

# OALJ Hearing Report

Please  Check Those Blocks Which Apply

Docket No.:	P-00072260		YES	NO
Case Name:	Petition of PECO Energy Company for	Prehearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Approval of (1) a Process to Procure Alternative Energy Credits		Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
During the AEPS Banking Period and (2) a Section 1307 Surcharge		Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
And Tariff to Recover AEPS Costs		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Location:	Philadelphia	Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Date:	May 4, 2007	Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ALJ:	Marlane R. Chestnut	Estimated Add'l Days:	2	
Reporting Firm:	Commonwealth Reporting	RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
		Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
<b>RECEIVED</b> MAY 17 2007 PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU		REMARKS:	Please schedule hearing in Phila - July 10 <sup>th</sup> 11 Thanks	

DOCUMENT FOLDER

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing
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Telephone: 717-783-5048	E-mail Address: <a href="mailto:tmccloskey@paoca.org">tmccloskey@paoca.org</a>	Fax Number: 717-783-2831

BTL

Check this box if additional parties or attendees appear on back of form.

[Handwritten Signature]

Reporter's Signature

*Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.*

Name and Telephone Number	Address			Who are you representing?
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Telephone:				
	City	State	Zip	
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*Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.*



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
May 8, 2007

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: P-00072260

(SEE ATTACHED LIST)

**Petition of PECO Energy Company**

For Approval Of (1) A Process To Procure Alternative Energy Credits During The AEPS Banking Period And (2) A Section 1307 Surcharge And Tariff To Recover AEPS Costs

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial & Further Hearings

Date: Tuesday, July 10, 2007  
Wednesday, July 11, 2007

Time: 10:00 a.m.

Location: In an available hearing room  
Philadelphia State Office Building  
Broad and Spring Garden Streets  
Philadelphia, PA 19130

Presiding: Administrative Law Judge Marlane R. Chestnut  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
Telephone: 215-560-2105  
Fax: 215-560-3133

DOCUMENT  
FOLDER

**DOCKETED**  
MAY 14 2007

*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988

pc: Judge Chestnut  
Stacy Nolan, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File

P-00072260 PETITION OF PECO ENERGY COMPANY FOR APPROVAL OF (1) A  
PROCESS TO PROCURE ALTERNATIVE ENERGY CREDITS DURING THE AEPS BANKING  
PERIOD AND (2) A SECTION 1307 SURCHARGE AND TARIFF TO RECOVER AEPS  
COSTS.

REVISED 5/7/07

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THOMAS P GADSDEN ESQUIRE  
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McNees Wallace & Nurick LLC  
attorneys at law

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SECRETARY'S BUREAU

2007 JUN -4 P11 3:54

June 4, 2007

Honorable Marlane Chestnut  
Administrative Law Judge  
PA Public Utility Commission  
1302 Philadelphia State Office Bldg  
1400 West Spring Garden Street  
Philadelphia, PA 19130

**Re: Petition of PECO Energy for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period, and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs; Docket No. P-00072260**

Dear Judge Chestnut:

Please be advised that the Philadelphia Area Industrial Energy Users Group ("PAIEUG") will not be filing Direct Testimony in the above-referenced proceeding. PAIEUG reserves the right, however, to file rebuttal testimony in response to issues raised in other parties' direct testimony.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Charis Mincavage  
Barry A. Naum

Counsel to the Philadelphia Area  
Industrial Energy Users Group

BAN/cas  
Enclosure

c: James J. McNulty, Secretary (via Hand Delivery)  
Certificate of Service

**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 E-MAIL AND FIRST-CLASS MAIL**

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Kenneth M. Kulak, Esq.  
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1701 Market Street  
Philadelphia, PA 19103-2921



Barry A. Naum

Dated this 4<sup>th</sup> day of June, 2007 in Harrisburg, Pennsylvania.



