

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF DUQUESNE :
LIGHT COMPANY FOR APPROVAL :
OF ITS RESTRUCTURING PLAN : Docket No. R-00974104
UNDER SECTION 2806 OF THE :
PUBLIC UTILITY CODE :

**Brief of
The Environmentalists
and the
Low-Income Advocates**

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1. INTRODUCTION AND SUMMARY OF ARGUMENT

1. Environmental Issues

For the Environmentalists,¹ the goal of electric utility restructuring is to create a new marketplace where:

... consumers have access to adequate, safe, clean, reliable and efficient energy services at fair and reasonable prices at the lowest long-term cost to society.²

Restructuring of the industry must do more than simply facilitate a mad rush for the next cheap kilowatt-hour. We need to unleash the creativity and resourcefulness of a free and vibrant market to the task of lowering the price of electricity for Pennsylvania homes, businesses, factories and farms and to the challenge of reducing the serious environmental and health consequences of generating, transmitting and distributing electricity. Electricity's fuel cycle is responsible for roughly two-thirds of our society's SO₂ emissions, nearly one-third of total NO_x emissions, and more than one-third of total CO₂ emissions, as well as a perilous list of hazardous, radioactive and solid wastes and liquid effluents.

The United States has made significant strides since the major wave of federal environmental legislation was enacted in the early

"Using energy in today's ways leads to more environmental ~~The Age of the~~ August 1988
human activity."

¹The Environmentalists consist of the Sierra Club, the Group Against Smog and Pollution, the Pennsylvania Public Interest Research Group, Citizen Power, Clean Water Action, Citizens Organizations on Utility Policies.

²This is the goal which begins *The Environmentalists' Vision for the New Electricity Marketplace*. This two-page document, drafted by the client group, is in this proceeding's record as Exhibit DS-2 of Environmentalists' Statement 1 (David Schoengold). The *Vision* document is included in this brief as Appendix A.

1970's. The federal Clean Air Act Amendments of 1992 were the beginning of a new era of environmental protection, using allowance trading and other market-based strategies to further reduce emissions at a cost lower than the traditional diaper-on-the-smokestack approach. In recent months, the momentum for change has accelerated again, with the U.S. Environmental Protection Agency's new regulations for nitrogen oxides and small particulates, the world community's commitment to binding reductions of carbon dioxide and other greenhouse gasses, and the President's proposal for a series of new tax breaks and other incentives for a variety of energy conservation and renewable energy technologies.

Unfortunately, except for some estimates of future environmental compliance costs buried in the printouts of market value projections, the various restructuring plans submitted by Pennsylvania's electric utilities fail to acknowledge, much less address, the environmental implications of their proposals. The companies argue that environmental issues belong in another department and are not important to the restructuring debate and they tell the Pennsylvania Public Utility Commission to ignore these issues entirely. The new epithet that the utilities use today for environmental initiatives (and universal service programs and any other attempt to address a societal need or interest other than their short-term profitability) is to label the effort a "social" program. Fortunately, most people of Pennsylvania do not share these views and they want policies which advance not only the economic self-interest of individual companies and consumers, but also the broader policy goals of our society.

These restructuring cases provide us with an important opportunity to set a better course for the new marketplace. The best means to affect this change is in our treatment of stranded costs. This opportunity was eloquently described by Peter Bradford in his testimony in the PECO Energy restructuring case:

Strandable investment is the public's best road to an effectively competitive and an environmentally acceptable future. Regulators, legislators and others in the public sector must not give it away until that future is well secured. The opportunity for recovery of a substantial amount of stranded costs should be expressly conditioned on full utility cooperation in achieving the best result for customers and the environment in the years ahead.³

³Application of PECO Energy Company for Approval of its Restructuring Plan, Docket No. R-00973953, CEPA *et al.* Statement of Peter Bradford, p. 13, l. 5-9.

The Environmentalists suggest that these restructuring cases, with their quantification and recovery of stranded costs, present us with the opportunity to forge a new deal with the utilities. If we the ratepayers agree to pay these stranded costs, what do we receive in return? What will the people of Pennsylvania have to show for the payment of stranded costs in this proceeding? That is the question they are asking the Public Utility Commission.

As environmentalists, we have worked to interject these issues into the debate. After hearing the evidence and the arguments, we now urge the Commission to modify Duquesne's restructuring plan in a number of important ways:

1. Revise the CTC rate design to remove it from the fixed portion of rates and into the kilowatthour charges, so as not to undermine consumers' incentive to conserve electricity.
2. Add reasonable interconnection standards for small self-generation, so such projects are not stifled by costs and bureaucratic hassles.
3. Add a net metering tariff for renewable energy projects and fuel cells of 10 kW or less.
4. Require all suppliers to tell consumers about air emissions, liquid effluents and radioactive, hazardous and solid wastes released to the environment by their generation of electricity.
5. Reduce the market domination of the monopoly utility by creating a supplier pool to serve non-choosing customers, so that customers who fail to choose do not simply default to the monopoly utility.
6. Add a renewable energy pilot program.
7. Order a distribution system planning process which evaluates the life-cycle costs of all system upgrade options, including energy conservation and efficiency, load management and distributed generation and which invites public involvement.
8. Expand the consumer education program to address the environmental consequences of energy production and use and the opportunities to reduce use through energy conservation and energy efficiency.
9. Add an energy loan program to help non-low-income customers improve their energy efficiency, with an initial capitalization equal to 2% of the Company's stranded cost recovery.
10. Create a Sustainable Energy Development Fund to support renewable and clean energy projects, energy conservation and efficiency development, with funding ramping up to 1% of gross revenues.

11. Become a full partner in the U.S. Department of Energy's Million Solar Roofs Program and provide loans for photovoltaic installations at 0.5% above the Company's cost of money.
12. Require the Company and all electric generating suppliers selling power to Duquesne customers to upgrade their generating plants to current Pennsylvania new source environmental standards.
13. Require the Company to file annual reports with the Commission and the public on the Company's compliance with the terms of the Commission's final order.

By making these changes, we will make an investment in a sustainable energy future and be on the road to adequate, safe, clean, reliable and efficient energy services at fair and reasonable prices and at the lowest long-term cost to society.

2. Low Income Issues

This brief is also submitted on behalf of the Low Income Advocates.⁴ The Environmentalists join with their allies in the low-income community to voice their concern about how the poor will fare in the restructured market. Restructuring in other industries has not done a very good job of reducing costs and improving service for our most vulnerable citizens who for a variety of reasons, may be unable to experience the benefits promised by restructuring. We need to make certain that this exclusion does not occur in the electric industry or, more realistically, is as limited as possible. As low-income advocates, we urge the Commission to reject a number of elements of Duquesne's restructuring plan and to modify it in a number of important ways:

1. Ensure that Electric Generation Suppliers ("EGSs") do not engage in redlining, discriminatory and unfair credit policies and other tactics which prevent low-income households from securing electricity from an EGS. Evaluate the extent to which low-income households are able to participate in the new market.
2. Encourage aggregation of low-income households and other strategies to facilitate their participation in the market.

⁴Mon Valley Unemployed Committee, Just Harvest, Alliance for Progressive Action, the Rainbow/PUSH Coalition.

3. Expand the consumer education program to address the specific needs and concerns of low-income households.
4. Require LIURP funding to ramp up to 0.2% of system revenues.
5. Require CAP funding ramping up to 0.5% of system revenues.
6. Recover universal service program costs from all customer classes, not just the residential class.
7. Create a Universal Service Program Advisory Committee so provide meaningful public input into program design and implementation.
8. Create a local Consumer Education Advisory Committee with responsibility and authority for the local education program.
9. Order a consumer education planning process as described in the testimony of Roger Colton and Barbara Alexander.
10. Require a four-year consumer education program budget equal to \$5.00 per residential customer, of which 65% is allocated to the Commission’s statewide program and 35% is allocated to the local education program.

The Three Tests	
(1)	Is the proposal in the public interest? Is it good for consumers? Is it good for competition? Is it good for the environment?
(2)	Is the proposal consistent with the Act?
(3)	Are the rates and charges imposed by the proposal just and reasonable?

3. The Three Tests

In evaluating the restructuring plan submitted by Duquesne and the alternative proposals made by the intervening parties, the Environmentalists urge the Commission to apply three tests. The first test is whether the offered proposal is in the public interest. For the Environmentalists, the public interest is found in the answers to three questions: is it good for the consumer, is it good for competition, and most important for the Environmentalists, is it good for the environment?

By asking the first question, is it good for the consumer, we mean will consumers see a meaningful cut in electricity prices? Will the benefits of restructuring be shared by all customer classes? Will low income consumers have access to essential electric services on reasonable terms and conditions

and will they be able to participate in the new market? Will consumers receive the information and education they need to meaningfully participate in the new market?⁵

⁵Consumers need to understand the basic workings of the electric system and how it will change under restructuring. All of us have heard consumers ask if their lights will go out if the supplier they chose goes out of business. Misunderstanding of this type will interfere with the proper functioning of the market.

The second question under the public interest test is whether the proposal is good for competition. Pennsylvania will realize the benefits of restructuring only if the Commission succeeds in creating a robust and vibrant competitive marketplace. Do the unbundled energy prices allow for meaningful competition? Is the market domination of the monopoly utility constrained? Are fair rules developed and enforced which prevent restraint of trade and other practices? As one of the parties noted in its brief in the retail access pilot proceeding, “[t]his Commission cannot take competition for granted.”⁶ In evaluating the results of the Act and the Commission’s implementation of it, people will look first and foremost to whether the Commission succeeds in producing a competitive market.

The third and final question of the public interest test is whether the proposal is good for the environment. Does the proposal help reduce adverse public health and environmental consequences of the production, transmission, distribution and use of electricity? Does the proposal support energy conservation and efficiency, renewable energy and other clean energy alternatives? Does the proposal advance a sustainable energy future for Pennsylvania?

