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PA. P.U.C.
SECRETARY'S BUREAU
00 APR 17 PM 3:51

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April 17, 2000

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

DOCKETED VIA HAND DELIVERY

APR 18 2000

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

**DOCUMENT
FOLDER**

Dear Secretary McNulty:

As counsel to the Industrial Energy Consumers of Pennsylvania ("IECPA") in the above-captioned proceeding, we are filing the original and three (3) copies of this Letter in Support of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") Reply to Objections of PPL Electric Utilities Corporation to the Joint Petition for Settlement. IECPA is a signatory to the Joint Petition for Settlement and has previously submitted a Statement in Support of that Settlement. IECPA continues to encourage Commission approval of the Joint Petition for Settlement as filed and a denial of the Objections submitted by PPL Electric Utilities Corporation and Councilman David Cohen.

IECPA's endorsement of the Joint Petition for Settlement and the PAIEUG Reply to Objections are based upon the public interest benefits inherent in the Settlement and the consistency of the Settlement with IECPA's position statement on utility mergers. That policy statement encourages all mergers approved by the Pennsylvania Public Utility Commission to promote the following principles:

- (1) Reliability of service;
- (2) Financial integrity of the regulated utility and safeguards protecting customers of that utility;

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James J. McNulty, Secretary
April 17, 2000
Page 2

- (3) Pass through of economic benefits achieved by the regulated utility to customers of that utility;
- (4) Customer avoidance of any economic hardship or additional costs incurred by their regulated utility; and
- (5) No adverse impact on the ability of customers of the regulated utility to competitively shop for energy.

The Joint Petition for Settlement accomplishes these principles and PPL's attempt to undermine that Settlement is inconsistent with the public interest, obstructionist to the settlement process, and injurious to the likelihood of future collaborative efforts on complex matters before the Commission. Therefore, IECPA requests that the Commission deny the Objections to the Joint Petition for Settlement as filed by PPL and Councilman Cohen and promptly adopt the Joint Petition for Settlement as filed.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this letter and kindly return it for our filing purposes.

Very truly yours,

McNEES, WALLACE & NURICK

By *David M. Kleppinger/dt*
David M. Kleppinger

Counsel to the Industrial Energy Consumers of
Pennsylvania

DMK/dt
Enclosures

c: Chief Administrative Charles E. Rainey, Jr. (via Federal Express)
Certificate of Service

CERTIFICATE OF SERVICE

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

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CERTIFICATE OF SERVICE

Docket No. A-110550F0147

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April 18, 2000

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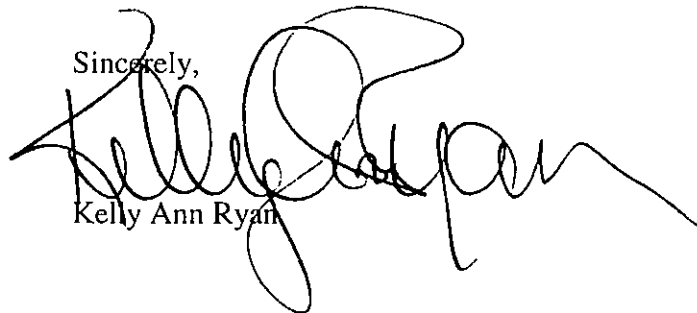
Re: Application of PECO Energy Company Pursuant to Chapters 11, 19, 21, 22, and 28 of the Public Utility Code for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) Merger of the Newly Formed Holding Company and Unicom Corporation:
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and four (4) copies of the Reply of the National Railroad Passenger Corporation to the Objections of PPL Electric Utilities Corporation in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please time-stamp the extra copy and return it with our messenger. Thank you for your assistance with this matter.

Sincerely,



Kelly Ann Ryan

Enclosures

cc: All counsel of Record (via facsimile)
Charles E. Rainey, Jr., Administrative Law Judge (via facsimile and hand delivery)

40

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

Docket No. A-1105550147

DOCKETED

APR 19 2000

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00 APR 18 PM 4:07
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SECRETARY'S BUREAU

REPLY OF THE
NATIONAL RAILROAD PASSENGER CORPORATION
TO THE OBJECTIONS OF PPL ELECTRIC UTILITIES CORPORATION

DOCUMENT
FOLDER

Pursuant to the order issued March 28, 2000 by Administrative Law Judge Charles E. Rainey, Jr., the National Railroad Passenger Corporation ("Amtrak") hereby submits this Reply to the Objections of PPL Electric Utilities Corporation ("PPL Objections"). PPL Electric Utilities Corporation ("PPL") urges the Commission either to reject the Joint Petition for Settlement ("Joint Petition") or to impose additional conditions prohibiting any signatory from relying upon this settlement as a precedent in other proceedings. For the reasons explained below, PPL's attack on the settlement should be rejected, and the Commission should approve the Joint Petition based upon the existing administrative record.

I. INTRODUCTION AND SUMMARY

PPL's opposition to the Joint Petition is misguided. First, as a utility with no direct stake in the proposed merger, PPL does not have standing to raise these objections. Although PPL is an intervenor in this proceeding, it has standing to challenge the global settlement only if and to the extent that it has a direct, immediate and substantial interest in this multi-party agreement. Yet the only interest identified by PPL is *not direct, immediate or substantial, but is entirely remote and speculative*. Specifically, PPL theorizes that it may some day be involved in a merger proceeding of its own, and its adversaries may rely upon the settlement agreed to by PECO Energy Company ("PECO") as a basis for seeking conditions or settlement provisions which are inconsistent with Commission policy. If PPL ever does propose a merger of its own, however, it is fully capable of defending its interests and opposing the imposition of inappropriate conditions at that time.

In questioning specific provisions of the settlement, PPL also takes a very narrow view of the Commission's authority to impose merger conditions that are "just and reasonable" or pro-competitive; however, the precise scope of the Commission's authority to mandate such conditions is an abstract or theoretical issue that need not be resolved in approving the terms of a voluntary settlement. Especially since the Joint Petition already contains a provision barring use of this settlement as "controlling

precedent,” there is no reason for the Commission to devote its scarce resources to the resolution of PPL’s hypothetical concerns.

Second, on a provision-by-provision basis, PPL questions the evidentiary support for the multi-party settlement. PPL argues, for example, that the agreed-upon rate reductions may exceed the cost savings attributable to the merger. This argument, however, is itself based upon a misunderstanding of the settlement process. Parties negotiate settlements partly to avoid the need to litigate over complex issues such as the appropriate methods for estimating and sharing future cost savings. In this case, if the Commission now forces the parties to engage in costly litigation over such issues, one of the critical benefits of the settlement process would be eliminated.

Furthermore, even if PPL could prove that the rate reductions negotiated here exceed the expected cost savings from this transaction or that other provisions go beyond what could be mandated by the Commission, that would not justify rejection of the settlement. When a utility such as PECO seeks Commission approval for a major transaction, it must weigh all the costs and uncertainties of litigation. In negotiating a settlement, it is always free to exceed minimum legal requirements. If that occurs, it is not a fatal flaw requiring Commission investigation, but is an accepted benefit of resolving cases through negotiations. Moreover, as is common, this settlement has been presented to the Commission as a package that must be accepted or rejected as a whole. This approach is often necessary, and was necessary here, in order to unify a multitude of

parties with differing interests. If, as here, the undisputed evidence shows that a settlement is in the public interest, hearings are completely unnecessary. Indeed, PPL acknowledges that the proposed settlement would require \$200 million in rate reductions, would extend the rate cap for an additional 18 months (until December 31, 2006), and simultaneously would require reliability improvements. Based upon these undisputed benefits, there is ample support in the record for a determination that the settlement is in the public interest.

Third, in challenging this settlement, PPL briefly refers to the provision authorizing Amtrak to pay a lump sum and buy out any obligation that it has to pay competitive transition charges (“CTCs”) to PECO. This provision has absolutely no impact on PPL, and PPL therefore does not have standing to question it. Furthermore, in giving Amtrak the option to pursue a CTC buyout, the settlement simply implements existing provisions in the 1998 Restructuring Settlement and in the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801 et seq. Those provisions are applicable to all industrial customers. Contrary to PPL’s assertions, then, the Amtrak buy-out provision is not unreasonable or discriminatory in any way.

II. ARGUMENT

A. SINCE PPL DOES NOT HAVE A DIRECT, IMMEDIATE, AND SUBSTANTIAL INTEREST, IT DOES NOT HAVE STANDING TO CHALLENGE THE SETTLEMENT

Under established principles of standing, any complaint filed with the Commission must demonstrate that the party seeking regulatory relief has a “direct, immediate and substantial interest” in the subject matter.¹ As Administrative Law Judge Rainey has stated: “The requirement that a party have standing to bring a complaint is essential to the integrity of the administrative hearing process.”²

In this case, PPL is an intervenor rather than a complainant, but the basic principles should be the same. An intervenor should not be permitted to challenge a multi-party settlement or obtain evidentiary hearings unless it can demonstrate that it has a “direct, immediate and substantial interest.”

PPL has failed to meet this basic test. In its Objections, PPL does not claim that the PECO-Unicom merger or the settlement will result in any direct or immediate

¹ See L.G. Spielvogel, P.E. v. PECO Energy Co., Docket No. R-00963728C0001 (Order by Administrative Law Judge Rainey entered January 17, 1997) at 4 (“Spielvogel Order”) (citing Investigation Into Equitable Gas Company’s Revenue Allocation Among Transportation Customers, I-900009 (order entered January 16, 1992); Re L&H Trucking Company, Inc., 55 Pa. PUC 469 (1982); Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company, 32 Pa. Commw. Ct. 19, 377 A.2d 1270 (1977), *aff’d* 488 Pa. 308, 412 A.2d 522 (1980)). See also Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975).

² Spielvogel Order at 9.

injury. Its only interest here is abstract and hypothetical. PPL argues that it could at some future date propose a merger of its own, and this hypothetical transaction could be opposed by parties attempting to rely upon the PECO-Unicom settlement as a precedent.³ Under PPL's own theory, any potential injury is in the future and is highly uncertain.

For standing purposes, it is unnecessary to confront the weakness of PPL's position on the merits. All that matters is that PPL has failed to show that it has any direct, immediate or substantial interest. As explained above, PPL is a sophisticated electric utility that has the ability to defend its interests in any future merger proceeding. Specifically, if PPL does in the future propose a merger with another electric utility, it would be free to oppose the imposition of any proposed conditions which are not "just and reasonable" or necessary to establish a competitive market. In any such proceeding, PPL also would be free to present its views on the proper interpretation of the statute. Consequently, PPL is not facing any direct or immediate injury that gives it standing here to contest a settlement strongly supported by PECO and nearly all of the intervenors.

³PPL acknowledges that the Joint Petition includes a provision designed to address such concerns. (Joint Petition at 41.) While conceding that this provision prohibits use of this settlement as "controlling precedent," PPL argues that this clause does not go far enough. PPL apparently seeks to prohibit parties from even referring to the settlement in negotiations or in pleadings. This request goes too far. Effectively, PPL is asking the Commission to limit the First Amendment rights of PECO, the intervenors in this proceeding, and possibly other interested parties. Yet PPL has failed to show that the Commission has the authority to grant such sweeping relief.

B. IN A SETTLEMENT, A UTILITY MAY PROPERLY OFFER CONCESSIONS THAT EXCEED LEGAL REQUIREMENTS

In urging the Commission to reject the proposed settlement or impose additional conditions, PPL claims that PECO has been too generous in the negotiations. PPL insists that the settlement is flawed because it contains “concessions and benefits that have no relation to the proposed restructuring and merger.” (PPL Objections at 12.)

This argument disregards the very broad authority that is given to the Commission in merger cases. Using expansive language, the Electricity Generation Customer Choice and Competition Act expressly authorizes the Commission to impose any conditions that are “just and reasonable” or that are necessary “to preserve the benefits” of a competitive and properly functioning market. (66 Pa. C.S. §§1103(a), 2811(e)(2)).

More importantly, this is not a proceeding in which the Commission is being asked to impose conditions on an unwilling utility. Instead, as part of an overall settlement, PECO has agreed voluntarily to institute rate reductions, to extend the existing rate cap for another 18 months, and to improve its reliability. If these core elements of the settlement are in the public interest, and they certainly are, the Commission has full authority to grant its approval. Contrary to PPL’s assertions, the Commission is not required to determine whether each and every provision of the

settlement is “directly related” to the merger or is designed to cure an injury directly attributable to the merger.

Indeed, PPL overlooks a basic tenet of settlement, which is that the parties, in order to settle, may agree to provisions that exceed the minimal requirements of the law, in an effort to resolve litigation and provide certainty.⁴ Under these established principles, even if PECO has offered concessions which exceed the requirements of Pennsylvania law, the proposed settlement should be approved.

C. THE AMTRAK-SPECIFIC PROVISION IN THE GLOBAL SETTLEMENT IS JUST AND REASONABLE

PPL briefly refers to the fact that in this settlement, “PECO has offered Amtrak the option of, and has asked the Commission to approve” a provision giving Amtrak the option to buy out any obligation to pay CTCs under PECO’s existing rate

⁴ See, e.g., Suter v. Artist M., 503 U.S. 347, 354 n.6 (1992) (parties may agree to provisions in a consent decree that “exceed the requirements of federal law”); cf. Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 389 (1992) (“officers in charge of institutional litigation may agree to do more than that which is minimally required by the Constitution to settle a case and avoid further litigation”); Alexander v. Britt, 89 F.3d 194, 200 (4th Cir. 1996) (“in a consent decree, defendants may agree, within limits, to do more than a judicially imposed injunction could have required”); Commonwealth v. Philip Morris, Inc., 40 Pa. D.&C. 4th 225, 233 (1999) (dismissing petitions to intervene challenging tobacco settlement based upon lack of ripeness or failure to present a live case or controversy, but noting that concessions by the tobacco companies have been characterized as “a major accomplishment because they exceed the kind of injunctive relief that this court would have been able to extend in light of First Amendment and other constraints.”), aff’d sub nom., 736 A.2d 693 (Pa. Commw. Ct. 1999).

schedule. (PPL Objections at 28.) PPL argues that this lump sum buy-out provision has not been shown to be “just and reasonable and non-discriminatory.” (Id.)

For the reasons explained above, PPL does not have standing to pursue this claim. Here again, this utility questions a provision of the settlement having no impact whatsoever on PPL. The only parties even potentially affected by this lump sum buyout provision are the other industrial and commercial customers of PECO, which are, or will be, grouped with Amtrak for CTC reconciliation purposes. Yet all groups and State agencies representing PECO’s industrial and commercial ratepayers have joined the PECO-Unicom settlement and therefore are supporting the lump sum buyout provision applicable to Amtrak.

In addition, in the years ahead, if Amtrak exercises one of the options granted by PECO, and if that reduces Amtrak’s energy costs, this cost reduction would certainly be in the public interest. Amtrak itself serves the public by providing intercity passenger service both on the Northeast Corridor between Washington, D.C. and Boston and elsewhere in the United States and Canada. Amtrak also operates its own interstate electric transmission system along the Northeast Corridor and supplies traction power to SEPTA and other commuter authorities operating on and off the Corridor. Ultimately, if Amtrak is able to reduce its costs, the beneficiaries will be the members of the public who rely upon Amtrak, SEPTA, and the other commuter authorities supplied by Amtrak.

Nor is there any basis for PPL's concerns about whether the buy-out provision is "just and reasonable" and "non-discriminatory." The buy-out provision simply implements existing provisions in the 1998 Restructuring Settlement and in the Electric Competition Act.⁵ For large industrial customers such as Amtrak, those provisions expressly authorize the negotiation of CTC buy-outs, subject to approval by the Commission. The Commission itself approved the buy-out clause in the 1998 Restructuring Petition and recognized that it was in the public interest to offer a lump sum payment option. In the proceeding, the PECO-Unicom settlement provides specific buy-out amounts for Amtrak, but does not preclude other eligible customers from negotiating buy-outs with PECO on reasonable terms. Accordingly, there is nothing even remotely discriminatory about this provision.

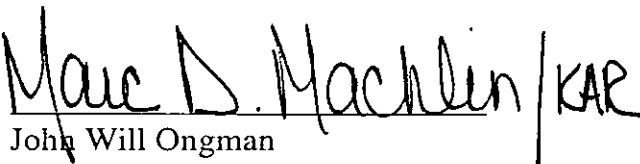
⁵ See 1998 Restructuring Petition at 21 (April 29, 1998). Amtrak's lump sum buy-out options were calculated using a projected traction power growth rate of 0.4 percent per year. In accordance with the 1998 Restructuring Petition, which was approved by the Commission, the revenue stream was then discounted back using PECO's after-tax cost of capital. If Amtrak is able to finance a buyout by borrowing funds at an interest rate which is less than PECO's after-tax cost of capital, it will be able to achieve cost savings. At the same time, however, since PECO's CTCs initially were established using PECO's higher pre-tax cost of capital, there is a substantial margin of protection for all ratepayers grouped with Amtrak for CTC reconciliation purposes.

III. CONCLUSION

For the reasons stated above, the proposed settlement covering the PECO-Unicom merger should be approved, and the Commission should not hold any further hearings.

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Dated: April 18, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of April, 2000, served Reply of the National Railroad Passenger Corporation to the Objections of PPL Electric Utilities Corporation upon the parties listed below via facsimile:

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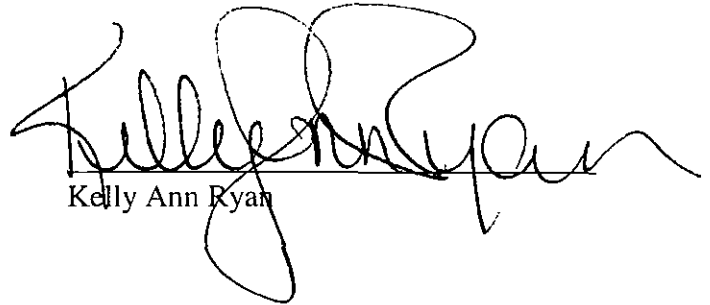
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company Pursuant :
To Chapters 11, 19, 21, 22 and 28 Of The :
Public Utility Code For Approval Of (1) A Plan :
Of Corporate Restructuring, Including Creation : Docket No. A-110550F.0147
Of A Holding Company And (2) The Merger :
Of The Newly Formed Holding Company And :
Unicom Corporation :

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REPLY COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

**DOCUMENT
FOLDER**

I. INTRODUCTION

The Office of Consumer Advocate (OCA) is in receipt of the Objections to the Joint Petition for Settlement filed by PPL Electric Utilities Corporation (PPL) and Councilman David Cohen. Councilman Cohen, while recognizing the many positive aspects of the Settlement, raises principled concerns that additional protections and conditions may be needed for this merger to be considered in the public interest. The OCA raised many of these concerns in its initial Protest in this proceeding and explored these matters through extensive discovery and the settlement process. The OCA respectfully submits that this comprehensive Settlement, joined in by a broad array of diverse interests, fairly resolves the many concerns regarding the merger. The OCA will briefly explain its position as to why the settlement provides necessary protections for ratepayers and is in the public interest in Section III below.

- PPL, on the other hand, filed objections to this Settlement that are, frankly, astonishing in their level of mistrust of the Commission's settlement process and in the Commission's ability to faithfully carry out its duties. Moreover, PPL has no legally cognizable interest in most of the specific provisions of this Settlement to which it objects. Who is PPL, for example, to argue that PECO ratepayers should not receive \$200 million in distribution rate reductions to reflect a sharing of certain merger savings between PECO and its customers? Even if it has a recognizable interest, PPL's objections are completely without support. PPL's tactics, if countenanced by the Commission, would severely impair the settlement process that the Commission has supported and which has worked well in advancing both electric and gas restructuring in Pennsylvania. PPL's effort to derail this Settlement, because some of the terms of the Settlement might be cited against PPL in some future, hypothetical proceeding, must be rejected.

The heart of PPL's complaint can be found at page 13, in Paragraph 22 of PPL's objections. PPL claims that it has become the subject of the "precedential effect" of settlements in major cases--referring specifically to the electric restructuring proceedings. In essence, PPL is arguing that it was not treated fairly by this Commission in the process of the settlement of its own restructuring proceeding and believes that the same may happen again. As a participant in all of the restructuring settlement proceedings, the OCA takes great exception to PPL's characterizations of this process and of the effort by all parties, particularly the Commissioners and Commission Staff, in developing a process that allowed electric restructuring to move forward in Pennsylvania on a fair and timely basis. Such a process worked to the benefit of all Pennsylvanians.

PPL argues, however, that even though it was represented by counsel throughout the electric restructuring settlement process, that it was treated unfairly in that process because its

restructuring settlement was “modeled” after PECO’s restructuring settlement. A comparison of PECO’s and PPL’s electric restructuring settlements, however, would demonstrate that, despite PPL’s cries of foul, there are differences between the settlements that reflect differences within the cases. To the extent that PPL did not like its restructuring settlement, it was never compelled to agree to the terms—always being free to pursue litigation rather than settlement. So, too in the future, PPL is never required to accept a settlement or a settlement term in its own case that it does not believe is reasonable or supported. PPL can always litigate if it believes that the settlement process will treat it unfairly.

As will be set forth in detail below, PPL’s objections should be rejected outright by this Commission. Importantly, PPL never once argues or even suggests that this merger should not go forward or that it is prepared to present evidence that this merger or the settlement is not in the public interest. PPL simply argues that every provision of the settlement has no bearing on the merger or is not supported by applicable law. But, PPL forgets the relevant legal test in evaluating this merger—the public interest. As the Commission is well aware, the public interest is defined broadly and the Settlement here brings together a broad and diverse group of Joint Petitioners who actually do have an interest in these proceedings, and addresses a wide variety of public interest considerations.

Moreover, the OCA questions whether it is proper at all for PPL to raise these types of objections to this Settlement. Although PPL’s intervention in this proceeding was not opposed by PECO, the OCA questions whether PPL is aggrieved by this settlement—which clearly acknowledges that it is not controlling precedent—or whether PPL has a sufficient interest in many of the terms that it has challenged to have standing to contest this settlement. The OCA submits that

PPL's interest in these provisions is so tenuous that it has no cognizable legal interest in the provisions of the Settlement. For example, PPL has not claimed any competitive harm to itself or any impact upon PPL service or rates from this Settlement in its objections.¹ PPL's objections should be dismissed out of hand. To do otherwise is to suggest that anyone can intervene in any PUC case and scuttle a negotiated settlement among the real parties in interest.

As this Commission's recent experience demonstrates, it is difficult enough to achieve just and reasonable settlements among the truly interested parties in a complex and difficult case such as this one. It would be impossible to achieve settlement, however, if wholly disinterested parties were allowed to challenge such settlements because of the possibility that some term from the settlement might be suggested by a party to some as yet unfiled or un contemplated proceeding involving another set of parties.

As set forth below, the provisions of this settlement address risks and benefits to PECO's customers and the public interest from PECO's proposed corporate restructuring and merger with Unicom. For the reasons set forth in the OCA's Statement in Support, for the reasons set forth in the public input testimony, and for the reasons set forth below, the OCA submits that this settlement is in the public interest and should be adopted.

¹ The only possibly relevant claim that PPL has forwarded is that there may be some impact from the rate caps and rate reductions on PJM transmission service that might affect PPL. As set forth below, PPL's claim is not only tenuous, it is wrong. PECO's agreements will not impair transmission service reliability and a rate cap exception exists that addresses this very issue.

II. REPLY TO OBJECTIONS OF PPL

A. Introduction

As set forth above, the OCA submits that PPL's objections to this Settlement are wholly without merit and should be dismissed out of hand. The gravamen of PPL's complaint is that PPL does not want this settlement to be used in any way in any other proceeding. See, PPL Objections, ¶¶22, 44-49. Even the settlement itself, however, acknowledges that it cannot serve as controlling precedent in any future cases, including future mergers by other Pennsylvania utilities. PPL, however, is not satisfied with this provision. PPL seeks to preclude the Joint Petitioners and the Commission, in both future litigation and future settlements, from even referring to the fact of this settlement or any of its provisions. PPL seeks to eliminate from Commission practice what has become a useful paradigm for settling complex cases. The OCA strenuously objects to the conditions proposed by PPL and submits that they are unnecessary and incorrectly imply that the Commission cannot fairly and properly weigh the evidence in a case before it.

PPL also argues that the Settlement is unsupported by evidence of record and is inconsistent with Commission policy and applicable law. PPL's arguments are sorely misplaced in some instances and flat out wrong in others. PECO has presented its Application, numerous Exhibits accompanying the Application, and the testimony of five witnesses accompanying the Application in this proceeding. In addition, there was significant public input testimony in support of the Settlement. See, Tr. 99-102 (Witness for Citizens for Pennsylvania's Future; Tr.102-104 (Witness for Action Alliance for Senior Citizens); Tr. 110-111 (Witness representing a bank in Bucks County); Tr. 112-114 (Witness for South Street Penthouse Special Service District); Tr. 114-118 (Witness for CEPA); Tr. 118-120 (Witness for the Greater Northeast Philadelphia Chamber of

=Commerce); Tr. 120-122 (Witness for the Variety Club of the Delaware Valley); Tr. 167-170 (Witness for The Partnership for Community Development Corporation).² PECO's testimony, the public input testimony, the terms of the Settlement and the Statements in Support of the Settlement, form the basis of any necessary findings regarding this merger.

PPL, however, seems to be suggesting that expert testimony beyond the Company's direct case is required for approval of this Settlement. Yet, PPL has presented no credible reason and did not set forth any facts that would suggest that this Settlement is not in the public interest or that further evidence is required. The Commission's settlement guidelines specifically encourage objecting parties to do just that if requesting further proceedings. 52 Pa. Code §69.406(a).

Moreover, despite PPL's call for evidentiary hearings, and its suggestion that this is a "contested" settlement, PPL never even indicates whether it would put on any evidence as to why the Settlement is not in the public interest.³ PPL also ignores the Statements in Support of the parties, as well as the public input testimony, that explains why this settlement is in the public interest. Based on the statements in support, the public input testimony and the Company's

² The above referenced testimony was taken from the first day of public input hearings. Other examples of testimony which provide support for the conclusion that the Settlement is in the public interest are as follows: Tr. 185-187 (Witness for Bensalem Township); Tr. 243-247 (Witness for East Brandywine Township); Tr. 259-263 (Witnesses for West Goshen Township); Tr. 269-272 (Witness for Chester County Chamber of Business and Industry); Tr. 294-298 (Witness for City of Coatesville).

³ PPL did not identify a witness for this proceeding in its Prehearing Memorandum or identify specific issues that it sought to pursue as the ALJ requested despite having PECO's Application and Testimony for over two months. PPL simply reserved the right to name a witness at a later time. PPL still has not identified a witness or indicated that it seeks to present evidence in this proceeding.

testimony with its Application, the Commission is fully able to review the terms of this settlement and determine whether it is in the public interest.

As the Commission is well aware, many cases over the years have settled and been accepted by the Commission based on the Company's initial direct testimony being admitted to the record. One of the reasons for settling cases is to avoid litigation costs and the unnecessary divisiveness of positions that can sometimes result if adversarial positions are required to be taken. In this case, extensive discovery was conducted by many of the parties, the Company testimony was presented, and a remarkable cross-section of disparate parties were able to resolve their differences without the resort to continued costly litigation. This is exactly what the Commission's policy on settlement contemplates. See, 52 Pa. Code §69.401. In its Policy Statement regarding both mediation of non-rate cases and settlement of rate cases, the Commission expresses its support for this approach and the results achieved by such an approach. For example, the Commission states:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the *interested* parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.

52 Pa. Code §69.401 (emphasis added). See also, 52 Pa. Code §69.391. Indeed, this is exactly what Chairman Quain urged the *interested* parties to do in this proceeding. Statement of Chairman Quain issued March 2, 2000. In contrast to all of the other parties who signed the Settlement--such as the Company, the OCA, the OSBA, OTS, the City of Philadelphia, Senator Fumo, PennFutures, Clean Air Council, Enron, Conectiv, MAPSA, New Energy, PAIEUG, IECPA, Amtrak, CEPA, TAG, ACORN, Action Alliance, Eric Epstein, and Patricia McNamara--PPL has no real interest in the

outcome of most of the issues in this case. PPL cannot be allowed to now carp from the sidelines and disrupt a negotiated resolution to this case that is in the public interest.

Finally, PPL seems to argue that the settlement is inconsistent with Commission policy and applicable law, and that many of the provisions are not related to the merger. The OCA submits that the public interest standard by which this merger is to be evaluated is a broad standard and all of the provisions of the Settlement go directly to the public interest. The corporate restructuring and the merger will affect every aspect of PECO's operations. The OCA will discuss below how the provisions of the settlement address the issues that were raised by the parties regarding this merger and how the resolution of these issues is consistent with Commission policy and applicable law. PPL has simply taken too narrow a view of what a proper resolution of this corporate restructuring and merger proceeding entails.

B. PPL's Request For Further Conditions Limiting The Future Rights Of The Joint Petitioners Should Be Rejected.

1. PPL's Request For Further Conditions Limiting The Future Rights Of The Joint Petitioners Is Wholly Without Merit And May Limit The Due Process Rights Of The Joint Petitioners In Future Proceedings.

In Paragraphs 44 through 49, PPL requests that the Commission "condition" this Settlement on the Joint Petitioners "agreement" that this Joint Petition will not be used to justify relief in subsequent proceedings before the Commission involving other public utilities, including efforts to reopen other restructuring settlements. PPL argues in ¶47 that if it does not get this "protection," PPL will be put in the position of defending against relief proposed in future proceedings that might be included in the settlement. PPL goes on to argue that without this

“protection,” every case at the Commission will have to be treated by PPL like a “rulemaking” and any decision the Commission may make in any other case will violate PPL’s due process rights. PPL’s argument is so out of line with the concept of legal precedent that it is difficult to respond.

Under PPL’s view of the world, every potential litigant will be required to intervene in every other litigant’s court proceeding. After all, one product manufacturer’s settlement of a product liability claim might be cited by a party in some as yet to be filed lawsuit involving some other product; or one criminal defendant’s plea bargain might be recalled by a judge in some other defendant’s sentencing hearing. Clearly, every utility will not only intervene in every other utility’s proceeding, but will also seek to veto any settlement term that the intervening utility would not have accepted if the settlement term applied to it. The concept of the law is simply not as PPL represents it.

This case is not a rulemaking. The terms of this Settlement do not apply to PPL any more than they apply to the scores of other utilities across Pennsylvania that chose not to intervene in this case. This is a case regarding a proposed merger by PECO. The OCA would note that this Settlement contains a clause that states just that. The Settlement provides:

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

Joint Petition, ¶72. This provision, in substantially similar form, is contained in many settlements considered by the Commission. The OCA does not dispute that this settlement will not constitute controlling precedent and the settlement and the law provides adequate support in this regard.

To suggest, however, that it is unfair to PPL or a denial of PPL's due process rights for the Commission even to consider similar provisions in any future case or any future settlements turns the "shield" of this protective clause into a "sword" that may impinge upon the due process rights of the Joint Petitioners, and may prevent the creation of a full record for Commission consideration. In essence, what PPL is arguing is that the Commission cannot be relied upon to consider each case on its merits and to determine what condition or relief is appropriate based on all of the facts of record in a case. The OCA submits that the Commission has always considered the merits of any case before it. Moreover, the entire principle of the law is based on the foundation of applying the facts of a case to the law or relevant precedent. What PPL really suggests is that the Joint Petitioners' due process rights in future proceedings be circumscribed by a condition that presupposes the inapplicability of these settlement provisions to a future case. PPL's attempt to here suggest that the entire structure of the law should not apply to PPL cannot withstand scrutiny.