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
June 22, 2007

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: P-00072260

(SEE LETTER DATED 5/8/07)

**Petition of PECO Energy Company**

For Approval Of (1) A Process To Procure Alternative Energy Credits During The AEPS  
Banking Period And (2) A Section 1307 Surcharge And Tariff To Recover AEPS Costs

Cancellation Notice

This is to inform you of the following cancellation:

Type: Initial & Further Hearing  
Date: Tuesday, July 10, 2007  
Time: 10:00 a.m.  
Presiding: Administrative Law Judge Marlane R. Chestnut

Please mark your records accordingly.

pc: Judge Chestnut  
Stacy Nolan, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File

**DOCUMENT  
FOLDER**

**DOCKETED**  
JUL 10 2007

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Fax: 215.963.5001  
www.morganlewis.com

Morgan Lewis  
COUNSELORS AT LAW

Kenneth M. Kulak  
215-963-5384  
kkulak@morganlewis.com

ORIGINAL

June 25, 2007

KJR

RECEIVED

JUN 25 2007

**VIA FEDERAL EXPRESS**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
PO Box 3265  
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**RE: Petition Of PECO Energy Company For Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period And (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs, Docket No. P-00072260**

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of a Stipulation by PECO Energy Company, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, the Philadelphia Area Industrial Energy Users Group and Citizens for Pennsylvania's Future in the above referenced proceeding.

Also enclosed is an additional copy of this filing which we request that you time and date stamp as proof of filing and return to us in the envelope provided.

If you have any questions, please contact me at (215) 963-5384.

Respectfully submitted,



Kenneth M. Kulak

Enclosure

c: The Honorable Marlane R. Chestnut  
Certificate of Service

DOCUMENT  
FOLDER

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF (1) A :  
PROCESS TO PROCURE :  
ALTERNATIVE ENERGY CREDITS :  
DURING THE AEPS BANKING PERIOD :  
AND (2) A SECTION 1307 SURCHARGE :  
AND TARIFF TO RECOVER AEPS :  
COSTS :

DOCKET NO. P-00072260

RECEIVED

JUN 25 2007

STIPULATION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

PECO Energy Company ("PECO"); the Office of Trial Staff ("OTS"); the  
Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the  
Philadelphia Area Industrial Energy Users Group ("PAIEUG"); and Citizens for Pennsylvania's  
Future ("PennFuture") (collectively, "the Parties") submit this joint stipulation (the  
"Stipulation") in the above-referenced proceeding.

Subject to approval of the presiding Administrative Law Judge, the Parties agree that:

1. The hearings presently scheduled for July 10 and 11, 2007, shall be canceled. At  
a time convenient for the presiding Administrative Law Judge and the Parties, a telephonic  
hearing shall be scheduled to provide for the admission, without objection, of (i) all testimony  
and exhibits served to date in this proceeding and (ii) a separate stipulation entered into by PECO  
and OSBA resolving certain factual issues pertaining to PECO's proposed procurement of  
alternative energy credits raised by OSBA witness Kalcic in his direct testimony.

2. The following schedule shall apply for the submission of briefs in this proceeding:

Main briefs July 13, 2007

Reply briefs July 27, 2007

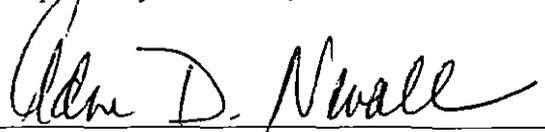
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OCT 13 2007

3. The above briefing shall be limited to the following three issues:
  - (i) Whether Section 3(e)(7) of the Alternative Energy Portfolio Standards Act of 2004 (“AEPS” or “Act”) provides that credits from a Tier 1 or Tier 2 source, in order to be bankable, must be associated with electricity in amounts that exceed the electricity from all Tier 1 and Tier 2 sources sold to retail customers during the 12-month period immediately preceding the effective date of the Act by the electric distribution company seeking to bank the credits.
  - (ii) Whether Section 3(e)(7) of the Act also requires electric distribution companies seeking to bank alternative energy credits to establish that the associated electricity will be (or was) delivered and sold to retail customers within the Commonwealth of Pennsylvania; and
  - (iii) Whether the Commission should approve, as part of this proceeding, PECO’s proposed Section 1307 AEPS cost recovery mechanism or, instead, defer consideration of such mechanism until a future proceeding when PECO submits, for the Commission’s review and approval, its proposed default service implementation plan.
4. Each party shall have the option to brief none, any, or all of these issues.
5. The Parties agree that for purposes of Section (3)(e)(7), PECO did not sell electricity from Tier 1 sources during the 12-month period immediately preceding the effective date of the Act.

