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May 2, 2000

HAND DELIVER

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-18
Commonwealth Avenue and North Street
Harrisburg, Pennsylvania 17105-3265

DOCUMENT
FOLDER

RE: Application of PECO Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of PECO Energy Company's Petition for Certification of the Record Pursuant to 66 PA.C.S. §335(a) in the above-captioned matter. We respectfully request that the Commission can act on this Petition at its May 11, 2000 Public Meeting.

Sincerely,

Paul R. Bonney
Paul R. Bonney

PRB/mbo

Enclosures

cc: John M. Quain, Chairman
Nora Mead Brownell, Commissioner
Aaron Wilson, Jr., Commissioner
Terrance J. Fitzpatrick, Commissioner
Robert K. Bloom, Commissioner
Administrative Law Judge Charles E. Rainey, Jr.
Certificate of Service

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68

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

APPLICATION OF PECO ENERGY :
COMPANY, PURSUANT TO CHAPTERS :
11, 19, 21, 22 AND 28 OF THE PUBLIC :
UTILITY CODE, FOR APPROVAL :
OF (1) A PLAN OF CORPORATE :
RESTRUCTURING, INCLUDING THE :
CREATION OF A HOLDING COMPANY :
AND (2) THE MERGER OF THE NEWLY :
FORMED HOLDING COMPANY AND :
UNICOM CORPORATION :

APPLICATION
DOCKET NO. A-110550F0147

DOCKETED
MAY 04 2000

DOCUMENT
FOLDER

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SECRETARY'S BUREAU

PETITION OF PECO ENERGY COMPANY
FOR CERTIFICATION OF THE RECORD
PURSUANT TO 66 PA.C.S. §335(A)

PECO Energy Company ("PECO") requests that the Pennsylvania Public Utility Commission exercise the authority granted under Section 335(a) of the Public Utility Code (66 Pa.C.S. §335(a)) to dispense with an initial decision in the above-captioned matter and certify the record for final decision. In further support of its request, PECO states as follows:

1. On November 22, 1999, PECO filed the above-captioned Application requesting that the Commission issue an Order, *inter alia*, approving a plan of corporate restructuring, including the creation of a holding company ("Restructuring"), and the merger of the newly formed holding company and Unicom Corporation ("Merger").

2. Notice of PECO's Application was published in the *Pennsylvania Bulletin* on December 4, 1999, and interested parties were given until December 20, 1999 to file formal

Protests and/or Petitions to Intervene. To date, PECO has been served with twenty-one Protests and Petitions to Intervene.

3. On December 21, 1999, the Commission assigned this matter to its Office of Administrative Law Judge and scheduled a Prehearing Conference to be held on January 20, 2000. Prehearing Memoranda were filed on January 13, 2000.

4. At the Prehearing Conference, Administrative Law Judge Rainey adopted a schedule for the full litigation of this proceeding. Additionally, the parties and the Administrative Law Judge discussed the potential for adopting a procedure that dispensed with an initial decision and the filing of exceptions and reply exceptions thereto. This procedure was either supported or not opposed by most of the parties. As a consequence, on January 25, 2000, PECO filed a *Petition For Certification Of The Record To The Commission For Decision Pursuant To 66 Pa.C.S. §335(a)*^{1/}, which requested that the Commission:

[I]ssue an Order pursuant to Section 335(a) of the Public Utility Code directing that: (1) evidentiary hearings be conducted before the presiding Administrative Law Judge; (2) upon its close, the record be certified to the Commission; (3) briefs and reply briefs

^{1/} Section 335(a) of the Public Utility Code (66 Pa.C.S. §335(a)) provides, in pertinent part, as follows:

When the commission does not preside at the reception of evidence, the presiding officer shall initially decide the case, *unless the commission requires, either in specific cases or by general rule, the entire record to be certified to it for decision.* (Emphasis added.)

be filed directly with the Commission; and (4) the Commission render a final decision based upon the certified record and the briefs and reply briefs filed by the parties.

5. On March 3, 2000, the Commission entered an order denying PECO's Petition. In so doing the Commission expressed its preference for the issuance of an initial decision in fully litigated matters as a means of "identifying issues" and permitting the contending parties to "refine their positions on those issues via filing exceptions." The Commission stated further that its standard procedures help to "narrow the scope of issues" it must decide and allow for "corrections of errors." (Order, p. 4.) The Commission also reviewed other cases where it entered an order without a prior initial or recommended decision and found them inapplicable because they involved either a partial settlement^{2/} or an impending statutory deadline^{3/}. Accordingly, the Commission found that the posture of this case at the time of PECO's earlier request for certification was not within either of the sets of circumstances that justify eliminating an initial or recommended decision:

In the present matter, PECO asserts neither a proposed settlement of issues otherwise subject to protracted litigation nor the need to consolidate and expedite the procedure due to statutory mandate.

^{2/} *Pa. P.U.C. v. PECO Energy Company*, Docket Nos. R-00973953 and P-00971265, Orders entered October 9, 1997 (p. 5) and November 6, 1997 (p. 8); *Re Nextlink Pennsylvania, Inc. et al*, Docket Nos. P-00991648 and P-00991649 (September 30, 1999), 196 P.U.R.4th 172, 185-186 (1999).

^{3/} *Re PECO Energy Company*, Docket No. P-00971170 (August 21, 1997). See also *Petition of Pennsylvania Power & Light Company*, Docket No. P-00971183 (December 16, 1999).

6. As the Commission is aware, on March 23, 2000, a Joint Petition for Settlement was filed in this matter. All but two of the parties to this proceeding either executed the Joint Petition or do not oppose it. In accordance with the schedule adopted by the Administrative Law Judge, the parties withholding consent, PPL Electric Utilities Corporation (“PPL”) and Philadelphia City Councilman David Cohen, filed comments and objections to the proposed Settlement on April 13, 2000, and the parties supporting the Settlement filed replies on April 18, 2000. A copy of PECO’s Reply, which summarizes and addresses the comments and objections of PPL and Councilman Cohen, is attached as Appendix “A.”

7. The nature and procedural posture of this case has changed dramatically since March 3, 2000, when the Commission entered its Order denying PECO’s earlier request for record certification. This case now involves a proposed settlement and, therefore, satisfies previously established Commission requirements for certification under Section 335(a). Moreover, because a settlement has been achieved among the vast majority of the parties in this case, issuance of an initial decision and filing of exceptions are not necessary to identify and narrow the issues or to refine the positions of the parties. The principal issue at this juncture is whether the Settlement is in the public interest, which the Commission has previously held can properly be addressed directly by the Commission on the basis of a certified record. *See Order*, pp. 5-6 (“In the [PECO restructuring] proceeding, as in *Nextlink*, the relevant issue was the possible settlement of issues otherwise subject to protracted litigation.”)

8. There are other important reasons that the Commission should approve the Section 335(a) record certification procedure in this case. Under the schedule adopted by the

Administrative Law Judge, evidentiary hearings will be held on May 10 and 11 and briefs and reply briefs will be filed on May 17 and 24, 2000, respectively. An initial decision would thereafter be issued, followed by exceptions, replies and, finally, the Commission's order. This schedule would put the proposed Settlement on a time track almost identical to the one established for full litigation of the case, which called for evidentiary hearings from April 25-28 and briefs and reply briefs on May 18 and May 31, respectively. In short, there would be as much time expended in reviewing the proposed Settlement as would have elapsed if this case were fully litigated. This consequence negates one of the principal benefits of settlement, which is the opportunity to decrease the time and litigation expense needed for Commission review and final decision. Making the settlement process as lengthy and nearly as arduous as full litigation creates significant disincentives for settlement and, therefore, conflicts with the Commission's policy favoring the amicable resolution of disputes (52 Pa. Code §§5.231, 69.391 and 69.401).

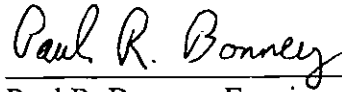
9. The unnecessary prolongation of settlement review has other detrimental effects in this case. Chief among them is the delay in implementing provisions of the Settlement that provide substantial benefits to customers and competitors but do not become effective until the Settlement has been approved, such as increasing the participation level for PECO's electric Customer Assistance Program (Joint Petition §34); implementing an Abbreviated Dispute Resolution process (Joint Petition § 50); limiting its marketing of provider-of-last-resort service (Joint Petition §51); implementing changes to the Competitive Default Service auction process to improve incentives for bidding (Joint Petition §52); and distributing the Office of Consumer Advocate's "Shopping Guide."

10. The proposed procedure will yield a meaningful saving of time, expense and administrative resources by eliminating the interval necessary for preparation of an initial decision and the filing of exceptions and replies while at the same time affording the non-consenting parties a reasonable opportunity to raise objections, present evidence and argue their positions. Moreover, the proposed procedure will ensure a more timely review of the proposed Settlement, which is essential to avoid prolonged uncertainty for employees and delays in the realization of benefits from the proposed merger.

For the reasons set forth above, PECO respectfully requests that the Commission issue an Order at its May 11, 2000 public meeting pursuant to Section 335(a) of the Public Utility Code directing that the record be certified to the Commission and that briefs and reply briefs conforming to the page limitations for Exceptions and Replies (a maximum of 40 pages and 25

pages, respectively) be filed directly with the Commission on the dates set by the Administrative Law Judge (May 17 and 24, 2000, respectively) so that a final decision may be rendered by the Commission by June 8, 2000.

Respectfully submitted,



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Dated: May 2, 2000

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY :
COMPANY, PURSUANT TO CHAPTERS :
11, 19, 21, 22 AND 28 OF THE PUBLIC :
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OF (1) A PLAN OF CORPORATE :
RESTRUCTURING, INCLUDING THE : APPLICATION
CREATION OF A HOLDING COMPANY : DOCKET NO. A-110550F0147
AND (2) THE MERGER OF THE NEWLY :
FORMED HOLDING COMPANY AND :
UNICOM CORPORATION :

PECO ENERGY COMPANY'S REPLY TO
THE OBJECTIONS OF PPL ELECTRIC UTILITIES
CORPORATION AND DAVID COHEN

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Dated: April 18, 2000

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I. INTRODUCTION

On March 23, 2000, a Joint Petition for Settlement ("Settlement") was filed in the above-captioned proceeding. Subsequently, two additional parties, the City of Philadelphia and New Energy East, L.L.C., signed the Settlement and, as a consequence, all but two parties have either joined in the Settlement or stated they do not oppose it. The two holdouts are PPL Electric Utilities Corporation ("PPL") and Philadelphia City Councilman David Cohen, who filed Objections to the Settlement on April 13, 2000. PECO Energy Company ("PECO" or the "Company") herein replies to those Objections.

II. SUMMARY OF ARGUMENT

A. PPL's Objections

PPL does not object to the Commission's granting the relief requested in PECO's Application, namely, approving PECO's proposed corporate restructuring, which will create a holding company structure, and the merger of Unicom Corporation into the new holding company. Rather, PPL's disagreement lies with other terms and conditions of the Settlement that address interests and concerns raised by other parties, such as rate reductions, extending the transmission and distribution rate cap and establishing objective measures for customer service and service improvement. Specifically, PPL claims that no evidence was presented to demonstrate that these additional terms are in the public interest and, therefore, they cannot be approved by the Commission unless a hearing is held for that purpose.

Additionally, PPL contends that the Commission should not approve the Settlement under any circumstances unless it mandates that the settling parties “(1) not . . . propose that a provision of the Joint Petition be adopted in any other proceeding based on the fact that such provision was included in the Joint Petition; and (2) not . . . seek to reopen another Pennsylvania public utility’s settlement of its retail restructuring proceeding to modify any provision of such settlement in order to make it consistent with a provision of the Joint Petition” (PPL Objections, pp. 33-34).

As more fully explained below, PPL’s objections are premised upon an erroneous understanding of the law, are contrary to the Commission’s policy of promoting settlements and should be dismissed, for several reasons.

First, contrary to PPL’s contentions, a hearing is not required for the Commission to discern whether a proposed settlement promotes the public interest. Pennsylvania appellate courts have held that due process is not offended when issues of law and public policy are resolved on the basis of parties’ written submissions and without a full, trial-type hearing. Although PPL strains to identify disputed factual issues allegedly presented by the Settlement, none exist.

Second, requiring evidentiary hearings would undermine the settlement process and conflict with the Commission’s policy favoring the amicable resolution of disputes (52 Pa. Code §§5.231, 69.391 and 69.401). Avoiding litigation’s delays, expense and drain on the Commission’s administrative resources is one of the principal benefits of settlements. Imposing

an evidentiary hearing requirement is particularly inappropriate where, as here, the intervenor calling for hearings has no legally cognizable interest in the issues those hearings would allegedly address.

Third, PPL does not have standing to address the “public interest” issues raised in its Objections. PPL purports to assert interests and concerns as to which it lacks the “substantial, direct and immediate” interest needed for standing under the test laid down in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). PPL is not a customer of PECO, nor does it meet any of the criteria for “representational standing.” PECO’s customers are represented in this proceeding both directly and through statutorily designated representatives that have all joined in the Settlement.

Fourth, PPL’s positions are contrary to the law. Based on the Commission’s decision in *PG Energy, Inc.*, Docket No. A-120011F.002 (1999), PPL contends that the rate reductions and other concessions made by PECO in the Settlement are “contrary to Commission policy.” While *PG Energy* provides that such concessions cannot be imposed unilaterally as a matter of law, it clearly does not preclude them if made with the utility’s agreement. PPL also contends that PECO’s proposed rate reductions and rate cap extension may affect its ability to construct transmission system improvements ordered under the Operating Agreement with the Pennsylvania-New Jersey-Maryland Interconnection, LLC (“PJM”). However, the Electricity Generation Customer Choice and Competition Act (“Competition Act”) provides a specific rate cap exception for transmission projects mandated by an Independent System Operator (66 Pa. C.S. §2804(4)(iii)(E)). Additionally, PPL’s concern that the Settlement’s provisions dealing

with decommissioning expense recovery might affect nuclear safety is misplaced. Those matters lie within the exclusive jurisdiction of the Nuclear Regulatory Commission ("NRC"). Finally, PPL's contention that changes in the Competitive Default Service ("CDS") auction process may violate the Competition Act as a "forced assignment" of customers to an Electric Generation Supplier ("EGS") was recently rejected by the Commonwealth Court. *See George v. Pa. P.U.C.*, 735 A.2d 1282 (Pa. Cmwlth. 1999)

Finally, PPL's concerns about the possible precedential value of the Settlement are unwarranted. Section 72 of the Joint Petition expressly provides that it shall not constitute or be cited as controlling precedent by the parties. Additionally, the Commission has held that: "We vigorously, and without equivocation, reject considering a settlement as precedent, as to any subsequent issue, in any proceeding." *Pa. P.U.C. v. The Bell Telephone Company of Pennsylvania*, 1988 Pa. PUC LEXIS 572 (November 10, 1988).

B. Councilman Cohen's Objections

The issues raised by Councilman Cohen are all addressed in one form or another in the proposed Settlement, which represents a reasonable and balanced accommodation of competing interests by parties who negotiated in good faith and at arms-length. Unlike PPL, which contends that the settling parties should make some further demonstration that PECO's concessions are in the public interest, Councilman Cohen does not dispute that what PECO has agreed to do will benefit consumers. He just thinks PECO has not gone far enough. Councilman Cohen's comments represent, at most, after-the-fact criticism of the negotiated outcome. They

do not contain any analysis of the positions asserted and, therefore, do not meet the minimum requirements for objecting to a proposed settlement (e.g., facts, affidavits, argument and relevant legal analysis). *See* 52 Pa. Code §69.406(a). Moreover, his criticism lacks substance given that all of the stakeholders -- including those just as committed to the issues raised by Councilman Cohen as the Councilman himself -- believe that the Settlement represents the best achievable outcome.

Additionally, many of PECO's concessions are extra-statutory and could not be imposed without PECO's agreement. In short, they are not something that could be placed at issue if this proceeding were fully litigated, but rather are achievable only through the settlement process. As a consequence, Councilman Cohen's desire for more and larger concessions does not present any legally sufficient basis either to require evidentiary hearings or to disapprove the Settlement.

Finally, Councilman Cohen's objections were filed before he knew of the settlement achieved with the City of Philadelphia, which expands PECO's commitments regarding its headquarters and employment levels.

III. ARGUMENT

A. Evidentiary Hearings Are Not Required For The Commission To Determine That The Settlement Is In The Public Interest

A full, trial-type hearing is not required for the Commission to determine if a settlement is in the public interest, even if the settlement includes less than all parties. Discerning where the public interest lies in relation to the terms and conditions of a proposed settlement involves

issues of law, public policy and the exercise of Commission discretion. As the Commonwealth Court held in *Lehigh Valley Power Committee v. Pa. P.U.C.*, 128 Pa. Cmwlth. 259, 274-275, 563 A.2d 548, 556 (1988), these kinds of issues can lawfully be addressed and resolved solely on the basis of written submissions:

LVPC submits that because its opportunity to litigate the issue was limited to its filing of an answer, that it was not afforded a meaningful opportunity to be heard. We disagree. The issue presented in LVPC's answer was a legal one. LVPC's contention that it should have been afforded the opportunity to present evidence is therefore meritless. *It is a fundamental proposition of law that a hearing or trial procedure is necessary only to resolve disputed questions of fact and is not required to decide questions of law, policy, or discretion. See Davis, Administrative Law Treatise, §§12:2, and 14:1-14:3 (1979-80).* LVPC was provided the opportunity to present argument on this issue and the Commission considered and rejected LVPC's contentions in its discussion in the [PP&L] Joint Petition proceeding. (Emphasis added.)

Accord Lehigh Valley Power Committee v. Pa. P.U.C., 128 Pa. Cmwlth. 276, 288, 563 A.2d 557, 563 (1988).

The procedure adopted in this case provides a reasonable basis for the Commission to ascertain whether to approve the Settlement. A complete explanation of how the Settlement promotes the public interest is set forth in the Settlement itself, which is augmented by the Statements in Support filed by the parties and the endorsement of numerous witnesses at the public input hearings. In addition, parties were given the opportunity to submit comments or objections. Upon analysis, it is clear that the objections and comments submitted by PPL and Councilman Cohen raise questions of law, public policy and the limits of Commission discretion

to approve a settlement and do not present triable issues of fact. Significantly, PPL -- the only party contending that an evidentiary hearing on the Settlement is necessary -- made no proffer of the evidence, if any, it might present. Indeed, it has not stated it would present any evidence even if an evidentiary hearing were held. In view of the foregoing, the opportunity to present written comments or objections fully satisfies the standards approved by the Commonwealth Court and provides ample basis for the Commission to determine whether the proposed Settlement is in the public interest.

Furthermore, in *Barasch v. Pa. P.U.C.*, 119 Pa. Cmwlth. 81, 546 A.2d 1296 (1988) ("*Milesburg I*"), the Court held that even in those cases, unlike the present one, where factual issues may be in dispute, a "full, trial-type hearing" is not necessary in all instances. The kind of "hearing" required must be adapted to the circumstances of each case, i.e., the nature of the facts at issue, the interests of the contesting parties, the administrative and public policies involved and the need to reach a reasonable resolution in the most expeditious and minimally burdensome manner possible. In so holding, the Commonwealth Court cited with approval, and relied upon, the United States Supreme Court's decision in *Mathews v. Eldridge*, 424 U.S. 319, 342 (1976), which found that: "While oral presentations may be necessary for determinations likely to turn on witness credibility, written submissions may be adequate when economic or statistical questions are at issue." 546 Pa. Cmwlth. at 1303. As a consequence, PPL's mere assertion that the proposed Settlement presents factual issues, even if correct, does not require that the Commission hold evidentiary hearings.

B. Imposing The Kind Of Hearing Requirement PPL Proposes Is Contrary To The Commission's Policy Encouraging Settlements And Would Undermine The Settlement Process

The Commission's policy favoring and encouraging settlements as the preferred alternative to litigation is well-established and, in fact, has been incorporated in the Commission's regulations and policy statements. 52 Pa. Code §5.231(a) ("It is the policy of the Commission to encourage settlements."); 52 Pa. Code §69.391 ("The Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation."); 52 Pa. Code §69.401 ("In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.") In a decision specific to this case, Chairman Quain admonished the parties to "work diligently, in the spirit of compromise repeatedly endorsed by this Commission, to reach an amicable resolution of this matter, if at all possible." See Separate Statement of John M. Quain, Chairman, issued March 2, 2000.

PPL's proposal would impose a *per se* requirement for evidentiary hearings in any proceeding where even one participant withholds consent to a settlement, without regard to the holdout's interest in the case or the substantiality of the issues it allegedly intends to raise. PPL's position is contrary to the Commission's policy favoring settlements because it would force the settling parties to press ahead with litigation at the behest of a lone dissenter despite having achieved a consensus among all other participants who have a real and substantial interest at stake in the outcome of the proceeding. In time-sensitive matters, this could amount to giving

one party the equivalent of a veto over a proposed settlement regardless of the merits, or lack thereof, of the dissenter's position. Even in matters that are not time-sensitive, the PPL proposal would create delays, impose additional expense and interject a degree of uncertainty in the outcome that could militate against the real parties in interest making the effort required to try to settle the case. That is particularly true in a case such as this one, where the settling parties devoted a great deal of time and effort to trying to reach an amicable resolution that is fair, balanced and serves the public interest.

As the Commission determined in its policy statement on mediation (52 Pa. Code §69.391), one of the chief benefits of negotiated settlements is that they save time, expense and the uncertainty of litigation. PPL's proposal would needlessly eliminate that benefit by imposing a requirement for evidentiary hearings in all non-unanimous settlements irrespective of the materiality or substantiality of the dissenting party's interests and objections. For example, in this case, PPL objects because of its concern that concessions granted by PECO in settlement may either become "precedent" in future litigated proceedings involving PPL or potentially could be used as a bargaining point in negotiating the settlement of a future PPL proceeding. Neither concern detracts from the merits of *this* Settlement or states any reason why *this* Settlement is not in the public interest. If settling parties are likely to face an adversarial proceeding based upon these kinds of non-substantial objections, they may well decide there is little point in trying to reach a settlement in the first place.

C. PPL Does Not Have A Substantial, Direct And Immediate Interest In The Outcome Of The Issues It Purports To Raise And, Therefore, Does Not Have Standing To Object To The Settlement

The PUC has discretion to determine an entity's right to challenge Commission action, including the Commission's resolution of disputed issues. However, in exercising that discretion, the Commission has adhered to the principles of standing and aggrievement established by Pennsylvania's appellate courts for civil and appellate proceedings. See *Re L & H Trucking Company v. Pa. P.U.C.*, 55 Pa. P.U.C. 469 (1982). The definitive statement of those principles was made by the Pennsylvania Supreme Court in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975).

In *William Penn*, the Court adopted a tri-partite test that a party must satisfy to prove that it is or may be "aggrieved" and, therefore, has standing to litigate an issue. Specifically, the party must establish that it has an interest that is substantial, direct and immediate. As to what constitutes substantiality, the Court held: "[T]he individual's interest must have substance -- there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." 346 A.2d at 269. The test for what is a "direct" interest "means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains." 346 A.2d at 282. To satisfy the immediacy test, the one claiming standing must show "a sufficiently close causal connection between the challenged action and the asserted injury to qualify the interest as 'immediate' rather than 'remote' ." 346 A.2d at 286. Elaborating on this concept, the Court stated: "[I]t is clear

that the possibility that an interest will suffice to confer standing grows less as the causal connection grows more remote.”

Pennsylvania appellate courts have applied the principles of *William Penn* to proceedings before the PUC in two very recent and notable decisions. First, in *George v. Pa. P.U.C.*, *supra*, the Commonwealth Court held that a party to a proceeding that received adequate notice thereof lacked standing to raise the issue of whether other affected parties were properly notified. 735 A.2d at 1286. Second, in *Mid-Atlantic Power Supply Association v. Pa. P.U.C.*, 746 A.2d 1196 (Pa. Cmwlth. 2000) (“*MAPSA*”), the Court held that a utility did not have standing to raise issues pertaining to the possible infringement of its customers’ constitutional rights by a Commission order directing the utility to release customers’ private billing data. Additionally, the Court held that assent by customers’ statutorily designated representative assured that customers’ interests were not compromised:

PECO does not represent the interests of its ratepayers. A party may not claim standing to vindicate the rights of a third party who has the opportunity to be heard. *Pennsylvania Dental Assoc. v. Commonwealth of Pennsylvania, Department of Health*, 75 Pa. Cmmw. 7, 461 A.2d 329 (Pa. Cmwlth. 1983). Additionally, Section 902-A of the Administrative Code statutorily provided for the OCA to represent the interests of consumers before the PUC, and the OCA, as intervenor, submitted its brief in support of the PUC’s Final Order.

Based upon the principles articulated by the Pennsylvania Supreme and Commonwealth Courts, as summarized above, there is no doubt that PPL lacks standing to raise the issues set forth in its Objections, which fall seven broad categories: (1) the proposed rate reductions and

rate cap extension may impair PECO's ability to maintain or improve its transmission and distribution system and its level of customer service to the detriment of PECO's retail customers (PPL Objections, pp. 20-22); (2) all interested parties may not have received proper notice that benchmarks for service reliability and improvement would be adopted in this case (PPL Objections, p. 21); (3) the mechanism for recovery of nuclear decommissioning costs may not "strike the proper balance" between protecting customers from the costs of decommissioning and protecting society from the hazard and long-run costs of incomplete or under funded decommissioning (PPL Objections, pp. 23-24); (4) the settling parties have not demonstrated that PECO's customers and the public as a whole will benefit from the environmental provisions incorporated in the Settlement (PPL Objections, pp. 24-25); (5) the modifications to the CDS process may constitute a form of "slamming" because PECO customers may have their default supplier changed without their consent (PPL Objections, pp. 26-27); (6) all interested parties may not have received proper notice that CDS modifications would be addressed in this case (PPL Objections, p. 26); and (7) the settling parties have not demonstrated that changes in contractual provisions for Amtrak and the City of Philadelphia are reasonable and non-discriminatory (PPL Objections, p. 28).^{1/}

^{1/} At page 28 of its Objections, PPL contends that its list of allegedly "unsupported" settlement provisions is "not exhaustive" but provides "good examples of the reasons why the Joint Petition must be rejected." PPL had an obligation to present all of its alleged reasons for contesting the Settlement in its written objections so that PECO and other settling parties would have a reasonable opportunity to respond. PPL cannot, hereafter, attempt to raise other alleged issues, which have been waived by its failure to identify them in its written submission.

In none of the areas addressed in PPL's objections does it have a substantial, direct and immediate interest that is adversely affected by the terms of the proposed Settlement. In each instance, it is asserting the interests of someone else, i.e., (1) PECO's customers; (2) PECO itself; and (3) in the case of its "notice" arguments, unidentified parties that allegedly may have an interest in this proceeding but are not participating. As the Court made clear in *George and MAPSA, supra*, standing cannot be established by asserting the rights of others. Indeed, in *MAPSA*, the Court went so far as to state that a utility does not have standing to assert the rights of its own customers. Here, PPL's interests are even further attenuated, because it purports to assert the interest of the retail customers of another utility altogether. There is no precedent for finding standing on this basis.^{2/} Rather, PPL's position is similar to that of the dissenting parties in *AES Beaver Valley v. West Penn Power Company*, 58 Pa. P.U.C. 729 (1985), whose exceptions to a proposed settlement were dismissed for lack of standing because they were not served by the affected utility, which had reached an amicable resolution of a non-utility generator's complaint regarding "avoided cost."

For the same reasons discussed above, PPL's oft-repeated contention that it can force a hearing in this case in order to have the settling parties demonstrate that PECO's concessions in the Settlement are "in the public interest" fails the substantiality test of *William Penn* because it

^{2/} PPL does not assert, nor could it claim, standing as a representative of PECO's customers. Representational status is only permitted, for example, by an association that has one or more members with standing in their own right and is authorized and empowered by its members to speak on their behalf. See *Pennsylvania Natural Gas Association v. T.W. Phillips Gas and Oil Company*, Docket Nos. C-902909 and C-913239 (December 20, 1991), 1991 Pa. PUC LEXIS 195.

is no different from the “abstract interest of all citizens in having others comply with the law,” which the Supreme Court expressly stated is inadequate to confer standing.

Finally, PPL’s concern that the Settlement not become a “precedent” is also insufficient to confer standing. Apart from PPL’s refusal to acknowledge the body of law holding that settlements are not “precedent,” an entity that otherwise would not be aggrieved by an administrative or judicial decision cannot gain standing simply because the outcome may establish what it views as an undesirable precedent. *See AES Beaver Valley v. West Penn Power Company, supra*. The status of *amicus* permits entities in that position to express their views. However, an *amicus* cannot, as PPL seeks to do here, overturn an amicable resolution of a contested matter by the real parties in interest.

D. PPL’s Objections Are Based On Positions That Are Contrary To The Law

Several of PPL’s most strenuously asserted objections are based upon a misunderstanding or misapplication of the law and, therefore, should be rejected even if the Commission were to decide -- over PECO’s opposition -- that it could reach the merits of PPL’s arguments.

Based on the Commission’s decision in *PG Energy, Inc.*, Docket No. A-120011F.002 (1999), PPL contends that the rate reductions and other concessions made by PECO in the Settlement are “contrary to Commission policy.” That is not a correct statement of the law. *PG Energy* provides that such concessions cannot be imposed *unilaterally* as a matter of law. However, it clearly does not preclude such concessions if made with the utility’s agreement, as

evidenced by the Commission's amended order in *PG Energy* entered on October 18, 1999. *See also Joint Application of Bell Atlantic Corporation and GTE Corporation*, Docket No. A-310200F.002 (November 4, 1999).

PPL also contends that PECO's proposed rate reductions and rate cap extension could affect PECO's ability to construct transmission system improvements ordered under the PJM Operating Agreement or distribution system improvements needed to maintain safe and reliable service (PPL Objections, pp. 21-22). This argument is wrong as a matter of law. Section 11 of the Settlement states that "other provisions of Paragraph 21 of the 1998 Electric Restructuring Settlement will remain in full force and effect." Paragraph 21 of the 1998 Electric Restructuring Settlement, in turn, states that "the rate cap exceptions set forth in Section 2804(4) of the Electric Competition Act shall apply. . . ." Section 2804(4)(iii)(E) of the Competition Act provides a specific exception where: "The electric distribution utility is directed by the commission or an independent system operator or its functional equivalent to make expenditures to repair or upgrade its transmission or distribution system." Accordingly, the hypothetical "inconsistency" PPL purports to find between PECO's rate reductions and rate cap extension and its service obligations simply does not exist.^{3/}

3/ PPL also contends there is no "evidence" on which to ascertain whether the proposed rate cuts and rate cap extension would harm PECO's financial health and whether the rate reductions are commensurate with the level of likely merger savings (PPL Objections, pp. 20-22). However, PPL ignores that PECO presented extensive testimony and detailed exhibits as part of the supporting data for its Application regarding its level of merger savings and also presented current and pro forma post-merger financial statements, which provide ample basis for the Commission to assess the likely impact of the rate and rate cap provisions of the Settlement. *See* PECO Statement No. 4 and Exhibit Nos. TJF-2 and
(continued...)

PPL also expresses concern about the Settlement's provisions dealing with the recovery of nuclear decommissioning expense in excess of the level currently embedded in PECO's rates. Specifically, PPL questions whether PECO's agreement not to seek to recover a portion of any such expenses in excess of current rate-embedded levels will adversely impact the safe decommissioning of PECO's nuclear units (PPL Objections, pp. 23-24). Overlooked by PPL is the fact that issues relating to the safety of PECO's nuclear plants and its ability to fund its nuclear decommissioning obligations lie within the primary and exclusive jurisdiction of the NRC.^{4/} Moreover, the adequacy of the Settlement's rate recovery mechanism to assure the safe decommissioning of PECO's nuclear plants is an issue that will have to be addressed and resolved by the NRC in connection with PECO's request for approval to transfer its NRC operating licences as part of its proposed corporate restructuring. PPL's attempt to interject these issues into a proceeding before the Commission, whose authority is preempted by federal law, should be rejected.

Finally, PPL argues that changes in PECO's CDS auction process may violate the Competition Act as a "forced assignment" of customers to an EGS, contrary to the "anti-

3/(...continued)

TJF-3; PECO Statement No. 3 (p. 11) and Exhibit No. TPH-4; Application Exhibits I through N.

4/ PPL's alleged concerns are inexplicable, inasmuch as provisions of the Settlement limiting PECO's right to request recovery of decommissioning expense in excess of rate-embedded levels are modeled after similar provisions in PPL's Restructuring Settlement. PPL's claim that this provision may not be in the public interest would, on its face, seem to impugn settlement terms that PPL itself has previously approved.

slamming” provisions of the Competition Act. At the outset, the principal change to the CDS process made by the Settlement would be to permit an auction of the obligation to provide generation service, while keeping the customer care functions with PECO. If anything, this revision would make the transfer from PECO, as provider-of-last-resort, to a CDS supplier even more transparent, and less like a “forced assignment,” than the original provisions of PECO’s 1998 Electric Restructuring Settlement to which PPL had no objection. Moreover, PPL’s argument is precisely the same as that advanced by a dissenter to GPU’s Electric Restructuring Settlement. In *George v. Pa. P.U.C.*, *supra*, the Commonwealth Court rejected that argument and found that “the competitive bidding process [for CDS] does not violate the Competition Act.” 735 A.2d at 1288.

