



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P.O. BOX 3265, HARRISBURG, PA 17105-3265
 September 21, 1998

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TO ALL PARTIES

Metropolitan Edison Company	R-00974009
Pennsylvania Electric Company	R-00974008
PECO Energy Company	R-00973953
Pennsylvania Power & Light Company	R-00973954
UGI Utilities, Inc.	R-00973975
West Penn Power Company	R-00973981
Duquesne Light Company	R-00974104

Re: Chapter 28 Electricity
 Generation Customer Choice
 and Competition Act; Capacity
 Issues Within the PJM Interconnection I-00980078

DOCKETED
 SEP 24 1998

To Whom It May Concern:

This is to advise you that an Interim Order has been adopted by the Commission in Public Meeting on September 17, 1998 in the above entitled proceeding.

An Interim Order has been enclosed for your records.

Very truly yours,

James J. McNulty
 Secretary

EEF

Enclosure
 Certified Mail
 JEP

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held September 17, 1998

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

Metropolitan Edison Company	:	Docket No. R-00974009
Pennsylvania Electric Company	:	Docket No. R-00974008
PECO Energy Company	:	Docket No. R-00973953
Pennsylvania Power & Light Company	:	Docket No. R-00973954
UGI Utilities, Inc.	:	Docket No. R-00973975
Pennsylvania Electric Company	:	Docket No. R-00974009
West Penn Power Company	:	Docket No. R-00973981
Duquesne Light Company	:	Docket No. R-00974104
	:	
Re: Chapter 28 Electricity	:	Docket No. I-00980078
Generation Customer Choice	:	
and Competition Act; Capacity	:	
Issues Within the PJM Interconnection	:	

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INTERIM ORDER

DOCKETED

SEP 24 1998

BY THE COMMISSION:

Today, the Commission is obliged to adopt the following interim order to ensure that the Commonwealth's transition to retail electric choice meets the statutory schedule set forth in the Electricity Generation Customer Choice and Competition Act. This interim order reflects the Commission's ongoing commitment to take appropriate action in its own right, or in cooperation with federal agencies, to implement the statutory directive for electricity customer choice through each utility's restructuring order and any

related settlement. We note that this issue may exist in both the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") and the East Central Area Reliability Coordination Agreement ("ECAR"). This interim order applies to all Electric Distribution Companies ("EDCs") and capacity holders under our jurisdiction ("jurisdictional entities").

We must note that this is not the first time the issue of capacity availability, particularly in the PJM Interconnection, has come before the Commission. A brief review of this matter is in order.

One year ago, on the eve of the electricity choice pilot programs, the Commission received information that there were similar concerns related to the availability and price of capacity within PJM and energy within ECAR. Specifically, there was a concern that capacity might not be available in PJM and that energy was not available in ECAR, or, if capacity was available, it would be offered at a price without any economic justification well-above the rate acknowledged as accurate in the pilot program implementation orders.

In October, 1997, the Commission was compelled to order electric distribution companies to adhere to the capacity prices acknowledged in the pilot program dockets and to file confidential reports identifying capacity sources and prices for pilot customers as of November 1, 1997. The generation credit (shopping credit or comparison cost) for residential, commercial, and industrial customers was based, in part, on a finding of the presumptive, reasonable price of capacity set forth in our pilot program orders. That price was a fraction of the PJM capacity deficiency charge of \$58.00 per KW/year.

We should note that the issues differ somewhat depending on region. In the PJM region, PJM rules apply to require each load serving entity to demonstrate sufficient installed capacity reserves (ICAP) so as to meet the terms of the PJM reliability assurance agreement. Failure to meet the ICAP obligation results in the imposition of a substantial penalty based upon the avoided cost of constructing a new gas turbine generation unit. No such installed capacity obligation exists in the ECAR region in the western portion of the

Commonwealth. There, the concern is with regard to the availability of energy that may be needed for serving end use customers. In early September, 1998, informal complaints once again began to reach the Commission indicating that capacity was either not being offered at all, or if offered, it was at economically unjustifiable and inexplicably excessive rates, in some cases even higher than the PJM installed capacity deficiency charge. As in 1997, if suppliers are required to pay capacity charges well beyond that contemplated in Commission restructuring orders, the generation shopping credits adopted by the Commission with the parties may not be sufficient to develop a competitive market nor to initiate competition as mandated by the Act on January 1, 1999. Clearly, this is both an incongruous and unacceptable outcome without justification in any record heretofore established before this Commission by the incumbent local distribution companies and other jurisdictional entities who are members of the incumbent group of integrated holders of transmission, distribution and generation facilities that are the major holders of capacity within the PJM area.

