

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

<p>1. REPORT DATE: February 29, 2000</p>	<p>2. BUREAU AGENDA NO. MAR-2000-L-45*</p>
<p>3. BUREAU: Law</p>	<p>5. PUBLIC MEETING DATE: March 2, 2000</p>
<p>4. SECTION(S):</p>	<p>6. APPROVED BY:</p> <p>Director: B. Pankiw 7-5000 <i>BP</i> Supervisor: K. Moury 7-4945 <i>KOM</i></p>
<p>7. PERSONS IN CHARGE: E.A. Lion Januzzi <i>EAJ</i></p>	<p>8. DOCKET NO.: A-110550F0147</p>

DOCUMENT FOLDER

DOCKETED

MAR 17 2000

9. (a) **CAPTION (abbreviate if more than 4 lines)**
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**

(a) Petition of PECO Energy Company for certification of the record in the above-captioned docket for final determination by the Commission, pursuant to 66 Pa. C. S. §335(a).

(b) On January 25, 2000, PECO filed this petition requesting an expedited administrative procedure for their restructuring and merger application. Specifically, PECO seeks to bypass the initial decision process and have the record certified to the Commission for issuance of a final order. Although PECO indicates that several parties have agreed to this approach, responses have been filed opposing this proposal.

(c) The Law Bureau recommends that the Commission deny PECO's request.

10. MOTION BY: Commissioner Chm. Quain
 Commissioner Brownell - Yes
 Commissioner Wilson - Yes
SECONDED: Commissioner Bloom
 Commissioner Fitzpatrick - Yes

CONTENTS OF MOTION: Staff recommendation adopted.
 Statement of Chairman John M. Quain attached.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

70-A

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

PUBLIC MEETING
March 2, 2000
MAR-2000-L-45*

STATEMENT OF JOHN M. QUAIN, CHAIRMAN

Before us, today, is the Petition of PECO Energy for final determination of its merger proceeding upon certification of the record to the Commission. We agree with the Law Bureau that there is no compelling reason why this alternative procedure should be implemented.

Having said that, it is our expectation that the parties will work diligently, in the spirit of compromise repeatedly endorsed by this Commission, to reach an amicable resolution of this matter, if at all possible.

Alternatively, we expect the Judge and the parties to present this Commission with a complete record, including public input hearings, an initial decision, and any exceptions and reply exceptions as expeditiously as possible. The completed case should be submitted in time for this Commission to address and resolve this matter by late August or early September of this year.

DATE: March 2, 2000


JOHN M. QUAIN, CHAIRMAN



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

A-110550F0147

MARCH 3, 2000

THOMAS GADSDEN ESQUIRE
MORGAN LEWIS & BOCKIUS
417 WALNUT STREET
HARRISBURG PA 17101

DOCUMENT
FOLDER

Re: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of Public Utility Code, for approval of (1) a Plan of Corporate Restructuring, including the Creation of Holding Company, and (2) the merger of the Newly Formed Holding Company and Unicom Corporation.

DOCKETED
MAR 08 2000

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on March 2, 2000 in the above-entitled proceeding has adopted an Order.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty,
Secretary

smk
Enclosure
cert. Mail

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Public Meeting held March 2, 2000

Commissioners Present:

John M. Quain, Chairman, Statement attached
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

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
Holding Company; and (2) the Merger of
the Newly Formed Holding Company and
Unicom Corporation.

Docket No. A-110550F0147

DOCUMENT
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ORDER

Presently before the Commission for consideration is the petition of PECO
Energy Company filed on January 25, 2000, for certification of the record in the
above-captioned proceeding to the Commission for decision pursuant to
66 Pa. C.S. §335(a). Specifically, PECO requests that the Administrative Law
Judge (ALJ) prepare the record in the proceeding for certification to the
Commission for decision on the merits.

DOCKETED
MAR 08 2000

PROCEDURAL HISTORY

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

Notice of PECO's application was published in the Pennsylvania Bulletin on December 4, 1999, and interested parties were given until December 20, 1999, to file formal Protest and/or Petitions to intervene. To date, twenty-one protests and petitions to intervene have been filed.

By the present petition, PECO requests that the Commission exercise its discretion under §335(a) and require certification of the record to the Commission for a final decision on the merits. Using this procedure would eliminate the requirement that the Office of Administrative Law Judge (OALJ) issue an initial decision.