The second test which the Environmentalists urge the Commission to apply in its decision-making is whether the proposal is consistent with the Electricity Generation Competition and Customer Choice Act (“the Act”).⁷

The third test for restructuring proposals is whether the rates and charges imposed are just and reasonable. The Act did not repeal the Public Utility Code, it simply added a new chapter to the existing body of public utility law. The Code’s standards of just and reasonable rates, used and useful and the

⁶Docket P-00971168 *et al.*, Main Brief of Conectiv Energy (August 13, 1997), page 2. They note that despite the necessary legislative and regulatory actions, neither the telecommunications industry nor the natural gas industry has yet to experience successful competitive markets.

⁷66 Pa.C.S. §§ 2801 *et seq.*

other sections of the Public Utility Code are still the law and these requirements apply to the new rates imposed by the restructuring plan.

The balance of this brief follows the generic outline drafted by the parties. Where the Environmentalists have chosen not to address an issue, the corresponding outline heading is left blank.

2. PHASE-IN OF CUSTOMER CHOICE

1. Method of Customer Selection

Duquesne proposes to allow customers access to the competitive market in three phases spread out over three years. The assignment of customers to one of the phases or groups (and thus the timing of the customer's ability to shop) is determined by geography for residential and small commercial customers and by Standard Industrial Code for large commercial and industrial customers.⁸

The Environmentalists prefer a first come/first served approach which allows customers to volunteer to shop. If too many residential and small commercial customers sign up for one of the phases, a lottery would be held to determine who is able to join. For large commercial and industrial customers, if the number of customers signing up exceeded the allowance, then each volunteering customer would be served with a pro-rata share of their load. This approach was adopted by the Commission in the PECO decision⁹ and we support it in this proceeding.

⁸Xxx cite

⁹Xxx cite

A robust competitive market will develop only if there is a significant number of potential customers. If an initial group of customers is offered the opportunity to enroll on the basis of zip code or SIC code, it is quite probable that many in the initial group would not enroll. To ensure a healthy number of market participants in the early years of competition, it is better to allow the early-adopters to self-select. The Commission adopted this same principle in the Retail Access Pilots proceeding¹⁰ and it is sound policy for this proceeding as well.

2. Timetable for Phase-In

Duquesne proposes to offer to phase in customers in three equal segments on a three year schedule.¹¹ The Environmentalists prefer to see an accelerated schedule, where two-thirds of the customers are able to choose their supplier on January 2, 1999 and the final one-third are able to choose on January 2, 2000. This is the phase-in timetable which the Commission has ruled consistent with the Act and which was approved in the PECO decision.¹² It makes good sense in this proceeding because it ensures a large number of market participants in the critical first few years of the transition.

3. TRANSMISSION AND DISTRIBUTION RATES; UNBUNDLING ISSUES

1. Introduction

¹⁰Docket P-00971168 *et al.*,xxx cite

¹¹Xxx cite

¹²Xxx cite

Much of the attention in this proceeding has focused on the generation component of the electric utility industry, but both the transmission and the distribution segments of the industry will be undergoing major changes as well.

2. 1996 Test Year Cost of Service
3. Required v. Realized Rates of Return
4. Distribution Losses
5. Ancillary Services
6. Voltage-Differentiated Rates

7. Other Issues - Targeted Area Planning

There is widespread recognition that the distribution system will remain a regulated monopoly into the foreseeable future. As such, an important consideration for the Commission is how it will regulate Duquesne's distribution function at a time when much of the rest of the system is subject to market discipline. The Environmentalists submit that as load grows, Pennsylvania's Electric Distribution Companies ("EDCs") will come under increasing pressure to upgrade transmission and distribution lines. However, before an EDC invests ratepayer money in such actions, it should first evaluate the life-cycle costs of a number of alternatives, including energy conservation and efficiency, load management and distributed energy generation.¹³ While integrated resource planning may have lost some applicability in the restructured market for generation decisions, it remains an important tool in the regulated world of distribution.

The Commission Should Structure the Regulation of the Distribution Utilities to Facilitate Competition and Encourage Energy Efficiency.

¹³Environmentalists' Statement No. 1 (David Schoengold), pp. Xxx.

Environmental witness David Schoengold recommends an “integrated” approach to regulation of the distribution system that encourages the utility to identify and implement the least-cost option in meeting system requirements.¹⁴ Thus, as explained by Mr. Schoengold, an integrated approach to distribution planning means focusing on finding the least expensive solution to distribution problems. Sometimes the least-cost way to solve a distribution problem is not by building new distribution facilities, but rather by targeting demand-side management approaches or by siting generation in local areas so that the need for new distribution facilities is reduced.¹⁵ In other situations, the lowest cost method may be to reconfigure existing distribution facilities rather than build new ones. As Mr. Schoengold testified, simply assuming that distribution system investment is the appropriate solution to system needs may well lead to higher costs to customers and negative environmental impacts.

Mr. Schoengold recommends a process for turning this common sense principle into a workable system for minimizing distribution system costs and environmental impacts. According to Mr. Schoengold, the Company needs to begin a systematic collection of data to support a thorough understanding of its distribution capabilities and limitations, forecasted needs and capital additions, area-specific avoided costs, and the costs and characteristics of a range of alternatives to traditional system reinforcements.

In sum, the Commission should require the Company to conduct detailed modeling studies of the distribution system to facilitate investments in the distribution system that are good for the economy and for the environment.

¹⁴Environmentalists’ Statement No. 1 (David Schoengold), p. 16, l. 20 to p. 18, l. 14.

¹⁵Schoengold recommended several strategies to encourage the proper geographic placement of distributed generation, including 1) the offering of credits by the LDC to EGSs equal to the value of the generation and distribution benefit, and 2) allowing the LDC to build and/or own generation where it alleviates distribution problems.

8. Conclusion

4. TRANSITION OR STRANDED COSTS

1. Overview of Stranded Cost Valuation and Recovery Approaches

1. Introduction

The quantification of stranded costs will be the linchpin of the Commission's restructuring order. A higher stranded cost award means a higher Competitive Transition Charge and/or a higher Intangible Transition Charge ("CTC" and "ITC") in the unbundled rates. Because of the rate cap,¹⁶ a higher CTC means a lower generation or shopping credit, which means that less of the bill is subject to competition and customers have less opportunity to obtain savings from alternate suppliers. This means that alternate suppliers have a tougher time entering and staying in the market and robust competition fails to develop and the promise of the Act is unfulfilled.

¹⁶66 Pa.C.S. §2804(4).

These issues are important to the Environmentalists because the absence of competition will, according to Environmentalists' witness David Schoengold, "slow down the introduction of new, clean generating options (both fossil-fueled options and renewable resource options)." In addition, a high stranded cost recovery "will indirectly subsidize existing generation ... including older inefficient, polluting units"¹⁷ and these emissions "will make it more difficult to maintain air quality at levels sufficient to protect human health and property." This in turn may "impose restrictions on economic development, constraining the siting of manufacturing operations or competitive power producers."¹⁸ How the Commission treats stranded costs will have a very large impact on the fate of the current generation of polluting and unsafe generating plants and whether and when Pennsylvania moves to a new and healthier electric future for our children.

2. Duquesne's Approach
3. Intervener Approaches
4. Conclusion

2. Generation-Related Stranded Costs (Recovery Pursuant to Section 2808(3))

1. Introduction

Approximately 64% of Duquesne's total stranded cost claim is its calculation of \$1.916 billion of stranded generating assets.

First phase quantification

¹⁷Environmentalists' Statement No. 1 (David Schoengold), p. xxx.

¹⁸Environmentalists' Statement No. 1 (David Schoengold), p. xxx.

Second phase quantification

2. Net Book Value
 1. Total Net Book Value
 2. Treatment of Beaver Valley 2 Lease Costs
 3. Recovery of Phillips and Brunot Island Costs
 4. Conclusion
3. Market Value
 1. Introduction
 2. Market Price Projections
 - (1) Forecasting Methodology

The market value estimate involves 30+ year projections of every important variable in the business, including electricity prices (expressed on an hourly basis), customer consumption and demand, the hourly output of all of its generating plants, and the O&M and capital costs (including such things as life extensions, environmental compliance,¹⁹ etc.). It is the sort of exercise which makes consultants wealthy. In the Partial Settlement, the stranded generating asset claim of \$4.484 billion is the difference between a regulated value of \$6.787 billion minus a market value of \$2.303 billion.²⁰

These changing numbers reflect the inherent inadequacy of Duquesne's methodology for quantifying its stranded costs. As David Schoengold testified,

[t]he key problem is its sensitivity to the input parameters. While this might not be so much of a problem if the method is used in a way that

¹⁹One example of the "fictional" aspects of this analysis is that Duquesne assumes no future changes in emission standards or other environmental regulations. No new compliance costs are shown for the EPA's recently adopted ozone and small particulate regulations. Is the probability really zero that in the next 30 years, we will see no standards to reduce carbon dioxide emissions?

²⁰Joint Petition for Partial Settlement, ¶ 18, p. 17. See also Duquesne Statement No. 1 (Thomas Hill), pp. 9-16.

allows for regular corrections, the Partial Settlement is based on a one-time use of the method to arrive at a CTC, with no mechanism for adjusting the CTC if conditions change. A small difference in the estimate of market price can make a huge difference in the calculated level of assumed stranded generating assets. A few tenths of a cent difference in market price can mean hundreds of millions of dollars in stranded costs. For example, a 0.4 cent per kWh difference in market price meant a \$788 million stranded cost difference in the initial Duquesne restructuring filings.²¹

The Environmentalists contend that any such charges would be so fraught with uncertainty as to make them anything but just and reasonable unless an alternative approach is taken to reduce the uncertainty.

- (2) Input Assumptions
- (3) Results
3. Other Evidence of Market Value
4. Conclusion

4. Other Factors Affecting Market Value/Stranded Costs
 1. Life Extension
 2. Plant Shutdowns
 3. Productivity Gains
 4. Costs Independent of Operation
 5. Projected Capital Additions and O&M Expense
 6. Environmental Regulations
 7. Other
 8. Conclusion
5. Conclusion

²¹Environmentalists' Statement No. 1-S (David Schoengold), p. 21, I. 5-14.