PPL also suggests that the Commission rule now that this settlement cannot be used to reopen another electric utilities restructuring proceeding. The OCA submits, however, that PPL's concern is again misdirected. The restructuring proceeding settlements are settlements in their own right and the terms of their reopening would be governed by the settlements themselves or the agreement of the parties to the settlement. There is simply no need for the Commission to direct such a condition when those settlements have been concluded, approved by the Commission, and are in the process of being implemented. If, indeed, any request is made to reopen any of the settlements, the Commission can rule on the merits of that request at the time it is made based on the facts at that time. PPL's request for this additional condition should be rejected.

2. PPL's Argument That It Should Never Have To Defend Against Certain Claims In Future Cases Proves Too Much.

PPL also argues that the conditions it proposes in ¶49 should be included because it should not have to defend itself against the position that similar provisions should be applied to PPL in a future case. PPL's argument proves too much. Every party in every case before the Commission is always free to present requests for relief and the Company must defend against those requests with which it disagrees. The fact that one such request was included in another settlement makes the burden no less and no more on the Company than any other request.⁴ The Commission will consider the request and the Company's defense on the merits. The Company's argument here presupposes that the Commission will not faithfully perform its review but will simply rely upon a previous settlement even if it is not supported in the PPL proceeding. The OCA strongly disagrees, but if PPL finds that this has occurred to it in a future case, it can appeal and make its arguments to the appellate courts.

PPL goes on to imply that some of the Joint Petitioners have an improper motive in regard to this Settlement. In Paragraph 46 of its Objections, PPL complains that the Statements in Support of the Settlement filed by the OCA, Eric Epstein, MAPSA, and PennFutures reveal that these parties already plan a strategy to use this Settlement in future proceedings. PPL again worries that it may have to "defend" itself against these positions in future cases. The OCA submits,

⁴ The OCA would note that the PECO Joint Petition for Settlement includes several corporate protections that were "modeled" after a similar settlement involving PPL's corporate restructuring. The OCA expects that had these similar requirements *not* been imposed upon or agreed to by PECO, PPL would now be arguing that the inconsistent treatment for the same form of corporate restructuring was unfair.

however, that there is nothing inappropriate in parties proposing terms in one case that have been successfully implemented in a prior settlement. Indeed, without such a process, the OCA submits that neither electric restructuring nor gas restructuring would have been accomplished in Pennsylvania in the timely manner in which they were accomplished. PPL's argument goes directly to the heart of the process which the Commission has utilized, and encouraged, to resolve large complex cases.

PPL, however, worries that it may be forced to sign a settlement or defend against a settlement term from another proceeding. The OCA submits, however, that the initial decision as to whether to accept a provision from another settlement always rests with the Company. If the Company feels that proposed provisions in a settlement, or requests for relief in a case, are not relevant to its case or appropriate, it need not sign on to them. The Company can always fully litigate its cases. The OCA has strongly supported the Commission's settlement process and a free exchange of ideas has always been helpful and useful in this process. As such, the OCA strongly urges the Commission to reject any suggestion that the Joint Petitioners be restricted in any way in a future proceeding for having negotiated—in good faith—these settlement provisions.

3. Conclusion

For the reasons set forth above, the OCA submits that the additional conditions requested by PPL in Paragraph 49 of its objections should be rejected. The OCA submits that imposing these types of conditions on the Joint Petitioners or the settlement process will simply eliminate the settlement process that has worked so well in Pennsylvania.

B. PPL's Argument That Specific Provisions Are Not Consistent With Commission Precedent Or Applicable Law, Or Are Not Supported By The Record, Is Completely Without Merit And Should Be Disregarded.

1. Introduction

The OCA would again note that it is the OCA's position that PPL does not have a cognizable legal interest in the individual settlement provisions to raise objections to the individual settlement provisions. For this reason alone, PPL's objections should be dismissed. Clearly, the parties representing the ratepayers of PECO Energy, the City of Philadelphia, and parties working on a variety of issues both within and affecting PECO's service territory such as competitors and environmentalists, have come together to resolve this matter in a manner that seeks to benefit PECO's ratepayers and advance competition in PECO's service territory. The OCA would note that the OCA, and many of these affected parties, conducted extensive discovery prior to and during the settlement process. The OCA submits that the wide array of parties with a direct and substantial interest in this proceeding and in PECO's service territory have come together to forge a Settlement that is in the public interest and fully in accord with Commission policy and applicable law. As one member of the public testifying in Philadelphia stated:

I'm amazed at the fact that this settlement has been able to be put together with all of the people involved in the settlement.

Tr. 111. A party such as PPL, with no recognizable interest and who has raised no credible issues, should not be permitted to disrupt this Settlement.

2. The Rate Reductions Are Consistent With Commission Precedent In Other Cases.

In its Objections, PPL argues that the \$200 million in rate reductions are contrary to Commission policy regarding mergers. The OCA would note that it is at a loss to explain how PPL thinks it is aggrieved by a rate reduction provided by PECO to PECO's ratepayers. Even if PPL had an interest in this issue, PPL's argument ignores relevant Commission Orders and is simply incorrect.

For support of this proposition, PPL cites the Commission's decision in PG Energy, Inc., Docket No. A-120011F.002, et al. PPL, however, fails to cite the Commission's amended order in that case which approved a settlement between the OCA and PG Energy that amended and enhanced the Application. PG Energy, Docket No. A-12-11F.002, et al. (Amended Order entered October 18, 1999)(attached hereto as Attachment A). Under the Settlement Agreement in PG Energy, the OCA and PG Energy addressed the issue of merger savings and how those savings would be reflected in rates to the benefit of customers. Specifically, with regard to the merger savings, the Company agreed that in any subsequent rate case, the deferred Section 2211(b) costs under the Natural Gas Competition Act would be offset by 50% of the net merger-related savings realized through the end of the test year utilized. See, Amended Order at pages 4-5, Stipulation at ¶2. As such, PPL's reliance upon the original order in that case is misplaced.

More importantly, however, PPL fails to cite, or even acknowledge, the Commission's decision regarding the APS/Duquesne merger that was fully litigated before the Commission in 1998. In the Commission's Order regarding this merger, the Commission specifically directed that 100% of the identified merger savings for distribution and generation be

-flowed back to the ratepayers of Duquesne and APS. Joint Application of DQE, Inc., Allegheny Power Systems, Inc. and AYP Sub, Inc. For Approval Of The Transfer By Merger Of The Property Rights Of Duquesne Light Company To Allegheny Power Systems, Docket No. A-110150F.0015, slip op. at 41-43 (Order entered May29, 1998). For the distribution-related merger savings, the Commission directed both Duquesne and West Penn to reduce their distribution rates beginning in the year of merger consummation. For the generation-related savings, the Commission directed that it be used as an offset to stranded cost in each utility's then pending restructuring proceeding. Id.

In another recent merger case involving Bell Atlantic and GTE Corporation, the Commission also approved a merger that was conditioned by a Memorandum of Understanding between the merging parties and the Office of Attorney General. Joint Application of Bell Atlantic Corporation And GTE Corporation For Approval Of Agreement And Plan Of Merger, Docket Nos. A-310200F.002, et al. (Order entered November 4, 1999). The merging companies entered into the Memorandum of Understanding with the Office of Attorney General to resolve numerous issues regarding the merger. In reaching the MOU, the parties agreed to extend the cap on rates for basic local exchange service for one company, and reduce residential local exchange rates for the other merging company; eliminate charges for touchtone service; provide access charge reductions, and implement UNE loop rate reductions. The Commission approved the MOU and approved the merger as modified by the MOU. Id. at Section VI.A.2, Ordering ¶¶ 3,8,9.

The OCA submits that the rate reductions called for in this case are fully consistent with applicable law, Commission policy, and are in the public interest.⁵

⁵ PPL asserts that there is no record basis for the rate reductions, but PPL ignores the testimony of PECO Witness Flaherty regarding the merger savings. PECO St. 4: Earlier on,

3. The Rate Cap Extensions Are Not Inconsistent With PECO's Obligations Regarding Reliability And Are Consistent With Commission Policy And Applicable Law.

In one of its more tangential arguments, PPL asserts that the 18 month extension of the transmission and distribution rate cap may be inconsistent with PECO's reliability obligations and its obligations to PJM. PPL Objections, ¶34. PPL's argument here is completely without merit. First, the OCA would point out that the rate reductions provided for by the settlement affect only the distribution portion of the rates, not the transmission rates. Thus, PECO's transmission rates have not been reduced. More fundamentally, however, PECO, who is fully aware of its financial position, was willing to agree to this term and supports this settlement.⁶ Finally, and importantly, the settlement provides for exceptions to the rate cap, notably the same exceptions contained in the Electricity Generation Customer Choice and Competition Act. In the Act, one of the possible exceptions to the rate cap found in Section 2804(4)(iii)(E) recognizes the need to make transmission and distribution system upgrades. That provision allows an exception to the rate cap if:

The electric distribution utility is directed by the commission or an independent system operator or its functional equivalent to make expenditures to repair or upgrade its transmission or distribution system.

66 Pa.C.S. §2804(4)(iii)(E).

recognizing its dilemma, PPL tries to suggest that some of these savings are "likely attributable" to Unicom. PPL Objections, Paragraph 13. The OCA submits that the decisions regarding the most appropriate use of the savings are better left to PECO and Unicom, without assistance from PPL. PECO obviously fully supports the Settlement.

⁶ PECO also included in its Application its Annual Reports and consolidated balance sheets.

PPL's suggestion that the rate cap extension is inconsistent with PECO's obligations regarding reliability is wholly without support and completely ignores the Electricity Generation and Customer Choice Act. The OCA submits that the rate cap extension is in the public interest and provides important protections to ratepayers as well as providing another method of reflecting merger-related savings to the benefit of ratepayers.

4. The Reliability Provisions Are Consistent With PECO's Testimony In This Proceeding And With Applicable Commission Policy and Law.

PPL also takes issue with PECO's commitment to enhance service reliability and to enhance the level of its customer service. PPL argues that these provisions would be more appropriate for a specific Commission investigation. PPL Objections, ¶32. PPL ignores the fact that one concern regarding this type of multi-state merger is that management attention and funds not be improperly diverted out of Pennsylvania through the merger. PECO clearly recognized this issue in its direct testimony. PECO witness Lawrence, in his direct testimony, set forth PECO's commitment to continue to improve reliability and customer service. PECO St. 1 at 3-9. These settlement provisions provide a means to measure this commitment and ensure that it is attained.

Moreover, this is not a rulemaking, and PECO's agreement to these standards does not preclude the Commission from conducting any rulemaking. In fact, the Commission has already completed its rulemaking regarding reliability and set forth its standards. See, e.g., Reliability Benchmarks and Standards, Docket No. M-00991220. To suggest that PECO, through this merger, cannot agree to enhance reliability beyond the Commission's minimum standards is simply absurd. PECO has agreed to enhance its historic performance and bring the benefit of best practices to its

ratepayers. This is a clear purpose of the merger and a clear benefit of the merger for PECO's ratepayers.

5. PPL's Argument Regarding The Nuclear Provisions Is Based On An Incorrect Assumption And Fails To Recognize The Important Protections Provided To Ratepayers:

At ¶35 of its Objections, PPL argues that the Commission cannot approve the provisions regarding nuclear cost. The basis of PPL's argument is PPL's suggestion that the agreement will lead to an under-financed or incomplete decommissioning fund. The provisions, however, do not even remotely have this effect. The Settlement provision at issue requires PECO to fund the first \$50 million of any increased nuclear decommissioning costs, plus 5% of any additional increase thereafter. The key here is that PECO is required to provide that level of funding—the funding is NOT being foregone as PPL suggests.

Once again, the OCA submits that the issue of nuclear costs, and appropriate protections for ratepayers regarding nuclear costs, are at the heart of this merger. As the Company's testimony explained, one motivating factor of this merger is to bring together two utilities with substantial nuclear capacity and develop synergies in operations for the generation markets. PECO St. 2 at 2-3 (Direct Testimony of Richard G. White). It is not at all unrelated to the merger that parties would seek protections for ratepayers and a sharing of some of these risks and benefits given this merger. Moreover, the provisions that PPL challenges here were explicitly supported at the public input hearings by witness Eric Epstein. Tr. at 374-376.⁷

⁷ PPL also attacked Appendix B to the Settlement regarding PECO's Agreement on nuclear monitoring and waste storage. The OCA anticipates that Mr. Epstein will respond fully to PPL. The OCA would note that EFMR is a recognized group that has worked on these issues for many years. In the agreement, PECO has agreed to work closely with the Group and has assured

PPL has raised no credible issue regarding the nuclear provisions and their objection should be dismissed.

6. The Environmental and Sustainable Energy Fund Provisions Are Consistent With The Developing Generation Market And The Commission's Policy Regarding A Sustainable Economic Future For Pennsylvania.

The OCA anticipates that several other Joint Petitioners will address the merits of the environmental provisions including the funding to the Sustainable Energy Fund. The OCA would note, however, that the Commission, in approving the Boards for the regional Sustainable Energy Funds and in setting up the Statewide Board for the Sustainable Energy Fund has recognized that these Funds are an investment in the Commonwealth and that they must garner further support for their initiatives. See, Electric Distribution Companies Sustainable Energy Funds, Docket Nos. R-00973953, R-00973954, R-00973981, R-00974008, R-00974009, Joint Statement of Chairman Quain and Commissioner Brownell, May-1999-C-7 (May 21, 1999). Many of the environmental provisions in this Settlement do just that by placing certain funding and program development under the auspices of PECO's Sustainable Energy Fund. Additionally, these provisions provide for appropriate reporting and accounting for these contributions.

Again, since this merger brings together the generation of two large utilities, additional conditions regarding alternative forms of generation are appropriate and in the public interest. The OCA again questions PPL's interest in these provisions in that PPL has identified no harm to PPL from these Settlement provisions.

that the contributed funds are appropriately spent and documented.

7. The Provisions Regarding Enhanced Competition And Revisions To CDS Help To Ensure That The Merger Will Meet The Requirements Of Section 2811 and 2210.

PPL also takes issue with certain provisions that are designed to enhance competition by addressing EGS related concerns and the revisions to the Competitive Default Service Program (CDS) that is to be implemented by PECO. The OCA would note, however, that PPL utterly fails to recognize that this merger must be reviewed under both Sections 2811 of the Electricity Generation Customer Choice and Competition Act and 2210 of the Natural Gas Competition Act. Under these sections, the Commission is obligated to address issues regarding the retail markets. The Joint Petitioners agreed to these provisions as one means of ensuring that the merger does not result in anti-competitive or discriminatory conduct. These provisions will assist in the development of the market in PECO's service territory and will provide benefits to all participants.

8. The Large Customer Provisions Bring Certainty To Large Customers As The Company Restructures And Merges.

PPL also argues that the Company must prove that the provisions for the large customers are not discriminatory and are just and reasonable. PPL argues that there is no record support for these provisions. The OCA would note, however, that several groups of large industrial customers, notably PAIEUG and IECPA, as well as the City of Philadelphia and Amtrak, participated in this proceeding and support this settlement. The OCA anticipates that these large customers will separately address PPL's objections in detail. The corporate restructuring and merger, however, can have an effect on all customers from issues related to customer service as practices and staffs are combined, to issues regarding the certainty of previous arrangements. The OCA submits that it is not PPL's place to question these provisions which are supported by the

affected company and its customers. These provisions provide certainty to these customers as the Company restructures its operations and merges. Again, however, the OCA submits that PPL is not aggrieved by these provisions and has no basis to challenge these provisions.

D. Conclusion

For all of the reasons set forth above, the OCA submits that PPL's objections should be dismissed without hesitation by this Commission. As noted above, the real parties in interest in this case have proposed a comprehensive settlement in this case that should not be disturbed because another party fears that this case somehow will be used against it in some hypothetical proceeding in the future.

III. REPLY TO OBJECTIONS OF COUNCILMAN COHEN

Objections to the proposed Settlement were also filed by Councilman David Cohen. In his Objections, Councilman Cohen recognizes the positive aspects of the Settlement but seeks to have various concerns addressed in the Settlement Agreement. Councilman Cohen argues that addressing these issues will improve the Settlement Agreement. The OCA would note that the OCA raised similar concerns regarding this merger and has sought to address many of these concerns through the settlement process. In particular, the OCA sought through the settlement process to obtain adequate protections for PECO's ratepayers for the risks associated with PECO's merger and diversified business, and to assure that ratepayers would not have to bear costs or risks associated with this merger. The OCA submits that the protections contained in the Settlement provide the necessary protections for PECO's ratepayers from both the risks and the costs of PECO's merger and corporate restructuring.

As to issues regarding the acquired nuclear plants, as set forth in the OCA's Statement in Support, the OCA submits that the settlement provisions ensure that PECO's ratepayers will not be burdened with additional nuclear costs associated with Exelon's nuclear fleet. The settlement clarified that PECO's ratepayers only remain responsible for nuclear costs that they were already obligated to pay under PECO's Restructuring Settlement or the Electricity Generation Customer Choice and Competition Act. *Even as to costs which ratepayers were required to bear under PECO's restructuring settlement*, such as the increases in nuclear decommissioning costs that were to be flowed through the Nuclear Decommissioning Adjustment Clause (NDAC) contained in PECO's restructuring settlement, PECO has agreed to a *further* limitation of ratepayer responsibility by agreeing to share responsibility for these additional costs.

The OCA would also note that in addition to the specific provisions regarding nuclear issues, PECO agreed to a number of other corporate protections that are designed to ensure that ratepayers are protected from the risks associated with PECO's diversified businesses and to avoid cross subsidization. In addition, there are provisions that ensure the Commission's continued jurisdiction over PECO.

As to the rate reductions, the OCA does not disagree that PECO's rate levels remain high and that rate relief for the Philadelphia area should remain an important goal. The OCA submits, however, that the rate reductions provided in the settlement, in addition to the wide variety of other benefits contained in the settlement, are in the public interest. It is important to recognize that the rate reductions are only one component of this settlement. In addition to the rate reductions, the settlement provides for a rate cap extension and other significant benefits. For example, the settlement permits an expansion of the Company's CAP rate program, which for electric CAP customers already provides 25% and 50% discounts on the first 500 kwh of use per month, to more than 80,000 low income customers. The settlement also addresses various barriers to effective competition in PECO's service territory. As these barriers are addressed and competition develops, there will be additional opportunities for customers to realize rate savings by selecting alternative providers offering prices that are below PECO's price to compare. These provisions, when viewed as a whole, bring great value to PECO's ratepayers. The OCA submits that the rate reductions, in the context of the whole settlement, are in the public interest.

Councilman Cohen also raises a concern regarding the retention of jobs in the Philadelphia region. Following the submission of Councilman Cohen's objections, it is the OCA's understanding that PECO and the City of Philadelphia reached a further agreement that among other

things, expands PECO's commitment to retain employment in its City headquarters and to retain its headquarters in Philadelphia. The OCA hopes that these commitments by PECO address these important concerns raised by Councilman Cohen.

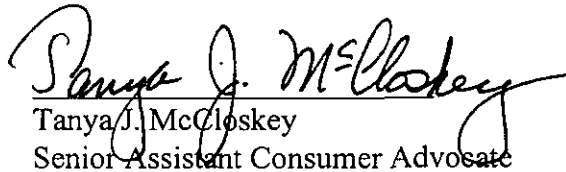
Councilman Cohen also recommends that PECO do more in regard to its universal service programs. The OCA again does not disagree that there are areas of PECO's universal service programs that should be the subject of continuing work among the interested parties. The OCA intends to continue to work with PECO and participate in PECO's Advisory Group on universal service issues to continue to address the needs of low income customers in PECO's service territory. The agreements of PECO in the settlement, however, advance PECO's universal service programs, resolve uncertainties for ratepayers regarding program cost recovery arising out of the electric and gas restructuring proceedings, and allow these programs to continue to develop at reasonable costs. The Settlement also requires PECO's CARES program to coordinate with the hardship funds to ensure that these funds reach customers in need. For these reasons, the OCA submits that the provisions regarding universal service programs, in addition to all other provisions of the settlement, are in the public interest.

The OCA appreciates Councilman Cohen's concerns and submits that he has raised important concerns for PECO's ratepayers and its service territory. As set forth above and in the OCA's Statement in Support Of The Settlement, however, the OCA submits that these concerns are reasonably addressed by this comprehensive settlement that brought together such a wide array of interested parties and reconciled such a diverse set of interests. The OCA submits that the Settlement, taken as a whole, is in the public interest.

IV. CONCLUSION

For the reasons set forth above, and the reasons set forth in the Joint Settlement and the OCA's Statement in Support, the OCA submits that the Joint Settlement reaches a fair balance of the myriad of issues and interests in this proceeding. This comprehensive settlement that is the product of intense and detailed negotiations that brought together a wide array of diverse parties, is in the public interest and should be approved. The objections raised by PPL are so baseless that they should be immediately dismissed. As to the concerns raised by Councilman Cohen, the OCA respectfully submits that the Settlement represents a fair resolution of these critical concerns and is in the public interest.

Respectfully submitted,



Tanya J. McCloskey
Senior Assistant Consumer Advocate

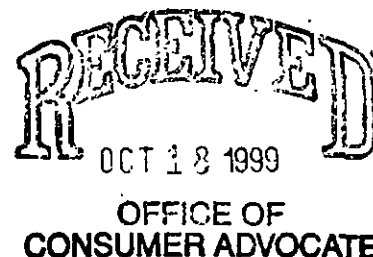
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Dated: April 17, 2000
57844

ATTACHMENT A

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265



Public Meeting held October 15, 1999

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.

Joint Application of PG Energy, Inc., Honesdale Gas Company, and Southern Union Company for: (a) approval of the merger of Pennsylvania Enterprises, Inc. into Southern Union Company, the merger of Honesdale Gas Company into PG Energy, Inc., and the merger of PG Energy Inc. into Southern Union Company; (b) the right of Southern Union Company to furnish gas service; (c) the abandonment of gas service by Honesdale Gas Company; and (d) the abandonment of gas service by PG Energy, Inc.

A-120011
A-120011, F0002
A-121200, F2000
A-122150, F2000

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration is a Letter-Petition seeking (1) amendment of our September 15, 1999 Opinion and Order (Merger Order) at the above-captioned dockets and (2) approval of a Stipulation to Satisfy Office of Consumer Advocate's Protest of Joint Application (Stipulation) (attached hereto as Appendix A). The Letter-Petition and Stipulation were filed on or about October 12, 1999, by the four (4) Petitioners: PG Energy, Inc., Honesdale Gas Company, Southern Union Company (PGE, Honesdale, and Southern Union, respectively, and Companies, collectively), and the Office of Consumer Advocate (OCA). The Letter-Petition and Stipulation are unopposed. For the reasons articulated herein, we shall grant the Letter-Petition, approve

the Stipulation, and amend the Merger Order, to incorporate the Stipulation conditions. This action will, in effect, amend the Joint Application approved in the Merger Order.

History of The Proceedings

On July 6, 1999, PGE, Honesdale, and Southern Union filed the subject Joint Application pursuant, *inter alia*, to Chapters 11, 19, 21, 22, 28 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§1101-1104, 1901-1904, 2101-2107, 2201-2212,¹ and 2801-2812. The OCA was the only Protester.

On September 15, 1999, this Commission dismissed the OCA's Protest and approved the Joint Application, holding that the issues raised by the OCA were outside the scope of this proceeding and were either ratemaking issues, amenable to post-merger rate proceedings, or were too speculative in nature to determine on their merit. (Merger Order, pp. 6-7). We noted that the Companies expressly affirmed that they anticipate no layoffs from the merger and expect no negative effect on service quality, safety, or reliability. (Merger Order, pp. 9-10).

We concluded that approval of the Joint Application would have a pro-competitive effect on the marketplace and that it would be counterproductive to impose, as a condition of approval, the passing on of cost savings. (Merger Order, pp. 11-12). Additionally, we noted that the transfer would be virtually transparent to Pennsylvania customers. (Merger Order, pp. 12-13). Our review of the Joint Application led us to conclude that the proposed mergers, acquisitions, and abandonments were necessary or proper for the service, accommodation, convenience, or safety of the public and that the Joint Application should be approved. (Merger Order, p. 13).

¹ Natural Gas Choice and Competition Act (NGCCA).

As noted, the Petitioners subsequently filed the instant Letter-Petition and Stipulation, indicating they have resolved their differences at this point in time.

Discussion

In this proceeding, the Petitioners are seeking, without opposition, amendment of the Merger Order. The standard in such cases is Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), relating to rescission or amendment of orders, and Section 5.572 of our Regulations, 52 Pa. Code §5.572, relating to relief following the issuance of a final decision. It has been held that, because a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. (*West Penn Power v. Pa. PUC*, 659 A. 2d 1055 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, No. 576 W.D., Allocatur Docket (April 9, 1996) (*West Penn Power*); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980)).

We have held that such petitions must allege new and novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the order under consideration. (*Duick v. PG&W*, 56 Pa. PUC 553, 51 PUR 4th 284 (1982) (*Duick*), citing *Pa. Railroad Co. v. Pa. PSC*, 118 Pa. Superior Ct. 380, 179 A. 850 (1935)). Our decisions in these types of cases are left to our sound discretion and will not be disturbed on appeal absent bad faith, fraud, capricious action, or abuse of power. (*West Penn Power*).

We note that the Stipulation was accomplished through a collaborative process and mutual agreement among the Parties. The existence of the Stipulation presents us with the opportunity to consider the Parties' agreement on the contested

issues. Such agreement is clearly a new matter under *Duick, supra*. Accordingly, we will grant the Letter-Petition and consider the Stipulation on its merits.

In approving the Joint Application, we were guided by Section 2210 of the NGCCA, which gives this Commission the authority to approve mergers that will promote a “properly functioning and effectively competitive retail natural gas market” in Pennsylvania. In exercising this responsibility, this Commission is cognizant of the fact that mergers between non-competing companies (because they are located in different states) have the potential of significantly increasing retail natural gas competition, especially where the merger involves bringing in the substantial resources of a new entrant into the market, such as Southern Union. Within this context we shall address the Parties’ Stipulation, which would amend the Joint Application and require a corresponding amendment of the Merger Order.

We note that the Stipulation has five (5) components: Acquisition Adjustment, Merger Savings and Restructuring, Service, Electric Generation Supplier Service, and the OCA’s Withdrawal of Protest and Agreement Not to Appeal. The first four (4) components are undertakings by Southern Union. The fifth is an undertaking by the OCA. We shall summarize each component.

First, relative to Acquisition Adjustment, Southern Union would agree to provide the OCA with documentation of the final booked amount of the additional purchase cost for the subject mergers and acquisitions prior to Southern Union’s next general rate case. Further, Southern Union would not seek recovery through rates for such additional purchase cost. (Stip., ¶1). Second, with respect to Merger Savings and Restructuring, Southern Union would agree, in any subsequent rate case, that deferred Section 2211(b) costs (excluding Section 2211(c) costs) will be offset by 50% of the net merger-related savings realized through the end of the test year utilized. Subject to

rebuttal, it would be presumed that any merger-related savings within the Commonwealth shall include 50% of any direct merger-related savings to the Pennsylvania division as well as 50% of a proportionate share of allocated merger-related savings. Rates established in Southern Union's next Pennsylvania base rate case would reflect on-going net merger-related savings. (Stip., ¶2). Third, as to Service, Southern Union would commit to no layoffs and no adverse change in utility operations, service availability, or service quality in its Pennsylvania division as a result of the merger. (Stip., ¶3). Fourth, turning to Electric Generation Supplier Service, at a minimum, Southern Union, itself or through an affiliate, would agree to offer residential service as an electric generation supplier to all eligible residential customers in the PGE and Honesdale service territories, for at least one (1) year, if Southern Union believes it can offer such service at competitive prices in an economical manner, subject to applicable laws and regulations. (Stip., ¶4).

In turn, the OCA would agree to "withdraw" its Protest, which this Commission dismissed, and to forego appealing the Commission's decision to approve the subject mergers and acquisitions and necessary related transactions. (Stip., ¶5).

We find the Stipulation of the Parties to be predicated upon the objectives of the NGCCA. Further, the Stipulation is not inconsistent with the Findings of Fact and Conclusions of Law underpinning the Merger Order. Approval of the Stipulation would serve to enhance market operation, consistent with the Merger Order. The Stipulation would also, in effect, amend, or enhance, the Joint Application but would not so transform it that it becomes a new application requiring the application process to begin anew with publication. We find, therefore, that granting the Letter-Petition, approving the Stipulation, amending the Merger Order to incorporate the conditions contained in the Stipulation, and deeming the Joint Application to be so amended, is in the public interest,

pro-competitive, and necessary or proper for the service, accommodation, convenience, or safety of the public.

Conclusion

Accordingly, we shall grant the Letter-Petition, approve the Stipulation, and amend the Merger Order to incorporate the terms of the Stipulation; **THEREFORE,**

IT IS ORDERED:

1. That the Letter-Petition, filed on or about October 12, 1999, by PG Energy, Inc., Honesdale Gas Company, Southern Union Company, and the Office of Consumer Advocate, seeking amendment of this Commission's September 15, 1999 Opinion and Order, at the above-captioned dockets, to incorporate the conditions contained in the Stipulation to Satisfy Office of Consumer Advocate's Protest of Joint Application is granted, consistent with this Opinion and Order.

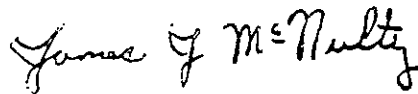
2. That the Stipulation to Satisfy Office of Consumer Advocate's Protest of Joint Application, filed on or about October 12, 1999, by PG Energy, Inc., Honesdale Gas Company, Southern Union Company, and the Office of Consumer Advocate, is approved, consistent with this Opinion and Order.

3. That the Joint Application of PG Energy, Inc., Honesdale Gas Company, and Southern Union Company for: (a) approval of the merger of Pennsylvania Enterprises, Inc. into Southern Union Company, the merger of Honesdale Gas Company into PG Energy, Inc., and the merger of PG Energy Inc. into Southern Union Company; (b) the right of Southern Union Company to furnish gas service; (c) the abandonment of gas service by Honesdale Gas Company; and (d) the abandonment of gas service by PG

Energy, Inc., is deemed amended to incorporate the conditions contained in the Stipulation to Satisfy Office of Consumer Advocate's Protest of Joint Application, and is approved as amended, consistent with this Opinion and Order.

4. That the Opinion and Order, entered on September 15, 1999, in the above-captioned dockets, is amended to incorporate the conditions contained in the Stipulation to Satisfy Office of Consumer Advocate's Protest of Joint Application, consistent with this Opinion and Order. In all other respects, said September 15, 1999 Opinion and Order shall remain in full force and effect.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: October 15, 1999

ORDER ENTERED: **OCT 18 1999**



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

IN REPLY PLEASE
REFER TO OUR FILE

October 26, 1999

ALL PARTIES OF RECORD

In Re: Joint Application of PG Energy, Inc., et al for (a) approval of merger, (b) right to furnish gas service, and (c) abandonment of service Docket Number A-120011, et al

To Whom It May Concern:

With reference to the Commission Opinion and Order, adopted October 15, 1999, subject above, enclosed is Annex A, which was inadvertently omitted from the Commission's Order. Please attach same to the original Order referenced.

