

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

INVESTIGATION OF  
CONSERVATION, ENERGY  
EFFICIENCY ACTIVITIES &  
DEMAND SIDE RESPONSE BY  
ENERGY UTILITIES &  
RATEMAKING MECHANISMS TO  
PROMOTE SUCH EFFORTS

Docket No. M-00061984

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COMMENTS ON BEHALF OF CPOWER, INC. IN RESPONSE TO QUESTIONS  
PROPOSED BY THE PA PUC REGARDING THE  
SPECIAL EN BANC HEARING

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DATED: NOVEMBER 14, 2008

COUNSEL FOR CPOWER, INC.

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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AND NOW COMES, **CPower, Inc.** (“CPower”), by and through its counsel, **Scott H. DeBroff, Esquire** and **Alicia R. Petersen, Esquire** of Rhoads & Sinon LLP. In support of this docket, CPower avers the following:

1. CPower is one of the nation’s leading demand side management providers, with significant experience providing demand response, energy efficiency, and distributed generation services in New York, New England, California, the Mid-Atlantic, and increasingly in other regions. CPower maintains direct alignment with their clients’ incentives – they earn revenues only when they achieve energy savings for their clients: large and small end-users of all types.

2. As a full service strategic energy asset management firm and one of the largest providers of demand response solutions in the United States with more than 1200 MW’s under

management, CPower currently operates in the nation's largest energy markets including Illinois, New York, California, New England, and many others. CPower's clients include Fortune 1000 companies and some of the nation's largest commercial, residential, retail and institutional facilities. CPower has found particular success partnering with hotels, hospitals, large co-op residential apartment complexes, financial institutions, unions, and REIT's. CPower's clients include dozens of substantial users of energy nationwide.

3. CPower provides its clients with Demand Management, Curtailment Services and Strategic Energy Asset Management Services. These services include assumption of market risk, representation in all ISO/State programs, interval metering, web-based access to consumption of data, engineering qualification of curtailable load, financing to improve demand response capabilities, frequent optimization of biddable loads, comprehensive energy audits and analysis, identification of tax saving opportunities, design and project management of ECMs & PDRs, generator uploading, load switching and controls, retro-commissioning to improve energy efficiency, controls development, upgrades and optimization, incentive optimization and reporting, project financing, performance-based contracting and stream management and negotiations. As a result of these services, CPower is able to provide clients with cost saving mechanisms to reduce energy usage.

4. CPower's clients include more than 75 million square feet of commercial real estate and more than 110,000 residential units.

5. As a leading demand response solutions provider in the United States, CPower has started to pursue business interests in Pennsylvania that will be affected by the outcome of this proceeding.

6. CPower's attorneys and to whom all correspondence and pleadings in this docket should be directed to are:

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## CPOWER'S GENERAL COMMENTS

### Regarding Energy Efficiency Program Design

1. CPower believes that a single, state-wide market for energy efficiency, modeled after the existing Tier II renewable portfolio standard, is the most cost-effective method of meeting Pennsylvania's Demand Side Reduction goals.
2. Portfolio standards are a well-established policy instrument for promoting renewable resources. A great deal of academic and professional literature exists describing portfolio market design. In brief, CPower sees the key components of such a market as:
  - a. A single set of standards specifying how to qualify resources for the program, how to measure the performance of such resources, and how to verify performance of existing resources. Qualifying projects generate a quantity of tradable 'energy efficiency credits,' also known as white certificates, according to the measurement and verification rules contained within these standards. Each white certificate is certified to represent 1MWh (or other quantity) of consumption avoided through qualifying energy efficiency projects.
  - b. A common market where white certificates are traded.
  - c. A mandate to EDCs to purchase specified quantities of white certificates.
  - d. A cap price on white certificates to set a known maximum cost for the program and ensure cost effectiveness. Typically, such a cap price is implemented by allowing the state to issue 'phantom' white certificates that are not actually based on energy efficiency projects, and allowing EDCs to purchase an unlimited quantity of these phantom certificates at a set price. We respectfully suggest that such a mandated purchase would constitute a "penalty" as used in 2806.1(F)(2), that the price on these phantom certificates be set to meet the "not less than \$1,000,000 and not to exceed \$20,000,000" requirement of 2806.1(F)(2), and that expenditures to purchase these certificates not be eligible for rate recovery.
  - e. A program administrator, either the Commission or a third-party designated by the Commission, with responsibilities to include
    - i. Developing and maintaining the standards described in point 2a, above.
    - ii. Review and approval of applications by energy efficiency projects.
    - iii. Licensing and monitoring of third-party evaluators authorized to conduct independent evaluation of energy efficiency projects.
    - iv. As necessary, auditing energy efficiency projects.
    - v. Crediting participants with white certificates earned by energy efficiency projects they have sponsored.
    - vi. Operating the white certificate trading market.
3. CPower believes that a program of this type has significant advantages over traditional ratepayer funded utility efficiency programs, including:

