

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

Bernard A. Ryan, Jr  
Small Business Advocate

(717) 783-2525  
(717) 783-2831 (FAX)

DOCUMENT  
FOLDER

January 7, 2002

Fax and First Class Mail

Hon. Wayne L. Weismandel  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RECEIVED  
02 JAN - 8 PM 2:41  
P.A.P.U.C.  
SECRETARY'S BUREAU

Re: Pike County Light & Power Company - Docket No. R-00016849  
Pennsylvania Power Company - Docket No. R-00016851  
Metropolitan Edison Company - Docket No. R-00016852  
Pennsylvania Electric Company - Docket No. R-00016853  
PECO Energy Company - Docket No. R-00016856

Dear Judge Weismandel:

In accordance with your Initial Prehearing Conference Order dated December 21, 2001, enclosed please find the Prehearing Memorandum on behalf of the Office of Small Business Advocate. As evidenced by the enclosed certificates of service, all parties have been served as indicated.

Sincerely,

A handwritten signature in cursive script that reads "Carol F. Pennington".

Carol F. Pennington  
Acting Small Business Advocate

Enclosures

cc: James J. McNulty, Secretary  
(W/two copies)

Parties of Record

  
McNees Wallace & Nurick LLC  
attorneys at law

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02 JAN -7 AM 10:56

KAREN S. MILLER ORNER  
DIRECT DIAL: (717) 237-5359  
EMAIL ADDRESS: KORNER@MWN.COM P.U.C.  
SECRETARY'S BUREAU

January 7, 2002

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
The Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

VIA HAND DELIVERY

KSR

Re: Duquesne Light Company – Docket No. R-00016854; Metropolitan Edison Company – Docket No. R-00016852; Pennsylvania Electric Company – Docket No. R-00016853; PECO Energy Company – Docket No. R-00016856; PPL Electric Utilities Corporation – Docket No. R-00016850; West Penn Power Company – Docket No. R-00016857

Dear Secretary McNulty:

Please find enclosed the original and three (3) copies of the Prehearing Memorandum of Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors in the above-referenced proceedings.

As evidenced by the attached Certificate of Service, all parties to the proceedings are being served with a copy of this document. Please date stamp the extra copy of this transmittal letter and kindly return it to our messenger for our filing purposes. Thank you.

Very truly yours,

MCNEES WALLACE & NURICK LLC

By *Karen S. Miller Orner*  
Karen S. Miller Orner

Counsel to Duquesne Industrial Intervenors,  
Met-Ed Industrial Users Group, Penelec  
Industrial Customer Alliance, Philadelphia Area  
Industrial Energy Users Group, PP&L Industrial  
Customer Alliance, and West Penn Power  
Industrial Intervenors

KSMO

Enclosures

c: Administrative Law Judge Wayne L. Weismandel (via hand delivery)  
Certificate of Service

84

CERTIFICATE OF SERVICE

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

VIA HAND DELIVERY

Kenneth L. Mickens, Esq.  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, PA 17120

Carol Pennington, Esq.  
Office of Small Business Advocate  
300 North 2<sup>nd</sup> Street, Suite 1102  
Harrisburg, PA 17101

Daniel P. Delaney, Esq.  
Kirkpatrick & Lockhart LLP  
Payne Shoemaker Building  
240 North Third Street  
Harrisburg, PA 17101

Tanya J. McCloskey, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1921

David Epple, Esq.  
Energy Association of Pennsylvania  
800 North Third Street  
Harrisburg, PA 17102

John H. Isom, Esq.  
Morgan Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101

VIA FACSIMILE AND FIRST-CLASS MAIL

W. Edwin Ogden, Esq.  
Ryan Russell Ogden & Seltzer, LLP  
Suite 301, 1100 Berkshire Boulevard  
Reading, PA 19610

Kent D. Murphy, Esq.  
Assistant General Counsel  
Ward L. Smith, Esq.  
Associate General Counsel  
Exelon Business Services Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103

John L. Munsch, Esq.  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Brian Kalcic  
Excel Consulting  
Suite 720-T  
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St. Louis, MO 63105

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02 JAN -7 11:10:51  
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Certificate of Service

Docket Nos. R-00016854, R-00016852, R-00016853, R-00016856, R-00016850, R-00016857  
Page 2

Michael R. Beiting, Esq.  
FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308

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02 JAN -7 AM 10:58  
PA.P.U.C.  
SECRETARY'S BUREAU

Karen S. Miller Omer  
Karen S. Miller Omer

Dated this 7th day of January, 2002, in Harrisburg, Pennsylvania.