6. Except with respect to the legal issues designated for briefing in paragraph 3, the Parties will support PECO's filing and PECO's request for approvals therein upon admission of all testimony and exhibits pursuant to paragraph 1 of this Stipulation.

Respectfully submitted,

A handwritten signature in black ink that reads "Adrian D. Newall". The signature is written in a cursive style and is positioned above a horizontal line.

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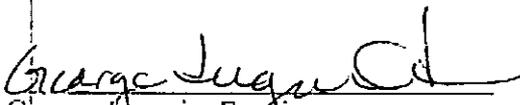
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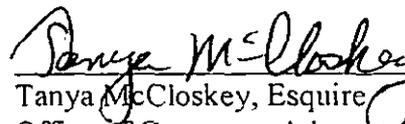
For the Philadelphia Area Industrial Energy  
Users Group

  
George Jugovic, Esquire  
Citizens for Pennsylvania's Future  
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Pittsburgh, PA 15219

Dated June ~~20~~ 2007

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Dated June 22 2007



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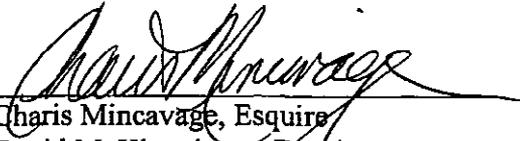
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Dated June \_\_, 2007

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Dated June 22, 2007

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For the Philadelphia Area Industrial Energy  
Users Group

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for** :  
**Approval of (1) A Process to Procure** :  
**Alternative Energy Credits During the** :  
**AEPS Banking Period and (2) A Section** : **Docket No. P-00072260**  
**1307 Surcharge and Tariff to Recover** :  
**AEPS Costs** :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served copies of a Stipulation by PECO Energy Company, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, the Philadelphia Area Industrial Energy Users Group and Citizens for Pennsylvania's Future in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**RECEIVED**  
JUN 25 2007

**VIA FIRST CLASS MAIL**

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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

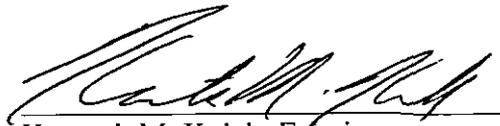
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Counsel for Philadelphia Area Industrial  
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Kenneth M. Kulak, Esquire  
Co-Counsel for PECO Energy Company

Date: June 25, 2007

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ORIGINAL

June 25 , 2007

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JUN 25 2007

**VIA FEDERAL EXPRESS**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
PO Box 3265  
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RE: **Petition Of PECO Energy Company For Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period And (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs, Docket No. P-00072260**

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of a Stipulation by PECO Energy Company and the Office of Small Business Advocate in the above referenced proceeding.

Also enclosed is an additional copy of this filing which we request that you time and date stamp as proof of filing and return to us in the envelope provided.

If you have any questions, please contact me at (215) 963-5384.

Respectfully submitted,

DOCUMENT  
FOLDER



Kenneth M. Kulak

Enclosure

c: The Honorable Marlane R. Chestnut  
Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF (1) A :  
PROCESS TO PROCURE :  
ALTERNATIVE ENERGY CREDITS :  
DURING THE AEPS BANKING PERIOD :  
AND (2) A SECTION 1307 SURCHARGE :  
AND TARIFF TO RECOVER AEPS :  
COSTS :

DOCKET NO. P-00072260

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JUN 25 2007

DOCUMENT  
FOLDER

STIPULATION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

PECO Energy Company ("PECO") and the Office of Small Business Advocate

("OSBA") file this Stipulation to resolve all factual issues addressed in the testimony of Brian Kalcic filed on behalf of the OSBA in this proceeding on June 4, 2007 and to thereby avoid the need for further litigation with respect thereto. This Stipulation is binding on PECO and OSBA only for the purpose of settling the issues recited herein.