We regret any inconvenience this may have caused.

Very truly yours,

A handwritten signature in cursive script that reads "James J. McNulty".

James J. McNulty
Secretary

Enclosure

APPENDIX "A"

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of PG Energy Inc., Honesdale :	
Gas Company, and Southern Union Company for :	
all approvals required under the Public Utility :	Docket Nos. A-120011
Code due to the merger of Pennsylvania :	A-120011F0002
Enterprises, Inc., into Southern Union Company, :	A-121200F2000
the merger of Honesdale Gas Company into PG :	A-122150F2000
Energy Inc., and the merger of PG Energy Inc. into :	
Southern Union Company as the Surviving :	
Corporation :	

STIPULATION TO SATISFY OFFICE OF CONSUMER ADVOCATE'S PROTEST OF JOINT APPLICATION

AND NOW, this ____ day of October, 1999, comes Southern Union Company ("Southern Union" or "Company"), PG Energy Inc., Honesdale Gas Company, and the Pennsylvania Office of Consumer Advocate ("OCA") and agree, representing give and take of positions, interests and statutory and property rights, to the following Stipulation to satisfy and resolve the protest and any appeal filed by OCA regarding filings made or orders issued in the above-captioned matters:

Acquisition Adjustment

1. Southern Union agrees not to seek recovery through rates of the additional purchase cost (the amount in excess of the net book value of the assets of PG Energy Inc. and Honesdale Gas Company) for the acquisitions and mergers which are the subject of the Joint Application. Such additional purchase cost is estimated presently to be approximately \$236

million¹ for the entire Pennsylvania Enterprises, Inc. acquisition, and Southern Union agrees to provide OCA with the final booked amount of the additional purchase cost before Southern Union's Pennsylvania public utility operations division's ("Pennsylvania division") next general rate case.

Merger Savings and Restructuring

2. Southern Union agrees that, in any subsequent rate case, if the Company claims any costs deferred under Section 2211(b) of the Public Utility Code,² excluding those costs indicated in current Section 2211(c) of said Code, such claim will be offset by 50% of the net merger-related savings realized through the end of the test year utilized in such rate case. There will be a rebuttable presumption that any merger-related savings in Pennsylvania shall include 50% of any direct merger-related savings to Southern Union's Pennsylvania division as well as 50% of a proportionate share of allocated merger-related savings. Southern Union will submit an annual report documenting merger-related savings and costs for each calendar year³ commencing with the close of the merger and until the end of the calendar year in which the next base rate case is concluded. For purposes of this provision, the term "net merger-related savings" refers to those savings net of merger costs which: (a) occur after the consummation of the merger; and, (b) result from the merger. For purposes of this provision, the term "offset" shall not be such as to produce a negative number. Upon the establishment of rates in Southern Union's next Pennsylvania division base rate case, the rates established therein will reflect ongoing net

¹ Such figure is preliminary and may be revised after completion of the merger and upon independent appraisals which have not yet been performed.

² 66 Pa. C.S. §2211(b)

³ The remaining months of 1999 may be combined with the year 2000 report.

merger-related savings, including Southern Union's Pennsylvania Division's proportionate share of allocated net merger-related savings.

Service

3. Southern Union commits that there will be no layoffs in its Pennsylvania division as a result of the merger and there will be no adverse change in utility operations, service availability, or service quality in its Pennsylvania division as a result of the merger.

Electric Generation Supplier Service

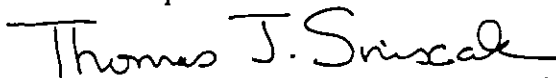
4. Subject to applicable laws and regulations, Southern Union agrees to offer residential service as an electric generation supplier, at a minimum, to all eligible residential customers who live within the territory presently served by PG Energy Inc. and Honesdale Gas Company. Such commitment shall not require Southern Union to provide service if, in Southern Union's opinion, it cannot offer competitively priced electric supply service to customers in an economical manner. Such service may be provided by an affiliate of Southern Union. This commitment shall extend for at least one year from the commencement of service after the date of this Stipulation.

OCA's Withdrawal Of Protest and Agreement Not To Appeal

5. In view of the above Stipulation, OCA agrees that its Protest in the above-captioned proceeding is satisfied by this Stipulation. OCA also agrees not to appeal the Commission's Order approving the Joint Application or to contest any other transaction necessary for the approval of this merger in any forum.

WHEREFORE, the parties request the Commission to amend its order of September 15, 1999 to incorporate the conditions contained in this Stipulation.

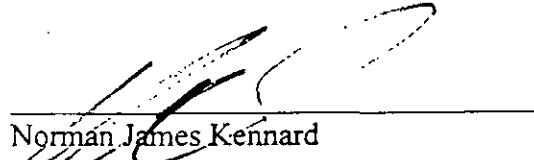
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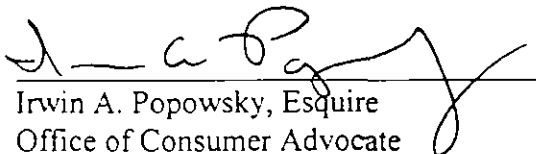
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Consumer Advocate

CERTIFICATE OF SERVICE

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

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

Dated this 18th day of April, 2000

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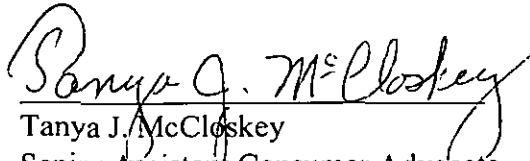
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SECRETARY'S BUREAU
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PA PUBLIC UTILITY COMMISSION
April 18, 2000 SECRETARY'S BUREAU

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James J. McNulty, Esquire
Secretary
Pennsylvania Public Utility Commission
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VIA FEDERAL EXPRESS

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APR 20 2000

DOCUMENT
FOLDER

**Re: 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;
Application Docket No. A-110550F0147**

Dear Mr. McNulty:

We are counsel to the MidAtlantic Power Supply Association (MAPSA) in the above matter. Please be advised that MAPSA joins the Reply Comments filed by the Office of the Consumer Advocate in the above matter with respect to the Objections to the Joint Petition filed by PPL Electric Utilities Corporation. MAPSA will not be filing separate Reply Comments.

Respectfully,

Joseph A. Dworetzky

JAD:kbs

cc: Commissioners
Certificate of Service

39

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APR 18 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

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2000, I served a true and correct copy of the foregoing letter in support of the Reply Comments filed by the Office of the Consumer Advocate on the following active participants and parties of record by first-class mail, postage prepaid:

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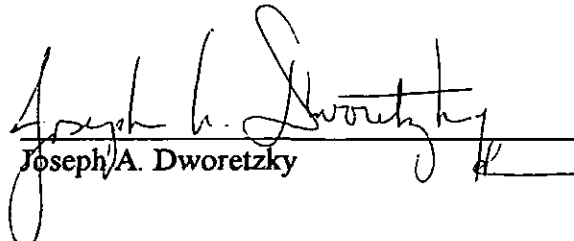
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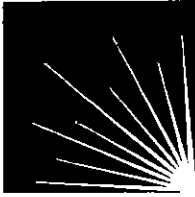
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Joseph A. Dworetzky

Clean Air Council



James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
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April 18, 2000

ORIGINAL

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

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

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of the Reply to Objections of PPL Electric Utilities Corporation and Councilman David Cohen of Clean Air Council, et al, in the above-referenced proceeding.

A copy of this document has been served on the parties of record and as required by rule as shown on the attached certificate of service.

Sincerely,

Michael Fiorentino, Esq.
Staff Attorney

Enclosures

cc: The Honorable Charles E. Rainey, Jr.
See Certificate of Service

**DOCUMENT
FOLDER RECEIVED**

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

00 APR 18 PM 1:07

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

APPLICATION
DOCKET NO. A-110550F0147

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SECRETARY'S BUREAU

CLEAN AIR COUNCIL, ET AL'S, REPLY TO OBJECTIONS OF PPL ELECTRIC UTILITIES CORPORATION AND COUNCILMAN DAVID COHEN TO THE JOINT PETITION FOR SETTLEMENT

Pursuant to Administrative Law Judge Charles E. Rainey, Jr.'s March 28, 2000 Order Revising Procedural Schedule, Clean Air Council, et al, by and through counsel, hereby submits these Reply Objections and do aver as follows:

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APR 19 2000

On March 23, 2000, PECO Energy filed a Joint Petition for Settlement in the above-captioned action. Clean Air Council, et al, is a signatory to that document. On April 1, 2000, the Council submitted a statement in support of the Joint Petition. PECO, OCA, marketers, consumers, other environmentalists, and additional intervenors have also filed support statements for the Joint Petition.

I. PPL Objections:

On April 13, 2000, the Council received PPL's Objections to the Joint Petition, which seek the Pennsylvania Public Utility Commission's rejection of the Joint Petition based on the signatories' failure to demonstrate that it is consistent with applicable law, supported by substantial evidence in the record, and in the public interest. The Objections are meritless.

Clean Air Council submits that PPL's Objections should be denied on the grounds that PPL does not have a substantial, direct or immediate interest in the issues which PPL challenges in the Joint Petition. Furthermore, settlement is not litigation. Full, adversarial proceedings run contrary to the very nature of settlement and are not required in this instance. Due process does not always require trial-type adversarial proceedings. Barasch v. Pa. P.U.C., 119 Pa. Cmwlth. 81, 546 A.2d 1296 (1988). PPL's requests are burdensome and result in serious expense and lost

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time for all the stakeholders to this proceeding who indeed have clear interests to protect and have determined that the public interest is served by the Joint Petition. Granting PPL's prayer for relief would be almost certain to have a chilling effect on future attempts at settlement in complex matters before the PUC, with the concomitant squandering of resources.

PPL contends that the PUC lacks a body of evidence responsive to the Application from which to determine if the Joint Petition "represents a reasonable accommodation the parties' positions." The parties themselves, however, are in the best position to decide whether they have been "reasonably accommodated." In this proceeding, they have done so. To burden all of the intervenors with the expensive and time-consuming process of preparing and submitting testimony following the extensive discovery process and lengthy, deliberative process of successful negotiation with PECO is clearly not in the interests of effective, efficient administration. Notwithstanding these considerations, there is, in fact, record evidence which supports the Joint Petition. Specifically, many intervenors filed statements of support for settlement and public input hearings were held in several communities at which supportive testimony was offered. The Council believes that the PUC should view the well-represented, broad-based nature of these negotiations as evidence in of itself.

It is accurate to state that affirmative promotion of the public interest must be shown by the proponent of a merger in order for it to receive Commission approval. However, it does not follow that a settlement in which the full spectrum of stakeholders have stated that the public interest is served thereby must independently demonstrate such promotion. In paragraph number 25 of its Objections, PPL misappropriates the standard in City of York v. Pa PUC, 295 A.2d 825 (Pa. 1972) for cases involving settlement. City of York was a fully contested matter in which the city lodged a complaint against the merger application of three telephone companies and subsequently challenged the PUC's unfavorable ruling following adversarial hearings. No settlement was involved in that case and therefore it cannot be applied in the instant matter in the manner which PPL suggests.

PPL's primary, stated concern is that this settlement would be used as precedent and be imposed upon them in future proceedings. This concern is unfounded. It is well-established that settlement does not create precedent. The solution PPL seeks is to ban parties from making even persuasive arguments for a particular measure in future proceedings on the grounds that the measure was part of a prior settlement. This is a blatant attempt by PPL to muzzle the free speech rights of parties to litigation and should not be taken seriously.

A. Specific Settlement Provisions

PPL attacks most of the public interest provisions of the settlement. Although Clean Air Council supports the full Joint Petition, this Reply will only address environmental provisions raised by PPL.

PPL has incorrectly stated the facts with regard to the Environmental provisions of the Joint Petition. PPL misstates funding totals in a way likely to mislead. Funding for Community

Energy, Inc. has been set at \$3.5 million, to be dispensed at regular intervals over a four-year period. There is no language in the Petition which could explain PPL's allegation that the total is \$15.5 million. It is also simply incorrect, as PPL does in their paragraph number 38, to state that any environmental funding provided in the settlement is directed to any intervening party to this proceeding.

In at least two locations in its objections, PPL mentions that environmental funding is being provided outside or beyond the 1998 Restructuring Settlement. Such a fact has no bearing whatsoever on the ability of PECO and intervenors in the instant proceeding to agree to items necessary to promote the public interest in light of PECO's proposed actions.

PPL claims that environmental funding in the Joint Petition "rewards a single group or individual." This is also a seriously mistaken interpretation. The environmental parties to this proceeding argued in filings that the public interest could be served by the merger if cleaner energy sources were advanced. Clean Air Council, Penn Future and PECO carefully selected the most efficient ways to bring significant wind and solar generation to Pennsylvania. The Sustainable Development Fund ("SDF") and Community Energy, Inc. ("CEI") are scheduled to receive funding to achieve this end because these entities are the only ones of their kind qualified to carry out the programs in the PECO service territory.

The environmental funding in the Joint Petition benefits the public as a whole because the SDF is committed to use the funds to construct wind farms and rooftop solar photovoltaic systems, both of which offset electric consumption from traditional air pollution-causing electrical production. CEI exists to market "wind blocks" to electric customers, or portions of customer load which would be served by wind power, thereby making it possible for additional wind generation to be built. The agreement provides that funding will be used to make these increments of wind power available to Pennsylvania customers regardless of their electric generation supplier. PECO customers benefit by enjoying the cleaner air which will result from the operation of wind turbines and by having improved consumer options in the marketplace which allow for selection of "wind blocks." Such a program inures not to the benefit of an individual but to the accommodation, convenience and safety of the public.

PPL's position regarding the appropriateness of the environmental package as a whole should be rejected outright. An issue is related to the merger and restructuring to the extent that it affects the determination of whether the merger and restructuring meet the legal standard of promoting the public interest. These environmental provisions serve the public because their consequence is reduced air pollution and other impacts of energy systems.

Since the outset of retail competition, the PUC has contemplated the role that renewable energy or general environmental factors would play in the developing marketplace. Renewable pilot programs were placed in the Restructuring Plans of the major electric utilities in the state, which demonstrate a recognition by the Commission that the introduction or expansion of renewable energy serves the public interest and deserves an opening to the marketplace.

Contrary to PPL's claims, the funding of wind and solar in this context bears no relation

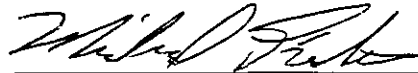
to the policies and legacy of the Public Utilities Regulatory Policy Act of 1978 ("PURPA"), 16 U.S.C. §§796 *et. seq.*, a law which enabled non-utility energy production in a fully regulated electric power industry. Today, wholesale competition is nationwide, and retail competition is spreading from state-to-state. In the Commonwealth, the proposed funding does not create a financial risk for utilities or ratepayers. Instead, the funding provides greater choices and helps to meet the growing demand for renewable energy in Pennsylvania.

II. Councilman David Cohen:

Objections were also filed by Philadelphia City Councilman-at-Large David Cohen on April 12, 2000. While Clean Air Council holds great respect for the Councilman and sympathizes with his desire to achieve greater benefits for the public and the city from this merger, it cannot justify preventing a settlement in an attempt to achieve those goals through litigation. The Council believes that the terms of the Joint Petition are superior to that which would be achieved through the adversarial process.

WHEREFORE, for the reasons set forth above, Clean Air Council, et al, respectfully submit that the Objections of PPL Electric Utilities Corporation and Councilman David Cohen be found meritless and dismissed.

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have, this 18th day of April 2000, served a true and correct copy of the foregoing Protestants/Intervenors Clean Air Council, et al's Reply Objections to PPL Electric Utilities Corporation and Councilman David Cohen on the following parties of record by first class mail or as indicated:

The Honorable Charles E. Rainey (BY FED EX)
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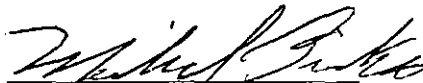
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A-116550F0147

April 18, 2000

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DOCUMENT FOLDER

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

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of PECO Energy Company's Reply to the Objections of PPL Electric Utilities Corporation and David Cohen in the above-captioned matter. Also enclosed for filing is the Supplemental Testimony of Thomas P. Hill, Jr. In Support of the Joint Petition for Settlement.

Sincerely,

Paul R. Bonney

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PRB/mbo

APR 18 2000

Enclosures

cc: John M. Quain, Chairman
Nora Mead Brownell, Commissioner
Aaron Wilson, Jr., Commissioner
Terrance J. Fitzpatrick, Commissioner
Robert K. Bloom, Commissioner
Administrative Law Judge Charles E. Rainey, Jr. (Via Hand Delivery)
All parties to this proceeding and to PECO's Electric Restructuring Proceeding (per the Certificate of Service)

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

46

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 :

DOCKETED
APR 20 2000

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

DOCUMENT
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF ARGUMENT 1

 A. PPL’s Objections 1

 B. Councilman Cohen’s Objections 4

III. ARGUMENT 5

 A. Evidentiary Hearings Are Not Required For The Commission
 To Determine That The Settlement Is In The Public Interest 5

 B. Imposing The Kind Of Hearing Requirement PPL Proposes
 Is Contrary To The Commission’s Policy Encouraging
 Settlements And Would Undermine The Settlement Process 8

 C. PPL Does Not Have A Substantial, Direct And Immediate
 Interest In The Outcome Of The Issues It Purports To
 Raise And, Therefore, Does Not Have Standing To Object
 To The Settlement 10

 D. PPL’s Objections Are Based On Positions That
 Are Contrary To The Law 14

 E. The Proposed Settlement Is Not Precedent And, Therefore,
 PPL’s Concerns That The Settlement’s Terms Would
 Apply To PPL Under Similar Circumstances Is Meritless 17

 F. If The Administrative Law Judge Or The Commission
 Decides To Hold Evidentiary Hearings Even Though
 None Are Required, They Should Set A Schedule That
 Avoids Any Undue Delay 19

 G. Councilman Cohen’s Objections Present No Valid
 Basis To Reject The Proposed Settlement 21

IV. CONCLUSION 24

I. INTRODUCTION

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

II. SUMMARY OF ARGUMENT

A. PPL’s Objections

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

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

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

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

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

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

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

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

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

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

B. Councilman Cohen’s Objections

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

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

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

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

III. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PPL also expresses concern about the Settlement's provisions dealing with the recovery of nuclear decommissioning expense in excess of the level currently embedded in PECO's rates. Specifically, PPL questions whether PECO's agreement not to seek to recover a portion of any such expenses in excess of current rate-embedded levels will adversely impact the safe decommissioning of PECO's nuclear units (PPL Objections, pp. 23-24). Overlooked by PPL is the fact that issues relating to the safety of PECO's nuclear plants and its ability to fund its nuclear decommissioning obligations lie within the primary and exclusive jurisdiction of the NRC.^{3/} Moreover, the adequacy of the Settlement's rate recovery mechanism to assure the safe decommissioning of PECO's nuclear plants is an issue that will have to be addressed and resolved by the NRC in connection with PECO's request for approval to transfer its NRC operating licences as part of its proposed corporate restructuring. PPL's attempt to interject these issues into a proceeding before the Commission, whose authority is preempted by federal law, should be rejected.

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

^{3/}(...continued)

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

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

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

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

Section 72 of the Settlement states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

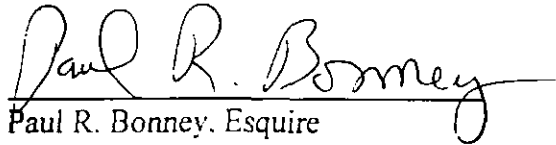
presumptive legal basis to obtain such concessions in a litigated proceeding. They could be obtained, if at all, only through a negotiated settlement. Consequently, Councilman Cohen's belief that full litigation of this proceeding could obtain more and larger concessions is simply wrong. More to the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

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

IV. CONCLUSION

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

Respectfully submitted,



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Dated: April 18, 2000

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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	:	

SUPPLEMENTAL TESTIOMNY

OF

THOMAS P. HILL, JR.

In Support of the Joint Petition for Settlement

Date: April 18, 2000

**SUPPLEMENTAL TESTIMONY OF THOMAS P. HILL, JR.
IN SUPPORT OF
THE JOINT PETITION FOR SETTLEMENT**

I. INTRODUCTION

1

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

3 A. Thomas P. Hill, Jr., 2301 Market Street, Philadelphia, PA 19101.

4 Q. **Mr. Hill, have you participated previously in this proceeding?**

5 A. Yes, I submitted direct testimony, pre-marked as PECO Statement No. 3, as part of
6 PECO Energy Company's ("PECO" or the "Company") November 22, 1999 Application.
7 A summary of my qualifications and professional experience is contained in my direct
8 testimony.

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

10 A. The purpose of my supplemental testimony is to support the Joint Petition for Settlement
11 that was filed with Administrative Law Judge Rainey (the "ALJ") on March 23, 2000
12 (the "Joint Petition") and to urge its expeditious approval. In particular, I will explain
13 why PECO believes that the Settlement proposed therein is in the public interest and will
14 briefly respond to the comments offered in opposition to the Joint Petition by City of
15 Philadelphia Councilman David Cohen ("Councilman Cohen") and by PPL Electric
16 Utilities Corporation ("PPL").

II. THE PROPOSED SETTLEMENT

1
2 Q. **Please describe the process that lead to the execution of the Joint Petition.**

3 A. Almost immediately following the filing of the Application, PECO began to meet with
4 interested parties to answer questions and discuss concerns. Thereafter, at the January
5 20, 2000 Prehearing Conference, the ALJ, with the encouragement of the parties,
6 scheduled two days of meetings in early March to give the parties a chance to explore an
7 amicable resolution of this proceeding in lieu of costly and contentious litigation. Those
8 initial meetings, which took place among all parties on March 1 and 2, 2000, produced
9 open and frank discussions on a wide range of issues, including the likely impact of the
10 proposed restructuring and merger on rates and service, reliability, nuclear safety,
11 competitive market conditions, environmental concerns and a variety of other matters.

12 Q. **Were the parties able to resolve their differences at those initial meetings?**

13 A. No, they were not. However, substantial progress was made and, most importantly, a
14 dialogue was established. Over the next several weeks, the parties continued to meet,
15 both in person and telephonically, and to exchange ideas and information. That process
16 culminated in the March 23 Joint Petition.

17 Q. **Did all protestants and intervenors have an opportunity to participate fully in those**
18 **negotiations?**

19 A. Yes, and all major parties, including Councilman Cohen and PPL, took full advantage of
20 that opportunity.

1 Q. **Why does PECO believe that the proposed Settlement is in the public interest?**

2 A. The specific reasons are set forth in the Joint Petition and may be summarized as follows:
3 (1) rates will be reduced; (2) transmission and distribution charges will be capped for an
4 additional eighteen months; (3) post-cap distribution rate increases will be mitigated; (4)
5 reliability and customer service will be enhanced; (5) competition will be promoted; (6)
6 universal service coverage will be expanded; (7) the environment will benefit; (8)
7 customers will be protected against unregulated risk and cross-subsidization; (9) PECO
8 will maintain a strong corporate presence in southeastern Pennsylvania; and (10)
9 substantial litigation and associated costs will be avoided.

10 More importantly, the Joint Petition represents the product of numerous compromises by
11 and among parties that represent virtually all potentially affected constituencies –
12 residential, commercial, industrial and municipal customers; environmentalists;
13 advocates for low income consumers and nuclear safety; and competitors. In this regard,
14 a sampling of intervenor comments, as contained in their Statements in Support of the
15 Joint Petition, is instructive:

- 16 • “As a result of this Settlement, electricity in the PECO service territory will
17 be cleaner, more affordable, and safer” (PennFuture, p. 1).
- 18 • “PECO has been induced to put substantial value on the table in many forms
19 to meet the particularized needs of this region” (CEPA et al., p. 6).
- 20 • “[T]he Settlement brings value and substantial affirmative benefits to PECO’s
21 ratepayers and the community” (OCA, p. 7).

- “The Settlement promotes competition and provides considerable environmental benefit” (OTS, p. 3).

In my view, the broad-based support by those parties most affected by PECO’s corporate restructuring and merger with Unicom provides compelling evidence that the proposed Settlement is in the public interest.

III. RESPONSE TO COMMENTS

A. Councilman Cohen

Q. In his comments to the Joint Petition, Councilman Cohen acknowledges that “there are many good aspects to the Settlement Agreement,” but contends that “many serious issues . . . are not adequately addressed.” Please comment.

A. The issues that Councilman Cohen identifies and, more specifically, the conditions that he would impose either are beyond the Commission’s jurisdiction or were, in fact, expressly addressed by the parties in their negotiations. In summary, those issues fall into three broad categories: (1) the cost and safety of nuclear power; (2) rates and low income customer assistance; and (3) the impact of the merger on jobs and local communities. I will not attempt to respond to each one of Councilman Cohen’s proposals and, for that reason, urge the ALJ and the Commission to carefully review PECO’s responsive comments that are being filed concurrently herewith.

Q. What suggestions does Councilman Cohen offer with respect to nuclear safety?

1 A. Councilman Cohen proposes that local health studies be conducted and that nuclear
2 generation be phased out. However, the safety and continued operation of nuclear
3 generating facilities fall within the purview of the Nuclear Regulatory Commission
4 (“NRC”), not this Commission. Moreover, any concerns regarding the possible
5 relicensing of those plants should be directed to the NRC if and when such license
6 extensions are sought.

7 Q. **Councilman Cohen also implies that the proposed Settlement does not protect**
8 **customers from being “burdened” by the attendant costs of nuclear power. Do you**
9 **agree?**

10 A. No, I do not. To the contrary, various intervenors were insistent that the Joint Petition
11 include rigid safeguards to ensure that this would not occur. Consequently, the proposed
12 Settlement contains provisions that (1) preclude PECO from ever claiming costs
13 associated with the decommissioning of nuclear interests it did not own when the
14 Application was filed; (2) require PECO to absorb a meaningful share of any increase in
15 the cost of decommissioning nuclear interests that it did own at that time (i.e. costs that
16 PECO otherwise would be entitled to claim in full); and (3) make clear that the recovery
17 of future purchased power costs will be consistent with market-based pricing principles.
18 As a result of this latter feature, customers cannot be “burdened” with above-market costs
19 of nuclear power should that form of electric generation not prove competitive in the
20 future.

1 Q. **Councilman Cohen argues that the proposed rate reductions are inadequate and**
2 **that more should have been done to assist low income customers. Please respond.**

3 A. The rate reductions set forth in the Joint Petition were arrived at only after a thorough
4 review of prospective restructuring/merger synergies and after extensive and intensive
5 negotiations between PECO and advocates for all customer groups. As noted by the
6 OCA (pp. 3-4), PECO's customers will enjoy "nearly a decade of rate stability in the
7 regulated portion of their rates." Similarly, the proposed Settlement expands universal
8 coverage, calls for consideration of the institution of a "special needs" program and
9 provides for additional contributions to fuel fund agencies in PECO's service territory.
10 Although I can appreciate Councilman Cohen's concerns for low income customers, I
11 believe that the proposed Settlement goes a long way toward addressing those concerns
12 and, in any event, represents a reasonable compromise of the interests of all parties.

13 Q. **Lastly, Councilman Cohen states that Philadelphia should not be "short-changed on**
14 **jobs" and that PECO should commit to maintain current staffing levels at its**
15 **Philadelphia headquarters building "for as long as it owns the distribution system."**
16 **Do you have any comments?**

17 A. Yes. PECO obviously cannot commit to specific staffing levels in perpetuity and it
18 would not be in customers' best interests to do so. I would note, however, that PECO had
19 made additional commitments regarding job retention since the Joint Petition was filed.
20 As recently reported in the press, PECO, following further discussions with Mayor Street
21 and his staff, has agreed that (1) the merger with Unicom will not result in any reduction

1 in line forces in Philadelphia County; (2) employment at 2301 Market Street,
2 Philadelphia will be no less than 1325 through 2001, 1300 through 2002, 1275 through
3 January 1, 2004 and 1100 through January 1, 2008; and (3) the corporate headquarters for
4 PECO's distribution business will remain in Philadelphia through at least January 1,
5 2008. Hopefully, these additional terms and conditions will alleviate Councilman
6 Cohen's concerns.

7 **B. PPL**

8 **Q. Please summarize PPL's objections to the Joint Petition.**

9 A. I understand PPL to have made two separate arguments. First, PPL asserts that the Joint
10 Petitioners have failed to demonstrate that the proposed Settlement is consistent with
11 applicable law, supported by substantial evidence and in the public interest. Second, PPL
12 contends that the Commission should severely restrict what the parties can say about the
13 Settlement in other proceedings. I will address PPL's evidentiary/public interest
14 concerns and leave to PECO's responsive comments a discussion of applicable law and
15 the precedential value, if any, of negotiated settlements.

16 **Q. At the outset, do you agree that the record lacks adequate support for the**
17 **Commission to conclude that the proposed restructuring and merger are in the**
18 **public interest?**

19 A. No, I do not. As PPL points out in its comments, PECO submitted five statements of
20 direct testimony and considerable additional information with its Application last

1 November. I believe that the data already on file with the Commission is more than
2 sufficient for the Commission to make the findings required for approval under the Code.
3 Moreover, it should be self-evident that the various concessions made by PECO in the
4 Joint Petition promise even more benefits to the public in the form of rate reductions,
5 enhanced reliability and customer service, the promotion of renewable resources,
6 enhanced competition and expanded universal service. I am therefore at a loss to
7 understand PPL's position.

8 **Q. Turning to PPL's specific objections, would you please first respond to PPL's**
9 **concerns over the proposed rate reductions set forth in the Joint Petition?**

10 A. Yes. PPL contends that rate reductions in the context of a merger proceeding are
11 "contrary to Commission policy" and could jeopardize PECO's ability to provide reliable
12 service. I strongly disagree. As to the first point, I would note that in the very
13 proceeding relied upon by PPL, *PG Energy, Inc.*, the Commission approved a settlement
14 agreement between the applicant and intervening parties that provided for rate offsets
15 (Amended Order entered October 18, 1999). *See also Joint Application of Bell Atlantic*
16 *Corporation and GTE Corporation*, Docket No. A-310200F.002 (Order entered
17 November 4, 1999). Regarding PPL's second point, PECO expects to "pay for" the rate
18 reductions, at least in substantial part, with synergies generated by the restructuring and
19 merger. As such, no impairment of PECO's financial condition is anticipated. In any
20 event, the Commission has all of the regulatory tools it needs to ensure that PECO fully
21 satisfies its service obligations in a safe and reliable manner.

1 Q. **What about PPL's concern that extension of the transmission and distribution rate**
2 **cap could interfere with PECO's ability to finance new facilities mandated by the**
3 **PJM?**

4 A. This concern is similarly misplaced as it overlooks the fact that the Electric Competition
5 Act carves out a specific exception to the rate cap under such circumstances. See 66 Pa.
6 C.S. § 2804(4)(iii)(E).