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Duquesne Light Company	:	Docket No. R-00016857
Metropolitan Edison Company	:	Docket No. R-00016852
Pennsylvania Electric Company	:	Docket No. R-00016853
PECO Energy Company	:	Docket No. R-00016856
PPL Electric Utilities Corporation	:	Docket No. R-00016850
West Penn Power Company	:	Docket No. R-00016857

SECRETARY'S BUREAU

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JAN 11 2002

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**PREHEARING MEMORANDUM OF  
DUQUESNE INDUSTRIAL INTERVENORS,  
MET-ED INDUSTRIAL USERS GROUP,  
PENELEC INDUSTRIAL CUSTOMER ALLIANCE,  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP,  
PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND  
WEST PENN POWER INDUSTRIAL INTERVENORS**

As requested by Administrative Law Judge ("ALJ") Wayne L. Weismandel in his Prehearing Conference Order of December 21, 2001, Duquesne Industrial Intervenor ("DII"),<sup>1</sup> Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power

<sup>1</sup> DII does not intend to pursue active litigation in these proceedings; however, for reasons explained below, DII disagrees with the legal standard applied by the Pennsylvania Public Utility Commission ("Commission") in these proceedings and is contemplating filing a Petition for Review with the Commonwealth Court of Pennsylvania ("Commonwealth Court") with respect to this issue.

Industrial Intervenors ("WPPII") (collectively, "Industrial Intervenors"), collectively, hereby submit this Prehearing Memorandum.<sup>2</sup>

## I. HISTORY OF THE PROCEEDING

On September 29, 2001, the Pennsylvania Department of Revenue ("DOR") published in the Pennsylvania Bulletin notice of an increase in the Revenue Neutral Reconciliation ("RNR") tax rate for the 2002 calendar year. This increase to the RNR tax rate increased the electric utility gross receipts tax from 44 mills to 60 mills. See 31 Pa.B. 5507 (September 29, 2001). On November 30, 2001, DOR published in the Pennsylvania Bulletin a revised RNR rate of 59 mills.

Pursuant to Sections 2804(16) and 2810 of the Electricity Generation Customer Choice and Competition Act ("Competition Act"), which permit an Electric Distribution Company ("EDC") to collect its RNR tax liability from its customers, Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company ("PECO"), PPL Electric Utilities Corporation, and West Penn Power Company ("West Penn") (collectively, "EDCs") filed individual Petitions with the Commission seeking to increase their State Tax Adjustment Surcharges in order to recover RNR tax liability which would cause the EDCs to exceed their rate caps. See 66 Pa.C.S. §§ 2804(16) & 2810. The Office of Consumer Advocate ("OCA") filed Complaints against each of these Petitions,<sup>3</sup> and the EDCs filed Answers to the appropriate Complaints. In addition, Petitions to Intervene in these proceedings

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<sup>2</sup> Membership in each separate industrial group was reflected in the groups' respective Petitions to Intervene.

<sup>3</sup> The OCA's Complaints asserted that in order for the Commission to determine that each EDC's proposed rates are just and reasonable, as required by Section 2804(16)(ii) of the Competition Act, the Commission must review each EDC's rate of return and consider whether any expense or tax savings offset the EDC's increased tax liability. See 66 Pa.C.S. § 2804(16)(ii).

were filed by PECO, the Office of Small Business Advocate ("OSBA"), the Mid-Atlantic Power Suppliers Association ("MAPSA"), and the Industrial Intervenors.<sup>4</sup>

Following a collaborative process, the EDCs, the OCA, the OSBA, MAPSA, and the Industrial Intervenors reached settlements resolving the issues raised by the EDC's Petitions. The EDCs individually filed the Settlements with the Commission on December 14, 2001. At a Public Meeting on December 19, 2001, however, the Commission voted to reject the Settlements. By Order entered December 21, 2001, the Commission formally rejected the Settlements and approved the Petitions, reasoning that the EDCs' proposed rates accurately reflect known and measurable changes in their RNR tax liability and, thus, are just and reasonable. The Commission also referred the OCA's Complaints to the Office of Administrative Law Judge for adjudication within 60 days, however, and granted the Petitions to Intervene filed by PECO, the OSBA, MAPSA, and the Industrial Intervenors.

## **II. ANTICIPATED ISSUES AND SUB-ISSUES**

The Industrial Intervenors wish to ensure that, prior to permitting the EDCs to recover their increased RNR tax liability resulting in rates that exceed their applicable rate caps, the Commission determine that the EDCs' resulting rates are "just and reasonable," as required by Sections 1308(a) and 2804 of the Competition Act. See 66 Pa.C.S. §§ 1308(a) & 2804. The Industrial Intervenors assert that while the Competition Act permits an EDC to seek recovery of increased tax liability attributable to the RNR process, the Competition Act does not automatically entitle an EDC to such recovery as an exception to the rate cap. Rather, inherent in the Competition Act's "just and reasonable" standard is the requirement that an EDC seeking

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<sup>4</sup> In addition to filing a Petition to Intervene in the Commission's proceeding regarding West Penn's Petition (Docket No. R-00016857), WPPII also submitted an Answer in Opposition.

to increase its rates beyond its rate cap show that an exception to the rate cap is necessary for the EDC to have the opportunity to earn a fair rate of return. See 66 Pa.C.S. § 2804(4)(iii)(c). An EDC may have an opportunity to earn a fair rate of return and recover increased tax liability without exceeding the rate cap by an amount equivalent to the increased tax liability. Thus, an EDC must prove that the rates resulting from its proposed exception to its rate cap are just and reasonable. The Commission's determination that the EDCs accurately calculated the effect of the RNR tax increase on their proposed rates is wholly insufficient. Instead, Section 2804(16)(ii) of the Competition Act clearly provides, "The commission shall adjudicate . . . whether the *resulting rates are just and reasonable.*" 66 Pa. C.S. § 2804(16)(ii) (emphasis added). Because the Industrial Intervenors disagree with the standard applied by the Commission in these proceedings, the Industrial Intervenors are planning to file Petitions for Review with the Commonwealth Court with respect to this issue.