E. The Proposed Settlement Is Not Precedent And, Therefore, PPL’s Concerns That The Settlement’s Terms Would Apply To PPL Under Similar Circumstances Is Meritless

Section 72 of the Settlement states:

Acknowledging that it is expressly understood and agreed that the Settlement constitutes a negotiated resolution solely of issues addressed herein, the Merger and Corporate Restructuring, the Joint Petitioners agree that this Settlement shall not constitute or be cited as controlling precedent in any other proceeding, including a proceeding involving a merger or acquisition by another Pennsylvania electric utility.

The Settlement itself provides ample protection to PPL against the terms and conditions thereof being used or cited as precedent in any PPL proceeding. Of course, PPL would have that

protection even if the Joint Petition did not contain the iron-clad statement of non-precedential use set forth above, because Commission precedent on this point is clear and well-established:

We vigorously, and without equivocation, reject considering a settlement as precedent, as to any subsequent issue, in any proceeding.

Pa. P.U.C. v. The Bell Telephone Company of Pennsylvania, 1988 Pa. PUC LEXIS 572 (November 10, 1988). *Accord Application of West Penn Power Company For Approval Of Its Restructuring Plan Under Section 2806 Of The Public Utility Code*, Docket No. R-00973981 (March 13, 1998), 1998 Pa. P.U.C. LEXIS 166 (Mimeo at p. 138) (Rejecting the position offered by a witness on the grounds that he attempted to support it on the strength of a settlement in another utility's case which provided that it "shall not constitute precedent as to any matter of law or fact.")

Similarly, PPL's concerns about the possibility of "reopening" its Electric Restructuring Settlement are unfounded. The Restructuring Settlements are binding and enforceable, and they cannot be "reopened" without the agreement of the parties thereto -- including the affected utility -- unless those settlements specifically provide for it. Simply stated, there is no way *this* Settlement could modify the terms and conditions of the Restructuring Settlements of *other* Pennsylvania electric utilities.

Finally, in view of the well-established body of law that already precludes the improper use of this Settlement either as precedent in future PPL proceedings or as a justification to "reopen" PPL Restructuring Settlement, it is not possible to discern what additional relief PPL is

asking the Commission to grant in this regard. PECO suspects that other parties, the ALJ and the Commission would be equally puzzled by PPL's request. Obviously, some clarification by PPL of the protection it hopes to obtain, beyond that afforded by the Section 72 of the Settlement and existing Commission precedent, is necessary.^{5/}

F. If The Administrative Law Judge Or The Commission Decides To Hold Evidentiary Hearings Even Though None Are Required, They Should Set A Schedule That Avoids Any Undue Delay

For all of the reasons set forth above, the Administrative Law Judge ("ALJ") and the Commission should find and determine that evidentiary hearings are not required in order to find that the Settlement is in the public interest and should be approved. If the ALJ or the Commission, nonetheless, decides to hold evidentiary hearings, they should establish a schedule that avoids undue delay. Given the posture of this case and the nature of PPL's objections, extensive additional proceedings are not required. To assure that no undue delay is introduced, PECO is herewith submitting Statement No. 3-S, the Supplemental Testimony of Thomas P. Hill, Jr., which, along with PECO's Application and accompanying Statements and Exhibits, would constitute PECO's direct case. The filing of Mr. Hill's testimony in no way constitutes an admission, express or implied, that PECO believes evidentiary hearings or the submission of any

^{5/} It is not clear whether PPL also wants the Commission to go a step further and order the parties not to propose terms or conditions of the Settlement as bargaining positions in private negotiations with PPL in subsequent Commission proceedings. If so, this position may be problematic because there is no apparent legal basis for the Commission to intervene in the negotiation process in this fashion. Moreover, any such attempt by the Commission to restrict parties' positions in PUC proceedings or related discussions and negotiations would seem to infringe upon protected speech and raise First Amendment issues.

additional evidence beyond that already before the Commission is necessary. To reiterate, this submission is made entirely on a contingent basis to avoid delay in the event the ALJ or Commission decide to hold an evidentiary hearing.

Additionally, PECO proposes -- again, on a contingent basis -- the following schedule, should the ALJ or Commission decide to hold an evidentiary hearing:

March 1	Formal Settlement discussions begin.
March 23	Joint Petition for Settlement filed and served.
April 13	Objections and Comments filed.
April 18	Submission of replies and testimony in support of the Settlement.
April 19	PPL and Councilman Cohen designation of witnesses, if any.
April 21	PPL and Councilman Cohen responsive testimony, if any, due in hand.
April 27	Hearing (if required)

This proposed schedule provides sufficient time for all parties without imposing undue delays and burdens. In this regard, it should be emphasized that PPL and Councilman Cohen were aware of the issues the intervenors raised, participated fully in the negotiations leading up to the Settlement and have been aware of the terms and conditions of the Settlement since mid-March. In short, they have had considerable time to obtain witnesses and prepare their positions and, consequently, there is no reason the objecting parties cannot proceed expeditiously. In this regard, it should be emphasized that, under the original litigation schedule for this case, opposing party testimony was to be filed on March 24 (subsequently extended to March 28) and hearings were to be held from April 25 to April 28. There is no reason a hearing on a proposed settlement

should extend beyond the period set aside for evidentiary hearings in the initial litigation schedule.

G. Councilman Cohen's Objections Present No Valid Basis To Reject The Proposed Settlement

Councilman Cohen concedes that "there are many good aspects to the Settlement Agreement" but objects on the basis that PECO's concessions should be greater in scope and magnitude. Councilman Cohen's objections do not provide a valid basis to reject the proposed Settlement, for several reasons.

First, Councilman Cohen's objections do not identify any reasons why PECO's proposed corporate restructuring, the merger with Unicom or the terms of the proposed Settlement are not in the public interest. Rather, his objections consist of a list of additional concessions he believes PECO should have made without any analysis as to whether his positions are lawful, supportable or within the authority of the Commission to grant. Simply stated, Councilman Cohen has failed to meet the minimum threshold to state a *prima facie* basis to object to a proposed settlement and, therefore, his objections should be rejected.

The Commission's *Settlement Guidelines and Procedures for Major Rate Cases*, while not directly applicable, offer a clear indication of what a dissenter is expected to present to raise a valid objection to a proposed settlement. Specifically, objecting parties should present "facts, affidavits, argument and relevant legal analysis . . ." 52 Pa. Code §69.402(a). None of that is present in Councilman Cohen's objections. Instead, his objections are a list of all the additional

things he would like PECO to do, without any argument or analysis explaining whether there is any legal authority to even raise such issues if this proceeding were fully litigated. As more fully explained below, that authority does not exist and the kinds of concessions Councilman Cohen seeks could be obtained only through a negotiated settlement. Indeed, many of the issues raised by Councilman Cohen, such as those pertaining to nuclear safety, are outside the Commission's jurisdiction.

Second, Councilman Cohen purports to raise a number of issues in his capacity as a member of City Council because he claims to speak for all the citizens of Philadelphia. *See* Petition to Intervene of Councilman David Cohen. This is evident from his proposals concerning jobs and employment, low-income and universal service programs and economic development initiatives. However, notwithstanding his status as an elected official, Councilman Cohen does not have standing to represent the interests of his constituents in administrative proceedings. *See e.g., George v Pa. P.U.C., supra.* Furthermore, the City of Philadelphia, which may have some claim to represent the City's residents, is a party to this case and has joined in the Settlement.

Third, all of the additional concessions Councilman Cohen hopes to extract from PECO are extra-statutory and most are not merger-related (e.g., funding for attorneys and experts at *Community Legal Services to intervene in future PECO rate proceedings*)^{6/}. There is no

^{6/} Of course, through its payment of the Commission's General Assessment, PECO already funds the activities of the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.

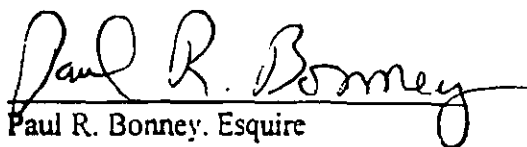
presumptive legal basis to obtain such concessions in a litigated proceeding. They could be obtained, if at all, only through a negotiated settlement. Consequently, Councilman Cohen's belief that full litigation of this proceeding could obtain more and larger concessions is simply wrong. More to the point, Councilman Cohen overlooks that the proposed Settlement addresses most of the substantive areas identified in his objections, and represents a reasoned and principled accommodation by parties representing all of the stakeholder groups in PECO's service territory. The Settlement may provide fewer concessions by PECO than Councilman Cohen desires, but it provides all of the benefits that could reasonably be achieved.

Finally, Councilman Cohen's objections focusing on PECO's nuclear plants -- restrictions on license extensions, commitments for early retirement and health studies -- are all directed to matters involving the safety-related regulation of nuclear power, which are within the exclusive jurisdiction of the NRC. As a consequence, even if this matter were fully litigated, the Commission would not have authority to grant the kinds of relief Councilman Cohen requests even if this matter were fully litigated.

IV. CONCLUSION

For all of the reasons set forth above, the objections of PPL Electric Utilities Corporation and Councilman David Cohen should be dismissed and the ALJ and the Commission should grant the Joint Petition for Settlement.

Respectfully submitted.



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Counsel for PECO Energy Company

Dated: April 18, 2000

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of PECO Energy Company's Application For Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation; by fax, email and first class mail:

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty
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Pennsylvania Public Utility Commission
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Harrisburg, PA 17105

By Federal Express

ORIGINAL

Re: Application of PECO Energy Company ... for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket No. A-110550F0147

Dear Mr. McNulty:

Enclosed please find an original and three (3) copies of the Joint Prehearing Memorandum of CEPA et al. and State Senator Vincent J. Fumo in the above-captioned matter.

Copies of this filing have been sent this date to parties listed on the Certificate of Service by First Class Mail, postage prepaid.

Sincerely,


PHILIP A. BERTOCCI

cc: Administrative Law Judge Charles E. Rainey, Jr.
Service List

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAY 2 2000

Application of PECO Energy Company
Pursuant to Chapters 11, 19, 21, 22 and 28
of the Public Utility Code For Approval
of (1) a Plan of Corporate Restructuring,
Including the Creation of a Holding
Company and (2) the Merger of the Newly
Formed Holding Company and
Unicom Corporation

DOCKETED PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MAY 03 2000

Docket No. A110550F0147

ORIGINAL

JOINT PREHEARING MEMORANDUM OF CEPA, ACORN,
ACTION ALLIANCE OF SENIOR CITIZENS, TAG AND
STATE SENATOR VINCENT J. FUMO

The Consumers Education and Protective Association ("CEPA"), the Association of
Community Organizations for Reform Now ("ACORN"), Action Alliance of Senior Citizens
of Greater Philadelphia ("Action Alliance"), the Tenants' Action Group ("TAG")
(collectively "CEPA et al.") and State Senator Vincent J. Fumo hereby submit a Joint
Prehearing Memorandum as follows pursuant to Administrative Law Judge Charles E.
Rainey, Jr.'s April 25, 2000 Prehearing Order #2:

I. Factual Issues to be Addressed:

DOCUMENT
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1. Whether the total rate reduction for PECO's ratepayers in the Joint Petition for
Settlement captures merger-related synergies in the years 2001 through 2006.

2. Whether the Joint Petition for Settlement provides other benefits to ratepayers in addition to rate reductions.

II. Legal Issues to be Addressed:

1. Whether approval of the Joint Petition for Settlement affirmatively promotes the public interest.

2. Whether the additional conditions requested by PPL in Paragraph 49 of its objections are appropriate.

3. Whether PPL has a cognizable legal interest in the individual settlement provisions, apart from its arguments concerning their precedential import.

III. List of Witnesses:

Richard H. Silkman, Ph.D. (if requested).

IV. Identification of Documents to be Introduced into Evidence:

Prefiled Direct Testimony of Richard H. Silkman, Ph.D on Behalf of Senator Vincent J. Fumo and Consumers Education and Protective Association, et al. (April 18, 2000)

V. Stipulations:

None at present.

Respectfully submitted,


May 2, 2000



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CERTIFICATE OF SERVICE

Re: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation.
Docket No. A-110550F0147

I hereby certify that I have this day served a true copy of the foregoing document, Joint Prehearing, Memorandum of CEPA, ACORN, Action Alliance of Senior Citizens, TAG and State Senator Vincent J. Fumo, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of May 2000

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May 2, 2000

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, PA 17120

VIA HAND DELIVERY
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Re: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, For Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation; Docket No.A-110550F0147

Dear Secretary McNulty:

Please find enclosed the original and three (3) copies of the Prehearing Memorandum of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced matter.

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

Very truly yours,

MCNEES, WALLACE & NURICK

By *Charis M. Burak*
Charis M. Burak

Counsel to Philadelphia Area Industrial Energy
Users Group

Enclosures
CMB/lhe

c: Administrative Law Judge Charles E. Rainey, Jr. (via federal express)
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51

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I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Docket No. A-110550F0147

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Docket No. A-110550F0147

Page 3

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Houston, TX 77210



Charis M. Burak

Dated this 2nd day of May , 2000, in Harrisburg, Pennsylvania.

- c. The commitment to enhance service reliability;
- d. The commitment to protect PECO ratepayers from certain nuclear costs; and
- e. The “fresh start” provision, which provides special-contract customers a unilateral, one-time opportunity to seek competitive energy supply.

PAIEUG also reserves the right to address other issues and respond to issues raised by other parties.

II. LEGAL ISSUES

PAIEUG will address whether the Joint Petition meets the necessary requirements for approval by the Pennsylvania Public Utility Commission. Specifically, PAIEUG will discuss whether the terms and conditions of the Joint Petition are in the public interest. PAIEUG also reserves the right to address other issues and respond to issues raised by other parties.

III. PROPOSED WITNESSES

PAIEUG will sponsor the testimony of Lane Kollen. Mr. Kollen’s testimony will discuss the terms and conditions of the Joint Petition, the public interest benefits provided by the settlement, and whether the Joint Petition should be approved by the PUC.

IV. IDENTIFICATION OF DOCUMENTS

PAIEUG has no documents, other than Mr. Kollen’s testimony, to be introduced into evidence at this time. PAIEUG reserves the right, however, to enter other documents into evidence at a later time, as necessary.

V. STIPULATIONS

At this point in the proceeding, PAIEUG has no stipulations to present for the record.

Respectfully submitted,

McNEES, WALLACE & NURICK

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David M. Kleppinger

Charis M. Burak

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Counsel to the Philadelphia Area Industrial
Energy Users Group

Dated: May 2, 2000

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May 2, 2000

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ORIGINAL VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
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Re: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, For Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation; Docket No.A-110550F0147

Dear Secretary McNulty:

Please find enclosed the original and three (3) copies of the Prehearing Memorandum of the City of Philadelphia in the above-referenced matter.

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

Very truly yours,

MCNEES, WALLACE & NURICK

By *Charis M. Burak*
David M. Kleppinger
Charis M. Burak

CMB/lhe

c: Administrative Law Judge Charles E. Rainey, Jr. (via federal express)
Certificate of Service

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I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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May 2, 2000

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May 2, 2000

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Charis M. Burak

Dated this 2nd of May, 2000, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY
COMPANY, PURSUANT TO
CHAPTERS 11, 19, 21, 22 AND 28 OF
THE PUBLIC UTILITY CODE, FOR
APPROVAL OF (1) A PLAN OF
CORPORATE RESTRUCTURING,
INCLUDING THE CREATION OF A
HOLDING COMPANY AND (2) THE
MERGER OF THE NEWLY FORMED
HOLDING COMPANY AND UNICOM
CORPORATION

Docket No. A-110550F047

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ORIGINAL

PREHEARING MEMORANDUM OF THE CITY OF PHILADELPHIA

Pursuant to Prehearing Order No. 2, issued on April 25, 2000 by Administrative Law Judge Charles E. Rainey, Jr. ("ALJ Rainey") in the above-captioned proceeding, the City of Philadelphia ("the City") hereby submits this Prehearing Memorandum.

I. FACTUAL ISSUES

The City will address the terms of the Joint Petition for Settlement ("Joint Petition") regarding PECO Energy Company's ("PECO") service to the City. Specifically, the City will focus upon the following.

- a. Street lighting rates applicable to the City;
- b. The interpretation and levels of charges in the City's contract with PECO;

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- c. PECO's commitments to maintain levels of employment at, and location of, corporate headquarters; and
- d. PECO's commitment to maintain its current civic and charitable contributions.

The City reserves the right to address other issues and respond to issues raised by other parties as necessary.

II. LEGAL ISSUES

The City will address whether the Joint Petition meets the necessary requirements for approval by the Pennsylvania Public Utility Commission. Specifically, the City will discuss whether the terms and conditions of the Joint Petition are in the public interest. The City also reserves the right to address other issues and respond to issues raised by other parties.

III. PROPOSED WITNESSES

On April 18, 2000, the City submitted the testimony of Kent R. Miller, in lieu of Reply Objections in this proceeding. Mr. Miller's testimony should be considered the City's Pre-filed Written Testimony in Support of the Settlement Petition.

IV. IDENTIFICATION OF DOCUMENTS

At this point in the proceeding, the City has no documents other than Mr. Miller's testimony to be introduced into evidence. The City reserves the right, however, to enter other documents into evidence at a later time, as necessary.

V. STIPULATIONS

At this point in the proceeding, the City has no stipulations to enter into the record.

Respectfully submitted,

McNEES, WALLACE & NURICK

By Charis M. Burak

David M. Kleppinger
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Counsel to the City of Philadelphia

Dated: May 2, 2000

DATE: May 3, 2000
SUBJECT: A-110550F0147
TO: Law Bureau
FROM: James J. McNulty, Secretary.

LAF

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MAY 04 2000

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Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation

Attached is a copy of a Petition for Certification of the Record Pursuant to 66 Pa. C.S. §335(A), filed by PECO Energy Company, in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS

laf



CITY OF PHILADELPHIA
CITY COUNCIL

DAVID COHEN
Room 588 City Hall
Philadelphia, Pennsylvania 19107
686-3446-3447
Fax No. 686-1927
COUNCILMAN-AT-LARGE

COMMITTEES
Chairman
Law & Government
Vice Chairman
Streets and Services
Member
Rules
Labor and Civil Service
Transportation and Public Utilities
Public Safety
Education
Elections

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May 3, 2000

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-18
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Harrisburg, Pennsylvania 17105-3265

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P.A.P.U.C.
SECRETARY'S BUREAU

RE: Pre-trial Memorandum, and Direct Testimony of Witnesses Submitted on Behalf of Councilman David Cohen in the matter of Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code for Approval of (1) a Plan for Corporate Restructuring, Including the Creation of a Holding company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket No. A-110550F0147

Dear Secretary McNulty:

On behalf of Councilman Cohen, enclosed for filing are an original and three copies of Councilman David Cohen's Pre-hearing Memorandum, and supporting testimonies from four witnesses, namely Councilman David Cohen, Dr. Ernest Sternglass, Dr. Janette Sherman, and Joseph J. Mangano.

Sincerely,

Robert Jaffe, Esq.
Counsel for Councilman Cohen

cc. Judge Charles E. Rainey, Jr.
All parties

32

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company,
Pursuant to Chapters 11, 19, 21, 22
and 28 of the Public Utility Code for
Approval of (1) a Plan for Corporate
Restructuring, Including the Creation
of a Holding Company and (2) the
Merger of the Newly Formed Holding
Company and Unicom Corporation

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Docket No. A-110550F0147

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DIRECT TESTIMONY OF COUNCILMAN DAVID COHEN

Q: Please identify yourself for the record.

A: I am David Cohen, a member of the City Council of Philadelphia for over twenty-two years, 20 of them served consecutively.

Q: On what basis do you offer testimony in this matter?

A: On the basis of my continuous interest and expertise in environmental matters of all kinds that have come before the Council during my membership in that body. In my first term in Council, from 1968 to 1971, I authored Philadelphia's Air Management Code, which remains in effect to this date. In 1987, I authored the City's Recycling Ordinance, which also remains in effect. Furthermore, in the mid-1980's I led the successful fight to defeat the construction of a trash to steam plant in South Philadelphia, a proposal widely acknowledged at the present time to have threatened the fiscal and environmental integrity of the City. As a leading environmental advocate in City Council, I have long been aware of the threat to the public posed by the erection and operation of nuclear plants, and have done everything in my power to limit, if not eliminate, this threat.

Q: Aside from your environmental background, do you have other information or expertise that is relevant to this proceeding?

A: As a member of City Council, I am acutely aware of the economic threats that face the City as a result of a variety of non-competitive costs faced by residents. Much attention has been paid to high taxes in Philadelphia as a cause of its troubling decline in population and business activity, but it is self-evident that high utility costs have the same negative impact on residential and business location.

Furthermore, this proposal threatens a direct loss of City jobs and tax revenue, something which Council and the Mayor have long established as a priority to prevent and deter.

Q: Given your background and experience, what do you see as the most troubling aspects of the proposed merger as it is presently posed before the Commission?

A: There are three main problems posed by this merger, first, the danger of increased health problems caused by nuclear radiation, second, the danger to the economy of the City and State, and, finally, the likelihood that the benefits of deregulation will be undermined.

Q: What environmental concerns do you have about atomic energy?

A: First, it is important to note the large body of evidence that even "normal operation" of nuclear plants poses a substantial threat to the health and safety of residents nearby. For instance a study released only last month found that infant death rates near five U.S. nuclear plants dropped drastically after the reactors closed. In the first two years after the reactors closed, infant deaths in counties within 40 miles of the plants fell 15 to 20 percent, compared to an average nationwide decline of just six percent between 1985 and 1996. These plants were well within the emission ranges deemed safe by the federal government. (A summary of the study is attached to my testimony as Exhibit "A".)

Another study showed that near the Three Mile Island plant, breast cancer "increased markedly following 'normal operation' after start-up [of the plant] following the accident."

Many other studies have elicited similar statistics about the danger of even "low levels" of nuclear radiation. I am attaching a statement by Joseph J. Mangano, MPH, MBA, research associate with the Radiation and Public Health Project in New York City, describing and listing those studies. (Furthermore, Mr. Mangano is testifying in this proceeding in support of my concerns relating to nuclear safety.) Notwithstanding this body of research, neither this Commission, any other State body, nor any federal agency, has ever conducted any large-scale systematic study of the long-term effects of radioactive exposure to the men, women and children living near nuclear plants. Thus, any increased likelihood of continued operation of nuclear plants in this area poses, at best, highly uncertain and risky impacts upon the health of Philadelphia residents.

Q: Why do you believe the merger increases whatever danger that PECO's nuclear plants now pose to the public health and safety?

A: Until recently it appeared likely that the nuclear threat would be declining in this country. No new plants have been ordered since 1978, and twelve have terminated operations since 1987. However, recent actions by the Nuclear Regulatory Commission ("NRC") have opened the door to greatly extending the lives of many existing plants. In particular, the NRC has inexplicably decided to disregard the potential health effects posed by applications to extend the lives of existing nuclear plants. And last month, without considering such effects, the Commission approved the first such request that came before it to extend the life of a nuclear facility.

Both PECO and Unicom derive much of their nuclear energy from plants whose useful lives may well be extended under these new rules. In addition, PECO is aggressively seeking to purchase additional plants, thus making clear its long-term commitment to nuclear energy. The merger will further increase the incentive to continue plants in operation since the amount of nuclear assets held under common ownership will immediately multiply upon completion of the regulatory process. Because new plants are being purchased at bargain-basement prices, operating profits from continued operation of these plants will be enormous and will grow for each year they are allowed to remain on-line. On top of that, reserves for decommissioning will continue to be amassed and earn interest. Together, these income sources create powerful incentives to continue the operation of these dangerous plants long into the future.

Finally, as I understand it, the Commission has no information before it regarding the increased likelihood of breakdowns and costly repairs caused by increased reliance on old nuclear plants. Thus, the economic, as well as health, risks of this merger are enormous.

Q: Why do you believe the merger may threaten to diminish the benefits derived from deregulation?

A: First, it should be clear that so far the benefits of deregulation to PECO customers have been minimal. First, only 16% of PECO's customers have chosen another supplier, likely due to the insignificance of the rate differentials that are available. Nor has PECO sharply cut its own rates. In that regard, it is apt to compare PECO's rate cuts to those which were granted to Unicom customers as a result of deregulation in Illinois. There, as I understand it, customers received a guaranteed rate reduction of twenty percent over three years. Here, PECO customers received a rate cut that is not only less than 10%, but declines over a period of years, and then disappears. And the settlement, notwithstanding the valiant efforts by several intervenors, has improved PECO's rate structure only marginally. The additional rate cut contained in the Joint Settlement is about 2.6%

in the first two years and then 1.7% for two more years. Then the rates return to the very high 1998 rates, which were the highest in the state.

The creation of a massive utility megacorporation, such as the entity to be formed under this proposal, clearly moves in the direction of remonopolizing the production of electricity. Notwithstanding provisions to enable competitors access to PECO's power supply, its sheer market power after this merger is highly likely to suppress any meaningful competition in short order. Thus, some high level of guaranteed savings should be a mandatory precondition of this Commission's approval of the proposal before it.

Given the relief that this Commission has afforded to PECO regarding its stranded costs, there is no justification for the limited rate reductions that have become available to customers in its service area. Thus, PECO should be required to provide all of its residential, commercial, and industrial ratepayers at least as high a percentage of guaranteed ongoing rate cuts as Unicom ratepayers received through Illinois' electric deregulation.

Q: How does this merger threaten the City's economy?

A: I want to start by congratulating other intervenors in obtaining a commitment from PECO to stay in Philadelphia for some period of time. But the fact that PECO will not commit to stay for more than a few years is a confession by PECO that this merger is very likely to damage the City's job base. Based upon my experience as a member of City Council, it is clear that the loss of PECO's headquarter jobs, no matter how long delayed, would be a major blow to the economy of the City and State. City Council has gone to great lengths to ensure that businesses remain in the City, or are attracted to relocate here. In addition, the Commonwealth has also put in place a number of programs seeking to ensure the preservation and expansion of business. These programs are conducted at great expense to taxpayers. Thus, it is proper for this Commission to take "judicial notice" that it cannot be, and is not, in the public interest to approve any merger which would to any degree increase the likelihood of jobs leaving the City and/or State. If the pending merger does not pose the threat of job loss, then PECO should have no difficulty agreeing to maintain its current number of jobs, and its corporate headquarters, in Philadelphia as long as it owns its distribution system. Otherwise, the Commission should impose such a restriction.

Q: Does the failure of PECO to commit to a long-term presence in Philadelphia suggest any other dangers to the economy of the City and State?

A: As public officials, we are all aware of the increasing prevalence of corporate mergers in our modern economy. This City has recently undergone a wave of

such mergers in the banking industry resulting in the actual disappearance of long-term business citizens of our City. This has been accompanied by a pattern of disinvestment and removal of services throughout the City, to its great detriment. PECO has long been a major partner in attracting businesses and jobs to the City because of its self-interest in having such businesses as customers. As the center of gravity of this business shifts to the West toward its larger partner, PECO's interest in the overall business climate of this region may well diminish. The effects of such a lessened interest in our local business climate could be devastating. Clearly, the new company's ability to shift its focus elsewhere is enhanced by its ability to move personnel and headquarters away. It is highly contrary to the public interest to facilitate any such potential corporate decisions to disinvest in this City and State by allowing a merger without ironclad guarantees of a continued local presence as long as it owns the distribution system.

Q: Could you summarize your testimony and recommendations?

A. I believe that this merger cannot be justifiably approved without this Commission imposing on PECO a variety of measures which would protect its customers and the residents of its service area. These would include all of the recommendations I made in my Comments and Objections to the Proposed Settlement Agreement, which I hereby incorporate by reference, and, in particular the following conditions that this Commission should impose as conditions on this merger:

- a. a ban on extending the useful lives of PECO's nuclear facilities beyond the estimated 30 year life of these plants; and early retirement of unsafe nuclear facilities;
- b. a commitment, in determining the present and future dangers of the new company's facilities, to provide the information, and take the health monitoring steps, described in the testimony of Joseph J. Mangano;
- c. a commitment that consumers should not be burdened by paying more for decommissioning expenses than they already are.
- d. a commitment by PECO to maintain the level of jobs at its current level of 1,440 at 2301 Market Street for as long as it owns the distribution system.
- e. a commitment by PECO to the same long-term charitable and civic role in Philadelphia that it has historically maintained. This commitment should be tied to its profitability and should increase (not decrease in real terms) over time as its profits rise.

f. PECO should be required to provide all of its residential, commercial, and industrial ratepayers at least as high a percentage of guaranteed ongoing rate cuts as Unicom ratepayers received through Illinois' electric deregulation.

Q: Does this conclude your testimony?

A: Yes.

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March 2000, Volume 2, Issue 1, Pages 32 - 36



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Improvements in local infant health after nuclear power reactor closing

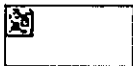
JOSEPH J. MANGANO

Radiation and Public Health Project, 786 Carroll Street, #9, Brooklyn, New York

Correspondence to: JOSEPH J. MANGANO, Radiation and Public Health Project, 786 Carroll Street, #9, Brooklyn, NY 11215. Tel.: (718)857-9825. Fax: (718)857-4986.

cancer; infant health; infant mortality; nuclear reactors; radiation

Between 1987 and 1998, operations ceased at 12 U.S. nuclear power reactors. One of these, Rancho Seco, is located in a densely populated area. After the reactor closed in 1989, significant decreases in mortality (all causes and from congenital anomalies) and cancer incidence were observed for fetuses, infants, and small children. These trends contrast with a worsening of infant health status after the plant opened in 1974. The data suggest that a relationship between nuclear emissions and adverse health effects exists, especially since fetuses and newborns are most sensitive to radiation. Because Rancho Seco released low levels of radionuclides into the local environment, the issue of health effects of prolonged, low-dose radiation exposure is raised. The matter becomes increasingly important as operators of several dozen aging U.S. reactors must soon decide whether to extend their operating licenses. *Environmental Epidemiology and Toxicology* (2000) 2, 32-36.



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Model, Congressman Join Groups In Calling on Government to Consider Adverse Health Effects of Radiation When Renewing Nuclear Plant Licenses

WASHINGTON, D.C. — Infant death rates near five U.S. nuclear plants dropped immediately and dramatically after the reactors closed. A new study shows, raising questions about the government's refusal to consider the effects of radioactive emissions from nuclear plants on local residents (see attached).

Moreover, dramatic decreases in childhood cancer cases and deaths from birth defects, which are strongly affected by radiation exposure, occurred near one of the reactors. The study suggests that the health of 42 million Americans who live downwind and within 50 miles of a nuclear plant may be affected by these reactors, according to the study's author. The study was conducted by the New York-based Radiation and Public Health Project and published in the spring issue of the scientific journal *Environmental Epidemiology and Toxicology*.

In light of the study, model Christie Brinkley today joined Rep. Michael Forbes (D-N.Y.) and others in calling upon the U.S. Nuclear Regulatory Commission (NRC) to immediately consider whether adverse health effects are associated with nuclear plant operations before renewing nuclear power plant licenses. Brinkley is a board member of the STAR (Standing for Truth About Radiation) Foundation, a group formed in 1997 by concerned Long Island residents.

"As a mother of young children who lives near nuclear facilities, I worry daily that radiation from these plants may be deadly to our children," Brinkley said. "So far, the federal government has buried its head in the sand. If closing the nuclear power plants was not responsible for the decline in infant deaths, what was?"

The NRC rules do not consider the potential adverse health effects of radioactive emissions when considering license renewal applications. Owners of twenty-eight nuclear reactors at 17 nuclear facilities around the country are scheduled to seek license renewals by 2003. The NRC has never voluntarily studied the link between radioactive emissions from nuclear plants and patterns of cancer.

The study, conducted by Joseph J. Mangano, a research associate at the Radiation and Public Health Project, examined infant death rates in counties within 50 miles and in the prevailing wind direction of five reactors: Fort St. Vrain (located near Denver, CO), LaCrosse (near LaCrosse, WI), Millstone/Haddam Neck (near New London, CT), Rancho Seco (near Sacramento, CA) and Trojan (near Portland, OR).

In the first two years after the reactors closed, infant death rates in the downwind counties under 40 miles from the plants fell 15 to 20 percent from the previous two years, compared to an average U.S. decline of just six percent between 1985 and 1996. In each of the five areas studied, no other nuclear reactor operated within 70 miles of the closed reactor, essentially creating a nuclear-free zone.

The study detailed the plunges in newly-diagnosed leukemia and cancer cases and birth defect deaths in children under five years in the four-county local area downwind from Rancho Seco. This excessive decline has continued through the first seven years after the June 1989 closing. In contrast, the local infant death rate rose in the two years after Rancho Seco began operations in 1974.

"This article is the first to document improvements in health after a nuclear plant closes," says study author Mangano.

"It supports many other studies showing elevated childhood cancer near operating reactors." "The federal government allows nuclear reactors to emit a certain level of radiation, saying that the amount is too low to result in adverse local health effects. However, this study clearly calls that assumption into question," as do other studies."

The announcement comes on the 14th anniversary of the catastrophic accident at Chernobyl, a nuclear power reactor. Increased infant cancer and death rates after Chernobyl have been documented, not just in the former Soviet Union, but in Western Europe and the US, where Chernobyl fallout levels were deemed by regulators to be within safe limits.

