the case rather than scheduling hearings. Green Mountain seeks a "second bite at the apple," which is specifically prevented by the Duick case.

14. Green Mountain fails to provide a citation to the Commission's allegedly erroneous ruling "that there were no factual issues in dispute." New Power cannot find such a statement in the Commission's Order. To the contrary, the Commission notes the controversy over whether or not PECO engaged in good faith negotiations with all bidders and finds that PECO complied with the requirements of the Restructuring Settlement and the Merger Settlement. PUC Order of November 30 at 20-21.

15. Green Mountain's Petition for Reconsideration should be denied, not only because it fails to meet the Duick standard, but also because Green Mountain is trying to re-litigate the process to be used in approving the proposed CDS contract. Green Mountain essentially argues that hearings were required as soon as any party protested the proposed CDS contract submitted for Commission review. No party to the Merger Settlement or the Restructuring Settlement contemplated that evidentiary hearings would be necessary to obtain PUC approval of the CDS contract. Green Mountain now seeks to change the rules after the fact because it did not like the outcome of the process as set forth by the Commission. The Commission should decline the suggestion that it revisit the process originally approved in a Commission Order two and one-half years ago.

16. Contrary to Green Mountain's assertion, the PUC did not ignore Green Mountain's amended proposal. Rather, the PUC explicitly reviewed the process approved by prior Commission decisions, and concluded that said process did not give the Commission authority to review GME's amended proposal. The Commission's role is instead to approve, disapprove, or modify the contract(s) submitted by PECO. The Commission's decision on this point was correct.

The Commission fully observed the due process rights of Green Mountain. The Commission considered the factual allegations of Green Mountain and concluded that (even if proved) they did not establish that PECO failed to comply with the process set forth in the Merger and Restructuring Settlements. Granting a hearing on Green Mountain's allegations would serve no useful purpose under these circumstances. Due process does not require such an exercise in futility.

III. CONCLUSION

17. WHEREFORE, New Power respectfully requests that the PUC expeditiously deny the Petition of Green Mountain because it lacks any merit whatsoever.

Respectfully submitted,



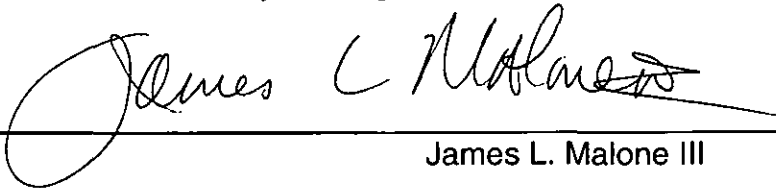
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LeBoeuf, Lamb, Greene & MacRae, LLP
Suite 300, 200 North Third Street
P.O. Box 12105
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(717) 232-8199

DATE: January 2, 2001

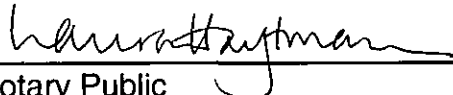
AFFIDAVIT

STATE OF CONNECTICUT)
) SS:
COUNTY OF FAIRFIELD)

I, James L. Malone III, being duly sworn according to law, depose and say that I am authorized to make this Affidavit on behalf of The New Power Company, being the holder of the office of Vice President, Law and Government Affairs with that company, and that the facts set forth in the foregoing document are true and correct, or are true and correct to the best of my knowledge, information and belief, and that I expect the said The New Power Company to be able to prove the same at any hearing hereof.


James L. Malone III

Sworn to and subscribed
before me this 21st day of
December, 2000.


Notary Public

My Commission expires: _____

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LAURA HAYTMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES SEP. 30, 2003

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: PECO Energy Company : Docket No. A-110550F0147
Competitive Default Service :
Program Bidding :

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CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of January, 2001, served a true and correct copy of the Answer of The New Power Company, Inc. to Green Mountain Energy Company's Petition for Reconsideration upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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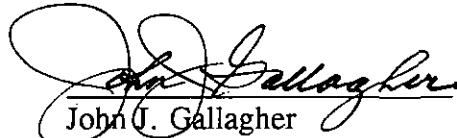
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(Counsel for Green Mountain Energy)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Gallagher", is written over a horizontal line.

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Direct Dial: 215 841 4257
January 2, 2001

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Deputy General Counsel

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Legal Administrator

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Todd D. Cutler
Susan Sciamanna Foehl
Amy E. Frank
Gregory Golazeski
John C. Halderman
Conrad O. Kattner
Kristopher Keys
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Jeffrey J. Norton
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Roslyn G. Pollack
H. Alfred Ryan
Richard S. Schlegel
Jenny P. Shulbank
Ward L. Smith
Lynn R. Steen
Delia W. Stroud
Saundra M. Yaklin
Ronald L. Zack
Assistant General Counsel

Via Federal Express

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: PECO Energy Company Competitive Default Service Program Bidding
PUC Docket No. A-110550 F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of PECO Energy's Response to the Petition for Reconsideration of Green Mountain Energy Company in the above-referenced docket.

As proof of filing, please date stamp and return the extra copy of this cover letter in the enclosed return envelope.

Sincerely,

Delia W. Stroud

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cc: Certificate of Service – Regular U.S. Mail

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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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JAN 02 2001

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In Re: PECO Energy Company Competitive
Default Service Program Bidding

Docket No. A-110550 F0147

ORIGINAL

RESPONSE OF PECO ENERGY COMPANY TO GREEN MOUNTAIN
ENERGY COMPANY'S PETITION FOR RECONSIDERATION

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.572, responds to Complainant, Green Mountain Energy Company's ("GME") Petition for Reconsideration and in support thereof asserts the following:

I. Background

PECO Energy and The New Power Company ("New Power") filed a Joint Petition for Approval of Competitive Default Service Coordination Agreement ("Joint Petition") on October 3, 2000. On October 23, 2000, GME filed an Answer and Protest to this petition. In that Answer and Protest, GME alleged, among other things, that PECO Energy failed to negotiate in good faith with GME. On November 30, 2000 the Commission entered an order granting the Joint Petition of PECO Energy and New Power and denying the protest of GME. In that order, the Commission specifically addressed GME's allegations and arguments that PECO Energy failed to negotiate in good faith with GME. On December 15, 2000, in response to the order granting PECO Energy's Joint Petition and denying GME's Answer and Protest, GME filed a Petition for

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Reconsideration of the November 30th order. On December 20, 2000, the Commission issued an order granting the Petition for Reconsideration for the limited purpose of retaining jurisdiction.

On December 19, 2000, PECO Energy and Green Mountain Energy filed a Joint Petition for Settlement and Approval of Competitive Default Service Coordination Agreement. That petition is being actively considered by the Commission. Nonetheless, to protect its procedural rights on the issue of the Petition for Reconsideration, PECO Energy files this Response.

II. Argument

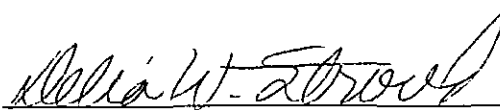
Complainant's Petition for Reconsideration does not raise any new or novel arguments not previously considered and should be denied.

A petition for reconsideration should be granted "judiciously and only under appropriate circumstances." West Penn Power Company v. Pennsylvania Public Utility Commission, 659 A.2d 1055, 1065 (Pa. Cmwlth 1995) (citing City of Pittsburgh v. Pennsylvania Department of Transportation (Appeal of Pennsylvania Public Utility Commission), 490 Pa. 264, 271, 416 A.2d 461, 465 (1980). It is not a vehicle by which the parties may achieve reconsideration of the same arguments and issues already considered and decided in the initial order. Duick v. Pennsylvania Gas & Water Company, 51 P.U.R.4th 284; 56 Pa. PUC 553 at 559 (1982). Rather, a petition for reconsideration should raise "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." Id.