### **III. PROPOSED WITNESSES**

The Industrial Intervenors are in the process of evaluating whether they will sponsor testimony in this proceeding. In the event that the Industrial Intervenors decide to sponsor testimony, they will inform the parties and the ALJ as soon as possible of the intended witnesses and topics of testimony. The Industrial Intervenors also intend to participate in this proceeding through possible submission of discovery, cross-examination of other parties' witnesses, and submission of briefs, exceptions, and reply exceptions, as necessary.

### **IV. PROPOSED SCHEDULE AND DISCOVERY RULES**

The Industrial Intervenors will cooperate with the ALJ and the parties at the Prehearing Conference to develop an appropriate procedural schedule and discovery rules in accordance with the Commission's regulations and any ALJ directives. If the Industrial Intervenors or other

parties file Petitions for Review concerning the appropriate legal standard to be applied in these proceedings, however, the OCA's Complaints should be held in abeyance pending resolution of such Petitions for Review due to the inefficiencies of litigating the OCA's Complaints under the legal standard set forth in the Commission's Orders while also contesting that legal standard at the appellate level.

**V. POSSIBILITY OF SETTLEMENT**

The Industrial Intervenors participated in collaborative discussions with the other parties in an attempt to amicably resolve the issues raised by the EDCs' Petitions and are willing to continue doing so.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Karen S. Miller Ormer

David M. Kleppinger  
Derrick P. Williamson  
Pamela C. Polacek  
Susan E. Bruce  
Charis M. Burak  
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Counsel to Duquesne Industrial Intervenors,  
Met-Ed Industrial Users Group, Penelec  
Industrial Customer Alliance, Philadelphia  
Area Industrial Energy Users Group, PP&L  
Industrial Customer Alliance, and West Penn  
Power Industrial Intervenors

Dated: January 7, 2002

**Brian D. Crowe**  
Director  
Regulatory &  
Governmental Affairs

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PECO Energy Company  
P.O. Box 8699  
2301 Market Street  
Philadelphia, PA 19101-8699  
January 9, 2002

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

**DOCUMENT  
FOLDER**JAN 08 2002  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Replacement Pages to Supplement No. 35 to Tariff Electric – PA PUC No. 3  
Issued December 21, 2001 Effective January 1, 2002

Dear Mr. McNulty:

R-00016856

This letter transmits for filing with the Commission eight copies of the **Replacement Page No. 51 (Rate POL Private Outdoor Lighting)** of PECO Energy Company's Supplement No. 35 to Tariff Electric PA PUC No. 3 that became effective January 1, 2002.

The revision to Page No. 51 is necessary to reinstate the correct rate that became effective in Supplement No. 32 for STANDARD HIGH PRESSURE SODIUM LAMPS, 250 Watts (nominally 25,000 Lumens) under CTC for (\$0.12 that replaces \$0.13).

I am sorry for any inconvenience this has caused you. Would you please acknowledge the foregoing on the enclosed copy of this letter.

Sincerely,

Glen Thomas, Chairman  
Robert K. Bloom, Vice Chairman  
Aaron Wilson, Jr., Commissioner  
Terrance J. Fitzpatrick, Commissioner  
C. F. Hoffman, Director, Office of Trial Staff  
R. A. Rosenthal, Director, Bureau of Fixed Utility Services  
R. Wilson, Bureau of Fixed Utility Services  
C. B. Glunz, Bureau of Fixed Utility Services  
C. Walker-Davis, Director, Office of Special Assistants  
Office of Consumer Advocate  
Office of Small Business Advocate  
Service List

45

PECO Energy Company

RATE POL PRIVATE OUTDOOR LIGHTING

**AVAILABILITY.**

Outdoor lighting of sidewalks, driveways, yards, lots and similar places, outside the scope of service under Rate SL-P, SL-S and SL-E.

**MONTHLY RATE TABLE.**

<u>MERCURY-VAPOR LAMPS</u>	<u>PRICE PER LIGHTING UNIT</u>					
	<u>CTC</u>		<u>ENERGY &amp; CAPACITY</u>		<u>DISTRIBUTION</u>	
	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>
100 Watts (nominally 4,000 Lumens)	\$0.04	\$0.08	\$1.46 (I)	\$1.32 (I)	\$10.16	\$ 9.10
175 Watts (nominally 8,000 Lumens)	\$0.07	\$0.11	\$1.99 (I)	\$1.85 (I)	\$13.77	\$12.75
250 Watts (nominally 12,000 Lumens)	\$0.10	\$0.14	\$2.45 (I)	\$2.33 (I)	\$16.97	\$16.06
400 Watts (nominally 20,000 Lumens)	\$0.13	\$0.18	\$3.16 (I)	\$3.00 (I)	\$21.90	\$20.71
400 Watts Floodlight (nominally 22,000 Lumens)	\$0.14	\$0.18	\$3.42 (I)	\$3.26 (I)	\$23.68	\$22.49