- a. Guaranteeing ratepayers that state energy efficiency goals are met at the lowest possible cost;
  - b. Guaranteeing that ratepayers who engage in energy efficiency projects are fairly compensated;
  - c. Placing the risks associated with specific program performance entirely with the program sponsor and isolating ratepayers from the costs of underperforming programs;
  - d. Simplicity of administration;
  - e. Avoidance of administratively complex and potentially error prone program assessments;
  - f. Avoids the potential risks from having a governmental agency 'pick technologies;
  - g. Flexibility for market participants to identify and develop energy efficiency opportunities across the widest possible range of end-users; and
  - h. Flexibility for new market participants to deploy innovative approaches to energy efficiency.
4. CPower believes that the provision of conservation services is inherently a competitive activity. Unlike the provision of retail electric service, providing conservation services is not a natural monopoly. As a result of this, we believe that incumbent utilities should not enjoy a privileged position as a provider of conservation services and that the costs of specific energy efficiency programs should not be directly recoverable from ratepayers.
5. This is not to say that the costs of energy efficiency mandates should not be borne by ratepayers; on the contrary, CPower believes that any mandated EDC *purchases* of white certificates should be fully recoverable through retail electric rates, subject to the provisions in 2806.1(A)(11). However, we believe that any activity EDCs engage in to *create* white certificates should be on equal competitive terms with other market participants, and the only opportunity for cost recovery for these activities should be sale of the created white certificates on an open, transparent market.

#### Regarding Waste Coal

- 6. CPower appreciates the significance of waste coal as an environmental issue in the Commonwealth, and applauds the successes of the existing Tier II REC market in creating incentives to address this problem. However, we believe that issues related to waste coal are essentially separate from those related to promoting energy efficiency, and that using a single policy instrument to address both waste coal and energy efficiency inevitably results in dilution of that instrument's effectiveness.
- 7. CPower respectfully requests that the Commission examine the effect that allowing waste coal and energy efficiency to participate in the same market has on that market's effectiveness in promoting energy efficiency, and that the Commission consider changes to the Tier II market to ensure it adequately values energy efficiency.

#### Regarding Integration With a Possible PJM Energy Efficiency Market

8. PJM has publicly stated that that it intends to file tariff changes allowing energy efficiency to enter into the RPM capacity market. CPower fully supports this, and believes that capacity market revenue is a potentially powerful incentive to stimulate energy efficiency.
9. CPower believes that the complexity associated with multiple, overlapping markets can increase the administrative costs of energy efficiency projects and serve as a deterrent to new energy efficiency projects. In order to reduce this complexity, CPower respectfully requests that the Commission consider harmonizing any Pennsylvania energy efficiency program with PJM's capacity market, and that the Commission investigate creating streamlined registration, measurement, verification, and settlement processes that allow qualifying projects to participate in both Pennsylvania's and PJM's programs with minimal duplication of effort.

