



PECO ENERGY

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February 23, 2000

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Assistant General Counsel

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

Dear Mr. Downey:

Enclosed, please find PECO's CONFIDENTIAL response to AMTRAK-I-7, and AMTRAK-I-D-19. Also, find PECO's response to AMTRAK-I-D-11 and AMTRAK-I-28.

Very truly yours,

Paul R. Bonney
Assistant General Counsel

EEF

/rhs

Enclosure

cc: James J. McNulty, Secretary (cover letter & certificate of service only)
Certificate of Service

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.

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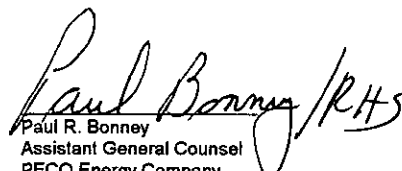
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Dear Mr. Mickens:

Enclosed, please find PECO's response to OTS-11.

Very truly yours,

Paul Bonney/rhs
Paul R. Bonney
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Enclosure

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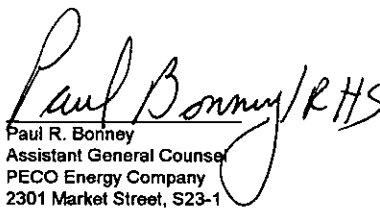
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Dear Mr. Downey:

Enclosed, please find PECO's response to AMTRAK-I-10.

Very truly yours,

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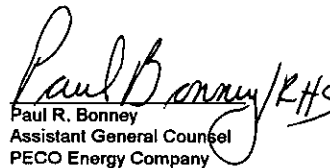
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Dated: February 25, 2000

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February 25, 2000

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VIA FEDERAL EXPRESS

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FEB 25 2000

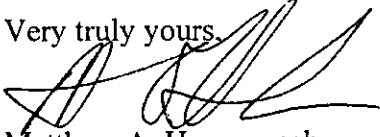
Re: Application of PECO Energy
Docket No. A-110550F0147

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Secretary McNulty:

Enclosed for filing are the original and four copies of Mid-Atlantic Power Supply Association's Motion to Compel Responses to Discovery Requests. Please date-stamp one of the copies and return it to me in the enclosed, self-addressed, stamped envelope. Thank you.

EEF

Very truly yours,

Matthew A. Hamermesh

Enclosures

cc: Hon. Charles E. Rainey, Jr. (via hand delivery)
Paul R. Bonney, Esquire (via hand delivery)
Thomas P. Gadsden, Esquire (via hand delivery)
certificate of service (via first-class mail)

74

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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FEB 25 2000

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 :
Merger of the Newly Formed Holding :
Company and Unicom Corporation :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU
Application Docket No. A-110550F0147

ORDER

AND NOW, this _____ day of _____, 2000, upon consideration of Mid-Atlantic Power Supply Association's Motion to Compel Responses to Interrogatories, it is hereby ORDERED that said Motion is GRANTED.

Applicant PECO Energy Company is hereby directed to answer the Interrogatories set forth in Mid-Atlantic Power Supply Association's Third Set of Interrogatories and Document Requests within ten (10) days.

Charles E. Rainey, Jr.
Administrative Law Judge

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 No. A-110550F0147
Merger of the Newly Formed Holding :
Company and Unicom Corporation :

**MID-ATLANTIC POWER SUPPLY ASSOCIATION'S MOTION TO
COMPEL RESPONSES TO DISCOVERY REQUESTS**

Protestant/Intervenor Mid-Atlantic Power Supply Association ("MAPSA") hereby moves the Commission for an Order compelling Applicant PECO Energy Company ("PECO") to answer the Interrogatories set forth in MAPSA's Third Set of Interrogatories and Requests for Documents to PECO Energy Company in this matter. In support of its Motion, MAPSA states as follows:

1. PECO filed its Application on November 22, 1999, seeking approval from the Public Utility Commission under the Public Utilities Code for a restructuring of PECO and a merger with Unicom Corporation.

2. On December 20, 1999, MAPSA filed its Protest and Petition to Intervene in this proceeding. At the Prehearing Conference held on January 20, 2000, MAPSA was granted authority to participate as an active party in this proceeding.

3. PECO has publicly stated its intention to acquire utilities or utility assets located in the geographical region between Chicago and Philadelphia. PECO has expressed these sentiments, inter alia, in a article reported in the Philadelphia Inquirer, dated November 24, 1999. A true and correct copy of this article is attached hereto as Exhibit A.

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4. Accordingly, in its First Set of Interrogatories and Requests for Production of Documents served upon PECO on January 6, 2000, MAPSA asked, in Interrogatory 18, "Do PECO and Unicom have any plans, general or specific, however tentative and initial, to acquire any entities located in the geographical area between PECO's and Unicom's present operating regions, including, without limitation, the states of Indiana and Ohio? If so, describe any such plans in detail." PECO responded that "PECO and Unicom currently have no plans to acquire any entities located in the geographical area between PECO's and Unicom's present operating regions. To the extent that such plans are announced publicly, PECO will update this response." A true and correct copy of Interrogatory 18 and PECO's answer thereto is attached hereto as Exhibit B.

5. The Office of the Consumer Advocate subsequently served a similar interrogatory: "Please indicate whether any PECO Energy official has, in the period since the merger was announced, publicly expressed an interest in acquiring other utilities or power plants between Philadelphia and Chicago. Please identify any such utilities or power plants to which PECO Energy has given specific consideration." See Interrogatory OCA-V-1. PECO responded:

Yes. Such interest was expressed in a very general sense. No specific utilities or power plants have been given specific consideration. To the extent that the information changes in the future, PECO would consider that information Highly Confidential and Proprietary and it will not be provided to the parties. PECO will inform the parties of any publicly available information pertinent to this request.

A true and correct copy of the Office of the Consumer Advocate's Interrogatory and PECO's answer thereto is attached hereto as Exhibit C.

6. In order to follow up on PECO's responses to these interrogatories, MAPSA served its Third Set of Interrogatories, which sought more detailed information concerning PECO's plans to acquire public utilities and utility assets located between Chicago and Philadelphia, on February

11, 2000. A true and correct copy of MAPSA's Third Set of Interrogatories and Requests for Documents is attached hereto as Exhibit D.

7. On Monday, January 21, 2000, MAPSA received PECO's Objections to MAPSA's Third Set of Interrogatories. A true and correct copy of PECO's Objections is attached hereto as Exhibit E.

8. PECO objected to MAPSA's Interrogatories on three grounds: (1) the Interrogatories are beyond the scope of permissible discovery; (2) the Discovery Requests are "overbroad, unreasonably burdensome and would require an unreasonable investigation"; (3) the information sought in the Interrogatories is confidential and disclosure thereof will cause PECO commercial harm.

Scope of Discovery

9. The information sought in MAPSA's Third Set of Interrogatories is well within the scope of permissible discovery.

10. The Public Utilities Commission's Rules of Procedure provide that "a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 52 Pa. Code § 5.321(c).

11. PECO contends that the information sought is beyond the scope of permissible discovery because it is not relevant to the Application. PECO notes that the Application concerns only the proposed restructuring and merger, not future acquisitions. If PECO in the future decides to acquire other assets of the sort described in MAPSA's Third Set of Interrogatories, PECO

contends that such acquisitions will be the subject of regulatory proceedings at that time, and therefore they are not an appropriate subject for this proceeding.

12. PECO's contention is erroneous, however, as the information sought is directly relevant to an analysis of the effect of the merger itself on market power in the retail electricity market.

13. In particular, PECO's evidence in support of the Application explicitly assumes that PECO and Unicom are not geographically connected to conclude that the merger will not effect market power, an assumption that will be undermined by evidence that PECO has plans to or has considered purchasing utilities located between Chicago and Philadelphia. William H. Hieronymus, PECO's expert on market power and the competitive effects of the merger, specifically relies on the geographical separation of PECO and Unicom in concluding that the merger will have no effect on market power. See Test. of William H. Hieronymus at 4, 5, 6, 7. Given this assumption, any information concerning PECO's plans concerning utilities located in the aforementioned region, however general and specific, tentative and initial, is highly pertinent to the question of the merger's likely effect on market power. Such information will be directly relevant to Mr. Hieronymus's testimony, and will provide a basis for challenging it. Accordingly, PECO itself has placed in issue its plans to acquire utility assets in the area between Philadelphia and Chicago.

14. Furthermore, as a general matter, PECO's acquisition of other utilities in the geographical region between Philadelphia and Chicago will have at least some effect on market power.

15. PECO's response to this more general argument -- that the effects of any future acquisitions on market power can be reviewed in regulatory proceedings relating to those

acquisitions -- is mistaken. Such proceedings possibly will not involve the Pennsylvania PUC, as it may not have jurisdiction over acquisitions by the merged entity of utilities in Indiana and Ohio. See In re Bell Atlantic Corp. and NYNEX Corp. Merger, Docket No. M-00960814 (Pa. P.U.C. Jan. 24, 1997) (PUC has no jurisdiction over acquisition, by a non-jurisdictional affiliate of a regulated company, of assets or stock of or from a company outside the PUC's jurisdiction). Since the Pennsylvania PUC may not have a chance to review the effect of such transactions in the future, these matters can and should be considered in the present proceeding.

16. Accordingly, the information sought in MAPSA's Third Set of Interrogatories is well within the permissible scope of discovery.

Unduly Burdensome

17. MAPSA's Third Set of Interrogatories is not overbroad or unduly burdensome.

18. PECO complains that the interrogatories constitute a "fishing expedition," seeking information about "possibilities."

19. To the contrary, the Interrogatories seek a narrowly focused categories of information, relating to any plans PECO has considered concerning acquisition of assets in a designated region.

20. Furthermore, all PECO would have to do to locate such information would be to inquire of its employees whether they have any knowledge of such plans relating to the specified region. Such an inquiry would not be unduly burdensome.

21. For instance, one of the Interrogatories seeks communications PECO has received from utilities located between Philadelphia and Chicago concerning the possibility of acquiring them or their assets. See MAPSA-III-2. PECO should have little difficulty in locating such information.

22. Likewise, some of the Interrogatories, see, e.g., MAPSA-III-3 & -4, seek information

concerning communications PECO has received from outside consultants relating to plans to acquire assets of the described sort. Such a request can hardly be called a "fishing expedition;" PECO has already identified the relevant outside consultants, and it should not be difficult or in any way burdensome to determine what proposals or other information PECO has received from them relating to the specified subject matter.

23. The remaining Interrogatories should likewise be easy to answer. Several of them seek such straightforward information as the identity of utilities located between Philadelphia and Chicago.

24. Accordingly, as the Interrogatories are sufficiently focused and not unduly burdensome to answer, PECO's objection that MAPSA's Third Set of Interrogatories are unduly burdensome and overbroad is unwarranted.

Confidential Information

25. PECO's assertions that the information sought is confidential and that its disclosure may cause PECO commercial harm do not provide a sufficient basis for refusing to answer the Interrogatories.

26. The PUC's Rules of Procedure provide explicit, clear and detailed rules concerning the disclosure of allegedly confidential information in discovery. The Rules provide two levels of protection for confidential or proprietary information, which are available by means of a protective order. See 52 Pa. Code § 5.423.

27. The first level involves limiting disclosure of the information only to participants' counsel and outside experts, but not to the participants themselves. Such protection is available only if the participant from whom discovery is sought "demonstrates that the potential harm to the

participant of providing the information will be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process." 52 Pa. Code § 5.423(a). The Rules also identify certain factors relevant in determining the propriety of such protection. See 52 Pa. Code § 5.423(a)(1)-(5).

28. The second level of protection involves a total prohibition on disclosure, and is available only in "extraordinary circumstances." See 52 Pa. Code § 5.423(d). In order to prevent disclosure completely, the participant from whom discovery is sought must establish that a total prohibition is "necessary to avoid severe and extreme prejudice." 52 Pa. Code § 5.423(d).

29. PECO has not sought any of the protections specifically identified in the PUC's Rules as available for the information it wishes to remain confidential. It has not sought a protective order, and has made no effort to show that it will suffer harm as a result of disclosure, or that such harm outweighs the public interest in free and open access to administrative proceedings. Rather, PECO has simply made naked, unsupported assertions concerning the allegedly harmful effects of disclosure. PECO's mere suggestions are insufficient to prove that it will suffer substantial harm. Furthermore, PECO has made absolutely no effort to balance its supposed harm against the public interest in disclosure or even to discuss the relevance of the public interest. PECO has not met, and indeed has made no effort to meet, its burden of establishing that it is entitled to the protections set forth in section 5.423.