Nuclear plants seeking re-licensing this year include Oconee Nuclear Station in northwest South Carolina; Arkansas Nuclear One in Russellville, Ark.; Edwin Hatch in southern Georgia; and Turkey Point near Miami, Fla. In 2001, plants expected to seek re-licensing include Catawba, which lies on the border between North Carolina and South Carolina; North Anna, located near Fredericksburg, Va.; Surry, near Virginia Beach, Va.; and Peach Bottom, located near Lancaster, Pa. Recently, the government approved a license renewal application for Calvert Cliffs, located near Baltimore, Md.

Said Forbes, whose eastern Long Island district lies across the Long Island Sound from Millstone Nuclear Power Station in Connecticut:

"On this day, in particular, which is the fourteenth anniversary of the Chernobyl disaster in Russia, we need to address the very real and legitimate concerns of people who live near nuclear reactors. At the very least, the government has a responsibility to determine whether emissions from these plants are harming people."

Janette Sherman, an Alexandria, Va., M.D. who specializes in internal medicine and toxicology, and has written books about the causes of breast cancer and the relationship between chemical exposure and disease, said she believes Mangano's study confirms the link between radiation and illness.

"This confirms the best of public health principles: that when you remove a known cause of illness, health improves," Sherman said. "The adverse effects on humans exposed to radiation are predictable. What is gratifying about the research is that it showed childhood health measures increasing so dramatically and quickly after the reactors closed."

For some of those who live near reactors, the government's inaction has been maddening. Randy Snell, a New York resident who lives near the Brookhaven National Laboratory (BNL), learned several years ago that his 8-year-old daughter had developed a rare soft tissue cancer called rhabdomyosarcoma. Snell also has uncovered 19 other cases of the same rare cancer in Suffolk County, in one area near BNL, the rate of this cancer in children under 10 since 1994 is 15 times the national average. **"I have no doubt that radiation from nuclear reactors sickens people who live nearby,"** Snell said.

"What is really disheartening, though, is that state and federal public health agencies haven't lifted a finger to confirm the link between Brookhaven and all these rare child cancers. I hope this study forces them to act."

**IMPROVEMENTS IN INFANT DEATH RATE
AFTER CLOSING NUCLEAR REACTORS
(decreases in death rate age 0-1)**

REACTOR CLOSED	YEAR	% CHANGE IN INFANT DEATH RATE
LaCROSSE, WI	1987	-15.3%
RANCHO SECO, CA	1989	-16.0%
FORT ST. VRAIN, CO	1989	-15.9%
TROJAN, OR	1992	-18.0%
MILLSTONE, CT	1995	-17.4%
BIG ROCK POINT, MI	1997	-54.1%
MAINE YANKEE, ME	1997	-33.4%
U.S. Average	1985-96	-6.4%

**OTHER IMPROVEMENTS IN INFANT HEALTH AFTER
CLOSING RANCHO SECO, CA REACTOR**

**Percent Change in Birth Defect Death and Cancer
Incidence Rates**

CATEGORY	LOCAL	US
DEATHS 0-1 FROM BIRTH DEFECTS	-20.9%	-5.8%
DEATHS 1-4 FROM BIRTH DEFECTS	-29.3%	-7.0%
CANCER CASES 0-4	-37.2%	+6.2%

Two years before and after closing are compared (e.g., LaCrosse 1986-87 vs. 1988-89). All downwind counties less than 50 miles from closed reactor are included. No other reactors are located within 70 miles of above reactors. Millstone was temporarily closed from late 1995 to mid-1998. All data from U.S. Centers for Disease Control (<http://www.cdc.gov>), except for Big Rock Point and Maine Yankee, which are available from the states. Prepared by Joseph J. Mangano, MPH, MBA, Radiation and Public Health Project, April 19, 2000

**DAVID COHEN
COUNCILMAN AT LARGE**

ELECTIVE POSITIONS:

Elected Councilman at Large 1979
Re-Elected Councilman at Large 1983
Re-Elected Councilman at Large 1987
Re-Elected Councilman at Large 1991
Re-Elected Councilman at Large 1995
Re-Elected Councilman at Large 1999

Councilman 8th District 1968 - 1971
(resigned to run for Mayor)
Democratic Leader, 17th Ward

**Appointed Positions
in**

Chairman, Law and Government Committee
Vice-Chairman, Streets and Services

City Council:

Transportation and Public Utilities
Member: Rules
Labor and Civil Service
Public Safety
Education
Ethics
Fiscal Stability & Intergov. Cooperation
Finance

Profession:

Attorney-At-Law

Education:

Simon Muhr Elementary School
Northeast High School
University of Pennsylvania School of Education
University of Pennsylvania Law School
University of Pennsylvania Gowen Memorial Fellow

Military Service:

S/Sgt. U.S. Army

Family:

Wife, Florence; Children: State Representative
Mark B. Cohen, Assistant District Attorney
Denis Cohen, Sherrie Cohen, Esq. and Judy Heiman

**Civic and
Fraternal Groups:**

American Jewish Congress, Maxwell Rosenfeld
Chapter, Past President
Ogontz Area Neighbors Association, Past Counsel
Jewish Community Relations Council, Logan-Olney
Boulevard Division, Past President
United Fund, Past District Director
Member: Philadelphia and Pennsylvania Bar
Associations
Jewish War Veterans
American Jewish Congress
Pannonia Beneficial Association
Urban League
B'Nai B'Rith
NAACP

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of PECO Energy Company :
Pursuant to Chapters 11, 19, 21, 22 and 28 :
of the Public Utility Code For Approval :
of (1) a Plan of Corporate Restructuring, : Docket # A-110550F0147
including the Creation of a Holding :
Company and (2) the Merger of the Newly :
Formed Holding Company and :
Unicom Corporation :**

Certificate of Service

I hereby certify that I have this day had served a true and correct copy of a Prehearing Memorandum, and supporting testimonies of four witnesses, on the following active participants and parties of record by first class mail, postage paid.

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Harrisburg, PA 17105-3265

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Christopher B. Craig, Esquire
Democratic Committee on Appropriations
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Harrisburg, PA 17120

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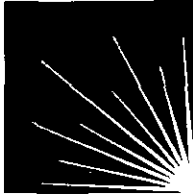
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PECO Energy Company
2301 Market Street
Philadelphia, PA 19103

Robert Jaffe

Robert Jaffe, Esquire
Attorney for Councilman David Cohen
Room 588, City Hall
Philadelphia, PA 19107

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SECRETARY'S BUREAU

Dated: 5/3/00



May 3, 2000

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

RE: Application of PECO Energy Company
Docket No.: A-110550F0147

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www.cleanair.org

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Suite 106
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717-230-8807
Fax 717-230-8808

Wilmington
Community Service Building
100 W. 10th St.
Suite 704
Wilmington, DE 19801
302-691-0112 ext. 226

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of the Prehearing Memorandum of Clean Air Council, et al, in the above-referenced proceeding. Also enclosed are an original and three (3) copies of the Direct Testimony of Andrew Altman on behalf of Clean Air Council, et al.

Copies of these documents have been served on the parties of record and as required by rule as shown on the attached certificate of service.

Sincerely,

Michael Fiorentino, Esq.
Staff Attorney

DOCUMENT
FOLDER

Enclosures

- cc: Honorable John M. Quain, Chairman
- Honorable Robert K. Bloom, Vice Chairman
- Honorable Nora Mead Brownell, Commissioner
- Honorable Aaron Wilson, Jr., Commissioner
- Honorable Terrance J. Fitzpatrick, Commissioner
- Honorable Charles E. Rainey, Jr.
- See Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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SECRETARY'S BUREAU

APPLICATION OF PECO ENERGY :
COMPANY, PURSUANT TO CHAPTERS :
11, 19, 21, 22 AND 28 OF THE PUBLIC :
UTILITY CODE, FOR APPROVAL :
OF (1) A PLAN OF CORPORATE :
RESTRUCTURING, INCLUDING THE :
CREATION OF A HOLDING COMPANY :
AND (2) THE MERGER OF THE NEWLY :
FORMED HOLDING COMPANY :
AND UNICOM CORPORATION :

DOCUMENT
FOLDER

DOCKET NO. A-110550F0147

DOCKETED

MAY 3 2000

PREHEARING MEMORANDUM
OF CLEAN AIR COUNCIL, et al FOR SETTLEMENT HEARINGS

Pursuant to Prehearing Order #2 issued on April 25, 2000 by Charles E. Rainey, Jr., Administrative Law Judge, Clean Air Council, Andrew Altman, Dennis Winters, and Amy Hammersmith by and through counsel, do hereby submit the following:

On March 23, 2000, PECO Energy filed a Joint Petition for Settlement in the above-captioned action. Clean Air Council, et al, is a signatory to that document. On April 1, 2000, the Council submitted a statement in support of the Joint Petition. PECO, OCA, marketers, consumers, other environmentalists, and additional intervenors have also filed support statements for the Joint Petition. Public Input hearings were held in several communities within PECO service territory and also in York, Pennsylvania, at which the testimony of individuals were taken.

On April 12, 2000, PPL filed with the Commission Objections to the Joint Petition. Councilman David Cohen also filed Objections on that date. On April 18, 2000, Clean Air Council, et al, filed a Reply to the Objections. PECO, OCA, OSBA, marketers, consumers, other environmentalists, and additional intervenors have also filed Replies to the Objections.

Pursuant to the Order of April 25, 2000 the information provided below pertains only to the intentions of Clean Air Council, et al, regarding the Joint Petition for Settlement and the Comments, Objections and Replies thereto, and not to the full range of issues and facts contained in PECO's Application.

Factual Issues

It is expected that Clean Air Council, et al, will address whether the Joint Petition is in the public interest with particular focus on the environmentally-related provisions thereof through description of the provisions and their probable effects. The Council, et al, reserve the right to address additional issues in the remainder of this proceeding as the need becomes apparent in testimony and evidentiary hearings.

Legal Issues

It is expected that Clean Air Council, et al, will address whether the Joint Petition is in the public interest and whether the environmentally-related provisions of the Joint Petition are related to that overall determination. In addition, issues involving PPL's standing to block this settlement process may be addressed. The Council, et al, reserve the right to address additional issues in the remainder of this proceeding as the need becomes apparent in testimony and evidentiary hearings.

Witnesses

Clean Air Council, et al, offered Bruce Biewald as a witness in their Prehearing Conference Memorandum. Mr. Biewald's testimony was never filed as a result of a successful process of negotiation culminating in the Joint Petition. Mr. Biewald will not be testifying for the purpose of the evidentiary hearings established by Judge Rainey on the Joint Petition.

Nevertheless, Clean Air Council, et al, have elected to present testimony in this proceeding, and now intend to offer as a witness:

Andrew Altman
Deputy Director, Clean Air Council
400 S. Camac St.
Philadelphia, PA 19147

Issues To Be Addressed By Witnesses

Mr. Altman will testify as to: 1) The nature of the environmental provisions of the Joint Petition; 2) the benefits of renewable energy and air pollution emissions reductions; and 3) the health and environmental impacts of electric power production.

Clean Air Council, et al, acknowledge the possibility that other issues may arise or be identified which may also be addressed by Mr. Altman in testimony.

Evidence

Clean Air Council, et al, will introduce the Direct Testimony of their witness, Andrew Altman, and the Statement of Support for the Joint Petition for Settlement filed by Clean Air Council, et al, on April 1, 2000.

Stipulations

The Council, et al, has not entered into any stipulations with any party at this time.

Respectfully submitted,



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Joseph Otis Minott, Esquire
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Counsel for Protestants and Petitioners
Clean Air Council
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Dated: May 2, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY :
COMPANY, PURSUANT TO CHAPTERS :
11, 19, 21, 22 AND 28 OF THE PUBLIC :
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AND (2) THE MERGER OF THE NEWLY :
FORMED HOLDING COMPANY :
AND UNICOM CORPORATION :

ORIGINAL

DOCKET NO. A-110550F0147

DIRECT TESTIMONY

OF

ANDREW ALTMAN

Regarding Environmental Provisions of
the Joint Petition for Settlement

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May 3, 2000

DIRECT TESTIMONY OF ANDREW ALTMAN

1
2 **Q. Please state your name, address and identify the party or parties for whom you are**
3 **testifying.**

4
5 A. My name is Andrew Altman, I reside at 400 S. Camac Street, Philadelphia, PA 19147. I
6 am testifying on behalf of Clean Air Council, Dennis Winters, Amy Hammersmith, and myself in
7 an individual capacity.

8
9 **Q. What is the purpose of your testimony?**

10
11 A. My testimony will demonstrate that the environmental provisions of the Joint Petition for
12 Settlement in the PECO Merger and Restructuring Application serve the public interest.

13
14 **Q. Please describe your qualifications.**

15
16 A. I have served as Deputy Director of Clean Air Council since 1992. In this capacity I have
17 developed the Council's energy program. Since 1996, I have been integral to the Council's work
18 on electric deregulation, including the Environmentalists' positions in restructuring litigation. I
19 studied this issue and the changes it has been bringing to the markets and the generation,
20 transmission and distribution of electricity in Pennsylvania. I am familiar with the Electricity
21 Generation Customer Choice and Competition Act, PUC regulations and policies promulgated
22 thereunder, and PUC Orders on Restructuring. My focus has been on those aspects which pertain
23 to renewable energy, consumer education and information disclosure. My resume further details
24 my background in renewable energy and information, and is attached as Clean Air Council, et al,
25 Exhibit AA-1.

26
27 **Q. Please identify the environmental provisions in the Joint Petition.**

28
29 A. The Joint Petition provides some \$24 million in new funding. \$12 million to the

1 Sustainable Development Fund (SDF) for wind power generation projects; \$4 million to the SDF
2 to fund a minimum of 450 roof-top solar photovoltaic installations; \$2.5 million to the SDF to
3 fund renewable energy education; and roughly \$2 million more to the SDF generally as a result
4 of a front-loading of PECO's existing obligation from the 1998 Restructuring Settlement and the
5 extension of the distribution rate cap. \$3.5 million is provided for a wind block marketing
6 program. In addition, the Joint Petition contains changes to Rate RS tariff and interconnection
7 rules which have some financial value to PECO.

8
9 **Q. Why is it in the public interest for a portion of merger savings to be dedicated to**
10 **wind generation investments?**

11
12 A. Wind power is an environmentally benign energy resource which is renewable and largely
13 untapped in Pennsylvania. Wind power is becoming increasingly competitive on a per kilowatt
14 installed basis, and is now the fastest growing source of power in the world.

15
16 Pennsylvania residents are greatly in need of relief from health-threatening air pollution.
17 Nationwide, approximately 29% of nitrogen oxides come from power plants and 66% of sulfur
18 dioxide emissions are emitted from power plants. Because of Pennsylvania's heavy reliance on
19 coal-fired power plants and the minimal overall sulfur dioxide emissions controls on its power
20 plants at this time, the figure in the prior sentence is likely to be quite conservative. Nitrogen
21 oxide forms ozone smog. Both sulfur dioxide and nitrogen oxide cause acid rain and haze.
22 According to a recent report by U.S. Public Interest Research Group which compiled EPA
23 emissions data, Pennsylvania plants release more sulfur dioxide than plants in any state but Ohio.
24 The same report indicates that Pennsylvania power plants release more mercury to the air than
25 the plants in any other state. Mercury is a neurological and developmental toxin. Since coal-
26 fired power production is a major source of such pollution, it follows that wind generation
27 displacing a more polluting source of energy will benefit the public health.

28
29 Because it is a relatively new technology in application in the Eastern United States, finding

1 sufficient capital to meet the expanding markets for wind generation has not been easy. The
2 supply of wind power has been unable to keep up with the demand from consumers. The \$12
3 million for wind generation can be used to leverage private investment and satisfy a need for
4 financing of merchant wind power projects to serve the competitive market.

5
6 In addition to the direct environmental benefits, wind also helps diversify the generation mix in
7 Pennsylvania and provides a mitigation strategy against higher fuel prices or tighter
8 environmental regulations. For example, if natural gas prices rise substantially or if
9 environmental regulations on coal-fired generation significantly tighten, wind will likely become
10 a highly cost effective resource. Investments in wind energy now help identify the best wind
11 sites and give utilities and system operators experience with the resource.

12
13 Finally, wind provides economic development benefits. Wind projects built in Pennsylvania can
14 add revenues for farmers and other landowners and contribute to the tax base in rural
15 communities.

16
17 **Q. What is a “wind block” marketing program?**

18
19 A. The program to be funded by PECO under the provisions of the proposed settlement
20 offers blocks of newly developed Pennsylvania wind energy in flexible amounts for purchase by
21 customers paying a specified monthly premium. The pilot program currently offers 400 kWh per
22 month blocks of Pennsylvania wind energy for a premium of \$10.

23
24 **Q. Do you agree with PPL’s suggestion that this wind program is anti-competitive?**

25
26 A. No. Contrary to the characterization of PPL, the program finances new renewables
27 through the market, using market forces to pay the higher costs of wind power and produce new
28 wind resources in direct proportion to market demand.

1 It should also be noted that the Joint Petition specifically states the program will be available to
2 Pennsylvania electric customers in a manner that is non-exclusive to the Electric Generation
3 Supplier a participating customer may select.
4

5 **Q. Is there a precedent for a program of this kind elsewhere in the United States?**
6

7 A. Yes. The first utility windblock program in the nation was offered by Public Service
8 Company of Colorado in 1997. Since then, over 15,000 residences, 400 commercial customers,
9 and two dozen cities in Colorado have agreed to pay a combined premium in excess of \$2
10 million dollars to purchase 25 MW of wind. In the last two weeks, numerous federal facilities
11 have come together to purchase an additional 10 MW of wind blocks. By 2004, the Colorado
12 utilities expect to have aggregated over 50 MW of demand for blocks of new wind energy.
13

14 Moreover, a number of utilities have adopted the program to offer renewable energy blocks to
15 their customers. Renewable energy blocks are now offered by: Pacific Corp in Utah (100 kWh
16 blocks of new wind); Public Service Company of Colorado along with four other utilities in
17 Colorado (100 kWh blocks of new wind energy); Madison Gas and Electric Company (150 kWh
18 blocks of 100% new wind); Wisconsin Electric Power Company (100 kWh blocks of 75% new
19 renewables, including landfill gas, wind and hydro to large commercial customers); and
20 Tennessee Valley Authority (150 kWh of 100% new renewables, solar, wind and landfill gas).
21

22 The agreement by PECO to fund the introduction of windblocks in Pennsylvania brings this
23 market-compatible renewable program to Pennsylvania.
24

25 **Q. What is Community Energy, Inc.?**
26

27 A. Community Energy is a Delaware corporation formed in 1999 through a partnership
28 between Clean Air Council and the Land and Water Fund of the Rockies, the Colorado
29 environmental group that successfully launched the first wind block marketing program.

1 Community Energy was created to market new wind energy to Pennsylvania consumers using
2 this wind block concept. The program uses market demand to bring new wind generation
3 facilities on line in the Commonwealth. Community Energy developed a pilot Pennsylvania
4 Wind Energy Program to offer wind blocks to small businesses in the Philadelphia region, and
5 will expand that program with funds provided under this settlement.
6

7 **Q. Why is it in the public interest for a portion of merger savings to be dedicated to the**
8 **Pennsylvania Wind Energy Program?**
9

10 A. The wind block marketing concept is extremely useful in advancing wind power, and
11 therefore reducing air pollution. By offering to provide for merely a portion of a customer's
12 needs with wind energy, the program can spread the economic toll of a higher-than-system-power
13 cost among a large number of willing participants. The program appeals to a large number of
14 customers in this manner. Another noteworthy effect of the program is its ability to draw
15 funding for new renewables from customers who would not otherwise be likely to support
16 renewables because of a reluctance to switch to a new supplier of energy. The intent of the
17 Pennsylvania Wind Energy Program is for it to be offered even to those who remain with their
18 provider of last resort.
19

20 **Q. Why is it in the public interest for a portion of merger savings to be dedicated to**
21 **renewables education?**
22

23 A. Most Pennsylvanians do not have a good understanding of where their electricity comes
24 from. The efforts at consumer education in Pennsylvania in the era of deregulation have
25 provided the public with very little information regarding the environmental factors which may
26 affect personal decisions about retail electric choice. In today's marketplace, renewable energy is
27 not generally the cheapest electric power available. Renewable energy has other attributes to
28 commend it, however, and the public interest is served when these are explained.
29

1 **Q. Why is it in the public interest for a portion of merger savings to be dedicated to**
2 **residential solar photovoltaic (PV) units?**

3
4 A. Solar PV technology is an environmentally benign renewable energy resource which
5 continues to become more efficient and more affordable. Panels of solar photovoltaic cells
6 would convert sunlight directly to electricity on the rooftops of homes and small businesses
7 under this program. The public benefits of this technology lie in the displacement of air
8 pollution causing forms of energy production and the delivery of power to the grid at peak times,
9 thereby reducing the need for construction of new, polluting central power plants for peak
10 operation. When electrical demand peaks, typically on the hottest days of summer, solar PV
11 rooftop units will be producing electricity at or near capacity.

12
13 The units funded in this Joint Settlement are of sufficient number to spark interest in PV units
14 among the public and among manufacturers, dealers, installers and maintenance businesses. This
15 type of infrastructure investment is a necessary component of a successful entry of solar power
16 into the Pennsylvania competitive market.

17
18 **Q. Does the settlement contain any other provisions which hold an environmental**
19 **benefit?**

20
21 A. Yes. The Joint Settlement has significant changes to PECO's Rate RS tariff and the
22 interconnection rules which govern small sources of generation.

23
24 **Q. Why is it in the public interest for PECO's tariff and interconnection rules to be**
25 **changed in this manner?**

26
27 A. These changes are crucial to allowing residential and small commercial scale distributed
28 generation to become economically viable in PECO service territory. Changes include: a tariff
29 revision which permits a customer to receive credit for power she generates and contributes back

1 to the grid at a rate equal to the amount paid for power taken from the grid; a tariff revision
2 which allows credit for excess power created in one month by the customer to offset the bill for
3 power taken from the grid in any subsequent month of a discrete 12-month period; or an
4 interconnection revision which provides certainty and eliminates onerous charges. Each of these
5 changes are necessary if substantial numbers of people are to self-generate electricity.
6

7 Self-generation is in the public interest because the renewable technologies used do not
8 create air pollution, decreasing demand for power from fossil-fuel plants which do pollute.
9

10 **Q. You have mentioned several times that wind and solar power applications will**
11 **reduce air pollution and produce an environmental benefit. Please explain.**
12

13 A. As more and more people in Pennsylvania choose a renewable power supply, the amount
14 of electrical load usage dependent upon polluting coal-fired plants in the state will decrease.
15 Power generated at those plants will be dispatched less often, the plants will therefore run at a
16 lower capacity and produce less emissions. This fact is significant because air pollution from
17 power plants contributes to a range of health problems, from increased asthma attacks and
18 premature death for lung irritants to unacceptable developmental and neurological risks
19 associated with mercury deposition.
20

21 **Q. Can you estimate how much air pollution is prevented by a renewable power**
22 **source?**
23

24 A. Yes. I will take as an example a 1.3 megawatt wind turbine, such as the ones currently
25 being installed in Western Pennsylvania. Assuming the turbine operates with a capacity factor of
26 25%, and given that coal-fired units comprise 59% of the generation mix in Pennsylvania, a
27 single wind turbine would prevent the emission of as much as 6,720 pounds of NOx annually,
28 and as much as 30,235 pounds of SOx annually. Source data was obtained from the U.S.
29 Department of Energy, Energy Information Administration, Form EIA-767, "Steam-Electric

1 Plant Operation and Design Report," and Form EIA-759, "Monthly Power Plant Report."
2

3 **Q: How precise are these estimates?**
4

5 A: These estimates do not involve any detailed modeling or quantitative analysis. Rather, I
6 have presented them to provide a rough projection of the likely pollution reduction benefits in
7 Pennsylvania associated with a single wind turbine.
8

9 **Q. Does this conclude your direct testimony?**
10

11 A. Yes.
12
13

Andrew Altman

Experience

1992 to present Clean Air Council Philadelphia, PA

Deputy Director

Program Management: (1992 – present)

- Responsible for all work with community groups and coalitions. Manages the Council's environmental education programs: Pollution Prevention Program and Sustainable Energy Education Program.
- Responsible for coordinating the Council's electricity deregulation program in Pennsylvania including the PECO, PP& L and GPU interventions, building environmental coalitions, planning and implementing educational programs, and working with the Public Utility Commission.
- Serves on the PECO Sustainable Development Fund board as Vice-President and official delegate to the statewide board.
- Founding board member and Secretary of Community Energy, a company created to develop and sell new wind power in Pennsylvania.
- Serves as member of the City of Philadelphia's Recycling Advisory Committee (RAC) and was on the management team of the Philadelphia Recycling Economic Development Consortium's U.S. Environmental Protection Agency - City Partnership.
- Serves on the Mid-Atlantic Advisory Committee to Green-e and is the Pennsylvania coordinator for the Power Scorecard.

Media: (1992 – present)

Responsible for media outreach for all programs. Has given interviews to all major stations in the Philadelphia region, been interviewed and quoted in local newspaper including the Philadelphia Inquirer, Daily News and Courier Post, and is used as a reliable environmental analyst/source by TV, newspaper and radio reporters.

1987 - 1991 Greenpeace Philadelphia, PA

Philadelphia Canvass Director

Directing: (1990 – 1991)

Raised one-half million dollars in the calendar year, 1990. Recruited and trained staff up to sixty canvassers. Designed and implemented new training systems to raise individual and office fundraising averages. Controlled petty cash and payroll; created and implemented advertising strategies; acted as public clearinghouse of information.

Media: (1989 – 1991)

- Served as official spokesperson. Appeared on ABC's "Good Morning America", local TV including WPVI, WCAU, KYW, and Fox Network. Interviewed and quoted in Time Magazine and in local newspapers including Philadelphia Inquirer, Daily News and Courier Post. Regular appearances on radio programs including WXPB's Kid's Corner and WMMR's noon show with Pierre Robert.

- Managed public relations for several activities including writing press releases, contacting media, providing live interviews, and follow-up.

Coordinating: (June 1989 – November 1989)

Motor Vessel "Greenpeace" Tour Education Coordinator and spokesperson. Directed major events in 14 cities, raising over \$25,000 and speaking to over 10,000 people. Complete responsibility for Public Open Ships, including organization of personnel, equipment, merchandise, logistics, and factual content of material/presentations.

Creating/Producing: (1988 – 1991)

Created student education program. Produced school, K-12 and college assemblies and class presentations, and led youth discussion sessions that concentrated on individual action and responsibility. Wrote and presented slide programs for over 100 groups ranging in size from 20 to 400 students.

Education

Emory University, Atlanta Georgia
B.A. History, Anthropology, May 1983

Languages

Fluent in French.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of PECO Energy Company, :
Pursuant to Chapters 11, 19, 21, 22 and 28 of :
the Public Utility Code, for Approval of (1) a :
Plan of Corporate Restructuring, Including the :
Creation of a Holding Company, and (2) the : Application Docket
Merger of the Newly Formed Holding : No. A-110550F0147
Company and Unicom Corporation : :

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00 MAY - 3 PM 1:55

CERTIFICATE OF SERVICE

I hereby certify that I have, this 2nd day of May 2000, served a true and correct copy of the foregoing Protestants/Intervenors Clean Air Council, et al's Prehearing Memorandum and Direct Testimony of Andrew Altman on the following parties of record by first class mail or as indicated:

The Honorable Charles E. Rainey (BY FED EX)
Administrative Law Judge
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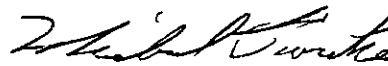
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May 3, 2000

VIA MESSENGER DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17120

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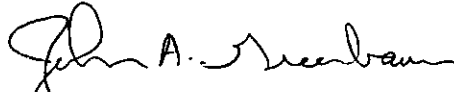
Re: Application of PECO Energy Company Pursuant to Chapters 11, 19, 21, 22, and 28 of the Public Utility Code for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) Merger of the Newly Formed Holding Company and Unicom Corporation:
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and four (4) copies each of (1) Second Prehearing Memorandum of the National Railroad Passenger Corporation and (2) Testimony of Stanley R. Forczek. Please return one time-stamped copy of each document with our messenger.

Thank you for your attention in this matter.

Sincerely,



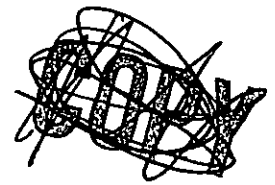
John A. Greenbaum

Enclosures

- cc: Charles E. Rainey, Jr., Administrative Law Judge (via facsimile and messenger delivery, w/encs.)
- Mr. John M. Quain, Chairman (via messenger delivery, w/encs.)
- Mr. Robert K. Bloom, Vice-Chairman (via messenger delivery, w/encs.)
- Ms. Nora Mead Brownell, Commissioner (via messenger delivery, w/encs.)
- Mr. Terrance J. Fitzpatrick, Commissioner (via messenger delivery, w/encs.)
- Mr. Aaron Wilson, Jr., Commissioner (via messenger delivery, w/encs.)
- All counsel of Record (via email and first class mail, w/encs.)

50

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED

MAY 05 2000

APPLICATION OF PECO ENERGY :
COMPANY, PURSUANT TO :
CHAPTERS 11, 19, 21, 22 AND 28 OF :
THE PUBLIC UTILITY CODE, FOR :
APPROVAL OF (1) A PLAN OF :
CORPORATE RESTRUCTURING, :
INCLUDING THE CREATION OF A :
HOLDING COMPANY AND (2) THE :
MERGER OF THE NEWLY FORMED :
HOLDING COMPANY AND UNICOM :
CORPORATION :

Docket No. A-110550F0147

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SECOND PREHEARING MEMORANDUM OF THE
NATIONAL RAILROAD PASSENGER CORPORATION

Pursuant to the order issued April 25, 2000 by Administrative Law
Judge Charles E. Rainey, Jr., the National Railroad Passenger Corporation
("Amtrak") hereby submits this second prehearing memorandum. Amtrak
reserves the right to amend or supplement this memorandum based upon any
evidence or legal argument submitted by PPL Electric Utilities Corporation
("PPL") or by City Councilman David Cohen.

Judge Rainey specifically requested that all parties address the following
specific items. Amtrak addresses each item in sequence, as follows:

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1. Factual Issues That Amtrak Plans To Address.

Amtrak intends to support the Joint Petition For Settlement filed on March 23, 2000. At this point, all parties other than PPL and Councilman Cohen have joined or expressed support for this global Settlement. PPL and Councilman Cohen do not appear to be raising factual issues, but neither of these parties has yet filed any testimony. Consequently, at the present time, it is not possible for Amtrak to determine whether any material factual issues are in dispute and will have to be addressed by Amtrak or by other settling parties. As stated above, Amtrak reserves the right to address any factual issues raised by the two parties opposing the Settlement

The fundamental question here is whether the proposed Settlement is in the public interest. This is more of a policy issue than a factual issue. In any event, Amtrak's witness will comment briefly on this question and will explain why this Settlement will benefit the public.

2. Legal Issues That Amtrak Plans To Address.

Amtrak addressed the core legal issues in its Reply To PPL's Objections, which was filed April 18, 2000. Amtrak hereby incorporates that pleading by reference. As explained therein, the basic issues are: (a) whether PPL has standing to oppose the Settlement, (b) whether a Settlement that reduces

PECO's rates, extends PECO's existing rate cap, and mandates reliability improvements by the utility is in the public interest and therefore should be approved, (c) whether PECO may, in negotiating a settlement, offer concessions that exceed minimum legal requirements, (d) whether PPL's concerns regarding the precedential effect of this Settlement have any legal basis, and (e) whether the provision giving Amtrak the option to buy out any remaining obligation to pay competitive transition charges ("CTCs") is in the public interest, as indicated by PECO's 1998 Restructuring Settlement and by the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2808(b).

Conceivably, new legal issues could arise based upon the testimony or other evidence offered by PPL and Councilman Cohen. If any new issues arise, Amtrak reserves the right to respond appropriately.

3. Amtrak's Witness And The Issues The Witness Will Address.

Amtrak identifies the following witness:

Stanley R. Forczek
Director– Energy Management
National Railroad Passenger Corporation
Northeast Corridor, Planning Policy and Development
30th Street Station, 5th Floor South Tower
Philadelphia, PA 19104

Mr. Forczek will provide background on Amtrak's operations and on its purchases and sales of traction power. He then will address the lump sum

buy-out provision in the global settlement. He will explain that this provision serves not only Amtrak's interests, but also the public interest. He also will explain that contrary to PPL's assertions, this lump sum buy-out provision is not unreasonable or discriminatory.

4. Documents That Amtrak Intends To Introduce Into Evidence.

Other than Mr. Forczek's prepared testimony and any exhibits to that testimony, Amtrak has not identified any documents which it intends to introduce into evidence.

5. Proposed Stipulations

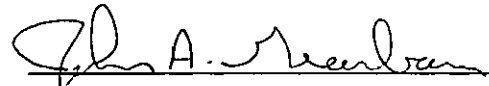
Amtrak is not proposing any stipulations at this time.

6. Conclusion

In this pre-hearing memorandum, Amtrak has sought to address all of the items listed in Judge Rainey's order. Since PPL and Councilman Cohen have not yet filed any testimony or other evidence, and since they may attempt to

refine their legal theories, Amtrak reserves the right to amend or supplement this submission.