<u>SODIUM-VAPOR LAMPS</u>	<u>PRICE PER LIGHTING UNIT</u>					
	<u>CTC</u>		<u>ENERGY &amp; CAPACITY</u>		<u>DISTRIBUTION</u>	
	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>
70 Watts (nominally 5,800 Lumens)	\$0.07	\$0.11	\$2.00 (I)	\$1.86 (I)	\$13.87	\$12.83
250 Watts (nominally 25,000 Lumens)	\$0.13	\$0.18	\$3.20 (I)	\$3.03 (I)	\$22.08	\$20.88
400 Watts (nominally 50,000 Lumens)	\$0.15	\$0.19	\$3.50 (I)	\$3.34 (I)	\$24.23	\$23.03
400 Watts Floodlight (nominally 50,000 Lumens)	\$0.16	\$0.21	\$3.77 (I)	\$3.60 (I)	\$26.00	\$24.81

<u>STANDARD METAL HALIDE LAMPS</u>	<u>PRICE PER LIGHTING UNIT</u>					
	<u>CTC</u>		<u>ENERGY &amp; CAPACITY</u>		<u>DISTRIBUTION</u>	
	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>
100 Watts (nominally 7,800 Lumens)	\$0.11	\$0.16	\$0.91 (I)	\$0.89 (I)	\$19.10	\$17.93
175 Watts (nominally 13,000 Lumens)	\$0.13	\$0.18	\$1.58 (I)	\$1.56 (I)	\$20.01	\$18.84
250 Watts (nominally 20,500 Lumens)	\$0.14	\$0.18	\$2.25 (I)	\$2.21 (I)	\$21.15	\$19.99
400 Watts (nominally 36,000 Lumens)	\$0.16	\$0.20	\$3.70 (I)	\$3.54 (I)	\$25.60	\$24.44
1000 Watts (nominally 110,000 Lumens)	\$0.33	\$0.37	\$6.49 (I)	\$6.33 (I)	\$44.80	\$43.64

<u>STANDARD HIGH PRESSURE SODIUM LAMPS</u>	<u>PRICE PER LIGHTING UNIT</u>					
	<u>CTC</u>		<u>ENERGY &amp; CAPACITY</u>		<u>DISTRIBUTION</u>	
	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>	<u>(Co.Pole)</u>	<u>(Cust.Pole)</u>
50 Watts (nominally 4,000 Lumens)	\$0.07	\$0.11	\$1.54 (I)	\$1.50 (I)	\$15.28	\$14.12
70 Watts (nominally 5,800 Lumens)	\$0.08	\$0.12	\$2.25 (I)	\$2.09 (I)	\$15.60	\$14.43
100 Watts (nominally 9,500 Lumens)	\$0.08	\$0.12	\$2.38 (I)	\$2.22 (I)	\$16.49	\$15.33
150 Watts (nominally 16,000 Lumens)	\$0.09	\$0.14	\$2.60 (I)	\$2.44 (I)	\$18.01	\$16.85
250 Watts (nominally 25,000 Lumens)	\$0.12	\$0.17	\$3.07 (I)	\$2.90 (I)	\$21.15	\$19.98
400 Watts (nominally 50,000 Lumens)	\$0.16	\$0.21	\$3.71 (I)	\$3.55 (I)	\$25.65	\$24.48
1,000 Watts (nominally 110,000 Lumens)	\$0.20	\$0.24	\$9.10 (I)	\$8.93 (I)	\$28.09	\$26.92

The Energy and Capacity Charges set forth above will apply to the customer if the customer receives Default PLR Service. These charges are not applicable to the customer if it obtains Competitive Energy Supply.

TRANSMISSION SERVICE FOR CUSTOMERS RECEIVING DEFAULT PLR SERVICE: Unless such a customer is able to obtain transmission service on its own, PECO Energy will provide transmission service, and will impose charges on such a customer for such transmission service.

STATE TAX ADJUSTMENT CLAUSE, NUCLEAR DECOMMISSIONING COST ADJUSTMENT APPLY TO THIS RATE.

**GENERAL PROVISIONS.**

1. Standard Lighting Unit. A Standard Lighting Unit shall be a Cobra Head or Floodlight comprised of a bracket, the lead wires and a luminaire, including lamp, reactor and control.

2. Standard Installations. In connection with the standard service provided herein, the Company will install, own and maintain all facilities within highway limits, and all standard service-supply lines and all Lighting Units. The customer will install, own and maintain all poles on the customer's property and all service extensions on the customer's property from the Company's standard service-supply lines.