On January 26, 2000, the Office of Small Business Advocate filed a letter in support of PECO's application. On February 2, 2000, the Consumers Education and Protective Association, Association of Community Organizations for Reform Now, the Action Alliance of Senior Citizens and Tenants Action Group jointly filed an answer in opposition to PECO's application. On February 7, 2000, the

National Railroad Passenger Corporation filed a response taking no position on PECO's application. Finally, on February 9, 2000, the Honorable David Cohen, Councilman for the city of Philadelphia, and the Clean Air Council, et al., separately filed answers in opposition to the application.

DISCUSSION

Section 335(a) of the Public Utility Code, 66 Pa C. S. §335(a) provides that the Commission may require in certain cases that the record in the proceeding be certified directly to the Commission for determination. This section describes the Commission's discretion to determine the administrative course a matter must navigate to final determination. Section 335(a) provides, in pertinent part:

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

Any departure from the standard process of an initial or recommended decision rendered by a hearing officer or ALJ requires a determination by the Commission that the departure is warranted. As a preliminary matter, a petitioner making such a request must provide a compelling reason for the departure. In weighing the petitioner's reasons for the request and the benefits inured from the departure from standard administrative procedures, the Commission's exercise of

discretion is guided by the principles of judicial economy and action consistent with the public interest.

Our administrative procedures are structured to facilitate the Commission's review of the record. The initial decision rendered by an ALJ or designated hearing officer serves the essential function of identifying the issues and providing all parties the opportunity to further refine their positions on those issues via filing exceptions. In the Commission's judgement, these standard administrative procedures tend to narrow the scope of issues presented for Commission-level review, allow for the correction of errors that may occur at the first stage of agency adjudication and, overall, promote excellence in this agency's deliberative process. Therefore, a petitioner suggesting a departure from these procedures must provide a compelling reason to do so.

In the present matter, PECO requests that the Commission dispense with the initial or recommended decision by a hearing officer or ALJ and proceed directly to the Commission for a final decision on the merits. PECO's asserted reasons are that the proposed procedure has been used successfully in the past and the proposed procedure will yield substantial savings in terms of time and litigation expense. (PECO Application ¶¶ 7 & 8).

In support of the application, PECO relies upon three cases in which PECO asserts that the recommended procedure was successfully utilized. However,

review of those cases reveals that important distinctions exist in each of those cases.

For example, in Re Nextlink Pennsylvania, Inc. et al, Docket Nos. P-00991648 and P-00991649, the Commission made the extraordinary decision to conduct hearings *en banc* and render the initial determination in that proceeding. This case, commonly referred to as the “Global Order” proceeding because of the number of telecommunications issues and litigated proceedings which it encompassed, was the culmination of lengthy settlement negotiations and literally years of litigation of telecommunications issues arising under deregulation.

In the other cases cited as supportive by PECO, RE: PECO Energy Co., Docket No. P-00971170 (Order entered August 21, 1997), Pa. PUC v. PECO Energy Co., Docket Nos. R-00973953 and P-00971265 (Orders entered October 9, 1997 and November 6, 1997), the Commission’s decision to implement an alternative procedure for final decision resulted from the special circumstances in those cases.

In PUC v. PECO Energy Co. the Commission directed that the record be certified to the Commission for initial decision on cross petitions for reconsideration of a Commission order, joint petitions for partial settlement of the proceeding in addition to a consolidated case which addressed duplicate and interrelated issues to the initial proceeding. In that proceeding, as in Nextlink, the

relevant issue was the possible settlement of issues otherwise subject to protracted litigation.

RE: PECO Energy Co. came before the Commission in the context of the statutory mandate to implement pilot programs in connection with the restructuring of the electric utility industry in the Commonwealth of Pennsylvania pursuant to the Electricity Generation Customer Choice and Competition Act of 1996. The Commission's decision to use an alternative administrative procedure was warranted to fulfill that statutory mandate.

In the present matter, PECO asserts neither a proposed settlement of issues otherwise subject to protracted litigation nor the need to consolidate and expedite the procedure due to statutory mandate. PECO's assertion that the expedited procedure would save time and litigation expense is vague and insufficient to warrant the requested relief. Simply stated, PECO has failed to show why the circumstances in the present matter are so compelling as to warrant the use of an alternative administrative procedure.