Respectfully submitted,



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machlinm@pepperlaw.com

Counsel for National Railroad Passenger Corporation

Dated: May 3, 2000

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**APPLICATION OF PECO ENERGY :
COMPANY, PURSUANT TO :
CHAPTERS 11, 19, 21, 22 AND 28 OF :
THE PUBLIC UTILITY CODE, FOR :
APPROVAL OF (1) A PLAN OF :
CORPORATE RESTRUCTURING, :
INCLUDING THE CREATION OF A :
HOLDING COMPANY AND (2) THE :
MERGER OF THE NEWLY FORMED :
HOLDING COMPANY AND UNICOM :
CORPORATION :**

Docket No. A-110550F0147

**TESTIMONY
OF
STANLEY R. FORCZEK**

**ON BEHALF OF THE
NATIONAL RAILROAD PASSENGER CORPORATION**

MAY 3, 2000

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SECRETARY'S BUREAU**

1 **I. QUALIFICATIONS AND EXPERIENCE**

2 **Q. Please state your name and business address.**

3 A. My name is Stanley R. Forczek, and my business address is National
4 Railroad Passenger Corporation, 30th Street Station, Philadelphia,
5 Pennsylvania 19104.
6

7 **Q. What is your position with the National Railroad Passenger
8 Corporation?**

9 A. I am the Director of Energy Management for the Northeast Corridor Strategic
10 Business Unit of the National Railroad Passenger Corporation ("Amtrak"). As
11 Director of Energy Management, I am responsible for the establishment and
12 development of Amtrak's energy policies in the Northeast Corridor and
13 elsewhere. My responsibilities include the procurement and management of
14 Amtrak's energy supplies and contractual administration for Amtrak's sales of
15 traction power to commuter authorities. I also coordinate the economic
16 dispatch of electric power for Amtrak's traction power transmission system in
17 the Northeast Corridor.
18

19 **Q. Please describe your business experience and education.**

20 A. A copy of my resume, including my professional experience and
21 qualifications is attached as Amtrak Exhibit 1 to this testimony. As my
22 resume indicates, I have been employed by Amtrak since 1973. I have held
23 a succession of managerial positions in the areas of finance and
24 administration, operations, and energy management. I hold a Bachelor's
25 Degree in accounting from Fairleigh Dickinson University and have
26 completed the Executive Masters Program at the University of Virginia's
27 Darden Graduate School of Business Administration. I also have completed
28

1 a Professional Development Program in Electrical Engineering Strategies in
2 The Restructured Environment at the University of Illinois.

3
4 **II. INTRODUCTION AND SUMMARY**

5 **Q. What is the purpose of your testimony?**

6 A. My testimony urges the Commission to approve the Joint Petition for
7 Settlement ("Joint Petition") filed on March 23, 2000. My testimony will
8 explain why this multi-party settlement is in the public interest, and I will
9 briefly respond to the comments filed in opposition to the Joint Petition by
10 PPL Electric Utilities Corporation ("PPL").

11
12 **Q. What position has PPL taken with respect to the Amtrak-specific
13 provision in the Joint Petition?**

14 A. In its Objections, which were filed on or about April 13, 2000, PPL briefly
15 *refers to the provision in the Settlement giving Amtrak the option to buy out*
16 *any continuing obligation to pay competitive transition charges ("CTCs") to*
17 *PECO Energy Company ("PECO"). PPL incorrectly implies that this lump*
18 *sum buy-out is a "concession or benefit" that has "no relation" to the*
19 *proposed merger between PECO and Unicom Corporation ("Unicom"). In*
20 *addition, PPL argues mistakenly that there is no evidence showing that the*
21 *lump sum buy-out provision is just, reasonable, and nondiscriminatory.*

22
23 **Q. Could you please summarize your testimony regarding PPL's
24 Objections?**

25 A. Yes. At the outset, I will describe Amtrak's operations and PECO's role in
26 supplying traction power to Amtrak's Northeast Corridor. My testimony will
27 then focus on four basic points. First, the lump sum buy-out provision
28 included in the proposed Settlement serves not only Amtrak's interests, but

1 also the broader public interest. If this global Settlement is approved by the
2 Commission and if the buy-out provision allows Amtrak to reduce its energy
3 costs, the ultimate beneficiaries will be the members of the public who rely on
4 Amtrak or on commuter authorities such as SEPTA, which purchase traction
5 power from Amtrak.

6 Second, the lump sum buy-out clause simply implements provisions in
7 PECO's 1998 Electric Restructuring Settlement and in the Electricity
8 Generation Customer Choice and Competition Act which expressly authorize
9 such buy-outs. PECO's 1998 Restructuring Settlement was approved by the
10 Commission and found to be in the public interest. Furthermore, PPL itself
11 was a signatory to the 1998 Restructuring Settlement.

12 Third, Amtrak decided to negotiate a lump sum buy-out in this
13 proceeding, because the railroad recognized that the proposed merger and
14 restructuring would result in a change in corporate control, potentially
15 affecting PECO's future implementation of the buy-out provision. Amtrak
16 recognized that under the proposed merger and restructuring, although
17 PECO's distribution and transmission unit still would have local management,
18 executives based in Illinois would have final authority over the combined
19 company's wires business. For that reason, Amtrak concluded that it would
20 be prudent to negotiate and lock in specific buy-out amounts prior to
21 consummation of the merger.

22 Fourth, contrary to PPL's assertions, the buy-out provision is not
23 unreasonable or discriminatory. Other eligible customers are free to
24 negotiate buy-outs of their own, subject to Commission approval.
25 Furthermore, none of the industrial or commercial customers grouped with
26 Amtrak in the Commission's annual CTC reconciliation process has objected
27 to this aspect of the Settlement. To the contrary, all the industrial ratepayer
28 groups participating in this proceeding and all the State agencies

1 representing ratepayers have signed on to the multi-party Settlement and are
2 supporting this buy-out clause.

3
4 **III. AMTRAK**

5 **Q. What is Amtrak?**

6 A. Amtrak is a national passenger railroad which was established by the Rail
7 Passenger Service Act of 1970 (Pub. L. No. 91-518, recodified at 49 U.S.C.
8 § 24101, *et seq.*). In this legislation, which has been amended from time to
9 time, Congress has declared that: "Public convenience and necessity
10 require that Amtrak, to the extent its budget allows, provide modern, cost-
11 efficient, and energy-efficient intercity rail passenger transportation between
12 crowded urban areas and in other areas of the United States." (49 U.S.C.
13 § 24101(a).) Congress also declared that: "By using innovative operating
14 and marketing concepts, Amtrak shall provide intercity and commuter rail
15 passenger transportation that completely develops the potential of modern
16 rail transportation to meet the intercity and commuter passenger
17 transportation needs of the United States." (*Id.* § 24101(b).)

18
19 **Q. Has Amtrak been directed by Congress to move toward economic self-
20 sufficiency?**

21 A. Yes. Amtrak has been directed "to make agreements with the private sector
22 and undertake initiatives that are consistent with good business judgment
23 and designed to maximize its revenues and minimize Government
24 subsidies." (49 U.S.C. § 24101(d).) In enacting the Amtrak Reform and
25 Accountability Act of 1997, Congress found that although "intercity rail
26 passenger service is an essential component of a national intermodal
27 passenger transportation system," "immediate action is required to improve
28 Amtrak's financial condition if Amtrak is to survive." Section (2), Pub. L.

1 No. 105-134, 111 Stat. 2570, 2571 (1997), codified at 49 U.S.C. § 24101
2 (Historical Note). Congress also found that "all of Amtrak's stakeholders"
3 must "participate in efforts to reduce Amtrak's costs and increase its
4 revenues." (Id.) My intent here is not to offer a legal interpretation of these
5 statutory provisions, but only to underscore the federal policy encouraging
6 Amtrak to move toward self-sufficiency.
7

8 **Q. Please describe Amtrak's operations.**

9 A. Amtrak provides rail service and operates intercity passenger trains serving
10 approximately 500 destinations in the continental United States and Canada.
11 A substantial percentage of Amtrak's ridership occurs in an area known as
12 the Northeast Corridor between Washington, D.C. and Boston, which is
13 approximately 500 miles in length. Almost fifty percent (50%) of Amtrak's
14 ridership takes place on the Northeast Corridor, which includes the line
15 running from Harrisburg to Philadelphia. The Northeast Corridor segment
16 between Washington D.C. and New York City is Amtrak's most active service
17 area, and Amtrak owns the right-of-way and the 25 Hertz transmission
18 system in that area.
19

20 **Q. On the Northeast Corridor segment between Washington, D.C. and New**
21 **York City, does PECO transmit or deliver traction power to Amtrak?**

22 A. Yes. PECO is one of four utilities that deliver power used for traction
23 purposes to Amtrak's Northeast Corridor between Washington, D.C. and
24 New York City. The four utilities are: PECO, PPL, Baltimore Gas And
25 Electric Company ("BGE"), and Consolidated Edison of New York ("ConEd").
26 In the last several years, PECO has been the largest supplier of electric
27 power to this part of the Northeast Corridor, delivering approximately sixty
28 percent (60%) of Amtrak's traction load. In the aggregate, Amtrak purchases

1 approximately 600,000 megawatt hours annually from or through these
2 utilities.

3
4 **Q. How is the traction power delivered by these four electric utilities**
5 **transmitted and distributed to Amtrak's trains?**

6 A. Amtrak owns and operates its own electrical infrastructure, which includes
7 approximately 1200 miles of catenary lines and over 970 miles of
8 transmission lines. This infrastructure is used not only to deliver power to the
9 Amtrak track segments where it is required, but also to supply power to
10 various commuter authorities for operations on and off the Northeast
11 Corridor. Furthermore, Amtrak's transmission system forms a fully
12 connected grid. Power is supplied to the grid at a number of delivery points,
13 but is commingled over a single set of Amtrak lines.

14
15 **Q. Has this Commission ever recognized the fact that Amtrak has a unique**
16 **transmission system which effectively bisects the service territories of**
17 **several utilities?**

18 A. Yes. In July, 1994, this Commission issued an order granting a letter petition
19 filed by PECO, which requested approval of a special contract for electric
20 service for Amtrak pursuant to PECO's Tariff Rule 4.6. Pennsylvania Public
21 Utility Commission v. PECO Energy Co., P-00940832 (July 7, 1994). In
22 granting PECO's letter petition, the Commission explicitly recognized certain
23 attributes of Amtrak's operating practices and electric transmission system.
24 Specifically, the Commission noted that:

25 Amtrak's operating practices have recently permitted the
26 company to take advantage of competitive alternatives to
27 much of the service PECO Energy has historically
28 supplied to Amtrak Amtrak owns and operates
electric power lines that are like PECO Energy's
transmission lines. These transmission lines pass
through PECO Energy's service territory, as well as

1 passing through and interconnecting with other electric
2 utility service territories in the Northeast corridor.
3 Amtrak's internal transmission system allows Amtrak to
4 purchase electricity from any utility to which it is
5 interconnected and to transmit or wheel power to its main
6 load centers. In order to efficiently supply its system,
7 Amtrak must continuously wheel power throughout its
8 system.

9
10 **Q. What percentage of the traction power delivered by PECO, PPL, BGE
11 and ConEd is then sold by Amtrak to the various commuter authorities?**

12 **A.** On the interconnected grid between Washington, D.C. and New York City,
13 which includes the line from Harrisburg to Philadelphia, Amtrak uses
14 approximately 50 percent of the traction power that it purchases. The
15 remaining 50 percent of this pooled power is sold to the various commuter
16 authorities, including SEPTA.

17
18 **Q. For train operations, does Amtrak utilize the same 60 Hertz three-phase
19 power used by all or nearly all of PECO's customers?**

20 **A.** No. Both Amtrak and the commuter authorities purchasing power from
21 Amtrak operate their trains on 25 Hertz, single-phase power. Except for a
22 portion of the power generated for Amtrak at the Safe Harbor hydroelectric
23 facility, the utilities serving Amtrak generate and supply their electricity as
24 60 Hertz, three-phase power. That electric power then has to be converted
25 to the special 25 Hertz, single-phase traction power needed for Amtrak's and
26 the commuter railroads' operations. This is done through seven frequency
27 converter facilities (two of which are owned by Amtrak and five of which are
28 owned by electric utilities or their affiliates, including the unit at Safe Harbor).
Each frequency converter facility interconnects with 60 Hertz transmission
lines owned by the utilities and ranging in size from 13.2 kV to 60 kV to
138 kV to 230 kV.

1 **Q. Which commuter authorities purchase traction power from Amtrak?**

2 A. SEPTA, New Jersey Transit, DelDOT (for extended SEPTA service), and the
3 Maryland Department of Transportation ("MDOT" or "MARC") all purchase
4 25 Hertz traction power from Amtrak. The power supplied by Amtrak is used
5 for commuter operations on and off the Northeast Corridor. SEPTA and all
6 of the commuter authorities other than DelDOT also purchase traction power
7 from or through their local electric utilities for operations on other lines off the
8 Northeast Corridor.

9

10 **IV. THE PROPOSED SETTLEMENT**

11 **Q. Does Amtrak support the proposed Settlement?**

12 A. Yes. Amtrak actively participated in the negotiation of the Settlement
13 and fully supports it. The proposed Settlement contains many
14 elements which are in the public interest. If approved, this Settlement
15 would require \$200 million in rate reductions, would extend the rate
16 cap for an additional 18 months (until December 31, 2006), and would
17 require PECO to make reliability improvements. These core provisions
18 of the Settlement extend over many years and will benefit all PECO
19 customers, including Amtrak.

20

21 **Q. Does this proposed Settlement also contain a provision that applies
22 solely to Amtrak?**

23 A. Yes. Paragraph 67 and Appendix F of the Joint Petition give Amtrak options
24 to buy out any remaining obligation to pay CTCs to PECO. Under these
25 provisions, any buy-out by Amtrak would be completely voluntary. Amtrak
26 may elect to take a buy-out, and under the proposed Settlement, the amount
27 paid to PECO would depend upon the date on which the option was
28 exercised.

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Q. How were these buy-out amounts determined?

A. The dollar amounts specified in the Settlement were negotiated based upon the framework established in PECO's 1998 Restructuring Settlement, which was approved by this Commission. The buy-out amounts were calculated using a projected traction power growth rate of 0.4 percent per year and then estimating the present value of the Amtrak's expected CTC payments to PECO. Under the methodology set forth in the 1998 Restructuring Petition, the projected CTC revenue stream was then discounted back using PECO's after-tax cost of capital.

Q. Is this lump sum buy-out consistent with Commission policy?

A. Yes. PECO's 1998 Electric Restructuring Settlement expressly authorizes PECO and customers to negotiate a mutually acceptable lump sum buy-out of transition charges (See 1998 Restructuring Petition at 21 (April 29, 1998)). PPL was itself a signatory to that 1998 Petition. In addition, the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2808(b), authorizes "alternative" payment methodologies. The Act provides that CTCs generally may be collected for a maximum of nine (9) years after the effective date of the Act, but this does not apply if "an alternative payment methodology is mutually agreed upon by the customer and the utility" (Id. § 2808(b)). My intent here is not to offer a legal interpretation of this provision or of the 1998 Restructuring Settlement, but simply to point out that both the Commission and the General Assembly already have determined that it is in the public interest to give customers an alternative to paying CTCs throughout a utility's transition period.

1 **Q. Apart from these prior determinations, is this lump sum buy-out**
2 **provision in the public interest?**

3 A. Yes. If Amtrak is able to use one of the options granted by this Settlement,
4 and if this action reduces Amtrak's energy costs, this cost reduction would be
5 in the public interest. In providing intercity passenger service, Amtrak itself
6 serves the public. In addition, any actions which reduce Amtrak's operating
7 costs are consistent with federal law, which encourages Amtrak to move
8 toward self-sufficiency and reduce its dependence on government subsidies.
9 Amtrak also supplies traction power to SEPTA and other commuter
10 authorities. Typically, at least some of the traction power cost savings
11 obtained by Amtrak are passed through to the commuter authorities. Any
12 cost reductions obtained by Amtrak through a buy-out should therefore
13 benefit commuters who are dependent upon these regional authorities, as
14 well as taxpayers who provide financial support for these entities. In short, if
15 Amtrak is able to reduce its energy costs, the beneficiaries would include
16 taxpayers and members of the public who rely upon Amtrak, SEPTA, and the
17 other commuter authorities purchasing traction power from Amtrak.

18
19 **Q. Is the lump sum buy-out provision a concession or benefit that is**
20 **unrelated to PECO's proposed merger and restructuring?**

21 A. No. Amtrak sought this benefit in this proceeding because Amtrak
22 recognized that the proposed transaction would result in a change of control.
23 No longer would decisions relating to PECO's transmission and distribution
24 system be made solely by local management. Amtrak assumed that after
25 consummation of the merger, executives based in Illinois would have final
26 approval authority over significant decisions. In order to ensure that the
27 railroad obtained the full benefit of the Pennsylvania legislation and the 1998
28 Restructuring Settlement, Amtrak concluded that it would be beneficial to

1 negotiate and lock in the terms for lump sum buy-out now, before the change
2 in control occurs.

3
4 **Q. Is the option for a lump-sum buyout unreasonable or discriminatory?**

5 A. This element of the Settlement is not unreasonable or discriminatory. Other
6 eligible customers are free to negotiate with PECO for a lump sum buy-out.
7 Nothing in this Settlement precludes future buyouts involving other
8 customers. Furthermore, the only parties even possibly affected by this
9 buyout provision are other industrial and commercial customers of PECO,
10 which are or will be grouped with Amtrak for CTC reconciliation purposes.
11 As explained above, however, the customer groups and State agencies
12 representing these ratepayers have joined the proposed Settlement and
13 therefore are supporting the lump sum buy-out provision. Only PPL, which
14 has no apparent economic interest in this matter, has questioned this
15 provision. For the reasons explained above, PPL's concerns are misguided.

16
17 **Q. Does that conclude your testimony?**

18 A. Yes.
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QUALIFICATIONS SUMMARY

Record of success in developing and implementing innovative, strategic programs with a strong commitment to maximizing business development and growth. Proven ability in providing visionary leadership, insightful business analysis, and strategies leading toward revenue enhancement and increased profitability.

PROFESSIONAL HISTORY

AMTRAK (National Railroad Passenger Corporation) 1973 - Present

PHILADELPHIA, PENNSYLVANIA

Director - Energy Management 1990 - Present

Establish and direct strategic planning and implementation of energy supply policies and programs. Developed national energy initiative to reduce costs, enhance revenue and increase profitability while managing risk and maintaining regulatory integrity. Negotiate supply agreements with State commuter agencies for the resale of electricity. Implemented a national solicitation process for energy commodities and services. Negotiate all energy commodity supply, interconnection and operating agreements with energy suppliers and distribution companies. Administrate all activities dealing with the business development of an independent and integrated regional transmission network and infrastructure. Established policy for monetization of energy assets and partnering with major energy players on cogeneration and related energy service projects.

* Possess a thorough understanding of energy market issues such as pricing, retail competition, restructuring activities, transmission costs and constraints, and regulatory laws governing the marketing of an energy product.

* Familiar with ISO/PX activities and transactions.

Director- Operations Support and Compliance 1986 - 1990

Developed and administrated a corporate operations audit function; developed and provided leadership for system design projects; coordinated development of operating systems for management reporting needs; chaired steering committees for the development of several corporate policies.

* Designed reporting system and supporting contracts for equipment fleet fueling.

Director- Finance and Administration 1980 - 1986

Directed operational and financial planning functions; provided leadership and counseled executive staff on operating and financial performance; created and directed administrative functions of correspondence control, records management and space coordination.

Prior Positions - Manager Budgets and Cost Control 1976 - 1980

Supervisor of Property Accounting 1973 - 1976

JEFFREY MARTIN INC.

UNION, NEW JERSEY

(Pharmaceuticals, Advertising)

Controller 1972 - 1973

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INTERPHOTO CORPORATION
LONG ISLAND CITY, NEW YORK
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Manager of General Accounting 1971 - 1972

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NEW YORK, NEW YORK
(Graphic Arts, Advertising, Photographic Arts)
Assistant Controller 1969 - 1971

WORTHINGTON CORPORATION
HARRISON, NEW JERSEY
(Manufacturing Heavy Equipment)
Accounting Manager 1964 - 1969

EDUCATION

- **Fairleigh Dickinson University** BS – *Accounting*
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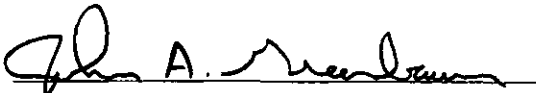
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VIA HAND DELIVERY

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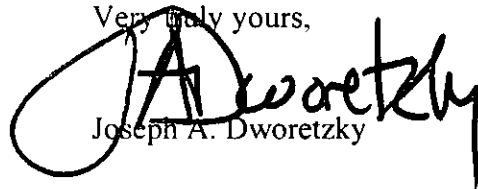
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00 MAY -3 PM 4: 13
PA.P.U.C.
SECRETARY'S BUREAU

Re: In re: Application of PECO Energy Company,
Application Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed for filing are the original and four copies of the Prehearing Memorandum of Mid-Atlantic Power Supply Association in the above-captioned proceeding. Please date-stamp one of the copies and return it to me in the enclosed, self-addressed, stamped envelope. Thank you.

Very truly yours,


Joseph A. Dworetzky

JAD/tg
Enclosures

cc: Hon. Charles E. Rainey (via hand delivery)
PECO Energy Company (via hand delivery)
certificate of service (method as indicated)

44

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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03 MAY -3 PM 4:14
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SECRETARY'S BUREAU

In re: Application of PECO Energy Company, :
Pursuant to Chapters 11, 19, 21, 22 and 28 of :
the Public Utility Code, for Approval of (1) a :
Plan of Corporate Restructuring, Including the :
Creation of a Holding Company, and (2) the : Application Docket No. A-11050F014
Merger of the Newly Formed Holding :
Company and Unicom Corporation :

**PREHEARING MEMORANDUM OF
MID-ATLANTIC POWER SUPPLY ASSOCIATION**

Mid-Atlantic Power Supply Association ("MAPSA") respectfully submits this Prehearing Memorandum in the above-captioned matter in accordance with Prehearing Order #2, dated April 25, 2000. MAPSA intends to offer testimony and argue in support of the Joint Petition for Settlement and in opposition to PPL's Objections thereto.

DOCKETED
MAY 04 2000

I. FACTUAL ISSUES

MAPSA believes that the Joint Petition for Settlement should be approved, as it is in the public interest and will promote competition. The Settlement includes a number of provisions, primarily located in Section F ("Promoting Competition"), which will have a positive impact on competition in the market for retail electrical services. These provisions include PECO's commitment to provide access to installed capacity ("ICAP"); the release of customer historical billing data; providing customer load profile revisions for existing EGS customers; revisions to the Electronic Data Interchange ("EDI") process; and PECO's agreement not to market its services as provider of last resort.

DOCUMENT
FOLDER

II. LEGAL ISSUES

The Public Utility Code requires that, in addition to finding that the proposed merger meets the general "public interest" standard, the Public Utility Commission should consider

"whether the proposed merger . . . is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market." 66 Pa. C.S. § 2811(e)(1). MAPSA will argue that the Joint Petition for Settlement meets this standard, i.e., is not "likely to result in anticompetitive or discriminatory conduct," particularly in light of the specific provisions referenced above.

III. WITNESSES

At this time, MAPSA intends to present the testimony of James McCormick. Mr. McCormick will testify concerning the benefits the provisions identified above will have on the market for retail electrical services in Pennsylvania and PECO's service area particularly.

IV. DOCUMENTS

At present, MAPSA believes that it may introduce the following documents into evidence at the Evidentiary Hearings:

- (1) The Joint Petition for Settlement and the Appendices thereto; and
- (2) The Direct Testimony of James McCormick, submitted herewith.

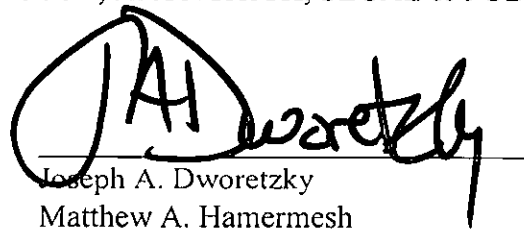
MAPSA does not at this time intend to offer other documents into evidence, but reserves the right to do so should it become necessary as a result of the testimony offered at the Evidentiary Hearings.

V. STIPULATIONS

MAPSA has not entered into any stipulations at this time, and is not aware of any proposed stipulations.

HANGLEY, ARONCHICK, SEGAL & PUDLIN

By: _____

A handwritten signature in black ink, appearing to read "JADworetzky", written over a horizontal line.

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DATED: May 3, 2000

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of PECO Energy Company, :
Pursuant to Chapters 11, 19, 21, 22 and 28 of :
the Public Utility Code, for Approval of (1) a :
Plan of Corporate Restructuring, Including the :
Creation of a Holding Company, and (2) the : Application Docket
Merger of the Newly Formed Holding : No. A-110550F0147
Company and Unicom Corporation :

CERTIFICATE OF SERVICE

I hereby certify that on May 2 , 2000, I served true and correct copies of the foregoing (1) Mid-Atlantic Power Supply Association's Prehearing Memorandum and (2) Direct Testimony of James McCormick on Behalf of Mid-Atlantic Power Supply Association in the above-captioned proceeding on the following active participants and parties of record by either telecopier and first-class mail or Federal Express:

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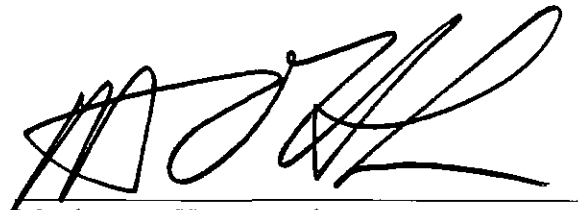
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May 3, 2000

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-20
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By Federal Express

Re: Application of PECO Energy Company Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket No. A-110550F0147

Dear Mr. McNulty:

We represent the Consumers Education and Protective Association (CEPA), the Association of Community Organizations for Reform Now (ACORN), the Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) and the Tenants' Action Group (TAG) in the above-captioned matter.

Enclosed please find for filing an original and three copies of our May 3, 2000 letter to Administrative Law Judge Charles E. Rainey, Jr. concerning PECO Energy's Application for Certification of the Record.

Very truly yours,

Philip A. Bertocci

PHILIP A. BERTOCCI
EDWARD A. MCCOOL

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MAY 03 2000

cc: Service List
Administrative Law Judge Charles E. Rainey, Jr.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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35

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May 3, 2000

The Honorable Charles E. Rainey, Jr.
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

Re: Application of PECO Energy Company Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket No. A-110550F0147

Dear Judge Rainey:

We represent the Consumers Education and Protective Association (CEPA), the Association of Community Organizations for Reform Now (ACORN), the Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) and the Tenants' Action Group (TAG) in the above-captioned matter.

This letter is to inform the Court that we do not oppose PECO Energy's May 2, 2000 Petition of PECO Energy Company for Certification of the Record Pursuant to 66 Pa.C.S. §335(a).

We opposed PECO's earlier January 25, 2000 Petition requesting such Certification. However, since that time, the settlement process has effectively narrowed the issues before the Court, thereby creating circumstances in which certification of the record is appropriate.

Very truly yours,

Philip A. Bertocci

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EDWARD A. MCCOOL

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

cc: James J. McNulty, Secretary w/cov.
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Docket No. A-110550F0147

I hereby certify that I have this day served a true copy of the foregoing letter, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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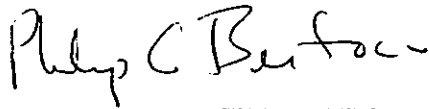
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May 3, 2000

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VIA FEDERAL EXPRESS

MAY 03 2000

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-18
Commonwealth Avenue and North Street
Harrisburg, Pennsylvania 17105-3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, including the creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket No. A-110550 F0147

Dear Secretary McNulty:

Pursuant to Administrative Law Judge Charles E. Rainey, Jr.'s April 25, 2000 Prehearing Order #2 in the above-captioned case, enclosed for filing are an original and three (3) copies of the Prehearing Memorandum of PPL Electric Utilities Corporation, and the Testimony of Paul L. Gioia on Behalf of PPL Electric Utilities Corporation. Also enclosed for filing are an original and three (3) copies of the Motion by PPL Electric Utilities Corporation to Strike Portions of Testimony of John Rohrbach.

Pursuant to 52 Pa. Code § 1.11, the enclosed documents are to be deemed filed on May 3, 2000, which is the date they were deposited with an overnight express delivery service as shown on the delivery receipt attached to the mailing envelope. As evidenced by the attached Certificate of Service, all parties to the proceeding are being served by overnight delivery and facsimile with a copy of these documents.

In addition, please date and time-stamp the enclosed extra copies of these filings and return them to me in the envelope provided.

If you have any questions regarding the enclosed, please call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald A. Kaplan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Donald A. Kaplan

Enclosures

cc: John M. Quain, Chairman
Nora Mead Brownell, Commissioner
Aaron Wilson, Jr., Commissioner
Terrance J. Fitzpatrick, Commissioner
Robert K. Bloom, Commissioner
Administrative Law Judge Charles E. Rainey, Jr.
All parties to this proceeding (per the Certificate of Service)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application Of Peco Energy Company
Pursuant To Chapters 11, 19, 21, 22
And 28 Of The Public Utility Code, For
Approval Of (1) A Plan Of Corporate
Restructuring, Including The Creation
Of A Holding Company And (2) The
Merger Of The Newly Formed Holding
Company And Unicom Corporation

Docket No. A-00110550 F0147

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MAY 03 2000

**PREHEARING MEMORANDUM OF
PPL ELECTRIC UTILITIES CORPORATION**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to the order issued April 25, 2000 by Administrative Law Judge
Charles E. Rainey, Jr., PPL Electric Utilities Corporation ("PPL Utilities," formerly
known as "PP&L, Inc.") submits this Prehearing Memorandum.

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INTRODUCTION**

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The Joint Petition for Settlement ("Joint Petition") filed by PECO Energy
Company ("PECO") on behalf of itself and a number of other parties raises
numerous issues. PPL Utilities believes that the overriding issue in this
proceeding is whether substantial evidence has been presented showing that the
provisions of the Joint Petition are in the public interest. PPL Utilities believes
such evidence has not been presented, and that the Joint Petition, in its current
form, has not been shown to be in the public interest.¹

¹ See Objections of PPL Electric Utilities Corporation to the Joint Petition for Settlement,
at 13-17.

PPL Utilities also believes that the Commission should adopt a policy against considering evidence or arguments by participants in proceedings before the Commission justifying relief on the grounds that such relief was incorporated in a settlement with another public utility.²

I. FACTUAL ISSUES

PPL Utilities intends to address the following factual issues raised by the Joint Petition:

1. Is there a nexus between the provisions of the proposed settlement and the concerns raised by the proposed merger and corporate restructuring.

2. Have the Joint Petitioners presented substantial evidence that the Joint Petition is in the public interest.

3. Have the Joint Petitioners addressed the concerns with the provisions of the Joint Petition set forth in PPL Utilities' Objections to the Joint Petition for Settlement.³

PPL Utilities reserves the right to address other factual issues that may arise during the course of this proceeding. In addition, PPL Utilities reserves the right to address factual issues raised by other parties.

II. LEGAL AND POLICY ISSUES

PPL Utilities intends to address the following legal and policy issues raised by the Joint Petition:

² See *id.* at 28-32.

³ See *id.* at 17-28.

1. Have the Joint Petitioners demonstrated that the settlement is in the public interest, consistent with applicable law, and supported by substantial evidence in the record.⁴

2. Have the Joint Petitioners met their burden of demonstrating that the Joint Petition is consistent with applicable law, and supported by substantial evidence in the record.⁵

3. Should the Commission establish a policy against considering evidence or arguments by participants in proceedings before the Commission, including, but not limited to, a proceeding to reopen or modify another Pennsylvania public utility's settlement of its retail restructuring proceeding under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, *et seq.*, justifying relief on the grounds that such relief was incorporated in a prior settlement with another utility.

PPL Utilities reserves the right to address other legal and policy issues that may arise during the course of this proceeding. In addition, PPL Utilities reserves the right to address legal and policy issues raised by other parties.

III. WITNESS AND ISSUES TO BE ADDRESSED BY WITNESS TESTIMONY

PPL Utilities plans to use the following expert witness in this proceeding:

⁴ See 66 Pa. C.S. § 332(b); *Re PECO Energy Co.*, R-00973953, P-00971265, 181 PUR 4th 517, 1997 WL 824004 (Pa. PUC Dec. 23, 1999); *City of York v. Pennsylvania Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972).

⁵ See 66 Pa. C.S. § 332(b).

Paul L. Gioia, Esquire
LeBoeuf, Lamb, Greene & MacRae L.L.P.
One Commerce Plaza
99 Washington Avenue, Suite 2020
Albany, New York 12210-2820

Mr. Gioia will testify on the regulatory and public policy issues raised by the use of settlement provisions as evidentiary or precedential support for relief sought in other proceedings before the Commission.

PPL Utilities reserves the right to call additional witnesses, as necessary, to address other factual and policy issues that may arise during the course of this proceeding, and will notify all active parties if it decides to do so.