7 Q. **PPL also suggests that it would be inappropriate to adopt reliability standards in**
8 **this proceeding because PECO's customers and other interested parties purportedly**
9 **"had no notice that these subjects would be addressed." Please comment.**

10 A. Preliminarily, I would note that reliability issues have been "on the table" from the outset
11 of this proceeding. Indeed, reliability standards were discussed by Mr. Lawrence in his
12 direct testimony (PECO St. 1, pp. 4-8) filed with the Application and were identified as
13 areas of inquiry by various protestants and intervenors months ago. In addition, and as
14 the list of signatories to the Joint Petition convincingly demonstrates, all potentially
15 affected parties were provided reasonable notice and, in fact, actively participated in the
16 settlement process. Moreover, approval of the Joint Petition would not foreclose or in
17 any way inhibit the initiation of a broader-based investigation of reliability issues, as PPL
18 implies.

19 Q. **PPL next questions PECO's agreement to forego recovery of certain nuclear**
20 **decommissioning costs. Please respond.**

1 A. PECO's agreement to share the risk of future increases in nuclear decommissioning costs
2 is by no means unprecedented. Indeed, it is my understanding that this feature of the
3 Joint Petition was actually modeled after PPL's own electric restructuring settlement.
4 Perhaps more to the point, the NRC has the requisite enforcement authority to ensure that
5 sufficient funds have been set aside to ensure the safe decommissioning of licensed
6 facilities.

7 Q. **Please comment on PPL's objections to the Joint Petition's environmental**
8 **provisions.**

9 A. It is unclear whether PPL objects to renewable energy sources, the designated recipients
10 of grant money or both. Nonetheless, several points need to be made. First, the Electric
11 Competition Act encourages the development of renewable resources and the Joint
12 Petition is entirely consistent with that statement of legislative purpose (66 Pa. C.S. §§
13 2802, 2804(9)). *See also Electric Distribution Company Renewable Energy Pilot*
14 *Programs*, Docket No. M-00991226 (Order entered April 7, 1999) ("The [development
15 of] renewable energy programs [was] one of the many essential accomplishments of the
16 electric distribution company settlement processes."). Additionally, PECO has worked
17 with the Sustainable Development Fund (i.e. the principal beneficiary) and has no doubts
18 regarding its good faith.

19 Q. **PPL claims that the Joint Petition effects significant changes to the nature of and the**
20 **rules governing competitive default service ("CDS") and asserts that those parties**
21 **which participated in PECO's 1998 electric restructuring settlement and its 1999**

1 **CDS collaborative should be provided an opportunity for input before such changes**
2 **are adopted. Is there any merit to either of these contentions?**

3 A. No, there is not. The Joint Petition does not create a new CDS “construct,” nor does it
4 authorize “the forced assignment of PLR customers to an EGS.” Instead, and as noted in
5 the OCA’s Statement in Support (p. 6), the changes proposed by the Joint Petition are
6 designed primarily to avoid the problems encountered by GPU Energy when it sought,
7 unsuccessfully, to attract bidders for CDS. Moreover, there is substantial overlap in the
8 parties to this proceeding and those that participated in the 1998 restructuring and 1999
9 CDS proceedings. With most - and perhaps all – interested parties represented, there is
10 no reason why refinements to the CDS process cannot be taken up at this time.

11 **Q. Finally, PPL questions whether the large customer provisions set forth in**
12 **paragraphs 67 and 68 of the Joint Petition are just, reasonable and non-**
13 **discriminatory. Please comment.**

14 A. Paragraph 67 simply invokes a provision of PECO’s 1998 Electric Restructuring
15 Settlement that explicitly authorizes PECO and certain customers (Rate HT industrial,
16 LILR, Rule 4.6 and EER) to negotiate a mutually acceptable lump sum buyout of
17 transition charges. Since PPL (or its corporate predecessor) was a signatory to that
18 agreement, I find it surprising that PPL would now object to its implementation.

19 Paragraph 68, in turn, memorializes PECO’s commitment to revise certain terms and
20 conditions of its Commission-approved Rule 4.6 contract with the City of Philadelphia,

1 as more specifically set forth in Appendix G to the Joint Petition. Notwithstanding PPL's
2 concerns to the contrary, one of the principal effects of those revisions is to eliminate a
3 rate disparity that had the City paying substantially more for street-lighting service than
4 suburban municipalities. To the extent that this reduces the City's overall costs, the Joint
5 Petition will help promote economic conditions in southeastern Pennsylvania.

6 IV. CONCLUSION

7 Q. **In view of the foregoing, what do you recommend?**

8 A. As I mentioned previously, PECO believes that the record already on file with the
9 Commission provides ample evidentiary support for approval of the proposed
10 restructuring and merger and for a finding that the Joint Petition is reasonable and in the
11 public interest. The various issues identified by Councilman Cohen and by PPL may be
12 fully addressed on the strength of that record and any responsive comments submitted by
13 the parties. Under the circumstances, an evidentiary hearing is not required and, indeed,
14 would only force the parties to incur unnecessary litigation expense. The Joint Petition
15 therefore should be approved without further delay.

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

17 A. Yes, it does.

Certificate of Service

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

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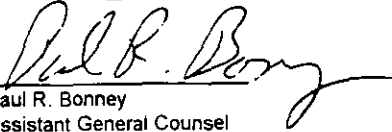
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Dated: April 18, 2000

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April 18, 2000

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

DOCKETED
APR 20 2000
A-110550F0147
DOCUMENT FOLDER

Re: Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 & 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

Dear Secretary McNulty:

Enclosed for filing are an original and three copies of the Testimony of Scott Piersol on behalf of East Brandywine Township, which the Township is filing in lieu of Reply Comments.

Very truly yours,

Andrew D.H. Rau

ADHR/id
Enclosures

RECEIVED

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

APR 18 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

45

EAST BRANDYWINE TOWNSHIP STATEMENT NO. 1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

APPLICATION DOCKET
NO. A-110550F0147

DOCKETED
APR 20 2000

TESTIMONY OF SCOTT T. PIERSOL

DOCUMENT
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APR 18 2000

April 17, 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TESTIMONY OF SCOTT T. PIERSOL

Q. Please state your name, business address and position.

A. Scott T. Piersol, 12214 Horseshoe Pike, Downingtown, PA 19335. I am Township Manager for East Brandywine Township, an intervenor in this proceeding.

Q. Have you previously provided testimony in this proceeding?

A. Yes, I provided sworn testimony at the public input session in Wallace Township on March 30, 2000.

Q. What is the purpose of your testimony?

A. I am testifying in support of the Joint Petition Regarding Issues Raised By Wallace Township And East Brandywine Township (the "Township Joint Petition"), as well as the global settlement in this proceeding.

Q. Why did East Brandywine Township intervene in the PECO/Unicom merger proceeding?

A. Over the past several years, PECO's electric service reliability to the Township has not been at acceptable levels. The Township was concerned that the proposed merger with Unicom might take financial resources from PECO, or that the merger might cause a reorientation of PECO's focus away from local service reliability. In either case, the Township was concerned that the merger would

limit PECO's ability to upgrade service to the Township or cause electric service to degrade further.

Q. Have these reliability issues been addressed in the settlement documents to which you refer?

A. Yes. In the global settlement document, PECO has made commitments to improve its system-wide reliability beyond its current levels, as determined by certain Commission-approved measures of reliability. In the Township Joint Petition, PECO has committed to developing and implementing a reliability enhancement plan specific to the Township, and PECO has further committed to Commission oversight, review, and enforcement of its implementation of the Township reliability enhancement plan. We have been assured of adequate enforcement mechanisms available to the Township should PECO fail to follow through on those commitments.

Q. Do these provisions provide a public benefit to the residents of East Brandywine Township?

A. Yes. The Township and its residents will be the beneficiaries of the general commitments to system-wide reliability and of the focused commitment to enhance reliability in the Townships. In addition, we have the benefit of a public commitment by PECO of Commission oversight of this effort. The increased commitments and resources, coupled with the ongoing Commission oversight, provide an important public benefit to the residents of East Brandywine

Township. With those commitments, the Township is satisfied that the PECO/Unicom merger will not inhibit service reliability to the Township. Instead, the Township anticipates that the merger will result in increased resources and attention to Township reliability issues.

Q. Does this conclude your testimony?

A. Yes.

Certificate of Service

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

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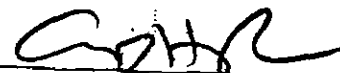
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April 18, 2000

VIA FACSIMILE & FEDERAL EXPRESS

Charles E. Rainey, Jr., Administrative Law Judge
Office of Administrative Law Judge - Philadelphia District Office
Pennsylvania Public Utility Commission
1302 State Office Building
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Philadelphia, PA 19130

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

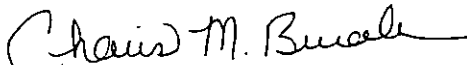
Dear Judge Rainey:

Enclosed please find two copies of the Testimony of Kent R. Miller on behalf of the City of Philadelphia, concerning the above-referenced proceeding.

Copies are also being served upon all parties of record as evidenced by the attached Certificate of Service.

Very truly yours,

MCNEES, WALLACE & NURICK

By 
Charis M. Burak

Counsel to the City of Philadelphia

CMB:lhe

c: Certificate of Service
James J. McNulty, Secretary (Transmittal Letter and Certificate of Service only -
Via Hand Delivery)

CERTIFICATE OF SERVICE

A-110550 F 0147

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

VIA HAND DELIVERY

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Docket No. A-110550F0147

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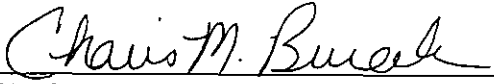
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CERTIFICATE OF SERVICE

Docket No. A-110550F0147

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Philadelphia, PA 19103



Charis M. Burak

Dated this 18th day of April , 2000, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PECO Energy Company,
Pursuant to Chapters 11, 19, 21, 22, :
& 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 :

307037
Application Docket No.
A-110550F0147

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APR 18 2000

**RESPONSE TO PPL ELECTRIC UTILITIES &
COUNCILMAN DAVID COHEN'S OBJECTIONS
TO THE JOINT PETITION FOR SETTLEMENT**

ERIC JOSEPH EPSTEIN, *Pro se*
4100 Hillsdale Road
Harrisburg, PA 17112

ORIGINAL

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

**DOCUMENT
FOLDER**

Dear Secretary McNulty:

Enclosed please find an original and three copies Eric Joseph Epstein's Response to PPL Electric Utilities and Councilman David Cohen's Objections to the Joint Petition for Settlement. An original and three copies of Mr. Epstein's Testimony and supporting documents are also enclosed.

1) Eric Joseph Epstein, ("Petitioner") *Pro se*, filed a Petition to Intervene and a Petition of Protest in the above captioned proceeding on December 13, 1999;

2) Mr. Epstein filed Two Sets of Interrogatories on January 4 and 18, 2000, and a subsequent Set of Oral Interrogatories on February 15, 2000. Please note that neither PPL Electric Utilities ("PPL") or Councilman David Cohen ("Cohen") filed any written or oral interrogatories. In addition, neither party conducted discovery;

3) Epstein proposed a Public Hearing schedule in his Pre-Hearing Memo dated January 7, 2000.

PPL's Pre-hearing Comments stated: "PP&L is not at this time separately raising specific issues..." And, "PP&L does not expect to present witnesses and/or testimony in this proceeding." (**Prehearing Conference Memorandum of PP&L, Inc.**, January 12, 2000, Page 2, Points 4 & 5.) PP&L also represented that it was willing to "cooperate with other parties" in determining a **Hearing Schedule** and **Briefing Schedule** and **ALJ Initial Opinion**, and "cooperate with other parties and ALJ Rainey in developing such a date [for the Commission Final decisions]." (**Prehearing Conference Memorandum of PP&L, Inc.**, Page 3, Points 6, 7 & 8);

4) Mr. Epstein attended, and participated in, the Pre-Hearing Conference held on Thursday, January 27, 2000 in Philadelphia. PPL attended, but not participate in the Pre-Hearing Conference. Robert Jaffee, Esquire, representing Councilman Cohen, attended the Pre-Hearing conference to announce Cohen's *Nunc pro tunc* filing;

5) Mr. Epstein submitted a Witness List on February 14, 2000.

Contrary to PPL's assertion in their Objections that Joint Petitioner's "have provided no information concerning the group", Mr. Epstein included a description of the non-profit, nonpartisan EFMR Monitoring Group as an attachment to his Witness List (PPL, Page 24, Lines 5-6). Moreover, PPL's Associate General Counsel, Paul E. Russell, and Lynn Ratzell from the Environmental Division, have been receiving the "EFMR Monitor" since 1995. Additionally, PPL has been actively engaged in dialogue and discussions with EFMR since 1996 (*See enclosures*);

Please note that EFMR's most recent newsletter, dated March 2000 is attached to Eric Joseph Epstein's Testimony. As PPL is aware, membership in EFMR is free, and open to members of the public; which currently include several PPL employees. Additional information on EFMR can be accessed seven days week, 24 hours-a-day on EFMR's web site: <http://www.envirolink.org/orgs/efmr>;

6) Neither PPL or Councilman Cohen submitted a Witness List;

7) Mr. Epstein actively participated in Settlement Negotiations conducted in Philadelphia, and advocated for resolution of the following issues: nuclear decommissioning; planned operating life of PECO's nuclear generating stations; Spent Fuel Isolation; "Low-Level" Radioactive Waste Isolation; rate payer equity; and, community investment in south central Pennsylvania;

8) Mr. Epstein testified at a Public Hearing in York on April 4, 2000, on behalf of Three Mile Island Alert Incorporated, 315 Peffer Street, Harrisburg, Pennsylvania 17102, Web site: <http://www.tmia.com>, and the EFMR Monitoring Group. Although the meeting was held in PPL's traditional rate base, no representative from the Company offered testimony or was present in the audience. TMIA and EFMR believes all of the issues defined in the proceeding paragraph were fully addressed; and, in some instances, established a constructive an innovative paradigm for other Pennsylvania communities and nuclear utilities;

9) Eric Joseph Epstein contends that PPL's Objections are frivolous and without merit, and deigned to impede and delay Settlement Negotiations sanctioned by the Public Utility Commission. Moreover, Mr. Epstein suggests that PPL has no direct interest in this proceeding, and has failed to establish standing;

10) The Negotiated Settlement process is predicted on the premise that it will supplant protracted litigation; thereby, saving all parties an enormous amount of time and effort. PPL's Objections circumvent this process. In light of the time and resources which were devoted in responding and preparing testimony to PPL's Objections, Mr. Epstein strongly suggest sanctions be imposed on PPL by the Pennsylvania Public Utility Commission;

11) Councilman David Cohen's Objections appear to support portions of the Negotiated Settlement, but also seek to infuse numerous issues that were not raised during the process. Mr. Epstein recommends that the Commission deny Councilman Cohen's objections;

12) PPL's opposition to **B. Nuclear Provisions 35.** is petty, sophomoric, and frankly, inexplicable. PECO, Eric Joseph Epstein and the Office of Consumer Advocate used the PP&L model, devised during the 1998 PP&L Negotiated Settlement, as a framework for the language, intent, and precedent of cost sharing between rate payers and shareholders (Joint Petition for Full Settlement of PP&L, Inc.'s Restructuring Plan and Related Court Proceedings, August 12, 1998, D.2., Page 21, Lines 9-12). PP&L agreed to a similar cost sharing formula **two years before it was proposed** during the PECO Negotiated Settlement discussions. (*See enclosure*). Clearly, PPL is attempting to unilaterally abrogate the commitment it made in 1998;

14) PPL's opposition to "a private nuclear monitoring group" is a transparent attempt to deflect attention from the Company's radiation monitoring inadequacies at the Susquehanna Steam Electric Station. EFMR's budget, which does not include salaries, is dedicated to radiation monitoring, semi-annual change out of the Low-Volume Air Sampler, weekly gamma analysis by Dickinson College's Department of Physics, and statistical evaluation of Rad Alert data by Economic InSights. EFMR's accounting is reviewed annually by an independent entity, and for the first seven years of operation, the Group maintained a budget **below** available funding streams.

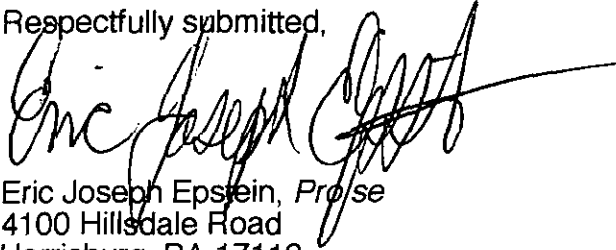
Moreover, EFMR has conducted dedicated site research on remote robotics related to nuclear decommissioning that substantially reduced worker exposure at the following nuclear generating stations: Oyster Creek, Saxton, and Three Mile Unit 1 & 2. In fact, EFMR has devoted more resources, and has more success in reducing radiation exposure to workers, than PPL and all its affiliates combined.

Clearly this not the appropriate forum to launch a baseless and mean-spirited attack on EFMR;

15) Regarding PPL's specious argument contained in PPL's Paragraph 45., Mr. Epstein stands behind his behind comments, which were cited in detail in Mr. Epstein's *Letter of Support dated March 27, 2000.*

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Joseph Epstein", with a long horizontal flourish extending to the right.

Eric Joseph Epstein, *Pro se*
4100 Hillsdale Road
Harrisburg, PA 17112

DATED: April 17, 2000

Enclosures

Testimony of Eric Joseph Epstein

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Application No. A-110550F0147

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery in accordance with the requirements of 52 Pa. Code § Section 1.54.

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

Paul E. Russell, Esquire
PP&L Inc.
Two North 9th Street
Allentown, PA 18101-1179

Craig A. Doll, Esquire
214 State Street
Harrisburg, PA
17101-1108

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Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103-2921

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David M. Kleppinger, Esquire
McNees, Wallace & Nurick
100 Pine Street, PO Box 1166
Harrisburg, PA 17108-1166

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PECO Energy Company
2301 Market Street
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Office of Consumer Advocate
Forum Place - 5th Floor
555 Walnut Street
Harrisburg, PA 17120

East Brandywine Township
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Gawthrop, Greenwood & Halsten
119 North High Street
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Kenneth Mickens, Esquire
Senior Prosecutor, Office of Trial Staff
Pennsylvania PUC
Pitnick Bldg - 3rd Floor
901 N. 7th Street - Rear
P.O. Box 3265
Harrisburg, PA 17105-3265

Gerard Gornish, Esquire
Wolf, Block, Schorr and Solis-Cohen
1650 Arch Street - 22nd Floor
Philadelphia, PA 19103

Clean Air Council
Michael Fiorentino, Esquire
106 North Front Street,
Suite 106
Harrisburg, PA 17101
cc: Andrew Altman
Amy Hammersmith & Dennis Winters

Thomas Schmidt, III, Esquire
Brian Downey, Esquire
John Greenbaum, Esquire
Pepper & Hamilton
200 One Keystone Plaza
North Front & Market Streets
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Citizens for Pennsylvania's Future
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Philadelphia, PA 19141

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P.O. Box 515
West Chester, PA 19381-0515

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Harrisburg, PA 17101

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Allegheny Energy Supply Co.
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Greensburg, PA 15601

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Sutherland, Asbill & Brennan
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Philadelphia, PA 19103

John Will Ongman, Esquire
Marc D. Machlin, Esquire
Pepper & Hamilton
600 Fourteenth Street, N.W.
Washington, D.C. 20005

Community Legal Services
Phil Bertocci, Esquire
1424 Chestnut Street, 4th Floor
Philadelphia, PA 19102
Counsel for CEPA, ACORN, TAG &
Action Alliance

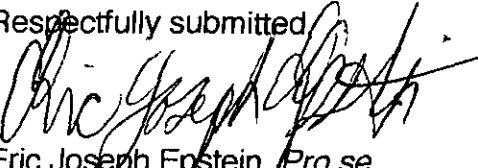
Robert Jaffe, Esquire
Special Counsel to
Councilman David Cohen
City of Philadelphia
Room 588, City Hall
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Suite 1102, Commerce Building
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619 Pemberton Street
Philadelphia, PA 19147

Christopher J. Townsend, Esq.
Piper, Marbury et al
203 N. La Salle Street, #1500
Chicago, Illinois 60601

Respectfully submitted,



Eric Joseph Epstein, Pro se
4100 Hillside Road
Harrisburg, PA 17112

DATE: April 17, 2000

The

EFMR Monitoring Group at Three Mile Island

2308 Brandywine Drive • Harrisburg, PA 17110 • (717) 541-1101 • FAX (717) 541-5487 • eepstein@igc.apc.org

November 26, 1999

Dr. Richard L Doty
PP&L, Inc.
Environmental Management Division TW-8
Two North Ninth Street
Allentown, PA 18101-1179

Rich:

Thanks for taking the time to prepare responses to my original set of questions addressed to Mr. Lynn Ratzell on August 29, 1999 (Enclosure 1) relating to the radiation monitoring program at the Susquehanna Steam Electric Station (SSES). I have completed a review of *PP&L's 1998 AREOR* and *Safety Net Program*. I still have several concerns and questions I hope you can address.

Q1. *PP&L's 1998 Environmental Report*. On page 16, the Report states: "We have 86 radiation-detection devices placed at various distances from the plant." How many of these "devices" are TLDs?

A1: "The devices you mention in your first paragraph are TLDs."

Follow-up: Clearly, Pennsylvania Power & Light's (PP&L) radiation monitoring program is overly dependent on TLDs. This over reliance on TLDs prevents the Company from aggressively monitoring for real-time, atmospheric releases. Since PP&L is dependent on TLD averages, there is no way to reconstruct or measure for *daily* elevated readings, *and* make adjustments for weather or "planned releases", i.e., refueling outages.

A2: "In addition to these programs, there is a Commonwealth of Pennsylvania program as described below; also, there is a set of real-time monitors around the plant boundary designed primarily for external radiation monitoring during emergency conditions."

Follow-up: What is this system? Does the real-time monitors have a name, tech specs, and history of deployment at other operating nuclear generating stations? How many monitors are deployed and where? Which plant boundary are you referencing? Why is this system not utilized seven days a week, 24 hours a day? Does this system monitor alpha or beta or gamma? Does this system have the ability to detect specific radionuclides? If so, what? What constitutes "emergency conditions"? Who has access to this data? Does the system print out at independent of governmental sites? Is this data available to the public?

Are you aware that Dr. Ruth Patrick and Dr. John M. Palms conducted an extensive study of Three Mile Island's (TMI) radiation monitoring? TMI's monitoring systems, which are far more extensive and sophisticated than the system deployed at Berwick, were found to be flawed? Have you reviewed their criticisms? If so, what changes did PP& L make to radiation monitoring at the SSES based on Dr. Patrick's review of TMI's system? In the event you have not reviewed the Patrick-Palms Study, copies can be obtained by contacting:

Three Mile Island Public Health Fund
c/o Daniel Berger
1622 Locust Street
Philadelphia, PA 19103
#215-875-3026

A3: "As you may be aware, PP&L is just embarking on its first use of the spent fuel storage modules. At this time, the environmental monitoring in place is TLD monitoring, but we will consider additional forms of monitoring as conditions warrant."

Follow-up: This response is particularly troublesome and indicates PP&L is not taking a pro-active approach to monitoring spent fuel storage. Why is PP&L not planning to deploy a dedicated real-time, monitoring system around the casks? Is PP&L considering deployment of remote temperature detectors inside of the dry casks? How will PP&L resolve problems associated with “masking”?

A4: “I do not understand the basis for your statement asserting that the Commonwealth does not actively, independent monitor radiation at nuclear power plants.”

Follow-up: Unlike other states, e.g., Maine and Illinois, the Commonwealth of Pennsylvania does not deploy dedicated, full-time staff at nuclear generating stations. The Bureau of Radiation Protection (BRP) does not construct site-specific radiation monitoring programs. In fact, like the Company, the BRP is almost totally reliant on TLDs. (Please refer to *Environmental Radiation in Pennsylvania, Annual Report(s), Bureau of Radiation Protection*). Unlike GPU Nuclear, which deploys 16 continuous real-time monitors in a concentric pattern around TMI, i.e., Reuter-Stokes (Enclosure 3), the Bureau limits itself to four stations at each plant. Additionally, there are no daily or even weekly site inspections of the monitors to inspect electrical equipment, air flow or meteorological disturbances of the particulate or charcoal filters.

Effluent monitoring employed by the Commonwealth is limited, generic, and dependent on “annual” and “semiannual” samplings in the “vicinity” of planned “discharges.”

Frankly, the he Bureau of Radiation Protection provides little in the way of meaningful empirical or redundant, radiation monitoring.

Thanks for your continued assistance on this matter. I am confident we can work together a productive and collegial manner to improve the radiation monitoring systems around the the Susquehanna Steam Electric Station. I look forward to your responses.

Sincerely,

Eric Epstein, EFMR Coordinator

Enclosures

cc:

*Rich Janati, Pa DEP, Bureau of Radiation Protection
William Kirk, Pa DEP, Bureau of Radiation Protection
Stan Mangi, Pa DEP, Bureau of Radiation Protection*

Richard L. Doty
Supervisor -- Operations Technology

PP&L, Inc.
Two North Ninth Street
Allentown, PA 18101-1179
Tel. 610.774.7932 Fax 610.774.7205
rldoty@papl.com



September 24, 1999

Mr. Eric Epstein, Coordinator
EFMR Monitoring Group
2308 Brandywine Drive
Harrisburg, PA 17110

Dear Mr. Epstein:

PP&L's Environmental Management personnel asked me to reply to your letter of August 29, 1999, concerning monitoring in the environs of the Susquehanna Steam Electric Station. I hope that the following and enclosed information meets your needs. We certainly believe that we have a good radiological environmental monitoring program around the Susquehanna facility. We would certainly consider any comment you may wish to offer following your review of the information.

Responding in the order written in your letter:

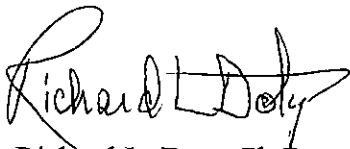
1. The devices you mention in your first paragraph are TLDs.
2. There are several types of monitoring that occur in the Berwick area. I have enclosed a copy of two documents to explain the program.
 - a. 1998 Annual Radiological Environmental Operating Report (AREOR), PP&L, Inc.
 - b. Safety Net Program 1997, The Academy of Natural Sciences, Philadelphia. PP&L has provided funding for about 20 years to have this additional review of the environs around the Susquehanna facility conducted by a consortium of independent scientists. The report for 1998 remains in preparation by Academy staff.

In addition to these programs, there is a Commonwealth of Pennsylvania program as described below; also, there is a set of real-time monitors around the plant boundary designed primarily for external radiation monitoring during emergency conditions.

3. As you may be aware, PP&L is just embarking on its first use of the spent fuel storage modules. At this time, the environmental monitoring in place is TLD monitoring, but we will consider additional forms of monitoring as conditions warrant.
4. I do not understand the basis for your statement asserting that the Commonwealth does not actively, independently monitor radiation at nuclear power plants. I believe that around Susquehanna, the Commonwealth program consists of air monitoring and direct radiation monitoring. In addition, the Commonwealth performs analyses of water, milk, fish and sediment samples.
5. I believe that the AREOR should answer your questions about river and well sampling.
6. The AREOR is enclosed for your information.

We hope you can see that PP&L, Inc. takes its radiological environmental monitoring responsibilities seriously. The program described in the AREOR goes beyond that required by the Nuclear Regulatory Commission (NRC). The safety-net program provides for additional monitoring conducted by a respected group of independent scientists. In combination with the oversight provided by NRC inspections and Commonwealth evaluations, the program, we believe, should provide for a high level of confidence that radiological impacts are being properly evaluated.

Sincerely,



Richard L. Doty, Ph.D.

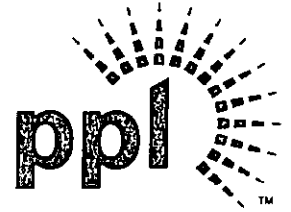
Enclosures

Copy to:

L. I. Ratzell	GENTW8	w/o
B. C. Nagle	GENTW8	w/o
H. D. Woodeshick	NUCIN	w/o
Mr. R. Janati	PaDEP, BRP	w/o

Richard L. Doty
Supervisor – Operations Technology

PP&L, Inc.
Two North Ninth Street
Allentown, PA 18101-1179
Tel. 610.774.7932 Fax 610.774.7205
rldoty@papl.com



September 24, 1999

Mr. Eric Epstein, Coordinator
EFMR Monitoring Group
2308 Brandywine Drive
Harrisburg, PA 17110

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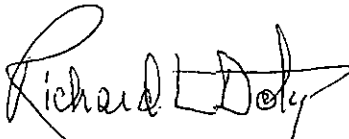
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- 6. The AREOR is enclosed for your information.

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Sincerely,



Richard L. Doty, Ph.D.

Enclosures

Copy to:

L. I. Ratzell	GENTW8	w/o
B. C. Nagle	GENTW8	w/o
H. D. Woodeshick	NUCIN	w/o
Mr. R. Janati	PaDEP, BRP	w/o

August 29, 1999

Mr. Lynn I. Ratzell, Manger
PP&L
Environmental Management Division TW-8
Two North Ninth Street
Allentown, PA 18101-1179

Lynn:

Enclosed please find a copy of the letter I addressed to you on July 15, 1999, and Herb Woodeshick's phone message on July 28, 1999. Thanks for sending me a copy of your *1998 Environmental Report*. On page 16, the Report states: "We have 86 radiation-detection devices placed at various distances from the plant." How many of these "devices" are TLDs?

- I wanted to follow up the message Mr. Woodeshick left in response to my initial inquiries. I presume your monitoring includes dedicated systems for alpha, beta and gamma. Could you please specify what type of radiation monitors PP&L deploys around Berwick?

- Will different types of monitors be deployed in, or around, the dry cask storage casks? If not, how will PP&L be able to observe radiation levels without masking problems occurring from the operating generating stations?

- The Commonwealth of Pennsylvania **does not actively, independently monitor radiation at nuclear generating stations!** What type of radiation monitoring does the PA DEP conduct at Susquehanna?

- PP&L stated in conducts effluent radiation monitoring (*1998 Environmental Report*)? If so, what are the points of collection on the river? What radionuclides does PP&L look for? Does PP&L test for tritium? Does PP&L's protocol include on-site well testing?

- Several nuclear generating stations in Pennsylvania prepare an annual radiation monitoring report. Does PP&L prepare an annual report for Susquehanna? If so, could you please supply EFMR with a copy? Please be apprised that EFMR is willing to pay for copying, postage, and any other costs associated with preparing a copy of your annual radiation monitoring report(s).

According to PP&L's responses in the 1997 CERES Report, **Section 4: Community Participation and Accountability**, pp. 21-23, your Company has committed to provide this type of information. Moreover, I would appreciate a written response to my questions.

Thanks for your assistance on this matter. I look forward to your responses.

Sincerely,

Eric Epstein, EFMR Coordinator

Enclosures

cc:

Rich Janati, Pa DEP, Bureau of Radiation Protection

July 15, 1999

Mr. Lynn I. Ratzell, Manager
PP&L
Environmental Management Division TW-8
Two North Ninth Street
Allentown, PA 18101-1179

Lynn:

Approximately three years ago you sent me a copy of "Taking Care of the Future Today." Has PP&L produced a more recent edition or a related publication? If so, could you please send a copy or copies?

Also, could you specify what type of radiation monitors PP&L deploys around Berwick? Are any of the monitors real time? Will different types of monitors be deployed in, or around, the dry cask storage casks? Are citizens actively involved with radiation monitoring? And, would the Company be interested in forming a partner ship with EFMR to enhance citizen radiation monitoring?