#### Regarding Service for Specific Customer Classes

10. CPower notes that 2806.1(B)(1)(b) and 2806.1(B)(1)(g) set specific energy consumption reductions for government facilities and low income households, respectively. By analogy to the way that Pennsylvania has used its renewable portfolio standard to support both new renewable and energy efficiency by creating Tier I and Tier II certificates, a program that created separate types of certificate and EDC purchase mandates for each target customer class could meet this need. We believe that providing energy conservation services to government facilities should be a competitive market, and respectfully suggest that the Commission could fulfill the 2806.1(B)(1)(b) requirements by creating a special class of white certificates representing energy savings from government facilities and mandating that 10% of EDC's white certificate purchase be of this class.
11. We acknowledge that providing energy efficiency services to low income customers raises unique issues and challenges, and that the market-based approach described herein may not be effective at serving low income customers. Therefore, we respectfully request that the Commission consider these comments as being limited to energy efficiency obtainable from the general electricity consuming population, unless specifically noted otherwise.

#### Regarding Peak Load Reduction

12. Section 2806.1(D), regarding Peak Demand, mandates that the plans adopted under Subsection (B) shall reduce electric peak demand of retail customers of each EDC by a minimum of 4.5% of the 100 hours of highest demand by 2013. This would be measured against the EDC's peak demand for the 2007-2008 period.
13. CPower notes that PJM current operates a robust, competitive demand response market which is well suited to providing peak load reductions. CPower respectfully suggests that PJM registered Curtailment Service Providers who can provide resources meeting the following criteria be considered eligible to provide Pennsylvania EDCs with peak-100 hour reductions. These criteria include the following:

- a. Located in Pennsylvania;
  - b. Registered in PJM's economic demand response program;
  - c. Willing to enter a contractual obligation to bid into PJM's economic market at a price specified by the contracting EDC for up to 100 hours per year, as directed by the contracting EDC;
  - d. Willing to enter into a contractual obligation to reimburse the EDC a portion of any penalty the EDC incurs as a consequence of not meeting statutory peak-reduction goals, should the resource fail to curtail load as requested; and
  - e. Capable of curtailing load on 2 hours notice.
14. CPower respectfully suggests that, should participants in PJM's demand response market offer such resources at a price per MW-year lower than that of obtaining peak reductions through EDC-proposed programs, then the Commission should order EDCs to purchase those resources up to the quantity sufficient to meet their peak load reduction obligation.
15. In order to ensure that demand resources contribute to a reliable electric grid, and to ensure that purchased demand resources perform as required, we respectfully suggest that only Curtailment Service Providers, certified by PJM as demonstrating an ability to follow dispatch orders, be eligible to offer the product described in 12 and 13.

**CPOWER'S COMMENTS IN RESPONSE TO THE ENERGY EFFICIENCY  
QUESTIONS REGARDING THE SPECIAL EN BANC HEARING**

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4 Q1. The Electric Distribution Companies (EDCs) currently have some Demand Side  
5 Reduction (DSR) programs available to various customer classes. They have developed these  
6 programs voluntarily without any mandates.

7 Q1a. Should the EDCs' existing DSR programs provide the starting point or baseline from  
8 which new offerings could be developed?

9 A. CPower acknowledges the value of existing ratepayer funded DSR programs, and believes  
10 that disrupting these programs would not serve the public interest. However, CPower also  
11 believes that allowing substantial expansion of ratepayer funded DSR programs would hide the  
12 true value of energy conservation, possibly hide the true costs and cost/benefit ratios of EDC  
13 programs, and create a barrier for new market entry by CSPs.

14 Therefore, we believe that existing ratepayer funded EDC DSR programs should be  
15 'grandfathered' and allowed to continue operation without substantial changes in scope and  
16 scale. Because grandfathered programs enjoy rate recovery, they should not also be allowed to  
17 earn revenue by generating white certificates.

18 Should an EDC wish to substantially change the scope or scale of existing programs, CPower  
19 respectfully suggests that the commission treat them as new programs, as described in our  
20 answer to Q1b and Q1c, below.

21 If there are any existing EDC DSR programs that do not recover costs from ratepayers, such  
22 programs should be allowed generate white certificates and enjoy full market access in the same  
23 manner as any new program.

24 These comments do not apply to DSR programs serving low income households. CPower does  
25 not propose any restrictions on rate recovery for such programs.

26 Q1b. Should new/expanded programs be developed?

27 A. The decision to develop new programs or to re-open closed programs should be made by the  
28 individual EDCs in the knowledge that these programs will not have the opportunity to recover  
29 costs from ratepayers, that all revenues from these programs will come from open market  
30 activity, and that their investors bear the full financial risk and rewards of program performance.