(I) Indicates Increase

Issued December 21, 2001

Effective January 1, 2002

**DOCKETED**

JAN 15 2002



An Exelon Company

**Brian D. Crowe**  
Director  
Regulatory &  
Governmental Affairs

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PECO Energy Company  
P.O. Box 8699  
2301 Market Street  
Philadelphia, PA 19101-8699

January 10, 2002

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

Dear Mr. McNulty:

Re: PECO Energy Company Supplement No. 35 to Electric Pa.  
P.U.C No. 3 - increase in the State Tax Adjustment  
Surcharge due to an increase in the Revenue Neutral  
Reconciliation tax liability - Docket No. R-00016856

In reference to the Order adopted by the Commission at the Public Meeting on  
December 19, 2001, in the above entitled proceeding, enclosed please find a  
copy of PECO Energy Company's RNR surcharge press release and bill insert.

Sincerely,

RECEIVED

JAN 10 2002  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

cc: R. A. Rosenthal, Director, Bureau of Fixed Utility Services  
R. Bennett, Energy-Mgr, Bureau of Fixed Utility Services

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## Electric Rate Changes for the Year 2002

As a result of several changes to PECO Energy rates, the typical residential customer using 500 kWh per month will pay 21 cents more per month, or 0.3%, than in 2001. Electric rates for PECO Commercial and Industrial customers will also be increased, as shown on the chart below.

Over the past several years, PECO Energy has committed to various rate reductions, which were approved by the Pennsylvania Public Utility Commission (PUC). Generally, these rate decreases are effective for a one-year period and are replaced the next year with a different rate reduction. Therefore, rates fluctuate somewhat from year to year. The rate changes for 2002 include a rate reduction in Distribution charges associated with the Company's merger with Unicom Corporation. However, higher state utility taxes offset this reduction and cause an overall increase in rates to be charged to customers beginning in February, 2002. The higher state utility taxes are collected through the 1.55% State Tax Adjustment Charge and higher Energy and Capacity charges as shown on the bill.

The table below summarizes these changes in total:

	Increase In Total Rates
Residential (Rate R)	0.3%
Small Commercial/Industrial (Rate GS)	2.3%
Large Commercial/Industrial (Rate HT)	2.9%

Shopping for an energy supplier may provide additional savings to customers. The new "Price to Compare" on average for 2002, is as follows: Residential (Rate R) is \$0.0593/kWh, Small Commercial/Industrial (Rate GS) is \$0.0630/kWh, and Large Commercial/Industrial (Rate HT) is \$0.0425/kWh.

If you have questions or would like more information, call 1-800-494-4000. Small Business customers should contact Business Account Services at 1-800-220-PECO. Large Industrial customers should contact their account representative directly.

PECO Energy Company

[www.peco.com](http://www.peco.com)

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JAN 10 2002

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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BUCKETED  
JAN 28 2002

**Subject:** News Release: Electric Rate Changes To Take Effect for PECO Energy Customers

**Contact:** Michael Wood  
215-841-4125

**ELECTRIC RATE CHANGES TO TAKE EFFECT  
FOR PECO ENERGY CUSTOMERS**

PHILADELPHIA, PA, January 8, 2002 - PECO Energy customers may notice changes in certain electric charges on their bill beginning next month. The various changes in total will mean about 21 cents more per month for the typical residential customer.

Although PECO is passing along a \$60 million decrease in its electric distribution charge due to savings from its merger with Unicom, the state tax adjustment surcharge will increase by 1.55 percent for all customers due to a higher assessment for the state gross receipts tax. As a result, total rates will increase slightly.

For those residential customers who shop for their electric generation supplier, the energy and capacity charge on the bill will rise by .26 cents per kilowatthour (kWh) to reflect a proper comparison with the suppliers that also must assess the higher state tax.

A typical residential customer using 500 kWh of electricity will receive a monthly bill of \$69.35 in 2002, up by 21 cents. All changes on the utility bill will take effect following each customer's monthly meter reading in January and will be reflected in bills beginning in February. Commercial and Industrial customers will see a somewhat larger increase, roughly 2.3 to 2.8 percent depending on the size of the customer.

An Exelon Company, PECO Energy is a Philadelphia, Pa.-based utility that delivers electricity to 1.5 million customers and natural gas to 435,000 natural gas customers in southeastern Pennsylvania. PECO and its sister utility, ComEd in the Chicago area, are subsidiaries of Exelon Energy Delivery. Its parent, Exelon Corporation, (NYSE: EXC), is one of the largest energy service companies in the U.S. with the largest retail utility customer base, one of the largest power generation fleets and a leading wholesale energy marketing operation in North America. In 2000, PECO delivered 92.5 billion cubic feet of natural gas and 35.36 million megawatt hours of electricity, generating \$3.5 billion in revenue.

###

Philadelphia Area Industrial Energy Users Group v.  
Pennsylvania Public Utility Commission.

R-00016856

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NOTICE OF PETITION by Philadelphia Area Industrial  
Energy Users Group v. Pennsylvania Public Utility  
Commission. at No. 90 C.D. 2002, in the Commonwealth  
Court of Pennsylvania from the order of the Commission  
entered December 21, 2001 in the above-captioned appeal.