30. At all events, and without conceding that any protection available under section 5.423 is necessary or appropriate, PECO has not, and cannot, demonstrate that it is entitled to a total prohibition on disclosure under section 5.423(d). This section, as noted above, permits a total prohibition on disclosure only where the participant seeking to prevent disclosure shows that

"extraordinary circumstances" exist and that such a prohibition is "necessary to avoid severe and extreme prejudice." None of PECO's asserted bases for withholding the information come close to "severe and extreme prejudice."

31. PECO's concern that disclosure will have a "chilling effect on confidential discussions concerning potential business transactions" should be addressed by the Confidentiality Agreement that the participants in this proceeding have already signed. A true and correct copy of the Confidentiality Agreement signed by MAPSA's counsel and PECO is attached hereto as Exhibit F. Given the Confidentiality Agreement, disclosure of the information sought in MAPSA's Third Set of Interrogatories is unlikely to have a chilling effect on confidential business discussions.

32. PECO's concern that disclosure of the "highly confidential and proprietary competitive information that could be used to the commercial advantage of the Applicant's competitors" is also not a basis for completely withholding the requested information. Section 5.423, discussed above, is specifically designed to deal with this problem, and PECO has not taken advantage of it. Even to the extent that limiting disclosure to counsel and outside experts is appropriate under section 5.423(c) to limit this alleged competitive harm, such a limitation on disclosure is clearly sufficient to address PECO's concern. Section 5.423(c) was intended by the PUC to be, and is, sufficient to prevent the assertedly confidential and proprietary information from being used to the commercial advantage of PECO's competitors.

33. Finally, PECO's claim that disclosure raises concerns about stock prices, securities laws and insider trading is equally baseless. The Confidentiality Agreement mentioned previously should provide adequate protection against use of the disclosed information in violation of securities laws. To the extent it does not, the parties could enter an agreement specifically prohibiting trading

in securities based on the disclosed information. Such a stipulation would eliminate any potential for harm to PECO resulting from the disclosure of the information sought in MAPSA's Third Set of Interrogatories.

34. Accordingly, PECO has not demonstrated that any limitation on disclosure is justified under section 5.423.

WHEREFORE, MAPSA respectfully requests that the Commission enter an Order in the form attached hereto requiring PECO to answer the Interrogatories set forth in MAPSA's Third Set of Interrogatories within ten (10) days.

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Dated: February 25, 2000

BEFORE THE
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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 February 25, 2000 I served a true and correct copy of the foregoing Protestant/Intervenor Mid-Atlantic Power Supply Association's Motion to Compel Responses to Discovery Requests on the following active participants and parties of record by first-class mail, postage prepaid (hand delivery to the Applicant and its counsel):

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

Matthew A. Hamermesh

PHILADELPHIA INQUIRER

Tuesday, November 2, 1999 Page: D01
Section: BUSINESS

Edition: SF
Graphics: PHOTO

AN EVEN BIGGER PECO AND UNICOM? THE TWO MERGER HOPEFULS SAY THEY MIGHT BUY OTHER UTILITIES. THEY EXPECT SWIFT PUC APPROVAL OF THEIR DEAL.

By Wendy Tanaka, INQUIRER STAFF WRITER

Peco Energy Co. and its proposed merger partner, Unicom Corp. of Chicago, may try to acquire other energy companies even before their own deal is closed and approved by regulators, the chairmen of the companies said yesterday.

Peco chairman Corbin McNeill, in a meeting with The Inquirer editorial board, said the planned new company wanted to get even bigger and hoped to buy other utilities and power plants between Philadelphia and Chicago as soon as it can.

Industry observers said NiSource Inc., Cinergy Corp., FirstEnergy Corp., and DQE Inc. in Coraopolis, Pa., are some of the likely takeover targets. John Rowe, Unicom's chairman and chief executive officer, declined to say whether Peco or Unicom had been talking to those companies.

"They are all fine companies," Rowe said yesterday.

McNeill also said he expected the \$8 billion Peco-Unicom merger to receive swift Pennsylvania Public Utility Commission approval.

McNeill said Peco planned to file its merger document with the

PUC by midmonth and anticipated the commission's blessings 12 months later.

"In my view, we have a clear enough case that we ought to be able to do pretty well," McNeill said. "Some of these things take 18 to 20 months [to receive state regulatory approvals]. I don't expect much legislative input on this. The PUC will move along expeditiously in considering it."

PUC spokesman Kevin Cadden said Peco's time frame was in line with the commission's. "Generally, proceedings of this nature take at least 12 months to complete," he said.

Cadden noted that in reviewing the merger between the two utility behemoths, "the commission will do what it has to do to make sure there is no degradation of quality of service for Peco customers."

The two companies agreed in September to merge, a move that would create the largest energy company in the nation with five million customers in Pennsylvania and Illinois. Revenues from the combined companies would be more than \$12 billion.

The merger also needs to pass muster with the Nuclear Regulatory Commission and the Securities and Exchange Commission. Peco spokesman Michael Wood said those agencies should receive merger filings this month or next.

The Illinois Commerce Commission, which regulates utilities in that state, is not required to approve the merger.

Irwin Popowsky, Pennsylvania's consumer advocate, said his office planned to file a formal protest with the PUC to make sure the merger benefits Peco ratepayers.

"If this merger is going to be approved, it has to show affirmative benefits for Pennsylvania consumers," Popowsky said. "It is not

enough that nobody is harmed by this, but that we in Pennsylvania are better off with this."

He said the merger's benefits could come in the form of lower rates and better service, such as restoring power faster after outages occur.

And despite Peco's contention that its distribution and transmission business would continue to be operated locally after the merger, Popowsky said it was unclear where major business decisions would be made.

"Will they be somebody in an office tower in Chicago, or will people in 2301 Market Street [Peco's headquarters] be able to make those decisions?" Popowsky said.

Despite having different backgrounds and temperaments, Rowe said he and McNeill had seen eye-to-eye on many industry issues.

"I have made my reputation mostly in New England . . . where to be 'green' was everything," Rowe said. "Corbin has been a nuclear turnaround king. But the thing we noticed is that we would go to meetings of electric industry trade organizations and we would find ourselves voting together. . . . We've been watching each other for four to five years. You come to know who you think like and who you don't."

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MAPSA-I -18 Question:

Do PECO and Unicom have any plans, general or specific, however tentative and initial, to acquire any entities located in the geographical area between PECO's and Unicom's present operating regions, including, without limitation, the states of Indiana and Ohio? If so, describe any such plans in detail.

MAPSA-I -18 Answer:

PECO and Unicom currently have no plans to acquire any entities located in the geographical area between PECO's and Unicom's present operating regions. To the extent that such plans are announced publicly, PECO will update this response.

Responsible Witness: Richard G. White

OCA-V-1 Question:

Please indicate whether any PECO Energy official has, in the period since the merger was announced, publicly expressed an interest in acquiring other utilities or power plants between Philadelphia and Chicago. Please identify any such utilities or power plants to which PECO Energy has given specific consideration.

OCA-V-I Answer:

Yes. Such interest was expressed in a very general sense. No specific utilities or power plants have been given specific consideration. To the extent that the information changes in the future, PECO would consider that information Highly Confidential and Proprietary and it will not be provided to the parties. PECO will inform the parties of any publicly available information pertinent to this request.

Responsible Witness: Richard G. White

|

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 No. A-110550F0147
Merger of the Newly Formed Holding :
Company and Unicom Corporation :

**PROTESTANT/INTERVENOR MID-ATLANTIC
POWER SUPPLY ASSOCIATION'S THIRD SET OF
INTERROGATORIES AND REQUESTS FOR
DOCUMENTS TO PECO ENERGY COMPANY**

Pursuant to 52 Pa. Code §§ 5.341, 5.342 and 5.349, Mid-Atlantic Power Supply Association ("MAPSA"), a protestant and intervenor in the above matter, hereby propounds the following third set of interrogatories and requests for documents to PECO Energy Company ("PECO"), to be answered by those officers, employees or agents of PECO as may be cognizant of the requested information and who are authorized to answer on behalf of PECO. MAPSA reserves the right to propound additional interrogatories and to request additional documents as and if additional information is required. In accordance with 52 Pa. Code §§ 5.342(d) and 5.349(d), the interrogatories are to be answered in writing under oath and served upon the undersigned, and the documents are to be furnished to the undersigned, within twenty days of service.

DEFINITIONS

As used in these Interrogatories and Requests for Documents (together, "Discovery Requests"), the following terms will have the following definitions:

1. "Identify," when used in reference to a document, means to state:
 - (a) the title of the document;

- (b) the subject matter of the document;
- (c) who prepared the document;
- (d) when the document was prepared;
- (e) who received the document or a copy of it;
- (f) who the custodian of the document is; and
- (g) where the document is located.

2. "Identify," when used in reference to an individual, means to state his or her:

- (a) full name and any aliases;
- (b) present or last known home address and phone number;
- (c) present or last known business address and phone number;
- (d) employment, title and job description at all times relevant to this proceeding;
- (e) present or last known employment, title and job description; and
- (f) relation, if any, to any party to this proceeding.

3. "Identify," when used in connection with an artificial person such as a corporation or partnership, means to state:

- (a) its full name;
- (b) all names under which it is known or operates;
- (c) its form of organization;
- (d) the address of its principal office;
- (e) its relationship with Applicant or any other party in the matters involved in this proceeding; and
- (f) the name and address of each of the agents who acted for it with respect to the matters involved.

4. When used in reference to a communication, the words "identify" and "state the identity of" mean to state:

- (a) the date on which such communication occurred;
- (b) the identity of the person(s) by whom it was made;
- (c) the identity of the person(s) to whom it was made;
- (d) in the case of an oral communication, the place at which it was made;
- (e) in the case of an oral communication, the identity of all persons in attendance, or before whom it was made; and
- (f) a description of its contents.

5. "Document" is used in the broadest possible sense and shall mean, without limitation, any written, typed, photostated, photographic, computerized, recorded or otherwise reproduced communication or representation, whether consisting of letters, words, numbers, pictures, sounds or symbols, or any combination thereof. This definition includes copies or duplicates of documents contemporaneously or subsequently created that have any nonconforming notes or other markings. Without limiting the generality of the foregoing, the term "document" includes, but is not limited to, correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, records of telephone calls, studies, analyses, contracts, agreements, working papers, summaries, statistical

statements, financial statements or work papers, accounts, analytic records, reports and/or summaries or investigations, trade letters, press releases, transcripts of speeches, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes or minutes of meetings, or other communications of any type, including inter and intra-office communications, electronic mail, deleted electronic mail that is retrievable, questionnaires, surveys, charts, graphs, phonograph recordings, films, tapes, computer and word processor disks, data cells, drums, printouts, all other data compilations from which information can be obtained, and any preliminary versions, drafts or revisions of any of the foregoing. Each document shall be produced in its entirety, without abbreviation, redaction or expurgation, including all attachments, appendices, exhibits, lists, schedules or other matters at any time affixed thereto.

6. "Communication" shall include all means by which information is conveyed by one person or entity to another, and shall include oral and written communications.

7. "Describe in Detail" shall mean to:

- (a) describe fully by reference to underlying facts rather than by conclusions of fact or law;
- (b) particularize as to (i) time, (ii) place and (iii) manner; and
- (c) identify all persons with knowledge of and all documents relating to the matter to be described.

8. "Explain" shall include, in addition to providing an explanation of the matter requested, an identification of all persons with knowledge of and all documents and communications relating to such matter, and a description in detail of any study, investigation, exploration or other examination of the matter.

9. "Relating to" shall mean in any way referring to, pertaining to, evidencing, showing, describing, or reflecting.

10. "Person" or "persons" shall mean natural persons as well as firms, partnerships, associations, institutions, joint ventures, corporations, governmental entities, administrative agencies, professional associations, corporations and every other organization of whatever sort.

11. The term "meeting" shall mean and include any assembly, convocation, conference (in person or by phone or other electronic means of transmission), encounter, or contemporaneous presence of two or more persons for any purpose, whether or not planned, arranged, or scheduled in advance, and whether or not the meeting was formal or informal or occurred in connection with some other activity.

12. The word "any" shall include "all" and vice versa.

13. The word "or" shall include "and" and vice versa.

14. Whenever used herein, the singular includes the plural and vice-versa. The masculine includes the feminine and neuter genders. The past tense includes the present tense when the clear meaning is not distorted by a change of tense.

15. "PECO," "Applicant," "You" and "Your" refers to PECO Energy Company and any predecessor, successor, subsidiary, division, affiliate, officer, director, employee, attorney, or agent of PECO Energy Company.