In the instant matter, GME has failed to allege any new or novel issues that were not already considered by the Commission when making the original decision. In GME's initial Answer and Protest it argued that PECO Energy had failed to negotiate in good faith with GME. In the Commission's November 30, 2000 order, this argument was specifically addressed and decided. The Petition for Reconsideration currently before the court raises the exact same issues that were before the Commission in GME's initial Answer and Protest. In fact, GME in its Petition for Reconsideration explicitly states that "[t]he Commission should grant GME's Petition for Reconsideration for the reasons discussed in GME's pleadings previously filed in this docket." (See Petition for Reconsideration at ¶ 13). Accordingly, GME has failed to meet the standards for reconsideration because it has not alleged any new or novel arguments not already considered by the Commission.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission deny Complainant's Petition for Reconsideration.

Respectfully submitted,



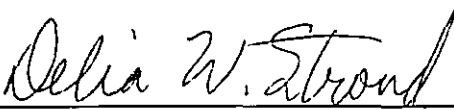
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delia.stroud@exeloncorp.com

Date: January 02, 2001

VERIFICATION

I, Delia W. Stroud, hereby declare that I am an attorney with PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: January 02, 2001



Delia W. Stroud

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 Competitive Default Service Program Bidding.

John Hanger
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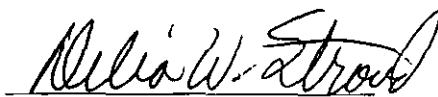
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Dated: January 2, 2001

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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January 3, 2001
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JAN 11 2001
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SECRETARY'S BUREAU

Re: PECO Energy Competitive Default Service Program
Docket No. A-110550 F0147

Dear Secretary McNulty:

I represent The New Power Company, Inc. ("New Power"), a party in the above-referenced proceeding and the selected provider of Competitive Default Service for PECO Energy Company ("PECO").

It has come to my attention that PECO has filed a proposed contract with the Public Utility Commission ("PUC") and has requested expedited approval of the same. Specifically, PECO has entered into an agreement with Green Mountain Energy Company regarding Competitive Default Service. PECO has requested that the PUC approve said agreement by January 11, 2001.

New Power has never been served with the documents filed with the PUC regarding this contract. In fact, New Power has repeatedly called the PUC's Secretary's Bureau to determine if such a contract had been filed, and was repeatedly told that the Secretary's Bureau had no record of such a document being filed with the PUC. New Power only became aware of this filing through a telephone call to me yesterday.

As the CDS provider selected through the process outlined in the Restructuring and Merger Settlements, New Power obviously has an interest in these proceedings. New Power's rights should not be prejudiced by an oversight on the part of PECO. New Power respectfully requests that the PUC deny PECO's request for Commission approval by January 11, 2001. New Power respectfully requests that the Commission now Order PECO to serve New Power as required by PUC regulations, and allow New Power to file an answer within

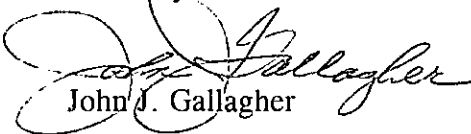
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James J. McNulty
January 3, 2001
Page 2

twenty (20) days from the date of service. 52 Pa. Code § 5.61(a). I will forward a formal Motion to that effect if the Commission deems that necessary.

Thank you for your attention to this matter. Please contact me if you have any questions about this correspondence.

Sincerely,



John J. Gallagher

cc: James L. Malone, III
All Parties on Service List

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: PECO Energy Company :
Competitive Default Service :
Program Bidding :

Docket No. A-110550F0147

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SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of January, 2001, served a true and correct copy of the foregoing document upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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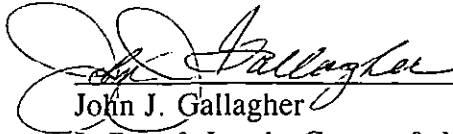
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Respectfully submitted,

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(717) 232-8199

DATE: January 11, 2001

SUBJECT: A-110550F0147

TO: Law Bureau

FROM: James J. McNulty, Secretary

LAF

DOCKETED
JAN 16 2001

**DOCUMENT
FOLDER**

PECO Energy Company Competitive Default Service Program
Billing

Attached is a copy of a Joint Petition for Partial Settlement and Approval of Competitive Default Service Coordination Agreement, filed by PECO Energy Company and Green Mountain Energy Company, in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: BCS
AUDITS
OTS - memo only

laf

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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January 22, 2001

VIA HAND DELIVERY

James McNulty, Secretary
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ORIGINAL

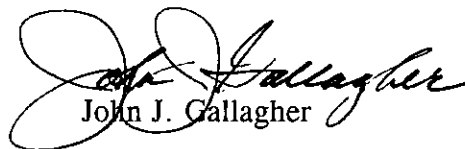
Re: PECO Energy Company Competitive Default Service Program
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of The NewPower Company, Inc.'s Answer and New Matter to the Joint Petition of PECO Energy Company and Green Mountain Energy Company for Partial Settlement and Approval of Competitive Default Service Coordination Agreement. A Certificate of Service is also enclosed.

Should you have any questions regarding this filing, please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/klb

Enclosures

cc: J. Quain, Chairman
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N. Mead Brownell, Commissioner
A. Wilson, Jr., Commissioner
T. Fitzpatrick, Commissioner
P. Burkett
D. Buckley
K. House

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811

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

In re: PECO Energy Company :
Competitive Default Service :
Program Bidding :

Docket No. A-110550F0147

DOCKETED
JAN 25 2001

ANSWER AND NEW MATTER OF
THE NEWPOWER COMPANY, INC.
TO THE JOINT PETITION OF
PECO ENERGY COMPANY AND
GREEN MOUNTAIN ENERGY COMPANY
FOR PARTIAL SETTLEMENT AND
APPROVAL OF COMPETITIVE DEFAULT
SERVICE COORDINATION AGREEMENT

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AND NOW COMES The NewPower Company, Inc. ("NewPower"), pursuant to 52 Pa. Code §§ 5.61 and 5.62, to file this Answer and New Matter to the Joint Petition for Partial Settlement and Approval of Competitive Default Service Coordination Agreement ("Joint Petition"), allegedly filed by PECO Energy Company ("PECO") and Green Mountain Energy Company ("Green Mountain") (hereinafter referred to collectively as the "Joint Petitioners") on or about December 19, 2000. By letter of January 3, 2001 (attached as Appendix "A"), NewPower informed the Public Utility Commission ("PUC" or the "Commission") that NewPower had not been served with the Joint Petition. As of this date, NewPower still has not been served with a copy of the Joint Petition in accordance with the Commission's regulations at 52 Pa. Code §§ 1.57 and 1.58. NewPower files this Answer and New Matter to preserve its rights to participate in this proceeding. NewPower reserves the right to file appropriate Motions and Petitions arising out of the Joint Petitioners' failure to properly serve NewPower.

DOCUMENT
FOLDER

I. Introductory Matter

The Joint Petition includes two (2) unnumbered introductory paragraphs describing the proposed contract between PECO and Green Mountain and comparing it to the contract approved by the PUC on November 30, 2000 at this docket number (regarding a contract for Competitive Default Service ("CDS") between PECO and NewPower). The proposed contract between PECO and Green Mountain, and the approved contract between PECO and NewPower, are written documents that speak for themselves.

Additionally, the introductory paragraphs claim that PUC approval of the proposed contract would "extend the price advantages of CDS to an additional 50,000 customers and further stimulate the development of the competitive market in Pennsylvania." Joint Petition, at 2. NewPower disagrees with this assertion. The Joint Petitioners assume, without any basis in fact, that (a) Pennsylvania customers will get the best price and (b) the Pennsylvania CDS market will be benefitted when a bidder that lost in the competitive auction process for CDS services is permitted to make a side deal with the utility awarding the CDS contract. Indeed, the opposite is far more likely to be true: there is no guarantee that the residential and commercial customers are getting the best deal when the open bidding process is avoided and a losing bidder is awarded the "runner up prize" of a certain number of customers at a price no lower than the lowest price timely bid in response to a PUC-sanctioned RFP.¹ To disperse customers in the manner proposed by the Joint Petitioners makes a mockery of the open bidding process. Pennsylvania consumers will have no "lowest price" guarantee if eligible bidders are allowed to "game" the bid process in the belief that they will always be able to get "half a loaf" by waiting until after an RFP is responded to and a contract awarded to make their offer at no lower a price than the awarded contract. As explained in

¹ Indeed, in this circumstance this calculation is easy. Green Mountain's "out of time" October 12, 2000 CDS bid called for a 2% discount for all approximately 300,000 customers covered by the PECO CDS RFP. The use of the PUC-approved award percentages of a 2.02% discount for approximately 80% of the 50,000 customers and a 1.02% discount for approximately 20% of the 50,000 customers is below the bid Green Mountain was willing to make, albeit a number of days late, in the context of the PUC-sanctioned open auction for the 300,000 CDS customers.

footnote 1, supra, that is exactly what PECO and Green Mountain propose to happen here. Such a result would make a mockery of the concept of a fair, open competitive bid process. It would, in sum, be an invitation for mischief in such proceedings.