1. To resolve Mr. Kalcic's concerns over the absence of a maximum acceptable bid price for alternative energy credits ("AECs"), PECO agrees to revise Paragraph 7.8 of its form Request for Proposals ("RFP") as attached to PECO Statement No. 1 (Testimony of John J. McCawley), to read as follows:

**7.8 Not an Offer.** This RFP is issued to elicit responses to PECO's inquiry and is not an offer. The issuance of the RFP and the submission of bidder's information do not create any obligation upon PECO to buy goods or services from a bidder, and PECO reserves the right to accept or reject any or all proposals received. PECO also reserves the right to amend, suspend, or terminate the RFP process at any time, without reason and without liability, and makes no commitments, implied or otherwise, that this process will result in a business transaction with one or more bidders. No contract or other binding obligation on PECO will be implied unless and until an agreement has been executed on terms and

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conditions acceptable to PECO. PECO also reserves the right to not execute agreements with any or all bidders should the Company determine, in its sole discretion, that such agreement(s) would not guarantee delivery, would impose unreasonably high costs on the Company's customers and/or would violate existing regulatory standards, and under no circumstances will the Company accept bids in this RFP that are in excess of \$45 per AEC .

2. To resolve Mr. Kalcic's concerns over the amount of AECs to be purchased and banked, PECO, through informal discovery, has demonstrated, to the OSBA's satisfaction, that the 450,000 non-solar Tier I AECs which PECO requests authority to procure represent a reasonable amount of AECs in light of PECO's 2011 and 2012 compliance requirements.

3. PECO and OSBA agree that this Stipulation does not address or resolve the issues of interpretation pertaining to Section 3(e)(7) of the Alternative Energy Portfolio Standards Act of 2004. The parties expressly reserve their rights to brief these issues to the Administrative Law Judge and, as necessary, to the Commission.

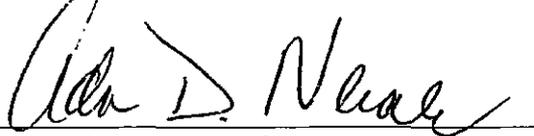
4. This Stipulation may only be amended by a written document duly agreed to and executed by PECO and OSBA.

AGREED TO BY:

\_\_\_\_\_  
William R. Lloyd, Jr., Esquire  
Small Business Advocate  
Sharon Webb, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Dated June \_\_, 2007

AGREED TO BY:

  
\_\_\_\_\_  
Paul R. Bonney, Esquire  
Adrian D. Newall, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

conditions acceptable to PECO. PECO also reserves the right to not execute agreements with any or all bidders should the Company determine, in its sole discretion, that such agreement(s) would not guarantee delivery, would impose unreasonably high costs on the Company's customers and/or would violate existing regulatory standards, and under no circumstances will the Company accept bids in this RFP that are in excess of \$45 per AEC.

2. To resolve Mr. Kalcic's concerns over the amount of AECs to be purchased and banked, PECO, through informal discovery, has demonstrated, to the OSBA's satisfaction, that the 450,000 non-solar Tier I AECs which PECO requests authority to procure represent a reasonable amount of AECs in light of PECO's 2011 and 2012 compliance requirements.

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AGREED TO BY:

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\_\_\_\_\_  
William R. Lloyd, Jr., Esquire  
Small Business Advocate  
Sharon Webb, Esquire  
Office of Small Business Advocate  
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Philadelphia, PA 19101-8699

Dated June 22, 2007

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for :  
Approval of (1) A Process to Procure :  
Alternative Energy Credits During the :  
AEPS Banking Period and (2) A Section :     Docket No. P-00072260  
1307 Surcharge and Tariff to Recover :  
AEPS Costs :**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served copies of a Stipulation by PECO Energy Company and the Office of Small Business Advocate in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA FIRST CLASS MAIL**

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**RECEIVED**

JUN 25 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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Kenneth M. Kufak, Esquire  
Co-Counsel for PECO Energy Company

Date: June 25, 2007