16. "Unicom" refers to Unicom Corporation, an exempt public utility holding company under section 3(a)(2) of the Public Utilities Holding Company Act, 15 U.S.C. § 79c(a)(2), organized and existing under the laws of the State of Illinois. "Unicom" shall also include any predecessor, successor, subsidiary, division, affiliate, officer, director, employee, attorney, or agent of Unicom Corporation.

17. "Application" refers to the 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, which is the subject of this proceeding, Docket No. A-110550F0147, before the Pennsylvania Public Utility Commission.

18. "Settlement" refers to the Full Settlement of PECO's Restructuring Plan in the proceeding captioned In re: Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al., Docket Nos. R-00973953 & P-00971265, which was tentatively approved on April 30, 1998, and finally approved on May 14, 1998.

INSTRUCTIONS

The following instructions are an integral part of these Discovery Requests, and apply to each of them:

1. If any Discovery Request shall contain subparagraphs designated (a), (b), (c), etc., each subparagraph shall constitute a separate Discovery Request.

2. Each of the Discovery Requests is a continuing one. If, after serving an answer, Applicant obtains or becomes aware of further information which enables Applicant to change or supplement such answer, Applicant is requested to serve a further answer changing or supplementing Applicant's initial answer.

3. If you contend or believe that a privilege or other protection enables you to withhold any information sought, you should:

- (a) state the nature of any privilege or doctrine claimed;
- (b) state each fact necessary to establish the applicability of any privilege

- claimed; and
- (c) state:
- (i) each person who communicated the information, to whom it has been communicated, and who otherwise has knowledge of it;
 - (ii) the date of the information; and
 - (iii) and the general subject matter of the information.

4. If you claim that any document or tangible thing requested to be identified or produced was in existence at one time but has been lost, discarded or destroyed, identify such document or thing as completely as possible including: (a) any explanation of what type of document or thing it was; (b) when and how it was lost or destroyed; (c) why it was disposed of or destroyed; (d) who knows or knew of its existence; (e) who lost or destroyed it; and (f) who knows its contents.

5. In the event that multiple copies of a document exist, produce each and every other copy on which appear any notations or markings or any sort not appearing on any other copy.

6. All documents produced pursuant to the Document Requests shall be organized in such a manner as to clearly indicate to which Document Request they are being produced.

7. If you encounter any ambiguity in construing a Discovery Request, or the definition or instruction relevant to the Request or Interrogatory, set forth the matter deemed "ambiguous" and set forth the construction chosen or used in responding to the request.

8. Unless otherwise stated, these Discovery Requests relate to the time period from 1998 to the present.

DISCOVERY REQUESTS

The following interrogatories concern PECO's response to Interrogatory MAPSA-I-118. In response to that Interrogatory PECO stated: "PECO and Unicom currently have no plans to acquire any entities located in the geographical area between PECO's and Unicom's present operating regions."

MAPSA-III-1 Does PECO or Unicom have any plans, general or specific, however tentative and initial, to acquire any transmission, distribution or generation assets located in the geographical area between PECO's and Unicom's present operating regions, including, without limitations, the states of Indiana and Ohio? If so, describe any such plans in detail.

MAPSA-III-2 Identify any communication PECO has had, direct or indirect, with any utility or other entity of the sort described in Interrogatory MAPSA-I-118, with regard to the possibility of acquiring or otherwise purchasing such entities or any or all of their transmission,

distribution or generation assets?

MAPSA-III-3 Identify any communication PECO has had with any individuals of the sort identified in Interrogatory MAPSA-I-11 concerning the possibility of acquiring entities or assets of the sort described in the preceding interrogatories and in Interrogatory MAPSA-I-118?

MAPSA-III-4 Identify any proposals, general or specific, however tentative and initial created by PECO, Unicom or any individuals of the sort identified in Interrogatory MAPSA-I-11, concerning the possibility of PECO and/or Unicom acquiring or otherwise purchasing any of the assets or entities of the sort described in the preceding Interrogatories and in Interrogatory MAPSA-I-118?

MAPSA-III-5 Have any employees of either PECO or Unicom considered, analyzed, or otherwise examined, in any way, no matter how general or specific, the possibility of acquiring or otherwise purchasing any assets or entities of the sort described in the preceding interrogatories and in Interrogatory MAPSA-I-118? If so, identify such employees, and describe their efforts and the results thereof.

MAPSA-III-6 Identify all entities and assets of the sort described in the preceding interrogatories and in Interrogatory MAPSA-I-118 which PECO or Unicom has considered acquiring or otherwise purchasing.

MAPSA-III-7 Identify all entities and assets of the sort described in the preceding interrogatories and in Interrogatory MAPSA-I-118 which PECO or Unicom might consider acquiring or otherwise purchasing

MAPSA-III-8 In response to Interrogatory OCA-V-1, PECO stated that its officials have expressed interest in acquiring entities and assets of the sort described in the preceding interrogatories and in Interrogatory MAPSA-I-118 "in a very general sense". Identify all entities and transmission, distribution or generation assets which are of the sort PECO officials have expressed an interest in acquiring "in a very general sense."

MAPSA-III-9 Identify and produce all documents relating to any of the preceding Interrogatories.

MAPSA-III-10 Identify all documents relating to, and all persons with knowledge of, the matters to which the preceding interrogatories refer.

MAPSA-III-11 Identify all persons who answered, assisted in answering, or in any other way contributed to the answering of these Interrogatories.

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Philadelphia, PA 19103-2921
215-963-5000
Fax: 215-963-5299

**Morgan, Lewis
& Bockius LLP**
C O U N S E L O R S A T L A W

Anthony C. DeCusatis
215-963-5034

February 18, 1999

VIA FEDERAL EXPRESS

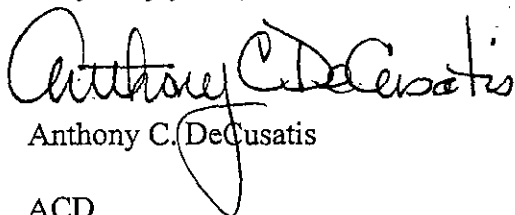
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building
New Filing Section, Room B-20
P.O. Box 3265
Harrisburg, PA 17105-3265

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-110550F0147

Dear Secretary McNulty:

Enclosed are an original and two copies of PECO Energy Company's ("PECO") Objections to Interrogatory (Set III) Nos. 2-11 of the Mid-Atlantic Power Supply Association ("MAPSA"). Pursuant to 52 Pa. Code §1.11(a)(2), the enclosed Objections shall be deemed filed with the Commission on the date hereof, when they were deposited with Federal Express, as shown on the delivery receipt. As evidenced by the enclosed Certificate of Service, copies of PECO's Objections have been served upon the Administrative Law Judge and all parties of record.

Very truly yours,


Anthony C. DeCusatis

ACD

cc: Per Certificate of Service

**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 : 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 OBJECTIONS
TO THE INTERROGATORIES (SET III) OF THE
MID-ATLANTIC POWER SUPPLY ASSOCIATION**

PECO Energy Company ("PECO" or the "Company"), pursuant to 66 Pa. C.S. § 333(d) and 52 Pa. Code §§ 5.342 and 5.361, hereby objects to Interrogatory (Set III) Nos. 2-11 of the Mid-Atlantic Power Supply Association ("MAPSA") and, in support of its objections, states as follows:

1. This proceeding involves a request, pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for approval of a plan of corporate restructuring, including the creation of a holding company, and the merger of the newly formed holding company with Unicom Corporation. The nature of PECO's request is set forth in detail in its Application filed with the Commission on November 22, 1999.

2. On February 11, 2000, MAPSA, a Protestant in this proceeding, served upon PECO its Set III Interrogatories, consisting of 11 separately-numbered questions. A copy of the Set III Interrogatories is attached as Appendix A to these Objections.

3. Interrogatory Nos. 2 through 8 seek to elicit all (1) communications by or among PECO or Unicom employees concerning the "possibility" of acquiring transmission, distribution or generation entities or assets in the geographic area between the PECO and Unicom; (2) any internal analyses or proposals considered by PECO or Unicom employees "however tentative and initial" concerning the "possibility" of acquiring any such entities or assets; and (3) detailed information regarding any expression of "interest" by PECO officials concerning the possibility of acquiring any such entities or assets. Interrogatory Nos. 9 and 10 seek production of "all documents" relating to the information requested in Interrogatory Nos. 2-8. Interrogatory No. 11 asks PECO to identify all persons who answer, assist in answering or contribute in any way to answering such Interrogatories.

4. PECO objects to MAPSA Interrogatory Nos. 2-10, and to No. 11 to the extent applicable to such prior Interrogatories, on the grounds that the requested information is entirely irrelevant to this proceeding and, in accordance with Section 333(d) of the Public Utility Code (66 Pa.C.S. §333(d)), is beyond the scope of permissible discovery. The matter presented for Commission approval in this case, and the subject of regulatory inquiry, is the proposed merger of PECO and Unicom, and not the possibility of future acquisitions, if any, by either of the Applicants. Moreover, any acquisitions along the lines described in the MAPSA Interrogatories would trigger the need for appropriate regulatory filings and could not be consummated without

required regulatory approvals specific to those transactions, all of which are outside the scope of this proceeding.

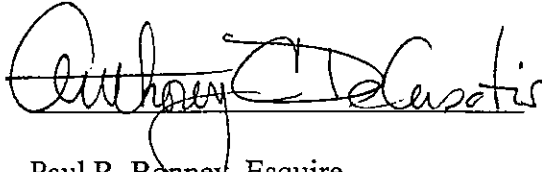
5. Additionally, PECO objects to MAPSA Interrogatory Nos. 2-10 and 11 on the grounds that they are overbroad, unreasonably burdensome and would require an unreasonable investigation. As noted above, the Interrogatories request detailed information about, *inter alia*, any communications by or among employees at any level within PECO and Unicom with regard to mere “possibilities” of future acquisitions as well as any analyses or consideration of such “possibilities,” without regard to how “tentative or initial” they may be. Such requests clearly fit the definition of an impermissible “fishing expedition.” Narrowly drawn requests for information about specific, established future plans of the Applicants that clearly pertain to the issues in this case (e.g., post-merger system reliability) may well be permissible. However, the Commission should not permit the discovery process to be used by competitors of PECO and Unicom to eavesdrop on internal conversations and discussions concerning subjects unrelated to this proceeding.

6. Even if it were assumed, *arguendo*, that some tangential connection were to exist between the MAPSA Interrogatories and the issues presented by the Application, the commercial harm to the Applicants from disclosing such information far outweighs any public interest (or parochial MAPSA interest) in turning it over. This commercial harm includes: (1) a chilling effect on confidential discussions concerning potential business transactions (e.g., who would consent to even speak with PECO or Unicom if the substance of their conversations were to be disclosed); (2) access to highly confidential and proprietary competitive information that could

be used to the commercial advantage of the Applicants' competitors, including MAPSA's membership (simply knowing who may or may not be interested in buying or selling is sensitive competitive information); and (3) disclosure of such information could have stock market and Securities and Exchange Commission rule implications, since it clearly constitutes "inside" information as to both the Applicants and any third-parties involved. Additionally, disclosure could raise other confidentiality issues, insofar as the information sought may be subject to confidentiality commitments to third parties that are not parties to the instant proceeding.

NOW, THEREFORE, for the reasons set forth above, PECO Energy Company objects to Interrogatory (Set III) Nos. 2-11 of MAPSA.

Respectfully submitted,



Paul R. Bonney, Esquire
Ward L. Smith, Esquire
Kent D. Murphy, Esquire
Assistant General Counsel
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P.O. Box 8699
Philadelphia, PA 19101-8699

Thomas P. Gadsden, Esquire
Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5234
(215) 963-5299 (FAX)

Counsel for PECO Energy Company

Dated: February 18, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy company
Pursuant to Chapter 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

CONFIDENTIALITY AGREEMENT

Supply Association

WHEREAS, Mid-Atlantic Power/ ("Intervenor") and PECO Energy Company
("PECO Energy") are parties to the above-captioned proceedings (hereinafter referred to
collectively as "party" or "parties"), and may or will be producing to each other (1) written
testimony and exhibits, and (2) documents and other information responsive to document
requests and other discovery pursuant to the Rules of Administrative Practice and Procedure
of the Pennsylvania Public Utility Commission ("discovery material"), and

WHEREAS, some of that material may be deemed by a party to be proprietary and
confidential,

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. This Confidentiality Agreement (the "Agreement") applies to all testimony and
exhibits, as well as to all discovery material, including documents and other products of
discovery, all information derived therefrom, including, but not limited to all copies, excerpts, or
summaries thereof, obtained by the parties pursuant to requests under 52 Pa. Code §5.349,
answers to requests for admission under 52 Pa. Code § 5.350, answers to interrogatories

under 52 Pa. Code §5.342, documents subpoenaed pursuant to 52 Pa. Code §5.373, and transcripts of depositions taken pursuant to 52 Pa. Code §§5.343 and 5.345

2. At the time any testimony, exhibit, or discovery material is produced or supplied by a party, the party may designate the testimony, exhibit, or discovery material as "CONFIDENTIAL" ("confidential material") by serving upon counsel a notice in writing of the party's intent to do so, describing with specificity any testimony, exhibit, or discovery material sought to be so designated. A list of such testimony, exhibits, or discovery material, containing descriptions sufficient for identification, shall be prepared and attached hereto as an Appendix, which shall be incorporated herein by reference. If testimony, exhibits, or discovery material are designated as "CONFIDENTIAL" on more than one occasion, a list shall be attached hereto for each such occasion as consecutively marked Appendices, beginning with Appendix No. 1.