On September 3, 1998, in an effort to resolve this matter, an informal meeting was held at the Commission to address the capacity issue. That meeting was attended by a number of capacity holders, electric generation suppliers, the staff of the PJM ISO, and a representative of FERC. A number of questions were raised about the necessity of continuing the discussion in front of the Commission when the more appropriate venue seemed to be the PJM ISO. Consequently, the Commission asked the PJM ISO staff whether they would convene a meeting to address the capacity issue. The ISO staff agreed to do this by adding the capacity issue to the PJM Reliability Committee agenda for the September 10, 1998, meeting in Wilmington, Delaware.

The September 10, 1998, PJM membership meeting in Wilmington did not see a meaningful, productive discussion of the capacity issue. Indeed, several non-PaPUC jurisdictional capacity holders acted affirmatively to remove the capacity discussion and any possible resolution from the agenda, further delaying consideration of these issues

until a special meeting subsequently called for by the ISO and now scheduled for September 17, 1998, in Valley Forge, Pennsylvania. Counsel for the Commission expressed grave concern at this unwarranted delay and its possible consequences.

It is our strong preference that the parties resolve these matters in a spirit of timely cooperation. However, because of the imminence of the January 1, 1999, statutory phase-in of retail electric choice, and given the lack of discussion of the capacity issue on September 3, 1998, and again on September 10, 1998, by PJM ISO and the market participants, and the continuing appearance of similar difficulties in ECAR, the Commission has no choice but to act affirmatively to meet its statutorily mandated duties to implement retail access under Section 2806(b) of the Act. We take this action as an interim order, leaving open the possibility of consideration of any reasonable and acceptable alternative arrived at by the PJM membership meeting in Valley Forge on September 17, 1998.

A number of options are available to our Commission to address the capacity issue, including but not limited to an immediate Section 2811 investigation or possible injunctive action by a federal court. Our preferred approach, at this point, is to enter an Interim Order as we did last year with the expectation that the parties will recognize the necessity of abiding by the spirit of the law and of honoring their restructuring orders and subsequent settlement agreements. Having reviewed the record in utility restructuring proceedings and settlements, we believe that capacity follows the departing customer. The competitive transition charge ("CTC") and associated shopping credit in each of those proceedings already reflects a value for PJM installed capacity and for the cost of energy in the ECAR region.

Capacity must follow the departing customer at the presumptive \$19.72 per kw-year amount that appears in each PJM utility's restructuring order for calendar year 1999. This figure was a part of the record before us and the basis for restructuring orders. It has not been disturbed by any subsequent settlements, and given that our restructuring orders

and stranded cost award calculations have been based upon it, has the force of law. We note, moreover, that utilities that offered installed capacity cost estimates in the record of the restructuring proceedings provided evidence which essentially supports our \$19.72 KW/year conclusion. It should be noted that had the utilities appearing before us offered higher estimates of installed capacity cost, it would have increased the estimated future value of installed generation for which competitive transition charge recovery was claimed and would have reduced the overall stranded cost award because the higher the value of generation assets, the lower the amount stranded. There is, therefore, a potential question as to whether the record in some of the above restructuring cases contains knowing misrepresentations about the cost of installed capacity. We would note that the issue does not seem to apply to those utilities which are not PJM members, as only PJM obligates load serving entities to maintain a specific installed capacity inventory.

We therefore direct PJM capacity holders which are jurisdictional entities to immediately release/offer installed capacity at \$19.72 per KW/year. Notwithstanding the foregoing, participants would remain responsible for capacity deficiency payments calculated pursuant to the FERC-filed PJM Reliability Assurance Agreement and administered by the ISO. To the extent necessary, we shall ask FERC to take action in support of this interim order. This \$19.72 installed capacity price shall continue to be binding upon our jurisdictional entities until either FERC or PJM and its members establish an effective day-ahead liquid capacity auction and capacity hoarding prohibitions that include adequate uncommitted installed capacity monitoring rules.