Thanks for your assistance on this matter. I look forward to your responses.

Sincerely,

Eric Epstein, EFMR Coordinator

Phone message on July 28, 1999:

"Eric, this is Herb Woodshick of PP&L. Just wanted to get back to you on your questions on radiation monitors. Ah, we do have a very sophisticated monitoring system here that does allow us to do real-time monitoring. Ah, obviously, as in all plants you know, the State of Pennsylvania does a parallel path of monitoring. In addition to that, we have the independent Academy of Natural Sciences doing the third party type work. But, appreciate your interest, and ah, just wanted to let you know we don't have any other needs at this time. Thank you."

PP&L, Inc.
Two North Ninth Street
Allentown, PA 18101-1179
Tel. 610.774.5151
<http://www.papl.com>



July 19, 1999

Mr. Eric Epstein
EFMR Coordinator
The EFMR Monitoring Group
at Three Mile Island
2308 Brandywine Drive
Harrisburg, PA 17110

Dear Mr. Epstein:

Lynn Ratzell, Environmental Management Division, received your letter requesting a publication and answers on radiation monitoring. Enclosed is a copy of our most recent Environmental Report. Regarding the monitoring, I have referred your letter to our Nuclear Licensing Department.

Please call me at (610) 774-4745 if I can be of further assistance to you.

Sincerely,

Jane W. Coyle

Jane W. Coyle
Administrative Coordinator

Enclosure

Copy to:
Mr. M. H. Crowthers, GENA61

January 27, 1996

Mr. Lynn I. Ratzell, Manager
PP&L
Environmental Management Division TW-8
Two North Ninth Street
Allentown, PA 18101-1179

Lynn:

Thanks for sending me a copy of "Taking Care of the Future Today." I had several questions after reading the literature and hope you can respond to them.

Question 1: Can you specify who has utilized recycled coal ash from Brunner Island? (page, 12.)

A: "Penn DOT has used our coal ash for recycling."*

Question 2: Could you specify what type of radiation monitors PP&L deploys around the plant? Are any of the monitors real time? Do you utilize the Reuter Stokes system? Are citizens actively involved with radiation monitoring? (page, 16.)

A: "Our people believe providing those details could get into competitive business issues."

Question 3: Do you have an extra copy of the Academy of Natural Sciences program you referred to as Safety Net (page, 17)?

Question 4: Concerning LLRW disposal, does PP&L utilize the services of Barnwell or SEG or Envirocare (page, 17)?

A: Same as Question 2.

Question 5: Has PP&L filed formal papers with the NRC through the Federal Register for PP&L's planned dry cask storage facility (page, 17)?

A: "No, we have not done that. But we're following the regulations."

Thanks for your assistance on this matter. I look forward to your responses.

Sincerely,

Eric Epstein, Coordinator

* Responses provided by telephone message on April 17, 1996, by Richard Jenosa.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania Power & :
Light Company for Approval of its : Docket No. R-00973954
Restructuring Plan Under Section 2806 :
of the Public Utility Code, et al. :

JOINT PETITION FOR FULL SETTLEMENT OF
PP&L, INC'S RESTRUCTURING PLAN AND
RELATED COURT PROCEEDINGS

August 12, 1998

TABLE OF CONTENTS

I. SUMMARY OF SETTLEMENT.....	4
II. BACKGROUND.....	6
III. TERMS AND CONDITIONS	9
A. Stranded Costs.....	9
B. Collection and Rates.....	12
C. Provider of Last Resort.....	15
D. Nuclear Decommissioning.....	20
E. Environmental Issues	21
F. Universal Service and Energy Conservation.....	24
G. Industrial Tariffs.....	25
H. Billing and Metering.....	30
I. Phase-In.....	34
J. Non-utility Generators	36
K. EGS Affiliate.....	37
L. Code of Conduct.....	40
M. Community Responsibility.....	43
N. Resolution of Other Issues.....	43
O. Withdrawal of Pending State And Federal Court Cases	43
P. Effectiveness, Duration And Enforcement Of Settlement	46
Q. Complete Agreement; No Alterations Or Modifications	47
IV. PUBLIC INTEREST CONSIDERATIONS.....	48
V. CONCLUSION.....	51

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3
4
5
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7 Light Company for Approval of : Docket No. R-00973954
8 Restructuring Plan Under Section 2806 :
9 of the Public Utility Code :

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**JOINT PETITION FOR FULL SETTLEMENT OF
PP&L, INC'S RESTRUCTURING PLAN AND
RELATED COURT PROCEEDINGS**

17 PP&L, Inc. ("PP&L" or the "Company"); the Office of Consumer Advocate
18 ("OCA"); the Office of Small Business Advocate ("OSBA"); the Office of Trial
19 Staff ("OTS"); the PP&L Industrial Customer Alliance ("PPLICA"); Eric Epstein;
20 Conectiv Energy ("Conectiv"); West Penn Power Company t/a Allegheny Power
21 ("APS"); Mid-Atlantic Power Supply Association ("MAPSA"); PECO Energy
22 Company ("PECO"); Local 1600 of the International Brotherhood of Electrical
23 Workers ("IBEW"); New Energy Ventures ("NEV"); Enron Power Marketing, Inc.
24 ("Enron"); Gilberton Power Company ("Gilberton"); the Anthracite Region
25 Independent Power Producers Association ("ARIPPA"); Schuylkill Energy
26 Resources ("SER"); Pennsylvania Rural Electric Association ("PREA"); Allegheny
27 Electric Cooperative, Inc. ("AEC"); Metropolitan Edison Company and
28 Pennsylvania Electric Company, collectively doing business as GPU Energy

1 (“GPU”); the Pennsylvania Petroleum Association (“PPA”); Environmentalists;¹ and
2 other parties designated on the signature pages (all such parties collectively referred
3 to as the “Joint Petitioners”), by their counsel, respectfully submit this Joint Petition
4 for Full Settlement of PP&L’s Proposed Restructuring Plan and Related Appeals
5 (“Joint Petition”).

6 The terms and conditions of the Joint Petition represent a
7 comprehensive settlement which resolves all issues before the Commonwealth
8 Court and all issues before the U.S. District Court arising from challenges by the
9 Joint Petitioners to the Commission’s final order, reconsideration order and any
10 related appeals regarding PP&L’s Application for Approval of its Restructuring Plan
11 Under Section 2806 of the Public Utility Code. The Joint Petitioners aver that this
12 comprehensive settlement is in the public interest and, therefore, request that the
13 Commission: (1) approve without modification the proposed settlement as set forth
14 in the Joint Petition; (2) amend the Commission’s final order and reconsideration
15 order as necessary to implement the full settlement; (3) approve the tariff
16 supplements necessary to implement the proposed settlement as appended hereto;
17 (4) issue a Qualified Rate Order authorizing PP&L to securitize up to \$2.97 billion

¹ The following Environmentalists member organizations do not participate in this Settlement Agreement but agree to abide by the terms and conditions contained herein: Sierra Club, Penn PIRG, and Lehigh Greens.

1 **D. Nuclear Decommissioning**

2 D.1 PP&L will recover its nuclear plant decommissioning costs through
3 the CTC as an element of stranded cost recovery. The recovery will be calculated at
4 the figure approved in the Commission's Order entered June 15, 1998, of \$128.989
5 million on a net present value basis. Nothing herein shall be deemed to limit
6 PP&L's ability to seek an exception to the rate cap for recovery of nuclear
7 decommissioning expense pursuant to Section 2804(4)(iii)(F) of the Public Utility
8 Code, 66 Pa.C.S. §2804(4)(iii)(F).

9 D.2. In the event that PP&L seeks recovery of additional nuclear
10 decommissioning costs under the rate cap exception of Section 2804(4)(iii)(F) of the
11 Public Utility Code, PP&L agrees that it will recover no more than 96% of the
12 amount approved in any such proceeding. 66 Pa.C.S. §2804(4)(iii)(F).

13

14 **E. Environmental Issues**

15 E.1 Renewable Energy Development. PP&L hereby files for Commission
16 approval Renewable Energy Development Rider ("RED Rider") Tariff sheet
17 attached in Appendix B to allow all customers to install and operate renewable
18 energy generation, including appropriate provisions for self-generation and net
19 metering. Renewable energy installations include solar, wind, biomass, methane
20 field and fuel cell generation.

1 E.2. The interconnection requirements for the inverter portion of
2 photovoltaic systems, as presently set forth in the document entitled "Requirements
3 for Parallel Operation of Non-Utility Generation" (the "Grey Book"), shall be
4 expanded to incorporate, as appropriate, IEEE Standard 929-1988 and UL
5 Publication 1741 ("Power Conditioning Units for Use in Residential Photovoltaic
6 Power Systems"). PP&L further agrees to initiate good faith technical discussions
7 with the Environmentalists' members to determine what changes, if any, should be
8 made to the interconnection requirements and processes under RED Rider and to
9 promptly seek Commission approval to implement any changes mutually agreed
10 upon.

11 E.3. The Joint Petitioners also agree that the "engineering review" of the
12 inverters in new photovoltaic systems will be designed to confirm that the systems
13 meet IEEE and UL standards. PP&L will review the other auxiliary equipment
14 associated with photovoltaic installations to ensure compliance with the Grey Book
15 requirements.

16 E.4. PP&L will charge a processing fee for RED Rider applications of
17 \$300 for non-photovoltaic installations and a fee of \$100 for photovoltaic
18 installations. PP&L agrees that it will not charge for the additional distribution
19 expenses incurred, up to a maximum of \$1,000, to accept a new RED Rider
20 installation. Customers will bear the responsibility of any cost in excess of \$1,000.

1 E.5. Sustainable Energy Fund. PP&L will establish a sustainable energy
2 fund which shall be funded from the 1.74 cents per KWH transmission and
3 distribution rate at .01 cents per KWH (less applicable gross receipts tax) on all
4 power sold for all customers beginning on January 1, 1999 and ending on December
5 31, 2004, or until the Commission establishes new distribution rates, whichever is
6 longer. The .01 cent per KWH shall not automatically be considered a cost of
7 service element upon expiration of the transmission and distribution rate cap on
8 December 31, 2004. The Sustainable Energy Fund shall be managed by an
9 administrator designated by a seven-member Board of Directors to be nominated by
10 the Joint Petitioners and approved by the Commission. The fund shall operate
11 according to the procedures set forth in its by-laws, which are to be reviewed and
12 approved by the Commission. The fund is to have an annual audit and is to make
13 semi-annual reports to the Commission and to the parties. The purpose of the fund
14 is to promote the development and use of renewable energy and clean energy
15 technologies, energy conservation and efficiency which promote clean energy.

16 E.6. Renewable Energy Pilot Program. PP&L agrees to implement a low-
17 income renewable energy pilot program which will consist of a solar hot water
18 heater program in 1999 and 2000, a photovoltaic program involving 35 installations
19 in 1999 and 75 installations in 2000. The renewable energy pilot program will be
20 operated by a Community-Based Organization with relevant experience and a

1 history of working with the Company. The budget for the solar hot water heater
2 program will be \$150,000 for each year. The 1999 budget for photovoltaic
3 installations will be \$175,000 and the 2000 budget would be \$375,000. There will
4 be a 5% administration factor for the entire budget. Funding of the renewable
5 energy pilot program will be provided in the Universal Service and Energy
6 Conservation budget other than the mandated \$4.7 million LIURP budget.

7

8 **F. Universal Service and Energy Conservation**

9 F.1. PP&L shall implement a Universal Service and Energy Conservation
10 Program, including CAP and LIURP programs, in the manner and at the funding
11 levels approved in the Commission's order of June 15, 1998, at pages 148-157. For
12 purposes of this Settlement, however, the maximum level of funding set forth at
13 page 156 of the Order -- \$11.7 million per year for CAP and \$4.7 million per year
14 for LIURP -- shall be deemed to be reflected in the residential distribution rates set
15 forth in the PP&L tariff at Appendix A. To the extent PP&L's funding of these
16 programs exceeds the amounts set forth in this paragraph prior to the end of the
17 distribution and transmission rate cap, the company may defer and seek recovery of
18 such costs (net of any cost savings attributable to the programs) after the expiration
19 of that rate cap. The allocation of any universal service and energy conservation
20 program costs among customer classes after the end of the distribution and

**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
THE CREATION OF A HOLDING
COMPANY AND 92) THE MERGER OF
THE NEWLY FORMED HOLDING
COMPANY AND UNICOM
CORPORATION

Docket No. A-110550 F0147

ORIGINAL

TESTIMONY OF ERIC JOSEPH EPSTEIN REGARDING
NUCLEAR DECOMMISSIONING, PLANNED OPERATING
LIFE OF PECO'S NUCLEAR GENERATING STATIONS,
SPENT FUEL ISOLATION, LOW-LEVEL RADIOACTIVE
WASTE ISOLATION and
RATE PAYER EQUITY & COMMUNITY INVESTMENT

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TABLE OF CONTENTS

STATEMENT OF THE ISSUES1-7

1) Nuclear Decommissioning1
Remedies: 8

2) Planned Operating Life of PECO's Nuclear Generating Stations
.8-11
Remedy: 11

3) Spent Fuel Isolation 12-16
Remedies: 17

4) "Low-Level" Radioactive Waste Isolation. 18-20
. Remedies: 20

5) Rate Payer Equity. 21-23
Remedy: 23

6) Community Investment. 24
Remedies: 24

STATEMENT OF THE ISSUES

1) Nuclear Decommissioning

PECO Energy's response (1) to Eric Epstein's Interrogatory-I-4 indicates an alarming rise (2) in projected decommissioning costs from 1985 to 1995. (See diagram below.) Unfortunately, these figures are already dated, inaccurate, and grossly underestimate decommissioning (3) since they represent data from studies conducted by TLG from 1995-1996, but *not* filed until January 1, 1998. Therefore, PECO is not preparing to revise decommissioning estimates until 2003.

<u>Generating Station(s)</u>	<u>1985 Study/1995 Study</u>	<u>\$ Increase</u>
Limerick 1 & 2	\$272m/\$986m	\$714m
Peach Bottom 2 & 3	\$273m/\$947m	\$674m
Salem 1 & 2	\$271m/\$701m	\$430m
Three Mile Island 1 (a)	\$60m(b)/\$368m or \$431m(c)	\$308-\$371

(a) GPU reported that the cost to decommission TMI-2 more than doubled in 48 months. By 1997, the decommissioning estimate had risen 110% in four years to \$433 million. (1997, GPU Annual Report.)

(b) TMI-1 total, projected decommissioning expense based on ENTOMB, (1986, GPU Annual Report, p. 39)

(c) TLG's estimate as referenced in the 1998, Annual Report, p. 59.
(Source: PECO Energy's Response to EE-I-4)

1 All of the above referenced studies were conducted by TLG Industries (TLG). ComEd's net nuclear decommissioning costs **have almost doubled** from 3,089 million in 1990 to 5,426 million in 1999. (PECO Energy's Response to EE-I-4.)

In 1995, ComEd estimated that its decommissioning costs had risen from \$2.9 billion to \$4.2 billion.

2 "A search of ComEd's records reveals that ComEd does not have records of the initial estimates of the indicated decommissioning costs." (PECO's Response to EE-Informal-I-4.)

3 At PPL's Susquehanna Steam Electric Station, decommissioning costs have increased from \$135-191 million in 1981 (PP&L, Alvin Weinstein) to \$724 million in 1993 according to PP&L's Annual Reports.

The Company added that the, "The original [1985] and current [1995] mode of decommissioning funding is geared toward a DECON method of decommissioning." (PECO's Response to EE-I-4, d.) However, since there is no permanent nuclear waste isolation site for spent fuel, SAFSTOR is the most likely decommissioning mode available when PECO's nuclear plants come off-line.

The wild fluctuation in the cost estimates for radiological decommissioning projections, is based, in large part, upon the lack of decommissioning activity at large nuclear generating stations. The largest commercial nuclear power plant to be completely "dismantled", Shippingport, was a 72 megawatt (MWe) light-water breeder reactor which was substantially smaller than Limerick, Oyster Creek, Peach Bottom, Salem, and Three Mile Island. Yet TLG was using this reactor as a reference unit in 1995. The Company's president, Thomas LaGuardia admitted that Shippingport was "almost like a pilot plant." (1995 PP&L Base Rate Proceeding, Transcript, page 2103, Lines 17-20). These comments were made in the same year that TLG completed decommissioning studies at Limerick, Peach Bottom, and Three Mile Island.

This methodology was reconfirmed in 1997:

The cost estimating methodology employed in developing the decommissioning estimates, have been field verified by the Company's decommissioning consultant [TLG] in work performed during the decontamination and dismantling of the Shippingport Atomic Power station, Shoreham Nuclear Station and Pathfinder Atomic Station as well as for activities ongoing at the Yankee Rowe, Trojan and Rancho Seco nuclear units.

(Question & Answer 155, PP&L's Response to Interrogatories of Environmentalists, Set 3, Dated May 19, 1997.)

Shippingport was owned and operated by Duquesne Light Company under a special agreement with the Department of Energy. The entire core was also removed and replaced three times prior to decommissioning, and as by LaGuardia during cross examination, "[T]here were several cores at Shippingport starting out as a pressurized water reactor and later being converted to a light water reactor." (1995 PP&L Base Rate Proceeding, Page 2105, Lines 19-21). Furthermore, the reactor vessel was shipped to the Hanford Reservation (through an exclusive and unique agreement with the Department of Energy) thus depriving the industry of critical hands-on decommissioning experience. In fact, Shippingport was dismantled and not decommissioned. The immense differences between Shippingport and PECO's nuclear generating assets; therefore, makes any financial comparison between the two inadequate and baseless.

Other nuclear reactors relied upon by TLG provide little meaningful decommissioning experience that could be used reliably to predict the decommissioning costs at Limerick, Oyster Creek, Peach Bottom, Salem or Three Mile Island. In addition, Shoreham, a large Boiling Water Reactor (809 MWe), was decommissioned after two full power days of operation or 1/7,300 of planned and "expected" operating life of PECO's nuclear facilities, thus making it, too, an unpredictable and unstable indicator of future decommissioning costs. Furthermore, in 1995, TLG's decommissioning cost estimates were based on work completed at Shippingport, Shoreham, Yankee Rowe and small, prototype reactors such as: BONUS (17 MWe) placed in ENTOMBMENT; Elk River (20 MWe) a reactor approximately 2% of Limerick's size which operated for five years; and, Pathfinder (60 MWe), which operated for 283 full power days before being placed in SAFSTOR in 1989. (1995 PP&L Base Rate Proceeding, Page 1044, Line 1). These estimates made by LaGuardia, relied on: 1) The development of nonexistent technologies; 2) Anticipated projected cost of radioactive disposal; and, 3) Incorrectly assumed that costs for decommissioning small and short lived reactors can be accurately extrapolated to apply to large commercial reactors operating for forty years.

PECO's projected costs for decommissioning have increased dramatically from 1985 to 1995. (*See Diagram on Page 1 and Discussion on Page 3*). The situation is aggravated by the fact that PECO's decommissioning studies, completed in 1995, were not filed until 1997. Therefore, PECO does not plan to conduct any follow-up estimated until 2002. If PECO's historic assumptions are factored, and the amount of decommissioning adjustments remain constant, than 1995 estimates grossly underestimate the true cost to decommission, and restore, Limerick, Oyster Creek, Peach Bottom, Salem and Three Mile Island to "Greenfield."

Additionally, the impact of the review of the Financial Accounting Standards Board (Security Exchange Commission) has yet to be configured into the decommissioning formula. "If current electric utility industry accounting practices for decommissioning are changed, annual provisions for could increase and the estimated cost for decommissioning could be recorded as a liability rather than as accumulated depreciation with recognition of an increase in the cost of a related regulated asset." (4)

(PECO Energy, 1998 Annual Report, Nuclear Decommissioning and Spent Fuel Storage, p.34 and PECO Energy, 1997 Annual Report, Nuclear Decommissioning and Spent Fuel Storage, p.32.)

The most disturbing and financially bizarre component of radiological decommissioning is the relationship between a "power reactor licensee" and the minority or "proportional owner(s)." Unlike "power reactor licensees", "proportional owners" are not mandated by the Nuclear Regulatory Commission to empirically verify, report or monitor record keeping relating to nuclear decommissioning funding mechanisms. In some instances, even the Public Utility Commission lacks the ability to mandate or regulate savings levels from "proportional owners", i.e., Rural Electric Cooperatives.

⁴ "PECO Energy continues to adhere to its position on nuclear decommissioning costs. However, the disclosure referred to above will not be made in the Company's 1999 annual report." (PECO's Response to EE-*Informal-1-7*).

At, PPL's Susquehanna Steam Electric Station, the "proportional owner", the Allegheny Electric Cooperative, is scheduled to contribute 10 to the total cost of decommissioning. The "power reactor licensee's" estimated PPL's share decommissioning share to \$724 or 90% of the total cost of decommissioning. Based on this calculation, AEC 's 10% share of \$804 million should be \$79 million. However, Allegheny is setting aside a figure based on 5% of the final decommissioning costs even though Laurence V. Bladen, Director of Finance and Administrative Services told Epstein that AEC is basing its decommissioning costs on data supplied by PP&L. (Telephone conversation, March 30, 1995.) "Allegheny's portion of the estimated cost of decommissioning SSES is approximately \$37.8 million (same figure enumerated in the AEC 1993 Annual Report, p.27) and is being accrued over the estimated useful life of the plant." (Decommissioning Trust Fund. Allegheny Electric Cooperative, 1994 Annual Report, Cost of Decommissioning Nuclear Plant, p.49.) The AEC's cost projections have not changed since 1993, despite repeated efforts by Mr. Epstein to engage the Cooperative in discussions through their general counsel, Otto Hoffman.

Unfortunately, PECO Energy has a similar financial relationship at Peach Bottom with its proportional partner, Public Service Electric and Gas PSE&G. At Salem, where, PSE&G is the "power reactor licensee," PECO has a similar financial stake but asserted,

The 42.6 % ownership share in Salem requires that the percentage of the decommissioning be PECO Energy's responsibility. A decommissioning trust fund has been established by PECO Energy and coordinated with PSE&G for that portion of the ownership share.

(PECO Energy's Response to EE-I-5a.)

PECO and PSE&G have a history of protracted and acrimonious litigation, and decommissioning coordination can not be guaranteed or mandated. After the NRC ordered the shut down of Peach Bottom 2 & 3 in 1987, PSE&G, Delmarva Power & Light Company and Atlantic City Electric sued PECO in 1988, and alleged the Company had "breached" its contract under the Owners Agreement. Several tort claims were also

filed. "As part of the settlement, Philadelphia Electric will pay \$130,985,000 on October 1, 1992 to resolve all pending litigation." (Joseph Paquette, President & CEO, PECO, April 8, 1982.)

After Salem's chronic mechanical and technical kept the plant shut down for a prolonged outage, beginning in 1995, PECO sued PSE&G; and,

On December 31, 1997, the Company received \$70 million pursuant to the May 1997 settlement agreement with PSE&G resolving a suit filed by the Company concerning the shutdown of Salem. The agreement also provides that if the outage exceeds 64 reactor unit months, PSE&G will pay the Company \$1 million per reactor unit month.
(PECO Energy, 1997 Annual Report, **Note 21. Other Income**, p. 44.)

Clearly, this history of protracted litigation does not foster an ideal environment of comity or facilitate coordination decommissioning funding.

ComEd also has a dysfunctional relationship with its proportional shareholder at Quad Cities. "ComEd ["power reactor licensee"] does not know the mode that MidAmerica Energy [proportional owner] uses for nuclear decommissioning nor the amount of money being set aside by MidAmerica Energy." (PECO Energy's Response to EE-1-6.)

On December 30, 1999, Eric Joseph Epstein filed a petition before the Nuclear Regulatory Commission asking for "a general solution to the absence of uniform nuclear decommissioning planning and record keeping for all entities who have a proportional interests) in nuclear generating stations." (5) Epstein's Petition for Rule making is currently under review by the NRC's staff.

5 U.S. N.R.C., Petition for Rulemaking: 10 CFR CH. 1(1-1-99 EDITION) SUBPART-H §2802: PETITION to AMEND THE FINANCIAL ASSURANCE REQUIREMENTS for DECOMMISSIONING NUCLEAR POWER REACTORS SECTION 50.75 REPORTING and RECORD KEEPING for DECOMMISSIONING PLANNING. Parts: (a), (b), (c), (d), (e), and (f) to INCLUDE UNIFORM REPORTING and RECORD KEEPING for PROPORTIONAL OWNERS of NUCLEAR STATIONS and A REQUEST to ADOPT Petitioner's RECOMMENDATIONS for NUCLEAR DECOMMISSIONING IDENTIFIED in: II) STATEMENT of ISSUES: (A), (B), (C), (D), (E), and (F).

The impact of this uncertainty between decommissioning partners is clear. PECO has no enforcement mechanism to compel PSE&G to fund 42.49% of the decommissioning costs at Peach Bottom. While PSE&G may be obligated to come with their share of decommissioning costs, the "proportional owner" is under no obligation to accept the "power reactor licensee's" estimates or mode of decommissioning. PSE&G's tenuous financial position in regard to inadequate decommissioning savings will place a greater fiscal burden on PECO and, thereby; 1) Create further uncertainties about the Company's ability to meet its financial commitments to decommission Peach Bottom 2 & 3; 2) Undermine TLG's net decommissioning estimates; and 3) Dilute TLG's contingency factor.

The cost estimates for non-radiological decommissioning (an imprecise term) are not mandated by the NRC. "For PECO Energy Company and ComEd, the costs for 'Greenfield' are included in the cost estimates and in the funding streams established for decommissioning." (PECO Energy's Response to EE-I-8b.) However, Greenfield, i.e., the original environmental status of nuclear generating station prior to construction of the nuclear power plant, has never been achieved by an operating nuclear generating station. (6) Moreover, this site status is unattainable if a station is placed in delayed-SAFSTOR, DECO, or ENTOMB.

6 According to NRC Regulations, Greenfield is achieved when a nuclear generating station is returned to "original status" prior to licensing, construction, and generation of nuclear power. The NRC would then clear the site for "free release" and would allow a "school or playground" to be constructed at the former nuclear power plant.

REMEDIES:

1) Any "upward adjustment" up to \$50 million for nuclear decommissioning at Limerick 2 & 3, Peach Bottom 2 & 3, Salem 1 & 2, above current funding projections, will be paid by PECO Energy shareholders and/or its successors, i.e., Exelon;

2) PECO accepted the decommissioning formula enumerated by Office of Consumer Advocate and Epstein after PECO's initial \$50 million contribution has been exhausted. This cost sharing formula includes a 5% contribution from shareholders and 95% from rate payers. This paradigm was modeled on the 1998 PP&L "precedent", , and voluntarily implemented by PECO (*See Discussion and Proposed Formula under E. Rate Payer Equity*);

3) PECO Energy committed \$500,000, for a period of up to five years, to conduct dedicated research relating to reducing worker exposure through remote robotics.

2) Planned Operating Life for PECO's Nuclear Generating Stations

Experience at large commercial nuclear power plants over 200 MWe has clearly demonstrated that TLG's assumption (7), which is shared by PECO, that Limerick 1 & 2, Oyster Creek, Peach Bottom 2 & 3, Salem 1 & 2, and Three Mile Island will operate for 40 years is not borne out by existing data. PECO sidestepped the issue by admitting, "Notwithstanding, there are no commercial nuclear plants owned by PECO Energy have operated for 40 years or 100% of their planned lifetime." (PECO Energy's Response to EE-I-2.) After discussions with the Company regarding Dr. Hieronymus's responses to EE-II-8, PECO's legal department stated that his testimony presumed a 40 year operating life with plants performing at analogous generating levels. (8)

⁷ The Company's witness, Thomas LaGuardia, was asked by Epstein: "[H]ow many commercial nuclear power plants in this country have completed their full operating lives?" Mr. LaGuardia replied: "[N]one, essentially." (1995 PP&L Base Rate Proceeding, Page 1023, Lines 20-22.) Additionally, George T. Jones, Vice-President of Nuclear Engineering, was asked by Mr. Epstein:

Q: "In your experience, which is rather extensive at TVA, Energy and CE, can you at least let me know what is the longest life of a plant you've been associated with?"

Mr. Jones: "I've never been associated with one that -- none of them have ever reached the end of their licensed life. (Page 2272, Lines 8-16.)

Mr. LaGuardia's and Mr. Jones's acknowledgments are confirmed by empirical data. The following reactors have been shut down prematurely: Millstone-1, a 660 MWe, General Electric BWR was shut down early, and removed from the rate base on December 31, 1997. Haddam Neck, a 582 MWe PWR was closed on December 4, 1996, in the hope of saving rate payers \$100 million, and six months later Main Yankee, the first Combustion Engineering was retired prematurely. Shoreham, 809 MWe, operated for two full-power days and closed before it could begin commercial operation in May 1989; Trojan, 1095 MWe which operated for 40% of its operating life (May 1976 to November 1992); Three Mile Island-2, 792 MWe which operated for 1/120 of its operating life (December 1978 to March 1979); Indian Point-1, 257 MWe which operated for 30% of its operating life (January 1963 to October 1974); San Onofre-1, 436 MWe which operated for 35% of its expected life (from January 1968 to November 1992); and, Fort Saint Vrain, 330 MWe which operated for 27.5% of its expected life (January 1979 to August 1989.)

⁸ "The following information applies to PECO Energy Company. All decommissioning cost estimates for nuclear units assume a 40-year service life." (PECO Energy's Response to EE-I-1.) "With the exception of Dresden Unit 1, all ComEd decommissioning cost estimates assume a 40-year life for each unit." (PECO's Response to EE-Informal-I-1.)

PECO's proposed merger with ComEd weds the Company with a nuclear utility that has been forced to shut down more nuclear plants than other operator in America. Dresden -1, a 200 MWe reactor, only operated for 45% of its planned life before ComEd prematurely shut the facility in October 1978. More recently, January 15, 1998, Commonwealth Edison announced it was permanently shutting down Zion-1 and Zion-2, 1040 Westinghouse PWRs. Zion-1 began commercial operation in December 1973 followed by Zion-2 September 1974. ComEd also reported this decision will cost shareholders \$515 million or \$2.38 per share. With the premature closure of Zion 1 & 2, every nuclear reactor type and supplier have fielded flawed nuclear units. (9)

Commercial nuclear power plants in the United States are predominately boiling water reactors (BWR) or pressurized water reactors (PWR) Every "power reactor licensee" has encountered generic challenges at the reactors they constructed. PECO and ComEd's BWR's are no exceptions. The most serious potential generic issues that face BWR's are vessel shroud cracks and containment vessel integrity.

Vessel shroud cracks are a serious problem which were first identified at Carolina Power & Light's Brunswick-2 in 1991 (767 MWe; began operation in March 1977), and Brunswick-2 (754 MWe; began operation November 1975) in September 1993. The cracks at this facility were attributable to stress corrosion and irradiation. Both are signs of premature aging. Cracks have also been identified at the following General Electric Boiling Water Reactors: Dresden-3 (794 MWe which came on line in November 1971) and Quad Cities-1 (789 MWe which came on line February 1973). On June 30, 1994, PECO Energy reported vessel shroud cracking in Unit-3; a 1034 MWe reactor which began operation in December 1974.