3. Merger Savings
4. Decommissioning
 1. Nuclear Decommissioning
 1. Introduction

The manner in which the Commonwealth authorizes the decommissioning and decontamination of its nuclear power plants may be one of the most significant legacies of the Act. It is essential that adequate funding be available for this task to minimize the possibility of radioactive exposure to our future generations. Nevertheless, the cost of undertaking such a task is massive and difficult to predict. Any mechanism to provide funding for decommissioning must be both efficient and equitable. Nuclear plant operators should be responsible for some portion of the decommissioning costs so as to have a motive to control these costs.

It is unreasonable to have the wires charge be the sole means for funding the Company's nuclear decommissioning obligations. This would provide a subsidy to the continued operation of the plant and remove all incentives for Duquesne to control future decommissioning costs. Customers should not be saddled with an open-ended obligation to bear these costs, which are likely to escalate if the nuclear units continue to operate over the remainder of their existing licenses. Instead, the Commission should adopt a framework for decommissioning -- as set forth in the testimony of Environmentalist witness Bruce Biewald -- that ensures that the needed funds will be available in a timely manner; that provides for customers and shareholders to bear their fair share of the costs over time, and that provides incentives for the plant owner to control the magnitude of decommissioning costs.

The Company currently estimates that it will spend \$ xxx million to decommission its nuclear facilities.²² As the unchallenged testimony of Bruce Biewald reveals, this amount is:

- *large and likely to grow:* The nuclear decommissioning cost estimates for dismantling a large pressurized water reactor are today about 15 times higher (6 times higher after adjusting for inflation) than they were in 1976. Indeed, Environmentalists' witness Biewald has analyzed approximately 180 site -specific nuclear decommissioning cost

²²Xxx cite

estimates that have been conducted by Duquesne's decommissioning consultant. The analysis demonstrates that decommissioning cost estimates are escalating at an alarming rate, doubling every 7-8 years;

- *very uncertain:* Dismantling a large, highly radioactive nuclear unit is a large, complex undertaking for which experience is quite limited, and for which regulations continue to evolve. A number of technical, economic and regulatory uncertainties will confound development of an accurate estimate prior expiration of the plant's licenses in 2014 and 2029.
- *within the control of the plant owner:* There is a clear relationship between routine plant operation and future nuclear decommissioning costs. Thus, running the plant today in a very clean manner (e.g., regular decontamination of equipment, removal of radioactive waste) will somewhat increase current operation costs, but lower decommissioning costs. Moreover, good planning and cost control measures for the decommissioning process that reduce the total exposure for decommissioning would translate into stranded cost reductions. Unfortunately, Duquesne has offered no evidence that it has a program in place to minimize the cost of its nuclear de-construction program. While the Environmentalists fully support the principle that adequate funds be made available to decommission the plants in a safe and timely manner, we are concerned that the allocation of these costs be equitable between shareholders and customers and that the Company mitigate these costs to the greatest extent practicable.

Based on the foregoing considerations, Environmentalists urge the Commission to take the following actions:

First, the Commission should not, at this point, extend the cost recovery for decommissioning beyond nine years. Instead, the Commission should address the complicated technical and policy issues of decommissioning in a generic case, in which limited regulatory resources can be used efficiently and a consistent statewide policy can be fashioned.

Second, the Commission should reject, at this time, the Company's proposal for assigning all future costs of nuclear decommissioning to the wires business. Rather, the Commission should consider the benefits of an incentive framework for nuclear decommissioning costs, in which the risks are shared between the Company and its customers. While it may be reasonable to fund some portion of decommissioning costs in this fashion, the Commission should carefully weigh the costs, benefits and risks of this approach. The Commission should consider the problems that occurred in the past when cost-based regulation was applied to the large, complex, expensive and uncertain project of nuclear plant construction.

Third, the Commission should direct Duquesne to undertake certain actions. Specifically, the Commission should require Duquesne to update its 1993 nuclear decommissioning study. Additionally, the Commission should require Duquesne to develop a plan for the mitigation of its decommissioning costs, setting forth, among other things, the procedures that the Company will put in place to ensure that the plant is operated in such a way that the decommissioning cost obligation is not increased.

2. The Need for an External Fund

The possibility of early retirement of Duquesne's nuclear stations must be taken into consideration in the design of decommissioning funding plans. Widespread discussion has occurred debating the effect that electric restructuring and competition will have on nuclear power plants. Environmentalists' witness Bruce Biewald suggests at least two of Duquesne's units may not be able to compete.²³ The financial difficulty that the Company could then experience from a retiring plant's loss of income is a persuasive reason for the maintenance of an external fund for decommissioning. It prevents the mis-allocation of the funding for other purposes.²⁴ Restrictions should be placed upon the use of the decommissioning funds and Commission jurisdiction should be preserved.

3. Cost-Benefit Analysis of Early Retirement

Any proposed increases in customer payments should trigger a cost-benefit analysis justifying the cost increase. In the event that Duquesne requests an increase in decommissioning funding, it must demonstrate that the increase is consistent with an overall economic plan for the unit. For example, if the Company plans to continue operating the unit for which the funding increase is requested, then it should

²³Environmentalists' Statement No. 2 (Bruce Biewald), p. xxx.

²⁴Environmentalists' Statement No. 2 (Bruce Biewald), p. xxx.

present a cost-benefit analysis that shows that continued operation, with the increased decommissioning funding levels, is the economic course of action.

4. Spent Nuclear Fuel

The treatment of spent nuclear fuel should be clarified and adjusted.

Not unlike the removal and disposal of ash from coal-fired units, the handling, storage and disposal of spent fuel rods at nuclear generating stations are a part of ongoing operations and maintenance and should be treated as such by the Commission. Indeed, Duquesne has included the Department of Energy's 1 mil/kWh charge for nuclear waste disposal programs in its projection of fuel costs and the market value of its nuclear assets. Despite treating this charge as an O&M expense, Duquesne now proposes to pay for this dry case storage through decommissioning funding. Duquesne should not be allowed to have it both ways. Since Duquesne has chosen to view the disposal of spent fuel as an operation and maintenance cost, a characterization with which we concur, it should not be given an opportunity to transfer the funding of disposal out to a wires charge.

2. Fossil Decommissioning

5. Regulatory Assets and Liabilities

1. Introduction

2. Disputes Regarding Specific Claims

1. SFAS 109 Deferred Taxes
2. Unamortized Debt Costs
3. Unamortized Sale/Leaseback Premiums
4. Deferred Rate Synchronization Costs
5. Deferred Employee Costs
6. Deferred Coal Costs
7. Deferred Caretaker Costs

8. Pre-Accrual of Nuclear Outages
 9. Transition Costs
 10. SFAS 106 Deferred Costs
 11. Warwick Mine Costs
 12. Pilot Program/Customer Education Expense
 13. Compensated Absences
 14. Injuries/Damages
 15. Other
3. Conclusion

6. Recovery of Stranded Costs

1. Introduction

Once the stranded costs have been quantified, the task is then to design the recovery mechanism which will "... provide the investors in Pennsylvania electric utilities with a fair opportunity to fully recover the amount of transition or stranded costs that the Commission finds just and reasonable."²⁵ The Environmentalists recommend the following principles in designing this mechanism:

1. The recovery period should be no longer than necessary.

²⁵66 Pa.C.S. §2804(14)

The Act provides for a CTC collection period which would end on December 31, 2005,²⁶ Since the CTC charge is a stone around the necks of ratepayers and a distortion of the true competitive market, it should be with us no longer than necessary. As David Schoengold testified, "... it is preferable to finish up the stranded cost collection (and to achieve the full benefits of competition) sooner rather than later."²⁷

P. 15 quote

2. The recovery should be capped and reconcilable by class.

Because the CTC are charges added to each kilowatt-hour, the total CTC recovery is directly dependent on the number of kilowatt-hours sold throughout the collection period. Even a very small discrepancy between projected sales and actual sales will result in a large difference in collections. The Act directed the Commission to "establish procedures for the annual review of the competitive transition charge" and to "reconcile the annual revenues received from the charge" at the approved level²⁸ and it should do so.

Assignment by class continues to accurately reflect the assignment of allocated cost recovery to those classes for whom the resource acquisition were initially made

²⁶66 Pa.C.S. §2808(b). A longer recovery period is permitted for "good cause."

²⁷Environmentalists' Statement No.1-E (David Schoengold), p. 12, l. 6-7.

²⁸66 Pa.C.S. §2808(f).

In designing the reconciliation mechanism, it is critical to prevent cost shifting between customer classes. CTC recovery should be set for each class and reconciliation should occur within each class.²⁹ This is important because of the different growth rates for the different classes. For example, if high growth is experienced in the residential class, and low growth in the industrial class and reconciliation was calculated on a system-wide basis, CTC recovery would be shifted to residential customers from the industrial customers.³⁰ With reconciliation by class, the residential CTC charge under this scenario would be reduced or shortened (to reflect the faster recovery) and the industrial CTC charge would be increased or lengthened (to make up for the under-recovery).

3. The recovery should be level over the recovery period.

Xxx Duquesne proposes this

The Act implies straight amortization of stranded costs³¹ and this is appropriate. The Environmentalists oppose both the Partial Settlement and the Choice Plan proposals for unbalanced recovery of the CTC charges over the recovery period. Reconciliation should be structured to recover the stranded costs in equal annual amounts. This will conform to §2808(f) and will most closely resemble the

²⁹This position is shared by others. See OCA Statement No. 4 (Lee Smith), p. 11-12.

³⁰This hypothetical is exactly what has occurred this decade. The residential and commercial classes have experienced load growth, but the industrial class has seen a drop in number of customers, peak load and energy consumption. Duquesne 1997 Annual Resource Planning Report, in the record as Conectiv Cross-Examination Exhibit 2.

³¹66 Pa.C.S. §2808(f).

market, where prices fluctuate because of natural market conditions but not because of a misplaced attempt to engineer rates.