II. Background

1. The Joint Petition for Settlement in Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, Docket Nos. R-00973953 and P-00971265, (the "Restructuring Settlement"), and the PUC Order approving the same, are written documents that speak for themselves.

2. The Joint Petition for Settlement in 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-1100550F0147 ("Merger Settlement"), the PUC Order approving the same, and the Commission's April 29, 1999 Order in Re: PECO Joint Petition for Full Settlement Competitive Provider of Last Resort Paragraph 38, Docket Nos. R-00973953 and P-00971265 (entered April 30, 1999), are written documents that speak for themselves.

3. The Merger Settlement is a written document that speaks for itself.

4. The Merger Settlement is a written document that speaks for itself.

5. PECO's April 6, 2000 request for proposal ("RFP") was attached as Appendix A to the Joint Petition of PECO and NewPower for Approval of Competitive Default Service Coordination Agreement. It is a written document that speaks for itself.

6. Admitted.

7. PECO's August 2000, request for proposal was attached as Appendix B to the Joint Petition of PECO and NewPower for Approval of Competitive Default Service Coordination Agreement. It is a written document that speaks for itself.

8. Admitted.

9. Admitted.
10. Admitted.
11. Admitted. NewPower filed (i) a Preliminary Motion and (ii) an Answer to Green Mountain's Answer and Protest on October 30, 2000.
12. Admitted.
13. Admitted. PECO filed a Response to the Petition for Reconsideration on January 2, 2001. On that same date, NewPower filed an Answer to said Petition for Reconsideration.
14. It is admitted that the PECO-Green Mountain Agreement was executed after Green Mountain filed its Petition for Reconsideration.
15. The proposed contract between PECO and Green Mountain is a written document that speaks for itself.
16. The proposed contract between PECO and Green Mountain, and the Commission-approved contract between NewPower and PECO, are written documents that speak for themselves.

III. CDS Agreement with Green Mountain

17. It is denied that the proposed contract between PECO and Green Mountain "complies with the requirements set forth in the Company's Restructuring Settlement, as modified by the Merger Settlement." The proposed contract, the Restructuring Settlement, and the Merger Settlement are written documents that speak for themselves. By way of further answer, as described in detail below under New Matter, NewPower respectfully submits that the proposed contract is not authorized by the Settlements already approved by this Commission. The proposed contract contradicts, rather than implements, those approved Settlements.
18. The proposed contract between PECO and Green Mountain is a written document that speaks for itself.

19. It is denied that the proposed contract between PECO and Green Mountain is "in accordance with the Merger Settlement." In fact, as discussed below under New Matter, NewPower submits that the proposed contract is not authorized by, and in fact conflicts with, both the Restructuring and Merger Settlements.

It is admitted that the Joint Petitioners have requested expedited consideration of the Joint Petition. As discussed below under New Matter, NewPower respectfully submits that Commission approval of the proposed contract would be premature at this time.

20. This paragraph constitutes a prayer for relief to which no response is required. To the extent deemed factual, the allegations of this paragraph are denied.

21. The proposed contract is a written document that speaks for itself.

22. The proposed contract is a written document that speaks for itself.

IV. New Matter

A. The PUC Should not Approve the Partial Settlement Because the Petition for Reconsideration Obviously Lacks Merit

23. As demonstrated by NewPower's Answer to Green Mountain's Petition for Reconsideration (attached as Appendix "B" and incorporated by reference herein), Green Mountain's Petition has no merit whatsoever. It obviously fails to meet the standard for granting reconsideration, as set forth in Duick v. Pennsylvania Gas and Water Co., 56 Pa. PUC 553 (1982). The PUC should deny the Petition for Reconsideration, rather than approving a settlement of a claim that obviously lacks merit -- especially where, as here, the proposed settlement would require the PUC to revise two prior Orders approving Settlements involving many parties, most of whom have not joined the instant Joint Petition.

B. The PUC Should Not Approve the Contract because Said Contract is not Authorized by the Restructuring and Merger Settlement Agreements

24. The Restructuring Settlement states, in pertinent part:

PECO agrees that, for the duration of the CTC/ITC recovery period, it *will serve as the provider of last resort* for all retail electric customers in its service territory that do not choose or cannot choose to purchase power from alternative suppliers

Paragraph 38 (emphasis added).

25. The Restructuring Settlement established two exceptions to the requirement that *PECO* serve as the provider of last resort for its non-selecting customers. First, *PECO* was required to assign twenty percent (20%) of all its residential customers "to a provider of last resort-default supplier other than *PECO* that will be selected on the basis of a Commission-approved energy and capacity market price bidding process." Restructuring Settlement, ¶ 38a. *PECO* complied with this requirement by entering into the CDS contract with NewPower that was approved by this Commission on November 30, 2000.

26. Second, the Restructuring Agreement provided for "market share thresholds for random assignment of non-shopping customers to alternative EGSs and *PECO*-affiliated or divisional EGSs." Restructuring Settlement, ¶ 39. In pertinent part, the Restructuring Agreement stated:

If, on January 1, 2001, less than 35% of all *PECO*'s residential and commercial customers by class are obtaining generation service from an alternate EGS or *PECO*-Supplier affiliate or division (including those customers assigned to the CDS pursuant to [the agreement between *PECO* and NewPower]), then the number of remaining customers, necessary to reach the 35% target, determined by random selection, by class, shall be assigned an EGS on the basis of a one-time, Commission-approved process in which *PECO*-affiliated EGSs may participate.

Restructuring Agreement, ¶ 39a (hereinafter referred to as the "35% market share threshold exception of the Restructuring Settlement").

27. The Restructuring Settlement does not provide for any other exception to the requirement that *PECO* will "serve as the provider of last resort for all retail electric

customers in its service territory that do not choose or cannot choose to purchase power from alternative suppliers." Restructuring Agreement, ¶ 38.

28. The Merger Settlement provided that "unless expressly provided herein, the CDS provisions in Paragraph 38 of the 1998 Electric Restructuring Settlement shall remain in effect." Merger Settlement, ¶ 52b.

29. The Merger Settlement created a third exception to PECO's obligation to provide PLR service to all of its residential customers:

In the event that PECO is unable to reach agreement with any supplier on a CDS bilateral agreement by October 1, 2000, or in the event the Commission, by November 1, 2000, modifies, rejects, or fails to approve any filed bilateral CDS agreement, and if, on January 1, 2001, less than 35% of all PECO's residential and commercial customers, by class, are obtaining generation service from an alternate EGS or PECO supplier affiliate or division, then PECO shall, as provided in the Company's 1998 Electric Restructuring Settlement, randomly assign, by class, to all licensed suppliers serving residential and/or commercial customers on its system, except PECO's divisional or affiliated EGSs, the percentage of such customers required to fulfill the January 1, 2001 thirty five [percent] (35%) market share threshold. . . . PECO shall assign said percentage of such customers among eligible suppliers in accordance with Commission-approved procedures.

Merger Settlement, at ¶ 52c (hereinafter referred to as the "35% market share exception of the Merger Settlement").

30. The proposed contract does not fall within any of the three exceptions to the requirement that PECO will serve as the provider of last resort for its non-selecting customers.