3. Material that is designated as "CONFIDENTIAL" shall be stamped "Confidential" by the party designating it as such. Where only a part of data compilations or multi-page documents constitutes or contains confidential material, the party who designated the material as "CONFIDENTIAL" (the "producing party") insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages which contain confidential material. Confidential material that is provided in electronic form need not be stamped "Confidential" or designated as "Confidential" in the text of the material provided.

4. To the extent that the party receiving confidential information is subject to the Pennsylvania Right-To-Know Act, that party shall consider and treat the confidential material as within the exemptions from disclosure provided in the Pennsylvania Right-To-Know Act as

set forth in 65 P S Section 66.1(2), until such information is found to be non-confidential or non-proprietary.

5. Confidential material shall not be disclosed to any person, including the officers, directors, employees, representatives or agents of the party receiving the confidential material, except: (1) the party's counsel, (2) a person employed or retained by that counsel as an attorney, expert, legal assistant, law clerk, or secretary whose duties include assisting that counsel in the preparation or presentation of this case, and (3) a limited number of client representatives not to exceed three persons per party.

6. Every person to whom disclosure is made of any confidential material subject to this Agreement shall be informed of the terms of this Agreement, and shall agree to be bound by it, and his or her name shall be designated in writing to the producing party within five days of the date on which the first disclosure is made. Every such person shall also sign a Confidentiality Agreement Acceptance Form in the form attached hereto as Exhibit "A," copies of which executed forms must be supplied to the producing party. Copies of the executed forms shall be forwarded to the person who has signed this Agreement on behalf of the producing party. The parties agree that all such persons to whom confidential material is disclosed may use such confidential material solely to help prepare and present a party's case in this proceeding.

7. The party who receives confidential material shall retain the right to question the confidential or proprietary nature of confidential material and to question or challenge the admissibility of confidential material. If a challenge to the confidential nature of confidential material is made, the producing party shall retain the burden of demonstrating that the designation is appropriate.

8. The producing party shall retain the right to question or challenge the admissibility of confidential material; to refuse or object to the production of confidential material on any proper ground, including but not limited to irrelevance, immateriality or undue burden; and to seek additional measures of protection beyond those provided in this Agreement.

9. Any party may move the Commission for an Order that allows that party to disclose particular confidential material to persons not permitted access to such confidential material pursuant to the terms of this Agreement. Before moving the Commission for such an Order, however, a party, through his counsel, shall make a request to the attorneys for the producing party in writing, and thereafter, the attorneys of record shall meet or confer by telephone to attempt to resolve the request. Any resolution shall be set forth in writing and signed by the moving and producing parties' attorneys. Any Motion filed pursuant to this paragraph shall be accompanied by a certification by the attorney for the moving party that the moving party has complied with the provisions of this paragraph. While any Motion filed pursuant to this paragraph is pending, the moving party shall not disclose the confidential material in question to any persons not permitted access to such confidential material pursuant to the terms of this Agreement.

10. The parties agree to investigate reasonable alternatives before proposing to place into the public record any deposition, brief, memorandum, written discovery material, or other writing that: (1) refers to, discusses, or directly relates to, confidential material, or (2) has any such confidential material affixed thereto as an exhibit or otherwise. If a party determines that it cannot agree to any reasonable alternative to public disclosure of any such writing, the

party shall file any such writing under seal. Counsels' copies of all such writings shall be subject to the provisions of this Agreement concerning disclosure and use.

11. If any party includes material designated by that party as "CONFIDENTIAL," or references thereto that disclose the matter designated as "CONFIDENTIAL," in any unsealed filing of its own to the Commission, that party waives the protection provided by this Agreement with respect to such confidential material, with the exception that, for testimony and exhibits designated as "CONFIDENTIAL," the producing party does not waive any protections provided by this Agreement by including the confidential material to the Commission as part of its Application, testimony, or exhibits.

12. Any party who believes that another party has violated or intends to disclose or use any confidential material in a manner prohibited by this Agreement may move the Commission for an Order imposing appropriate sanctions on the party allegedly in violation of this Agreement, and/or directing the adverse party to refrain from such disclosure or use when appropriate. The parties agree that the Commission shall have the authority to adjudicate such a dispute, and agree to be bound by whatever determination the Commission makes.

13. This Agreement shall continue to be binding throughout and after the conclusion of proceedings in the above-captioned matter.

14. The parties agree that this Agreement, which consists of six pages and fourteen numbered paragraphs, may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same

Agreement



Attorney for Intervenor
Joseph A. Dworetzky
Matthew A. Hamermesh
HANGLEY ARONCHICK SEGAL & PUDLIN
One Logan Square, 27th Floor
Philadelphia, PA 19103

2-11-00
Date

Kurt D. Murphy
Kent D. Murphy
Assistant General Counsel
2301 Market Street, S23-1
Philadelphia, PA 19103
Attorney for PECO Energy Company

2/15/00
Date

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Objections to MAPSA's Interrogatories (Set III) on the following persons in the manner provided in 52 Pa. Code § 1.54.

John Hanger, Esquire
212 Locust Court, Suite 410
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(Counsel for Citizens for Pennsylvania's Future)

Peter Meadows Adels, Esquire
Charles McPhedran
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(Counsel for Citizens for Pennsylvania's Future)

Christopher B. Craig, Esquire
Senate Democratic Appropriations Committee
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(Counsel for Senator Furno)

Eric Joseph Epstein, Esquire
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email: eepstein@igc.apc.org
(Pro Se)

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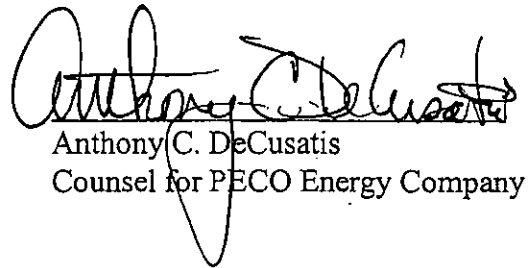
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Dated: February 18, 2000



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February 29, 2000

FEB 29 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

FedEx

ORIGINAL

James McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room 206
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of PECO Energy Company's Answer in Opposition to Mid-Atlantic Power Supply Association's Motion to Compel Responses to Discovery Requests. As proof of filing, please date stamp and return the enclosed copy of this letter in the return envelope.

Sincerely,

Kent D. Murphy
Assistant General Counsel

DOCUMENT FOLDER

Enclosures

cc: Honorable Charles E. Rainey Jr. (Hand Delivery)
Matthew A. Hamermesh, Esq. (Hand Delivery)

KDM/mtg

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FEB 29 2000

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 :
Merger of the Newly Formed Holding Company :
and Unicom Corporation :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. A-110550F0147

PECO ENERGY COMPANY'S ANSWER IN OPPOSITION TO
MID-ATLANTIC POWER SUPPLY ASSOCIATION'S MOTION
TO COMPEL RESPONSES TO DISCOVERY REQUESTS

DOCKETED

MAR 02 2000

Presiding Administrative Law Judge Charles E. Rainey, Jr.

PECO Energy Company ("PECO"), pursuant to the pre-hearing order dated January 28, 2000 and 52 Pa. Code § 5.342(e)(1), hereby submits its answer in opposition to Mid-Atlantic Power Supply Association's Motion to Compel Responses to Discovery Requests, filed February 25, 2000 ("MAPSA Motion"). For the reasons set forth below, PECO requests the presiding administrative law judge to deny the MAPSA Motion. The information sought by MAPSA: 1) is irrelevant and beyond the scope of permissible discovery; 2) would require PECO to engage in an unreasonable and overly broad, burdensome investigation; and 3) would create commercial harm to PECO and Unicom that far outweighs the limited MAPSA self-interest in obtaining the information.

DOCUMENT
FOLDER

I. BACKGROUND

1. This proceeding involves PECO's request, pursuant to Chapters 11, 19, 21, 22, and 28 of the Public Utility Code, for approval of a plan of corporate restructuring, including the creation of a holding company, and the merger of the newly formed holding company with Unicom Corporation. ("Application").

2. MAPSA is a consortium of energy suppliers, which supply energy and energy related products and services throughout the Mid-Atlantic region, Pennsylvania, and the PECO electric service territory, markets in which PECO and PECO affiliates compete. MAPSA members are therefore direct competitors with PECO in the retail and wholesale markets in which PECO competes.

3. Through discovery in this proceeding, PECO has received and responded to more than five hundred data requests and requests for production of documents. Until the filing of the MAPSA Motion, PECO had resolved all discovery-related issues through cooperation and mutual resolution.

4. On February 11, 2000, PECO received MAPSA Interrogatory Set III, containing eleven data requests and requests for production of documents. ("MAPSA Set III"). See MAPSA Motion, Exhibit D. Certain of these requests would require identification and disclosure of:

- (a) "any communication PECO has had ... with any entity [located between PECO's and Unicom's present operating regions], with regard to the possibility of acquiring or otherwise purchasing such entities or any or all of their transmission, distribution or generation assets" (MAPSA-III-2);
- (b) "any communication PECO has had with any [accountants, investments bankers, financial advisers, underwriters, indenture trustees, and consultants] concerning the possibility of acquiring entities of the sort described in [other interrogatories] and MAPSA-I-I18" (MAPSA-III-3);
- (c) "any proposals, general or specific, however, tentative and initial created, by PECO, Unicom, or any [bankers, financial advisers, underwriters, indenture trustees, and consultants] concerning the possibility of PECO and/or Unicom acquiring or otherwise purchasing any of the assets or entities described in the preceding Interrogatories and in Interrogatory MAPSA-I-I18)" (MAPSA-III-4);
- (d) the employees of PECO or Unicom who have "considered, analyzed, or otherwise examined, in any way, no matter how general or specific, the possibility of acquiring or otherwise purchasing any assets or entities of the sort described in the preceding interrogatories and in Interrogatory MASP A-I-I18", and describe their efforts and results thereof (MAPSA-III-5);

- (e) "all entities and assets of the sort described in the preceding interrogatories and in Interrogatory MAPSA-I-118 which PECO or Unicom has considered acquiring or otherwise purchasing" (MAPSA-III-6);
- (f) "all entities of the sort described in the preceding interrogatories and in Interrogatory MAPSA-I-118 which PECO or Unicom might consider acquiring or otherwise purchasing" (MAPSA-III-7);
- (g) "all entities and transmission, distribution or generation assets which are of the sort PECO officials have expressed an interest in acquiring "in a very general sense" (MAPSA-III-8); and
- (h) all documents related to the preceding interrogatories (MAPSA-III-9).

MAPSA-III-10 and MAPSA-III-11 request the identity of the persons having knowledge of the matters to which the preceding interrogatories refer and the identity of all individuals that contributed to the preparation of the response.

5. On February 14, 2000, counsel for PECO informed MAPSA's counsel that PECO objected to MAPSA-III-2 through and including MAPSA-III-11. PECO also offered to explore alternatives to the questions (limited admissions or factual stipulations) which would not require PECO, in effect, to disclose highly confidential and proprietary, competitive trade information. MAPSA's counsel later informed PECO that it had rejected the alternative discovery means offered by PECO and that MAPSA would require the requests to be answered. In the same conversation, counsel for PECO indicated that PECO would file the appropriate written objections.

6. PECO served its written objections on February 18, 2000. Therein, PECO explained that the requested information: 1) is irrelevant and beyond the scope of permissible discovery; 2) would require an overly broad and unreasonably burdensome investigation; and 3) if disclosed, would cause PECO commercial harm that far outweighed any public interest (or parochial MAPSA interest). See MAPSA Motion, Exhibit E.