2. Proposals to Adjust the Level of Stranded Cost Recovery

1. Mitigation

The Act imposes upon the utilities the undeniable responsibility to mitigate their stranded costs. The definition of “transition or stranded costs” are certain costs “which the commission determines will remain following mitigation by the electric utility.”³² Another section of the Act directs the Commission to consider “the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs by appropriate means in a manner that is reasonable under all of the circumstances...” and cites several specific mitigation strategies which should be considered.³³ It is interesting to note that the mitigation must be “commensurate with the magnitude of the ... stranded costs” and that the duty to mitigate exists not just up to the filing of the restructuring plan, but extends throughout the transition period.³⁴

One proven mitigation strategy which Duquesne has reduced rather than expand in the recent past is demand-side management. Energy conservation and load management mitigate stranded costs because they reduce the retail allocation of Duquesne’s stranded generating assets by reducing net retail peak load and freeing up capacity and energy for wholesale transactions.

³²66 Pa.C.S. §2803, definition of “Transition or stranded costs.”.

³³66 Pa.C.S. §2808(C)(4). This is another reason to recommend the trading account mechanism for the quantification of stranded costs.

³⁴66 Pa.C.S. §2808(C)(4).

2. Sharing of Stranded Costs

One of the policy declarations contained in the Act is that:

[i]n moving toward greater competition in the electricity generation market, the Commonwealth must resolve certain transitional issues **in a manner that is fair** to customers, electric utilities, investors, the employees of electric utilities, local communities, nonutility generators of electricity and other affected parties.³⁵ [emphasis added]

The legislative history is clear that there is no utility entitlement to 100% recovery of its stranded investment. In the Senate debate on the Act that occurred on November 25, 1996, Senator Piccola cited with favor a November 14, 1996 letter from Irwin A. Popowsky, Consumer Advocate which stated that under the Act, the burden of stranded costs would be "shared" by the utilities and the customers. The OCA letter emphasized that:

[i]t is extremely important to note that utilities are not guaranteed full stranded cost recovery under this bill. With respect to utility-owned and operated generation facilities, the PUC must determine the appropriate level of stranded costs that is just and reasonable to recover from ratepayers....³⁶

While recognizing nothing prevents a utility from requesting 100% recovery of its stranded costs, he stated that the utility may only "receive such recovery to the extent that the PUC determines it to be just and reasonable."³⁷

³⁵66 Pa.C.S. §2802(8).

³⁶Legislative Journal -- Senate, 11/25/96 at 2688.

³⁷Legislative Journal -- Senate, 11/25/96 at 2688.

Senator Brightbill also confirmed this recognition that the Act did not guarantee utilities a 100% recovery of their stranded investment: "...in California they guaranteed the utilities a 100-percent return on their stranded investment. Here we make no such guarantee."³⁸

In responding to this theme of a fair sharing of the responsibility, Environmentalists' witness David Schoengold testified:

get p. 19 quote - a bit different

... I believe that in a situation such as Duquesne's where there is a huge economic loss to address, it is not appropriate for the customers to have to bear the full responsibility for that loss and for the stockholders to receive a full return *on* their investment as well as return *of* their investment. I doubt that Duquesne's management would honestly try to claim that the company bore absolutely no responsibility for causing any of the stranded cost. 100 percent recovery of the stranded generating asset costs puts 100 percent of the responsibility for the economic losses on the customers and 0 percent on the company.³⁹

³⁸Legislative Journal -- Senate, 11/15/96, at 2692.

³⁹Environmentalists' Statement No. 1-E (David Schoengold), p. 40, l. 4-14.

Mr. Schoengold developed a model which examines depreciation, remaining rate base and returns on rate base year by year. He estimates that Duquesne stockholders have already recovered 41% of their investment in generating plant. By the time Duquesne's accumulated depreciation has reached 41% of the initial investment, the authorized returns on investment have totaled 126.5 percent of the initial investment. For Duquesne, the initial stockholder investment was \$0.835 billion (\$2.084 billion of production plant, times the equity fraction of 40.1%). The total authorized returns have been \$1.057 billion (\$0.835 billion times 126.5%). The total dollars to Duquesne stockholders (depreciation plus return) have been \$1.4 billion).⁴⁰ The internal rate of return of their investment to date has been approximately 8.8%. He then went on to analyze the level of stranded generating asset cost recovery which would be necessary to pay off the debt holders and to provide the stockholders with a return of their investment and a 9% return on their investment. He determined that this level was \$xxx billion, or 60% of the Company's generating asset stranded claim. a 9% return on a bad investment seems quite reasonable.

The Environmentalists recommend that the Commission adopt Mr. Schoengold's analysis and reduce the stranded generating asset recovery to no more than \$xxx billion.

3. Securitization
3. Methods of Stranded Cost Recovery
 1. Accelerated Amortization Under Section 2804(4)(v) (Duquesne's ROE Spillover Proposal)
 2. Immediate Rate Reductions (OCA Proposal)
 3. Rate Cap/CTC Extension
 4. Other Proposals
4. Other Arguments Regarding Recovery of Stranded Costs

⁴⁰Xxx cite

5. Conclusion

7. Conclusion

The Environmentalists have evaluated the evidence presented by the other parties in this proceeding and have determined which recommendations for stranded costs are most reasonable. These

Table 1:

The Environmentalists' Recommendations on Stranded Costs		
<u>Category</u>	<u>Duquesne</u>	<u>Environmentalists</u>
Generating assets	\$xxx billion	\$xxx billion (1)
Regulatory assets	\$xxx billion	\$xxx billion (2)
Nuclear decommissioning	\$xxx billion	\$xxx (3)
Fossil decommissioning	\$xxx billion	\$xxx (4)
Other transition costs	\$xxx billion	\$xxx billion (5)
	-----	-----
TOTAL	\$xxx billion	\$xxx billion x xx% (6)

		\$xxx billion
(2) Notes: (1)	Environmentalists' Statement 1-S (David Schoengold), p. 40.	
(3)	OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 2	
(4)	(Revised).	
(5)	OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1	
(6)	(Revised).	
	OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1	
	(Revised).	
	OCA Statement 1-S (Richard Capra), Ex. RLC-2, p. 1	
	(Revised).	
	Retail jurisdictional fraction from Environmentalists' Statement	
	1-S	
	(David Schoengold), Exhibit DS-7, Schedule 1.	

figures we recommend be used by the Commission are summarized on the following page in Table 1.

5. THE COMPETITIVE TRANSITION CHARGE

The Act requires “the unbundling of electric utility services, tariffs and customers bills to separate the charges for generation, transmission and distribution.”⁴¹ The other explicit charge which is to be included in the bill is the CTC. The unbundling of rates is where the rubber meets the road for the ratepayers, for this tells customers what part and how much of their bill they can take shopping for alternative suppliers and what part and how much will continue to be tied to the monopoly utility.

1. The CTC Charge

The Commission has several issues to consider in designing the unbundled CTC charge, including its total magnitude, the number of years it is collected and whether it is flat, increases or decreases over the collection period.

The magnitude of the CTC is determined by the total authorized stranded cost recovery and by the assumptions about sales.

As discussed earlier, the Environmentalists recommend that the CTC recovery be equal throughout the collection period, and because of the assumption of a slight load growth, the kilowatt-hour CTC charge is able to decrease slightly in the Environmentalists’ proposal.

Table 2:

⁴¹66 Pa.C.S. §2804(3)

Proposed CTC

	(1)	(2)	(3)	(4)	(5)
<u>Year</u>	<u>Duquesne</u>	<u>Enron</u>	<u>Enviro</u>	<u>MAPSA</u>	<u>PECC</u>
1999					
2000					
2001					
2002					
2003					
2004					
2005					

- Sources:**
- (1) Partial Settlement, Table A, p. 8.
 - (2) Enron (EESPI) Statement 1-R (Steven Kean), Attachment A.
 - (3) Environmentalists' 1-E (David Schoengold), Ex. DS-1, Sch. 1.
 - (4) MAPSA Statement 1-S (Donald Johnstone), Schedule A.
 - (5) NEV Statement 1-SR (David Boonin), Exhibit DMB-16

2. The Generation Credit



The generation or shopping credit is the most critical number in the unbundled rates to both the ratepayers (because it is the amount they can take shopping to find a lower price from another supplier) and for the alternate suppliers (because the degree to which they can undercut the generation credit will determine to a very large extent their ability to attract customers).

The generation credit recommendations of the parties are summarized in Table 3 on the next page. In addition, the generation credit figures of the Partial Settlement, Enron and the Environmentalists are shown graphically. As can be seen in the graphic, the generation credit in the Partial Settlement begins quite low and then rises quite

Table 3:**Proposed Generation Credits**

<u>Year</u>	<u>(1) Settlement</u>	<u>(2) Enron</u>	<u>(3) Enviro</u>	<u>(4) MAPSA</u>	<u>(5) NEV</u>	<u>(6) PECC</u>
1999	2.80	3.48	3.35	4.01	3.75	3.80
2000	2.80	3.48	3.45	4.13	3.81	4.02
2001	3.20	3.61	3.55	4.25	3.93	4.41
2002	3.50	3.75	3.66	4.38	4.07	4.61
2003	3.70	3.89	3.77	4.51	4.20	4.71
2004	3.97	4.04	3.88	4.64	4.34	4.93
2005	4.07	4.19	4.00	4.78	4.49	5.10
2006	4.77	4.35	4.12	4.93	4.64	5.29
2007	5.37	4.52	4.24	5.08	4.80	5.48
2008	5.57	4.52	4.37	5.23	4.88	5.68

Sources: (1) Partial Settlement, Table A, p. 8.
(2) Enron (EESPI) Statement No. 1-R (Steven Kean), Attachment A.
(3) Environmentalists' Statement No. 1-E (David Schoengold), Ex. DS-1, Sch. 1.
(4) MAPSA Statement 1-S (Donald Jonhstone), Schedule A.
(5) NEV Statement No. 1-SR (David Boonin), Exhibit DMB-16
(6) PECC Statement No. 1-SR (Steven Mitnick), Ex. SAM-SR2

steeply. The generation credits proposed by Enron and the Environmentalists begin higher than the Partial Settlement, but have a shallower slope.

3. Summary of The Environmentalists' Unbundled Rates

In the Partial Settlement, the unbundled rates are shown in Table A.⁴² The Environmentalists' version of this table is shown in Table 4.