B-00023894

Filed: January 11, 2002

**DOCUMENT FOLDER**

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JAN 29 2002

Irwin A. Popowsky, Consumer Advocate v. Pennsylvania  
Public Utility Commission.

R-00016856

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NOTICE OF PETITION by Irwin A. Popowsky, Consumer  
Advocate v. Pennsylvania Public Utility Commission. at No.  
46 C.D. 2002, in the Commonwealth Court of Pennsylvania  
from the order of the Commission entered December 21,  
2001 in the above-captioned appeal.

~~R-00023884~~

Filed: January 8, 2002

**DOCUMENT FOLDER**

**DOCKETED**

JAN 29 2002



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

IRWIN A. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
E-Mail: paoca@ptd.net

April 1, 2002

Hon. Wayne L. Weismandel  
PA Public Utility Commission  
400 North Street  
P.O. 3265  
Harrisburg, PA 17105-3265

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Re: PECO Energy Rate Change to State  
Tax Adjustment Surcharge to Implement 2002  
Revenue Neutral Reconciliation  
Docket No. R-00016856

Dear Judge Weismandel:

Enclosed please find for filing an original and two (2) copies of the Office of Consumer Advocate's Motion To Dismiss Objections And To Compel Answers To Interrogatories in the above-captioned proceeding.

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

Sincerely,

James A. Mullins  
Assistant Consumer Advocate

Enclosures

cc: All parties of record  
✓ James J. McNulty, Secretary PUC

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PIKE COUNTY LIGHT AND POWER CO.	:	Docket No. R-00016849
PPL ELECTRIC UTILITIES CORPORATION	:	Docket No. R-00016850
PENNSYLVANIA POWER COMPANY	:	Docket No. R-00016851
METROPOLITAN EDISON COMPANY	:	Docket No. R-00016852
PENNSYLVANIA ELECTRIC COMPANY	:	Docket No. R-00016853
DUQUESNE LIGHT COMPANY	:	Docket No. R-00016854
UGI UTILITIES, INC.	:	Docket No. R-00016855
WEST PENN POWER COMPANY	:	Docket No. R-00016857
PECO ENERGY COMPANY	:	Docket No. R-00016856

**DOCKETED**

MAY 04 2002

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MOTION TO DISMISS OBJECTIONS AND TO COMPEL ANSWERS  
TO INTERROGATORIES  
OF THE OFFICE OF CONSUMER ADVOCATE

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Pursuant to 52 Pa. Code § 5.342, the Office of Consumer Advocate (“OCA”) hereby moves that the Presiding Officer, Administrative Law Judge Wayne J. Weismandel, dismiss the Objections to Discovery of PECO Energy Company (“PECO” or “Company”) to the Office of Consumer Advocate’s Interrogatories (Set I, Nos. 1-7). Set I was served on PECO on January 2, 2002 and the Company filed Objections on January 8. These objections were held in abeyance pending the resolution of the OCA’s appeal of the Order to the Commonwealth Court of Pennsylvania. In support of its Motion, the OCA states as follows:

1. On January 2, 2002, the OCA served its Set I—Questions to All Companies—on PECO.<sup>1</sup> Set I contains 7 questions and is attached hereto as Exhibit 1.

2. On January 8, 2002, PECO filed its Prehearing Memorandum and Objections to Discovery. PECO objected to all questions (1-7) contained in Set I. A copy of PECO's Objections is attached hereto as Exhibit 2.

3. OCA Set I, Interrogatory Nos. 1 through 7 stated as follows:

- (1) Please provide the actual amount paid for each RNR affected tax for each year from 1996 through 2001. If any amounts for 2001 are yet to be paid, please identify the additional amount to be paid and the date. In the case of PURTA, please identify both the total and RNR portion of the tax.
- (2) Please indicate whether the Company has received or is expected to receive any refunds of the RNR affected taxes paid or other taxes paid for each year from 1996 through 2001. If yes, please identify the amounts of all such refunds by tax year, tax type and date received or pending.
- (3) With regard to the Company's 52 Pa.Code Section 71 Financial Reports, please explain how provider of last resort (POLR) revenues and expenses are reflected in unadjusted earnings per books. If not specifically identified, please identify the revenues and costs attributable to POLR service for the 12 months ended December 31, 2000 and the 12 months ended September 30, 2001.
- (4) Please explain whether the Company's 52 Pa.Code Section 71 Financial Reports do or do not include CTC revenues and costs. Also, please verify that CTC revenues and costs are net income neutral. If not, please explain why not and identify the CTC revenues and costs for the 12 months ended December 31, 2000 and the 12 months ended September 30, 2001.
- (5) To the extent the Company has included adjustments to its per books results in its 52 Pa.Code Section 71 Financial Report for the 12 months ended December 31, 2000 and/or the 12 months ended September 30, 2001, please provide all workpapers and supporting documentation for those adjustments.

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<sup>1</sup>An identical Set was served on the other 8 electric distribution companies seeking an increase in rates due to the revenue neutral reconciliation rate in effect for calendar year 2002.