II. STANDARD

7. Section 5.321 of the Commission's Regulations, 52 Pa. Code §5.321(b), provides in pertinent part:

(b) *Scope Generally.* Subject to this subchapter, a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking such discovery or to the claim or defense of another party or participant ... It is not ground for objection that the information will be admissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

III. THE MAPSA MOTION

8. MAPSA does not deny in its Motion that PECO has a strong commercial and proprietary interest in maintaining the confidentiality of the information sought by MAPSA. However, MAPSA claims that: 1) the requests are "well within the scope of permissible discovery" (MAPSA Motion at Paras.9-16); 2) the requests are "not overbroad or unduly burdensome" (MAPSA Motion at Paras. 17-24; and 3) disclosure would not cause PECO commercial harm (MAPSA Motion at Paras. 25-34).

IV. THE INFORMATION SOUGHT BY MAPSA IS IRRELEVANT AND NOT REASONABLY CALCULATED TO LEAD TO ADMISSIBLE EVIDENCE.

9. The subject interrogatories and data requests, if compelled for disclosure, would require PECO and Unicom to disclose highly cherished corporate secrets concerning the potential business dealings of two companies that are currently immersed in the highly competitive energy business. As noted at paragraph 4, *supra.*, MAPSA requests the identity of all entities (with utility or generation assets located between Philadelphia and Chicago) with whom PECO has made initial inquiries concerning acquisitions, to whom PECO has made an offer or proposal concerning potential acquisitions, and about whom PECO has received

information concerning the possibility of acquisitions. In addition, if compelled, PECO and Unicom would be required to disclose all of the proposals, and all communications its employees and agents have made concerning efforts to purchase or acquire distribution, transmission, and generation companies or assets located between Philadelphia and Chicago.

10. PECO submits that the information requested by MAPSA in MAPSA-III-2 through MAPSA-III-11 is entirely irrelevant to the matters posed in these application proceedings. While the information may be useful to such competitors as MAPSA's membership, and possibly stock investors, speculation about events which may or may not occur at some indefinite time in the future is no basis upon which an application before this Commission should be adjudged.

11. This issue was decided under analagous circumstances in *Application of Citizens Utilities Water Company of Pennsylvania and Application of Philadelphia Suburban Water Company* (Docket Nos. A-211070F007 and A-212370F0050), wherein Administrative Law Judge Debra Paist, on December 2, 1999, issued an Order, a copy of which is provide as Appendix A. In that proceeding, which involved Citizens' contested Application for authority to provide service in a new territory and a competing Application by Phildadelphia Suburban, Judge Paist excluded from evidentiary consideration an executory, unconsummated agreement by Citizens' to sell its water works property to another utility and, thereby, rejected arguments by Philadelphia Suburban that Citizens, following such a sale, would no longer have the ability to serve the new area. ("A dismissal cannot be based on speculation about events which may or may not occur at some indefinite time in the future.") In addition, Judge Paist denied Citizens' attempt to introduce evidence of the technical and financial fitness of the utility to whom it had agreed to sell its water works property: ("Citizens' offer to present the affidavit of a Pa-American representative is base on speculation about events which may or may not occur at some indefinite time in the future.") Judge Paist's reasoning applies with

even greater force in this dispute, where the information MAPSA seeks from PECO and Unicom involves inquiries, proposals, information exchanged and internal communications about the mere possibility of future transactions which have not risen to the level of a written agreement and may never reach that point.

12. MAPSA's argument that the requested information is "well within the scope of permissible discovery" relies wholly on three patently defective points:

- a) "the information sought directly relevant to an analysis of the effect of the merger itself on market power in the retail electricity market." (MAPSA Motion at Para. 12);
- b) the Application explicitly assumes that PECO and Unicom are not geographically connected to conclude that the merger will not effect market power, an assumption that will be undermined by evidence that PECO has plans to or has considered purchasing utilities located between Chicago and Philadelphia (MAPSA Motion at Para. 13); and
- c) as a general matter, PECO's acquisition of other utilities in the geographical region between Philadelphia and Chicago will at least have some effect on market power (MAPSA Motion at Paras. 14-15).

13. The defect in MAPSA's first argument is facially apparent. The "information sought" by MAPSA does not concern the "merger itself". Rather, it concerns potential acquisitions that may or may not ever occur. Potential transactions do not affect: 1) the restructuring and merger proposed by PECO and Unicom; and 2) do not affect retail market power considerations relevant to the proposed merger and restructuring, since neither the merger nor the restructuring are contingent on those potential transactions.

14. In addition to Judge Paist's recent decision in Citizens, the Federal Energy Regulatory Commission provides additional persuasive precedent on the lack of relevance that speculation concerning the market impact of future transactions has to a merger application properly before the agency. In this respect, FERC, as does this Commission, applies the five-step United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, in analyzing the effect of mergers on competition. Inquiry Concerning the

Commission's Merger Policy Under the Federal Power Act; Policy Statement, Docket No. RM96-6-000, III FERC Stats. and Regs. ¶¶ 31,044, at 30,119-120, 30,129 (1996). An inspection of this five-step test reveals that none of those steps lend themselves to consideration of speculation concerning the market impact of uncertain future transactions. Id. at 30,129.

15. Indeed, the FERC, in a proceeding involving a PECO affiliate's proposed acquisition of Nine-Mile Point Unit 1, recently held that market power matters concerning the then recently announced Unicom and PECO merger "are outside the scope of this proceeding." AmerGen Energy Company, 89 FERC ¶¶ 61,125 N. 12 (1999).

16. Similarly, the FERC has been critical of parties' which have suggested that the Commission base its analysis on speculation concerning possible future transactions or any basis other than "credible forward-looking analysis" and the "facts presented". Northern States Power Company, 90 FERC ¶¶ 61,020, at 61,134 (January 12, 2000); PG&E Corp and Valero Energy, 80 FERC ¶¶ 61,041, at 61,134 (1997); Wisconsin Energy Corp. and Edison Sault Electric Co., 83 FERC ¶¶ 61,359 (1998)(rejecting as overly speculative inclusion in merger analysis of transmission capability that applicants might be able to control in the future).

17. Taking this precedent as a guide, since the information sought by MAPSA in this matter could only lead to wanton speculation concerning the possible market impact of potential future transactions, the interrogatories to which PECO has objected are not relevant nor reasonably calculated to lead to admissible evidence.

18. Removing speculation concerning potential future transactions from a merger analysis also brings certainty to the analytical process. To require otherwise, the agency's task would be fraught with endless speculation concerning the possibility that the applicant may be considering a transaction that might affect the agency's market power analysis. Therefore,

PECO submits that the matters MAPSA seeks to review are not relevant to the retail market power issues presented in the transaction posed for approval by PECO in this case and not reasonably calculated to lead to admissible evidence.

19. MAPSA's second "within scope" argument is equally unpersuasive (see MAPSA Motion at Para. 13). PECO agrees that the credibility of Mr. Hieronymus' opinion can be measured against the assumptions upon which it is based. Yet, as the FERC has agreed in reviewing transactions submitted for its approval, the relevant market power analysis should be limited to how the current marketplace will be affected by the transaction proposed in the application pending before the agency, and not speculation concerning potential future transactions. Critical analysis of Mr. Hieronymus' opinion therefore should not be based on speculation concerning what the marketplace might look like if some other transaction took place¹.

20. Finally, MAPSA's third "within scope" argument basically requests the Commission to require PECO to disclose all of its corporate acquisition secrets based on the possibility that the Commission may not have jurisdiction over some potential, future transaction (MAPSA Motion at paras. 14 and 15). In essence, the elasticity of MAPSA's logic effectively rebounds against its own premise by concluding that the requested information might concern a non-jurisdictional transaction. Thus, MAPSA seeks to protect the Commission from its own jurisdictional limitations, by basing its decision on speculation over the market power implications of transactions that may never occur or, even if one does, may not be reviewable by the Commission. Nowhere in its motion, however, does MAPSA attempt to tie the requested information to the transactions presented by the instant Application: PECO's

¹ Moreover, while not conceding relevance, PECO has already admitted in discovery that it has no "plans concerning utilities located in the geographical region between PECO's and Unicom's present operating regions", however tentative or initial. (See MAPSA Motion, Exhibit B). Thus, any information concerning PECO's acquisitions efforts that amount to less than a "plan" is even less pertinent to the matter at hand and therefore not germane to Mr. Hieronymus' opinion.

restructuring and the merger with Unicom. The Commission should not attempt to hamstring the transactions before it based on one party's belief that some future transaction might be outside of the Commission's jurisdiction.²

V. THE INFORMATION REQUESTED IS OVERLY BROAD AND WOULD REQUIRE AN UNDULY BURDENSOME EFFORT ON THE PART OF PECO.

21. Full and complete responses to the questions posed by MAPSA would require PECO and Unicom to

- a) to identify and disclose "any communication PECO has had, direct or indirect" with any entity concerning potential acquisitions of transmission, distribution or generation assets located between PECO's and Unicom's present operating regions (MAPSA-III-2, 3);
- b) identify and disclose any "proposals, general or specific, however tentative and initial created by PECO, Unicom or any other individuals in other MAPSA interrogatories, concerning potential acquisitions (MAPSA-III-4, 5) ;
- c) identify entities or assets which PECO "has considered", "might consider acquiring or purchasing", or in which PECO is interested in acquiring "in a very general sense" (MAPSA-III-6, 7, 8);

22. MAPSA incorrectly dismisses PECO's objection that the information requested by MAPSA would be unduly burdensome. Responses to these questions would involve the following:

- a) requesting information from numerous individuals from each company, and outside parties, that have as part of their job responsibility matters related to potential strategic transactions, corporate development and corporate planning for PECO or Unicom;

² In this respect, the Commission is certainly aware that material transactions involving the holding company structure proposed by PECO will be subject to scrutiny by at least one or more of the following: the United States Department of Justice under the Hart-Scott-Rodino Act; the Federal Energy Regulatory Commission under the Federal Power Act; the Securities and Exchange Commission under the Public Utility Holding Company Act; the Commission itself under the Pennsylvania Public Utility Code; and, to the extent it involves a state-regulated public utility outside of Pennsylvania, the state commission having proper jurisdiction.

- b) interviewing the same individuals concerning every communication they may have had, or analyses they may have developed, or proposal they may have put together, with respect to the types of transactions identified in the MAPSA interrogatories;
- c) reviewing electronic and paper documents in the possession of those individuals which may be responsive to the subject requests;
- d) to the extent that discussions are ongoing between PECO or Unicom, and some third party entity, a review of any written, non-disclosure agreements which may exist between the parties that expose PECO to legal damages as a result of the potential disclosure of the discussions; and
- e) assuming such a document exists or otherwise for relationship maintenance, providing notice to the other party to allow it to seek a protective agreement or other protective order to ensure the confidentiality of the information.

23. Therefore, even assuming *arguendo* that the information bears any relevance to this proceeding or is otherwise calculated to lead to admissible evidence, the burden of thoroughly investigating and extracting the information is great. The Commission should find that this burden simply outweighs any tangential evidentiary relevance the information could have in this proceeding.

VI. ASSUMING ARGUENDO THAT THE INFORMATION SOUGHT BY MAPSA HAS SOME TANGENTIAL RELEVANCE TO THIS PROCEEDING, THE POTENTIAL COMMERCIAL HARM TO PECO AND UNICOM FROM DISCLOSURE FAR EXCEEDS ANY PUBLIC INTEREST VALUE IN THAT INFORMATION.

24. MAPSA suggests that the avenue of non-disclosure undertaken by PECO (i.e., by objection) is an inappropriate means of protecting PECO and Unicom from commercial harm that may occur from disclosing the information to participants in this proceeding. Specifically, MAPSA claims that 1) PECO should have sought a protective order rather than objected to the questions; 2) the "commercial harm" alleged by PECO is not a sufficient basis for refusing to answer the interrogatories (MAPSA Motion at para. 25); and 3) that PECO has

failed to demonstrate the "severe and extreme prejudice" that would justify non-disclosure (MAPSA Motion at para. 28). PECO respectfully disagrees.

25. PECO's primary reason for not seeking a protective order to this point is that the information sought is neither relevant nor reasonably calculated to lead to admissible evidence.³ Therefore, until the material is deemed to be relevant or otherwise subject to discovery, there has been no need to seek a protective order.

26. In any event, the MAPSA Motion exhibits absolutely no serious consideration of the potential harm that PECO and Unicom would incur if the MAPSA Motion were granted. In effect, if the MAPSA Motion were granted, PECO and Unicom would be required to produce every proprietary communication concerning possible transactions between PECO or Unicom, and any entity with utility or generation assets located between Northern Illinois and Southwestern Pennsylvania.