Date	Trans	Dist	CTC/ ITC	Energy/ Capacity	Total	Discount from 12/96
9/1/98	0.47	2.64	1.90	3.32	8.33	16.2 %
1/1/99	0.47	2.64	1.88	3.35	8.34	16.1 %
1/1/00	0.47	2.64	1.87	3.45	8.42	15.3 %
1/1/01	0.47	2.64	1.85	3.55	8.51	14.4 %
1/1/02	0.47	2.64	1.83	3.66	8.60	13.5 %
1/1/03	0.47	2.64	1.82	3.77	8.69	12.5 %
1/1/04	0.47	2.64	1.80	3.88	8.79	11.6 %
1/1/05	0.47	2.64	1.78	4.00	8.89	10.6 %
1/1/06	0.47	2.64	0.00	4.12	7.23	27.3 %
1/1/07	0.47	2.64	0.00	4.24	7.35	26.1 %
1/1/08	0.47	2.64	0.00	4.37	7.48	24.8 %

4. Conceptual Disputes Regarding Calculation of CTC/CGC

⁴²Joint Petition for Partial Settlement, Table A, p. 8.

1. Differences in Overall Approach (e.g., CTC or CGC as Residual; OCA Proposal)
2. Other Conceptual Disputes
 1. CGC Calculation: Annual Adjustments v. Fixed Schedule
 2. Determination of Class Responsibility for Stranded Costs
 3. Levelized CTC v. Other Methods
4. Duquesne's Rate Redesign Proposal

The Commission should require the Company to structure the CTC on a mils/kWh basis in order to encourage energy efficiency rather than to subsidize high energy use.

The Company proposes to collect the CTC as a fixed charge for all customers. The use of a fixed charge serves to artificially reduce the cost of electricity the more a customer purchases, reducing the incentive for energy efficiency. It also causes the burden of stranded cost recovery to disproportionately affect low energy users and low-income customers. The Commission should not approve a fixed charge rate mechanism for the CTC but rather should require that the Company collect the entire CTC on a per kWh basis. The Company can insure against the risk of under-collection by implementing a true-up at the end of each year.

For the same reasons, the Commission should reject any proposal to collect transmission and distribution costs on a fixed charge rather than a per kWh basis.

5. Other Conceptual Disputes
3. Conclusion
5. Other Disputes Regarding Specific Proposals
 1. Duquesne

2. OCA
3. DII
4. Other Proposals
6. Other Issues Addressed in PECO Order
7. Conclusion
6. RATE OF RETURN / DISCOUNT RATE
7. SPECIAL CUSTOMER CLASSES
 1. Rule 4 Contracts
 2. Riders 8 and 20
 3. Self-Generation
 1. Distributed Energy

The Act appears to envision an energy future which is very similar to today's world, in which the generation of electricity is dominated by large central-generating stations. The Environmentalists have advanced a different view that our generation future will be marked by more decentralized, distributed systems. The challenge facing us is to design a marketplace which can accommodate not only the large central plants, but also the energy future of small turbines, roof-shingle photovoltaics and dishwasher-size fuel cells. We need marketplace rules which allow these new distributed energy sources.

2. Interconnection

Small distributed energy projects which face endless interconnection obstructions and high fees will never succeed. To remove unnecessary barriers to interconnection, the Environmentalists recommend several changes to the connection provisions of the tariff. First, the technical standards should be simplified and made consistent with IEEE, UL and other national standards. Second, for photovoltaic and other simple systems, the engineering review should be replaced with an inspection designed to confirm that the systems meet IEEE and UL standards and the cost of this review should be capped at \$35. The interconnection review fee for other installations should be capped at \$250. Third,

the tariff should allow a customer three metering options at the customer's choice: a non-ratcheted bidirectional meter; two meters; or a smart meter. There should be no additional meter-reading fee.

3. Net Metering

Duquesne currently does not have a net metering tariff. The Environmentalists recommend that, as a condition for receiving stranded cost recovery, Duquesne should implement a net metering tariff for renewable energy and fuel cell projects by any customer class which are 10 kW or less. In addition, the net metering provisions should specify retail-in/retail-out up to net each month and customers should be able to carry forward a generation credit (at the retail-out rate) for up to 12 months. The net metering provisions must address what happens when the customer is purchasing power from an alternate supplier.

4. Other Tariff-Related Issues

8. COMPETITIVE SAFEGUARDS

1. Code of Conduct

2. Pro Forma Tariffs

9. DUTY TO SERVE

1. Service to Returning Customers

2. Provider of Last Resort / Default Supplier

1. Introduction

A just and reasonable set of unbundled rates is an essential condition to creating a robust competitive market, but an adequate generation credit alone is not enough to ensure all customers have meaningful choices of electricity suppliers and services. The Commission must also address the problem of market domination by Duquesne by virtue of its status as the monopoly supplier in this region for the last century. As Environmentalists' witness Bruce Biewald testified,

A great many of Duquesne's electricity customers are unlikely to make any choice at all regarding their electricity supplier... If the Company is designated the default supplier of these customers, then it will be granted

a significant market share without incurring the marketing and transaction costs that would be required of competitive utilities. This formidable advantage would add to the numerous tangible and intangible competitive advantages that are typically enjoyed by incumbent utilities.⁴³

To address the problem of market domination by Duquesne, the Environmentalists proposed a system for allocating non-choosing customers to alternative suppliers serving Duquesne's service territory. We call this the Better Choice Plan.⁴⁴

Before reviewing the specifics of this proposal, it is important to understand the distinction we are making between the concepts of "provider of last resort" and "default supplier." The provider of last resort is the "entity that is assigned the responsibility of ensuring that all electricity customers will have access to a reliable supply of electricity at reasonable prices, terms and conditions."⁴⁵ The provider of last resort is required to serve customers who, for a variety of reasons, cannot obtain generation services from any alternative supplier. The Act makes the electric distribution company the provider of last resort⁴⁶ and

⁴³Environmentalists' Statement No. 2 (Bruce Biewald), p. 9, l. 9-18.

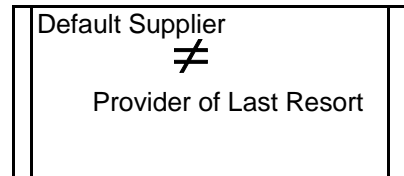
⁴⁴The genesis of the Better Choice Plan was the experience in the long distance telephone industry, where the Federal Communications Commission in 1985 sought to end the market domination of AT&T and encourage meaningful competition by setting up a market allocation pool of other carriers to provide long distance service to customers who failed to select a carrier.

⁴⁵Environmentalists' Statement No. 2 (Bruce Biewald), p. 29, l. 3-5.

⁴⁶66 Pa.C.S. §2807(e).

provides a funding mechanism to cover the cost of those services for those unable to pay.⁴⁷ The Environmentalists recommend that Duquesne be the provider of last resort.

The Better Choice Plan introduces the concept of “default supplier” which is very different than the provider of last resort. The default supplier is the supplier that serves the default customers, or those customers who are eligible to choose an alternative generation supplier but have failed to do so. Under the Environmentalists’ Better Choice Plan, a more diverse market is created because the alternative suppliers active in the market can volunteer to become part of the default supplier group which will serve the customers who fail to choose.



Before describing the mechanics of the proposal, two other concepts must be addressed - the default customer and the default supplier group.

2. The Default Customer - The Failure to Choose

It is widely acknowledged that when an industry moves from a regulated monopoly to an open market, many customers stay with the monopoly supplier. Some argue that these customers are “choosing not to choose” and that it is inappropriate to interfere in this “choice.” But Environmentalists’ witness Roger Colton showed the error in this argument:

Consumer choice implies that given an opportunity, a consumer will use his or her knowledge of available alternatives to translate wants into satisfaction.

⁴⁷66 Pa.C.S. §2804(8) and (9).

In fact, however, considerable consumer research finds that there is no conscious exercise of discretion in the failure of consumers to choose an alternative supplier of service when an industry moves from a regulated monopoly to a competitive model. Indeed, "staying put" is the antithesis of exercising discretion. It is the failure to choose.⁴⁸

Mr. Colton suggested three reasons why many customers fail to choose and noted that the Better Choice Plan promoted competition by helping customers overcome all three barriers:

The Environmentalists' Recommended Public Interest Standards for Participation in the

In each case, jump-starting the competitive electric market will help address the factors that led to the consumer paralysis in decision-making. Allocating the non-choosing consumers among alternative suppliers will help generate consumer experience that will overcome confusion and skepticism. Allocating consumers among alternative suppliers will help generate experience in seeking out and understanding information. Allocating consumers will help overcome the simple consumer inertia that leads to a consumer failure to act.⁴⁹

Mr. Colton testified that a transitional market mechanism such as the Better Choice Plan was an appropriate and helpful response to these temporary customer difficulties.

⁴⁸Environmentalists' Statement No. 3 (Roger Colton), p. 2, l. 22-28.

⁴⁹Environmentalists' Statement No. 3 (Roger Colton), p. 3, l. 26-32.

3. The Default Supplier Group

Under the Environmentalists' Better Choice Plan, suppliers can volunteer to participate in the default supplier group if they agree to seven

conditions. These conditions, listed in the box to the right, are designed to protect the customers and to advance some important public interest goals.

This *quid pro quo* is fair and appropriate because participation in the group is entirely voluntary and the participating suppliers receive from the Commission the private benefit of an allocation of default customers without incurring the costs and effort to recruit these customers.

Default Supplier Group	
	1. The price for the generation services will be no higher than the unbundled generation rate that Duquesne will be allowed to charge.
	2. Any default customer who elects to switch generation suppliers will not be charged a contract termination fee or other penalty.
	3. The energy and capacity to serve default customers meets an environmental baseline comparable to the applicable Pennsylvania environmental regulations.
	4. The resource mix includes at least one percent renewable resources and the supplier has a net metering tariff and other policies to facilitate the interconnection of small-scale clean and renewable energy generation.
	5. Customers would be informed about the fuel mix, air emissions and other wastes (radioactive, solid and liquid) of all of its power sold in Pennsylvania, in a simple, uniform format.
	6. The generation supplier would contribute 0.5 percent of its total Pennsylvania power revenues to the Pennsylvania Sustainable Development Fund.
	7. Customers would be informed about the number and percentage of its work force that is employed in Pennsylvania.