A. The proposed contract does not fall within the 20% CDS contractor exception, because PECO selected NewPower as said contractor.

B. The proposed contract does not fall within the 35% market share threshold exception of the Restructuring Settlement because (i) that exception only applies on and after January 1, 2001 and the instant contract was allegedly submitted for approval in December 2000; (ii) the assignment of customers must be made pursuant to a Commission-approved process, and the Commission has not approved such a process; (iii) the Joint Petitioners do not even claim that less than 35% of PECO's customers have failed to select an alternate provider; (iv) the Joint Petitioners do not even claim that the assignment of 50,000 customers is necessary to meet (and would not exceed) the 35% threshold; and (v) the Merger Settlement indicates that customers are to be assigned to all licensed suppliers according to a Commission-approved process, not to one supplier selected by PECO.²

C. The proposed contract does not fall within the 35% market share threshold exception of the Merger Settlement because (i) that exception only applies on and after January 1, 2001 and the instant contract was allegedly submitted for approval in December 2000; (ii) the assignment of customers must be made pursuant to a Commission-approved process, and the Commission has not approved such a process; (iii) the Joint Petitioners do not even claim that 35% of PECO's customers have failed to select an alternative provider; (iv) the Joint Petitioners do not even claim that the assignment of 50,000 customers is necessary to meet (and will not exceed) the 35% threshold; and (v) customers are to be assigned to all licensed suppliers according to a Commission-approved process, not to one supplier selected by PECO.

D. If, as here, none of the three exceptions apply, PECO is required by the Restructuring and Merger Settlements to be the provider of last resort. Restructuring Settlement, ¶ 38.

31. Both Green Mountain and PECO have changed their previous positions in this proceeding.

² In this regard, and as noted in paragraph 31A., *infra*, Green Mountain has previously argued to the PUC – when it suited Green Mountain's case – that “an incumbent utility [must not be permitted] to choose its own competitors.”

A. Green Mountain argued in its Answer and Protest to the PECO-NewPower contract (at pp. 7-8) that "an incumbent utility [must not be permitted] to choose its own competitors." Id. Green Mountain now asks this Commission to approve a contract by which an incumbent utility chooses its own competitors. Unlike the contract between PECO and NewPower, which was explicitly authorized by the Restructuring and Merger Settlements, and approved by the PUC by an Order entered on November 30, 2000, the proposed contract between PECO and Green Mountain has no basis in those Settlements. In the event that customers must be assigned to other companies to achieve certain market thresholds, those Settlements provide that customers will be assigned to all licensed suppliers in order to avoid the very problem Green Mountain previously found objectionable -- an incumbent utility selecting its own competition. The Commission should not be swayed by the Joint Petitioners' claim that the instant contract promotes competition. It is anti-competitive in that it permits PECO to negotiate sweet-heart deals with favored providers,³ rather than requiring PECO to assign customers to all licensed suppliers on a level playing field. See also, footnote 1 and the text related thereto, supra at page 2.

B. PECO previously argued that any deviation from the process specified in the Restructuring Settlement is contrary to and in violation of those Settlements. Re: PECO Joint Petition for Full Settlement Competitive Provider of Last Resort Paragraph 38, supra, at 11. PECO now asks the Commission to deviate from the process specified in both the Restructuring and Merger Settlements by approving a contract that has no basis in those Settlements. NewPower respectfully submits that the process established in two previous Commission Orders cannot be set aside by way of a Petition for Partial Settlement and

³ It should be noted in this regard that the proposed contract would modify provisions of the Supplier Tariff that would otherwise apply to Green Mountain. For example, Paragraph 31 of the proposed contract states, in pertinent part, "in the event of a conflict between the terms of this Agreement and the terms of the Supplier Tariff, the terms of this Agreement shall control." See also, Proposed Competitive Default Services Coordination Agreement at ¶¶ 15, 16, and 18.

Reconsideration of the Commission's Order approving the PECO-NewPower contract. Unless and until the PUC modifies the process set forth in its previous Orders -- Orders that obviously control this matter -- the proposed contract between PECO and Green Mountain cannot be approved because those Settlements provide no authority for PECO to enter into such a contract.

32. NewPower does not ask this Commission to assign the 50,000 customers affected by this contract to NewPower. Nor does NewPower ask this Commission to modify the Orders approving the Restructuring and Merger Settlements. NewPower simply asks this Commission to enforce the process set forth in its prior Orders in this matter. If the Commission wishes to change that process, it should do so in an appropriate proceeding -- not in response to a Partial Settlement of one party's meritless Motion to Reconsider the Order approving the PECO-NewPower contract. If PECO needs to assign 50,000 customers to EGSs it must "randomly assign [such customers] by class to all licensed suppliers serving residential and/or commercial customers on its system . . . in accordance with Commission approved procedures."

C. The Request for PUC Approval is Premature

33. The Joint Petitioners suggest that the proposed contract is authorized by the 35% market share exception of the Merger Settlement. Joint Petition, ¶ 19. Yet the Joint Petition does not even claim that "on January 1, 2001, less than thirty five percent (35%) of all PECO's residential and commercial customers, by class, are obtaining generation service from an alternate EGS or PECO supplier affiliate or division." Merger Settlement, ¶ 52c. Until such a showing is made, Commission approval would be premature.

34. The 35% market share exception of the Merger Settlement requires that customers be assigned "among eligible suppliers in accordance with Commission-approved procedures." Merger Settlement, ¶ 52c. The PUC has not approved any such process to date. The PUC should create a process before it approves the assignment of customers pursuant to that process. It would be patently unfair to other interested providers for the PUC to approve

the process for assigning customers, and a contract doing so, in a single step. An assignment of customers is premature at this time.

D. The PUC Should Not Approve the Contract because it Modifies the Restructuring and Merger Settlement Agreements Without the Consent of all Parties to those Contracts

35. A settlement agreement is an enforceable contract. See, e.g., Mazzella v. Koken, 739 A.2d 531 (Pa. 1999).

36. PECO was a signatory to the Restructuring and Merger Settlements. Green Mountain was a party to the Restructuring and Merger Settlements through the intervention of the Mid-Atlantic Power Supply Association ("MAPSA"), an association of which Green Mountain is a member. Answer and Protest of Green Mountain Energy Company to the Joint Petition for Approval of Competitive Default Service Agreement, n. 1. As a result, both Joint Petitioners are contractually bound by the Restructuring and Merger Settlements.

37. A settlement agreement, like any other contract, may be modified by the parties. It cannot be modified, however, without the consent of all parties to the contract.

38. The Restructuring and Merger Settlements were signed by numerous parties. The vast majority of those parties are not parties to the instant Petition for Partial Settlement. This is not a situation in which two parties to a proceeding have agreed to settle certain claims or issues as between themselves. Instead, this case involves an attempt by two parties to modify an existing contract that was signed by many additional parties. The Joint Petitioners cite no legal authority allowing the PUC to approve such a contract modification.

39. The proposed contract between PECO and Green Mountain drastically modifies the Restructuring and Merger Settlements. Nothing in the Restructuring and Merger Settlements allows PECO to contract with, and assign customers to, a CDS provider after it has assigned twenty percent (20%) of its residential customers to a CDS provider(s) (i.e., NewPower). In fact, Paragraph 52c of the Merger Settlement explicitly states that assignments

of customers pursuant to the 35 % market share exceptions of both the Restructuring and the Merger Settlements are to be made "to all licensed suppliers." PECO cannot negotiate favorable terms with one licensed supplier and assign customers to it.

40. Under the Restructuring and Merger Settlements, once PECO contracted with NewPower, it exhausted its ability to assign customers to a selected CDS contractor. The proposed contract with Green Mountain would not implement the Restructuring and Merger Settlements, it would modify those contracts without the consent of the other contracting parties.