27. A cornerstone to achieving a strategic, non-hostile transaction is that such negotiations must be kept confidential in order to develop and maintain a trust relationship between the parties to those discussions. Otherwise, the parties cannot be confident that the confidential and proprietary information exchanged between them will stay that way and out of the hands of its competitors. This is why sophisticated potential transaction partners execute confidentiality agreements which prohibit both parties from even mentioning to third parties that such discussions are taking place as well as from disclosing to third parties the economic proposals and trade secrets exchanged between them. Without such trust, the transaction

³ This is not to say that PECO and Unicom would not seek a protective order that provide disclosure protection over and above that established in the Confidentiality Agreement that several parties have already executed in this proceeding. PECO believed that, until it is known whether any such information needs to be provided, a protective order request for a more restrictive protective agreement would be premature.

discussions break down quickly, legal proceedings may be brought against the disclosing party, and the potential transaction will not occur.⁴

28. The commercial harm that would be wrought against PECO, Unicom, and the energy industry generally, in the event the MAPSA Motion is granted, is at least four-fold:

- a) Entities with whom either PECO or Unicom may be discussing a potential transaction (within or outside the geographical scope of the MAPSA questions) likely will curtail those discussions and request that PECO or Unicom return all confidential information provided by the party;
- b) Entities that may have considered discussing a potential transaction with either PECO or Unicom likely will stop having those thoughts and not begin discussions. After all, what company would want to speak to PECO or Unicom, directly or through agents, concerning a potential transaction if they new that transaction would be subject to regulatory scrutiny even before it was made or became public;
- c) The chilling effect on discussions will result in an adverse stock market perception of PECO and Unicom concerning their respective potential growth strategies (reduced likelihood that any new significant transaction by these parties will occur); and
- d) Without PECO and Unicom viewed as potential transaction partners by parties interested in buying and selling assets or companies, competitors such as MAPSA's membership could step into transactional opportunities made vacant by PECO and Unicom's absence, thereby causing competitive harm to the marketplace.

In sum, the commercial harm to PECO and Unicom, and the harm sustained in the marketplace, resulting from disclosing the information sought by MAPSA would be substantial and irreparable, and advantage only MAPSA's membership.

29. That commercial harm greatly outweighs the limited MAPSA interest that disclosure could conceivably serve. As discussed supra. at paragraphs 9-20, PECO submits that the information is irrelevant to the matters at hand. Assuming *arguendo* that there is a relevant connection to this proceeding, the tangential thread of relevance suggested by MAPSA is pared back by the MAPSA Motion itself to speculation that some future, speculative

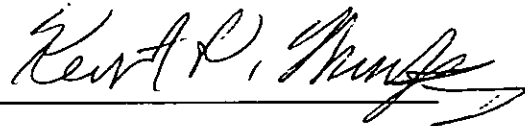
⁴ To the extent deemed necessary by the presiding Administrative law judge, PECO and Unicom are prepared to submit an affidavit or, if necessary, testimony of witnesses that would support these

strategic transaction might have an impact on the retail market power issues in this case. PECO submits that the commercial harm discussed above is far greater than the limited selfish and non-public interest expressed by MAPSA in obtaining the information.

VII. CONCLUSION

For the reasons set forth above, PECO Energy Company requests that the presiding Administrative Law Judge issue an order denying the MAPSA Motion.

Respectfully submitted,



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allegations of commercial harm and those set forth in the following paragraphs.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COPY

Application of Citizens Utilities Water : Docket No.
Company of Pennsylvania : A-211070F0007

Application of Philadelphia Suburban : Docket No.
Water Company : A-212370F0050

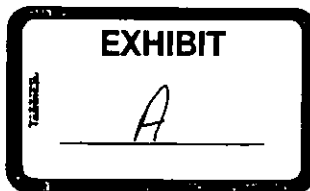
**ORDER DENYING SUBURBAN'S
MOTION TO DISMISS CITIZENS' APPLICATION;
ORDER GRANTING SUBURBAN'S MOTION IN LIMINE**

This Order disposes of two motions recently filed by Philadelphia Suburban Water Company (Suburban): a motion to dismiss and a motion in limine.

I. Motion to Dismiss

On November 2, 1999, Suburban filed a motion to dismiss the application of Citizens Utilities Water Company of Pennsylvania (Citizens) at Docket No. A-211070F0007. On November 16, 1999, Citizens filed an answer to the motion to dismiss.¹

¹ As noted in Citizens' answer to Suburban's motion, two versions of Suburban's motion have been served: an original and a corrected. Both Citizens and I were served with both versions of the motion. In a letter filed November 5, 1999, Citizens stated that its answer would respond to the corrected version. I specify that this Order concerns the corrected version.



The material facts are: (1) Citizens now exists as a public water utility certificated by the Pennsylvania Public Utility Commission (Commission); (2) if Citizens wishes to abandon water service, it will need to have the Commission approve an application to do so pursuant to subsection 1102(a)(2) of the Public Utility Code;² (3) if American Water Works, Inc. or Pennsylvania-American Water Company (PA-American), etc. wishes to acquire the assets or stock, etc. of Citizens, it will need to have the Commission approve an application to do so pursuant to subsection 1102(a)(3) of the Public Utility Code;³ (4) as of today's date, the Commission's computerized docket does not show the filing of an application to acquire Citizens' assets or stock, etc. or the filing of an application for Citizens to abandon service; (5) an application under either subsection 1102(a)(2) or subsection 1102(a)(3) may take considerable time to resolve particularly if the application is protested⁴ and results in protracted litigation, e.g., Applications of Lemont Water Company to Abandon Water Service and for Approval of Partial Transfer of Stock, A-211690F2000 and A-211690F5001 (opinion and order adopted July 9, 1998, entered July 10, 1998) (protests resulted in 1 year of hearings followed by a Commission ruling upon exceptions to the ALJ's Initial Decision, an appeal of the Commission's opinion to Commonwealth Court, and a closing of the case nearly 3 years after its inception); and (6) the mere filing of an application does not guarantee Commission approval of the application, e.g., Application of Public Service Water Co. v. Pennsylvania Public Utility Commission, 165 Pa. Cmwlth. Ct. 463, 645 A.2d 423 (1994) (application to acquire public utility stock and assets was not granted by the Commission).

² 66 Pa. C.S. §1102(a)(2).

³ 66 Pa. C.S. §1102(a)(3).

⁴ See 52 Pa. Code §5.51.

Given the aforementioned material facts, it would be inappropriate to dismiss Citizens' application at this time. A dismissal cannot be based on speculation about events which may or may not occur at some indefinite time in the future.

THEREFORE, IT IS ORDERED: That the motion of Philadelphia Suburban Water Company to dismiss the application of Citizens Utilities Water Company of Pennsylvania at Docket No. A-211070F0007 is hereby denied.

II. Motion in Limine

On November 5, 1999, Citizens filed a letter which stated that it would shortly serve all parties and me with a PA-American representative's affidavit concerning how PA-American's proposed acquisition of Citizens would affect Citizens' application at Docket No. A-211070F0007. On November 19, 1999, Citizens filed the affidavit of Richard C. Neubauer, PA-American's vice president of operations, and served copies of the affidavit on all parties and me. On November 18, 1999, Suburban filed a motion in limine to exclude the PA-American affidavit. On November 29, 1999, Citizens filed an answer to Suburban's motion in limine.

In view of the material facts which I have reviewed under the discussion of Suburban's motion to dismiss, it would be inappropriate to permit the presentation of evidence from a PA-American representative at this time. Citizens' offer to present the affidavit of a PA-American representative is based on speculation about events which may or may not occur at some indefinite time in the future. At the current time, Citizens exists as a Commission-certificated public water utility and can pursue its application at Docket No. A-211070F0007 on its own behalf.

THEREFORE, IT IS ORDERED: That the motion in limine filed by Philadelphia Suburban Water Company is hereby granted to exclude the affidavit of PA-American's Vice President of Operations Richard C. Neubauer at Docket No. A-211070F0007.

Dated: 12/2/99

Debra Paist
DEBRA PAIST
Administrative Law Judge

A-211070F0007 and A-212370F0050

Application of Citizens Utilities Water Company of Pennsylvania
Application of Philadelphia Suburban Water Company

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cc: CALJ Christianson/Lewis/Scheduler
E. Plantz
Docket - New Filing

Certificate of Service

I hereby certify that I have served the foregoing document on the following:

First Class Mail

Attached List

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Respectfully submitted,



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Ronald L. Zack
Assistant General Counsel

Direct Dial: 215 841 4252

February 29, 2000

Brian Downey
Pepper Hamilton LLP
North Front and Market Streets
Harrisburg, PA 17108-1181

DOCUMENT
FOLDER

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

99387

Dear Mr. Downey:

Enclosed, please find PECO's supplemental response to AMTRAK-I-33 and PECO's CONFIDENTIAL response to AMTRAK-I-23.

Very truly yours,

Paul R. Bonney
Assistant General Counsel

/rhs

Enclosure

cc: James J. McNulty, Secretary (cover letter & certificate of service only)
Certificate of Service

00 MAR -2 PM 12:47
RECEIVED
SECRETARY'S BUREAU

AMTRAK-I-33 Question:

Please identify the specific transactions in which PECO has securitized its transition costs pursuant to its authorization to do so. Please indicate the total amount securitized, and provide a restated Schedule I from the Settlement, revised to show two sub-columns for the original Column 4, so that there is now a new Column 4a for CTC charges and a new Column 4b for ITC charges, with a new Column 4c for total CTC and ITC charges.

AMTRAK-I-33 Supplemental Answer:

On July 15, 1999, PECO filed with the Commission a report with the PaPUC that describes the final structure of the initial bond issuance. A copy of the report is attached.

Responsible Witness: Thomas P. Hill



PECO ENERGY

Vice President, Finance,
and Treasurer

PECO Energy Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101-8699
215 841 5800
Fax 215 557 9885

July 15, 1999

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
Harrisburg, PA 17120

Re: PECO Energy Report on Issuance of \$4 Billion Transition Bonds, Docket Nos.
R-00973953 and P-00971265

Dear Mr. McNulty:

In PECO Energy's Restructuring proceeding, the Commission's May 14, 1998 Qualified Order directs PECO Energy (¶ 15) to file, no later than 120 days after issuance of Transition Bonds pursuant to that QRO, a description of the final structure of each issuance of refinancing of such Transition Bonds and the final plans for the company's use of proceeds of such offering. On March 25, 1999, PECO Energy's subsidiary, the PECO Energy Transition Trust, issued \$4 billion of Transition. With this letter, I provide an original and three copies of PECO Energy's report in compliance with that ordering paragraph.

Please contact me, Clare Koeber at 215-841-4336, or Alan Cohn at 215-841-5769 if you have any questions.

Sincerely,

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO Energy Company	:	
Filing Pursuant To The	:	
Application of PECO Energy	:	Docket Nos. R-00973953
Company for Approval Of Its	:	and P-00971265
Restructuring Plan Under	:	
Section 2806 Of The Public	:	
Utility Code, et al	:	

PECO ENERGY COMPANY FILING PURSUANT TO
THE APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806
OF THE PUBLIC UTILITY CODE, ET AL

TO THE HONORABLE COMMISSION:

In compliance with Paragraph 15 of the Pennsylvania Public Utility Commission's May 14, 1998 Qualified Rate Order in PECO Energy's Electric Restructuring Case, Docket Nos. R-00973953 and P-00971265, PECO respectfully submits the following:

1. At the PUC's Public Meeting held on May 14, 1998, the Public Utility Commission (the "Commission") issued a Qualified Rate Order ("QRO") for PECO Energy Company (the "Company") under Docket Nos. R-00973953 and P-00971265.
2. In the QRO, the Commission authorized the Company to recover \$5.26 billion of stranded costs through Competitive Transition Charges ("CTC").
3. The PUC also authorized the Company to securitize up to \$4 billion of its recoverable stranded costs through the issuance of Transition Bonds.

4. Paragraph 15 of the May 14, 1998 Qualified Rate Order states "that PECO Energy Company shall file with this Commission, no later than 120 days after the issuance or refinancing of Transition Bonds, a description of the final structure of each issuance or refinancing of such Transition Bonds, including the principal amount, the price at which each such series and/or class of Transition Bonds were sold, payment schedules, the interest rate and other financing costs, and the final plans for the Company's use of the proceeds of such offering."