⁹ The "premature" closing of a nuclear generating station is only one challenge to plant service, reliability, and longevity. In January 1995, bad weather caused a record-setting demand for electricity on the PJM grid. The Susquehanna Steam Electric Station (SSES) contributed to the crisis when SSES-1, shut down since September 1994, did not return to service until January 22, 1994 - *four days* after PJM experienced a record surge in demand. Also, on January 22, SSES-2 tripped and was forced to shut down.

PECO and ComEd have joined the BWR Vessel and Internals Project owners group which announced "cracking of the core shroud is a warning that additional safety-class reactor internals are increasingly more susceptible to the same age related deterioration." [Nuclear Monitor, November 21, 1994, pp.1-2.] As boiling water reactors age, (10) they will become more vulnerable to age-related problems such as vessel shroud cracks, which have already begun to appear at General Electric Boiling Water Reactors (11). Stan Maingi of the Pennsylvania Department of Environmental Resources told Mr. Epstein on June 9, 1995: "That's an issue that can shut them [BWR's] all down. They formed BWR Vessel and Internals Project."

10 Another generic challenge was identified at PP&L's BWR on December 31, 1992 by two PP&L engineers who demonstrated that the highly radioactive spent fuel pools at Susquehanna were unsafe, and an emergency core cooling failure could facilitate a meltdown of spent fuel elements. The engineers, Donald Prevatte and David Lochbaum, attempted to report their concerns to PP&L in March, 1992. PP&L dismissed the matter and tried to fire Prevatte and Lochbaum, who were invited to testify before the Nuclear Regulatory Commission on October 1, 1993.

PP&L's spent fuel design is utilized by one-third of nuclear generating stations.

11 Limerick, Peach Bottom and Susquehanna are General Electric Boiling Water Reactors as are ComEd's Dresden, La Salle and Quad Cities' stations.

REMEDY:

1) PECO agreed to extend the activities, information flow, and supplement the radiation monitoring equipment of the EFMR Monitoring Group to include the Peach Bottom area for a ten year period. This Agreement will be modeled on the 1992 GPU Agreement and the 1999 AmerGen Agreement.

3) Spent Fuel Isolation

There is no location to permanently store spent fuel and high level radioactive waste (HLRW) generated by nuclear power plants. This is a significant problem for PECO's reactors which have lost, or are close to losing Full Core Off Load Capability.

<i>Reactor</i>	<i>Core Size</i>	<i>Lose Full Core Off load Capability</i>
Limerick 1	764	2006
Limerick 2	764	2006
Oyster Creek	560	LOST
Peach Bottom 2	764	2000
Peach Bottom 3	764	2001
Salem 1	183	2012
Salem 2	193	2018
Three Mile Island	177	NA

(Source: PECO Energy's Response to EE-I-12.)

PECO's strategy, like that of PPL, (12) to the critical shortage in spent fuel capacity, is to increase storage capacity through an untested, commercial dry cask technology (13).

<u>Station</u>	<u>Dry Cask Technology</u>	<u>Deployment Date</u>	<u>Contractor</u>
Limerick	BD	Summer 2010	TBD
Oyster Creek	NUHOMS 52B (c)	July, 2010	None
Peach Bottom	Trans-Nuclear TN-68	June, 2000	Raytheon
Salem (a)	None	TBD	None
TMI (b)	None	TBD	None (d)

(a) Salem has no plans to extend spent fuel capacity through dry cask storage or re-racking.

(b) TMI-1 plans to increase spent fuel storage capacity by re-racking in 2002.

(c) Holtec is the new vendor chosen to provide dry cask services at Oyster Creek. (PECO's Response to Eric Epstein's Informal I-8.)

(Source: PECO Energy's Responses to EE-I-11 & EE-I-12.)

12 On June 28, 1995, Mr. Epstein discussed dry cask storage at the Susquehanna Steam Electric Station with David Nye of the Pennsylvania Department of Environmental Protection (DEP). Mr. Nye stated that, "In about a year [PP&L will] start construction and a year after that, loading [dry] casks."

In a conversation with Mr. Epstein, PP&L anticipated deployment of dry cask technology utilizing the Vectra cask design at the Susquehanna Steam Electric Station in "Mid 1997." (PP&L Spokesman Herbert D. Woodeshick, June 29, 1995.) PP&L "planned to initiate the first fuel transfer to the storage location the week of September 6, 1999, but problems developed and the transfer has been delayed for a few weeks." (U.S. NRC, Office of Nuclear Reactor Regulation.) According to a PP&L Press Release, the transfer process finally got underway on October 18, 1999.

13 "PECO Energy Company is participating in research projects on spent nuclear fuel (SNF), and transportation methods for SNF, through EPRI and NEI. The total spending on these projects is in excess of \$250,000 per year. (PECO Energy's Response to EE- Informal-I-11.)

When, and if, spent fuel storage is increased at Pennsylvania nuclear generating stations, the additional upward 'adjustments' will have a significant impact on decommissioning funding. This cost, which was omitted from TLG's estimate, "None of the estimates we have prepared include the cost of disposal of spent nuclear fuel," (1995 PP&L Base Rate Proceeding, Page 1032, Lines 20-12), is the main contributing factor in the escalation of decommissioning costs at Yankee Rowe. Thomas LaGuardia, the Company's witness, admitted the increase during cross examination:

Mr. Epstein: "Are you aware that the cost has increased for the decommissioning of Yankee Rowe from \$247 million to \$370 million over the last two years?"

Witness: "Yes. I'm aware of what the estimate concludes."

Mr. Epstein: "And half of the cost was attributable to spent fuel storage?"

Witness: "That's correct." (Page 1029, Lines 16-22.)

Aggravating the critical shortage of HLRW storage space is the bleak estimate for the completion of Yucca Mountain, the designated repository for high level nuclear waste. The earliest date this repository could be available is 2010. Lynn M. Shishido-Topel, who Commissioner from the Illinois Commerce Commission testified on behalf of the *National Association of Regulatory Commissioners before the House Subcommittee on Energy and Mining Resources and the House Committee on Oversight and Investigations* (March 17, 1995.) She told the panel that she was "fairly certain that DOE would not meet its revised 2010 deadline to begin accepting spent fuel from commercial reactors." [Bureau of National Affairs (BNA), "Federal Facilities: Industry, DOE Struggle to Find Acceptable Solution to Interim Storage of Spent Fuel, Daily Environment Report News, March 18, 1994 [1994 DEN 52 d10] Shishido-Topel also predicted that the amount of spent fuel generated by 2000 will be 40,000 metric tons (MTU). This amount waste would exceed Yucca Mountain's capacity. The State of Nevada has demonstrated that Yucca Mountain will probably hold about 20% of the total 85,000 MTU of spent fuel earmarked for the facility. (State of Nevada, Nuclear Waste Project Office, *Scientific and Technical Concerns*, pp.8-11.)

As early as 1995, concerns about Yucca Mountain's integrity surfaced from scientists at Los Alamos National Laboratories. Dr. Charles Bowman warned that plutonium would remain after the steel casks containing the nuclides dissolved. Plutonium could then migrate and concentrate. (*The New York Times*, p.1, March 13, 1995.) In February 1999, the scientific peer review panel for Yucca Mountain commissioned by the United States Department of Energy (DOE) produced a "highly critical" report: "The review panel said the model [DOE's computer model] has so many uncertainties - like the corrosion rates of waste containers, the area's vulnerability to earthquakes and how climate changes would affect rainfall - that its reliability was limited." (*The New York Times: Science*, "New Questions Plague Nuclear Waste Storage Plan," Jon Christensen, August 10, 1999.)

Further complicating Yucca Mountain's future was a complaint filed on October 4, 1999, by LeBouf, Lamb, Green & MacRae, alleging a conflict of interest by the Department of Energy in their selection and awarding of a \$16 million legal contract to Winston & Strawn. Former general counsel to the DOE, R. Tenney Johnson, stated in a sworn affidavit: "[A] situation has been created which an entity [Winston & Strawn] will pass judgment on its own work." (Matthew Wald, *New York Times*, October 5, 1999.)

PECOs "political strategy" relating to finding a solution for a permanent spent fuel storage facility has been disappointing.

The planned fall-back scenario in the event of unavailability of low-level radioactive waste disposal facility would be to continue political pressure on the States and US Government to support the development of permanent low-level waste facilities. In the event that a high-level radioactive waste facility is unavailable, the station would continue spent fuel management under "dry storage". Any station without dry storage capability would establish dry spent fuel storage management if it is likely that the DOE would not receive spent fuel in a prudent time frame and wet fuel storage is no longer feasible.

(PECO Energy's Response to EE-I-14.)

When the State of Nevada balked at hosting a HLRW facility, PECO and PP&L promptly poured \$66,673 into a \$3.3 million advertising campaign coordinated by the Edison Electric Institute to convince a state that has no nuclear generating stations to host the nation's spent nuclear fuel. PECO and PP&L joined a consortium of 33 utilities on December 12, 1994, which engaged in a campaign to pressure the Mescalero Apaches to host a Monitored Retrievable Storage facility. Both initiatives were funded by the PECO and PP&L rate payer.

Isolation of high-level radioactive waster, which is primarily composed of spent fuel, can not be separated from radiological decommissioning. The earliest Yucca Mountain will be available is in the year 2010. (14)

Yet, for:

...PECO Energy Company, each decommissioning cost evaluation presumes a date for a permanent high level radioactive waste (HLRW) facility. This allows for a cost comparison with other estimates. the following dates are included as "presumed" in the cost estimates...Oyster Creek: DOE commences pickup in 2010...TMI: DOE commences pickup in 2010...PBAPS [Peach Bottom Atomic Power station] 2 & 3: DOE commences pickup in 2010, LGS [Limerick Generating Station]: DOE commences pickup in 2010, Salem 1 & 2: DOE commences pick up in 2010.

(PECO Energy's Response to EE-I-10.)

Nuclear generating stations can not be decommissioned or decontaminated with the presence of HLRW on-site or inside the reactor vessel. Aggressive decontamination process will be precluded, necessitating utilities to place retired reactors into extended-DECON or SAFSTOR. If a long term solution to spent fuel isolation is not found in the immediate future, some, or all, of PECO's nuclear generating stations will be shut down prematurely due to an absence of spent fuel storage capacity.

14 "All the proposed sites will meet environmental regulations, PECO energy has raised certain financial issues about the project and has withdrawn for now because of economic issues." (PECO Energy's Response to EE-I-10.)

REMEDIES:

1) PECO agreed not to import High Level Radioactive Waste onto Peach Bottom;

2) PECO agreed not to utilize Mixed Uranium Oxide fuel at Limerick, Peach Bottom or Salem.

4) Low Level Radioactive Waste Isolation

All nuclear generating stations serve as temporary repositories for low-level radioactive waste (LLRW). (This term is imprecise and "low-level" is not analogous to low-risk.) For example, both PECO and PP&L store LLRW on site, ship the waste to Scientific Ecology Group (SEG) in Oak Ridge, Tennessee for "compaction, and SEG reships the compacted waste, (which still has the same curie content) back to Pennsylvania. PECO and PP&L ship the compacted LLRW to Barnwell, South Carolina. Currently, Limerick, Peach Bottom, and Three Mile Island do not meet the standards set by the Appalachian Compact in regards to a permanent LLRW facility. And,

Neither PECO nor ComEd consider its nuclear generating sites to be appropriate for permanent isolation of either low-level or high-level radioactive wastes generated as a result of operations. ComEd will continue to store only radioactive waste generated at each site on a temporary, as-needed basis.

(PECO Energy's Response to EE-I-13.)

TLG provided decommissioning cost estimates to PECO, PP&L and General Public Utilities (GPU) predicated on a specious assumption. Mr. Thomas La Guardia, president of TLG, based decommissioning cost estimates for low-level radioactive waste disposal on the assumption that the Appalachian Compact would be available when the the Susquehanna Steam Electric Station closes (1995 PP&L Base Rate Proceeding, Page 1034, 17-20). He concluded that the disposal of LLRW is the most expensive component in the decommissioning formula (Page 2091, Lines 21-25.) Furthermore, Mr. LaGuardia conceded it may be necessary to recompute cost estimates for disposal because it now appears imminent that Barnwell will open for seven to ten years for all states except North Carolina (PP&L, Page 2108, Lines 4-9.)

Barnwell is currently operating and accepting LLRW from Pennsylvania utilities, and the site is expected remain open until 2006.

Our analysis is based on the insights and understanding that come from having a major operation in South Carolina. The realities are that Chem Nuclear LLRW disposal facility in Barnwell, S.C. has sufficient disposal capacity to remain open to the nation for approximately 10 years based on volume received.

(Walter E. Newcomb, PhD, Vice president and Project Manager, CNSI Pennsylvania Office, May 18, 1996, formal response to inquiries by Eric Epstein, Chairman, Three Mile Island Alert.)

On June 18, 1998, the Appalachian States Low-Level Radioactive Waste Commission voted to support the Pennsylvania Department of Environmental Protection's suspension of the site-selection process for a Low-Level Radioactive Waste Disposal Facility in Pennsylvania.

TLG's decommissioning estimates relating to dose assessments concentrated on the half-life of cobalt-60 and cesium-137. The timing of decommissioning is based to a large degree on the period in which the above mentioned radioisotopes decay, and allow clean-up processes. However, Mr. LaGuardia stated his unfamiliarity with the term hazardous life.

Witness: "The half-life is the period of time a radionuclide takes to decay to half the radioactive level that occurred during that period. The hazardous life generally is referred to chemical hazardous materials which don't go by the same definition. I'm not familiar with that term with respect to radionuclides of concern."

(1995 PP&L Base rate Proceeding, Page 2118, Lines 1-6.)

This is a glaring and costly omission. The hazardous life is more than ten to twenty half lives. Therefore, the hazardous life of cobalt-60, (mostly a gamma medical source) is at least 52.7 years and cesium-137, (fission product) is at least 301 years. (Projected hazardous life is based on half life values in the CRC Handbook of Chemistry and Physics, 1988). Moreover, as Mr. LaGuardia attested (1995 PP&L Base Rate Case, Page 2100, Line 24), there are conflicting radiation clean-up standards for soil, water and surface as

defined by the Environmental Protection Agency and the Nuclear Regulatory Commission and each agency has conflicting cleanup standards for site restoration. (14) **[EPA]**

(Witness, LaGuardia, Page 2099, Lines 20-25 and page 2100, Lines 1-18.)

13 For further discussion see FR 52061, October 23, 1981; 42 FR 60956, November 30, 1977; 40 CFR 192, 12, July, 1989 and US NRC, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use of Termination of Licenses for Byproduct, Source, or Special Nuclear Material." Policy and Guidance Directive FC 83-23, Division of Industrial and Medical Nuclear Safety, Washington, DC, August, 1987.]

REMEDIES:

1) PECO agreed not to import Low-Level Radioactive Waste onto Peach Bottom;

2) PECO agreed not to use Mixed Uranium Oxide fuel at Limerick, Peach Bottom or Salem.

5) Rate Payer Equity

On the issue of decommissioning, the Kansas State Corporation Commission stated that “Decommissioning cost estimates are inherently uncertain and speculative” and that “[t]o date, there has been no actual experience decommissioning a large, commercial nuclear plant and cost estimates have been traditionally low.” (*Re Wolf Creek Nuclear Generating Facility*, 70 PUR 4th 475 (1985)) In addition, the Commission held that “The current shortage (indeed nonexistence) of the site for the disposal of large quantities of radioactive waste makes detailed estimates of shipping distance and cost virtually impossible.” *Id.* at 540-41. In the *Wolf Creek* rate case, Mr. LaGuardia (also a Company witness in the instant case) failed to include inflation in his cost estimates and assumed a forty year operating life for the nuclear plant. *Id.* On the basis of this omission and the speculative predictions of operating life, the Commission chose a “midpoint” of LaGuardia’s testimony.

The Commission also declared, “We believe that the NRC and general industry estimates of 30 years is a valid and realistic life to utilize for purposes of decommissioning estimates.” *Id.* at 541.

Additionally, the Commission cited to NRC guidelines that suggested five criteria for evaluating alternative financing mechanisms for nuclear decommissioning . One of the components of analysis in the discussion was titled “Intergenerational equity - that the cost of decommissioning be spread equitably to all retypers throughout the life of the facility.” *Id.*

No commercial nuclear generating facility has completed its full operating life, due to safety and economic considerations, nor has a safe, permanent repository been found for the disposal of high-level and low-level radioactive waste. Clearly, the rate payer should not be made to bear the brunt of expenses incurred by premeditated imprudent and speculative management decisions. Pennsylvania Commissioner Joseph Rhodes wrote in *Pa. PUC v. Metropolitan Edison Company*, 141 PUR 4th 321 (1993):

Premature retirements bear great similarities to TMI-2 because they involve liabilities for premature retirements and decommissioning. Therefore, the policy set forth in determining who should pay for TMI-2's decommissioning grows in significance because it may well establish a precedent for additional early retirement cases that might involve substantial rate increases...[A]side from whether it is legal, is it fair to impose these costs on rate payers?

While PECO is entitled to recover a portion of decommissioning funding through the rate making process, the Company must also assume responsibility for its business decisions similar to the commitment PP&L made to share decommissioning expenses between shareholders and rate payers. PECO aggressively sought to license, construct and operate nuclear facilities despite the fact that the riddle of how to resolve the "back-end" of nuclear power production, i.e. (nuclear waste disposal and decommissioning) had not been solved. To allow PECO to recover 100% of decommissioning funding from rate payers, after the Company was awarded almost \$10 billion in stranded costs as a result of the 1998 Negotiated Settlement, would be a *de facto* endorsement of corporate socialism. That is, shareholders profit from their investment decisions but are accorded rate relief when their imprudent and speculative decisions become uneconomical.

The issue of rate payer equity, and mandated feasibility of shared costs for PECO's nuclear investments are essential to any Negotiated Settlement involving the proposed merger between PECO and ComEd. Clearly, a formula must be established that recognizes rate payer equity and prevents intergenerational hostility. The Company has been pursuing a billing policy articulated by Luther J. Carter:

These industry actors, for the most part, find themselves nicely insulated from the costs of waste management. The Price-Anderson Act, for example limits industry liability, and the nuclear waste policy act allows utilities to pass waste management costs through to ratepayers. Thus nuclear waste management costs, like nuclear wastes, are a residue of the 1950s nuclear promotion policy. Moreover, a portion of nuclear wastes and their management costs is the result of improperly underpricing nuclear electricity and creating an over-investment in nuclear plants and equipment. As a result, more waste than optimum was created. Furthermore, waste management costs are to be absorbed by taxpayers and ratepayers instead of the shareholders of the industry actors who put their externality-creating products on the market without fully accounting for social costs.
[Luther J. Carter, "Jurimetrics Journal," Fall, 1988. 29 JURIM J 97.]

Unless a more equitable funding formula for decommissioning is established, rate payers who are not yet born will be burdened for payment for the cleanup of a plant that they derived no benefit from. Society as a whole, and the Company in specific, must assume responsibility for the decisions it makes. Creating and perpetuating intergenerational debt is not a constructive, fair or equitable resolution. The solution should **not** be a financial safety net provided by hostage rate payers and tax payers excluded from internal corporate decision making. PECO Energy must assume financial responsibility for its decision to invest, and acquire, nuclear power. This necessarily means that the PECO shareholder must bear a substantial burden of decommissioning costs in excess of the 1995 projected estimates by TLG.

REMEDY:

- 1) See Discussion on Nuclear Decommissioning.**

6) Community Investment

PECO Energy is a statewide electricity utility. The Company must recognize that its corporate presence requires a commensurate level of community "presence." In order for PECO Energy to establish and maintain its status as a good "corporate citizen", the Company must create and implement a verifiable community investment plan in Lancaster and York counties. This plan should include additional funding for low-income and rural rate payers.

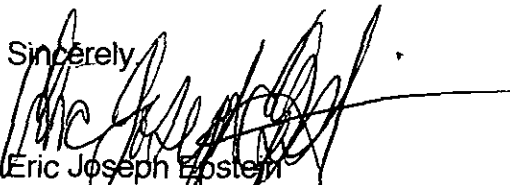
REMEDIES:

1) Community investment levels will increase 5% per annum for a five year period;

2) Increased Universal Service in York County will be verified through the Mason-Dixon Report.

This concludes my formal testimony relating to the Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 & 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. I respectfully request that the Secretary incorporate my testimony into the official record as evidence. Additionally, I am available for cross-examination.

Sincerely,



Eric Joseph Epstein
4100 Hillside Road
Harrisburg, Pennsylvania 17112

DATE: APRIL 17, 2000

REFERENCES

Technical

Dr. Michael Masnik, Senior Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Plant Support, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, (Bethesda, Maryland).

Dr. John Luetzelschwab, Department of Physics and Astronomy, Dickinson College, (Carlisle, Pennsylvania).

Mr. Arthur Morris, Chairman, Nuclear Regulatory Commission's Advisory Panel for the Decontamination of Three Mile Island Unit 2 and former Mayor of Lancaster (Lancaster, Pennsylvania).

PROFESSIONAL PAPERS & PUBLICATIONS

Journal

Publisher of the *EFMR Monitor*,

Technical

Testimony on the PECO Negotiated Settlement ((2000); Settlement Agreement with AmerGen on the License Transfer of Three Mile Island Unit-1 (1999); Testimony on Pennsylvania Power & Light's Restructuring Plan, (Pennsylvania Public Utility Commission, Administrative Law Judge George M. Kashi, 1997); Testimony on the "Investigation into Electric Power Competition," (Pennsylvania Public Utility Commission, 1996); Expert Testimony on Pennsylvania Power & Light's 1995 Base Rate Case, (Pennsylvania Public Utility Commission, Administrative Law Judge Robert Christianson); Testimony on "Hostile Takeovers of Electric Utilities," (Pennsylvania Senate Consumer Protection and Professional Licensure Committee, 1995); "Assessing Risk-Assessment," (University of Tennessee, 1995); "Old and New Forms of Public Participation at the PUC," (Public Utility Commission, University Park, PA, 1995); "Radioactive Scrap Metal: An Environmental Perspective," (University of Tennessee, 1994); "On-Site Storage and the Period Prior to Decommissioning," (League of Women Voters, 1993); Testimony on the Security Intrusion at Three Mile Island (Pennsylvania House of Representatives, 1993); Settlement Agreement with General Public Utilities and the Nuclear Regulatory Commission on Post-Defueling Monitored Storage at Three Mile Island Unit-2, (Atomic Safety & Licensing Board, Administrative Law Judge Peter Bloch, 1992); Testimony on Chem Nuclear's Siting Plan for a Low-Level Radioactive Waste Site, (Department of Environmental Resources, 1991, 1990, 1989); Testimony on the Cleanup and Decommissioning of Three Mile Island Unit 2, (Nuclear Regulatory Commission, Three Mile Island Advisory Panel for the Decontamination of Three Mile Island, Unit 2, 1994, 1993, 1992, 1991, 1990, 1989, 1988, 1987, 1986, 1985); Testimony on the Pennsylvania Energy Plan, (Lt. Governor Mark Singel, Pennsylvania Energy Office, 1987); Testimony on the Shutdown of Peach Bottom, (Pennsylvania House of Representatives, 1987); Testimony on the Restart of Three Mile Island, (Nuclear Regulatory Commission, Washington, D.C., 1985.)

RESEARCH

Energy
(1999-2005)

Founding Board Member of PP&L's Sustainable Energy Fund.

Nuclear
(1993-1999)

- Sponsored the purchase of **MIRS-II, Scavenger SS100** and **9050 Pipe Crawling Robot (PLS 8750)** by General Public Utilities. These robots perform decontamination and decommissioning tasks at Three Mile Island, Oyster Creek and Saxton nuclear power plants.

Scavenger: Used to vacuum the fuel transfer canal during refueling outage 10R at TMI. Dose savings: One to two man-rem and eliminated one entry into canal saving three to four hours critical path time. Future uses: Clean TMI-2 outdoor tanks, vacuum Oyster Creek equipment pool (16R), and vacuum deep end of TMI-1 fuel transfer canal as well as shallow end (11R).

MIRS-II: Used for an entry into the Filter Sludge Tank room at Oyster Creek on February 15 and 16, 1996.) This was a high radiation area. The robot identified that there was not a leak in the cleanup system relief valve. This activity saved approximately 300 mrem and prevented replacement of the valve which would have cost 130 man-hours, and 7.5 man-rem exposure. The exercise saved about 3.5 man-rem exposure.

- Sponsored the purchase of five, **low-volume air samplers (Andersen)** located one to seven kilometers from Three Mile Island. The filters are collected and analyzed weekly for gross alpha and beta and Iodine-131, monthly for gamma isotopes, and semiannually for Strontium-90.

EFMR Monitor

Monitoring radiation trends in the Three Mile Island area

March 2000

NRC Staff Criticizes Commission's New Regulatory Process

by Scott Portzline, EFMR

For the first time ever, an inside look at the Nuclear Regulatory Commission (NRC) shows morale could threaten the ability of the NRC to carry out its statutory mandate to protect the public health and safety. A major overhaul of the regulatory process is in the works and some of the strongest criticism is coming from within the commission itself.

While the NRC publicly states that it is streamlining regulations to help utilities and inspectors perform with greater safety and efficiency, the NRC staff told a different story to the investigative arm of congress. The majority of NRC staff who responded to the US General Accounting Office survey believe that the new risk-informed regulatory oversight process will reduce plant safety margins. An incredible seven out of ten nuclear plant inspectors

say they fear that the new regulatory process will not identify and correct degrading performance.

Three-fourths of the NRC staff told GAO auditors that utilities and industry groups had too much input and influence in developing the new regulatory process. Once again, "the fox will be guarding the hen house" if those who stand to profit have their way.

Inspection hours might be reduced even further according to two-thirds of plant inspectors. The same percentage have misgivings that licensees will manipulate performance indicator data and seventy-six percent say the proposed process could mask problems. More than half of the inspectors worry that there will be an increased reliance on utilities' self-assessments rather than actual

(Continued on page 7)

AmerGen Acquires Clinton & TMI-1; More Purchases Planned

from a February 2000, American Nuclear Society Nuclear News article

AmerGen Energy Company, the joint venture created by PECO Energy Company and British Energy Company in 1997 to compete in the nuclear plant buyers' market, purchased a pair of nuclear units less than a month before the start of the new year. On December 16, AmerGen acquired the Clinton plant, in central Illinois, for \$20 million from Illinois Power Company. The transaction marks AmerGen's first completed purchase of a U.S. nuclear power plant. Five days later, on December 21, AmerGen closed on the \$100-million deal for the purchase of the Three Mile Island-1 plant from GPU, Inc.

The sale of Clinton, a 930-MWe (net) General Electric boiling water reactor, comes one year after Illinois

(Continued on page 7, column 1)

inside...

AmerGen Reports Drug Testing Results at TMI.....	2
RadAlert at the Dentist's Office.....	3
Canadian Group Pushes Broader Study of Nuclear Risk.....	4
Wackenhut to Provide Guards at Three Mile Island Plant.....	4
Monitor Finds Radioactive Trash.....	5
NRC to Withhold Nuke Plant Information about Shutdowns.....	6
Second Quarter 1999 Low-Volume Air Sampler Report.....	8
Third Quarter 1999 Low-Volume Air Sampler Report.....	11
Fourth Quarter 1999 Low-Volume Air Sampler Report.....	15
Seven Years of Low-Volume Air Sampler Reports.....	18
Strontium-90 Levels Reaching Levels Of Atmospheric Nuclear Testing Years.....	23
Glossary of Terms.....	24

The EFMR Monitoring Group at TMI

Web Address: <http://www.enviroweb.org/efmr/>

E-mail address: cepstein@igc.apc.org

The EFMR Monitoring Group is a non-profit, non-partisan organization that monitors radiation trends in the Three Mile Island (TMI) area. The Group was formed out of a settlement between Eric Epstein and GPU Nuclear. In January 1999, the new owners of TMI-1, AmerGen, negotiated a settlement with EFMR scheduled to last until 2005.

EFMR has distributed 60 Rad Alert radiation monitors at 50 stations in an eight county area around TMI, including several colleges, high schools, and community-based organizations. Additionally, several monitors are deployed in northern Maryland close to the York County, Pennsylvania border.

EFMR has worked with AmerGen, the Environmental Protection Agency, Los Alamos National Laboratories SWOPE Program, GPU Nuclear, the Nuclear Regulatory Commission, the Pennsylvania Bureau of Radiation Protection, and the University of Tennessee.

Through a grant from the Rex Foundation, EFMR maintained five low-volume air samplers on the east and west shores of the Susquehanna River adjacent to TMI from 1993-1999. Dickinson College Department of Physics collected the filters and cartridges from these monitors on a regular basis. Analyses performed included weekly gross beta and alpha measurements, monthly gamma

isotopic analysis, weekly Iodine-131 analysis, and semi-annual Strontium-90 analysis. The last collection occurred in December 1999.

From 1993 through 1999, GPU invested approximately \$900,000 in remote robotics research as part of the Agreement relating to TMI-2.

EFMR has online access to GPU's Reuter-Stokes gamma monitoring system. This sensitive system prints out hourly reports from 16 stations located within four miles of TMI. EFMR continues to receive quarterly reports from the remote temperature monitoring system located at the base of the TMI-2 Reactor Vessel. EFMR continues to attend NRC exit meetings, and to receive regular briefings and updates from AmerGen.

Direct your comments or questions to: EFMR Monitoring Network, 4100 Hillsdale Road, Harrisburg, PA 17112 or call (717) 541-1101.

Coordinator — Eric Epstein

Reuter-Stokes Technician — Debbie Davenport

Statistician — Richard Stöber,
Economic Insights

Editor — David Raeker-Jordan

Webmaster — Scott Portzline

AmerGen Reports Drug Testing Results at TMI

from a February 10, 2000, AmerGen letter to the NRC

For the six month period ending December 31, 1999, AmerGen reported the following Fitness For Duty data:

Of 802 licensee employees, 264 were tested and 2 tested positive (cocaine). Of 3000 short-term contractor personnel (at both TMI and Oyster Creek), 1043 were tested and 8 tested positive (5 for marijuana, 2 for cocaine, and 1 for alcohol).

In addition to marijuana, cocaine, and alcohol, personnel were also tested for opiates, amphetamines and phencyclidine. Testing occurred under the following circumstances: pre-access (which found the largest number of positives), for cause (post accident), for cause (observed behavior), random, follow-up and other.

As a result of the positive drug tests, the two (2) TMI licensee employees who tested positive for cocaine as a result of Pre-Access testing were denied unescorted access to GPU operated facilities. There was one (1) TMI contractor employee who tested positive for alcohol as a result of For-Cause testing (observed behavior) and six (6) TMI contractor employees who tested positive for drugs as a result of Pre-Access testing. One (1) TMI contractor employee was found in possession of marijuana in the Owner Controlled Area and refused to submit to For-Cause testing. The contractor employee was arrested by the Pennsylvania State Police and charged with Possession of a Controlled Substance. All eight (8) contractor employees were denied unescorted access to GPU Nuclear operated facilities.

RadAlert at the Dentist's Office

by Linda Schatz

The new dentist I went to on March 2, 1999, was very interested in the RadAlert radiation monitor that I brought to my appointment. We experimented with its placement during the x-rays that I needed. The RadAlert readings surprised us, and the dentist proceeded to take readings in other settings in his office.