E. The PUC Should Not Approve the Proposed Contract because it Would Deprive NewPower of a Valuable Part of its Bargain with PECO

41. The PUC has already approved PECO's CDS contract with NewPower.

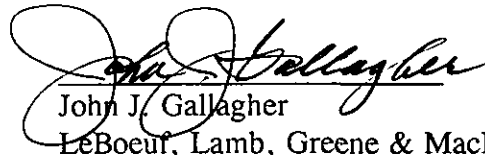
42. NewPower entered into its CDS Agreement with PECO based on the clear, explicit terms of the two Joint Settlements, which have already been approved by the PUC. Those Settlements indicate that if, as here, PECO selects one CDS provider to serve twenty percent (20%) of its CDS customers, said provider would be the sole CDS contractor with PECO. All other customers receiving default service would either receive said service from PECO or would be randomly assigned among all licensed providers pursuant to the 35 % market share threshold exceptions. **The proposed contract with Green Mountain would deprive NewPower of a valuable part of its bargain with PECO -- the exclusive arrangement that it negotiated in good faith with PECO. The PUC should not approve a contract that would make such a drastic change in a contract that the PUC previously approved.**

43. PUC approval of the proposed contract would be anti-competitive in that it would undermine competition during the open bidding process. When the open bidding process is the exclusive avenue for awarding a CDS contract, companies have a strong incentive to submit their best deals during the auction process. That incentive disappears, however, if companies are permitted to negotiate a deal with the incumbent utility on the same

basis as the so-called "lowest bid" after the bidding period has concluded. This is exactly the roadmap for mischief that PECO and Green Mountain are drawing here. This is why the Restructuring and Merger Settlements provided only one opportunity for PECO to contract with a CDS provider. The PUC should not change its model for promoting competition in mid-stream. It should enforce the process set forth in the Settlements.

WHEREFORE, NewPower respectfully requests that the PUC: (1) disapprove the Partial Settlement between Green Mountain and PECO; and (2) disapprove the proposed contract between Green Mountain and PECO.

Respectfully submitted,



John J. Gallagher
LeBoeuf, Lamb, Greene & MacRae, LLP
Suite 300, 200 North Third Street
P.O. Box 12105
Harrisburg, PA 17108-2105
(717) 232-8199


DATE: January 22, 2001

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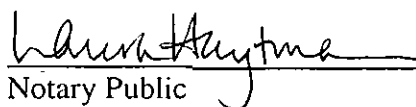
AFFIDAVIT

STATE OF CONNECTICUT)
) SS:
COUNTY OF FAIRFIELD)

I, James L. Malone III, being duly sworn according to law, depose and say that I am authorized to make this Affidavit on behalf of The New Power Company (the "Company"), being the holder of the office of Vice President, Law and Government Affairs with the Company, and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that I expect the Company to be able to prove the same at any hearing hereof.


James L. Malone, III

Sworn to and subscribed
before me this 18th day of
January, 2001.


Notary Public

My Commission expires: _____

LAURA HAYTMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES SEP. 30, 2003

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APPENDIX A

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON, D.C.
ALBANY
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DENVER
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SALT LAKE CITY
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200 NORTH THIRD STREET
SUITE 300
P.O. BOX 12105
HARRISBURG, PA 17108-2105
(717) 232-8199
FACSIMILE: (717) 232-8720

LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)
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BRUSSELS
MOSCOW
RIYADH
(AFFILIATED OFFICE)
TASHKENT
BISHKEK
ALMATY
BEIJING

January 3, 2001

VIA HAND DELIVERY

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

Re: PECO Energy Competitive Default Service Program
Docket No. A-110550

Dear Secretary McNulty:

I represent The New Power Company, Inc. ("New Power"), a party in the above-referenced proceeding and the selected provider of Competitive Default Service for PECO Energy Company ("PECO").

It has come to my attention that PECO has filed a proposed contract with the Public Utility Commission ("PUC") and has requested expedited approval of the same. Specifically, PECO has entered into an agreement with Green Mountain Energy Company regarding Competitive Default Service. PECO has requested that the PUC approve said agreement by January 11, 2001.

New Power has never been served with the documents filed with the PUC regarding this contract. In fact, New Power has repeatedly called the PUC's Secretary's Bureau to determine if such a contract had been filed, and was repeatedly told that the Secretary's Bureau had no record of such a document being filed with the PUC. New Power only became aware of this filing through a telephone call to me yesterday.

As the CDS provider selected through the process outlined in the Restructuring and Merger Settlements, New Power obviously has an interest in these proceedings. New Power's rights should not be prejudiced by an oversight on the part of PECO. New Power respectfully requests that the PUC deny PECO's request for Commission approval by January 11, 2001. New Power respectfully requests that the Commission now Order PECO to serve New Power as required by PUC regulations, and allow New Power to file an answer within

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SECRETARY'S BUREAU

James J. McNulty
January 3, 2001
Page 2

twenty (20) days from the date of service. 52 Pa. Code § 5.61(a). I will forward a formal Motion to that effect if the Commission deems that necessary.

Thank you for your attention to this matter. Please contact me if you have any questions about this correspondence.

Sincerely,



John J. Gallagher

cc: James L. Malone, III
All Parties on Service List

APPENDIX B

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: PECO Energy Company : Docket No. A-110550F0147
Competitive Default Service :
Program Bidding :

ANSWER OF THE NEW POWER COMPANY, INC.
TO GREEN MOUNTAIN ENERGY COMPANY'S
PETITION FOR RECONSIDERATION

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AND NOW COMES The New Power Company, Inc. ("New Power"), pursuant to 52 Pa. Code § 5.572(e), to file this Answer to the Petition for Reconsideration ("Petition") filed by Green Mountain Energy Company ("Green Mountain") on December 15, 2000.

I. Background

1. The Joint Petition for Settlement in 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, ("Merger Settlement"), and the Public Utility Commission ("PUC") Order approving said Merger Settlement, are written documents that speak for themselves.

By way of further answer, New Power notes that the Joint Petition for Settlement in Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al., Docket Nos. R-00973953 and P-

00971265, ("Restructuring Settlement"), which was approved by the PUC two and one-half years ago, continues in effect, except to the extent modified by the Merger Settlement.

Merger Settlement ¶ 52b.

The Restructuring Settlement, at ¶ 38a, provides "on January 1, 2001, 20% of all of PECO's residential customers . . . shall be assigned to a provider of last resort-default supplier other than PECO that will be selected on the basis of a Commission-approved energy and capacity market price bidding process." Green Mountain's Petition asks this Commission to delay implementation of PECO's CDS program indefinitely in order to hold hearings. The PUC should not countenance such a delay without good reason for doing so. As demonstrated in the following paragraphs, Green Mountain failed to demonstrate a good reason for further delay.

Additionally, it should be noted at the outset that the CDS contract approved by the PUC states:

. . . in the event that the Commission has not so approved this Agreement on or before November 30, 2000, the CDS Provider shall have the right, exercisable within 20 business days of such date upon the furnishing of written notice to [PECO], to terminate this Agreement.

Joint Petition for Approval of Competitive Default Service Coordination Agreement, Appendix C, ¶ 1. If the PUC would grant the Petition and rescind its approval of the PECO-New Power contract, said contract could be terminated. The PUC should not jeopardize the deal already reached by New Power and PECO in order to reconsider claims previously raised by Green Mountain and rejected by the PUC.

2. To the best of New Power's knowledge, information and belief, the Secretarial letter of August 22, 2000 stated that the only bid received in response to the April

request for proposal was non-conforming. New Power believes Green Mountain is incorrect in its assertion that the bid was rejected because it "was not the best bid for customers."

3. The Merger Settlement is a written document that speaks for itself. By way of further answer, New Power denies that the Restructuring Settlement and the Merger Settlement required PECO to submit multiple proposals to the Commission. The Commission correctly decided this point in its November 30, 2000 Order. Order, at 21-22. PECO properly entered into a contract with New Power and submitted said contract to the PUC for approval, disapproval or modification.

4. New Power has no first-hand information concerning Green Mountain's response to PECO's request for proposal.

5. In awarding the CDS contract, PECO complied with its obligations under the process mandated by prior PUC decisions.

6. PECO, acting within its authority under the Restructuring Settlement and the Merger Settlement, selected New Power as the sole CDS contractor on October 3, 2000. PECO also acted within its authority under those Settlements in submitting the selected contract (and only the selected contract) to the PUC for approval, disapproval, or modification.