IV. DOCUMENTS TO BE OFFERED INTO EVIDENCE

PPL Utilities will offer excerpts from the following documents into evidence:

1. Statement of PennFuture in Support of *Joint Petition for Settlement*, at 1-2 (filed Mar. 30, 2000);
2. Statement in Support of Joint Petition for Settlement of Eric Joseph Epstein, at 2 (filed Mar. 28, 2000);
3. Statement in Support of Joint Petition for Settlement of the Office of Consumer Advocate, at 6 (filed Mar. 29, 2000);
4. Statement of MAPSA in Support of Joint Petition, at 1-2 (filed Apr. 7, 2000);
5. Reply Comments of the Office of Consumer Advocate, at 5 (filed April 18, 2000).
6. Response to PPL Electric Utilities Corporation and Councilman David Cohen's Objections to the Joint Petition for Settlement, Eric Joseph Epstein, at 4 (filed April 17, 2000).

V. STIPULATIONS

PPL Utilities is offering no stipulations at this time.

PPL Utilities requests that the official service list be amended to delete the name of Leanne M. Bober, include the name of Caryn Blythe Houck, and include E-mail addresses inadvertently omitted. The appearances for PPL Utilities should now read as follows:

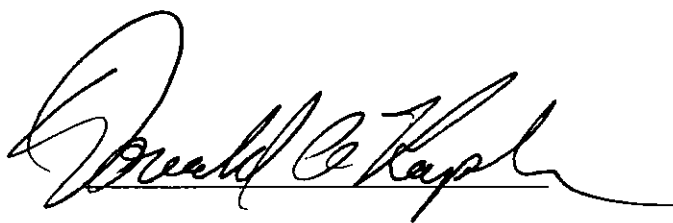
Paul E. Russell, Esq.
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Donald A. Kaplan, Esq.
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Washington, D.C. 20006

Phone: (202) 628-1700
Fax: (202) 331-1024
Email: Donk@Prestongates.com
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul E. Russell". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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Fax: (202) 331-1024
Email: Donk@Prestongates.com
Carynh@Prestongates.com

Dated: May 3, 2000

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company,
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Docket No. A-110550 F0147

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**MOTION BY PPL ELECTRIC UTILITIES CORPORATON
TO STRIKE PORTIONS OF TESTIMONY OF JOHN ROHRBACH**

PPL Electric Utilities Corporation ("PPL Utilities," formerly known as "PP&L, Inc."), moves to strike certain portions of the Testimony of John Rohrbach on the grounds that such testimony, as identified below, is either irrelevant or immaterial and, as such, should be stricken from the record pursuant to 66 Pa. C.S. 332(b), or discusses the internal decision-making processes of the Commission in violation of Mr. Rohrbach's obligations as a former employee of the Commission.

PPL Utilities specifically requests that the following portions of Mr. Rohrbach's testimony be stricken on the grounds that such portions are irrelevant and immaterial to the matter before the Commission in this docket:

- Page 3, line 6, beginning with the words “It is hard” through page 3, line 9 ending with the words “stake in this proceeding.”
- Page 3, line 29, beginning with the words, ““These statements combined” through page 4, line 1, ending with the words, “unfair, past treatment.”
- Page 6, line 28, beginning with the words, “PPL also lacks” through page 8, line 1, ending with the words, “supremely hypocritical.”
- Page 8, line 8, beginning with the words, “Coming on the heels of” through page 8, line 30, ending with the words, “modern control technology.”

In addition, PPL Utilities specifically requests that the following portion of Mr. Rohrbach’s testimony be stricken on the ground that it impermissibly discloses the internal decision-making processes of the Commission:

- Page 8, line 1, beginning with the words, “Note that as” through page 8, line 4, ending with the words, “market failure.”

Attached is a copy of the Testimony of John Rohrbach on Behalf of PennFuture, with the matter proposed to be stricken shown in strikeout format.

I. BACKGROUND

On March 23, 2000, PECO Energy Company (“PECO”) filed with the Pennsylvania Public Utility Commission, on behalf of itself and a number of other parties to this proceeding, a Joint Petition for Settlement (“Joint Petition”). In light of

² See Objections of PPL Electric Utilities Corporation to the Joint Petition for Settlement, at 33 (filed April 12, 2000).

the Joint Petition, by Order dated March 28, 2000, Administrative Law Judge Rainey revised the original procedural schedule established in this case. The revised procedural schedule required parties to file Objections or Comments to the Joint Petition by April 13, 2000, and Replies to Objections or Comments by April 18, 2000.

PPL Utilities filed Objections to the Joint Petition on April 12, 2000. PPL Utilities requested that evidentiary hearings be held in regard to the Joint Petition.² Philadelphia City Councilman David Cohen filed Comments and Objections to the Joint Petition on April 12, 2000. Councilman Cohen also requested that evidentiary hearings be held in regard to the Joint Petition.³

Several Joint Petitioners filed replies to PPL Utilities' Objections, including, on April 18, 2000, Citizens for Pennsylvania's Future, et al. ("PennFuture"). Included with PennFuture's reply was testimony by John Rohrbach.⁴ This motion is addressed to Mr. Rohrbach's testimony.⁵

³ See Objections to the Joint Petition for Settlement of Councilman Cohen, at 7 (filed April 12, 2000).

⁴ See Testimony of John Rohrbach on Behalf of PennFuture (filed April 18, 2000)("Rohrbach Testimony").

⁵ Some, but not all, of the other Joint Petitioners also offered testimony in support of the Joint Petition.

II. IRRELEVANT OR IMMATERIAL EVIDENCE MUST BE EXCLUDED

Under 66 Pa C.S. § 332(b), the Commission "shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence."⁶ The first four portions of Mr. Rohrbach's testimony identified above reflect Mr. Rohrbach's opinions which, even if founded upon fact, are clearly irrelevant and immaterial to any issue related to the Joint Petition. Neither Mr. Rohrbach's unsubstantiated opinions seeking to link the respiratory problems of thousands of Pennsylvanians to PPL Utilities' environmental record nor his complaints about transactions engaged in by PPL Utilities' corporate affiliates that have been found by the Federal Energy Regulatory Commission to have no effect on competition, rates, or regulation,⁷ tell the Commission anything regarding whether this contested settlement meets the test for Commission approval, i.e. it is in the public interest, consistent with law, and supported by substantial evidence in the record.⁸ These

⁶ 66 Pa. C.S. § 332(b).

⁷ See *Montana Power Company*, 87 FERC ¶ 61,344 (1999) (approving transfer of jurisdictional facilities from Montana Power Company to PPL Montana, L.L.C.); *Montana Power Company*, 88 FERC ¶ 62,018 (1999) (approving transfer of hydropower licenses from Montana Power Company to PPL Montana, L.L.C.); see also *Bangor Hydro-Electric Company*, 86 FERC ¶ 61,281 (1999) (approving transfer of jurisdictional facilities from Bangor Hydro-Electric Company to PPL Maine, L.L.C.); *Bangor Hydro-Electric Company*, 87 FERC ¶ 62,001 (1999) (approving transfer of hydropower licenses from Bangor Hydro-Electric Company to PPL Maine, L.L.C.).

⁸ See 66 Pa. C.S. § 332(b) ("No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.") (emphasis added); 2 Pa. C.S. § 704 (on judicial review, a court should uphold the findings of the PUC unless the adjudication is in violation of constitutional rights, is not in accordance with law, or is not supported by substantial evidence); see also *Re PECO Energy Co.*, R-00973953, P-00971265, 181 PUR 4th 517, 1997 WL 824004 (Pa. PUC Dec. 23, 1999) (Commission's review of partial settlements "must be consistent with processes and standards for deciding a contested case."); *Popowsky v. Pennsylvania Pub. Util.*

opinions and the other material that is the subject of this motion have no “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”⁹ In other words, they have *nothing* to do with either the PECO-Unicom merger or the Joint Petition, the issues to be resolved by the Commission in this proceeding. Given that the statements that are the subject of this motion simply do not make the existence of any fact that is of consequence to the determination of this proceeding any more or less probable than it would be without them, they should be excluded from the record.

Finally, allowing the statements that are the subject of this motion to remain in evidence will improperly and unnecessarily expand the issues before the Commission and will require responsive testimony to rebut those statements. This would undoubtedly cause delay and impose additional costs on all parties to the proceeding. By excluding the identified portions of Mr. Rohrbach’s testimony from the record, the Commission would focus the administrative record upon the real

Comm’n, 706 A.2d 1197, 1201 (Pa. 1997) (standard of review of appellate courts is whether there is substantial evidence to support the findings of the agency); *See City of York v. Pennsylvania Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972) (the proponent of a merger has the burden to show that the merger will affirmatively promote the public interest); *Middletown Township v. Pennsylvania Pub. Util. Comm’n*, 482 A.2d 674, 682 (Pa. Comm. Ct. 1984) (the benefits and detriments of the merger will be measured under the public interest test as they impact on “all affected parties”); *see also Re Bell Atlantic Corp.*, 1999 WL 1565855, slip op. at 4 (Pa. PUC 1999) (stating that in a merger proceeding the Commission “must find that the proposed transaction is in the public interest, convenience, and necessity”).

⁹ Pa. R. Evid. 401; *accord*, Fed. R. Evid. 401 (identical to Pa. R. Evid. 401).

¹² *See* 66 Pa. C.S.A. § 319(a).

issues before it, whether the Joint Petitioners have demonstrated that provisions of the Joint Petition have any connection to the concerns raised by the proposed merger and corporate reorganization such that they are in the public interest. Neither Mr. Rohrbach nor his sponsor, PennFuture, can avoid that burden by seeking to put PPL Utilities on trial.

III. TESTIMONY TO INTERNAL COMMISSION DECISION-MAKING PROCESSES IS IMPROPER AND SHOULD BE EXCLUDED

Mr. Rohrbach states at page 8 of his testimony: "Note that as an advisor to a Commissioner during the PPL Utilities restructuring settlement I supported that settlement." This testimony completely ignores the Code of Ethics to which the Commission - and its employees - must subscribe.¹² The Commission's Code of Ethics provides that a Commissioner shall "[a]void impropriety and the appearance of impropriety in all activities." 66 Pa. C.S.A. § 319(a)(1). It also requires that a Commissioner:

(4) Abstain publicly from expressing, other than in executive or public session, his personal views on the merits of a matter pending before the commission and require similar abstention on the part of commission personnel subject to his direction and control.

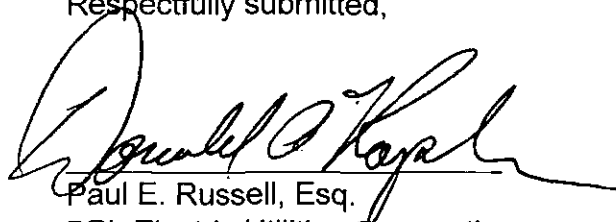
66 Pa. C.S.A. § 319(a)(4). While Mr. Rohrbach was not a Commissioner, he worked for a Commissioner as her advisor during the period he describes in his testimony and should be governed by the same requirements. While the PPL Utilities retail restructuring proceeding is no longer pending, this does not absolve Mr. Rohrbach from avoiding testimony as to what occurred within the Commission's internal deliberative process while the matter was open.

Even if such abuse were not specifically in contravention of public policy and inconsistent with accepted ethical practice, the implied purpose of Mr. Rohrbach's revelations — to bolster the credibility of his irrelevant allegations — is improper and should not be permitted. Like Mr. Rohrbach's irrelevant and immaterial allegations concerning PPL Utilities discussed above, Mr. Rohrbach's proclamations regarding his position on PPL Utilities' Restructuring Settlement cannot assist the Commission in determining the questions regarding the proposed merger and corporate restructuring at issue in this proceeding.

WHEREFORE, for the reasons stated above, PPL Utilities requests that the presiding Administrative Law Judge issue an order in the form attached hereto striking from the record the portions of the Testimony of John Rohrbach testimony identified herein.

Dated: May 3, 2000

Respectfully submitted,



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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY
COMPANY, PURSUANT TO CHAPTERS
11, 19, 21, 22 AND 28 OF THE PUBLIC
UTILITY CODE, FOR APPROVAL OF (1)
A PLAN OF CORPORATE
RESTRUCTURING, INCLUDING THE
CREATION OF A HOLDING COMPANY
AND (2) THE MERGER OF THE NEWLY
FORMED HOLDING COMPANY AND
UNICOM CORPORATION

Docket No. A-110550 F0147

**MOTION BY PPL ELECTRIC UTILITIES CORPORATON
TO STRIKE PORTIONS OF TESTIMONY OF JOHN ROHRBACH**

**PORTIONS PROPOSED TO BE STRICKEN FROM THE
TESTIMONY OF JOHN ROHRBACH ON BEHALF OF PENNFUTURE**

May 3, 2000

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

5 APPLICATION OF PECO ENERGY :
6 COMPANY, PURSUANT TO CHAPTERS :
7 11, 19, 21, 22 AND 28 OF THE PUBLIC :
8 UTILITY CODE, FOR APPROVAL :
9 OF (1) A PLAN OF CORPORATE :
10 RESTRUCTURING, INCLUDING THE : APPLICATION
11 CREATION OF A HOLDING COMPANY : DOCKET NO. A-110550F0147
12 AND (2) THE MERGER OF THE NEWLY :
13 FORMED HOLDING COMPANY AND :
14 UNICOM CORPORATION :

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TESTIMONY OF JOHN ROHRBACH
ON BEHALF OF PENNFUTURE

21 INTRODUCTION

24 **Q. Please state your name, address and for whom you are testifying?**

25
26 A. My name is John Rohrbach. I am Chief Economist at PennFuture. I am
27 testifying on behalf of PennFuture and ten named individuals referred to
28 as the "PennFuture Parties" in this proceeding. My business address is
29 212 Locust Street, Suite 410, Harrisburg, PA 17101.

31 **Q. What is the purpose of your testimony?**

32
33 A. I explain why the PECO merger settlement ("Settlement") comports with
34 the public interest. Specifically, I discuss how the environmental, electric
35 choice and nuclear decommissioning aspects of the Settlement benefit
36 consumers by decreasing rates and by making more renewable products
37 available. The environmental, electric choice and nuclear
38 decommissioning terms of the Settlement also make electricity choice
39 cleaner, safer and more affordable. The Settlement protects the public

1 health and environment. For these reasons, the Settlement advances
2 the public interest and should be approved.

3
4 **Q. What other purpose does your testimony serve?**

5
6 A. I also respond to some of the objections to the Settlement made by PPL
7 Electric Utilities Corporation ("PPL") in their 12 April filing. PPL's
8 objections are frivolous, an abuse of process, and should not be tolerated.

9
10 **Q. Please describe your qualifications and background.**

11
12 A. I received a Bachelor of Arts from Rutgers in 1982 and a Master of
13 Science in 1984 from Carnegie Mellon's Heinz School of Public Policy and
14 Management. From 1985 to 1989 I was a research economist at the
15 New Jersey Board of Public Utilities. From 1989 to 1990 I was an analyst
16 with ECONorthwest in Eugene, Oregon. From 1990 to 1993 I was a
17 utility economist and expert witness with the New Hampshire Office of
18 Consumer Advocate. From August 1993 to December 1998 I worked for
19 Commissioners John Hanger and Nora Mead Brownell of the
20 Pennsylvania Public Utility Commission (Commission).

21
22 I am familiar with electricity choice and the restructuring of Pennsylvania's
23 electric utilities, especially PECO and PPL. I provided an affidavit on
24 behalf the Commission in U.S. District Court in the matter of PP&L v.
25 Quain et. al. when PPL challenged the Commission's September 1998
26 order on installed generating capacity ("ICAP"). I have written two
27 articles in The Electricity Journal dealing with issues at the core of the
28 Settlement – nuclear decommissioning and electricity competition.

1 Part One: Response to PPL's Objections

2
3 **Q. Can you comment on PPL's objections to the Settlement?**

4
5 A. I first want to state that I view PPL's Objections as frivolous and an abuse
6 of process. ~~It is hard to say whether PPL has polluted this record with this~~
7 ~~filing more than it pollutes Pennsylvania's air with carbon dioxide (CO₂),~~
8 ~~nitrogen dioxide (NO_x), mercury and sulfur dioxides (SO_x).~~ PPL has no
9 ~~direct interest at stake in this proceeding.~~ To meet the requirements of
10 standing, indeed, PPL can only say that the settlement may establish a
11 precedent with which it may disagree. This argument is frivolous, abusive,
12 and obstructionist and PPL knows that or certainly should know this for
13 the following reasons: First, it is well established that settlements do not
14 serve as binding precedent. Second, even were a case to produce a
15 precedent that may affect PPL or anyone else, the mere possibility or
16 even certainty that a case could produce an adverse precedent does not
17 create the requisite direct interest in the matter to justify standing.

18
19 It is also truly incredible that PPL now opposes distribution rate cuts for all
20 customers in the PECO service territory, including many who receive
21 generation service from PPL. This act is a very poor way to treat one's
22 customers.

23
24 Moreover, it is insulting to this Commission for PPL to imply that past
25 settlements, including restructuring settlements, have treated PPL
26 unfairly. To begin with, no settlement affecting PPL has been approved
27 without PPL's agreement. Additionally, PPL's restructuring settlement
28 certainly treated PPL fairly as PPL's frequent positive, even glowing
29 statements about its current financial condition prove. ~~These statements~~
30 ~~combined with PPL's buying spree in Montana, New England and around~~

1 ~~the world should shame PPL when it now implies unfair, past treatment.~~

2
3 **Q. Please elaborate.**

4
5 A. Simply because a party envisioned a particular policy in January 1998
6 and carried it into each of the Settlements that transpired that year does
7 not mean that, as PPL states on page 13 (point 22), an idea was
8 'precedentially used' in the various settlements subsequent to the PECO
9 restructuring settlement. The provisions in one settlement that are used in
10 another settlement are merely original ideas that one party or another has
11 decided to include in each settlement they participate in. Since the same
12 parties participated in each settlement, there usually is a commonality of
13 settlement themes. PPL would have the Commission believe that PPL
14 was forced to agree to its settlement in August 1998. Similarly, PPL
15 implies that in any future settlement PPL will be forced to live by
16 settlement provisions contained in this Settlement. This is, of course,
17 ridiculous. All PPL need do is not agree to something that it does not
18 wish to accept should any future settlement negotiations directly involving
19 PPL commence.

20
21 **Q. What is your second major point regarding PPL's list of objections?**

22
23 A. PPL's characterization of the Settlement's wind programs is inaccurate,
24 misleading, and presents nothing more than the barest suggestion that
25 the wind provisions of the Settlement are not in the public interest. The
26 wind provisions of the Settlement do not "reward any single group or
27 individual" and neither the Sustainable Development Fund ("SDF") nor
28 Community Energy, Inc. were parties to this proceeding. Both
29 organizations are probably the most qualified funding mechanisms for
30 PECO's investment.

1
2 The SDF is already the recipient of PECO money in support of renewable
3 energy development, and the additional money targeted to new wind
4 development will enable it to better achieve its objectives. The SDF Board
5 includes a variety of parties and has been approved by the Commission.
6 SDF must file regular reports with the Commission concerning its program
7 investments. Any suggestion that it exists to reward any single group or
8 individual is contrary to fact and offensive.

9
10 PECO has also agreed in the Settlement to support a "wind block"
11 program, just as renewable energy blocks are presently offered by Pacific
12 Corp in Utah (100 kWh blocks of new wind), Public Service Company of
13 Colorado along with four other utilities in Colorado (100 kWh blocks of
14 new wind), Wisconsin's Madison Gas & Electric Company (150 kWh
15 blocks of 100% new wind), Wisconsin Electric Power Company (100 kWh
16 blocks of 75% new renewables, including landfill gas, wind and hydro to
17 large commercial customers), and Tennessee Valley Authority (150 kWh
18 blocks of 100% new renewables [solar, wind and landfill gas]). The
19 agreement by PECO to help develop a wind block program in its service
20 territory is forward looking.

21
22 The selection of Community Energy, Inc. to develop the wind block
23 program provides tremendous advantages. The President of Community
24 Energy, Inc., Brent Alderfer, although he now lives and works in the
25 PECO service territory, helped develop the first wind block programs in
26 1997 when he was a member of the Colorado Public Utility Commission.
27 The Settlement requires that the wind block program be made available
28 through multiple competitive suppliers and is subject to public reporting of
29 its program. Contrary to PPL's insinuation, Community Energy provides
30 a uniquely qualified and committed organization that is able to deliver the

1 public benefit of this program investment by PECO.

2
3 **Q. Is investment in new wind energy contrary to market forces?**

4
5 A. To the contrary, the wind block program uses market forces to pay the
6 costs of wind power and produces new wind resources in direct proportion
7 to market demand. The wind block program to be funded by PECO offers
8 blocks of newly developed Pennsylvania wind energy for purchase by
9 customers paying a specified monthly premium.

10
11 The Settlement's wind investment is not a forced ratepayer contribution or
12 interference in the free market as PPL would have the Commission
13 believe. The wind energy from the investment to which PPL objects will
14 be sold to retail consumers in the PECO service territory. Retail
15 consumers will purchase the output of the Settlement's wind investment –
16 but only in a competitive market. The settlement's wind programs are not,
17 as PPL would have it, forced consumption or forced construction of wind
18 generating capacity. In fact, just the opposite is true. There is demand for
19 clean renewable electricity in Pennsylvania. The Settlement facilitates the
20 construction of needed new renewable capacity that thousands of
21 consumers want.

22
23 **Q. Can you respond to PPL's 'market failure' argument at page 25 of**
24 **their objections?**

25
26 A. PPL makes the incredible statement that the wind investment aspects of
27 the settlement are evidence of some sort of market failure. As I noted
28 above, the wind investment program is not market failure. ~~PPL also lacks~~
29 ~~the intellectual honesty to point out the biggest example of market failure~~
30 ~~— its own Restructuring Settlement. Let us not forget that a PPL~~

1 consumer wishing to purchase renewable energy must pay a premium
2 over market prices because PPL's competitive transition charge raises the
3 delivered price of a renewable product by over 1.5 cents/kWh for the
4 normal customer.

5
6 **~~Q. Please elaborate. How does PPL's CTC interfere with the market?~~**

7
8 **~~A. A PPL residential consumer can purchase a 50% renewable product for~~**
9 **~~6.03 cents/kWh but must also pay a premium over the PPL residential~~**
10 **~~shopping credit in order to do so. This is because the customer must pay~~**
11 **~~over 1.5 cents/kWh to PPL for PPL's generation investment that is no~~**
12 **~~longer economic. If PPL were not interfering with the free market for~~**
13 **~~electricity, this consumer would have to pay only a very small premium for~~**
14 **~~purchasing renewable power in PPL's service territory. As it stands now~~**
15 **~~PPL effectively tells the consumer "we [PPL] realize the market price for~~**
16 **~~renewable power is 6 cents/kWh, but PPL has made past investments~~**
17 **~~that are not economic. We are required to force you, the consumer to pay~~**
18 **~~for our past investment mistakes. While we are sorry to interfere with the~~**
19 **~~free market for electricity, we have to remain viable."~~**

20
21 ~~No matter what PPL says in response to this, it is clear that the PPL CTC~~
22 ~~directly interferes with free market principles. PPL's electric restructuring~~
23 ~~settlement awarded PPL approximately \$5 billion in stranded cost charges~~
24 ~~over an 11 year period starting in 1999. Let us also not forget that PPL's~~
25 ~~settlement provided PPL with sufficient above market resources for PPL~~
26 ~~to purchase the generating portfolios of Montana Power and Maine's~~
27 ~~Bangor Hydro Electric. These purchases were facilitated by the generous~~
28 ~~settlement that PPL was "subjected to" in August 1998. For PPL to~~
29 ~~criticize the Settlement's wind provisions as "market failure" while PPL's~~
30 ~~stranded cost charges interfere massively with Pennsylvania's electricity~~

1 ~~market each year until 2009 is supremely hypocritical. Note that as an~~
2 ~~advisor to a Commissioner during the PPL restructuring settlement I~~
3 ~~supported that settlement. I bring up the above points because PPL has~~
4 ~~challenged the Settlement's renewable investment as market failure.~~

5
6 **Q. Is there anything else you find inconsistent in the PPL Objections?**

7
8 **A.** ~~I addition, I find PPL's criticism of the wind investment curious. Coming~~
9 ~~on the heels of receiving a grant for a science and nature center at Lake~~
10 ~~Wallenpaupack, PPL's questioning of the Settlement's wind program is~~
11 ~~puzzling. It also is puzzling because PPL is among the largest polluters~~
12 ~~in the Commonwealth. Four PPL plants (Sunbury, Montour, Martins~~
13 ~~Creek and Brunner Island) release over 20 million tons of carbon dioxide,~~
14 ~~40,000 tons of nitrogen dioxide and over 235,000 tons of sulfur dioxide~~
15 ~~annually into the atmosphere. These plants also release over a ton of~~
16 ~~mercury. In fact, the Pocono's Lake Wallenpaupack has a fish advisory~~
17 ~~for mercury contamination. Mercury is one of the most toxic substances~~
18 ~~on earth. A small fraction of a teaspoon annually falling into a moderate~~
19 ~~sized lake could contaminate its fish so making them unsafe to eat.~~

20
21 ~~PPL's massive pollution contributes to many of Pennsylvania's most~~
22 ~~serious environmental problems. Pennsylvania's acid rain problem~~
23 ~~threatens our forests and streams. PPL's huge SO_x emissions aggravate~~
24 ~~these threats. Moreover, more than 14,500 Pennsylvanians were seen in~~
25 ~~emergency rooms last year suffering from respiratory problems~~
26 ~~attributable to dirty air. PPL's huge NO_x and SO_x emissions certainly do~~
27 ~~not help Pennsylvanians with lung conditions. PPL's Montour and~~
28 ~~Brunner Island plants have NO_x rates 250% times the amount that would~~
29 ~~be the case if Brunner Island was equipped with modern control~~
30 ~~technology.~~

1
2 **Part Two: The Settlement Improves Pennsylvania's Environment**

3
4 **Q. Describe the settlement's wind investment provisions?**

5
6 A. The Settlement provides that PECO will provide a total of \$32 million in
7 support of renewable energy, of which \$24 million is newly committed
8 funds and the remainder is an accelerated payment of funds previously
9 committed to the Sustainable Development Fund (SDF). Of these
10 commitments, PECO will contribute \$15.5 million to support new wind
11 energy development, enough to build turbines to produce more than 30
12 mW of wind power. This will enable construction of sufficient renewable
13 power for 7500 homes each year, and will remove 51,000 tons of carbon
14 dioxide from the air, reducing global warming. This is the equivalent of
15 planting 7.2 million trees or not driving 126 million miles. The benefits of
16 a growing renewable energy presence in Pennsylvania are significant.
17 They include increased permanent and construction employment levels,
18 the development of "second crops" for farmers based on the land leased
19 to the developers of wind projects, and increased tax revenues for local
20 governments are all benefits associated with renewable energy.

21
22 PECO also will provide \$4 million for installation of rooftop photovoltaic
23 panels to provide personal solar power. PECO will provide \$2.5 million to
24 fund public education on renewable electricity.

25
26 **Q. Please continue. What are the Settlement's other provisions for
27 renewable power?**

28
29 A. The first aspect of the settlement addressing retail choice requires that
30 PECO engage in cooperative process to develop streamlined technical

1 requirements and procedures for the interconnection of renewable and
2 distributed generation facilities.

3
4 These Settlement provisions are designed to maximize pre-certification of
5 various facilities and avoid timely individualized reviews. In addition, the
6 Settlement requires consideration of system benefits to offset any charge
7 to the developer for costs imposed on the system. The Settlement also
8 establishes a cooperative procedure to develop streamlined technical
9 requirements and procedures for the interconnection of renewable and
10 distributed generation facilities to PECO's facilities.

11
12 Finally, the Settlement provides that PECO will not charge any distribution
13 or transmission charges on interconnecting generators, unless the PUC or
14 FERC has approved such charges for all generation, including utility
15 generation.

16
17 **Q. What is the impact of the settlements on renewable and distributed**
18 **generation in southeastern Pennsylvania?**

19
20 A. The Settlement's provisions in these areas should reduce uncertainties
21 and expenses for developers of new renewable generation facilities, while
22 improving the safety, reliability and efficiency of PECO's distribution
23 system.

24
25 **Q. What are the other key aspects of the settlement benefiting**
26 **renewable power?**

27
28 A. The settlement provides that PECO's "net metering" tariff will enable
29 consumers to better afford to install pollution-free solar panels on their
30 roofs or fuel cells in their basement. Since private installation of

1 distributed generation closer to the customer will reduce the need for
2 consumers to fund distribution system improvements and avoid "line
3 losses", there is an improvement in overall distribution system integrity
4 and generation diversity.

5
6 **Part Three: The Settlement Facilitates Retail Competition in Southeastern**
7 **Pennsylvania**

8
9 **Q. What are the benefits of the settlement for the Pennsylvania retail**
10 **market?**

11 A. The first obvious benefit is that PECO, will, on a first-come/first serve
12 basis provide suppliers with ICAP and price certainty. At roughly \$20 per
13 kW-year, the agreement provides enough ICAP to allow over 50,000 new
14 Philadelphia-area customers to participate in the competitive retail market.

15
16 **Q. Please comment on the Settlement provisions facilitating retail**
17 **choice.**

18 A. Four additional aspects of the Settlement specifically enhance electric
19 choice in Southeastern Pennsylvania.

- 20 1. PECO agrees not to market, advertise or promote its Provider of
21 Last Resort service January 1, 2004
- 22
- 23 2. PECO will reconcile transition charge revenues for all commercial
24 and industrial accounts as a single class, minimizing volatility of the
25 charges.
- 26
- 27 3. Large industrial customers are granted a one-time option to
28 terminate their PECO contract and switch to a competitive supplier.
- 29

1 4. PECO and competitive suppliers will identify contact personnel to
2 quickly resolve electronic data exchange problems. PECO will
3 provide licensed electric and natural gas suppliers twelve-month
4 historical usage and billing data without charge, and PECO will
5 review and revise customer load profiles for customers with
6 significant over or under deliveries relative to their load profile over
7 a six-month period.

8
9 5. The Competitive Default Supply provisions of the Restructuring
10 settlement will be modified to improve the opportunity for
11 successful competitive bidding. An RFP will be issued on April 1,
12 2000, covering electric generation supply and capacity only, while
13 excluding customer care functions such as call center, collections
14 and billing. Bids must be received by May 1, 2000, and the winning
15 bidder selected by the Commission by July 1, 2000. The
16 settlement establishes a process of bilateral negotiations in case
17 no winning bidder is selected.

18

19 **Q. Can you comment on these aspects of the Settlement?**

20

21 A. The above provisions are important additions or adjustments to the
22 current array of policies helping make Pennsylvania's retail choice
23 become the most successful such effort in the US. The above provisions
24 are necessary to continue Pennsylvania's commitment to retail choice in
25 the PECO service territory. They will also benefit green power consumers
26 who want clean energy products at the best possible price. Presently
27 about 80,000 Pennsylvania consumers have purchased some kind of
28 cleaner energy product.

29

30

1 **Part Four: The Settlement protects consumers from unwarranted**
2 **Nuclear Decommissioning Expenses**

3
4 **Q. Please describe the Settlement's nuclear decommissioning**
5 **aspects?**

6
7 A. One of my big fears going into this case was that PECO's distribution
8 consumers were somehow, some way, going to be stuck with a bill for
9 decommissioning either one or many of Unicom's many reactors or one of
10 the Amergen reactors (for example Nine Mile Point 1&2, Oyster Creek,
11 Vermont Yankee or Clinton). My fear was that, because the concentration
12 of nuclear assets in one company was so large, a shift in
13 decommissioning assumptions (operating life of Unicom or Amergen
14 plants, decommissioning costs, inflation rates) could place cost
15 responsibility for these plants on the backs of Philadelphia-area
16 consumers.

17
18 **Q. Please continue.**

19
20 A. The settlement firmly insulates PECO customers from having to pay
21 decommissioning costs for Unicom plants, those co-owned by PECO's
22 unregulated affiliates, or those purchased in the future. For PECO
23 plants, consumer exposure to nuclear decommissioning cost increases is
24 limited. PECO will forego consumer payment for the first \$50 million of
25 increased decommissioning costs and 5% of any additional increases.
26 The settlement protects future generations from bearing the risk that
27 nuclear decommissioning costs obligations will not be inappropriately
28 foisted on due to cost escalations that are unforeseen today.

29
30

1 **Q. At page 23, item 35 of its Objections, PPL states that the parties**
2 **should demonstrate how the settlement does not interfere with a**
3 **balance between consumer protections versus an under-financing of**
4 **nuclear decommissioning? Can you respond?**

5
6 A. PPL forgets that the Pennsylvania restructuring settlements already deal
7 with fundamental nuclear decommissioning responsibility and funding
8 levels.

9
10 The Settlement's nuclear provisions, insofar as PECO's nuclear
11 decommissioning plants are concerned, do not affect adversely meeting
12 this responsibility. The provisions of the Pennsylvania Electric
13 Competition Act that protect consumers from an under-financed nuclear
14 decommissioning scenario or a public safety issue are intact.