- (6) Please state whether the Company is aware of any unusual, extraordinary, or other revenues or costs which distort the reported earnings for the 12 months ended September 30, 2001. If yes, please explain and provide details and quantification.
- (7) Please verify that the proposed increase in the STAS will apply equally to both transmission & distribution (T&D) revenues and generation revenues. If not please explain in detail and identify the increase applicable to each component of the rates for each customer class.

4. PECO's Objection to each question reads: "PECO objects to this question on the basis that the question is not designed to elicit information that can lead to admissible evidence."

5. The OCA submits that the information requested in Questions 1 through 7 is within the realm of discoverable evidence and is relevant to the consideration of whether an increase above the rate cap is just and reasonable. These questions probe the question of whether there are offsetting state tax payments, offsetting tax rate reductions and refunds.

6. As the PUC stated in its Motion to Quash when arguing that the Commission's Order was not final:

[T]he OCA still retains the opportunity to argue and, indeed, may succeed, in convincing the presiding Administrative Law Judge and the Commission, for example, that offsetting tax or expense savings should be considered in reviewing the utility's rate filing, or that existing rates of return are relevant and do not warrant the grant of the RNR surcharge, or that another mechanism, such as a deferral, should be used to recover the increased RNR expense.

Motion at ¶ 22. Since Questions 1-7 are designed to elicit information relevant to these issues and sub-issues, PECO should be compelled to provide timely responses. The Commission cannot move to quash the OCA's appeal on the ground that OCA will have a right to litigate certain issues, and then permit a utility to refuse to provide OCA with the basic discovery that is

necessary to litigate those very issues. Moreover, the subject matter is not only appropriate for discovery as indicated by the PUC before the Commonwealth Court, but also under relevant regulations and precedent.

7. Title 52 of the Pennsylvania Code governs discovery disputes in this matter. In particular, section 5.321(c) states:

(A) participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c).

8. Section 5.321(f) also provides that:

A participant may obtain discovery for the purpose of preparation of pleadings, or for preparation or trial of a case, or for use at a proceeding initiated by petition or motion, or for any combination of these purposes...

52 Pa. Code § 5.321(f). This regulation then specifies that “(w)ritten interrogatories to a participant” is a permissible form of discovery. Id.

9. The OCA submits that the discovery rights stated in these regulations are conferred upon the parties to a proceeding by Section 333(d) of the Public Utility Code. 66 Pa. C.S. § 333(d). The OCA submits that the information requested in OCA Set I, is discoverable under 66 Pa. C.S. § 333(d). Section 333 (d) states that “(a)ny party to a proceeding may serve

written interrogatories upon any other party for purposes of discovering relevant, unprivileged information.” 66 Pa. C.S. § 333(d).

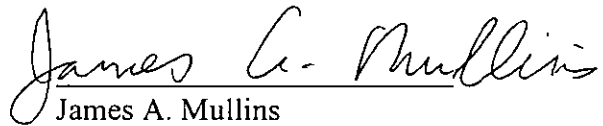
10. The Commonwealth Court of Pennsylvania has stated that “(d)iscovery itself is designed to promote free sharing of information so as to narrow the issues and limit unfair surprise. It is a tool which serves each litigant and promotes judicial economy.” Pittsburgh Bd. of Public Education v. M.J.N. by N.J., 524 A. 2d 1385, 1388 (Pa. Cmwlth. Ct. 1987).

11. The Commission has stated that the relevancy test should be liberally applied when considering data requests. Pa. PUC v. Equitable Gas Co., 61 Pa. P.U.C. 468, 477 (1986). The scope of discovery includes information which relates to any arguments which the OCA or other parties may present in considering the rate increase, if any, that should be awarded to PECO. The information sought by the OCA in Set I is relevant, clearly within the discovery rules, is required to be provided to the OCA pursuant to regulations, will enable the parties to narrow the issues in this RNR proceeding and conserve hearing room time. Additionally, this information was clearly acknowledged by the PUC to be relevant to the instant proceeding. Therefore, PECO should be compelled to provide the relevant information.

12. The OCA further respectfully requests that Your Honor expedite this motion and order PECO to provide these documents expeditiously.

WHEREFORE, for the above reasons, the Office of Consumer Advocate respectfully requests that the Presiding Officer, Administrative Law Judge Wayne L. Weisman, expedite this matter, dismiss the Objections and compel the Company to respond and produce the requested documents as soon as possible.

Respectfully submitted,



James A. Mullins  
Assistant Consumer Advocate  
Tanya J. McCloskey  
Senior Assistant Consumer Advocate

For:  
Irwin A. Popowsky  
Consumer Advocate

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Harrisburg, PA 17101-1923  
(717) 783-5048

DATED: April 1, 2002  
00068450

EXHIBIT 1

Office of Consumer Advocate  
Interrogatories  
Docket Nos. R-00016851, R-00016849, R-00016857  
R-00016854, R-00016850,  
R-00016853, R-00016852,  
R-00016855, R-00016856

Set I

Questions to All Companies

1. Please provide the actual amount paid for each RNR affected tax for each year from 1996 through 2001. If any amounts for 2001 are yet to be paid, please identify the additional amount to be paid and the date. In the case of PURTA, please identify both the total and RNR portion of the tax.
2. Please indicate whether the Company has received or is expected to receive any refunds of the RNR affected taxes paid or other taxes paid for each year from 1996 through 2001. If yes, please identify the amounts of all such refunds by tax year, tax type and date received or pending.
3. With regard to the Company's 52 Pa.Code Section 71 Financial Reports, please explain how provider of last resort (POLR) revenues and expenses are reflected in unadjusted earnings per books. If not specifically identified, please identify the revenues and costs attributable to POLR service for the 12 months ended December 31, 2000 and the 12 months ended September 30, 2001.