7. Green Mountain filed an Answer and Protest asking the Commission to award all or part of the CDS contract to it. Green Mountain did not request a hearing. Green Mountain's Answer and Protest recognized that time was of the essence in awarding a contract and implementing CDS service. See, Green Mountain Answer and Protest, at page 9 (Green Mountain makes certain concessions "in order to expedite the review and implementation process"). Green Mountain now retreats from that position and seeks indefinite delay by

requesting evidentiary hearings. Such relief is not only inconsistent with Green Mountain's previous position in this case, it is inconsistent with the Merger Settlement and the Restructuring Settlement, neither of which contemplated that evidentiary hearings would be required to obtain PUC approval of the CDS contract.

8. Shell Energy Services Co., L.L.C. ("Shell"), like Green Mountain, filed an Answer and Protest asking the Commission to award all or part of the CDS contract to it. Like Green Mountain, Shell did not request a hearing on its factual allegations that PECO failed to negotiate in good faith.

9. The Clean Air Council filed an Answer in which it expressed "concern about the allegations made in the October 23, 2000 Protest of Green Mountain Energy Company that PECO conducted the CDS process without requisite fairness." Clean Air Council Answer at ¶ 4. The factual matters that Green Mountain now relies on as the basis for its request for hearings were fully addressed in the original proceedings before this Commission. The Commission explicitly found that Green Mountain's allegations (even if proved) did not demonstrate that PECO deviated from the process required by the PUC-approved Merger Settlement and Restructuring Settlement. PUC Order, at 21. Under these circumstances, there is no need for hearings to gather evidence on this issue.

10. The parties do not entirely agree on all the facts surrounding PECO's award of the contract. Yet, despite a large number of filings by numerous parties in this case, not one document filed prior to the Commission's November 30 decision requested hearings to resolve the alleged factual disputes. Even Green Mountain's Reply to PECO's Answer did not request a hearing; it merely stated (at page 5) "If the Commission believes that evidentiary hearings are required to resolve the factual dispute concerning the good faith negotiations

between PECO and Green Mountain, Green Mountain would not oppose such hearings."

These facts, in and of themselves, demonstrate that no hearings are necessary to resolve the alleged factual disputes.

11. The Commission's Order is a written document that speaks for itself.

12. Duick v. Pennsylvania Gas and Water Co., 56 Pa. PUC 553, 559 (1982)

sets the following standard for granting reconsideration:

A petition for reconsideration, . . . , may properly raise any matters designed to convince the Commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . ." 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 or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

II. The PUC Should not Reconsider its Order of November 30, 2000

13. The Commission should not grant reconsideration because Green Mountain has not satisfied the Duick standard. Green Mountain relies on the same factual allegations that it (and Shell and Clean Air Council) previously raised. The Commission explicitly addressed the substantive issue, and implicitly addressed the need for hearings by deciding the case rather than scheduling hearings. Green Mountain seeks a "second bite at the apple," which is specifically prevented by the Duick case.

14. Green Mountain fails to provide a citation to the Commission's allegedly erroneous ruling "that there were no factual issues in dispute." New Power cannot find such a statement in the Commission's Order. To the contrary, the Commission notes the controversy over whether or not PECO engaged in good faith negotiations with all bidders and finds that PECO complied with the requirements of the Restructuring Settlement and the Merger Settlement. PUC Order of November 30 at 20-21.

15. Green Mountain's Petition for Reconsideration should be denied, not only because it fails to meet the Duick standard, but also because Green Mountain is trying to re-litigate the process to be used in approving the proposed CDS contract. Green Mountain essentially argues that hearings were required as soon as any party protested the proposed CDS contract submitted for Commission review. No party to the Merger Settlement or the Restructuring Settlement contemplated that evidentiary hearings would be necessary to obtain PUC approval of the CDS contract. Green Mountain now seeks to change the rules after the fact because it did not like the outcome of the process as set forth by the Commission. The Commission should decline the suggestion that it revisit the process originally approved in a Commission Order two and one-half years ago.

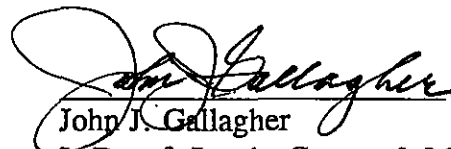
16. Contrary to Green Mountain's assertion, the PUC did not ignore Green Mountain's amended proposal. Rather, the PUC explicitly reviewed the process approved by prior Commission decisions, and concluded that said process did not give the Commission authority to review GME's amended proposal. The Commission's role is instead to approve, disapprove, or modify the contract(s) submitted by PECO. The Commission's decision on this point was correct.

The Commission fully observed the due process rights of Green Mountain. The Commission considered the factual allegations of Green Mountain and concluded that (even if proved) they did not establish that PECO failed to comply with the process set forth in the Merger and Restructuring Settlements. Granting a hearing on Green Mountain's allegations would serve no useful purpose under these circumstances. Due process does not require such an exercise in futility.

III. CONCLUSION

17. WHEREFORE, New Power respectfully requests that the PUC expeditiously deny the Petition of Green Mountain because it lacks any merit whatsoever.

Respectfully submitted,



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(717) 232-8199

DATE: January 2, 2001

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: PECO Energy Company : Docket No. A-110550F0147
Competitive Default Service :
Program Bidding :

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of January, 2001, served a true and correct copy of the foregoing document upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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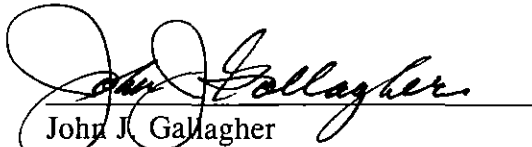
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January 23, 2001

VIA HAND DELIVERY

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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DOCUMENT
FOLDER

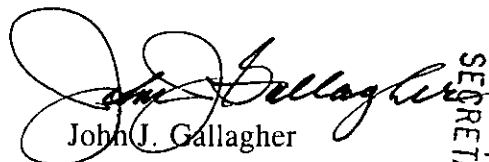
Re: PECO Energy Company Competitive Default Service Program
Docket No. A-110550F0147

Dear Secretary McNulty:

Due to mechanical equipment failures, I was unable to serve some of the parties to this proceeding yesterday. Enclosed please find a corrected Certificate of Service.

Should you have any questions regarding this filing, please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/jtk

Enclosures

cc: J. Quain, Chairman
R. Bloom, Commissioner
N. Mead Brownell, Commissioner
A. Wilson, Jr., Commissioner
T. Fitzpatrick, Commissioner
P. Burkett
D. Buckley
K. House

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01 JAN 23 AM 10:55
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SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: PECO Energy Company : Docket No. A-110550F0147
Competitive Default Service :
Program Bidding :

CERTIFICATE OF SERVICE

DOCUMENT
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I hereby certify that the following participants were served with a true and correct copy of the foregoing on the dates and in the manner listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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DOCKETED
JAN 25 2001

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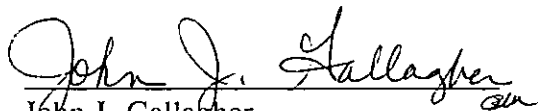
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ORIGINAL

RE: PECO Energy Company Competitive Default Service Program Bidding
PUC Docket No. A-110550 F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of Green Mountain Energy and PECO Energy's Joint Response to the Answer and New Matter of New Power Company, Inc., in the above-referenced docket.

As proof of filing, please date stamp and return the extra copy of this cover letter in the enclosed return envelope.