5. FINAL STRUCTURE — On March 25, 1999, the Company, through PECO Energy Transition Trust ("PETT"), an independent special-purpose entity formed by the Company, issued \$4 Billion of transition bonds. Bond principal, price, payment schedules and interest rate information are quantified on Exhibit A (attached), but can be summarized as described below. Additional detail is provided in the Prospectus and Prospectus Supplement, which is attached as Exhibit B.

6. PRINCIPAL: The \$4 billion of bonds were issued in a single series (1999-A) that is comprised of seven classes. The seven classes of Transition Bonds sold by PETT have average maturities ranging from 1.9 to 9.4 years at issuance.

7. PRICE: The bonds sold at a discount from their principal amount or face value. The bond price is calculated by deducting the discount from the face amount of principal. Exhibit A lists both the principal amount and the bond discount, netted out to determine the actual price for each of the seven classes of bonds.

8. PAYMENT SCHEDULES: Exhibit A also lists the First Payment Date, Maturity and Expected Final Payment Date for each of the seven classes of bonds. The last Expected Final Payment Date for any Class is September 1, 2008.
9. INTEREST RATE AND OTHER FINANCING COSTS: The interest rates are also included on Exhibit A. Two of the classes (A-3 and A-5) bear interest at floating rates; the remaining five classes pay fixed rates of interest with coupons ranging from 5.48% to 6.13%. In addition to the \$5,439,524 bond discount, the Underwriter's Commission amounted to \$18,795,164. Other issuance expenses included, legal expenses, SEC registration fees, rating agency fees, etc. Total issuance expenses (including bond discount and commission) were approximately \$30,000,000.
10. FINAL PLANS FOR THE COMPANY'S USE OF PROCEEDS: The bond principal amount was reduced by \$30 million for fees and expenses as well as by the required \$20 million initial capital contribution made to PETT, resulting in \$3,950,000,000 (\$4 billion less \$50 million) in proceeds made available to the Company. In accordance with the terms of Pennsylvania's Electricity Generation Customer Choice and Competition Act and the May 14, 1998 QRO, the Company will utilize the proceeds principally to reduce its stranded costs and related capitalization. The net proceeds from the Transition were applied towards A) debt retirement, B) preferred stock redemption and C) share repurchase, as described below:
- A. Of the \$3.95 billion net proceeds, \$2.026 billion (or approximately 51%) is being used to retire debt (including \$36 million in premium payments):

To date, the Company has applied \$1.211 billion and \$512 million towards the retirement of fixed and floating rate debt, respectively. PECO expects to apply the remaining \$303 million in outstanding floating rate debt by the end of the 3rd quarter, 1999. The specific debt issues that have been redeemed, or which PECO Energy currently plans to redeem, are identified in Exhibit C.

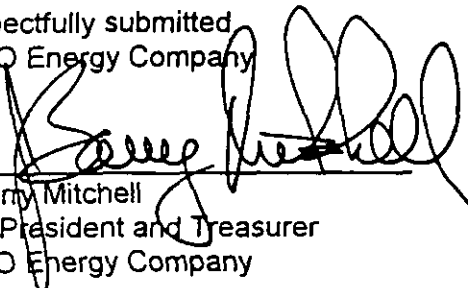
B. \$259 million (7%) will to applied towards the redemption of preferred securities:

The Company plans to redeem its 9.00% Monthly Income Preferred Stock (MIPS) on July 30, 1999 at a total cost of \$221 million. The Company has also exercised its option to double-up on its required 20% sinking fund for its \$6.12 Preferred Stock on August 2, 1999 at a total cost of \$38 million.

C. The remaining \$1.665 billion (43%) is being used for common stock share repurchases:

In 1997, the Company entered into forward common equity repurchase agreements that were settled immediately following receipt of the Transition Bond proceeds. On March 26, 1999 the Company used \$682 million of Transition Bond proceeds to settle the forward share repurchase program balance. An additional \$983 million will be used to repurchase shares in the open market. PECO expects to complete the repurchase of common equity through open market purchases from time to time in compliance with SEC rules. The number of shares purchased and the timing and manner of remaining purchases are dependent upon market conditions, but PECO expects to complete the share repurchase program by the 4th quarter of 1999.

Respectfully submitted
PECO Energy Company

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

J. Barry Mitchell
Vice President and Treasurer
PECO Energy Company

EXHIBIT A

**PECO ENERGY TRANSITION TRUST, Issuer
PECO ENERGY COMPANY, Seller and Servicer
Series 1999-A, \$4,000,000,000 Transition Bonds**

	Class A-1	Class A-2	Class A-3	Class A-4	Class A-5	Class A-6	Class A-7	Totals:
Principal Amount:	\$ 244,470,272	\$ 275,371,325	\$ 667,000,000	\$ 458,518,647	\$ 464,600,000	\$ 993,386,331	\$ 896,653,425	\$ 4,000,000,000
Less: Bond Discount:	\$ 55,715	197,827	1,089,278	604,236	744,754	1,275,409	1,472,305	\$ 5,439,524
Price	\$ 244,414,557	\$ 275,173,498	\$ 665,910,722	\$ 457,914,411	\$ 463,855,246	\$ 992,110,922	\$ 895,181,120	\$ 3,994,560,476
Less: Underwriter's Commission	\$ 855,646	1,101,485	3,001,500	2,063,334	2,323,000	4,966,932	4,483,267	\$ 18,795,164
Commission expressed as a % of Principal:	0.35%	0.40%	0.45%	0.45%	0.50%	0.50%	0.50%	0.47%
Proceeds to the Issuer:	\$ 243,558,911	\$ 274,072,013	\$ 662,909,222	\$ 455,851,077	\$ 461,532,246	\$ 987,143,990	\$ 890,697,853	\$ 3,975,765,312
Interest Rate:	5.48%	5.63%	LIBOR* +0.125%	5.80%	LIBOR* +0.200%	6.05%	6.13%	
Interest Paid:	Semi-Annually							
First Payment Date:	September 1, 1999							
Maturity (years):	1.9	3.9	4.9	5.9	8.4	7.9	9.4	
Expected Final Payment Date:	March 1, 2001	March 1, 2003	March 1, 2004	March 1, 2005	September 1, 2007	March 1, 2007	September 1, 2008	

* The LIBOR (London Interbank Offered Rate) in effect at bond issuance was 5.06375%

EXHIBIT C

PECO ENERGY COMPANY Transition Bond Use of Proceeds Summary

	<u>Date</u>	<u>Principal</u>	<u>Premiums</u>	<u>Total</u>	<u>% of Total Proceeds:</u>
A1) <u>Fixed Debt:</u>					
Term Loan Agreement	3/26/99	\$ 400,000,000	\$ -	\$ 400,000,000	
7.75% FMB due 2023	4/26/99	100,000,000	4,620,000	104,620,000	
7.75% FMB due 2023	5/3/99	250,000,000	12,350,000	262,350,000	
7.25% FMB due 2024	4/26/99	225,000,000	10,597,500	235,597,500	
7.125% FMB due 2023	4/26/99	<u>200,000,000</u>	<u>8,320,000</u>	<u>208,320,000</u>	
		\$ 1,175,000,000	\$ 35,887,500	\$ 1,210,887,500	31%
A2) <u>Floating Debt:</u>					
Commercial Paper	(1)	\$ 343,000,000	\$ -	\$ 343,000,000	
Mid-Atlantic Fuel Lease	6/1/99	154,300,000	-	154,300,000	
Accounts Receivable Financing	(2)	<u>318,082,500</u>	<u>-</u>	<u>318,082,500</u>	
		\$ 815,382,500	\$ -	\$ 815,382,500	21%
TOTAL A: Proceeds applied to debt:				\$ 2,026,270,000	A) 51%
B) <u>Preferred Securities</u>					
9% MIPS	7/30/99	\$ 221,250,000	\$ -	\$ 221,250,000	
\$6.12 Preferred Sinking Fund	8/2/99	<u>37,080,000</u>	<u>-</u>	<u>37,080,000</u>	
		\$ 258,330,000	\$ -	\$ 258,330,000	B) 7%
C) <u>Common Equity</u>					
Forward Share Repurchase (3)	3/26/99	\$ 681,758,180	\$ -	\$ 681,758,180	
Open Market Repurchases	(4)	<u>983,641,820</u>	<u>-</u>	<u>983,641,820</u>	
		\$ 1,665,400,000	\$ -	\$ 1,665,400,000	C) 42%
TOTAL PROCEEDS:		<u>\$ 3,914,112,500</u>	<u>\$ 35,887,500</u>	<u>\$ 3,950,000,000</u>	100%
ADD: Bond Discount, Underwriter's Commission, Debt Issuance Expenses & Initial Capitalization:				\$ 50,000,000	
				\$ 4,000,000,000	

- (1) \$208 million redeemed 3/26/99, remainder to be redeemed by end of 1999.
(2) \$150 million redeemed to-date, remainder to be redeemed by end of 1999.
(3) \$682 million paid on 3/26/99 as part of forward share repurchase program.
(4) Remaining shares will be purchased on the open market through the end of 1999.

Certificate of Service

A-110550F0147

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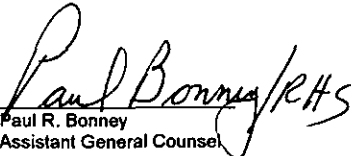
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Dated: February 29, 2000



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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

Dear Mr. Downey:

Enclosed, please find PECO's response to AMTRAK-I-25 and AMTRAK-I-D-24.

Very truly yours,

Paul Bonney / RLS

Paul R. Bonney
Assistant General Counsel

/rhs

Enclosure

cc: James J. McNulty, Secretary (cover letter & certificate of service only)
Certificate of Service

PECO Energy Company
Docket No. A-110550F0147

AMTRAK-I-D-24 Question:

Please provide organization charts and position responsibility information for PECO's electricity transmission organization.

AMTRAK-I-D-24 Answer:

Attachment AMTRAK-I-D-24 is an organization chart for Electric Supply and Transmission which provides planning and administrative services for the electric transmission system. Also, the attachment contains an organization chart for Operations which, through its Transmission and Substation Department, provides maintenance services for the electric transmission system.

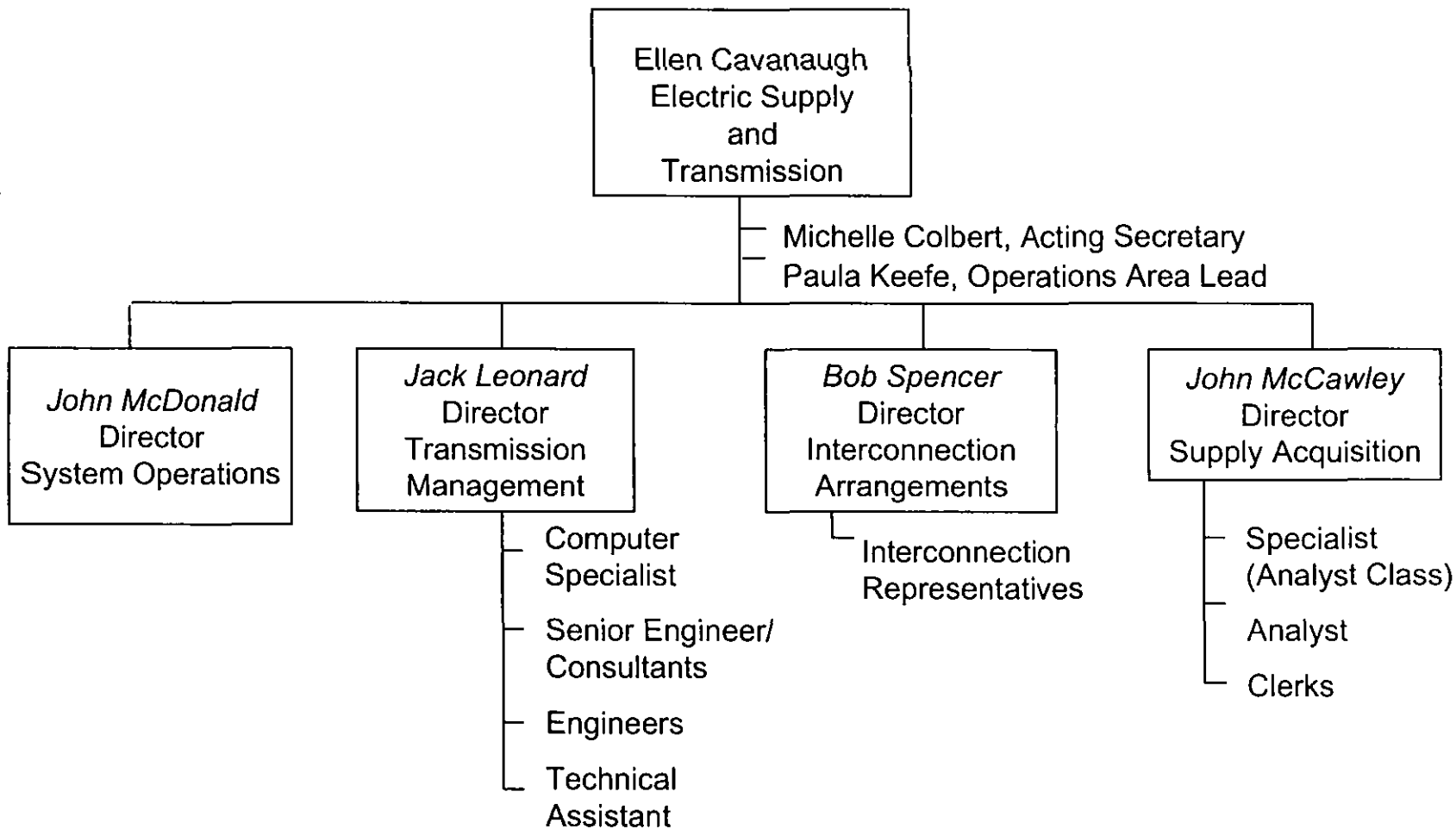
Responsible Witness: Kenneth G. Lawrence