4. Please explain whether the Company's 52 Pa.Code Section 71 Financial Reports do or do not include CTC revenues and costs. Also, please verify that CTC revenues and costs are net income neutral. If not, please explain why not and identify the CTC revenues and costs for the 12 months ended December 31, 2000 and the 12 months ended September 30, 2001.
5. To the extent the Company has included adjustments to its per books results in its 52 Pa.Code Section 71 Financial Report for the 12 months ended December 31, 2000 and/or the 12 months ended September 30, 2001, please provide all workpapers and supporting documentation for those adjustments.
6. Please state whether the Company is aware of any unusual, extraordinary, or other revenues or costs which distort the reported earnings for the 12 months ended September 30, 2001. If yes, please explain and provide details and quantification.
7. Please verify that the proposed increase in the STAS will apply equally to both transmission & distribution (T&D) revenues and generation revenues. If not please explain in detail and identify the increase applicable to each component of the rates for each customer class.

EXHIBIT 2

Objection of PECO Energy Company  
To  
Office of Consumer Advocate  
Interrogatories  
Docket No.R-00016856

Set I

OCA-I-1. Please provide the actual amount paid for each RNR affected tax for each year from 1996 through 2001. If any amounts for 2001 are yet to be paid, please identify the additional amount to be paid and the date. In the case of PURTA, please identify both the total and RNR portion of the tax.

**PECO Response.** PECO objects to this question on the basis that the question is not designed to elicit information that can lead to admissible evidence.

OCA-I-2. Please indicate whether the Company has received or is expected to receive any refunds of the RNR affected taxes paid or other taxes paid for each year from 1996 through 2001. If yes, please identify the amounts of all such refunds by tax year, tax type and date received or pending.

**PECO Response.** PECO objects to this question on the basis that the question is not designed to elicit information that can lead to admissible evidence.

OCA-I-3. With regard to the Company's 52 Pa.Code Section 71 Financial Reports, please explain how provider of last resort (POLR) revenues and expenses are reflected in *unadjusted earnings per books*. If not specifically identified, please identify the revenues and costs attributable to POLR service for the 12 months ended December 31, 2000 and the 12 months ended September 30, 2001.

**PECO Response.** PECO objects to this question on the basis that the question is not designed to elicit information that can lead to admissible evidence.

OCA-I-4 Please explain whether the Company's 52 Pa.Code Section 71 Financial Reports do or do not include CTC revenues and costs. Also, please verify that CTC revenues and costs are net income neutral. If not, please explain why not and identify the CTC revenues and costs for the 12 months ended December 31, 2000 and the 12 months ended September 30, 2001.

**PECO Response.** PECO objects to this question on the basis that the question is not designed to elicit information that can lead to admissible evidence.

OCA-I-5. To the extent the Company has included adjustments to its per books results in its 52 Pa.Code Section 71 Financial Report for the 12 months ended December 31, 2000 and/or the 12 months ended September 30, 2001, please provide all workpapers and supporting documentation for those adjustments.

**PECO Response.** PECO objects to this question on the basis that the question is not designed to elicit information that can lead to admissible evidence.

OCA-I-6. Please state whether the Company is aware of any unusual, extraordinary, or other revenues or costs which distort the reported earnings for the 12 months ended September 30, 2001. If yes, please explain and provide details and quantification.

**PECO Response.** PECO objects to this question on the basis that the question is not designed to elicit information that can lead to admissible evidence.

OCA-I-7. Please verify that the proposed increase in the STAS will apply equally to both transmission & distribution (T&D) revenues and generation revenues. If not please explain in detail and identify the increase applicable to each component of the rates for each customer class.

**PECO Response.** PECO objects to this question on the basis that the question is not designed to elicit information that can lead to admissible evidence.

CERTIFICATE OF SERVICE

Re: PECO Energy Company Rate Change to State Tax  
Adjustments Surcharge to Implement 2002  
Revenue Neutral Reconciliation  
Docket No. R-00016856

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Motion To Dismiss Objections And To Compel Answers To Interrogatories, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1<sup>st</sup> day of April, 2002.

SERVICE BY INTEROFFICE MAIL

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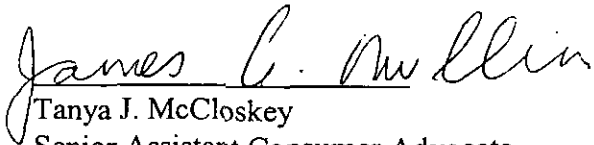
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