15
16 *The Settlement's provisions protecting consumers from PECO's interest in*
17 *the Amergen or Unicom plants are fundamental protection issues that I do*
18 *not believe PPL has any basis to criticize. I see no reason why a PECO*
19 *customer should bear any decommissioning responsibility for any*
20 *Amergen or Unicom nuclear plants.*

21

22

23 **Q. Does this conclude your direct testimony?**

24

25 A. Yes, it does.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PECO Energy Company,
Pursuant to Chapters 11, 19, 21, 22
and 28 of the Public Utility Code, for
Approval of (1) A Plan of Corporate
Restructuring, including the creation of
a Holding Company and (2) The Merger
of the Newly Formed Holding Company
and Unicom Corporation

Docket No. A-110550 F0147

**ORDER STRIKING PORTIONS OF
THE TESTIMONY OF JOHN ROHRBACH**

On March 23, 2000, PECO Energy Company (PECO) filed with the Pennsylvania Public Utility Commission, on behalf of itself and a number of other parties to this proceeding, a Joint Petition for Settlement ("Joint Petition"). In light of the Joint Petition, by Order dated March 28, 2000, I revised the original procedural schedule established in this case. The revised procedural schedule required parties to file Objections or Comments to the Joint Petition by April 13, 2000, and Replies to Objections or Comments by April 18, 2000.

PPL Utilities filed Objections to the Joint Petition on April 12, 2000. PPL Utilities requested that evidentiary hearings be held in regard to the Joint Petition.¹

¹ See Objections of PPL Electric Utilities Corporation to the Joint Petition for Settlement, at 33 (filed April 12, 2000).

Philadelphia City Councilman David Cohen filed Comments and Objections to the Joint Petition on April 12, 2000. Councilman Cohen also requested that evidentiary hearings be held in regard to the Joint Petition.²

Citizens for Pennsylvania's Future, et al. ("PennFuture") filed on April 18, 2000 both a Reply and the testimony of John Rohrbach. PPL Utilities moved this Commission to strike certain portions of Mr. Rohrbach's testimony.

After consideration of subject testimony, arguments submitted by parties, and the record, I conclude that the certain Testimony of John Rohrbach identified by PPL Utilities in its Motion to Strike violates 66 Pa. C.S. 332(b) and contravenes the public policy of this Commission and for these reasons should be stricken from the record.

THEREFORE,

IT IS ORDERED:

That the following lines of the Testimony of John Rohrbach on Behalf of PennFuture be stricken from the record:

- Page 3, line 6, beginning with the words "It is hard" through page 3, line 9 ending with the words "stake in this proceeding."
- Page 3, line 29, beginning with the words, ""These statements combined" through page 4, line 1, ending with the words, "unfair, past treatment."
- Page 6, line 28, beginning with the words, "PPL also lacks" through page 8, line 1, ending with the words, "supremely hypocritical."
- Page 8, line 1, beginning with the words, "Note that as" through page 8, line 4, ending with the words, "market failure."

² See Objections to the Joint Petition for Settlement of Councilman Cohen, at 7 (filed April 12, 2000).

- Page 8, line 8, beginning with the words, "Coming on the heels of" through page 8, line 30, ending with the words, "modern control technology."

DATE

CHARLES E. RAINEY, JR.
Administrative Law Judge

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF PECO ENERGY COMPANY, PURSUANT TO CHAPTERS 11, 19, 21, 22, AND 28 OF THE PUBLIC UTILITY CODE, FOR APPROVAL OF (1) A PLAN OF CORPORATE RESTRUCTURING, INCLUDING THE CREATION OF A HOLDING COMPANY AND (2) THE MERGER OF THE NEWLY FORMED HOLDING COMPANY AND UNICOM CORPORATION

DOCKET NO. A-110550 F0147

RECEIVED

MAY 03 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**DOCUMENT
FOLDER**

**TESTIMONY OF PAUL L. GIOIA
ON BEHALF OF PPL ELECTRIC UTILITIES CORPORATION**

DOCKETED
MAY 04 2000

Date: May 3, 2000

1

2 **TESTIMONY OF PAUL L. GIOIA**
3 **ON BEHALF OF PPL ELECTRIC UTILITIES CORPORATION**
4

5

6

7 **Q. Please state your name, current position and business address.**

8

9 A. My name is Paul L. Gioia. I am Of Counsel in the law firm of LeBoeuf, Lamb,
10 Greene & MacRae, L.L.P., 99 Washington Avenue, Albany, NY 12210.

11

12

13 **Q. What is your educational background?**

14

15 A. I received a B.S. degree from Fordham University in 1962 and an LL.B. from the
16 Cornell Law School in 1965.

17

18

19 **Q. What is your professional experience, with specific reference to regulatory
20 and public policy matters?**

21

22 A. I served as Chairman of the New York State Public Service Commission for six
23 years. The New York PSC has jurisdiction over all regulated electric, gas, telephone
24 and water utilities in New York State.

25

1 Prior to being appointed to the New York PSC, I served on the legal staff of the
2 Governor of New York State for seven years, in which capacity I was involved in a
3 wide range of public policy matters.

4
5 Over the past three years I have served as lead counsel to the New York Power
6 Pool in both state and federal proceedings with respect to the restructuring of the
7 electricity industry in New York State to establish competitive electricity markets and
8 an Independent System Operator.

9
10 A copy of my resume is attached to my testimony.

11
12
13 **Q. Since leaving the New York PSC have you had occasion to address public**
14 **policy matters related to regulated utilities?**

15
16 **A.** Yes. I was appointed by the bankruptcy court to serve as the Examiner in the Public
17 Service Company of New Hampshire bankruptcy proceeding. In that capacity I
18 advised the court on regulatory and public policy issues related to the rates, rate
19 base, financial structure and possible reorganization of a regulated utility. I was
20 appointed to a similar position by the bankruptcy court in the El Paso Electric
21 Company bankruptcy proceeding. I also provided advice to the Hawaii PUC with
22 respect to regulatory and policy issues related to the relationship among companies
23 affiliated to a regulatory utility under a holding company structure.

24

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Q. As Chairman of the New York PSC did you have occasion to deal with settlement agreements in contested proceedings?

A. Yes. When I became Chairman virtually all proceedings before the New York PSC were fully litigated. I initiated an effort to encourage PSC staff and interested parties to consider settlement in appropriate cases. The PSC adopted settlement guidelines to facilitate this process. By the time I left the Commission the settlement of contested proceedings had become an accepted practice and was used frequently, even in major cases.

Q. What is the nature of your testimony in this proceeding?

A. I have been asked to address the regulatory and public policy considerations related to the settlement of a contested proceeding, with specific reference to according precedential effect or evidentiary weight to the terms of the settlement agreement in future proceedings.

Q. Will you be addressing any of the provisions of the Joint Petition?

A. No, except to the extent that my testimony addresses the precedential effect or evidentiary weight to be accorded its terms in future proceedings.

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Q. Based on your experience in regulatory and public policy matters, do you have an opinion in that regard?

A. Yes. Based on my experience in regulatory and public policy matters it is my opinion that there are sound and compelling regulatory and public policy grounds for the Pennsylvania Public Utility Commission to articulate a clear policy that the specific terms of a settlement agreement will not be accorded precedential effect or evidentiary weight in any subsequent proceeding.

Q. Can you explain the basis for your opinion?

A. First, it is important to consider the settlement process in general. In my judgment, there are sound regulatory and public policy reasons for a regulatory body, such as the Pennsylvania PUC, to encourage the settlement of contested proceedings, in appropriate cases. Litigation is very expensive and time consuming. Settlements save substantial time and money and permit commission staff and other parties to put their limited time and resources to more productive uses. In addition, settlements often achieve a more creative and balanced resolution of issues than would result from a commission decision in a fully litigated proceeding.

1 By their nature, however, settlements almost always involve compromises and
2 trade-offs among the parties in order to reach agreement. Often parties accept one
3 aspect of a settlement to which they are opposed, in order to gain support for other
4 aspects of the settlement with which they agree. In addition, settlements may
5 include terms which, in isolation, might not be acceptable to the parties or the
6 Commission, but are acceptable as part of a total settlement of all of the issues in
7 the proceeding.

8
9 For the potential benefits of the settlement process to be achieved, it is important
10 that parties feel free to accept a settlement agreement, including some terms with
11 which they might not agree, with the assurance that their acceptance of those terms
12 will not be cited as precedent, or be introduced as evidence, in a subsequent
13 proceeding. Without such assurance, parties will be much more reluctant to agree
14 to a settlement that includes terms which they would not otherwise support. In
15 addition, parties may be more likely to intervene in proceedings where they
16 otherwise might not do so in order to protect themselves against settlement
17 provisions that would be undesirable if applied to them in other proceedings. These
18 additional interventions would make settlements more difficult to achieve. For these
19 reasons, the regulatory policy in favor of settlements, in the long run, would be
20 adversely affected.

1 **Q. Are there any other reasons why it would not be sound regulatory policy to**
2 **accord precedential effect or evidentiary value to the terms of a settlement**
3 **agreement?**

4
5 A. Yes. The specific facts and circumstances in a subsequent proceeding will almost
6 certainly be different from the proceeding in which the settlement was achieved.
7 Consequently, terms that were acceptable and appropriate as part of a settlement in
8 one proceeding may be inappropriate and unacceptable in a subsequent
9 proceeding. Once the terms of a settlement are taken out of the context of the
10 specific facts and circumstances in which the settlement was made, there is no
11 rational basis for presuming that they are reasonable and appropriate in a
12 subsequent proceeding.

13
14
15 **Q. Does a policy that clearly provides that the terms of a settlement agreement**
16 **will not have a precedential effect or evidentiary value in a subsequent**
17 **proceeding have any relevance to parties who have not joined in the**
18 **settlement or have not participated in the proceeding?**

19
20 A. Yes. Before being bound by a regulatory decision, parties generally are entitled to
21 reasonable notice, a fair opportunity to be heard and a rational decision-making
22 process. Those requirements are extremely difficult, if not impossible, to achieve
23 with respect to the terms that come out of a negotiated settlement. First, unless the
24 Commission has characterized the proceeding as a generic or rule-making

1 proceeding at the outset, parties may not have adequate notice that the
2 Commission's decision will be accorded precedential effect or have evidentiary value
3 in a subsequent proceeding. Second, the final terms of a settlement agreement
4 often could not have been anticipated at the beginning of negotiations and may
5 address matters beyond the scope of the original filing. Thus, according
6 precedential effect or evidentiary value to the terms of a settlement agreement
7 raises fairness and, possibly, due process issues with respect to third parties.
8
9

10 **Q. What do you mean when you say that the terms of a settlement agreement**
11 **should not be accorded "precedential effect" or "evidentiary value"?**
12

13 A. By those terms I mean that the fact that a particular term was part of a settlement
14 agreement approved by the Commission should not be considered in any way as a
15 binding precedent in a subsequent proceeding nor should it be admitted as evidence
16 in a subsequent proceeding.
17
18

19 **Q. Do you mean that terms identical or similar to those in a settlement agreement**
20 **could not be part of a subsequent settlement agreement or Commission**
21 **decision?**
22

23 A. No, but the consideration of those terms in any subsequent proceeding should be on
24 their own merits, in the context of the facts and circumstances of that proceeding.

1 The mere fact that the terms were included in a settlement agreement that resolved
2 a different proceeding should not be accorded any precedential value or evidentiary
3 weight.

4
5
6 **Q. Are there any specific public policy and regulatory considerations related to**
7 **the granting of precedential effect or evidentiary weight to the terms of the**
8 **settlement agreement in this proceeding?**

9
10 A. Yes. As the electricity industry is restructured and deregulated, public officials and
11 utilities are exploring ways to provide electricity consumers with the maximum
12 benefits of competition, including the lowest prices and widest range of choices.
13 Sometimes, in order to achieve the maximum benefits of competition, a utility may
14 have to undertake a corporate reorganization, merger or other kind of action. It is in
15 the public interest for the Commission to encourage utilities to consider actions that
16 could provide benefits to the public that otherwise would not be available. It also is
17 important that utilities, and their potential partners, believe that the Commission will
18 give reasonable consideration to any such proposed action, provided that it can be
19 demonstrated that it is in the public interest.

20
21 If the terms of a previous settlement agreement are perceived to be precedential
22 with respect to a future utility action, that may have the effect of discouraging such
23 actions. If, for example, the parties to a possible transaction consider the specific
24 terms of a previous settlement agreement onerous or inappropriate to their proposed

1 transaction they may be discouraged from proceeding, even though the proposed
2 transaction, under terms suitable to that transaction, would be in the public interest.

3
4
5 **Q. In light of your testimony, what is your recommendation with respect to the**
6 **Commission's position in regard to the precedential effect and evidentiary**
7 **weight of the terms of this settlement agreement?**

8
9 A. I would respectfully recommend that, if the terms of the settlement agreement are
10 acceptable to the Commission, the Commission expressly state that the terms taken
11 as a whole satisfy the public interest standard, but that the fact of the Commission's
12 approval does not render the individual terms of the agreement precedent or
13 relevant or material evidence in any subsequent proceeding, and that the terms of
14 any subsequent proposed reorganization, merger or other action will be considered
15 on its own merits. Such a statement by the Commission would give a clear signal to
16 the utilities in Pennsylvania, and interested parties in Pennsylvania and in other
17 states, that the Commission will not mandate any specific terms in a future
18 transaction merely because they were accepted in a previous settlement, and will
19 consider any proposed transaction on its own merits.

20
21
22 **Q. Does that complete your testimony?**

23
24 A. Yes, it does.

PAUL L. GIOIA

Business Address: One Commerce Plaza
99 Washington Avenue-Suite 2020
Albany, NY 12210-2820
(518) 465-1500

Home Address: 38 Loudon Parkway, Loudonville, NY 12211

Professional Experience:

Of Counsel, LeBoeuf, Lamb, Greene & MacRae, L.L.P.
November 1993 - Present

Provides legal and consulting services to electric, gas, telecommunications and water utilities and energy related companies on a broad range of issues, including regulation, litigation, finance, operations and strategic planning.

Served as lead counsel for the Energy Association of New York State and the New York Power Pool in both state and federal proceedings related to the deregulation of the electricity market in New York State, including the creation of an Independent System Operator ("ISO") and the implementation of locational based marginal cost pricing.

Served as the court appointed Examiner in the Public Service Company of New Hampshire bankruptcy proceeding, and the court appointed Regulatory Expert in the El Paso Electric Company bankruptcy proceeding. Advised the court on regulatory issues and assisted in the process that led to settlement agreements and court approval of the final plans of reorganization.

Member of the Board of Directors of the Energy East Corporation, the New York State Electric & Gas Corporation and Berkshire Energy Resources.

Senior Vice President, First Albany Corporation
May 1987 - October 1993

Senior Vice President with First Albany, a regional brokerage and investment banking firm with offices throughout New York State and New England and a Member of the New York State Exchange. Headed First Albany's Utility and Energy Finance Unit providing investment banking and consulting services to utilities and independent energy

companies. Responsible for the firm's participation in debt and equity offerings by major utilities in the Northeast and for private placements of debt and equity by smaller gas and water utilities and independent power companies. Developed and supervised a research publication providing regular coverage of 30 selected utilities in the Northeast. Provided consulting services to utilities and energy related companies throughout the United States.

Chairman, New York State Public Service Commission

April 1981 - February 1987

Member, New York State Public Service Commission

February 1987 - April 1987

Chairman of the regulatory agency with responsibility for regulation of the rates, operating practices and financial activities of all private electric, gas, telephone and water utilities in New York State. Exercised leading role in the development of policy in all major areas of utility regulation including: the financing, prudence review and cost recovery for major power plants; development of alternate energy sources; restructuring of telephone industry in response to the AT&T divestiture and fostering of greater competition; and the development of flexible pricing and transportation rates for natural gas.

Chief Executive Officer of the Department of Public Service, with a budget of \$40 million and 650 employees. Implemented major administrative changes in the Department including: the establishment of Consumer Services Division, Outreach and Education Unit, Office of Utility Efficiency and Productivity, Office of Energy Conservation and the Environment and Electronic Data Processing Unit. Eliminated the previous backlog of Commission proceedings and substantially reduced time required to conduct major cases. Introduced the extensive use of stipulations and settlements in Commission proceedings.

Ex-officio Chairman of the New York State Board on Electric Generation Siting and the Environment and member of the New York State Energy Research and Development Authority and the State Environmental Board.

First Assistant Counsel to Governor Hugh L. Carey

April 1979 - March 1981

Chief Assistant to the Counsel to the Governor with supervisory responsibility over Governor's legal staff. Provided advice and assistance to the Governor on a wide range of legal, policy and legislative issues. Actively involved in the drafting and negotiation of major legislative proposals.

Assistant Counsel to the Governor
November 1973 - March 1979

Served as a member of the legal staff of Governors Rockefeller, Wilson and Carey with a primary responsibility for areas of criminal justice, special prosecutions and investigations, insurance and environmental conservation.

Special Assistant to United States Senator Jacob K. Javits
January 1973 - November 1973

Senator's representative in New York City. Worked with local government officials, community groups and business organizations to develop programs in areas of housing, economic development, law enforcement, manpower training and education. Senator's representative at public meetings and official functions in New York City.

Assistant District Attorney, New York County
January 1968 - December 1972

Assisted in the investigation and prosecution of cases involving organized crime and official corruption including: corruption in the City's Emergency Repair Program; political abuse of office by appointed city officials; conspiracy to bribe public officials; and abusive practices by officials of municipal employee unions.

Prosecuted approximately 200 felony indictments and conducted 15 trials to jury verdict. Supervised Supreme Court motion practice, extradition and Coram Nobis proceedings.

Tried approximately 300 misdemeanor cases in the Criminal Court of the City of New York, including prosecutions arising out of disorders at Columbia University in 1968. Presented approximately 150 felony cases to the Grand Jury for indictment.

Associate with the firm of Rein, Mound & Cotton
56 Pine Street, New York City
April 1966 - December 1967

Assisted senior partners in major insurance-related litigation in state and federal courts. Responsibilities included trial preparation, drafting of motion papers and pleadings, legal research and the writing of legal memoranda.

Education:

Cornell Law School, Ithaca, New York, LL.B.
June 1965

Fordham University, New York, New York B.S.
June 1962

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PECO Energy Company, :
Pursuant to Chapters 11, 19, 21, 22 :
and 28 of the Public Utility Code, for :
Approval of (1) A Plan of Corporate :
Restructuring, Including the Creation of :
a Holding Company and (2) The :
Merger of the Newly Formed Holding :
Company and Unicom Corporation :

Docket No. A-110550 F0147

RECEIVED

MAY 03 2000

CERTIFICATE OF SERVICE PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the foregoing documents upon the participants, listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

Via Federal Express

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The Honorable Vincent J. Fumo
Democratic Committee on Appropriations
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Dorothy Ferebee
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Philadelphia, PA 19140

Jim McDevitt
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Warminster, PA 18974-3630

Charles A. Gallager, Jr.
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Landsdowne, PA 19050

Jon Emery
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Harleysville, PA 19438

John Collins
490 McGregor Drive
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Honorable Allyson Schwartz
Senate of Pennsylvania
Harrisburg, PA 17130

Charles Cattley
993 N. 7th Street
Allentown, PA 18101

Dated this 3rdth day of May, 2000



Donald A. Kaplan, Esq.
Preston Gates Ellis &
Rouvelas Meeds LLP
Suite 500
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Washington, D.C. 20006
Ph: (202) 628-1700
Fax: (202) 331-1024

Counsel for PPL Electric Utilities Corporation

Commentors to PECO Energy's Application: A-110550F147: (By FedEx)

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Landsdowne, PA 19050

John Collins
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Charles Cattley
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Allentown, PA 18101

DOCKETED

MAY 17 2000

DOCUMENT
FOLDER

*Send no further mailings.
J.M.D.*

309533

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SECRETARY'S BUREAU
00 MAY -3 AM 7:47



PECO ENERGY

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Fax 215 568 3389

James W. Durham
Senior Vice President
and General Counsel

Edward J. Cullen, Jr.
Deputy General Counsel

Sandra H. Byrne
Legal Administrator

Paul R. Bonney
Ellen M. Cavanaugh
Jessica N. Cone
Todd D. Cutler
Harvey B. Dikter
Susan Sciamanna Foehl
Vilna Waldron Gaston
Gregory Golazeski
John C. Halderman
Mary McFall Hopper
Conrad O. Kattner
Kristopher Keys
Jeffrey J. Norton
Mark B. Peabody
Roslyn G. Pollack
H. Alfred Ryan
Wendy Schermer
Richard S. Schlegel
Jenny P. Shulbank
Ward L. Smith
Delia W. Stroud
Ronald L. Zack
Assistant General Counsel

April 27, 2000

FEDEX

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-18
Commonwealth Avenue and North Street
Harrisburg, Pennsylvania 17105-3265

RE: Application of PECO Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation
Docket No.: A-110550F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of Revised Appendix A to the Merger Settlement. This revision, which is to be substituted for the original Appendix A, contains Proofs of Revenue for the years 2003 and 2005. The original Appendix A included Proofs of Revenue for 2002 and 2004; the distribution rates under the Settlement are the same for 2002 and 2003 (reflecting the \$60 million rate decrease) and for 2004 and 2005 (reflecting the \$40 million rate decrease)

In addition, the Revised Appendix A corrects a minor math error and results in a reduction in the demand charge of the Rate PD Night Service rider rate for 2002 and 2004.

The Joint Petitioners to the Settlement have had an opportunity to review the Revised Appendix A and do not object to it.

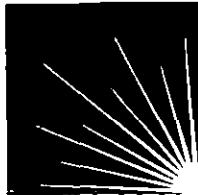
Sincerely,


Paul R. Bonney

PRB/mbo

Enclosures

cc: Administrative Law Judge Charles E. Rainey, Jr. (Via Hand Delivery)
All parties to this proceeding and to PECO's Electric Restructuring
Proceeding (per the Certificate of Service)



ORIGINAL ^{May 4, 2000}

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

309894

00 MAY -5 AM 8:02

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Wilmington, DE 19801
302-691-0112 ext. 226

RE: Application of PECO Energy Company
Docket No.: A-110550F0147

Dear Mr. McNulty:

Clean Air Council has read PECO Energy's Motion for Certification of the Record filed on or about May 2, 2000. The Council was one of the few parties who opposed PECO's original Motion for Certification. That original Motion was denied by the Commission on March 3, 2000.

The Council agrees with PECO that the circumstances in this proceeding are substantially different than when the Commission reviewed the first Motion and the responses thereto. A Joint Petition for Settlement has been filed to which nearly every party to the proceeding has signed or indicated non-opposition. Clean Air Council supports the Settlement.

The ability to conserve legal resources and promote judicial economy should result from certifying the record at this time. Please be advised that Clean Air Council will not oppose PECO's May 2, 2000 Motion.

Sincerely,

DOCKETED

MAY 08 2000

Michael Fiorentino
Michael Fiorentino, Esq.
Staff Attorney

Enclosures

- cc: Honorable John M. Quain, Chairman
- Honorable Robert K. Bloom, Vice Chairman
- Honorable Nora Mead Brownell, Commissioner
- Honorable Aaron Wilson, Jr., Commissioner
- Honorable Terrance J. Fitzpatrick, Commissioner
- Honorable Charles E. Rainey, Jr.
- Certificate of Service (by fax or first class mail)

DOCUMENT
FOLDER

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
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Bernard A. Ryan, Jr
Small Business Advocate

May 4, 2000

(717) 783-2525
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HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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P. O. Box 3265
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RECEIVED
MAY - 4 PM 3:14
PA.P.U.C.
SECRETARY'S BUREAU

Re: Application of PECO Energy Company
Docket No. A-110550F0147

Dear Mr. McNulty:

Enclosed for filing is the original and three copies of the Joinder of the Office of Small Business Advocate in the Petition of PECO Energy Company For Certification of the Record Pursuant to 66 Pa. C.S. §335(a).

As evidenced by the enclosed certificate of service, all parties have been served as indicated.

Sincerely,

Bernard A. Ryan, Jr.
Small Business Advocate

Enclosures

- cc: Hon. John M. Quain, Chairman
- Hon. Robert Bloom, Vice-Chairman
- Hon. Nora Mead Brownell, Commissioner
- Hon. Aaron Wilson, Commissioner
- Hon. Terrence J. Fitzpatrick, Commissioner
- Parties of Record
- Stanford L. Levin, Ph.D
- Mr. Brian Kalcic

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Application of PECO Energy Company :
Pursuant to Chapters 11, 19, 21, 22 :
and 28 of the Public Utility Code, :
For Approval of (1) a Plan of : Docket No. A-110550F0147
Corporate Restructuring, Including :
the Creation of a Holding Company :
and (2) the Merger of the Newly :
Formed Holding Company and Unicom :
Corporation :

Joinder of the
Office of Small Business Advocate
in the Petition of PECO Energy Company
For Certification of the Record
Pursuant to 66 Pa. C.S. §335(a)

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00 MAY -4 PM 3:15
PA. P.U.C. BUREAU
SECRETARY'S BUREAU

The Office of Small Business Advocate ("OSBA"), a signatory to the Joint Petition for Settlement of this matter, files this Joinder in the Petition of PECO Energy Company for Certification of the Record Pursuant to 66 Pa. C.S. §335(a) that was filed May 2, 2000. The OSBA states its support for that renewed request by PECO Energy Company ("PECO") to have the record certified to the Commission without an intervening Recommended Decision following the two days of hearings on the objection to the settlement that are presently scheduled for May 10 and 11, 2000.

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MAY 08 2000

The OSBA agrees with PECO that employing the approach of direct certification of the record to the Commission:

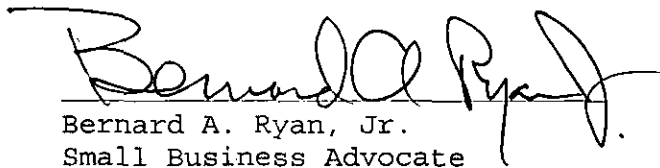
A. Recognizes the very different procedural posture of this matter and the dramatically reduced scope of the remaining contested issues at this time as compared to the situation on March 3, 2000 when a prior request was denied by the Commission;

B. Preserves, at least to a degree, the benefits of reduced litigation time and expense as well as the more timely implementation of the beneficial provisions of the settlement, expected benefits that were significant factors in the decisions of the Joint Petitioners, including the OSBA, to become parties to the proposed settlement agreement; and

C. Supports the Commission's long-standing policies encouraging the negotiated settlement of disputes in complex matters such as this proceeding.

WHEREFORE, the Office of Small Business Advocate joins in PECO's request that the record be certified directly to the Commission, with briefs and reply briefs to be filed May 17 and 24, 2000 as previously scheduled by the Presiding Officer.

Respectfully submitted,


Bernard A. Ryan, Jr.
Small Business Advocate

Dated: May 4, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company :
Pursuant to Chapters 11, 19, 21, 22 :
and 28 of the Public Utility Code, :
For Approval of (1) a Plan of : Docket No. A-110550F014
Corporate Restructuring, Including :
the Creation of a Holding Company :
and (2) the Merger of the Newly :
Formed Holding Company and Unicom :
Corporation :

RECEIVED
JUN 14 PM 3:15
PA P.U.C. BUREAU
SECRETARY'S BUREAU

Certificate_of_Service

I certify that I am serving a copy of the foregoing document on behalf of the Office of Small Business Advocate by first class mail (unless otherwise indicated) upon the persons addressed below:

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Senate Democratic Appropriations
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Harrisburg, PA 17120

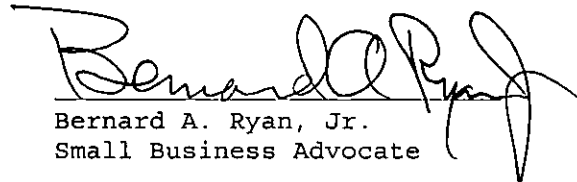
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Bernard A. Ryan, Jr.
Small Business Advocate

Dated: May 4, 2000

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ATTORNEYS AT LAW

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TELEPHONE (717) 232-8000
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CHARIS M. BURAK
DIRECT DIAL: (717) 237-5437
E-MAIL ADDRESS: CBURAK@MWN.COM

May 5, 2000

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, PA 17120

ORIGINAL

VIA HAND DELIVERY

RECEIVED
00 MAY -5 PM 3:46
PA.P.U.C.
SECRETARY'S BUREAU

Re: Application of PECO Energy Company; Docket No.A-110550F0147

Dear Secretary McNulty:

On May 2, 2000, PECO Energy Company ("PECO") submitted a Petition for Certification of the Record ("Petition") in the above-captioned proceeding. The Philadelphia Area Industrial Energy Users Group ("PAIEUG") and the Industrial Energy Consumers of Pennsylvania ("IECPA") are parties to this proceeding, as well as signatories to the Joint Petition for Settlement ("Joint Petition"). Upon review of the Petition, PAIEUG and IECPA submit this letter to fully support PECO's request.

PAIEUG and IECPA agree with PECO that with the involvement of the Joint Petition, this proceeding satisfies the previously established Commission requirements for certification under 66 Pa. C.S. Section 335(a). Moreover, because the Joint Petition achieved settlement among most of the parties, a recommended decision and the filing of exceptions by the parties to identify issues or refine positions is not necessary in this proceeding, which is limited to the issue of whether the Joint Petition is in the public interest. For these reasons, PAIEUG and IECPA respectfully request that the Commission grant the aforementioned Petition in order to ensure the savings of time, expense and administrative resources.

Very truly yours,

MCNEES, WALLACE & NURICK

By *Charis M. Burak*
David M. Kleppinger
Charis M. Burak

DOCUMENT
FOLDER

Counsel to the Philadelphia Area Industrial Energy Users
Group and the Industrial Energy Consumers of Pennsylvania

c: Honorable Charles E. Rainey, Jr. (via first class mail)
Certificate of Service

DOCKETED
MAY 08 2000

57

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

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Docket No. A-110550F0147

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Docket No. A-110550F0147

Page 3

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Charis M. Burak

Dated this 5th day of May , 2000, in Harrisburg, Pennsylvania.



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ORIGINAL

May 5, 2000

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SECRETARY'S BUREAU

Re: Application of PECO Energy Company
Docket No. A-110550F0147

Dear Secretary McNulty:

The Office of Consumer Advocate (OCA) is in receipt of PECO Energy Company's Petition For Certification Of The Record To The Commission For Decision Pursuant To 66 Pa.C.S. §335(a). The OCA recognizes the different procedural status of this case and the reduced scope of the issues at this time as compared to PECO's initial request for certification of the record. Given the current status of this case, the Office of Consumer Advocate does not object to PECO's request.

If you have any questions, please feel free to contact me

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MAY 08 2000

Sincerely,

Tanya J. McCloskey
Tanya J. McCloskey
Senior Assistant Consumer Advocate

cc: Parties of Record
Hon. Charles Rainey, Administrative Law Judge
58203

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CERTIFICATE OF SERVICE

ORIGINAL

Re: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, and 28 of the Public Utility Code for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation
Docket No. A-110550F0147

I hereby certify that I have this day served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 5th day of May, 2000

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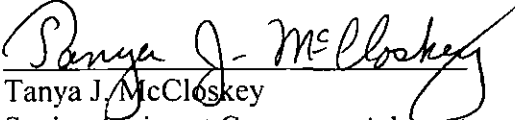
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May 8, 2000

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-18
Commonwealth Avenue and North Street
Harrisburg, Pennsylvania 17105-3265

RE: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, including the creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket No. A-110550 F0147

Dear Secretary McNulty:

Enclosed for filing is the original and three copies of the Statement By PPL Electric Utilities Corporation in Support of the Petition of PECO Energy Company For the Certification of the Record Pursuant to 66 Pa. C.S. § 335(a).

Pursuant to 52 Pa. Code § 1.11, the enclosed documents are to be deemed filed on May 8, 2000, which is the date they were deposited with an overnight express delivery service as shown on the delivery receipt attached to the mailing envelope. As evidenced by the attached Certificate of Service, all parties to the proceeding are being served by overnight delivery and facsimile with a copy of these documents. In addition, please date and time-stamp the enclosed extra copies of these filings and return them to me in the envelope provided.

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James J. McNulty, Secretary
May 8, 2000
Page 2

If you have any questions regarding the enclosed document, please call.

Very truly yours,



Donald A. Kaplan

Enclosures

cc: John M. Quain, Chairman
Nora Mead Brownell, Commissioner
Aaron Wilson, Jr., Commissioner
Terrance J. Fitzpatrick, Commissioner
Robert K. Bloom, Commissioner
Administrative Law Judge Charles E. Rainey, Jr.
All parties to this proceeding (per the Certificate of Service)

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application Of PECO Energy Company Pursuant To Chapters 11, 19, 21, 22 And 28 Of The Public Utility Code, For Approval Of (1) A Plan Of Corporate Restructuring, Including The Creation Of A Holding Company And (2) The Merger Of The Newly Formed Holding Company And Unicom Corporation

Docket No. A-00110550 F0147

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**STATEMENT BY PPL ELECTRIC UTILITIES CORPORATION IN SUPPORT
OF THE PETITION OF PECO ENERGY COMPANY FOR CERTIFICATION OF
THE RECORD PURSUANT TO 66 PA. C.S. § 335(a)**

Introduction

PPL Electric Utilities Corporation ("PPL Utilities") files this Statement By PPL Electric Utilities Corporation In Support Of The Petition Of PECO Energy Company For Certification Of The Record Pursuant To 66 Pa. C.S. § 335(a), which was filed May 2, 2000.