31 CPower does not propose any restrictions on rate recovery of the costs of expanding or creating  
32 programs serving low income households.

33 Q1c. Should EDCs re-open closed programs in order to fill in the gaps of the existing EDC  
34 DSR programs?

35 A. Please see response to Q1b, above.

1 Q2. Should the DSR/Energy Efficiency (EE) programs be combined to have the greatest  
2 impact? For example, should an education campaign combined with an offer to install  
3 frequently-used EE measures be one program?

4 A. We believe that specific program design decisions should rest with the program sponsor, and  
5 that the pressures of supplying into a competitive market will provide sufficient incentive for  
6 market participants to combine appropriate, qualified EE measures in the most efficient manner  
7 possible.

8 Any education campaign funded by taxpayers or ratepayers should aim to raise awareness of  
9 energy efficiency benefits and opportunities without privileging any market participant.  
10 Exceptions to this may be appropriate for programs that target low income households or other  
11 specific groups not well served by more general programs.

12 Q3. Should DSR and/or EE programs be fully recoverable in rates if demonstrated to be cost  
13 effective by satisfying the Total Resource Cost (TRC) benefit test? Are there other cost/benefit  
14 tests the Commission should use? Should the Commission use multiple tests in evaluating  
15 programs?

16 A. CPower believes that simplifying the cost/benefit analysis of possible programs is one of the  
17 advantages of our proposed approach. Ultimately, our approach suggests that the Commission  
18 need make only one cost/benefit decision, which is to set the price of the phantom white  
19 certificates discussed in comment 2d, above. Any qualifying project which is able to deliver  
20 white certificates at a price less than the cap price set by the Commission is inherently cost  
21 effective; our goal in suggesting that EDCs purchase their allotment of white certificates on an  
22 open, competitive market is to ensure that the EDCs procure their energy efficiency from the  
23 most cost effective of available sources.

24 Q6. Should some or all DSR/EE programs be coordinated across the Commonwealth to act as  
25 one program? If so, what types of programs? What types of programs should be utility specific?

26 A. We believe that a single white certificate market should be implemented across the  
27 Commonwealth, using a single set of qualification, measurement, and verification rules. We also  
28 believe that, to the maximum extent consistent with 2806.1, white certificates should be  
29 'geography neutral'—that is, an EDC is under no obligation to meet its white certificate  
30 obligation by purchasing white certificates generated in any particular location.

31 CPower believes that offering program participants maximum flexibility to develop energy  
32 efficiency opportunities across the Commonwealth will promote the most cost effective mix of  
33 projects, ultimately reducing the cost to ratepayers.

34 In keeping with our belief that EDCs should provide energy efficiency services on equal terms  
35 with other CSPs, we have no objection to EDC programs enrolling participants outside of their  
36 retail electricity service area. However, we acknowledge that this could raise regulatory issues  
37 beyond the scope of this hearing, and thus offer no opinion on the geographic scope of EDC  
38 programs.

39

1 Q7. Should statewide energy and demand-reduction (DR) targets be identified and set? How  
2 would these targets be set, and what are reasonable targets?

3 A. We respectfully suggest that the energy reduction targets set forth in 2806.1(c)(1) and  
4 2806(c)(2) provide guidance on this issue, and that EDCs should be required to purchase white  
5 certificates to meet the load reduction targets specified there. The question of whether there  
6 should be statewide energy and demand reduction targets be developed above and beyond the  
7 Act 129 minimum reduction figures is something that would likely need to be aired out on the  
8 legislative side, as opposed to being a topic to be addressed at this time by the Commission.

9 8. Should utility-specific EE and DR reduction goals be established?

10 A. Yes. Please see our answer to Q7, above.

11 Q8a. If yes, how should such cost-effective reduction goals be determined?

12 Q8b. If yes, how should this be accomplished?

13 A. CPower respectfully suggests that each EDC be mandated to purchase white certificates in  
14 sufficient quantity to meet the annual electrical consumption load reduction targets specified in  
15 2806.1(C). We believe that cost-effectiveness criteria are met by setting the white certificate  
16 price cap as described in our comment 2d and answer 3, both above.