Moreover, while consent of the parties is not a precondition to the Commission's exercise of discretion to implement an alternative administrative procedure, it is evident that all the parties have not agreed upon the procedure requested by PECO. PECO's states that the proposed alternative procedure has been agreed upon by "OCA, PECO and others" (PECO application ¶ 4). However, as noted in the procedural history, several responses in opposition to the petition

have been received. Further, many of parties that have filed formal Protests and Petitions to Intervene in the PECO's Restructuring and Merger have not assented to the proposed procedure. Accordingly, an inference may be drawn that the public interest will be better served by the standard administrative procedures for these matters.

Finally, we expect that the additional time needed for the issuance of an initial decision and the filing of exceptions will be tacked on to the end of the litigation schedule attached to PECO's petition. In that manner, other parties to this proceeding will not be deprived of the time and opportunity to litigate this matter along the lines set forth in that schedule.

CONCLUSION

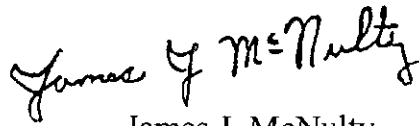
Since PECO has provided no compelling reason why the proposed alternative procedure should be implemented, PECO's application for relief is denied; **THEREFORE,**

IT IS ORDERED:

1. The application of PECO Energy Company for certification of the record in the above-captioned proceeding to the Commission for decision pursuant to 66 Pa. C.S. §335(a), is denied.

2. The above-captioned matter will proceed to initial determination by the
Administrative Law Judge.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: March 2, 2000

ORDER ENTERED: MAR - 3 2000

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

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

PUBLIC MEETING
March 2, 2000
MAR-2000-L-45*

STATEMENT OF JOHN M. QUAIN, CHAIRMAN

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DATE: March 2, 2000


JOHN M. QUAIN, CHAIRMAN

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TANYA J MCCLOSKEY
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FORUM BUILDING
555 WALNUT STREET 5TH FLOOR
HARRISBURG PA 17101-1921
MESSENGER

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of _____, 19__,

the undersigned, as evidence by execution hereof, acknowledges receipt and accepts service of **COPY ORDER** an official Commission document entered, issued, or otherwise promulgated under date of **MARCH 3, 2000** at Docket No. **A-110550F0147** on behalf of:

BERNARD A RYAN ESQUIRE
OFFICE OF SMALL BUSINESS
ADVOCATE
COMMERCE BLDG STE 1102
300 NORTH SECOND STREET
HARRISBURG PA 17101

MAR 3 2000

RECEIVED
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PA.P.U.C.
SECRETARY'S BUREAU

C. Updegraff
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU FILE RETENTION SECTION
PA PUBLIC UTILITY COMMISSION
B-20 NORTH OFFICE BUILDING
HARRISBURG PA 17105-3265

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 3rd day of March, ~~19~~²⁰⁰⁰,

the undersigned, as evidence by execution hereof, acknowledges receipt and accepts service of **COPY ORDER** an official Commission document entered, issued, or otherwise promulgated under date of **MARCH 3, 2000** at Docket No. **A-110550F0147** on behalf of:

KENNETH MICKENS ESQUIRE
PA PUC OFFICE OF TRIAL
STAFF

Elaine C. Messinger
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

To: → SECRETARY'S BUREAU FILE RETENTION SECTION
PA PUBLIC UTILITY COMMISSION
B-20 NORTH OFFICE BUILDING
HARRISBURG PA 17105-3265

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SECRETARY'S BUREAU
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2000

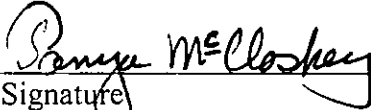
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PA PUC
OFFICE OF TRIAL STAFF
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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 3rd day of March, 19²⁰⁰⁰0,

the undersigned, as evidence by execution hereof, acknowledges receipt and accepts service of COPY ORDER an official Commission document entered, issued, or otherwise promulgated under date of MARCH 3, 2000 at Docket No. A-110550F0147 on behalf of:

TANYA J MCCLOSKEY
OFFICE OF CONSUMER ADVOCATE
FORUM
555 WALNUT STREET 5TH FLOOR
HARRISBURG PA 17101-1921


Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU FILE RETENTION SECTION
PA PUBLIC UTILITY COMMISSION
B-20 NORTH OFFICE BUILDING
HARRISBURG PA 17105-3265

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