4. Allocating Default Customers

The Environmentalists' Better Choice Plan

begins with customers selecting their generation suppliers, just as they would under the Act and the other proposals.⁵⁰ At no time does the Better Choice Plan interfere with any election by any customer to be served by a particular supplier. A customer will always be able to select a particular supplier and that

⁵⁰The mechanics of the Better Choice Plan are discussed in Environmentalists' Statement No. 2 (Bruce Biewald), p. 8, l. 29 to p. 11, l. 9.

selection will prevail. A reasonable time following the expansion of eligibility to each new group of customers, the results of the selection process will be published and evaluated to determine Duquesne's share of the customers.

For purposes of measuring Duquesne's market share, the Duquesne share would be defined to include (1) the customers who had made an affirmative selection of Duquesne, (2) the customers who had made an affirmative selection of one of Duquesne's affiliated generation suppliers,⁵¹ and (3) the default customers (*i.e.* those who failed to make any selection at all). If the Duquesne share is less than 50%, nothing further would happen under the Better Choice Plan. The 50% figure is used as a threshold to identify the point at which Duquesne's market share threatens the health of the competitive market. If that share is less than 50%, then the remedy of the Better Choice Plan is unneeded. If the Duquesne share is 50% or more, then the Better Choice Plan's allocation mechanism would be triggered.

When the Duquesne share is 50% or more, the Better Choice Plan would allocate all default customers to be served by the non-Duquesne generation suppliers who have volunteered and qualified to be part of the default supplier group. The default customers would be allocated on a random basis between the suppliers in the default supplier group in proportion to the market share of each member supplier.

The Environmentalists acknowledge that implementation of the Better Choice Plan is possible only after additional work to address some of the unresolved issues, but we urge the Commission to include it in the final Order to prevent the serious threat of market domination by the monopoly provider which would be fatal to the emergence of a competitive market.

⁵¹Because of the competitive advantage a supplier affiliated with Duquesne would have over other competitors (simply because of the affiliation), the Environmentalists suggest that for purposes of the market share determination, the customers of a Duquesne affiliate be considered Duquesne customers. These affiliates would not be eligible to participate in the default supplier pool.

3. Electric Transmission and Distribution Service
 1. Unbundling Other Customer Services
 1. Introduction
 2. Resolution in Generic Proceedings v. Resolution in this Case
 3. Interim Rules Applicable to Duquesne
 4. Specific Services
 - (1) Customer Billing
 - (2) Metering
 5. Conclusion
 2. Agency
 3. Other Issues (e.g., CARS system)
4. Consumer Protection and Service Issues

The Act recognizes Chapter 56 as a most important consumer protection and it requires that customer services (“including meter reading, complaint resolution and collections”) be “maintained at the same level of quality”⁵² While the Environmentalists recognize that some revision of the regulations may be appropriate given the scope of the restructuring changes, we urge caution in this effort. Restructuring cannot become the excuse to gut the protections of Chapter 56.

1. Termination
2. Switching Fees
5. Partial Payments

10. UNIVERSAL SERVICE AND ENERGY CONSERVATION

⁵²66 Pa.C.S. §2807(d).

1. Introduction

As noted in the Act, electricity has become a necessity of life,⁵³ but for many of Duquesne's low-income customers, it is a necessity they cannot afford. Unfortunately, this situation is not going to get better under restructuring. As Roger Colton testified for the City of Pittsburgh,

[m]oving to a competitive marketplace in the electric industry will likely have significant adverse impacts on low-income consumers. A review of competitive, non-electric industries (such as health care, personal lines of insurance, telecommunications) reveals that, even if regulated, these industries have not achieved and maintained universal service. Universal service is *not* the norm in these industries and the competitive market has operated to impede rather than to promote universal service. In each instance, it tends to be the poor and minority consumers who are charged higher rates, provided lesser service or excluded from the market altogether.

In implementing electric restructuring in Pennsylvania, we must all work to avoid this deterioration of service.

evaluation of ability and willingness of suppliers to serve: no redlining, no harsh credit requirements, no benign neglect
special educational outreach

2. Overall Funding and Rate Issues

1. Eligibility and Funding Levels

The Environmentalists contend that the most serious deficiency in the Duquesne universal service program is that it imposes improper eligibility criteria which greatly decrease the number of households which are to be served by the programs. The eligibility guidelines in the Commission's Guidelines for Universal Service and Energy Conservation Programs begin with the statement that:

⁵³66 PA.C.S. §2802(9).

[i]n general, these universal service and energy conservation programs shall be available to electric customers whose household income is at or below 150% of federal poverty guidelines and who meet other non-income criteria.⁵⁴

The Guidelines go on to specify the “other non-income criteria” which are to be applied for each of the various programs. For example, the non-income criteria for the Customer Assistance Program (CAP) consists of one criteria: that the CAP applicant is “payment troubled,” which the Guidelines define as “a household who has failed to maintain one or more payment arrangements.”⁵⁵ For the Low-Income Usage Reduction Program (LIURP), the one recognized non-income criteria is that the household must have “high energy usage,” which each LDC is allowed to define.⁵⁶

Duquesne’s Universal Service and Energy Conservation Plan⁵⁷ violates these Guidelines by adding additional eligibility criteria for each of its programs. Duquesne’s CAP imposes the additional non-income requirements that the customer has lived at their current address for one year, has housing

⁵⁴Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section C(1), p. 31. The eligibility guideline allows up to 20% of the total universal service program budget to be applied to special needs customers with income between 150% and 200% of the federal poverty guidelines.

⁵⁵Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section C(2)(c), p. 33.

⁵⁶Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section C(2)(b), p. 32. Duquesne defines high usage as 125% above the average customer usage.

⁵⁷This document was attached as Exhibit JPF-1 of Duquesne Statement No. 14-R (Joseph Flynn).

expenses more than 45% of their gross income and has a bill arrearage of at least \$500. Duquesne's LIURP imposes the requirement that the customer has lived at their current address for one year.

The result of these added eligibility requirements is to greatly reduce the number of households who are eligible to receive assistance. Duquesne states that they have "identified 115,055 customers who are 'low-income, payment troubled.'"⁵⁸ Since those are the eligibility criteria the Guidelines have made applicable for CAP, the number of Duquesne customers who are eligible for CAP should be 115,055. But Duquesne states that only 5,731 customers "appeared eligible" for CAP.⁵⁹ Their additional eligibility criteria improperly rejects 95% of the eligible households.

The corresponding numbers for LIURP are unknown, since the Duquesne plan does not identify the number of "low income, high usage" customers. The number of customers estimated to be eligible for LIURP is 21,226.

When various parties pointed out this problem, Duquesne responded with testimony from Joe Flynn that:

[n]either the Competition Act nor the Guidelines for Universal Service and Energy Conservation Programs require that *all* customers with household income at or below 150% of the Federal poverty guideline be eligible for *all* universal service and energy conservation policies, protections, and services.⁶⁰

True enough, but the Guidelines do state that customers who are low-income and payment-troubled are eligible for CAP and Duquesne itself says that number is 115,055 customers and not the 5,731 Duquesne recognizes.

⁵⁸Duquesne Statement No. 14-R (Joseph Flynn), p. 8, l. 8-9.

⁵⁹Duquesne Statement No. 14-R (Joseph Flynn), p. 8, l. 9.

⁶⁰Duquesne Statement No. 14-R (Joseph Flynn), p. 8, l. 26-29.

Mr. Flynn justifies Duquesne's additional eligibility criteria by noting:

[t]he Commission's Guidelines specifically include "other non-income criteria" in the definition of eligibility. Accordingly, the Company has included such criteria to enable it to better target its resources and to maximize the likelihood of accomplishing its stated universal service goal.⁶¹

This is a misreading of the Guidelines. As noted above, the Guidelines list the non-income eligibility criteria which apply for CAP and LIURP. The Guidelines go on to list other factors for both CAP and LIURP which an EDC can use to prioritize the delivery of services, but these are not additional eligibility criteria. As Roger Colton noted:

Prioritizing the enrollment based on one of the four articulated factors is completely different from restricting enrollment to those customers who meet only one of the four factors. To deny enrollment to someone who meets the three "eligibility" criteria articulated by the PUC but who does not meet the "prioritization" for enrollment is contrary to the PUC order.⁶²

What Duquesne has done is take suggested "prioritization" factors and turned them into eligibility criteria and that is an error.

One additional general point must be made on the topic of program costs. At least three times in his rebuttal testimony, Mr. Flynn states that if the Company is directed to increase its universal service funding, it will "approach the PUC for relief from its rate cap to meet the need."⁶³ This statement is at direct odds with the Commission's Guidelines, which provides that:

⁶¹Duquesne Statement No. 14-R (Joseph Flynn), p. 9, l. 6-9.

⁶²City of Pittsburgh *et al.* Statement No. 3-R (Roger Colton), p. 4, l. 4-9.

⁶³Duquesne Statement No. 14-R (Joseph Flynn), p. 3, l. 25-27. See also pp. 6 and 16.

[f]unding for universal service and energy conservation programs should not be determined after all other funding requirements are met. The total amount of dollars available under the rate cap should be adjusted to meet all the requirements of the Act including universal service and energy conservation." If total expenditures by the Company were to exceed the rate cap, Universal Service costs would be no more the "cause" than any other expenditure of the Company.⁶⁴

The Environmentalists support the testimony of Roger Colton and his estimate of an "appropriately funded and available" budget should be for Duquesne's universal service programs. Based on the assumption that 50% of the customers who are eligible for each program will participate, Mr. Colton's recommended budget is \$17.49 million. in each program

Funding Budget for Universal Service Program in the Duquesne Service Territory		
	Duquesne	Environmentalists
CAP	\$ 550,000	\$ 14,750,000
LIURP	\$ 700,000	\$ 2,214,000.
CARES	\$ 60,000	\$ 60,000
Hardship	\$ 65,000	\$ 65,000
2. Credit Counseling	\$ 6,000	\$ 400,000
	-----	-----
o TOTALS	\$ 1,381,000	\$ 17,489,000

Allocation and Rate Design

⁶⁴Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section D(2), p. 35.