A large lead shield was placed on my chest and torso prior to the first x-ray. The monitor was placed on top of the shield, around the middle of my chest. 852 millirads was the reading on the monitor. Background radiation is, on the average, 14 millirads per minute, so this amount of radiation was equivalent to about one hour's worth of background radiation.

We wanted to see how protective the lead shield was. I placed the RadAlert on my chest, under the lead shield. 258 millirads from the next x-ray, not quite the "shield" I had assumed this lead apron to be. Okay, what about the two lead shields the dentist suggested. The monitor on my chest under two lead shields registered 174 millirads during my third x-ray.

The dentist wanted to know how many millirads were sent out by this x-ray machine during each "routine" x-ray that I had been getting. He placed the RadAlert on a shelf about six feet from the end of the x-ray machine that is usually placed right against a person's cheek — 1250

millirads — the equivalent of almost one and one-half hours of background radiation.

The dentist explained that x-rays are only sent out from the x-ray machine in the specific direction they are aimed in. As an experiment, the dentist took another x-ray, but this time put the monitor in the operator directly behind the one where the x-ray machine was. The RadAlert registered 17 millirads this time. Not a high reading to be sure, but I do now wonder what radiation I am exposed to from other people's x-rays at the dentist office.

Checking out more possibilities for radioactive exposure in his office, the dentist placed the RadAlert monitor in the area where a child's face is during a "full-face" x-ray. The x-ray machine used for this purpose is a different and larger machine than the one that was used to take my x-rays. The dentist explained that it is more common to take a full-face x-ray of a child than to use the smaller x-ray machine that he routinely uses with adults.

The dentist was astounded by the reading — 3875 millirads in one x-ray. He pointed out that the same amount of radioactive exposure in an adult has a greater detrimental effect in a child. It was incomprehensible to the dentist how state officials could have recently checked this x-ray equipment and found it to be within the normal limits of safe

functioning.

As I stated in my earlier article about radioactive exposure from a variety of sources in our environment (see *EFMR Monitor*, December 1997), the effects of radiation exposure are cumulative in the body. The kinds of higher than background levels of radiation that were recorded in the dentist's office have been associated with causing cancer and other health problems. I hope that people will increasingly choose to value life and health. We need to keep putting our money and energy towards developing peaceful and healthy ways of living and interacting with each other and the planet we live on.



Canadian Group Pushes Broader Study of Nuclear Risk

from a January 22, 2000, *The Toronto Star* article

The announcement of a new national surveillance program that will look for higher rates of cancer among people living near nuclear power stations has met with a lukewarm response from a Durham Region citizens group.

Irene Kock, of the Nuclear Awareness Project, said the program "just doesn't go far enough," and she might not trust interpretation of the data. "We'd like to see more cause-and-effect studies," said Kock, whose group monitors the Pickering nuclear plant. "Surveillance studies just aren't enough. We already know the cancer is there . . . we'd like to know what's causing it." Kock is also disappointed that the program focuses solely on cancer and ignores the incidence of birth defects.

The national program, unveiled Thursday by the Atomic Energy Control Board in response to widespread public fears, will do continuing surveillance of nuclear installations. The program will also monitor populations near uranium mines, atomic research facilities, and fuel-processing plants. It is to begin within months as an Ontario pilot project, possibly centered on the Bruce or Pickering nuclear stations, and will go national by 2002. The federal health department and the control board will run the program, using data collected by Ontario Cancer Care and similar agencies.

Kock, who welcomed the initiative despite misgivings, said she would prefer an independent analysis of collected data, given that the control board typically interprets the findings. "We really need something more removed," Kock said. "We need an interpretation exclusive of a government agency or the utility."

Pickering Mayor Wayne Arthurs cheered the "long overdue" announcement. "This is a very progressive move and shows a welcome widening of the (control board's) responsibility," Arthurs said. Creation of the surveillance program signals more inclusion of the community in the board's actions.

Two control board studies in 1990 and 1991 found that children up to 14 living near the Bruce and Pickering power plants had a leukemia rate 40 per cent higher than the provincial average. But the control board's consultants said these higher rates could be simply chance. Another 1991 report counted 24 Down syndrome babies born 1973-1988 to mothers near the Pickering plant, compared with the expected 13.

The surveillance system marks a major shift for the nuclear watchdog, which has stated in the past that nuclear plants cannot produce cancers because regulations keep radiation well below problem levels.

Wackenhut to Provide Guards at Three Mile Island Plant

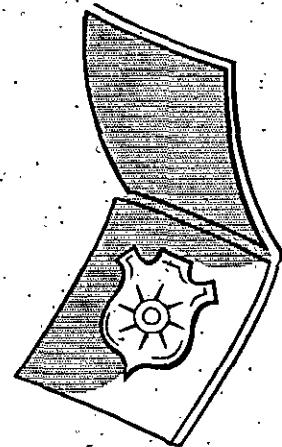
from a January 15, 2000, *The Palm Beach Post* article

Wackenhut will take over security operations at the Three Mile Island nuclear plant, the new owners of the complex said Friday.

Terms were not disclosed.

AmerGen, which took over operations of the plant's Unit 1 reactor last month, will contract with Palm Beach Gardens-based Wackenhut, which also provides security at other U.S. nuclear plants, AmerGen spokesman Ralph DeSantis said.

Three Mile Island's Unit 2 was the site of the nation's worst commercial nuclear accident in 1979, when a portion of the reactor's core melted. The unit has not operated since.



Monitor Finds Radioactive Trash

from an October 28, 1999, The Tulsa World article

Eight truckloads of garbage have been rejected in the past month at Tulsa's trash-to-energy plant after a just-activated monitoring system detected radioactivity in the waste. In most cases, the radioactive trash was traced to improperly discarded medical waste. Four loads were sent back to Tulsa hospitals.

The source of the radioactive waste -- cat litter, in one case -- was removed or set aside until radioactivity dissipated to acceptable levels, officials said. The trash then was returned to the trash plant and was burned.

Trash plant operator Ogden Martin Systems of Tulsa began Sept. 21 to screen trash for radioactivity, plant manager James Richardson said. The radioactivity detection equipment was activated "for the health and safety of the employees" at the facility, he said. The equipment, which was installed years ago but never used, went into use following a companywide directive by Ogden Martin corporate officers, Richardson said.

State environmental regulators downplayed the risks associated with the radioactive trash flagged at the trash plant. The radioactive trash was "not considered to be a risk to the general public," said Pam Bishop of the state Department of Environmental Quality.

The state, although prohibiting the

disposal of radioactive materials in municipal waste, does not require landfills or incinerators to use monitoring equipment.

The discovery of radioactive trash tied up some garbage trucks for hours and is a regulatory first for the DEQ, officials said. "This is our first real experience with radiation in municipal waste," Bishop said.

The eight reports of radioactive waste have "taxed" DEQ resources and prompted state officials to suggest Ogden Martin should hire a consultant to "deal with the incidents," Customer Services Manager Frank Erwin wrote in a memo.

Mayor Susan Savage said the DEQ should provide staff assistance and assume any costs associated with inspecting any future flagged waste loads. Savage said the city pays landfill tipping fees to the state agency. "Presumably, it ought to go to support the municipalities," she said.

City officials plan to meet next week with state Department of Environmental Quality officials to discuss a plan to deal with future reports.

It didn't take long for the monitoring equipment, once turned on, to detect radiation. Three days after the company activated the equipment, a load of trash from St. Francis Hospital triggered an alarm. Hospital officials told city officials

the radioactivity might be related to radioactive dye in a cup that was improperly placed in the regular trash. Trash plant operators accepted the trash three days later, after the radioactivity level was deemed acceptable. The same day, another load of garbage from St. Francis triggered the alarm. Trash deliveries from Doctors Hospital and St. John Medical Center triggered detection alarms on Sept. 29, city records indicate. Four other trucks containing residential trash have been rejected after they triggered the alarm.

One load of trash was traced to an adult diaper, and another was traced to cat litter, a city memo said. Inspectors were able to trace the pet litter to a resident who recently had taken a pet cat to Kansas for a medical procedure, said Cheryl Cohenour, the TARE chairwoman.

City Public Works Director Charles Hardt said no reports of radioactive trash had come in the past two weeks. "I'm sure the hospitals (have) really tightened up their controls now," Bishop said.



NRC to Withhold Nuke Plant Information about Shutdowns

from a December 27, 1999, *The Energy Report* article

To partially protect nuclear operators from pressures of the electric wholesale market, the Nuclear Regulatory Commission (NRC) has agreed to keep information about plant shutdowns and restarts confidential unless the plant owner waives the right.

In the past, the NRC would supply information about most aspects of nuclear licensees' affairs, but with the move toward marketplace competition, it became evident that the policy was having an effect on wholesale prices. Although the commission does not require companies to file information about outages, most have done so voluntarily to help facilitate inspection schedules and monitoring. "In light of the impact of deregulation, NRC reviewed its policy regarding release of outage information," the announcement said.

"The agency concluded that outage information, if provided in writing with a request that it be considered confidential business information, or proprietary, would likely be withheld from public disclosure under terms of commission regulations and the U.S. Trade Secrets Act."

To comply with this decision, the NRC said that unless the company agreed to allow the information to be released, or if the outage was part of a public docket, then it would not release the information "without first providing a licensee

an opportunity to formally request it be withheld."

The NRC's Mindy Landau said it had become obvious that the new regulations were needed: "The industry has changed so much over the past several years that it needed to be done," she said, "We have seen shutdown information directly affect the prices on the spot market for electricity."

The decision was not easy, however, because of the NRC's desire to keep as much information as possible public, Landau said.

Utilities will have 15 days to decide whether the information on the shutdown would harm their financial situation and request that the information be kept secret. The NRC will then decide whether to continue keeping it confidential past that time period.

Public interest groups are concerned about this decision. David Lockbaum, nuclear safety engineer at the Union of Concerned Scientists, said that his group is concerned that the NRC's decision will require additional efforts on the part of the public to monitor nuclear plant performance. "The industry has claimed that because of deregulation, some of that information about plant outages becomes a competitive issue. We can sympathize with that. We understand the business angle," Lockbaum said. "The one possible

drawback is that it somewhat erodes public participation in the process."

Even if utilities agree to release the information, the 15-day lag time the NRC imposes will limit the window of opportunity for interested parties to raise issues with the commission about plant startups, Lockbaum said.

Lockbaum said the NRC's daily events reports would probably still include unexpected outages, at least for situations in which plants automatically trip off-line because of a malfunctions. However, the daily events reports won't include cases where plants are manually shut because of equipment problems. Those are deemed planned outages, even if the plant is forced off line in response to malfunctioning equipment or other concerns, he said.

For longer range planned outages, the American Nuclear Society publishes a biannual listing of upcoming outages in its Nuclear News publication.



(Continued from "AmerGen," page 1)

Power's decision to exit the nuclear power business and less than six months after Illinois Power and AmerGen reached a definitive agreement on the terms of the sale.

AmerGen assumes responsibility and liability for operating and ultimately decommissioning Clinton. Illinois Power has transferred the existing decommissioning trust fund of \$98 million and is making additional payments to the decommissioning trust funds intended to be sufficient to provide for the actual decommissioning of Clinton by 2026, when the plant's operating license is scheduled to expire. Illinois Power will purchase at least 75 percent of Clinton's electricity output through 2004.

To purchase TMI-1, located in Londonderry Township, Pa., AmerGen paid \$23 million to GPU and will

pay another \$77 million over five years for the plant's nuclear fuel. A second unit at the site, TMI-2, which was permanently shut down after its accident in 1979, will remain under ownership of GPU.

GPU is leaving the power generating business to focus on the transmission and distribution of electricity. GPU and AmerGen first agreed to the sale of TMI-1 in July 1998.

AmerGen has assumed full responsibility for the decommissioning of TMI-1, which has been prefunded by GPU for an amount of \$230 million. The unit, a 786-MWe (net) Babcock & Wilcox pressurized water reactor, is licensed to operate to 2014.

GPU has agreed to purchase the energy and capacity from TMI-1 from January 1, 2000, through December 31, 2002, at fixed prices.

AmerGen has another deal pending with GPU, this one for the \$10-million purchase of Oyster Creek, in Forked River, N.J. AmerGen also has a tentative deal signed with Vermont Yankee Nuclear Power Corporation to purchase the Vermont Yankee plant, in Vernon, Vt., for \$23.5 million. All the deals are expected to close this year.

A proposed deal to purchase Nine Mile Point-1 and a large share of Nine Mile Point-2, in Scriba, N.Y., from Niagara Mohawk Power Corporation for \$163 million has been put on hold at least for the time being by a purchase bid made by Rochester Gas and Electric Corporation. Currently, the New York state Public Service Commission is investigating the similar bids made by AmerGen and RGE for the NMP plants.

(Continued from "NRC Staff," page 1)
observations by the NRC.

According to the January 2000 GAO report titled "Nuclear Regulation: NRC Staff Have Not Fully Accepted Planned Changes," the staff has "expressed high levels of uncertainty and confusion about the new directions in regulatory practices and challenges facing the agency." Only twenty percent of the NRC staff say that trust exists between NRC senior management and the NRC staff.

The NRC's Office of the Inspector General concluded that "without significant and meaningful improve-

ment in management's leadership, employees' involvement, and communication, NRC's climate could eventually erode the staff's outlook and commitment to doing their job."

The GAO noted that one-fourth of NRC staff said they were considering resigning and almost half said they would not recommend a colleague take a job with the commission. Nearly one-third of the staff said they were dissatisfied with the NRC.

The GAO report concluded that, "NRC has neither established long-range goals to implement a risk-informed approach nor devel-

oped performance indicators to determine whether the agency has met the goals. ... Without such information, NRC has no way to determine where it is going, how it will get there, or what progress has been made."

The GAO has provided adequate warning that the NRC is headed into a void which could allow the world's most technologically advanced nation to overestimate its abilities and harm its citizens. As a nuclear watchdog group, we are astounded that this level of criticism, normally coming from the anti-nuclear movement, is being trumpeted by the NRC staff and inspectors.

Second Quarter 1999 Low-Volume Air Sampler Report

by John Luetzelschwab, Dickinson College

The following is a summary of monitoring results from the five air sampling monitors installed within a two-mile radius of Three Mile Island and from a control station located at Dickinson College.

Sample Collection and Analysis

The beta readings were about average, but the alpha readings (including the control station) were significantly higher than the average for the past six years. We recorded some abnormally high beta counts for several filters collected in June. We subsequently found that the alpha/beta detector was not functioning properly. Although we re-counted those samples and recorded values more in line with normal values, I do not have full confidence in those values. However, the regular and special gamma analyses for these filters showed no unusual gamma activity. Therefore, I do not feel that we collected anything other than natural radioactivity.

Results

The gamma analyses of the charcoal and particulate filters have shown no detectable activity attributable to

TMI. As usual, we do see some natural radioactivity: lead-212, lead-214 and bismuth-214 which are radon progeny and Beryllium-7 produced by cosmic radiation.

The gross beta and alpha activities are shown in Tables 1 and 2 and Figures 1 and 2. Both the alpha and beta activities show a correlation among the stations; more so than usual. However, the beta activity does not show many sharp increases and decreases as it usually does.

The average activities shown in the tables and the activities plotted in Figures 3 and 4 are for the five regular monitoring stations; they do not include the data from the control station. The control station data are kept separate because they are intended to be a check of the five regular stations. Both the alpha and beta averages and their control stations values track well this quarter; the alpha tracks better than the beta this time. Figure 5

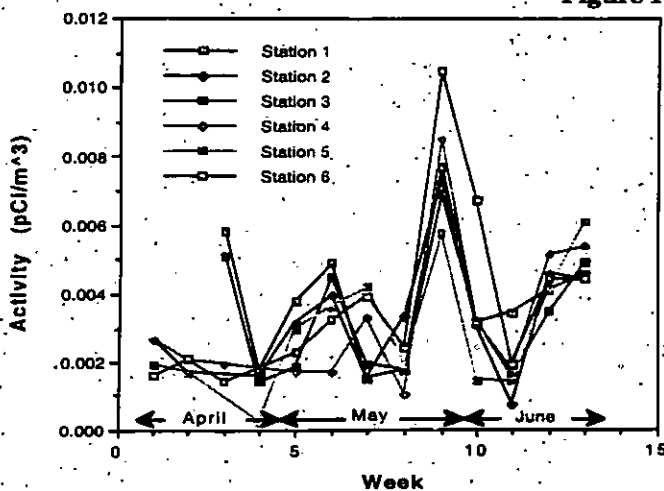
shows the comparison between the alpha and beta activities.

The average alpha activity of 0.00336 pCi/m³ is higher than the 0.00226 pCi/m³ average for the previous quarters. The average beta activity of 0.0191 pCi/m³ is slightly higher than the 0.0183 pCi/m³ average for the previous quarters and higher than the second quarter average of 0.0156 pCi/m³.

Strontium-90 Results

In my last report I had forgotten to include the results of the Sr-90 analysis done last February. The results showed no strontium activity in the particulate filters from July through December, 1998.

Alpha Activity
Second Quarter, 1999 Figure 1



Average Values for Previous Quarters (1993 - 98) (Activities in pCi/m³)

Quarter	Alpha*	Beta
First	0.00192	0.0171
Second	0.00207	0.0156
Third	0.00277	0.0204
Fourth	0.00235	0.0201
Total Averages	0.00226	0.0183

*Alpha averages corrected from previous quarters to reflect the 0.65 correction factor beginning in 1998.

Figure 2

Beta Activity
Second Quarter, 1999

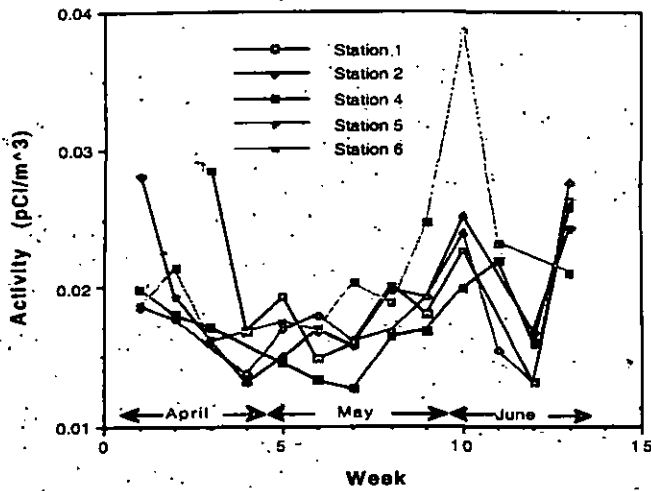


Figure 3

Five Station Alpha Average
and Control Station

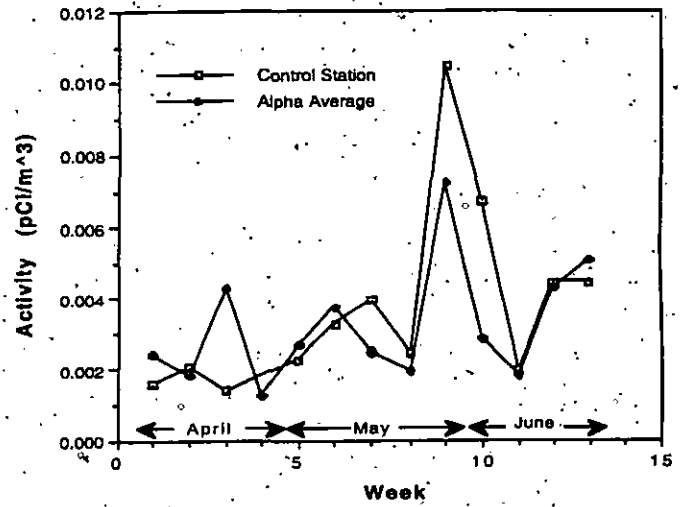


Figure 4

Five Station Beta Average
and Control Station

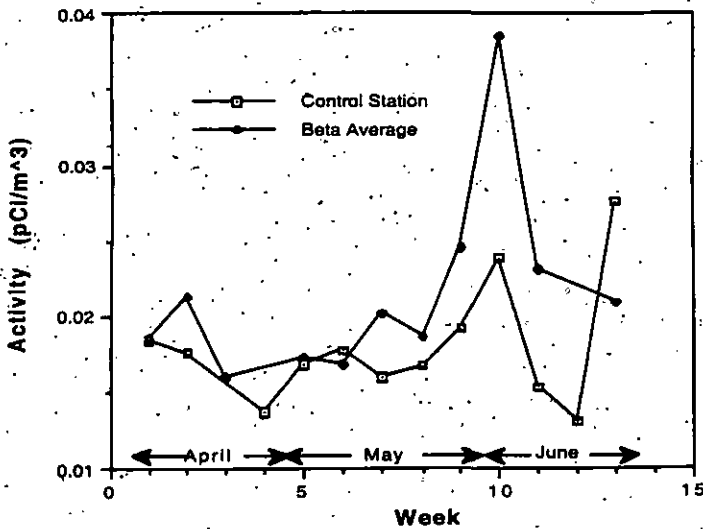
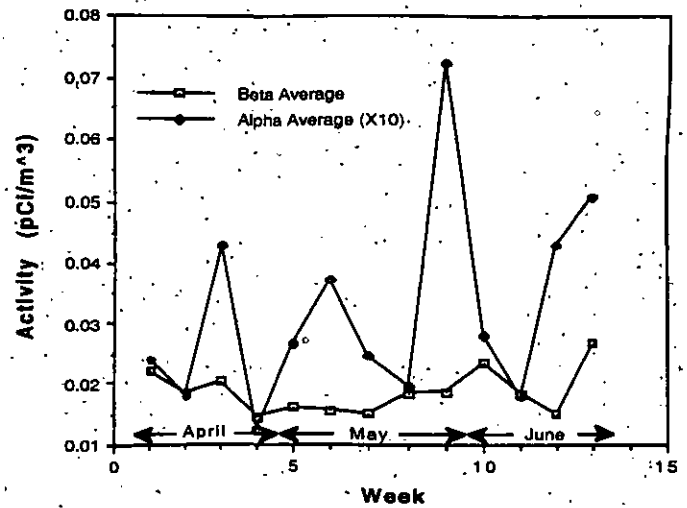


Figure 5

Alpha and Beta Averages
Second Quarter, 1999



Second Quarter 1999 Alpha & Beta Charts

Table 1 — Alpha Activities (pCi/m³)***

Date	Station 1	Station 2	Station 3	Station 4	Station 5	Control	Average*
4/5/99		0.00263		0.00263	0.00192	0.00160	0.00239
4/11/99		0.00169		0.00208	0.00168	0.00209	0.00182
4/19/99	0.00585		0.00509	0.00192		0.00140	0.00429
4/24/99	0.00174	0.00160	0.00142		0.00025		0.00125
5/2/99	0.00374	0.00311	0.00183	0.00168	0.00295	0.00226	0.00266
5/8/99	0.00491	0.00394	0.00449	0.00169	0.00360	0.00325	0.00373
5/17/99	0.00149	0.00151	0.00191	0.00328	0.00418	0.00391	0.00247
5/23/99	0.00174	0.00334	0.00174	0.00102	0.00191	0.00240	0.00195
5/31/99	0.00772	0.00734	0.00691	0.00848	0.00572	0.01046	0.00723
6/7/99	0.00315	0.00303	0.00317	0.00315	0.00145	0.00671	0.00279
6/14/99	0.00340	0.00074	0.00158	0.00175	0.00142	0.00194	0.00178
6/21/99	0.00408	0.00458	0.00346	0.00515	0.00418	0.00442	0.00429
6/28/99	0.00457	0.00442	0.00491	0.00538	0.00614	0.00442	0.00508
Average=	0.00385	0.00316	0.00332	0.00318	0.00295	0.00374	0.00328
Std Dev=	0.00189	0.00179	0.00182	0.00216	0.00183	0.00261	0.00185
Alpha Average** =		0.00336					
Std Dev =		0.00185					

***Including correction factor of 0.65

Table 2 — Beta Activities (pCi/m³)

Date	Station 1	Station 2	Station 3	Station 4	Station 5	Control	Average*
4/5/99		0.0281		0.0198	0.0184	0.0185	0.0221
4/11/99		0.0193		0.0179	0.0176	0.0213	0.0183
4/19/99	0.0284		0.0161	0.017		0.016	0.0205
4/24/99	0.0167	0.0131	0.0143		0.0137		0.0145
5/2/99	0.0191	0.0149	0.0152	0.0144	0.0169	0.0174	0.0161
5/8/99	0.0148	0.0168	0.0157	0.0133	0.0178	0.0169	0.0157
5/17/99	0.0159	0.0158	0.0153	0.0127	0.016	0.0202	0.0151
5/23/99	0.02	0.0197	0.0191	0.0164	0.0167	0.0187	0.0184
5/31/99	0.018	0.0192	0.0199	0.0168	0.0192	0.0246	0.0186
6/7/99	0.0225	0.0251	0.0258	0.0199	0.0239	0.0386	0.0234
6/14/99			0.018	0.0218	0.0154	0.0231	0.0184
6/21/99	0.0131	0.0166	0.017	0.0159	0.0131		0.0151
6/28/99	0.0261	0.0242	0.0301	0.0257	0.0276	0.021	0.0267
Average=	0.0195	0.0193	0.0188	0.0176	0.0180	0.0215	0.0178
Std Dev=	0.0049	0.0047	0.0049	0.0037	0.0041	0.0063	0.0036
Beta average** =		0.0191					
Std Dev =		0.0044					

*Average of stations 1 through 5; does not include the control station.

**Average of all six stations

Third Quarter 1999 Low-Volume Air Sampler Report

by John Luetzelschwab, Dickinson College

The following is a summary of monitoring results from the five air sampling monitors installed within a two-mile radius of Three Mile Island and from a control station located at Dickinson College.

Entering and Exiting Members of the Team

We have trained the last set of students workers; our contract ends December 31, 1999. For the summer, we added Todd Gutekunst from York, PA. He and Parke Rhoades did all the collecting and analyses this past summer. In September we have added three more students: Kara Jermacans from Morgantown, Chet Patel, from Hermitage, and Kristie Siracuse, from Wyoming, PA.

We also lost four members of the team who graduated in May. Bob Ekey is now a graduate student in physics at Bryn Mawr; Maya Keller is working for an environmental firm but is applying to health physics graduate programs for next year;

David Carlson (who was a physics/economics double major) is working for Anderson Consulting; and finally David Neal is enjoying his freedom and is travelling this year - he may apply to graduate programs next year.

Sample Collection and Analysis

As mentioned in the second quarter report, we have been having problems with the alpha/beta counter. We have made corrections to the system, but we still seem to be getting much higher than normal for alpha activities and slightly higher beta activities. One of the major problems with the corrections we have made is that it causes large uncertainties in the alpha calculations. As a result, the alpha activities tend to be higher than they should be.

We could not make sense out of these results, so we just deleted them from the set of data.

We only lost a few weeks of collection time. The control station was out the first week of July for emergency repairs and stations 1 and the control station were out the last week of September for their regular semi-annual maintenance.

Results

The gamma analyses of the charcoal and particulate filters have shown no detectable activity attributable to TMI. As usual, we do see some natural radioactivity: lead-212, lead-214 and bismuth-214 which are radon progeny and Beryllium-7 produced by cosmic radiation.

These higher activities are recorded for both the five samples around TMI and for the control station. Therefore, it appears to be detector specific and not a case of collecting more radioactivity. As a result, the average values of both alpha and beta activities are higher than the past averages. The September 5 set of data was exceptionally problematic. The calculated beta activities were quite high, but the alpha activities calculated to zero or negative values.

The gross beta and alpha activities are shown in Tables 1 and 2 and Figures 1 and 2. The alpha activities show no correlation among the stations, but the control station is also among that random behavior. The beta activities do show a correlation among the stations with the control station tracking the other five stations except for the last week.

The average activities shown in the tables and the activities plotted in Figures 3 and 4 are for the five regular monitoring stations; they do not include the data from the con-

(Continued on page 12)

Average Values for Previous Quarters (1993 - 99)
(Activities in pCi/m³)

Quarter	Alpha*	Beta
First	0.00192	0.0171
Second	0.00229	0.0161
Third	0.00277	0.0204
Fourth	0.00235	0.0201
Total averages	0.00231	0.0184

*Alpha averages corrected from previous quarters to reflect the 0.65 correction factor beginning in 1998.

(Continued from page 11)

The control station data are kept separate because they are intended to be a check of the five regular stations. The alpha average does track the control station for about six weeks in the middle of the quarter, but, as expected from the lack of correlation among all stations, does not track well the rest of the time. The beta averages and

their control station values, however, do track very well this quarter, except for the last week.

The average alpha activity of 0.00378 pCi/m³ is considerably higher than the 0.00231 pCi/m³ average for the previous quarters. The average beta activity of 0.0229 pCi/m³ is higher than the 0.0184 pCi/m³ average for the previous quarters

but only slightly higher than the third quarter average of 0.0204 pCi/m³.

Strontium-90 Results

No Strontium-90 activity was detected in the January through June, 1999, samples.