17 Additionally, 2806.1(C)(3) states that “If the commission determines that the benefits of the  
18 program exceed the costs, the commission shall adopt additional required incremental reductions  
19 in consumption.” We respectfully suggest that this requirement may be met by the Commission  
20 making a determination of the societal benefit of a quantity of energy conservation, and, should  
21 the white certificate market be able to provide certificates beyond the quantities specified in  
22 206.1(C)(1) and (2) at or below this price, require EDCs to purchase additional certificates.

23 Q9. How many and what types of programs should be selected?

24 A. CPower believes that one of the strengths of the approach described in these comments is  
25 that the Commission does not have to put itself in the position of selecting or evaluating specific  
26 programs. CPower respectfully suggests that because ratepayers bear none of the performance  
27 risk of programs developed under an open market system, a lower level of Commission oversight  
28 is sufficient to safeguard the public interest.

29 Under the approach described here, program selection, cost-effectiveness screening,  
30 administration, and evaluation would be the responsibility of individual market participants. This  
31 applies equally to both EDCs and independent CSPs, so long as EDC programs do not have the  
32 opportunity for cost recovery from ratepayers.

33 Q10. How should the programs be selected?

34 A. Please see response to Q9, above.

35 Q11. Should these programs be subjected to rigorous program evaluation?

36 A. Please see response to Q9, above.

1 Q11a. Is a determination of cost-effectiveness based on a TRC test sufficient? Is there a need to  
2 conduct classical program evaluation where net impacts are actually measured?

3 A. Please see response to Q9, above.

4 Q11b. What is the likely cost to properly evaluate these programs?

5 A. Please see response to Q9, above.

6 Q11c. How often should the programs be evaluated?

7 A. Please see response to Q9, above.

8 Q11d. Should the programs undergo process evaluations to determine if they are being  
9 implemented and targeted as designed, or is there is a need for early implementation adjustments  
10 to increase their effectiveness?

11 A. Please see response to Q9, above.

12 Q12. Who should (1) select, (2) develop, and (3) administer the EE and DR programs? The  
13 utility, the PUC or a third-party administrator?

14 A. As discussed in our response to Question 9, above, CPower suggests that utilities and CSPs  
15 should be responsible for selecting, developing, and administering specific programs.

16 CPower believes that, for a market of the type described here to succeed, the PUC or a third-  
17 party designated by the PUC should administer the overall market framework specific programs  
18 operate within. The responsibilities of such an administrator could include:

- 19 i. Developing and maintaining qualification, measurement, and verification  
20 standards for energy efficiency resources.
- 21 ii. Review and approval of applications by energy efficiency projects.
- 22 iii. Licensing and monitoring of third-party evaluators authorized to conduct  
23 independent evaluation of energy efficiency projects.
- 24 iv. As necessary, auditing energy efficiency projects.
- 25 v. Crediting participants with white certificates earned by energy efficiency projects  
26 they have sponsored.
- 27 vi. Operating the white certificate market.

28 Additionally, we believe that certain administrative duties are best carried out directly by the  
29 PUC:

- 30 i. Setting state-wide and individual utility white certificate purchase mandates.
- 31 ii. Verifying EDC compliance with such mandates.
- 32 iii. Setting a cap price for white certificates or administering other cost-control  
33 measures.
- 34 iv. Monitoring the white certificate market to ensure open, non-discriminatory  
35 functioning and to police for abuse of market power, gaming by market  
36 participants, or similar undesirable behavior.

1           v.       Periodic evaluation to ensure the white certificate market is delivering sufficient  
2                   quantities of energy efficiency and demand reduction.

3    Q14.   Should the Commission establish standardized rules for meter and meter data access to  
4    facilitate third-party DSR programs and other energy-management services by Curtailment  
5    Service Providers and other energy-management providers?

6    A. Yes.

**CPOWER'S RESPONSES TO CEEP'S QUESTIONS**

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Q1. Conservation Service Providers

Q1c. Does the provision providing for competitive bidding for all contracts with CSPs require the utility to competitively bid all energy efficiency and conservation services? If not, what energy efficiency and demand services should not be competitively bid?