**DOCUMENT
FOLDER**

Sincerely,

Delia W. Stroud
Delia W. Stroud

DWS/csm
Enclosures

cc: Certificate of Service – Regular U.S. Mail

ORIGINAL RECEIVED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FEB 01 2001

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In Re: PECO Energy Company Competitive
Default Service Program Bidding

:
:
:

Docket No. A-110550F0147

JOINT RESPONSE OF PECO ENERGY COMPANY AND GREEN MOUNTAIN ENERGY COMPANY TO THE ANSWER AND NEW MATTER OF THE NEW POWER COMPANY, INC., TO THE JOINT PETITION OF PECO ENERGY AND GREEN MOUNTAIN ENERGY COMPANY FOR PARTIAL SETTLEMENT AND APPROVAL OF COMPETITIVE DEFAULT SERVICE COORDINATION AGREEMENT

I. Introduction

By Order entered November 30, 2000, the Agreement between PECO Energy Company ("PECO" or "PECO Energy") and The New Power Company, Inc. ("New Power"), was approved by the Pennsylvania Public Utility Commission ("the Commission"). Green Mountain Energy Company ("GME") filed a Petition for Reconsideration of that order on December 15, 2000. Subsequently, PECO Energy entered into an agreement with GME to settle the matter and on December 19, 2000, submitted to the Commission the above-referenced Joint Petition for Partial Settlement and Approval of Competitive Default Service Coordination Agreement ("GME CDS Agreement"). On January 22, 2001, New Power filed this Answer and New Matter to that Joint Settlement Petition. PECO Energy and GME respond thereto as follows¹:

**DOCUMENT
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DOCKETED

FEB 05 2001

¹ PECO and GME note that paragraphs one through twenty two are answers to the Joint Settlement Petition of PECO Energy and GME and therefore, no response is required.

II. New Power was Served With the Joint Settlement Petition of PECO Energy and GME

In its Answer and New Matter (p. 1) New Power claims that it has not received proper service of the Joint Settlement Petition which was filed with the Commission on December 19, 2000. To the best of PECO and GME's knowledge, a copy of the Petition was hand delivered to John H. Gallagher, New Power's Counsel, on December 19, 2000. In addition, following a conversation on January 2, 2001 in which Mr. Gallagher indicated he had not been served with the Petition, James H. Cawley, GME's Counsel, hand delivered, on that date, a copy of the Joint Settlement Petition to him.²

Indeed, on close reading of New Power's Answer, it appears that New Power's real concern is that its name was left off of the service list, and because its name was inadvertently omitted from the original service list, that somehow negated the effectiveness of hand service.³ That is not the case, however, actual service cures such an oversight.

III. Contrary to New Power's Claim, There is Sufficient Controversy in This Proceeding to Warrant A Settlement

On December 15, 2000 GME filed a Petition for Reconsideration in response to the order granting PECO Energy and New Power's Joint Petition and denying GME's Answer and Protest of that Petition. On December 20, 2000, the Commission issued an order granting GME's Petition for Reconsideration pending a review of the merits.

² Therefore, it is clear that New Power's Counsel had a copy of the Joint Petition in its possession on January 2, 2001, one day before stating in a January 3, 2001 letter to the Commission that New Power had not yet been served.

³ This conclusion is derived from the fact that New Power's objections are based on 52 Pa. Puc §§1.57 and 1.58 related to proof of service, rather than §1.54 related to actual service.

As explicitly provided in PECO and GME's Joint Petition for Settlement, upon the Commission approval thereof, GME has agreed to withdraw its Petition for Reconsideration. In its Answer and New Matter (¶ 23), New Power contends that PECO and GME should not be allowed to settle GME's outstanding claims in this matter because, according to New Power, the GME Petition for Reconsideration "has no merit whatsoever." Upon review of GME's Petition for Reconsideration, different parties will likely reach different conclusions as to merits of its arguments. PECO Energy contested GME's Petition for Reconsideration and believes that it may ultimately achieve a favorable result with regard to that Petition. But the fact is, the Commission has not yet ruled upon the merits of the Petition for Reconsideration. Moreover, even if the Commission were to rule against GME's Petition, GME would still have the right to appeal that ruling. Those rights create a risk of loss for all parties and would require time and resources to pursue. Both in an effort to avoid extended litigation, and pursuant to the longstanding Commission preference for negotiated settlements, PECO attempted to settle the GME dispute by proffering a valid settlement agreement for Commission approval.

IV. The Proposed PECO Energy-GME CDS Agreement Does Not Violate the Restructuring Settlement or the Merger Settlement

Much of New Power's argument is based on the assumption that implementing the GME CDS Agreement will require the Commission to amend the PECO Restructuring Settlement or the PECO Merger Settlement. For example, in ¶¶ 35-40, New Power argues that PECO is prohibited from assigning CDS customers in a manner that varies in any manner from the Merger and Restructuring Settlements; in ¶¶ 24-30,

New Power argues that the GME CDS Agreement is not authorized by either the Restructuring or Merger Settlements; and in ¶¶ 33-34 New Power argues that the GME CDS Agreement is not authorized by PECO's obligation to meet the separate 35% market share threshold requirement contained in the Restructuring Settlement.

PECO Energy and GME note that the PUC-approved CDS Agreement between PECO and New Power varies from the Restructuring and Merger Settlements in several ways. For example, the Restructuring and Merger Settlements state that PECO Energy shall assign 20% of its shopping and non-shopping residential customers to an alternative CDS provider, whereas the New Power CDS Agreement assigns approximately 22% of only non-shopping customers to New Power. Because the PECO-New Power Agreement has been approved by the Commission, it provides compelling proof that PECO Energy is allowed to exceed the Settlements' CDS terms and provide additional benefits.

To understand the CDS and market share threshold requirements of the Restructuring and Merger Settlements requires an assessment of what the Settlements were intended to accomplish, and who they were intended to benefit. Those requirements were, simply, methods of helping to ensure that the competitive retail market for electricity would become established in Pennsylvania. These were essentially minimum actions and checkpoints that all parties agreed were appropriate measures of the advancement of competition. No party to those Settlements ever took the position that PECO Energy was prohibited from taking additional steps to help promote competition, if it should choose to do so.⁴

⁴ All pleadings in this docket have been served on the Restructuring and Merger Settlement signatories.

And that is what PECO has chosen to do. Having met the minimum obligations imposed on it by the Restructuring and Merger Settlements, it has chosen to go beyond those requirements to assist the development of the marketplace. As noted above, PECO agreed to:

- Randomly assign only non-shopping customers to CDS, rather than both shopping and non-shopping, to increase the likelihood of a successful CDS program.
- Award New Power a contract for 22% of its residential CDS customers, thus exceeding the minimum 20% that the Settlement required.
- Award GME a CDS agreement for 50,000 of its residential non-shopping customers, thus exceeding the minimum 20% that the Settlement required.

In short, PECO has met the minimum requirements imposed on it in the Restructuring and Merger Settlements, and has volunteered to go beyond that level. There is nothing in either settlement that prohibits it from proposing to do so, subject to Commission approval. New Power's arguments to the contrary, most especially the arguments found at ¶¶ 24-30 and ¶¶ 35-40), which are based on the explicit assumption that the Settlement set forth both minimum **and maximum** amounts of CDS customers that PECO could transfer, must be rejected.⁵

⁵ New Power notes (¶ 31B) that PECO previously argued that any deviation from the process specified in the Restructuring Settlement is contrary to and in violation of the Settlement. PECO did make such an argument in early 1999 during argument in Re: PECO Joint Petition for Full Settlement of Competitive Provider of Last Resort Paragraph 38, Docket Nos. R-00973953 and P-00971265. As the Commission stated in its April 29, 1999 order in that proceeding: "PECO argues that the Commission must focus on the fact that the purpose of developing the CDS Rules is to implement the Agreement reached by the parties to the Full Settlement, as set forth in Paragraph 38 of the Joint Petition. PECO urges that the Commission should reject MAPSA's petition to develop a new and different concept of CDS service from that delineated in the Joint Petition. According to PECO, any deviation from the bidding process specified in the Joint Petition is contrary to, and violates, the terms of the Joint Petition."