We recognize that, on the path towards creating a retail market, we are continuing a traditional form of price regulation, as authorized by 66 Pa.C.S. §1301 and §2809(e). This apparent paradox is necessitated by recent actions of the holders of capacity in PJM, in which a few entities hold virtually all of the installed capacity necessary for every market participant to serve end use customers in the PJM area. The inexplicable market failure in installed capacity in PJM appears to present a situation in which capacity

holders are acting in a monopolistic or oligopolistic fashion in an attempted exercise of market power and to resist market entry by new competitors. Chapter 28 calls for the establishment of a true competitive market, and we intend to carry out the mandate of the legislature by all means within our authority. It would indeed be a bitter blow were Pennsylvanians to discover that they have committed to the elimination of rate regulation and the funding of utility stranded costs and have not in return obtained the essential benefits of the competitive retail generation market intended by the legislature.

As in 1997, we include in this Interim Order a directive to the capacity-holders to file confidential reports with the Commission specifically identifying capacity (for PJM) or energy sources (for ECAR) and prices for shopping customers as of September 17, 1998. Likewise, marketers licensed by our Commission must also file confidential reports, including copies of correspondence to and from the capacity holders, establishing their requests for capacity or energy made on or before September 17, 1998. Those reports must be filed with the Secretary of the Commission at the above investigation docket no later than September 24, 1998. In view of the fact that this is the second time that the Commission has been compelled to act on this matter, that data should be correlated by the Law Bureau and supporting staff with any confidential data received from the PJM ISO on capacity availability and pricing, with a view towards pursuing the Commission's market monitoring responsibility under Section 2811 of the Act. The refusal to discuss capacity availability and to establish *meaningful*, market-based pricing with EGSs up to this point may raise substantial anti-trust concerns.

Finally, it is important to note that this was not, and is not, a reliability issue. A physical capacity problem is not created by retail choice because existing load neither increases nor decreases the capacity requirements of the system.

We stress that ECAR utilities, marketers operating within ECAR and licensed by the Commission, the PJM ISO and the PJM membership are free to pursue other solutions, such as the implementation of a day-ahead liquid capacity trading system and

the institution of a no-hoarding rule. Our Interim Order will offer reconsideration at any time if *viable* alternatives that take into account the January 1, 1999, start date emerge from ECAR participants or from the September 17, 1998, PJM conference and are jointly presented by the EDCs and EGSs and are supported by the PJM ISO. Absent such a resolution, the Commission is committed to implementing this Interim Order for the calendar year 1999, to ensure an orderly transition to generation competition. It is essential to address this issue now to implement the law and to avoid frustrating the legitimate expectations of all who have secured an opportunity to participate in the first year of customer choice.

We look forward to prompt resolution of this matter and timely compliance on the part of our jurisdictional utilities and licensees affected by this Motion and Order.

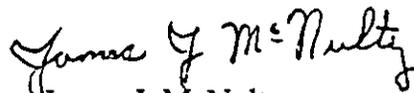
Accordingly, pursuant to the Public Utility Code and the regulations promulgated thereunder the Commission herewith issues this interim order; THEREFORE,

IT IS ORDERED:

1. That PJM capacity holders are to immediately release/offer capacity at the presumptive \$19.72 per kw-year level absent ISO directed capacity deficiency findings;
2. That jurisdictional entities with installed capacity within the PJM area shall file confidential reports with the Secretary of the Commission specifically identifying capacity sources and prices for shopping customers as of September 17, 1998; electric generation suppliers shall file confidential reports, including copies of correspondence to and from the capacity holders, establishing their requests for capacity on or before September 17, 1998; that ECAR members shall file confidential reports with the Secretary of the Commission specifically identifying energy sources and prices for shopping customers as of September 17, 1998; electric generation suppliers in the ECAR area shall file confidential reports, including correspondence establishing their requests for energy on or before September 17, 1998; all of these materials are to be filed no later than September 24, 1998 at the above investigation docket;

3. That the data received pursuant to ordering Paragraph 2, above, will be correlated with any confidential information received from the PJM ISO and reviewed by the Law Bureau and any necessary supporting staff assigned by the Office of the Executive Director with a view towards appropriate action by the Law Bureau to meet the Commission's market monitoring responsibility under Section 2811 of the Act;
4. That this Commission will reconsider this interim order if viable alternatives that take into account the January 1, 1999, start date emerge from the ECAR participants or from the September 17, 1998, PJM conference and are jointly presented by the ECAR participants, or by PJM EDCs, EGSs, and the PJM ISO;
5. That absent further action by the Commission, the effective period of the Interim Order will be calendar year 1999;
6. That a copy of this Interim Order shall be served upon all Commission jurisdictional electric distribution companies, electricity generation suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, the Federal Energy Regulatory Commission, and the United States Department of Justice -- Antitrust Division.

BY THE COMMISSION


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: September 17, 1998

ORDER ENTERED: September 21, 1998