A. Under the approach suggested herein, a utility would meet its energy efficiency mandates by purchasing white certificates on an open market. We have also suggested that utility activities that generate white certificates be required to sell those certificates on the open market, rather than using them directly to meet their own efficiency mandates. We respectfully suggest that purchase of standardized energy efficiency certificates on an open market is a form of 'competitive bidding,' and that this program approach meets this requirement of 2806.1(A)(7).

Q2. Measurement of Meeting Statutory Requirements:

Q2b. How would one distinguish between reductions in consumption as a result of customer participation in technology programs in an EDC territory, implemented as part of an EDC's Energy Efficiency and Conservation Plan, as opposed to unrelated and independent consumer actions (i.e. manually adjust thermostat heat/cooling settings, turn lights off, etc.)?

A. Because the program design suggested here is based on crediting performance of individual, specific programs, unrelated and independent consumer actions will not be measured.

Q3. Evaluation:

Q3c. Act 129 requires utilities to file a plan to assure quality assurance [includes evaluation, measurement and verification by independent parties to ensure quality of completed measures], and further requires an annual independent evaluation of cost effectiveness of the Plan. Given the exposure to penalties by EDCs for potential non-compliance on meeting statutory energy efficiency and conservation goals, what approaches are appropriate to ensure that such independent, third parties are free of coercion from the EDCs they evaluate?

A. CPower respectfully suggests that the Commission or its third party delegate consolidate all utility quality assurance plans filed under Act 129 into a single evaluation, measurement, and verification manual that applies equally to all energy efficiency projects seeking to generate white certificates. The Commission may find it beneficial to institute rules regarding the qualifications of the 3<sup>rd</sup> party evaluator and order that any EDC attempts to impede the work of the evaluator be met with certain defined penalties. The third party administrator should have the authority to require independent auditing of energy efficiency projects when concerns about the project's measurement and verification procedures arise.

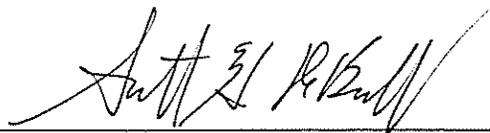
Q4. Cost Recovery:

Q4b. How should this Commission ensure recovery of only "prudent and reasonable" costs? Is this established at the time of plan approval? Is it established only after quality assurance and performance is measured, verified, and evaluated, or is it established during the annual independent analysis?

1 A. CPower respectfully suggests that the Commission only allow recovery of the costs incurred  
2 by EDCs in purchasing the mandated quantity of white certificates. Prior to a white certificate  
3 being placed on a market, the project that generates that white certificate will have been subject  
4 to qualification, measurement, and verification by the Program Administrator. Proper quality  
5 assurance prior to issuance of white certificates ensures that recoverable costs are only applied to  
6 the purchase of certificates that represent real, verified energy efficiency projects.

WHEREFORE, CPower respectfully requests that the Pennsylvania Public Utility Commission grant it party status in the above captioned investigation. CPower also asks that the Commission enter its comments in the above-captioned proceeding. We look forward to participating in the process going forward and contributing our experience and expertise. Thank you again for the opportunity to comment on this important matter.

Respectfully submitted,

By:  \_\_\_\_\_

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**DATED: NOVEMBER 14, 2008**

**COUNSEL FOR CPOWER, INC.**

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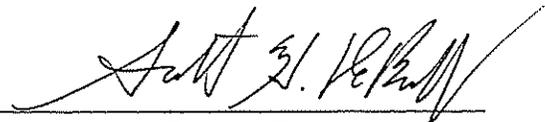
CERTIFICATE OF SERVICE

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I hereby certify that I served the foregoing "COMMENTS ON BEHALF OF CPOWER IN RESPONSE TO QUESTIONS PROPOSED BY THE PA PUC REGARDING SPECIAL EN BANC HEARING" in hand and electronically to Mr. James J. McNulty, Commission Secretary, as well as ALJ Salapa, and Tom Charles in the Office of Communications.

Dated: November 14, 2008

By:



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