

CITIZEN POWER

Public Policy Research Education and Advocacy

August 1, 2011

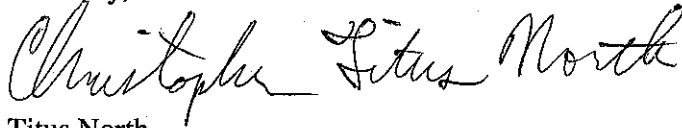
Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Citizen Power and Pennsylvania Steel and Cement Manufacturers Coalition for a Declaratory Order to Investigate Utility Stranded Cost Collection and Mitigation Efforts, Docket No. P-2010-2195426

Dear Secretary Chiavetta:

Enclosed for filing with the Commission on behalf of Citizen Power, Inc. and Pennsylvania Steel and Cement Manufacturers Coalition is an electronic copy of their Petition for Reconsideration of Order in the above-captioned proceeding. Copies of this document have been served in accordance with the attached Certificate of Service.

Sincerely,



Titus North
Executive Director
Citizen Power

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Citizen Power and Pennsylvania :
Steel and Cement Manufacturers Coalition for a : Docket No. P-2010-2195426
Declaratory Order to Investigate Utility Stranded :
Cost Collection and Mitigation Efforts :

**PETITION OF CITIZEN POWER AND THE PENNSYLVANIA STEEL & CEMENT
MANUFACTURERS COALITION FOR RECONSIDERATION OF ORDER**

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Dated: August 1, 2011

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Pursuant to 66 Pa.C.S. § 703 and 52 Pa. Code § 5.572, Citizen Power and the Pennsylvania Steel and Cement Manufacturers Coalition (“Joint Petitioners”) file this Petition for Reconsideration of the Order of the Pennsylvania Public Utility Commission (“Commission”) entered in the above-captioned proceeding on July 15, 2011.

Introduction

1. On August 24, 2010, the Joint Petitioners filed a Petition for a Declaratory Order to Investigate Utility Stranded Cost Collection and Mitigation Efforts (“*Joint Petition*”) with the Commission. In the *Joint Petition*, the Joint Petitioners requested that the Commission determine whether each EDC has adequately mitigated costs as required under 66 Pa.C.S. § 2808(c)(4), compare the projected stranded costs for each EDC to the actual stranded costs accounting for mitigation, and implement a mechanism to refund the over collection to each EDC’s customers.¹

¹ Stranded cost awards were largely determined in the following restructuring cases: *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code – Joint Petition for Settlement*, Dockets R-00973953 and P-00971265 (May 14, 1998), *Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code – Joint Petition for Settlement*, Docket R-0097354 (August 27, 1998), *Application of Metropolitan Edison Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code – Joint Petition for Settlement*, Dockets R-00974008 and P-00971216, P-00971217, P-00971223 and P-00971325 (October 16, 1998), *Application of Pennsylvania electric company for*

2. On September 13, 2010, the Energy Association of Pennsylvania (“EAP”) requested an extension of the time to file an answer or otherwise respond until October 12 2010, which was granted on September 14, 2010. On October 12, 2010, petitions to intervene and answers in opposition to the *Joint Petition* were filed by the EAP, Allegheny Energy, PPL, UGI Utilities Inc. – Electric Division, PECO Energy Company, Duquesne Light, and, filing jointly as affiliated companies of FirstEnergy Corp., Metropolitan Edison, Pennsylvania Electric and Pennsylvania Power Companies. In addition, PPL filed a Motion for Judgment on the Pleadings.

3. On November 2, 2010, the Joint Petitioners filed a reply to the answers and separately filed a reply to the Motion for Judgment on the Pleadings.

4. On July 14, 2011, the Commission adopted an Order (“*Order*”) granting the Motion of PPL Electric Utilities Corporation for Judgment on the Pleadings and correspondingly denied the *Joint Petition* of the Citizen Power, Inc. and Pennsylvania Steel & Cement Manufacturers Coalition for a Declaratory Order. This Order was entered on July 15, 2011.

The Legal Requirements to Grant a Petition for Reconsideration

5. The standards for granting a petition for reconsideration following a final decision were enumerated in *Philip Duick et al. v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001, 1982 Pa. PUC LEXIS 4, 56 Pa. P.U.C. 553 (December 17, 1985) (“*Duick*”). *Duick* stands for the proposition that “A petition for reconsideration, under the provisions of 66 Pa. C.S.

Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code – Joint Petition for Settlement, Dockets R-00974009 and P-00971215, P-00971278, P-00981324 and P-00900450 (October 16, 1998), *Application of West Penn Power Company for Approval of a Restructuring Plan Under Section 2806 of the Code*, Docket No. R-00973981 (November 19, 1998), *Application of Duquesne Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00974104 (December 17, 1998) and *Application of UGI Corp – Luzerne Electric Division for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code* (June 18, 2008), *Application of Pike County Light & Power Company for Approval of Restructuring Plan; Office of Consumer Advocate v. Pike County Light & Power Company* R-00974150, 1998 Pa. PUC LEXIS 191 (July 23, 1998).

§ 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part...[w]hat we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.”²

6. The Commonwealth Court in *AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. Ct. 1990), further found that a reconsideration petition is not required to allege newly discovered evidence.³

Argument

7. The Joint Petitioners believe that generation revenues that are above those estimated in determining the stranded costs are required to be mitigated under Section 2808(c)(4) during the transition period. In footnote 9 of its *Order*, the Commission found that “the mitigation process was part of the original determination of stranded costs and was not meant to be an on-going exercise.” However, this is contrary to Commission’s holding in the stranded cost proceedings. For example, in PECO’s restructuring settlement, the Commission held:

Section 2808(c)(4) requires PECO to mitigate stranded costs “during the transition.” The Commission finds that PECO’s mitigation efforts have been inadequate considering the magnitude of its stranded costs and its historic high rates. PECO will have two transition years since the 1/1/97 effective date of the Act until it faces competition beginning in 1999. Thereafter, PECO will have an additional 8 ½ year transition period in which to mitigate stranded costs.

PECO still has additional opportunities to mitigate stranded costs in the future based on the foregoing considerations. In addition, competitive markets will provide PECO with substantial new opportunities to mitigate stranded costs. For example, Section 2808 identifies sale of generating assets as an appropriate mitigation

² *Duick v. PG&W*, 1982 Pa. PUC LEXIS 4, at *11-*13.

³ *AT&T v. Pa. PUC*, 568 A.2d 1362 at 1364-65.

effort, and PECO has indicated that it plans to transfer its generating assets to an affiliate.”⁴

The determination of stranded costs is partially based upon anticipated future mitigation efforts. However, under Section 2808, the obligation to mitigate the originally determined stranded cost amount continues during the transition period. Just as the sale of generation assets has been applied to mitigating stranded costs, excessive revenues from generation assets should also be applied toward mitigating stranded costs. The Joint Petitioners believe that the Commission did not address how the sale of generation assets can be used to mitigate stranded costs after the initial stranded cost determination while revenues cannot.

8. If, as the Joint Petitioners contend, the duty to mitigate stranded costs survived the original stranded cost determination, any investigation into an EDC’s duty to mitigate stranded costs during the transition period would not implicate the doctrine of Commission-made rates because the adjudications regarding stranded costs would implicitly be subject to Section 2808.

Conclusion

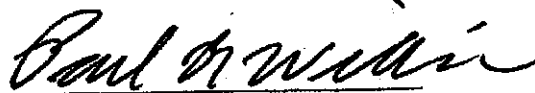
9. For the foregoing reasons, the Joint Petitioners respectfully request that the Commission reconsider the July 14, 2011 *Order* and grant the Joint Petitioners’ *Joint Petition*.

⁴ *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code – Joint Petition for Settlement*, Dockets R-00973953 and P-00971265, *Opinion and Order* (December 11, 1997), pgs. 98-99.

Respectfully submitted,



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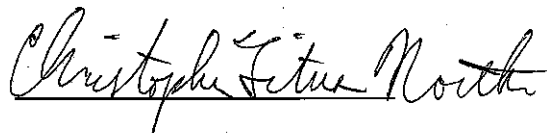
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VERIFICATION

I, Titus North, hereby state that the facts above set forth in the PETITION OF CITIZEN POWER AND THE PENNSYLVANIA STEEL & CEMENT MANUFACTURERS COALITION FOR RECONSIDERATION OF ORDER are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Titus North
Executive Director
Citizen Power, Inc.
2121 Murray Avenue
Pittsburgh, PA 15217

Dated this 1st day of August, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the PETITION OF CITIZEN POWER AND THE PENNSYLVANIA STEEL & CEMENT MANUFACTURERS COALITION FOR RECONSIDERATION OF ORDER, which was electronically filed today, in accordance with the requirements of § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of August, 2011.



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