Duquesne proposes to collect the costs of its universal service programs in the rates of all ratepayers and this cost allocation is appropriate and correct. The cost of providing universal service is recognized as a “public service cost” in the Act.⁶⁵ As a public service cost, all sectors of the public should bear the costs.⁶⁶ To support this conclusion, City of Pittsburgh witness Roger Colton presented a compelling argument that universal service is the compensation for the valuable public perquisites of eminent domain and the right to use public streets. These rights are of tremendous value to Duquesne and to all who receive service from Duquesne, for without them, all ratepayers would bear higher costs. As Mr. Colton testified, “[t]he commitment to universal service is simply the compensation to the public for having provided these public benefits.”⁶⁷

Some parties argue that the Act’s prohibition against cost shifting means that universal service costs should be assessed only against the residential class. Their argument is based on the assumption that the universal service costs are exclusively residential costs, but as shown above, the entire system benefits and the program costs are appropriately called “public service costs” in the Act. There is no cost shifting if the costs appropriately belong to everyone.

This analysis is supported by the Universal Service Guidelines, which states:

1. The cost of an EDC’s universal service and energy conservation programs should be allocated among the classes of the distribution company’s ratepayers consistent with sound rate design principles and in accordance with the Act’s prohibition against the interclass and intraclass cost transfer and the Act’s rate cap...

⁶⁵66 Pa.C.S. §2802(17).

⁶⁶Another example of a public cost are the various economic development tariffs for “payment-troubled” industrials. These programs are included in the rates for all customers.

⁶⁷Environmentalists’ Statement No. 1 (Roger Colton), p. 29, l. 18 to p. 33, l. 27.

4. ...
All customer classes should share in providing funding of universal service consistent with sound rate design principles and in accordance with the Act's prohibition against the interclass and intraclass cost transfer and the Act's rate cap.⁶⁸

In the commentary section of the Order, the Commission cites a kWh assessment on all customer classes as violating this cost transfer principle since this sort of assessment "places a disproportionate responsibility for funding universal service and energy conservation programs on high kWh (high volume) users in violation of Section 1301."⁶⁹ In other words, the kWh assessment is rejected not because it assesses the industrial customers for universal service costs, but because under such a mechanism, industrial customers would pay more than their share of the costs. What the commentary indicates is allocating the universal service program costs among the various rate classes is acceptable provided it is done in accordance on a valid cost-of-service basis.

3. Specific Programs

1. CAP Program

Other than the eligibility and budget issues discussed above, the Environmentalists believe that Duquesne's CAP is generally well designed and effective. We would like to see the program be modified to ensure that CAP operates closely with the other universal service programs. We suggest that all CAP recipients are referred to LIURP so that their usage can be reduced. We also oppose the use of prepaid meters and find them inappropriate for low income households.

⁶⁸Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Appendix B, Section G(1) and (5), p. 40.

⁶⁹Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, p. 20.

2. LIURP

Other than the eligibility and budget issues discussed above, the Environmentalists believe that the Low-Income Usage Reduction Program is a cost-effective means of reducing the energy costs of low income households. Energy conservation, as well as bill subsidies, should be the core elements of the universal service program. Duquesne's LIURP program is seen as one of the state's most effective energy programs. The key is a highly skilled staff supported by proper tools and instrumentation, giving the program the ability to accurately diagnose a house's situation and recommend appropriate treatments.

3. Renewable Resources

The one explicit reference in the Act to renewable energy is found in the definition of the phrase "universal service and energy conservation."⁷⁰ The Universal Service Guidelines require the universal service plans to "propose how the application of renewable resources will be accommodated."⁷¹ Duquesne's universal service plan brushes off this requirement by simply noting that "Duquesne Light has no existing renewable resource programs in place nor does it have any plans for any at this time."⁷² The Environmentalists urge the Commission to direct Duquesne to develop and offer a renewable energy pilot program as a component of its universal service program. This pilot could offer renewable technologies such as solar domestic water heating, solar photovoltaics, wood-fired water and/or space heating, etc.

4. Provider of Last Resort

The Act includes requires each EDC to acquire electric energy at prevailing market prices to serve customers who do not obtain generation from another electric supplier.⁷³ The Commission's Universal

⁷⁰66 Pa.C.S. §2803, definition of "Universal service and energy conservation."

⁷¹Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Section B(2)(b), p. 30.

⁷²Duquesne Statement No. 14-R (Joseph Flynn), Exhibit JPF-1, p. 4.

⁷³66 Pa.C.S. §2807(e)(3).

Service Guidelines require that the restructuring plans propose an initial supplier of last resort and address how it will be utilized.⁷⁴

⁷⁴Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Section B(2)(a), p. 30.

Duquesne's plan states that it "will fill this role by default" but the plan fails to describe how the "prevailing market rates" for this power will be determined and passed on to customers.⁷⁵ This is an important issue since it is likely that many low-income customers will, for a variety of reasons, will be unable to obtain their power from a EGS and instead will be in effect captive customers of Duquesne. For this reason, the universal service plan needs to address a fair and effective mechanism for obtaining power and charging market rates for it.

5. Low-Income Consumer Education

The Act includes consumer education as a component of the definition of universal service and energy conservation programs.⁷⁶ Accordingly, the Commission's Universal Service Guidelines require that the restructuring plans discuss an education program targeted to address the special needs of low-income customers, with a long discussion of the program content and various outreach strategies.⁷⁷ The low-income education section of Duquesne's plan consists of four sentences and barely distinguished low-income education from its general restructuring effort.⁷⁸ The Environmentalists ask that the Commission

⁷⁵Duquesne Statement No. 14-R (Joseph Flynn), Exhibit JPF-1, p. 4.

⁷⁶66 Pa.C.S. §2803, definition of "Universal service and energy conservation."

⁷⁷Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Section B(2)(c), p. 30.

⁷⁸Duquesne Statement No. 14-R (Joseph Flynn), Exhibit JPF-1, p. 4.

reject this portion of the Duquesne plan and direct the Company to file a low-income education plan which complies with the Guidelines.⁷⁹

6. Current Universal Service Policies and Protections

⁷⁹Duquesne Statement No. 14-R (Joseph Flynn), Exhibit JPF-1, p. 2.

The Commission's Universal Service Guidelines cites a handful of Policy Statements and 19 different Secretarial Letters which, along with Chapter 56, make up the existing universal service and energy conservation policies, protections and services.⁸⁰ Duquesne's universal service plan acknowledges the applicability of Chapter 56, but it does not mention the other Policy Statements and Secretarial Letters cited in the Guidelines. The plan should be revised to include these other requirements.

4. Administration

The Environmentalists recommend that Duquesne contract out both the delivery and administration of the universal service programs. Duquesne contracts with community-based groups to be direct providers for LIURP, but all other universal service programs will be delivered by Duquesne and Duquesne will continue as the administrator of all of the programs. The Environmentalists urge the Commission to restructure Duquesne's universal service program and to unbundle the administration of the program by requiring it to be contracted out to a qualified community-based organization. Roger Colton described the ideal candidate as "an experienced non-profit, community-based organization with both a strong track record in the provision of energy assistance, conservation and education programs, and the ability to leverage significant amounts of additional public and private resources to help resolve the energy problems of Duquesne's low-income customers."⁸¹

5. Universal Service Program Advisory Panel

⁸⁰Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Section B(1), pp. 29-30 and Appendix C.

⁸¹City of Pittsburgh *et al.* Statement No. 2 (Roger Colton), p. 38, l. 18-23.

The Universal Service Guidelines require the EDCs to “create and maintain a universal service program advisory panel to provide consultation and advice to the utility regarding the scope, design and administration of its universal service programs.”⁸² Duquesne’s universal service plan states that it “will establish an advisory panel” but the plan falls short of ensuring that the advisory group will play a meaningful role.⁸³ The Environmentalists suggest that additional discussion be added to ensure that the advisory panel is inclusive and balanced. The panel should meet as needed, but at least twice a year. Its meetings should be transcribed. The panel should present its recommendations in writing to Duquesne and the company should be required to respond in writing to the committee’s recommendations.

11. CUSTOMER EDUCATION

1. Scope of Customer Education

1. Introduction

Consumer information and education were important components of the Act, which clearly recognized that they were vital to the success of restructuring. Recognizing that consumers need an educational foundation for the purchasing and other market decisions they will soon be called upon to make, the Act requires that:

⁸²Final Order Re: Guidelines for Universal Service and Energy Conservation Programs (Order entered July 11, 1998), Docket No. M-00960890F0010, Section J, p. 43.

⁸³Duquesne Statement No. 14-R (Joseph Flynn), Exhibit JPF-1, p. 10.

[p]rior to the implementation of any restructuring plan under section 2806 (relating to implementation, pilot program and performance-based rates), each electric distribution company, in conjunction with the commission, shall implement a consumer education program informing customers of the changes in the electric utility industry. The program shall provide consumers with information necessary to help them make appropriate choices as to their electric service.⁸⁴

In addition to the education program responsibility, the Act made the Commission responsible for ensuring that consumers have quality information to help them make sound decisions in the new marketplace. The Commission was directed to promulgate regulations:

... to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.⁸⁵

2. State-Wide v. Company Specific

⁸⁴66 Pa.C.S. §2807(d)(3).

⁸⁵66 Pa.C.S. §2807(d)(2)

The importance of educated consumers and access to objective, understandable information was certainly reinforced by the recent experience with the retail access pilot programs. One need look no further than the barrage of confusing and empty advertisements which have been flooding over us in the pilot programs to see that the Act was correct. An active Commission role is appropriate and necessary. Consumers are clamoring for accurate information in an uniform and understandable format. Without it, many of those who volunteered for the pilot programs are giving up and dropping out. There should be no lingering doubts that the Commission must implement a state-wide consumer education program.⁸⁶

3. Role of EDC

2. Implementation Issues

As part of its restructuring filing, Duquesne submitted its plan for an education program which the Environmentalists contend is inadequate. The education plan should have the following components:

1. Consumer Research

As described in the testimony of Roger Colton⁸⁷ and Barbara Alexander⁸⁸, the first step in the development of a quality consumer education plan should be consumer research to determine what consumers already know, what other information they want to know, and whom they trust for their

⁸⁶The Commission has opened several generic dockets to address the education and information issues and the Environmentalists have participated (and will continue to participate) in those proceedings.