In the year-and-a-half since making that statement, PECO has several times confronted the reality that the CDS program, as described in the Restructuring Settlement, likely would have failed to attract a CDS bidder. Thus, in its Merger Settlement, PECO agreed to alter the CDS process and subsequently made additional minor changes to that process during implementation and bidding, including its decision to exceed the 20% figure in its contract with New Power and assign only non-shopping customers. PECO

New Power's similar argument (Answer, ¶¶ 34-45) that the request for Commission approval is premature is also based on a misunderstanding of the Restructuring and Merger Settlements, as well as a misunderstanding of the current state of market switching in PECO's service territory. In a nutshell, New Power appears to believe that the GME CDS Agreement was reached in an attempt to fulfill the 35% market share threshold requirement.

The Green Mountain CDS Agreement is unrelated to the 35% market share threshold requirement. Rather, as explicitly stated in PECO and GME's Joint Settlement Petition, the GME CDS Agreement was filed in settlement of GME's Petition for Reconsideration. Notably, without including any of GME's 50,000 CDS customers, as of January 1, 2001 PECO had already exceeded the 35% market share threshold requirement for all of its customer classes.

V. The GME CDS Agreement Does Not Undermine the Open Bidding Process

New Power also argues (p. 2, ¶ 31A, ¶ 43) that the GME CDS Agreement undermines the open bidding process and allows gaming of the system. Again, this argument is based on a misunderstanding of the relationship of the GME CDS Agreement to the Restructuring and Merger Settlements and to the open bidding process described therein. PECO met, and in fact went beyond, the minimum CDS transfer requirements through its CDS Agreement with New Power. The open bidding process was followed throughout that process, and resulted in a winning bid by New Power and discounted prices for customers. In the case of the GME CDS Agreement,

disagrees with New Power's conclusion that PECO's more flexible approach is grounds to reject the GME CDS Agreement which mirrors the terms of the PUC-approved New Power Agreement.

PECO has not attempted to engage in a new open bidding process, but merely to settle a contested proceeding. As a result of settlement negotiations, PECO and GME have submitted, for Commission review and approval, a CDS Agreement which mirrors the approved New Power CDS Agreement in all substantive terms.

VI. The GME CDS Agreement Does Not Deprive New Power of Any of the Value of the New Power CDS Agreement

In paragraph 42 of its Answer and New Matter, New Power makes the following argument:

“The proposed contract with Green Mountain would deprive New Power of a valuable part of its bargain with PECO – the exclusive arrangement that it negotiated in good faith with PECO. The PUC should not approve a contract that would make such a drastic change in a contract that the PUC previously approved.”

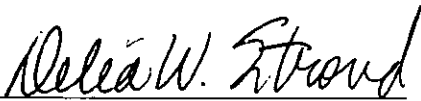
(emphasis in original).

New Power’s CDS Agreement does not purport to give any exclusivity to New Power, nor does New Power cite any contract term that granted it such exclusivity. New Power is essentially stating that, having itself been named a CDS Provider, it now wants to exclude other competitors. That is the antithesis of an open, competitive marketplace. It should be noted as well, that on November 29, 2000, prior to Commission approval of its CDS Agreement, New Power issued a press release stating that it had been involved in negotiations with GME to assign 70,000 customers to GME. In other words, New Power itself had intended that it would not be the exclusive CDS Provider.

VII. Conclusion

WHEREFORE, PECO Energy Company and Green Mountain Energy Company respectfully request that this Honorable Commission dismiss the New Matter of New Power Company, Inc. and issue an expeditious approval of the Joint Settlement Petition filed by PECO Energy Company and Green Mountain Energy Company.

Respectfully Submitted,



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Date: February 1, 2001

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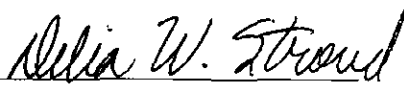
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Dated: February 1, 2001

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L.L.P.

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February 6, 2001

VIA HAND DELIVERY

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

DOCKETED
FEB 08 2001

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01 FEB -6 PM 3:40
IN P.U.C.
SECRETARY'S BUREAU

Re: PECO Energy Company Competitive Default Service Program Bidding
Docket No. A-110550-F0147

Dear Secretary McNulty:

On February 1, 2001, PECO Energy Company ("PECO") and Green Mountain Energy Company ("Green Mountain") filed a "Joint Response" to the Answer and New Matter of The NewPower Company, Inc. to the Joint Petition of PECO and Green Mountain for Partial Settlement and Approval of Competitive Default Service Coordination Agreement. The Public Utility Commission's regulations provide no mechanism for responding to an Answer (although the "Joint Response" does not technically qualify as an "Answer" because an "Answer" is a pleading that must be verified, but PECO/Green Mountain's filing does not include a verification). Nevertheless, since the February 1, 2001, filing impugns my personal integrity, I am compelled to file this correspondence.

I was not served with a copy of the PECO/Green Mountain Petition in any manner on December 19, 2000. The fact that my name was not included on the Joint Petitioners' Certificate of Service accurately reflects the fact that I was not served. The fact that both PECO and Green Mountain state that "to the best of PECO and GME's knowledge a copy of the Petition was hand delivered to John H. Gallagher, NewPower's Counsel on December 19, 2000" reflects the woeful limitation of their knowledge and also while they may well have served a copy of the Petition on a person named John H. Gallagher they definitely did not serve the Petition on John J. Gallagher. My client should not be prejudiced by another party's failure to serve me as required by regulations of the Public Utility Commission ("PUC").

45

James J. McNulty
February 6, 2001
Page 2

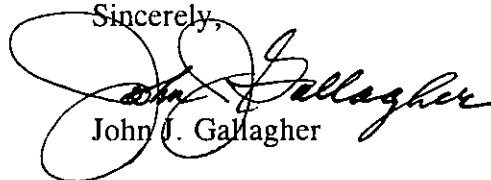
The Joint Petitioners claim that I was provided with a copy of the Joint Petition and the Contract on January 2, 2001. I was informed by James H. Cawley, Esquire, that a document had been filed with the Commission under his signature. I was subsequently provided with a document that was not under his signature. That document also failed to include a certificate stating that I had received a true and correct copy of the document filed with the PUC. I was unable to determine whether the document was in fact a true and correct copy of said document because the Secretary's Bureau was unable to locate any copy of the Joint Petition in its files.

On January 3, 2001, I wrote to inform the Commission that I had not been served with a copy of the contract. By that date, fifteen (15) of the twenty (20) days for filing an Answer had already passed. Neither PECO nor Green Mountain took the obvious and honorable step of effecting proper service, which would have given New Power a new twenty (20) day period to file an Answer. Instead, they tried to rush this matter through the Commission. (It is worth noting, in this regard, that the Joint Petitioners initially requested that the Commission approve their filing by January 11, 2001.)

I sincerely hope the tactics of PECO and Green Mountain are not successful. Rewarding the Joint Petitioners' behavior here would encourage parties in future proceedings to violate simple, common-sense rules of fair play and sound legal practice that are clearly set forth in the Commission's regulations. This result would be extremely unfortunate.

Thank you for your attention to this matter. Please contact me if you have any questions about this correspondence.

Sincerely,


John J. Gallagher

cc: All Parties on Service List
James L. Malone, III

RECEIVED
01 FEB -6 PM 3:49
P.A.P.U.C.
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: PECO Energy Company : Docket No. A-110550-F0147
Competitive Default Service :
Program Bidding :

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of February, 2001, served a true and correct copy of the foregoing document upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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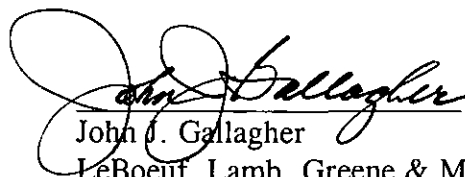
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01 FEB -6 PM 3:49

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FEB 15 2001

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A PUBLIC UTILITY COMMISSIC.
SECRETARY'S BUREAU

February 9, 2001

A-110550

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Re: **Name Change for Amy E. Frank of PECO Energy Company**

Dear Mr. McNulty:

This letter is to inform you that I got married in January and my name is now Amy E. Hamilton. Please inform the appropriate parties at the Pennsylvania Public Utility Commission. Thank you.

Very truly yours,

Amy E. Hamilton

DOCKETED
FEB 21 2001

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Deputy General Counsel

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