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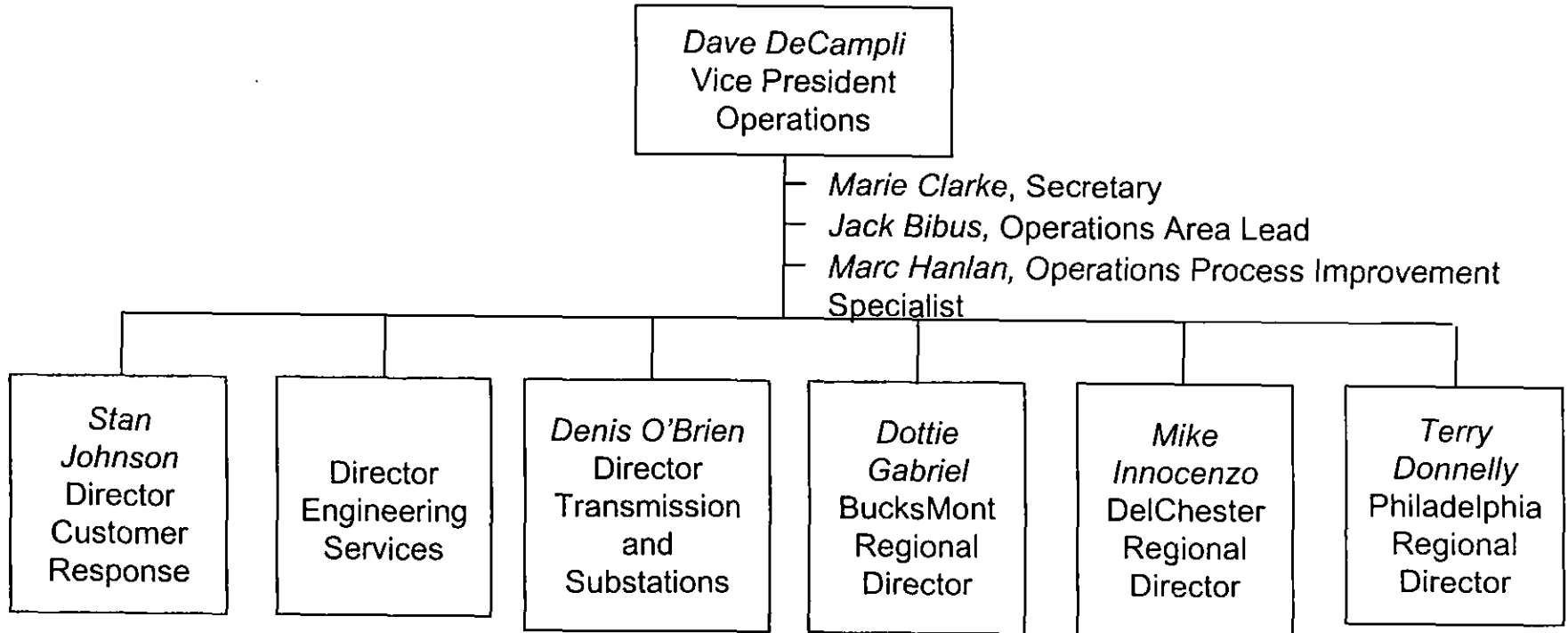
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Attachment AMTRAK-I-D-24

Electric Supply and Transmission



Operations



A-110550 F0147

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.

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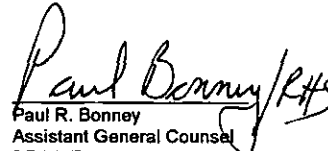
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Dated: February 29, 2000



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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

Dear Mr. Downey:

Enclosed, please find PECO's response to AMTRAK-I-D-6.

Very truly yours,

Paul Bonney /RHS
Paul R. Bonney

Assistant General Counsel

/rhs

Enclosure

cc: James J. McNulty, Secretary (cover letter & certificate of service only)
Certificate of Service

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PECO Energy Company
Docket No. A-110550F0147

AMTRAK-I-D-6 Question:

For each year, 1990-1999, please provide all documents which reflect PECO's:

- a. capital spending on electric utility distribution plant;
- b. capital spending on electric utility transmission plant;
- c. O&M expense for electric utility distribution;
- d. O&M expense for electric utility transmission;
- e. the number of employees assigned to electric utility transmission and distribution maintenance.

AMTRAK-I-D-6 Answer:

Shown below, for the period 1994 through 1999, is the capital spending on electric utility distribution plant, capital spending on electric utility transmission plant (T&S), o&m spending on electric utility distribution, o&m spending for electric utility transmission(T&S) and number of employees assigned to electric utility transmission and distribution maintenance. Attachment AMTRAK-I-D-6 is the ES&T (electric transmission) o&m and capital spending, actual, for 1998 and 1999 which is in addition to that shown below. The missing data for years prior to 1994 is not readily available.

	Employees	O&M		Plant Added(Capital)	
		T&S	Distribution	T&S	Distribution
1994	2,750	31.7	133.1	1.6	108.0
1995	2,500	32.5	129.9	14.6	69.7
1996	2,070	39.5	132.6	17.1	110.0
1997	1,740	50.5	185.6	9.2	122.0
1998	1,600	34.2	105.4	26.0	126.0
1999	to be provided	to be provided	to be provided	to be provided	to be provided

Dollars in Millions
94-98's are from FERC Form 1 data
Employee count is from TB&A data

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Responsible Witness: Kenneth G. Lawrence

ATTACHMENT A
- I-D-6

**ES&T
O&M and Capital Spending
Actual & Budget
1998 - 2004**

	<u>1998 Actual</u> (000s)	<u>1998 Budget</u> (000s)	<u>1999 Actual</u> (000s)	<u>1999 Budget</u> (000s)	<u>2000 Budget</u> (000s)	<u>2001 Budget</u> (000s) (not final)	<u>2002 Budget</u> (000s) (not final)	<u>2003 Budget</u> (000s) (not final)	<u>2004 Budget</u> (000s) (not final)
O&M (see Note 1 below):									
System Operation	12,826	12,698	12,897	14,225	13,790				
Transmission Management	1,200	1,623	946	1,283	1,098				
Interconnection Arrangements	446	930	5,753	6,099	7,969				
Supply Acquisition	154	0	223	428	382				
MP & Staff	5,150	4,379	414	635	788				
Total O&M	19,776	19,630	20,233	22,670	24,027	23,885	24,402	24,815	25,141
Capital (see Note 2 below):									
System Operation	0	0	145	0	1,700	1,900	500	500	500
Transmission Management	0	0	3	0	0	0	0	0	0
Interconnection Arrangements	0	0	6,843	6,000	8,000	9,000	9,000	9,000	9,000
Supply Acquisition	0	0	0	0	0	0	0	0	0
MP & Staff	0	0	0	0	0	4	48	26	0
Total Capital	0	0	6,991	6,000	9,700	10,904	9,548	9,526	9,500
Number of Employees	73	74	72	74	74	74	74	74	74

Note 1: O&M excludes purchased power (fuel) costs for the Supply Acquisition group.

Note 2: Capital includes the following:

	<u>Actual</u>	<u>Budget</u>	<u>Actual</u>	<u>Budget</u>	<u>Budget</u>	<u>Budget</u>	<u>Budget</u>	<u>Budget</u>	<u>Budget</u>
System Op. Purchase of PCs	0	0	145	0	0	0	0	0	0
Misc. TM Capital Charges	0	0	3	0	0	0	0	0	0
PJM Facilities Capital (not in service)	0	0	6,843	6,000	8,000	9,000	9,000	9,000	9,000
System Op. Backup Control Center	0	0	0	0	1,200	0	0	0	0
Final DMACS Payment & Upgrades	0	0	0	0	300	1,400	0	0	0
DMACS Projector Replacement-DOC	0	0	0	0	200	0	0	0	0
Syst. Op. Upgrade/Replace Comp.Eq.	0	0	0	0	0	500	500	500	500
Other Misc. PC Purchases, etc.	0	0	0	0	0	4	48	26	0
Total Capital	0	0	6,991	6,000	9,700	10,904	9,548	9,526	9,500

ES&T did not assume the PJM Capital expenditure until 1999.

A-110550 F0147

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.

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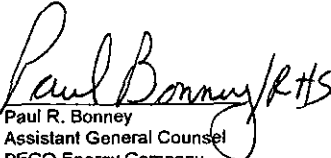
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Dear Mr. Downey:

Enclosed, please find PECO's response to AMTRAK-I-12 , I-D-30 and PECO's CONFIDENTIAL response to AMTRAK-I-34.

Very truly yours,

Paul Bonney/RHS
Paul R. Bonney
Assistant General Counsel

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Enclosure

cc: James J. McNulty, Secretary (cover letter & certificate of service only)
Certificate of Service

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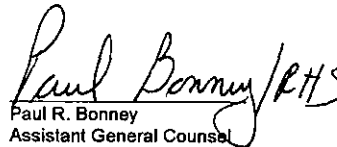
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Dear Mr. Downey:

Enclosed, please find PECO's CONFIDENTIAL response to AMTRAK-I-D-17 and 18.

Very truly yours,

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Paul R. Bonney

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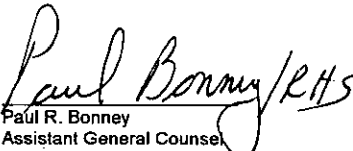
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RE: Application of PECO Energy Company to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, including the creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company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

Dear Ms. McCloskey:

Enclosed, please find PECO's CONFIDENTIAL response to OCA-VIII-1 and OCA-III-5.

Very truly yours,

Paul Bonney/RHS
Paul R. Bonney
Assistant General Counsel

~~CONFIDENTIAL~~

/rhs

Enclosure

cc: James J. McNulty, Secretary (cover letter & certificate of service only)
Certificate of Service

FEF

Certificate of Service

A-110550F0147

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.

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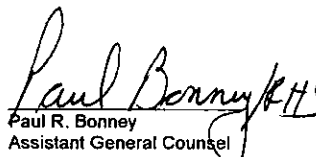
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RE: Application of PECO Energy Company to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, including the creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company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

Dear Mr. Downey:

Enclosed, please find PECO's CONFIDENTIAL response to AMTRAK-I-27 and AMTRAK-I-D-31.

Very truly yours,

Paul Bonney /rhs
Paul R. Bonney

Assistant General Counsel

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Enclosure

cc: James J. McNulty, Secretary (cover letter & certificate of service only)
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EEF

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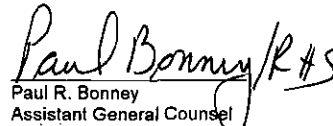
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RE: Application of PECO Energy Company to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, including the creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company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

Dear Mr. Downey:

Enclosed, please find PECO's response to AMTRAK-I-D-21 and PECO's CONFIDENTIAL response to AMTRAK-I-24.

Very truly yours,

Paul Bonney/RHS
Paul R. Bonney
Assistant General Counsel

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Enclosure

cc: James J. McNulty, Secretary (cover letter & certificate of service only)
Certificate of Service

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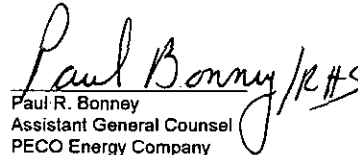
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