⁸⁷Xxx cite

⁸⁸Xxx cite

information. This type of baseline data survey is critical in the design of a good program because you cannot decide how to get to where you want to be unless you first know where you are. A number of states have already conducted such research, and it should be reviewed for its lessons. Duquesne should also conduct its own research of its own customers.

2. Education Plan

The Environmentalists suggest that after the consumer research is completed, an education plan should be drafted to address the following issues:

1. Goals and Objectives - using the customer research, set the specific goals and objectives for the program. Also identify strategies and tactics
2. A Staged or Phased Message - the
3. Specific Themes and Content for Each Phase
4. Delivery Mechanisms for Each Message
5. Evaluation and Feedback
6. Identification of In-House Staff and outside consultants
7. Identification of Advisory Counsel

3. Funding Levels and Recovery

The Environmentalists support an education budget for the four year program of at least \$5 per customer. The PECO education is \$5.33 per customer.⁸⁹

The Environmentalists support the Commission's 65/35 split contained in the PECO restructuring order.⁹⁰

⁸⁹Xxx cite

⁹⁰Xxx cite

4. Consumer Information

In adopting the Competition Act, Pennsylvania lawmakers were keenly aware that customers need ample and accurate information in order to exercise informed choice about their electric supply options. Thus, under terms of the Act, the Commission is required to facilitate informed customer choice, by issuing regulations ensuring that the information supplied to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.⁹¹ The Environmentalists contend that one of the important pieces of information needed and desired by many customers is the environmental byproducts of their electricity.

On July 10, 1997, and during the pendency of this proceeding, the Commission issued interim requirements, but not final regulations, pertaining to customer information.⁹² These interim requirements include, *inter alia*, the obligation that suppliers disclose the source and fuel mix of their supply. This requirement will ensure that customers receive basic information about the sources of their supplier's electricity. This policy also includes the requirement that suppliers verify specific environmental claims.⁹³ The latter requirement should supplement commercial law in protecting consumers from fraudulent environmental claims.

⁹¹66 Pa.C.S. Section 2807(d)(2).

⁹²1997 Interim Requirements for Customer Information, Docket No. M-00960890F0008.

⁹³Interim Requirements, Appendix B, Section III.C.6

The Commission should be applauded for joining the other pro-active states of Vermont, Massachusetts and Maine in including mandatory disclosure provisions as an element of the electric industry restructuring.⁹⁴ This policy provides an excellent foundation upon which to build a comprehensive environmental disclosure process.

In this section of the brief, the Environmentalists propose a modest extension of the Commission's interim requirements. Environmentalists' testimony in this case speaks to the need to address additional aspects of informed customer choice; namely, the need for disclosure of key air and other waste emissions to consumers in a standard and easy to comprehend label. These requirements should pertain to all suppliers selling into the PP&L service territory, if not the entire state of Pennsylvania.

Extension by the Commission of its interim requirements to add of environmental disclosure would represent sound public policy for the following reasons:

- Electricity generation has a tremendous environmental footprint, accounting for roughly two-thirds of all SO₂ emissions, nearly one-third of total NO_x emissions, and more than one-third of total CO₂ emissions. Electricity generation is responsible for a host of other land-, water- and air-related environmental costs and risks. These environmental considerations are related to, but not entirely addressed by fuel mix disclosure;
- Survey data reveals that many consumers are interested in the environmental implications of their purchasing decisions, and would be willing to pay more for electricity from less harmful sources;
- Many electricity suppliers are positioning themselves to fill the “green power” niche. Many suppliers are interested in marketing a clean product. Unfortunately, others will be green in name alone. Mandatory disclosure of environmental attributes will (1) allow verification of claims; (2) provide customers with information on “dirty” suppliers, and not just those who make environmental claims; and (3) make comparisons between suppliers easier;
- In order for customer choice to be most meaningful, customers should have basic information about the suppliers in a standardized, easy-to-understand format. Fuel mix and environmental information can be disclosed along with standardized information on price and price volatility.
- The fuel mix disclosure requirement already endorsed by the Commission will require a system of tracking transactions to attribute generation at power plants to sales at retail. As pointed out by Mr. Biewald, it is a relatively simple (and inexpensive) matter to extend

⁹⁴Xxx cite

the fuel mix disclosure system to key environmental attributes, since the basic protocols for tracking will be in place.

In sum, the Commission should require all retail suppliers to provide accurate, verifiable and uniform information about the sources and environmental impacts of the power they sell. The generation of electricity has tremendous impacts on the environment and customers are interested in the environmental implications of their electricity purchases. The Commission should not simply rely on commercial law to protect consumers from fraudulent claims. Rather, it should take affirmative steps to ensure that every supplier provides customers with uniform and reliable information about the power they purchase. Only in this way can the Commission ensure that customers can make informed and meaningful choices in a competitive marketplace.

The Commission Should Require Retail Sellers to Disclose the Environmental Characteristics of the Power They Sell.

At a minimum, the Commission should require retail suppliers to disclose the fuel mix and emission rates (lbs/MWH) of NO_x, SO₂ and CO₂ of the power they sell. Most power generators must report emissions data for these substances and will have the information readily available to supply to retail sellers for the purpose of compliance with a disclosure requirement. To the extent that other major environmental impacts, such as waste creation, can be quantified, these should be included as well. A standardized point of comparison, such as the regional average level of pollution per kWh, should be indicated for reference. As discussed in the Regulatory Assistance Project report which was an exhibit to the Biewald testimony, much good work is taking place around the country on this issue. Whether in the restructuring Order or the generic proceeding, emission and waste information should be added to the consumer information requirements.

12. MISCELLANEOUS ISSUES

As a way of answering the question what do the people of Pennsylvania get in exchange for allowing Duquesne to recover a fair portion of it stranded, the Environmentalists have proposed three new initiatives to be undertaken for Duquesne's customers.

1. The Sustainable Development Fund

1. Introduction

Since the PECO securitization proceeding, the Environmentalists have been advancing a proposal to the Commission for a Sustainable Development Fund to finance and promote energy conservation and efficiency, renewable energy and other clean-energy technologies. While a large part of the restructuring proceeding is looking backwards and charging ratepayers billions of dollars for past mistakes, we should also be looking forward and making a modest investment in Pennsylvania's sustainable energy future.

2. The Mission and Structure of the Sustainable Development Fund

Environmentalists' witness David Schoengold presented the Environmentalists' proposal for the Sustainable Development Fund.⁹⁵ The purposes of the Fund are summarized in the box below.

⁹⁵Environmentalists' Statement No. 1 (David Schoengold), p. 8, l. 28 to p. 9, l. 8.

3. The Budget of the Sustainable Development Fund

The Environmentalists propose that the Sustainable Development Fund be financed by all suppliers through an annual contribution equal to 1% of their gross revenues. On a statewide basis, this would provide annual funding of approximately \$22 million. By way of comparison, the Clean Energy initiative of the Long Island Power Authority is very similar to the Sustainable Development Fund and its annual budget is \$32 million.⁹⁶

2. The Million Solar Roof Program

Sustainable Development Fund	
•	to support energy efficiency, clean distributed generation and renewable technologies
•	to support economic development projects which promote clean energy
•	to support cost-effective clean energy alternatives to distribution system upgrades
•	to develop reasonable interconnection standards and other important sustainable energy policies
•	to review and publicize power plant emission and waste data
•	to encourage clean energy supplies in the generation mix offered to Pennsylvania customers
•	to encourage energy efficiency and renewable energy resource technologies to locate in Pennsylvania

The Million Solar Roof Program is a joint effort of the U.S. Department of Energy (“DOE”) and the Utility Photovoltaic Group (“UPVG”) to accelerate the commercialization of photovoltaic systems. The Environmentalists recommend that the Commission direct Duquesne to become a full partner in this

⁹⁶Environmentalists’ Statement No. 2 (Bruce Biewald), p.15, l. 11-20.

important program and to offer financing for the installation of such systems by its customers at an interest rate 0.5% higher than its cost of capital.⁹⁷

3. The Conservation Loan Fund

⁹⁷Environmentalists' Statement No. 1 (David Schoengold), p. 8, l. 21-26.

The Environmentalists recommend that Duquesne establish an energy loan program to help its non-low-income customers make energy efficiency improvements to their existing or new facilities. Loans would be given priority on the basis of electricity savings, system reliability benefits, customer class contributions and need. The Loan Fund would receive an initial capitalization from Duquesne at a level equal to 2% of the Company's stranded cost recovery.⁹⁸

4. Environmental Comparability

In order to create a level playing field for all market participants, the Commission should implement uniform environmental standards that all retail suppliers must meet in order to sell power in Pennsylvania. At present there is considerable disparity between the emission standards applied to generating units of different vintages or located in different states or regions. Restructuring could have a dramatic impact on the air quality in Pennsylvania if

it encourages generators of relatively dirty power who are subject to less stringent environmental regulations to increase production.

The Commission Should Implement Uniform Environmental Standards in Order to Ensure Fair Competition among Generators.

The Commission must ensure that the introduction of competition to the electric industry in Pennsylvania does not result in dirtier air and the attendant harm to the environment and public health. In the absence of uniform federal emission standards, the Commission should require all retail sellers to ensure that the power they sell in Pennsylvania has been generated by plants that meet the state's most recent environmental standards.

13. CONCLUSION

The Electricity Generation Competition and Customer Choice Act recently celebrated its first birthday. Since it was passed, everyone knew that many of the monumental decisions would fall on the

⁹⁸Environmentalists' Statement No. 1 (David Schoengold), p. 9, l. 10-27.

Commission. The Environmentalists have shared, as best we can, our vision for the job ahead. It is now the Commission's task to create the marketplace where the residents and the businesses of Pennsylvania have access to adequate, safe, clean, reliable and efficient energy services at fair and reasonable prices at the lowest long-term cost to society.

Respectfully submitted,

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