PPL Utilities supports PECO Energy Company's ("PECO") request to have the record certified to the Commission without an intervening Recommended Decision. If the Commission grants PECO's request, PPL Utilities requests that the Commission revise the filing schedule such that initial post-hearing briefs

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are due on May 23, 2000 and reply briefs would be due on May 31, 2000, to allow time for the parties to develop fully, refine, and respond to the factual and legal issues in this matter in their initial post-hearing briefs and reply briefs.

Background

On March 23, 2000, PECO Energy Company ("PECO") filed, on behalf of itself and a number of other parties to this proceeding, a Joint Petition for Settlement ("Joint Petition"). In light of the Joint Petition, by Order dated March 28, 2000, Administrative Law Judge Charles E. Rainey, Jr. revised the original procedural schedule established in this case. The revised procedural schedule required parties to file Objections or Comments to the Joint Petition by April 13, 2000, and Replies to Objections or Comments by April 18, 2000.

Pursuant to the revised schedule, PPL Utilities filed Objections to the Joint Petition, in which it asserted that the Joint Petitioners had failed to demonstrate that the Joint Petition was in the public interest and requested that the Commission limit the evidentiary as well as precedential use of the Joint Petition. A copy of PPL Utilities' Objections is attached as Appendix A. Philadelphia City Councilman David Cohen also filed Comments and Objections to the Joint Petition on April 12, 2000 and requested that evidentiary hearings be held in regard to the Joint Petition.¹

¹ See Objections to the Joint Petition for Settlement of Councilman Cohen, at 7 (filed April 12, 2000).

Many Joint Petitioners filed replies to PPL Utilities' Objections.² In light of the objections and replies and Administrative Law Judge Rainey's belief that evidentiary hearings might be necessary and helpful in the adjudication of the matter, Administrative Law Judge Rainey ordered evidentiary hearings to be held on May 10 and 11, 2000.³ In response to the Administrative Law Judge's Order, many of parties submitted written testimony.⁴ Several parties also filed prehearing memoranda and indicated therein plans to offer numerous documents into evidence during the hearings on May 10 and 11.⁵

² The following parties filed Replies to the Comments and/or Objections of PPL Utilities and/or Councilman Cohen: the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Office of Trial Staff ("OTS"); Philadelphia Area Industrial Energy Users Group ("PAIEUG"); Industrial Energy Consumers of Pennsylvania ("IECPA"); Clean Air Council, et al; Eric Joseph Epstein; Consumer Education and Protective Association, et al. ("CEPA"); and the National Railroad Passenger Corporation (Amtrak). The following parties filed Replies and written testimony: PECO; Citizens for Pennsylvania's Future, et al ("PennFuture"). The following parties filed testimony in lieu of Replies: the City of Philadelphia; Senator Vincent Fumo; and East Brandywine Township.

Included with PennFuture's reply was testimony by John Rohrbach. PPL Utilities filed a motion to strike certain portions of Mr. Rohrbach's testimony on May 3, 2000. See Motion By PPL Electric Utilities Corporation To Strike Portions Of Testimony Of John Rohrbach (filed May 3, 2000).

³ See Prehearing Order #2 of Administrative Law Judge Charles E. Rainey, Jr. (dated April 25, 2000).

⁴ The following parties have submitted prefiled written testimony: PPL Utilities (Paul L. Gioia); PECO (Kenneth G. Lawrence; Richard White (direct testimony and supplemental testimony); Thomas P. Hill (direct testimony and supplemental testimony); Thomas J. Flaherty; William H. Hieronymus); Amtrak (Stanley R. Forczek); PAIEUG (Lane Kollen); MAPSA (James McCormick); OTS (Kevan Deardorff; Paul J. Metro); Clean Air Council (Andrew Altman); OCA (Richard LaCapra); PennFuture (John Rohrbach); Eric Joseph Epstein (Eric Joseph Epstein); Senator Fumo (Richard H. Silkman); East Brandywine Township (Scott T. Piersol); and the City of Philadelphia (Kent R. Miller).

⁵ See Second Prehearing Memorandum of PECO Energy Company (filed May 2, 2000); Prehearing Conference Memorandum #2 of Eric Joseph Epstein, pro se (filed April 28,

On May 2, 2000, PECO filed its Petition of PECO Energy Company for Certification of the Record Pursuant to 66 Pa. C.S. § 335(a). The Office of Small Business Advocate ("OSBA") filed a Joinder in PECO's petition on May 4, 2000.⁶

**Statement Of Support
and Request To Extend The Briefing Schedule**

PPL Utilities supports the request of PECO and OSBA for certification of the Record in this matter. PPL Utilities agrees with PECO that the proposed procedure will yield a meaningful saving of time, expense, and administrative resources.⁷

If PECO's request is granted, however, PPL suggests that the Commission revise the initial post-hearing and reply briefing schedule to accommodate the savings in time and to permit the parties to refine their positions and narrow the scope of the issues the Commission is asked to decide. PPL proposes an overall one-week extension of the procedural schedule such that the initial post-hearing briefs are due on May 23, 2000 and reply briefs are due on May 31, 2000.⁸

2000); Prehearing Memorandum Submitted on Behalf of Philadelphia City Councilman David Cohen (May 3, 2000); Second Prehearing Conference Memorandum of PennFuture (filed May 1, 2000); Second Prehearing Memorandum of the Office of Consumer Advocate (filed May 2, 2000); Prehearing Memorandum of PPL Electric Utilities Corporation (filed May 3, 2000).

⁶ See Joinder of the Office of Small Business Advocate in the Petition of PECO Energy Company for Certification of the Record Pursuant to 66 Pa. C.S. § 335(a) (filed May 4, 2000).

⁷ See Petition of PECO Energy Company at 7.

⁸ This schedule adds one day to the interval between the initial post-hearing and reply briefs to accommodate the Memorial Day holiday.

The issue before the Commission is whether this contested settlement and underlying proposed merger and corporate reorganization meets the test for Commission approval, *i.e.*, it is in the public interest, consistent with law, and supported by substantial evidence in the record.⁹ Numerous witnesses and exhibits on this issue have been proffered and the parties have identified a variety of legal and factual issues that they believe the Commission must address before it can decide the ultimate issue.

As PECO noted in its request for certification of the record, the Commission has placed great importance upon allowing contending parties to identify fully the factual and legal issues of concern to them in the matter. In order to permit parties to narrow the scope of remaining issues, refine their positions on those issues, and correct any misinformation in the record, the Commission does not normally bypass an initial decision by the Presiding Administrative Law Judge.¹⁰ The existing schedule, adopted by the Administrative Law Judge under the assumption that there would be such an initial decision, gives the parties only six days to write their initial post-hearing briefs, and the entire briefing process is to be completed 13 days following the scheduled end of the hearings. The short extension of that schedule suggested

⁹ See PPL Objections at 13-17.

¹⁰ See Petition of PECO Energy Company at 4 (quoting *Pa. P.U.C. v. PECO Energy Company*, Docket Nos. R-00973953 and P-00971265, Orders entered October 9, 1997 (p. 5) and November 6, 1997 (p.8); *Re Nextlink of Pennsylvania, Inc. et al*, Docket Nos. P-00991648 and P-00991649 (September 30, 1999) 196 P.U.R. 4th 172, 185-186 (1999)).

here will give the parties some additional time to marshal the evidence and arguments in a manner that would be helpful to the Commission in resolving this dispute.

WHEREFORE, PPL Utilities supports PECO's request that the record be certified directly to the Commission, and respectfully requests that the Commission concurrently extend the briefing schedule previously established by the Presiding Administrative Law Judge Officer such that initial post-hearing briefs are filed on May 23 and reply briefs are filed May 31, 2000.

Respectfully submitted,

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By 

Dated: May 8, 2000

APPENDIX A

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APR 12 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Application of PECO Energy Company, Pursuant :
to Chapters 11, 19, 21, 22 and 28 of the Public :
Utility Code, for Approval of (1) A Plan of : Docket No. A-110550 F0147
Corporate Restructuring, including the creation of :
a Holding Company and (2) The Merger of the :
Newly Formed Holding Company and Unicom :
Corporation :

**OBJECTIONS OF PPL ELECTRIC UTILITIES CORPORATION
TO THE JOINT PETITION FOR SETTLEMENT**

Pursuant to the Order Revising Procedural Schedule dated March 28, 2000 of Administrative Law Judge Charles E. Rainey, Jr. ("ALJ Rainey"), PPL Electric Utilities Corporation (formerly PP&L, Inc.) ("PPL"), a party to the above captioned case,¹ hereby submits its Objections to the Joint Petition for Settlement ("Joint Petition") submitted by PECO Energy Company ("PECO" or the "Company") along with various other Intervenors in the above-captioned case (all such parties collectively referred to as the "Joint Petitioners")² on March 23, 2000, as amended on April 3, 2000 and April 5, 2000.

¹ PPL became a formal party to the case pursuant to the Prehearing Order dated January 28, 2000 in which ALJ Rainey granted PPL's Motion to Intervene. See Jan. 28, 2000 Prehearing Order of ALJ Rainey, at 2.

² The other signatories to the Joint Petition for Settlement are: the Office of Trial Staff ("OTS"); the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); Citizens of Pennsylvania's Future and the ten named individuals that joined in its Protest and Petition to Intervene (collectively, "PennFuture"); Senator Vincent J. Fumo; the City of Philadelphia; Clean Air Council and the three named individuals that joined in its Protest and Petition to Intervene ("CAC"); the Consumers Education and Protective Association *et al.* ("CEPA") (which includes the Association of Community Organizations for

I. SUMMARY OF ARGUMENT

1. PPL urges the Commission to reject the Joint Petition on the grounds that the Joint Petitioners have failed to demonstrate that it is consistent with applicable law, supported by substantial evidence in the record, and in the public interest. In fact, the only evidence submitted in this proceeding was in support of the original Application of PECO Energy Company for approval of its proposed restructuring and merger with Unicom Corporation ("Unicom") (hereinafter, "Merger Application"), which the Joint Petition substantially supplements and modifies. A number of provisions of the Joint Petition have no obvious nexus to the transactions described in the Merger Application and clearly require further explanation and justification before the Commission can approve them. No additional legal and evidentiary support, however, was submitted with the Joint Petition to demonstrate that it is lawful and in the public interest. In the absence of such support, and in the face of opposition to the Joint Petition, the Commission has no choice but to reject the Joint Petition.

Reform Now ("ACORN") and the Tenants' Action Group ("TAG"); Enron Energy Services, Inc. ("Enron"); the Philadelphia Industrial Energy Users Group ("PAIEUG"); the Industrial Energy Consumers of Pennsylvania ("IECPA"); Conectiv Energy ("Conectiv"); Eric Joseph Epstein; Patricia McNamara; the National Railroad Passenger Corporation ("Amtrak"); and the Mid-Atlantic Power Supply Association ("MAPSA"). NewEnergy East, LLC ("NewEnergy") subsequently agreed to sign the Joint Petition. See April 3, 2000 Filing of PECO (containing signature page of NewEnergy). Also in PECO's April 3, 2000 filing was a Joint Petition regarding Issues Raised by Wallace Township and East Brandywine Township that independently addressed the concerns of those parties. See *id.* Shell Energy Services Co. L.L.C. ("Shell") submitted a letter to the Commission on April 3, 2000 stating that it takes no position regarding the settlement proposal, and was not a signatory to the Joint Petition. See Apr. 3, 2000 Filing of Shell. In addition, Allegheny Energy, Inc. and Allegheny Energy Supply (collectively, "Allegheny") submitted a letter to the Commission on March 27, 2000 stating that they would not oppose the Joint Petition but also would not become signatories. See Mar. 27, 2000 Filing of Allegheny.

2. PPL also requests that any approval of the Joint Petition be conditioned on the agreement of the parties that no signatory to the Joint Petition will propose that a provision of the Joint Petition be adopted in any other proceeding based on the fact that such provision was included in the Joint Petition, and that no party to the Joint Petition will seek to reopen another Pennsylvania public utility's settlement of its retail restructuring proceeding under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, *et seq.* (hereinafter "Electric Competition Act") to modify any provision of such settlement in order to make it consistent with a provision of the Joint Petition. Given the increased reliance of the Commission on settlements to resolve important and complex litigation, and the use by various interest and advocacy groups of settlement provisions in subsequent proceedings, such a condition is necessary to protect the *rights of other Pennsylvania utilities.*

3. PPL notes that ALJ Rainey has required parties to state in their Objections whether they desire to continue to litigate the case. March 28, 2000 Order Revising Procedural Schedule of ALJ Rainey, at 2.³ Accordingly, PPL requests the continuation of the litigation with respect to the legality and the necessity for evidentiary support of the provisions of the contested Joint Petition. PECO's Merger Application as filed is no longer before the Commission in its

³ See also 52 Pa. Code § 69.406 ("Parties objecting to a proposed settlement or stipulation are encouraged to set forth facts, affidavits, argument and relevant legal analysis and, if desired, a specific request to continue to litigate. A request to litigate should be supported by appropriate information and legal argument concerning the implication of denial of a continued opportunity to litigate the matter.").

original form, but has been effectively and substantially amended by the Joint Petition. PPL sets forth below the analysis and legal argument supporting its opposition to the Joint Petition, as well as the implications for PPL and other Pennsylvania utilities if the Commission approves of the Joint Petition.

II. BACKGROUND

A. PECO's Application for Approval of the Proposed Restructuring and Merger

4. On November 22, 1999, PECO filed its Merger Application pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code ("Code"), for approval of the transactions associated with (1) a plan of corporate restructuring, including the formation of a holding company, and (2) the merger of the newly formed holding company and Unicom.

5. Under Chapter 11 of the Code, PECO seeks a certificate of public convenience pursuant to Section 1102(a)(3), 66 Pa. C.S. § 1102(a)(3), to "acquire from, or transfer to, . . . the title to, or the possession or use of, any tangible or intangible property used or useful in the public service." Merger Application at 8-9. PECO also seeks such a certificate pursuant to Section 1103(a), which provides that such a certificate shall be issued only upon a showing that its granting is "necessary or proper for the service, accommodation, convenience, or safety to the public." Merger Application at 9. PECO asserts that the share exchange in the restructuring between PECO and NewCo., by effecting a "change in control," will be a transfer under Section 1102(a)(3). Merger Application at 9-10. PECO submits that its Merger Application demonstrates that the proposed restructuring is in the public

interest and therefore a certificate of public convenience should be issued.⁴ Merger Application at 10.

6. PECO also requests that the Commission take the ministerial step to issue any necessary certificates of public convenience pursuant to Section 1102 to transfer generating assets and liabilities in accordance with the Commission's May 14, 1998 Order approving PECO's Restructuring Settlement (hereinafter "1998 Restructuring Settlement").⁵ Merger Application at 10-11.

7. In addition, PECO seeks approval for the transfer by PECO to NewCo., ServeCo. and VenturesCo. of various assets that will be utilized by them in furnishing "miscellaneous business services (e.g., accounting, legal, human resources, finance, information technology)." Merger Application at 11. PECO requests that the Commission pre-approve the transfer, with the understanding that PECO will file with the Commission an itemized list of such assets and liabilities once the transfers have been completed. Merger Application at 11.

8. PECO requests that the Commission issue any necessary approvals pursuant to Section 1901 of the Code, 66 Pa. C.S. § 1901, to the extent that the assignment of debt obligations as part of the transfer of generating assets and liabilities triggers the requirements of Section 1901. Merger Application at 12.

⁴ To the extent necessary, PECO also seeks approval for the concomitant change in control over PECO's 50% interest in PECO Hyperion Telecommunications. See Merger Application at 10, n.10.

⁵ See *Re PECO Energy Co.*, R-00973953, P-00971265, 186 PUR 4th 105, 1998 WL 420175 (Pa. PUC May 14, 1998).

9. PECO requests Commission approval pursuant to Section 2102(b), 66 Pa. C.S. § 2102(b), of several contracts among affiliated interests resulting from the proposed restructuring and merger. Merger Application at 12. Specifically, PECO seeks approval of a form of affiliated services contract to control the provision of non-power goods and services from ServeCo. to all entities in the corporate family, including PECO. Merger Application at 12-13. In addition, PECO seeks approval of a contract in which entities within the corporate group provide or receive non-power goods and services from PECO, including transactions involving PECO and any affiliated electric generation supplier. Merger Application at 13. PECO also submits a wholesale purchased power agreement between PECO and GenCo., and acknowledges its obligations pursuant to the 1998 Restructuring Settlement to continue to abide by the comparable treatment/non-discrimination features set forth in the Competitive Safeguards (Appendix G) and the Interim Code of Conduct (Appendix H) attached to the 1998 Restructuring Settlement. Merger Application at 13-14.

10. PECO also seeks the requisite approvals under both Chapters 22 (Natural Gas Choice and Competition Act ("Gas Competition Act")), 66 Pa. C.S. § 2201, et seq., and 28 (Electric Competition Act), 66 Pa. C.S. § 2801, et seq., which require the Commission to consider whether a proposed merger, consolidation, acquisition or disposition "is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail [gas] [electricity] customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail [natural gas] [electricity]

market.” 66 Pa. C.S. §§ 2210(A)(1) (Gas Competition Act), 2811(E) (Electric Competition Act).

11. Finally, PECO states that while it does not plan to seek Exempt Wholesale Generator (“EWG”) status for GenCo. from the Federal Energy Regulatory Commission (“FERC”) at this time, that situation may change in the future, and therefore it requests that the Commission make the findings required by Section 32(c) of the Public Utility Holding Company Act (“PUHCA”) (15 U.S.C. § 793-5a(c)) that the transfer of generating assets, liabilities and wholesale power contracts to a newly formed corporate subsidiary (1) will benefit customers, (2) is in the public interest, and (3) does not violate state law. *Merger Application* at 15. In addition, PECO requests that the Commission’s Order include the findings required by Section 32(k) of PUHCA (15 U.S.C. § 793-5(a)(k)) with respect to purchases of power from GenCo., i.e., that (1) the Commission possesses sufficient regulatory authority, resources and access to books and records of PECO and any relevant associate, affiliate or subsidiary company to exercise its duties under Section 32(k), and (2) the purchase by PECO of energy and capacity from an affiliated EWG will benefit customers, does not violate state law, would not provide the EWG an unfair competitive advantage, and is in the public interest. *Merger Application* at 15-16.

B. Evidence Submitted In Support of the Merger Application

1. Written Testimony and Exhibits

12. Along with its Merger Application, PECO submitted the written testimony and supporting exhibits of five witnesses that comprise its case-in-chief. The first three witnesses are officers of PECO Energy: (1) Kenneth G. Lawrence,

who describes how the proposed restructuring and merger will not adversely affect PECO's regulated operations, the employees who staff those operations or the local communities and organizations that have enjoyed PECO's support; (2) Richard G. White, who describes the proposed restructuring and merger and identifies the principal factors that PECO considered in deciding to pursue a merger with Unicom; and (3) Thomas P. Hill, Jr., who describes PECO's commitment to continue to honor its 1998 Restructuring Settlement and explains how provisions of that Settlement will apply following consummation of the proposed restructuring and merger, and the impact of merger-related synergies on future regulated rates.

13. The fourth piece of testimony is by Thomas J. Flaherty of Deloitte & Touch Consulting Group LLC, who presents the results of a study that he conducted to assist PECO and Unicom in identifying and quantifying the potential cost savings in regulated operations that will likely arise from the proposed merger. Mr. Flaherty finds that the proposed merger will likely result in over \$330 million in cost savings to regulated public utility transmission and distribution operations. These estimated savings are net of costs to achieve (over \$185 million) and pre-merger initiatives (over \$40 million) for the combined entity over the first five years after the close of the merger. A substantial portion of this \$330 million in cost savings is, of course, likely attributable to Unicom.⁶

⁶ For example, if one-half of the \$330 million were attributable to each company's regulated operations, the cost savings attributable to PECO's Pennsylvania regulated operations would be approximately \$165 million.

14. The fifth piece of testimony is a market power study, conducted by Dr. William H. Hieronymus of PHB Hagler Bailly, Inc., consistent with the Competitive Analysis Screen described in Appendix A to FERC's Merger Policy Statement, concluding that the Merger will have no adverse competitive impact on Pennsylvania's retail energy markets.

2. Additional Supporting Data

15. Additional supporting data submitted with the Merger Application include: (1) diagrams of PECO's and Unicom's existing corporate structures; (2) PECO's Plan of Restructuring; (3) Agreement and Plan of Exchange and Merger; (4) diagrams of NewCo.'s Post Merger Corporate Structure; (5) schedule setting forth the net book value of assets and liabilities to be transferred to GenCo.; (6) preliminary representation of assets and liabilities to be transferred to NewCo., ServeCo., and VenturesCo.; (7) Affiliated Interests Agreement and Purchased Power Agreement; (8) statements of the original cost of PECO's electric and natural gas plant in service, by primary account, together with the associated reserve for depreciation, as of December 31, 1998; (9) consolidated balance sheets and income statements for PECO and NewCo.; (10) listing of number of electric and natural gas customers of PECO as of June 30, 1999; (11) PECO's 1998 annual report; (12) Unicom's 1998 annual report; and (13) statement that all annual reports, tariffs, certificates of public convenience, applications, securities certificates, and similar documents previously filed by PECO are made a part of the record by reference.

16. On February 2, 2000, PECO submitted the Supplemental Direct Testimony of Richard G. White regarding the restatement of the Merger Agreement, with the restated Merger Agreement attached. In addition to the supplemental testimony, PECO provided copies of affiliate contracts that were submitted to FERC after PECO's Application was filed with the Commission.

C. The Record and Proceedings Before ALJ Rainey

17. A Notice of Filing of PECO's Application appeared in the Pennsylvania Bulletin on December 4, 1999, setting December 20, 1999 as the date for petitions to intervene and protests. 29 Pa. B. 6208. To date, twenty-seven parties, including PPL, have been permitted to intervene.⁷ In addition, the Office of Trial Staff entered its appearance.

18. A Prehearing Conference Order was issued by ALJ Rainey on December 28, 2000, directing the parties to submit prehearing conference memoranda by January 13, 2000, and scheduling a prehearing conference for January 20, 2000. Issues on which ALJ Rainey ordered the parties to report included: (1) the status of any settlement discussions; (2) the status of and proposed procedural rules for discovery; (3) the issues to be addressed in the case; and (4) other procedural issues. After the Prehearing Conference, the Commission issued a Hearing Notice on January 21, 2000, scheduling evidentiary hearings for Tuesday, April 25, 2000 through Friday, April 28, 2000. In addition, ALJ Rainey

⁷ The Department of the Navy ("Navy") filed a Notice to Intervene, Out of Time, on March 13, 2000, which was granted by ALJ Rainey on March 24, 2000. However, Navy subsequently withdrew its intervention on March 27, 2000.

issued a Prehearing Order dated January 28, 2000 adopting various procedural rules, and setting a hearing and briefing schedule providing for: (1) the submission of Intervenor Direct Testimony on March 24, 2000; (2) the submission of PECO/Unicom Rebuttal Testimony on April 10, 2000; and (3) the submission of Intervenor Surrebuttal Testimony on April 21, 2000.⁸ As a result of the submission of the Joint Petition, however, ALJ Rainey on March 28, 2000 issued an Order Revising Procedural Schedule suspending both the briefing and evidentiary hearings. Pursuant to the March 28, 2000 Order, the Public Input hearings, however, were held between March 27, 2000 and April 4, 2000.

19. On January 21, 2000, PECO had submitted a Petition for Certification of the Record to the Commission, requesting that the Commission exercise authority under 66 Pa. C.S. § 335(a) to dispense with an initial decision and certify the record for final decision. On March 3, 2000, the Commission entered an Order denying PECO's request, asserting that PECO had "failed to show why the circumstances in the present matter are so compelling as to warrant the use of an alternative administrative procedure." March 3, 2000 Order, at 6. In a Statement attached to the Order, Chairman John M. Quain encouraged the parties to reach an amicable resolution of the matter, or in the alternative, that:

we expect the Judge and the parties to present this Commission with a complete record, including public input hearings, an initial decision, and any exceptions and reply exceptions as expeditiously as possible.

⁸ On March 19, 2000, the parties submitted a letter to ALJ Rainey stating that the parties and PECO had agreed, in light of the settlement discussions, that the due date for filing testimony would be extended by two business days, from March 24, 2000 to March 28, 2000. See Mar. 19, 2000 Letter from T. McCloskey to ALJ Rainey.

The completed case should be submitted in time for this Commission to address and resolve this matter by late August or early September of this year.

20. Prior to the submission of the Joint Petition, several intervenors and PECO conducted discovery through multiple interrogatories and requests for documents. However, such discovery is not part of the official record of the case.

D. The Joint Petition for Settlement

21. Subsequent to several scheduled settlement conferences, the Joint Petition for Settlement at issue herein was executed by PECO and some, but not all of, the intervenors.⁹ The Joint Petition contains concessions and benefits from PECO that have absolutely no relation to the proposed restructuring and merger, that bear little or no relationship to PECO's Merger Application, and have no support in the record to demonstrate that if adopted they would be in the public interest. In fact, and as discussed below, several of the provisions appear on their face to be contrary to Commission policy and/or applicable law. Specifically, the Joint Petition provides:

- Speculative and unsubstantiated distribution rate reductions, contrary to Commission policy with respect to merger proceedings;
- An extension of the rate cap that may be inconsistent with PECO's PJM Interconnection, LLC ("PJM") and reliability obligations;
- Reliability enhancements unrelated to the merger and potentially inconsistent with the rate reductions and rate cap extension;
- Limitations on the level of recovery of preexisting nuclear decommissioning costs;

⁹ See *supra*, n.2.

- Funding of a private nuclear monitoring group;
- Direct grants to a specific environmental organization;
- Commitment to the Sustainable Development Fund ("SDF") to construct and fund specific types of renewable energy sources outside of the process approved in the 1998 Restructuring Settlement;
- A substantial change in Competitive Default Service ("CDS") bidding rules and the character of CDS service; and
- Special arrangements with specific large customers that have not been demonstrated to be just and reasonable and non-discriminatory.

E. The Use of Settlements in Recent Public Utility Proceedings.

22. As a Pennsylvania public utility, PPL has become subject to the precedential effect of settlements in major cases with other Pennsylvania utilities. While most settlements, including the Joint Petition, provide that they cannot be cited as precedent in later cases, in practice the intervenors in subsequent cases routinely use the terms of a prior settlement to require other utilities to defend against the relief proposed simply on the basis that it would be consistent with that prior settlement. Even a cursory examination of the electric utility restructuring settlements demonstrates their substantial similarity, to the point that the initial settlement in the series — in the case of the restructuring settlements, the PECO settlement of May 14, 1998 — became the default as if it were Commission precedent or a statement of Commission policy. This is the case even though the specific provisions were never subjected to the process of considered Commission decisionmaking based either on record evidence or an opportunity for public comment and replies. As a result, because settlements have taken on such

increased importance, PPL has been required to intervene in other utilities' cases simply to protect its interests.

III. DECISIONS ON CONTESTED SETTLEMENTS, AS WITH CONTESTED CASES, MUST BE CONSISTENT WITH LAW, BASED UPON SUBSTANTIAL EVIDENCE IN THE RECORD, AND IN THE PUBLIC INTEREST.

23. The Commission reviews contested settlements such as the Joint Petition consistent with the processes and standards for deciding a contested case. Thus, in order to approve the settlement, the Commission must find that each provision is in the public interest, consistent with applicable law, and supported by substantial evidence in the record. The Commission explained this standard in a December 23, 1997 Order on PECO's retail restructuring plan in which it considered a contested Partial Settlement:

[s]ome clarification is in order about how this Commission treats agreements among some but not all parties compared to settlements supported, or not opposed, by all parties. . . .

When a settlement document is filed with this Commission that is supported, or not opposed, by all parties, evidentiary hearings or adversarial processes are generally not utilized. In such cases, the Commission's practice is to review the proposed settlement to ensure that it is in the public interest and does not violate applicable laws.

This Commission, however, distinguishes between those settlements that enjoy the support of all parties and those agreements among some parties that are opposed by other parties. Despite the hard work of the Joint Signatories, the Partial Settlement is actively opposed by some parties to this case. Consequently, *this Commission's review of the Partial Settlement must be consistent with processes and standards for deciding a contested case.*"

Re PECO Energy Co., R-00973953, P-00971265, 181 PUR 4th 517, 1997 WL 824004 (Pa. PUC Dec. 23, 1999) (emphasis added). Therefore, in order to

understand the standards for approval of the Joint Petition, it is necessary to examine the standards the Commission applies in contested cases.

24. In a contested case, the burden of proof is on the proponent of an order to show that its approval would be in the public interest. 66 Pa. C.S. § 315 (burden of proof to show that proposed rate is just and reasonable is on the public utility); 66 Pa. C.S. § 332(a) (except as provided in section 315, the proponent of a rule or order has the burden of proof). To make such a finding, the Commission must find substantial evidence in the record supporting its decision, and the decision must otherwise be in accordance with law. See 66 Pa. C.S. § 332(b) (“No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party *and as supported by and in accordance with the reliable, probative and substantial evidence.*”) (emphasis added); 2 Pa. C.S. § 704 (on judicial review, a court should uphold the findings of the PUC unless the adjudication is in violation of constitutional rights, is not in accordance with law, or is not supported by substantial evidence); see also *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 706 A.2d 1197, 1201 (Pa. 1997) (standard of review of appellate courts is whether there is substantial evidence to support the findings of the agency); accord *Barasch v. Pennsylvania Pub. Util. Comm’n*, 490 A.2d 806, 809 (Pa. 1985). Substantial evidence is defined “as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Republic Steel Corp. v. Workmen’s Comp. Appeal Bd.*, 421 A.2d 1060, 1062 (Pa. 1980) (citing *Shenandoah Suburban Bus Lines*, 50 A.2d 301 (Pa. 1947))(emphasis added).

25. Normally, in a merger proceeding the Commission would look to the Merger Application and apply the relevant standards to determine whether a settlement reached concerning the merger is in the public interest.¹⁰ Where, as here, however, the settlement contains provisions not addressed by and which are unrelated to the Merger Application, those provisions must be independently supported by substantial evidence and argument that they are consistent with applicable law and in the public interest. Again, the burden of proof of such provisions would be on the proponents of an order approving of the provisions, *i.e.*, the Joint Petitioners.

26. At this stage of the proceeding, no evidentiary hearings have been held and no testimony has been submitted, other than that submitted by PECO in support of the Merger Application. Thus, the Commission has no record evidence upon which to base a decision that provisions of the Joint Petition that differ from those submitted by PECO in the Merger Application are in the public interest. Indeed, where contested settlements have been submitted for approval in cases at a similar procedural stage, the Commission has ordered evidentiary hearings and required briefing. See *Popowsky v. Philadelphia Elec. Co.*, 82 Pa. PUC 26, 1994 WL 577896 (1994) (following the submission of a Joint Petition for Partial

¹⁰ See *City of York v. Pennsylvania Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972) (the proponent of a merger has the burden to show that the merger will affirmatively promote the public interest); *Middletown Township v. Pennsylvania Pub. Util. Comm'n*, 482 A.2d 674, 682 (Pa. Comm. Ct. 1984) (the benefits and detriments of the merger will be measured under the public interest test as they impact on "all affected parties"); see also *Re Bell Atlantic Corp.*, 1999 WL 1565855, slip op. at 4 (Pa. PUC 1999) (stating that in a merger proceeding the Commission "must find that the proposed transaction is in the public interest, convenience, and necessity").

Settlement, ALJ held an evidentiary hearing, accepted testimony and exhibits, and required main and reply briefs from the parties in light of the opposition of one party to the Settlement); see also *Pennsylvania Pub. Util. Comm'n v. Pennsylvania Gas and Water Co.*, 74 Pa. PUC 569, 1991 WL 476322 (1991) (recognizing that while the Joint Petition for Settlement was not signed by all parties, the case had been fully litigated before settlement, and therefore all parties had their opportunity to provide evidence of record and had their due process rights protected). Indeed, contested settlements submitted prior to the submission of intervenor evidence should be treated as merely amended applications.

27. ALJ Rainey recognized in his March 28, 2000 Order the possibility of the need for evidentiary hearings and the filing of written testimony. See March 28, 2000 Order Revising Procedural Schedule of ALJ Rainey, at 2 ("After the filing of Replies to Objections or Comments, the presiding officer will determine whether it is necessary to hold evidentiary hearings. A second prehearing conference may be held, if necessary, for the purpose of establishing a new schedule for the filing of written testimony and holding evidentiary hearings."). As discussed below, because the record, and in some cases the law, fails to support finding that the Joint Petition is in the public interest, the Commission must either reject the Joint Petition or direct the Joint Petitioners to demonstrate through the submission of substantial evidence that the proposed Settlement is lawful and in the public interest.

IV. THE JOINT PETITIONERS HAVE FAILED TO DEMONSTRATE THAT THE SETTLEMENT IS CONSISTENT WITH APPLICABLE LAW, SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD, AND IN THE PUBLIC INTEREST.

28. In this case, the only evidence in the record is in support of the Merger Application as filed. No evidence was submitted with the Joint Petition. In addition, the procedural schedule of the proceeding has not advanced sufficiently to permit the submission of evidence in response to the Merger Application or supporting the positions asserted in the protests and prehearing memoranda submitted by the intervenors.¹¹ Thus, the Commission does not even have a body of evidence responsive to the Merger Application that it can weigh against that submitted with the Merger Application to determine if the provisions of the Joint Petition represent a reasonable accommodation of the parties' positions.¹² The Commission has here, in effect, a bare request for relief by some, but not all, parties to a proceeding that it cannot impose over the objections of the dissenting parties "except upon consideration of the whole record or such portions thereof as may be cited by any party and *as supported by and in accordance with the reliable, probative and substantial evidence.*" 66 Pa. C.S. § 332(b)(emphasis added).

¹¹ Indeed, the parties sought and received from ALJ Rainey extensions of the procedural schedule to postpone the submission of intervenor evidence citing the pendency of settlement discussions. *See supra*, n. 8.

¹² Of course, even in a fully litigated case, a contested settlement provision that differs substantially from either the relief requested in the Merger Application or proposed by intervenors cannot be approved, where nothing in the record suffices as "substantial evidence" to justify such a provision. Rather, before such a provision can be approved by the Commission, it must be supported independently by evidence submitted with or in response to the contested settlement.

29. In addition to lacking any evidentiary support, a number of the provisions of the Joint Petition are wholly unrelated to the proposed restructuring or merger. While some of these provisions may be consistent with intervenors' litigation positions, as evidenced by their protests and prehearing memoranda, that, by no means, renders them lawful or in the public interest. Indeed, PECO recognized the nature of some of these demands in the early stages of the proceeding, when it stated in its prehearing memorandum that:

The parties' Protests and Petitions enumerate various concerns and desires. PECO is confident that many of those concerns reflect a misunderstanding of the facts or PECO's intentions, or both, and can be amicably resolved through stipulation. As important, certain parties seem determined to inject wholly tangential 'issues' into the mix for the sole purpose of extracting concessions that have little or nothing to do with the Restructuring or the Merger. On that point, however, the Commission has spoken: matters that 'do not affect whether [the] merger will have an anti-competitive effect or will impair the technical, managerial or financial fitness of [the public utility and its ability] to continue to provide adequate service at just and reasonable rates' will not be heard. *Joint Application of PG Energy, Inc., et al.*, Docket No. A-3102200F002 (Order entered September 15, 1999, p. 7). Simply put, issues which are merely speculative, which can be raised in other Commission proceedings, or which are unrelated to the merger may not be raised in merger cases.

Jan. 13, 2000 Prehearing Conf. Mem. of PECO, at 6-7. However, as discussed below, the Joint Petitioners, including PECO, agreed in the Joint Petition on numerous provisions that have absolutely no support in PECO's Merger Application, which are wholly tangential to the proposed restructuring and merger, and which, absent further evidence and consideration regarding their potential effects, cannot be found to be in the public interest and accordingly must be rejected.

A. Rate and Reliability Provisions

30. The Settlement contains substantial rate reductions, and an extension of the cap on PECO's retail transmission and distribution charges, which are speculative and unsubstantiated.¹³ See Joint Petition at 8-10. Such rate reductions in the context of this proposed restructuring and merger are contrary to Commission policy. In *PG Energy, Inc.*, 1999 WL 1036580, slip op. (Pa. PUC 1999) (citing cases), the Commission restated its policy in merger proceedings that requests for reductions in rates and for pass-throughs and allocation of merger savings to ratepayers "does not address whether the merger itself is in the public interest but rather, . . . , is more properly addressed in a future ratemaking case when the savings are real and not speculative as they are now." Thus, the Commission rejected the OCA's "attempts to obtain future ratemaking concessions in a merger application proceeding instead of in a rate case." *Id.*

31. While the OCA here praises the \$200 million in rate reductions for customers' distribution rates from 2002 through 2005 that are "[o]f particular importance to the OCA[.]"¹⁴ OCA offers no evidence that such reductions are warranted or, even if such rate reductions were permissible under Commission

¹³ As stated in the Joint Petition, PECO has agreed to reduce its retail electric distribution rates by \$60 million annually beginning on January 1, 2002. See Joint Petition at 8. The Commission had previously approved of a \$60 million reduction for the duration of 2001. *Id.* Such \$60 million decrease will remain in effect until January 1, 2004, when the annual rate decrease will become \$40 million. *Id.* PECO will also extend the cap on its retail transmission and distribution charges agreed upon in PECO's 1998 Restructuring Settlement, which would otherwise expire on June 30, 2005, for an additional eighteen months, or through December 31, 2006. *Id.* at 10.

¹⁴ Statement in Supp. of the Office of Consumer Advocate, at 3 (filed Mar. 29, 2000).

policy, that they bear any relation to the only evidence in the case on merger savings.¹⁵ With no evidence in the record concerning the effect of the substantial rate reductions proposed in the Joint Petition, the Commission has no way of determining the effect such rate reductions could have on the level of service provided by PECO, or whether such reductions are based upon wholly speculative claims of savings associated with the merger with Unicom.

32. In addition, the Joint Petition establishes a complex set of reliability and service standard improvements that would appear more appropriate for a specific Commission investigation or rulemaking addressed to reliability and service standards, rather than a restructuring and merger proceeding. See Joint Petition at 13-18. PECO customers and other parties interested in reliability and service issues had no notice that these subjects would be addressed in this proceeding, nor is there any basis for the Commission to determine if the standards agreed to in the Joint Petition are appropriate. The relationship of these commitments to the transactions proposed in the Merger Application are wholly unexplained.

33. Moreover, the Joint Petition's rate cuts and rate cap extensions are facially inconsistent with these commitments to improve reliability and service standards. Even if they did bear some relation to the proposed restructuring and merger, the record contains no evidence as to how these commitments will be met, their cost, and whether these commitments are made to the detriment of other customer service functions. The Joint Petition leaves unexplained how it reduces

¹⁵ See Merger Application, PECO Statement No. 4 (Direct Testimony of T. Flaherty "Regarding Estimated Regulated Cost Savings").

PECO's distribution revenues by \$200 and freezes them for a total of 10 years (measuring from the effective date of the Electric Competition Act), yet leaves PECO with sufficient revenue to fund substantial reliability and service commitments. Nor does the Joint Petition provide the Commission with any basis for determining if some other tradeoff between rate reductions and service improvements is in the public interest.

34. Finally, the extension of the rate cap may be inconsistent with PECO's reliability obligations and its obligations to the PJM. In extending the rate cap, the Joint Petition may be placing more at risk than the profits of PECO's shareholders. FERC has specifically identified the need to construct additional transmission both to maintain reliability and to accommodate the increase in wholesale and retail competition.¹⁶ In addition, under the PJM Operating Agreement and the Transmission Owners Agreement, PECO, like all other transmission owners in the PJM, has an obligation to pay for and construct transmission facilities determined to be necessary by the PJM Office of Interconnection.¹⁷ Without further evidence concerning the effect of the rate cap extension on PECO's obligations, the Commission cannot find that such a rate cap extension is in the public interest.

¹⁶ See Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 810, 813-15 (Jan. 6, 2000) (detailing the stresses on the transmission grid as a result of increased wholesale and retail competition).

¹⁷ See Amended and Restated Operating Agreement of PJM Interconnection, LLC, as amended, Schedule 6, § 1.7; see also PJM Transmission Owners Agreement, as amended, § 7.

B. Nuclear Provisions

35. The Joint Petition also provides for limitations on the level of recovery through retail electric distribution rates of PECO's preexisting nuclear decommissioning costs. See Joint Petition at 10-13. PECO agreed in the Joint Petition that when it seeks to increase its annual nuclear decommissioning expense allowance above the base \$29.162 million annual accrual level used for the purpose of calculating its Nuclear Decommissioning Cost Adjustment Charge, it will under certain circumstances voluntarily forego recovery of \$50 million of its total decommissioning cost obligations, plus 5% of any additional increase in the annual accrual level above the base \$29.162 annual accrual level. See Joint Petition at 11. However, no evidence has been submitted to demonstrate the effect of such a concession on PECO's ability to decommission fully and safely the various nuclear facilities that are subject to this provision. The Commission cannot approve this provision unless it considers carefully whether the provision represents a correct balance between protecting consumers from the costs of nuclear decommissioning and protecting society (including some of these same consumers) from the dangers and (long-run costs) of an incomplete or under-financed decommissioning effort. There is no evidence in the record that the Joint Petitioners have chosen the correct balance. Until the parties have provided the Commission with an evidentiary basis for adopting the Joint Petitioners' proposal, it cannot be accepted.

36. In addition, PECO has agreed to fund a private nuclear monitoring group through its "Nuclear Monitoring and Waste Storage Agreement" entered into

with Eric J. Epstein.¹⁸ See Joint Petition at 12-13, and Appendix B. PECO has agreed not only to provide specific information and to provide several benefits to the EFMR Monitoring Group at its nuclear power plant, Peach Bottom Atomic Power Station, but has also agreed to provide funding to the group in terms of an “annual budget” of \$13,000. The Joint Petitioners, however, have provided no information concerning this group, why this group is entitled to information concerning PECO’s nuclear operations that other citizens may or may not be privy to, or why this group was selected instead of any other group for the same purpose. It is therefore unclear from the record whether such funding and the provision of such information is in the public interest.

C. Environmental Provisions

37. Through the Joint Petition, PECO has agreed to provide a direct grant of \$3.5 million to one environmental organization, Community Energy, Inc., “for its Pennsylvania Wind Energy Program.” Joint Petition at 22-23. In addition, PECO has agreed to contribute \$16 million to the Sustainable Development Fund (“SDF”) to construct and fund specific types of renewable energy sources outside of the process approved in the 1998 Restructuring Settlement, including \$12 million for new Pennsylvania wind facilities. See Joint Petition at 22-26.

38. There is no explanation as to why a specific group was chosen to receive at least \$3.5 million (and possibly up to \$15.5 million) in payments, other

¹⁸ PECO has specifically stated that the Nuclear Monitoring and Waste Storage Agreement entered into with Eric J. Epstein is referenced for informational purposes only, and that it does not seek approval of such Agreement from the Commission.

than perhaps the fact that the group intervened in the merger proceeding. This is not private litigation, however. The outcome of the case must be in the public interest, rather than advancing or rewarding any single group or individual. The Joint Petitioners should therefore be required to demonstrate that the \$19.5 earmarked for a specific group and technologies will benefit ratepayers as a whole, or whether such funds would be better utilized for some other purpose, such as further rate reductions or service improvements.

39. In addition, the Joint Petitioners should be required to demonstrate why the Commonwealth should not rely on the competitive market to determine the identity and quantity of renewable resources that customers are willing to support. Earmarked programs favoring a specific generation resource without regard to market forces is a product of the prior comprehensive regulation approach, not the competitive generation market mandated by the Electric Competition Act. It is reminiscent of the policies pursued under the Public Utility Regulatory Policies Act of 1978 ("PURPA"),¹⁹ for which Pennsylvania ratepayers will be paying for years. In addition, the direct market intervention represented by the Joint Petition is a significant departure from the measured and modest program established in the 1998 Restructuring Settlement. Accordingly, the Joint Petitioners should be required to provide evidence demonstrating what market failure justifies modification of the resolution so recently adopted in the 1998 Restructuring Settlement.

¹⁹ 16 U.S.C. § 2601, *et seq.*

D. Electric Generation Supplier Benefits

40. The Joint Petition contains a number of provisions designed specifically to benefit Electric Generation Suppliers (“EGSs”) that intervened in the proceeding. These provisions, however, have no apparent nexus to the impact of the proposed restructuring and merger. They appear to be “improvements” on CDS and supplier coordination provisions negotiated in the 1998 Restructuring Settlement. The Commission should require the Joint Petitioners to provide an evidentiary link between the impact of the proposed restructuring and merger and the changes proposed by the Joint Petition. In the absence of their ability or willingness to do so, the changes they seek, if warranted by events subsequent to the 1998 Restructuring Settlement, should be raised with the parties to that settlement or groups growing out of the settlement process. One such group could be participants in the PECO CDS collaborative that considered the rules for CDS service last year.²⁰ In either case, all of the parties that participated or had an interest in the development of the CDS and Supplier Coordination Tariff rules would be able to participate, instead of only those who participated in this proceeding that, as noted above, has no obvious connection to the CDS and supplier coordination issues.

41. In addition, of particular concern in the Joint Petition are the substantial revisions to the character of CDS. These revisions would appear to be inconsistent with both the Electric Competition Act and the 1998 Restructuring

²⁰ See *Re Full Settlement Competitive Provider of Last Resort*, R-00973953, P-00971265, 1999 WL 632808 (Pa. PUC Apr. 30, 1999).

Settlement. CDS, as its name implies, was designed to promote the transition from traditional monopoly service by substituting another supplier for part of PECO's Provider of Last Resort ("PLR") load. Because this was to be a default service, it was not intended to be a forced assignment of customers to an EGS — Section 39 of the 1998 Restructuring Settlement provided for that possibility if certain customer choice thresholds were not met. Rather, it was intended to be a substitute utility service for customers that for whatever reason did not exercise their right to choose an EGS. In other words, CDS was designed to provide residential PLR customers, the only customers to which the CDS provisions of the 1998 Restructuring Settlement apply, a substitute for the utility, and not an EGS. Only in that sense could it arguably be consistent with the statute which provides customers with the right to choose — and the right not to choose. See, e.g., 66 Pa. C.S. § 2807(d)(1).²¹ The Joint Petitioners should therefore be required to explain how the new rules in the Joint Petition are consistent with the Electric Competition Act, why these provisions are not simply the forced assignment of PLR customers to an EGS, and how the proposed revised allocation of responsibility between PECO and the selected CDS provider will work. They must also demonstrate that this new construct, as well as other proposed changes to CDS, are in the public interest.

²¹ *George v. Pennsylvania Public Utility Commission*, 735 A. 2d 1282, 1287-89 (1999), which upheld the Commission's power under the Electric Competition Act to approve an alternative PLR, did not reach this issue. The CDS provision of the Metropolitan Edison Company and Pennsylvania Electric Company retail restructuring settlements upheld in *George* was essentially identical to the CDS provision of the PECO retail restructuring settlement. *George* did not reach the issue of whether the Electric Competition Act authorized assigning a portion of a utility's PLR load to what is effectively EGS service.

E. Large Customer Agreements

42. The Joint Petition also contains specific agreements with specific large customers that have not been demonstrated to be just and reasonable, and non-discriminatory. See Joint Petition at 38. In particular, PECO has offered Amtrak the option of, and asked the Commission to approve, executing a lump-sum buyout of its Transition Charges. See *id.* and Appendix F. PECO has also offered, and has asked the Commission to approve, the grant to the City of Philadelphia of additional rights and options under its Rule 4.6 contract. See *id.* and Appendix G. Nowhere in the record, however, is there any evidence demonstrating how the proposed merger affects these large customers, why these specific arrangements are necessary to undo any problem or issue created by the proposed restructuring and merger, and why the grant of such special deals would be just and reasonable and non-discriminatory.

43. While the above list of provisions in the Joint Petition which contain no support in the record is not exhaustive, it does provide good examples of the reason why the Joint Petition must be rejected in the absence of a showing that such provisions are lawful and a further evidentiary demonstration that they are in the public interest. Approval of the Joint Petition without such a demonstration would not only be inconsistent with applicable law requiring adequate justification, especially in a contested case, it could potentially jeopardize all parties affected by the provisions of the Joint Petition, including PECO's customers, shareholders, and as described below, other Pennsylvania utilities.

V. THE COMMISSION SHOULD CONDITION THE SETTLEMENT TO PREVENT ITS USE BY OTHER PARTIES TO JUSTIFY RELIEF IN SUBSEQUENT PROCEEDINGS.

44. Even if the Commission determines that the Joint Petition is lawful and in the public interest, it should condition its approval on the agreement by the Joint Petitioners that the Joint Petition will not be used to justify relief in subsequent proceedings before the Commission involving other Pennsylvania public utilities, including efforts to reopen their restructuring settlements. Such a condition is necessary to protect the due process rights of other Pennsylvania public utilities and to prevent a misuse of the Commission's policy favoring settlements of large and complex proceedings.

45. PPL acknowledges, and indeed has benefited from, the Commission's policies encouraging settlements of contested cases, particularly in large, complex proceedings. Such settlements, however, have become the predominant means by which major cases such as the present case are resolved. Even though most settlements, including the Joint Petition, provide that they may not constitute or be cited as controlling precedent in future proceedings,²² in practice the reality is quite different. Settlements have become one of the principal means by which various

²² The Joint Petition states:

Acknowledging that it is expressly understood and agreed that the Settlement constitutes a negotiated resolution solely of issues addressed herein, the Merger and the Corporation Restructuring, the Joint Petitioners agree that this Settlement shall not constitute or be cited as controlling precedent in any other proceeding, including a proceeding involving a merger or an acquisition by another Pennsylvania electric utility.

Joint Petition at 41.

interest groups advocate specific proposals. Once they secure agreement to a favored settlement provision by a utility anxious to avoid a contested proceeding, they seek to characterize that settlement provision as the “model” which all other utilities must follow. All too often utilities that did not actively participate in the settled proceedings find themselves forced to defend against provisions that are justified on the basis that they already were agreed to or implemented by another utility.

46. Various Joint Petitioners have already made it known that they intend to pursue this strategy with the instant settlement, even though, like most other settlements, the Joint Petition contains the usual statement that it “shall not constitute or be cited as controlling precedent in any other proceeding[.]” Thus, for example, PennFuture, in its Statement in Support, applauds the “unprecedented” nature of the \$32 million in support that will be provided by PECO for renewable energy projects, and describes the Joint Petition as a “landmark Settlement.”²³ Eric Joseph Epstein states that “all of the issues defined in the proceeding paragraph [summarizing the various issues he advocated in the settlement negotiations] were fully addressed; and, in some instances, *established a constructive and innovative paradigm for other Pennsylvania communities and nuclear utilities . . .*”²⁴ Similarly, OCA states with respect to the changes in CDS that “this agreement is important in

²³ Statement of PennFuture in Supp. of Joint Pet. for Sett., at 1-2 (filed Mar. 30, 2000).

²⁴ Statement in Supp. of Joint Pet. for Sett. of Eric Joseph Epstein, at 2 (filed March 28, 2000) (emphasis added).

working toward a successful competitive default service in *Pennsylvania*.²⁵ MAPSA also explicitly sets forth its intended use of the Joint Petition in its letter in support of the Joint Petition. It notes that Paragraph 46 of the Joint Petition, regarding the release of additional customer historical billing data in addition to that provided under the 1998 Restructuring Settlement, “will provide a *model* for the development of competition throughout Pennsylvania and the nation.”²⁶ MAPSA goes on to state that certain other provisions in the Joint Petition concerning the retail market “will provide a model for the market through Pennsylvania and the nation.”²⁷

47. As a result of the above (and despite the stated “protection” in the Joint Petition), PPL may be placed in the position of defending against relief proposed in future proceedings by the same or similar parties based upon the fact that a prior settlement with a different public utility contains such concessions. Utilities such as PPL will therefore have no choice but to treat all similar or potentially similar proceedings as if they were rulemakings and participate fully in any settlement negotiations in order simply to protect their interests. This not only makes settlements more difficult to achieve, but will increase the costs to participants in Commission proceedings and to the public. It also poses a very practical threat to the due process rights of PPL and other Pennsylvania utilities. Without adequate notice, important decisions could be made at the settlement

²⁵ Statement in Supp. of the Office of Consumer Advocate, at 6 (filed Mar. 29, 2000) (emphasis added).

²⁶ Statement of MAPSA in Supp. of Joint Pet., at 1-2 (filed Apr. 7, 2000) (emphasis added).

²⁷ *Id.* at 2.

bargaining table of one utility's proceeding that profoundly affect the rights of other utilities' customers and shareholders. By the time these other utilities are given the opportunity to address the specific relief requested, the issue would have been either determined or framed in such a way that they would bear the burden of demonstrating that the "pattern" settlement should not apply to them.

48. Of particular concern is the possibility that parties will seek to reopen the retail restructuring settlements and amend provisions to make them consistent with the changes to the 1998 Restructuring Settlement proposed in the Joint Petition. As the Commission knows, those restructuring settlements were achieved after difficult negotiations and litigation and involved many parties that are not parties to the instant proceedings. Interests of finality and stability also warrant the protection sought here.

49. Thus, while the Commission's policy of encouraging settlements remains sound, the adverse effects upon other Pennsylvania electric utilities must be addressed. The Commission can avoid such results by conditioning its approval of the proposed settlement on the agreement of the parties that:

- (1) no party to the settlement will propose that a provision of the Joint Petition be adopted in any other proceeding based on the fact that such provision was included in the Joint Petition; and
- (2) no party to the settlement will seek to reopen another Pennsylvania public utility's settlement of its retail restructuring proceeding to modify any provision of such settlement in order to make it consistent with a provision of the Joint Petition.

In addition, the Commission should declare a policy that it will not entertain evidence or arguments by participants in proceedings before the Commission justifying relief

on the grounds that such relief was incorporated in a settlement with another public utility. This policy will not preclude parties from advocating similar relief, provided that they can justify that relief based wholly on legitimate evidentiary or policy reasons apart from the fact that it was included in a prior settlement. This policy will, however, permit other Pennsylvania utilities to address proposed relief on the merits of their own cases, rather than a compromise of another utility's proceeding. By providing such conditions, the Commission can ensure that its policy encouraging settlements will not have the adverse, unintended effects of harming Pennsylvania public utilities as described above. It will also protect the due process rights of those utilities to a decision on the merits.

VI. CONCLUSION AND PRAYER FOR RELIEF


For the reasons stated herein, PPL hereby requests that the Commission either: (1) reject the Joint Petition on the grounds that the Joint Petitioners have failed to demonstrate that it is consistent with applicable law, supported by substantial evidence in the record, and in the public interest; or (2) establish a procedural schedule directing the Joint Petitioners to set forth the evidentiary and legal basis upon which they claim that the Joint Petition is lawful and in the public interest. In addition, the Commission should condition any approval of the Joint Petition on the agreement of the parties: (1) not to propose that a provision of the Joint Petition be adopted in any other proceeding based on the fact that such provision was included in the Joint Petition; and (2) not to seek to reopen another Pennsylvania public utility's settlement of its retail restructuring proceeding to modify

any provision of such settlement in order to make it consistent with a provision of the
Joint Petition.

Respectfully submitted,

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By: 
Attorneys for PPL Electric
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Dated: April 12, 2000

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PECO Energy Company, :
Pursuant to Chapters 11, 19, 21, 22 :
and 28 of the Public Utility Code, for :
Approval of (1) A Plan of Corporate :
Restructuring, Including the Creation of :
a Holding Company and (2) The :
Merger of the Newly Formed Holding :
Company and Unicom Corporation :

Docket No. A-110550 F0147

RECEIVED

MAY 08 2000

CERTIFICATE OF SERVICE PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the foregoing documents upon the participants, listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

Via Federal Express

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Dated this 8th day of May, 2000

A handwritten signature in black ink, appearing to read "Donald A. Kaplan". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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COMMONWEALTH OF PENNSYLVANIA
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IN REPLY PLEASE
REFER TO OUR FILE

May 9, 2000

ORIGINAL

James J. McNulty, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of PECO Energy Company to Chapters 11,
19, 21, 22 and 28 of the Public Utility Code, for
Approval of (1) A Plan of Corporate Restructuring,
Including the creation of a Holding Company and
(2) the Merger of the Newly Formed Holding
Company and Unicom Corporation
Docket No. A-110550F0147

**DOCUMENT
FOLDER**

DOCKETED
MAY 10 2000

Dear Secretary McNulty:

The Office of Trial Staff ("OTS") is in receipt of PECO Energy Company's
Petition for Certification of the Record to the Commission for Decision Pursuant to 66
Pa. C.S. §335(a). OTS does not object to this Petition.

Sincerely,

Kenneth L. Mickens
Senior Prosecutor

41042

KLM:pae
c: Parties of Record

RECEIVED
SECRETARY'S BUREAU
00 MAY - 9 AM 9:29

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Application of PECO Energy :
Company to Chapters 11, 19, 21, :
22 and 28 of the Public Utility Code, :
for Approval of (1) A Plan of :
Corporate Restructuring, including :
the creation of a Holding Company :
and (2) the Merger of the Newly :
Formed Holding Company and :
Unicom Corporation :

Docket No.
A-110550F0147

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing, the **Letter**, dated
May 9, 2000, either personally, by fax upon the persons addressed below:

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410413

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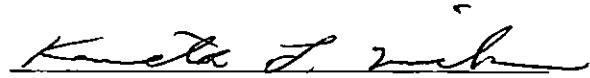
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Kenneth L. Mickens
Senior Prosecutor
Office of Trial Staff

Docket No. A-110550F0147
Date: May 9, 2000

ORIGINAL

May 9, 2000



James McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

RE: Application of PECO Energy
Docket No. A-110550F0147

DOCUMENT FOLDER

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the PennFuture Parties' Statement in Support of Petition of PECO Energy Company for Certification of the Record.

Copies of these documents have been served on all parties of record as indicated on the attached Certificate of Service.

Sincerely,

Peter Meadows Adels
General Counsel
PennFuture

cc. Administrative Law Judge Rainey

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MAY 09 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

41

ORIGINAL
BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAY 09 2000

APPLICATION OF PECO ENERGY :
COMPANY, PURSUANT TO CHAPTERS :
11, 19, 21, 22 AND 28 OF THE PUBLIC :
UTILITY CODE, FOR APPROVAL :
OF (1) A PLAN OF CORPORATE :
RESTRUCTURING, INCLUDING THE :
CREATION OF A HOLDING COMPANY :
AND (2) THE MERGER OF THE NEWLY :
FORMED HOLDING COMPANY AND :
UNICOM CORPORATION :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPLICATION
DOCKET NO. A-110550F0147

Statement in Support of the
Petition of PECO Energy Company
for Certification of the Record

DOCKETED

MAY 11 2000

DOCUMENT
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Citizens for Pennsylvania's Future, d/b/a PennFuture, Liz Robinson, Ron

Celentano, Roger Clark, Julie Dugery, Lonnie Golden, June Cairns, Felicia Coward,

Gertrude Weaver, Darryl Jones, and Donna Henry, (hereafter the "PennFuture Parties"),

Protestors and Intervenors in the referenced proceeding, hereby submit the following

Statement in Support of the Petition of PECO Energy Company ("PECO") for

Certification of the Record.

1. On May 2, 2000, PECO filed a Petition for Certification of the Record pursuant to 66 Pa. C.S. Sec. 335(a).

2. The PennFuture Parties support the Petition as it reduces the burden on the parties that result from continuing to litigate this settled case.

3. The PennFuture Parties are willing to agree along with the other parties to waive Briefs and Reply Briefs. The PennFuture Parties oppose any extension of time or expansion of subjects for Briefing in this case, including that requested by PPL, as all

parties already have filed documents that essentially constitute Briefs of the very few and uncomplicated issues in this proceeding. In the event that Briefing is retained, the PennFuture Parties would be likely to support a narrowing of the issues and reduction in the page limits for briefing to minimize the repetition of arguments already fully available in the record.

4. The PennFuture parties note that we strongly opposed PECO's first January 25, 2000 Petition to Certify the record in this case as inappropriate at the time proposed. In stark contrast, it is in the public interest to conclude this proceeding promptly so that the benefits of the settlement may accrue to the public expeditiously.

Respectfully submitted,



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Attorney for the PennFuture Parties

Dated: May 9, 2000

Certificate of Service

I hereby certify that I have this day served the foregoing documents on the following in the Matter of PECO Energy Company's Application For Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation by hand delivery, overnight delivery, or U.S. mail.

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Dated: May 10, 2000



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CITY COUNCIL

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COUNCILMAN-AT-LARGE

**DOCUMENT
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Law & Government
Vice Chairman
Streets and Services
Member
Rules
Labor and Civil Service
Transportation and Public Utilities
Public Safety
Education
Ethics

May 10, 2000

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-18
Commonwealth Avenue and North Street
Harrisburg, Pennsylvania 17105-3265

RE: Answer of Councilman David Cohen to PECO Energy Company's Petition for Certification of the Record Pursuant to 66 Pa. C. S. A. Sec. 335 (A) in the Matter of Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code for Approval of (1) a Plan for Corporate Restructuring, Including the Creation of a Holding company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket No. A-110550F0147

Dear Secretary McNulty:

On behalf of Councilman Cohen, enclosed for filing are an original and three copies of the Councilman's Answer to PECO Energy Company's Petition for Certification of the Record.

Sincerely,

Robert Jaffe

Robert Jaffe, Esq.
Counsel for Councilman Cohen

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cc. Judge Charles E. Rainey, Jr.
All parties

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company, :
Pursuant to Chapters 11, 19, 21, 22 :
and 28 of the Public Utility Code for :
Approval of (1) a Plan for Corporate : Docket No. A-110550F0147
Restructuring, Including the Creation :
of a Holding Company and (2) the :
Merger of the Newly Formed Holding :
Company and Unicom Corporation :

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**ANSWER OF COUNCILMAN DAVID COHEN
TO PECO ENERGY COMPANY'S PETITION
FOR CERTIFICATION OF THE RECORD TO
THE COMMISSION FOR DECISION
PURSUANT TO 66 PA.C.S. SEC. 335(A)**

**DOCUMENT
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PECO Energy has asked the Commission to certify the record in the instant case directly to the Commission, thus effectively dispensing with the role of the administrative law judge in the matter. Councilman Cohen strongly opposes the petition.

This is the second such petition that PECO has filed. In denying the first petition, this Commission noted that its standard administrative procedures should not be casually waived since:

these standard administrative procedures tend to narrow the scope of issues presented for Commission-level review, allow for the correction of errors that may occur at the first stage of agency adjudication and, overall, promote excellence in this agency's deliberative process. Therefore, a petitioner suggesting a departure from these procedures must provide a compelling reason to do so. Order, March 2, 2000, p. 4

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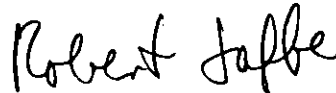
In the prior instance, the Commission found that no compelling reason for a waiver had been shown. It noted that the cases cited by PECO in support of its petition were inapposite for a number of reasons, including an absence in the

proceeding of a statutory mandate to accomplish a particular goal, and lack of a settlement proposal. It also noted the lack of assent by all parties.

Only one of these factors has changed since the Commission's decision, the development of a settlement. However, two parties have not agreed to the settlement, and many have not agreed to the proposed accelerated procedure. Moreover, no compelling policy reason for a speedy resolution has been given, since, as noted, there is no statutory mandate in favor of this merger application. Indeed, Councilman Cohen vigorously asserts that the proposed merger runs directly counter to the policy of the Commonwealth to foster retail electric supply competition, since such competition requires many providers in the marketplace, rather than a reduction in their number. Furthermore, he asserts, supported by expert testimony, that this merger poses substantially higher health risks, and costs associated with them, from heightened reliance by the new company on nuclear energy from old and unreliable nuclear plants.

For all the above reasons, it is clear that PECO has not carried its burden to show a compelling reason to alter the normal administrative procedures in this matter. Those procedures should continue to govern the resolution of this matter to its conclusion.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert Jaffe". The signature is written in a cursive, slightly slanted style.

Robert Jaffe
Counsel to Councilman Cohen

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of PECO Energy Company :
Pursuant to Chapters 11, 19, 21, 22 and 28 :
of the Public Utility Code For Approval :
of (1) a Plan of Corporate Restructuring, :
including the Creation of a Holding :
Company and (2) the Merger of the Newly :
Formed Holding Company and :
Unicom Corporation :**

Docket # A-110550F0147

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Certificate of Service

I hereby certify that I have this day served a true and correct copy of the Answer of Councilman David Cohen to PECO Energy Company's Petition for Certification of the Record in the instant on the following active participants and parties of record by first class mail, postage paid.

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Dated: May 10, 2000.

ALJ APPEARANCE SHEET

Hearing Report

Docket No.	A-110550F0147	Check Those Blocks Which Apply:				
Case Name	Application of PECO Energy	Prehearing Held	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
Company		Hearing Held	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
		Testimony Taken	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
		Transcript Due	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
		Hearing Concluded	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
Location	Philadelphia, PA	Further Hearing Needed	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
Date	May 10, 2000	Estimated Add'l Days				
ALJ	Charles E. Rainey, Jr.	RECORD CLOSED *	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
Reporting Firm	Commonwealth Reporting	DATE MAY 24, 2000 *				

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 MAY 15 2000
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Briefs to be Filed	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
DATE		MAY 17, 2000 - Initial Briefs MAY 24, 2000 - Reply Briefs		
Bench Decision	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO

REMARKS: * *The record will close with the filing of Reply Briefs on May 24, 2000.*

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OFFICE OF C.A.L.J.
PUBLIC UTILITY COMMISSION

DOCKETED
MAY 16 2000

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Incomplete Information may Result in Delay of Processing

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Docket No.	A-110550F0147	Check Those Blocks Which Apply:				
		Prehearing Held	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Case Name	Application of PECO Energy	Hearing Held	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Company		Testimony Taken	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
		Transcript Due	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
		Hearing Concluded	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Location	Philadelphia, PA	Further Hearing Needed	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Date	May 11, 2000 MAY 10, 2000	Estimated Add'l Days				
ALJ	Charles E. Rainey, Jr.	RECORD CLOSED	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Reporting Firm	Commonwealth Reporting	DATE				
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		DATE				
		Bench Decision	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
		REMARKS:				

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