Figure 1

Alpha Activity
Third Quarter, 1999

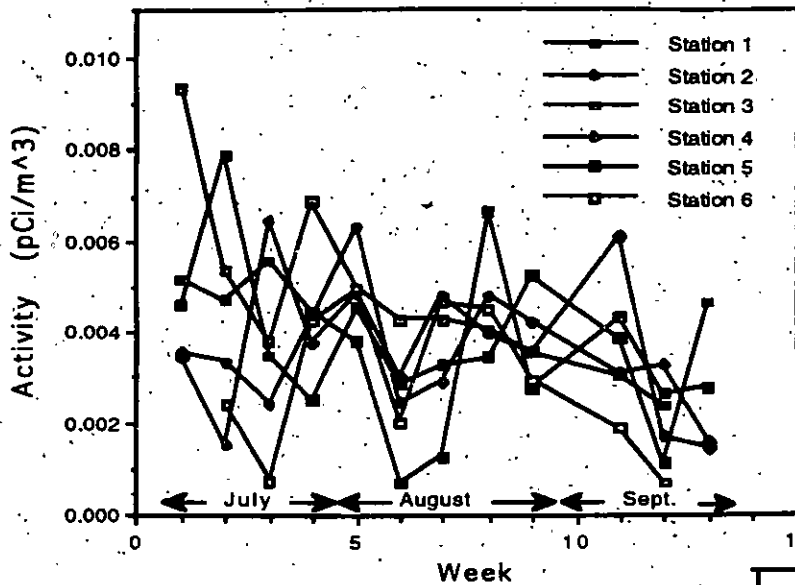


Figure 2

Beta Activity
Third Quarter, 1999

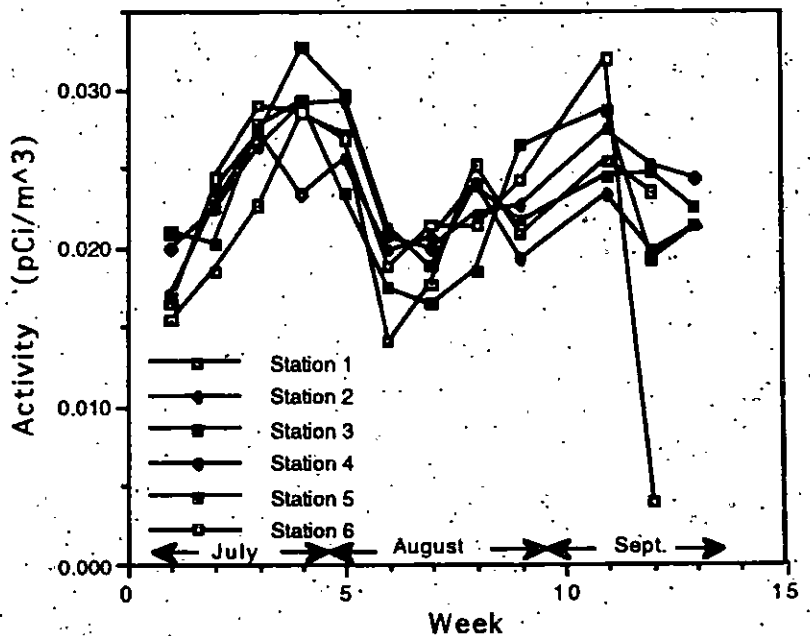


Figure 3

Five Station Alpha Average and Control Station

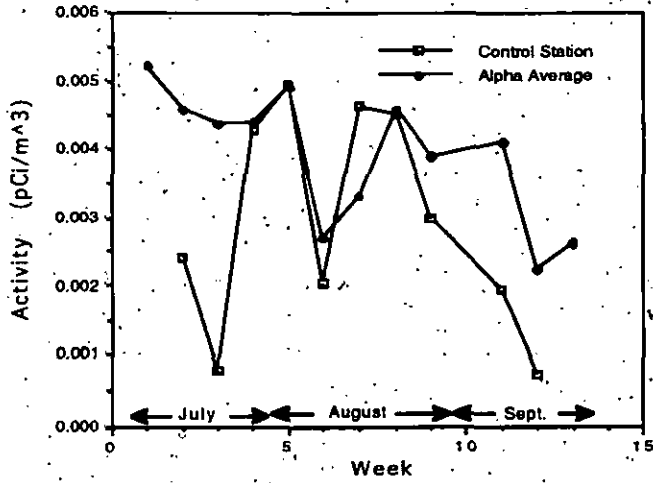


Figure 4

Five Week Beta Average and Control Station

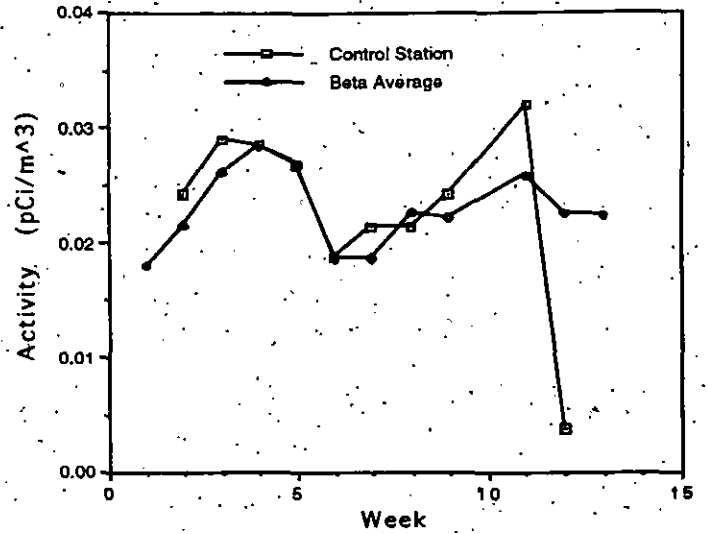
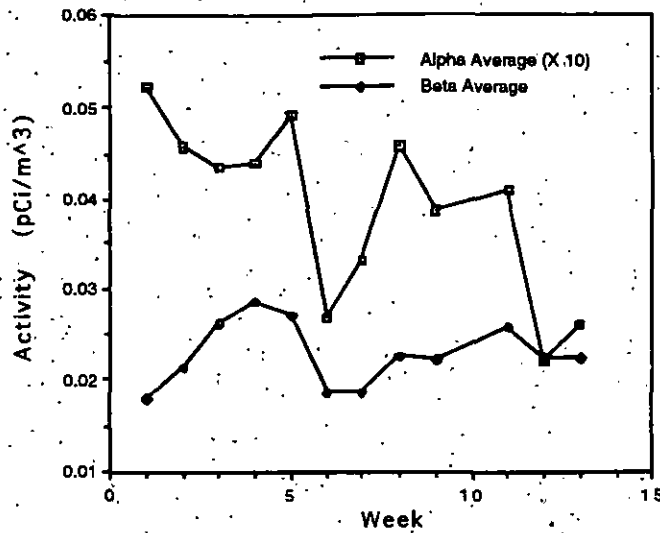


Figure 5

Alpha and Beta Averages
Third Quarter, 1999



Third Quarter 1999 Alpha & Beta Charts

Table 1 — Alpha Activities (pCi/m³)***

Date	Station 1	Station 2	Station 3	Station 4	Station 5	Control	Average*
7/5/99	0.00934	0.00346	0.00458	0.00358	0.00515		0.00522
7/11/99	0.00538	0.00154	0.00785	0.00337	0.00472	0.00242	0.00457
7/19/99	0.00378	0.00646	0.00351	0.00243	0.00558	0.00077	0.00435
7/26/99	0.00685	0.00375	0.00252	0.00435	0.00448	0.00426	0.00439
8/2/99	0.00500	0.00485	0.00457	0.00632	0.00382	0.00494	0.00491
8/9/99	0.00428	0.00305	0.00288	0.00248	0.00071	0.00203	0.00268
8/16/99	0.00429	0.00482	0.00325	0.00292	0.00126	0.00462	0.00331
8/23/99	0.00406	0.00397	0.00345	0.00483	0.00662	0.00451	0.00458
8/30/99	0.00357	0.00357	0.00525	0.00425	0.00277	0.00297	0.00388
9/5/99							
9/12/99	0.00306	0.00608	0.00386	0.00309	0.00435	0.00192	0.00409
9/19/99	0.00237	0.00171	0.00114	0.00325	0.00263	0.00072	0.00222
9/26/99		0.00145	0.00463	0.00157	0.00280		0.00261
Average=	0.00473	0.00372	0.00396	0.00354	0.00374	0.00292	0.00392
Std Dev=	0.00194	0.00165	0.00166	0.00126	0.00176	0.00159	0.00164
Alpha Average =		0.00378					
Std Dev =		0.00164					

***Including correction factor of 0.65

Table 2 — Beta Activities (pCi/m³)

Date	Station 1	Station 2	Station 3	Station 4	Station 5	Control	Average*
7/5/99	0.0154	0.0199	0.0165	0.0171	0.0210		0.0180
7/11/99	0.0185	0.0223	0.0236	0.0227	0.0202	0.0243	0.0215
7/19/99	0.0227	0.0263	0.0273	0.0271	0.0277	0.0290	0.0262
7/26/99	0.0284	0.0291	0.0326	0.0234	0.0293	0.0286	0.0286
8/2/99	0.0271	0.0293	0.0297	0.0256	0.0234	0.0269	0.0270
8/9/99	0.0141	0.0206	0.0212	0.0198	0.0175	0.0188	0.0186
8/16/99	0.0177	0.0200	0.0188	0.0207	0.0164	0.0214	0.0187
8/23/99	0.0251	0.0221	0.0239	0.0240	0.0185	0.0214	0.0227
8/30/99	0.0208	0.0226	0.0217	0.0193	0.0264	0.0242	0.0222
9/5/99							
9/12/99	0.0255	0.0274	0.0245	0.0234	0.0287	0.0319	0.0259
9/19/99	0.0235	0.0251	0.0248	0.0198	0.0193	0.0039	0.0225
9/26/99		0.0243	0.0225	0.0213	0.0214		0.0224
Average=	0.0217	0.0241	0.0239	0.0220	0.0225	0.0230	0.0229
Std Dev=	0.0048	0.0034	0.0044	0.0029	0.0045	0.0078	0.0042
Beta average =		0.0229					
Std Dev =		0.0048					

*Average of stations 1 through 5; does not include the control station.

**Average of all six station

Fourth Quarter 1999 Low-Volume Air Sampler Report

by John Luetzelschwab, Dickinson College

The following is a summary of monitoring results from the five air sampling monitors installed within a two-mile radius of Three Mile Island and from a control station located at Dickinson College.

Sample Collection and Analysis

The alpha/beta counter has been operating much better this quarter; there have been no problems with that system. We have been operating at a higher voltage which means that there are more of the beta counts that fall into the alpha channel. Although we can correct for this, the large number of beta counts compared with the small number of alpha counts means that the uncertainty in the alpha counts will be greater than previous data. Therefore, we expect the alpha counts to have larger variations than in the past.

We only lost a few weeks of collection time, mostly for regular semi-annual maintenance. We did manage to lose a couple of filters so

there are two blanks in the middle of the quarter. We moved to a new building in September and the alpha/beta counter was in the old building, so keeping track of materials has been a bit more difficult.

Results

The gamma analyses of the charcoal and particulate filters have shown no detectable activity attributable to TMI. As usual, we do see some natural radioactivity: lead-212, lead-214 and bismuth-214 which are radon progeny and Beryllium-7 produced by cosmic radiation.

The gross beta and alpha activities are shown in Tables 1 and 2 and Figures 1 and 2. The alpha activities show very little correlation among the stations, but the control station is also among that random behavior. In addition, there are several weeks when a station recorded a zero alpha activity.

As indicated earlier, the higher operating voltage causes a greater uncertainty in the alpha data, so this kind of behavior is expected. However, the average of the five stations does correlate with the control station for most of the quarter. The beta activities do show a correlation among the stations with the control station.

The average alpha activity of 0.00314 pCi/m³ is considerably higher than the 0.00235 pCi/m³ average for the previous quarters and the 0.00235 pCi/m³ average for the fourth quarter. The average beta activity of 0.0256 pCi/m³ is higher than the 0.0186 pCi/m³ average for the previous quarters and the fourth quarter average of 0.0201 pCi/m³. However, both the alpha and beta averages are lower than their respective control station averages for the quarter.

Average Values for Previous Quarters (1993 - 99) (Activities in pCi/m³)

Quarter	Alpha*	Beta
First	0.00192	0.0171
Second	0.00229	0.0161
Third	0.00293	0.0208
Fourth	0.00235	0.0201
Total averages	0.00237	0.0186

*Alpha averages corrected from previous quarters to reflect the 0.65 correction factor beginning in 1998.

Figure 1

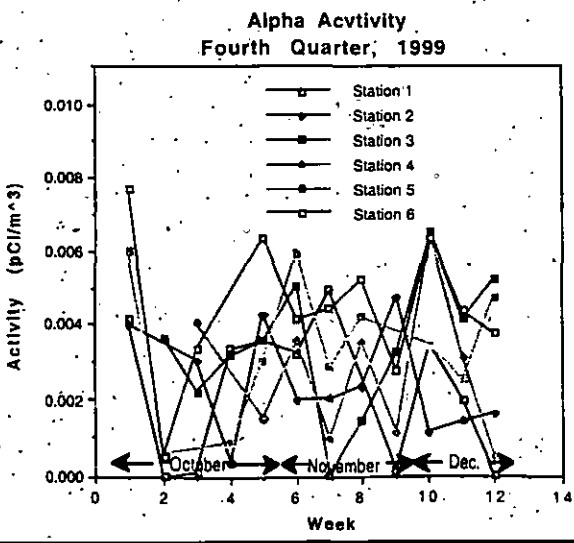


Figure 2

Beta Activity
Fourth Quarter, 1999

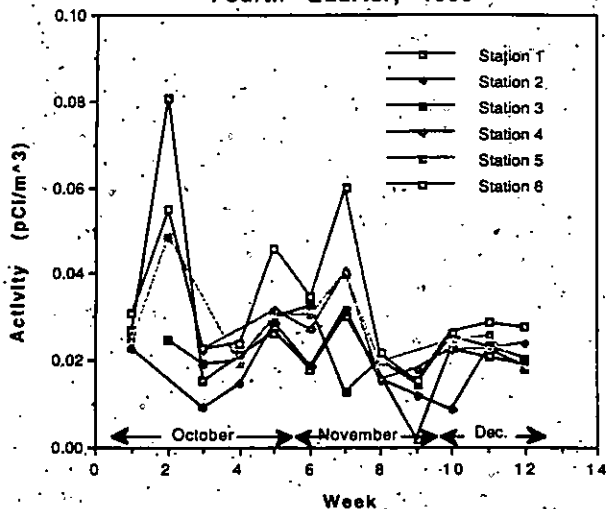


Figure 3

Five Station Alpha Average
and Control Station

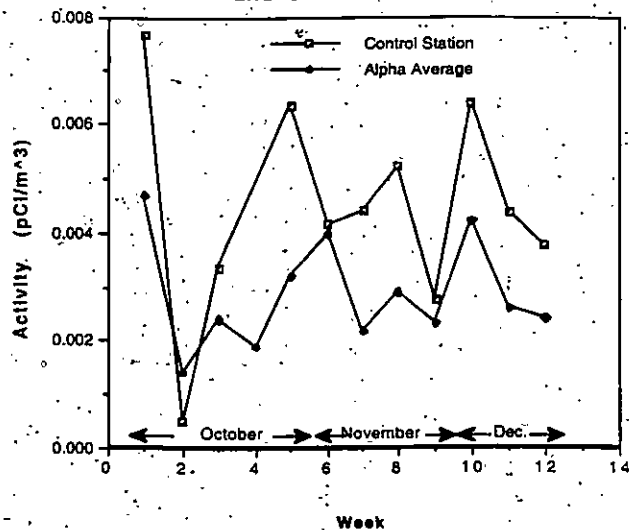


Figure 4

Five Station Beta Average
and Control Station

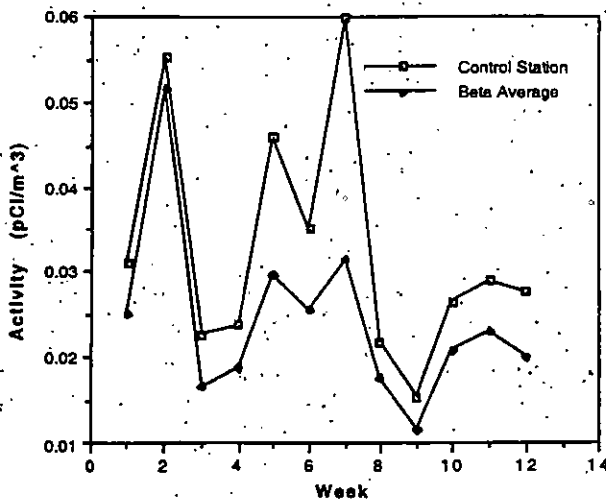
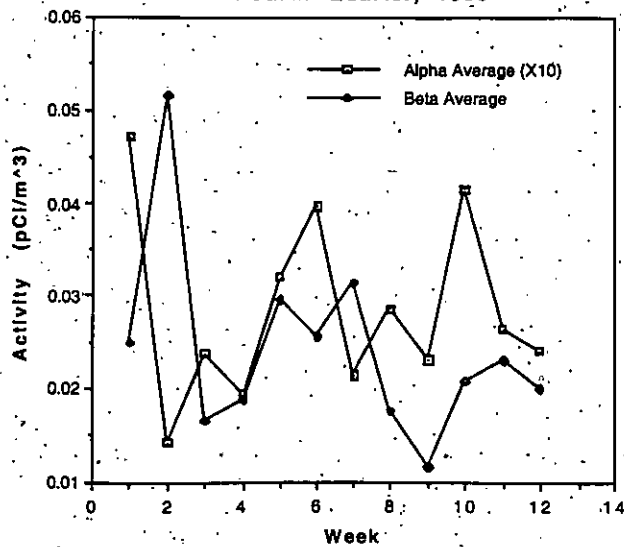


Figure 5

Alpha and Beta Averages
Fourth Quarter, 1999



Third Quarter 1999 Alpha & Beta Charts

Table 1 — Alpha Activities (pCi/m³)***

Date	Station 1	Station 2	Station 3	Station 4	Station 5	Control	Average*
10/3/99	0.00415	0.00400			0.00600	0.00769	0.0047
10/10/99	0.00000		0.00368		0.00057	0.00048	0.0014
10/17/99	0.00015	0.00305	0.00223	0.00412		0.00337	0.0024
10/24/99	0.00335	0.00037	0.00317		0.00085		0.0019
10/31/99	0.00357	0.00429	0.00357	0.00152	0.00305	0.00635	0.0032
11/7/99	0.00323	0.00200	0.00509	0.00358	0.00595	0.00415	0.0040
11/14/99	0.00495	0.00203	0.00000	0.00091	0.00288	0.00440	0.0022
11/21/99		0.00232	0.00143	0.00355	0.00418	0.00522	0.0029
11/28/99	0.00014	0.00471	0.00328	0.00111		0.00275	0.0023
12/5/99	0.00346	0.00109	0.00648	0.00634	0.00343	0.00638	0.0042
12/12/99	0.00198	0.00140	0.00417	0.00314	0.00254	0.00437	0.0026
12/19/99	0.00000	0.00157	0.00522	0.00049	0.00474	0.00377	0.0024
Average=	0.00227	0.00244	0.00348	0.00275	0.00342	0.00445	0.0029
Std Dev=	0.00188	0.00140	0.00182	0.00190	0.00187	0.00197	0.0018
Alpha Average =		0.00314					
Std Dev =		0.00178					

***Including correction factor of 0.65

Table 2 — Beta Activities (pCi/m³)

Date	Station 1	Station 2	Station 3	Station 4	Station 5	Control	Average*
10/3/99	0.0270	0.0230			0.0250	0.0310	0.0250
10/10/99	0.0807		0.0251		0.0486	0.0551	0.0515
10/17/99	0.0151	0.0093	0.0192	0.0226		0.0227	0.0166
10/24/99	0.0212	0.0149	0.0201		0.0194	0.0239	0.0189
10/31/99	0.0264	0.0290	0.0302	0.0319	0.0311	0.0460	0.0297
11/7/99	0.0179	0.0187	0.0330	0.0275	0.0308	0.0351	0.0256
11/14/99	0.0306	0.0321	0.0130	0.0410	0.0401	0.0597	0.0314
11/21/99		0.0156	0.0199	0.0155	0.0198	0.0218	0.0177
11/28/99	0.0022	0.0121	0.0146	0.0179		0.0154	0.0117
12/5/99	0.0230	0.0089	0.0258	0.0224	0.0244	0.0265	0.0209
12/12/99	0.0210	0.0226	0.0234	0.0227	0.0259	0.0288	0.0231
12/19/99	0.0193	0.0188	0.0204	0.0239	0.0181	0.0277	0.0201
Average=	0.0259	0.0186	0.0222	0.0250	0.0283	0.0328	0.0239
Std Dev=	0.0197	0.0076	0.0061	0.0077	0.0097	0.0138	0.0115
Beta average =		0.0256					
Std Dev =		0.0123					

*Average of stations 1 through 5; does not include the control station.

**Average of all six stations

Seven Years of Low-Volume Air Sampler Reports

by John Luetzelschwab, Dickinson College

The following is a summary of seven years of monitoring results from the five air sampling monitors installed within a two-mile radius of Three Mile Island and from a control station located at Dickinson College.

Collection

Over the years we have collected and analyzed somewhere between 1700 and 1800 sets of filters. To get those samples, our collectors have gotten soaked during rain storms, have hiked over the train tracks to get station 2 samples when the Susquehanna River flooded, and have plowed through three to four foot snow drifts to get station 4 samples. One student collector, when collecting late one Sunday night, was surrounded by security personnel at the airport, another lost his wallet at the corner store in Fal-mouth, and as reported previously, one student had a nuclear medicine bone scan prior to collecting samples and breathed a detectable amount of Technicium-99 onto a filter. Overall, the students have done a superb job of collecting and analyzing samples.

Results

What have we found? Basically nothing except background radioactivity. Although this can tend to get boring for a scientist, it has been very good for the neighbors of TMI. The quarterly averages are listed in Tables 1 and 2 and the plots of the quarterly averages over the seven-year period are shown in Figures 1 through 4.

Even though there have been times when the data showed significant

fluctuations, looking at the average for the stations, we see that things have been very consistent over the long term. The beta averages for the five regular stations are each essentially equal to the 0.0188 pCi/m³ average for the entire period. The alpha averages show more fluctuations, but all are close to the 0.00237 pCi/m³ average for the entire period and the seven-year average falls within the standard deviation of each station.

Comparing the five regular station values to the control station, we see that the control average is higher than the seven-year averages for all the stations. (Alpha: 0.00276 pCi/m³ for the control station vs. 0.00237 pCi/m³ for the five station average; Beta: 0.0230 pCi/m³ for the control station vs. 0.0188 pCi/m³ for the five station average) However, the control station was only operating for the last 13 quarters and we have noticed a gradual increase in both the alpha and beta activities. Therefore, it is more appropriate to compare the control station with the last 13 quarters of the five regular stations. Doing this we see that the five station average is much closer to the control station average. (Alpha: 0.00276 pCi/m³ for the control station vs. 0.00266 pCi/m³ for the 13 Quarter average; Beta: 0.0230 pCi/m³ for the control station vs. 0.0212 pCi/m³ for the 13 Quarter average)

Figures 1 and 2 give the plots of quarterly averages of the five regular stations over the seven-year period. Both the alpha and beta plots show a good correlation among the stations. Figures 3 and 4 give the quarterly average for all stations along with the control station. These plots do show the gradual increase of both alpha and beta activity and they show that the control station activities correlate well with the five-station averages.

Over the entire time, we did not find any unexpected radionuclides from the gamma spectral analyses (except for the Tc-99 from the student collector who had a nuclear medicine bone scan). The only identifiable activity we found was from radon and from Beryllium-7, a cosmic ray produced radionuclide. In my Radiation and Health class a few years ago, I had one student group investigate any correlation with the Be-7 and sun spot activity, but that exercise did not give any conclusive results. We expect that there are more factors than sun spots that effect the activity of Be-7 we gather on the filters.

Students

Over the years we have had a total of 24 student workers. Those who have graduated have gone on to graduate schools, found jobs, and, in one case, is just travelling for a

(Continued on page 19)

(Continued from page 18)

year. The following is a summary of the students and what they are doing now.

Dina Harp. 1993 - 1994: Programmer for website development company in San Francisco, California

John Tice. 1993 - 1994: Family Heating and Cooling business, Annville, PA

Jake Hopkins. 1994 - 1996: Product development, Vernier Software, Portland, OR

Chris Boswell. 1994 - 1996: Ph.D Program, MIT Department of Physics; Plasma Physics

Chris Eckert. 1995 - 1996: Unknown (had worked in the Dickinson College Computer Services until this year)

Joel Schwendemann. 1995 - 1996: Engineering, Fenner Drives, Mannheim, PA

Matt Welker. 1995 - 1997: Electrical Engineer: SENTEL, IIT Research Institute, Maryland, and is enrolled in engineering graduate program, University of Maryland

Chris Wilhelm. 1996: Has been in Sales with PASCO Scientific, but is now changing to a job in Pittsburgh, PA

Christie Storey. 1996 - 1997: Earned an MS in Epidemiology, now in Medical School, University of Loma Linda, CA.

Christina Dugan. 1996 - 1997: Medical Studies Program, Rutgers U.

Brian Werner. 1996 - 1998: Masters program, Health Physics, University of Massachusetts, Lowell, MA

Jeremiah Williams. 1996 - 1998: Ph.D. program, UCLA, Plasma Physics

Katie Zraly. 1997 - 1998: Working for iCUBE, Boston, MA

Maya Keller. 1997 - 1999: Scientist for an environmental firm in Arlington, VA; applying to graduate programs in Health Physics for fall

Bob Ekey. 1997 - 1999: Ph.D. program, Bryn Mawr, Physics

Dave Carlson. 1997 - 1999: Process Competency Group, Anderson Consulting, Philadelphia, PA

Dave Neal. 1997 - 1999: Travelling (last heard, he was in Australia)

Parke Rhoads. 1998 - 1999: Adjunct faculty, Dickinson College, teaching astronomy laboratories

Darryl Hamm. 1998 - 1999: Senior at Dickinson College (planning to apply to physics graduate programs)

Dan Mouyard. 1998 - 1999: Senior at Dickinson College

Kristie Siracuse. 1999: Junior at Dickinson College

Cheten Patel. 1999: Junior at Dickinson College

Kara Jermacans. 1999: Senior at Dickinson College (Headed for high school teaching or other education career)

Todd Gutekunst. 1999: Junior at Dickinson College

Summary

We want to thank Eric Epstein for choosing Dickinson as the contractor to do the air sampling. Not only has this work provided our students with a positive work experience, but some students have commented that they were happy doing something positive for the community. There were times when sample collection and analyses were not convenient (especially around break and vacation times), but we all managed to get the work done on time (well, mostly!) and done well. In addition, the alpha/beta counting has generated a paper soon to be published in the Health Physics Journal. Two students, Christie Storey and Katie Zraly, will be among the authors.

Table 1
Seven-year Quarterly Alpha Activities

Quarter	Year	Station 1	Station 2	Station 3	Station 4	Station 5	Control
Fourth	1993	0.00332	0.00253	0.00209	0.00249	0.00191	
First	1994	0.00250	0.00227	0.00174	0.00214	0.00185	
Second	1994	0.00302	0.00217	0.00236	0.00154	0.00170	
Third	1994	0.00378	0.00294	0.00360	0.00331	0.00205	
Fourth	1994	0.00211	0.00220	0.00156	0.00158	0.00199	
First	1995	0.00175	0.00127	0.00144	0.00100	0.00148	
Second	1995	0.00240	0.00190	0.00119	0.00149	0.00128	
Third	1995	0.00264	0.00242	0.00184	0.00195	0.00158	
Fourth	1995	0.00282	0.00242	0.00226	0.00216	0.00233	
First	1996	0.00197	0.00178	0.00168	0.00150	0.00163	
Second	1996	0.00251	0.00217	0.00196	0.00194	0.00151	
Third	1996	0.00191	0.00209	0.00198	0.00150	0.00129	
Fourth	1996	0.00244	0.00254	0.00217	0.00217	0.00145	0.00204
First	1997	0.00257	0.00224	0.00201	0.00179	0.00184	0.00198
Second	1997	0.00182	0.00180	0.00174	0.00196	0.00187	0.00207
Third	1997	0.00298	0.00152	0.00181	0.00216	0.00188	0.00222
Fourth	1997	0.00255	0.00202	0.00196	0.00229	0.00219	0.00263
First	1998	0.00222	0.00170	0.00183	0.00189	0.00184	0.00163
Second	1998	0.00283	0.00268	0.00247	0.00193	0.00229	0.00262
Third	1998	0.00465	0.00558	0.00455	0.00613	0.00471	0.00493
Fourth	1998	0.00288	0.00271	0.00282	0.00226	0.00224	0.00282
First	1999	0.00241	0.00218	0.00217	0.00181	0.00168	0.00180
Second	1999	0.00385	0.00316	0.00332	0.00318	0.00295	0.00374
Third	1999	0.00473	0.00372	0.00396	0.00354	0.00374	0.00292
Fourth	1999	0.00227	0.00244	0.00348	0.00275	0.00342	0.00445
Average:	0.00276	0.00242	0.00232	0.00226	0.00211	0.00276	
Std. dev.		0.00079	0.00084	0.00084	0.00100	0.00081	0.00103
7-year average:				0.00237			

Last 13 quarters (when control station was on-line)

Average:	0.00294	0.00264	0.00264	0.00260	0.00247	
5-station average:			0.00266			

Table 2
Seven-year Quarterly Beta Activities

Quarter	Year	Station 1	Station 2	Station 3	Station 4	Station 5	Control
Fourth	1993	0.0174	0.0171	0.0172	0.0166	0.0177	
First	1994	0.0160	0.0149	0.0144	0.0151	0.0149	
Second	1994	0.0151	0.0152	0.0157	0.0145	0.0148	
Third	1994	0.0181	0.0174	0.0202	0.0180	0.0149	
Fourth	1994	0.0182	0.0194	0.0184	0.0171	0.0177	
First	1995	0.0152	0.0131	0.0144	0.0115	0.0144	
Second	1995	0.0124	0.0135	0.0131	0.0130	0.0135	
Third	1995	0.0165	0.0174	0.0163	0.0166	0.0166	
Fourth	1995	0.0177	0.0174	0.0165	0.0170	0.0183	
First	1996	0.0156	0.0173	0.0178	0.0170	0.0178	
Second	1996	0.0151	0.0140	0.0130	0.0147	0.0143	
Third	1996	0.0190	0.0184	0.0189	0.0181	0.0167	
Fourth	1996	0.0170	0.0176	0.0169	0.0155	0.0164	0.0188
First	1997	0.0171	0.0186	0.0177	0.0183	0.0193	0.0200
Second	1997	0.0165	0.0140	0.0159	0.0164	0.0162	0.0178
Third	1997	0.0205	0.0195	0.0212	0.0218	0.0193	0.0205
Fourth	1997	0.0250	0.0259	0.0231	0.0224	0.0249	0.0232
First	1998	0.0165	0.0176	0.0166	0.0175	0.0164	0.0176
Second	1998	0.0203	0.0198	0.0190	0.0182	0.0188	0.0199
Third	1998	0.0262	0.0312	0.0305	0.0296	0.0266	0.0355
Fourth	1998	0.0281	0.0274	0.0283	0.0263	0.0269	0.0291
First	1999	0.0222	0.0216	0.0225	0.0223	0.0207	0.0199
Second	1999	0.0195	0.0193	0.0188	0.0176	0.0180	0.0215
Third	1999	0.0217	0.0241	0.0239	0.0220	0.0225	0.0230
Fourth	1999	0.0259	0.0186	0.0222	0.0250	0.0283	0.0328
Average:	0.0189	0.0188	0.0189	0.0185	0.0186	0.0230	
Std. dev.		0.0040	0.0044	0.0043	0.0042	0.0042	0.0058
7-year average:				0.0188			

Last 13 quarters (when control station was on-line)

Average:	0.0213	0.0212	0.0213	0.0210	0.0211	
5-station average:			0.0212			

Figure 1

Figure 3

Seven-year Quarterly Alpha Activity

Average Quarter Alpha Activities With Control Station

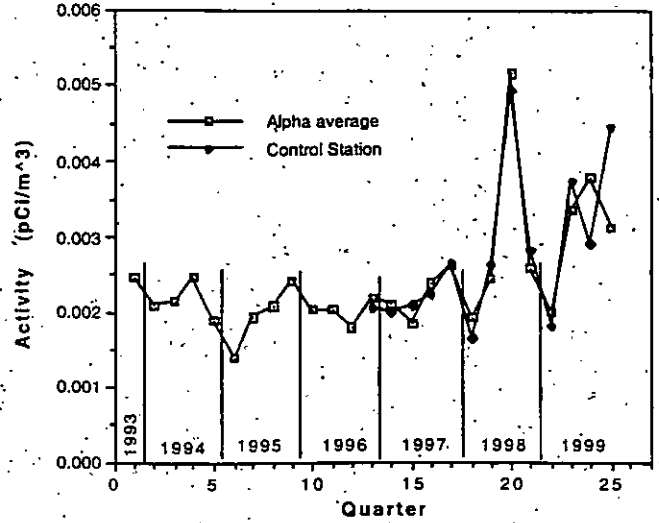
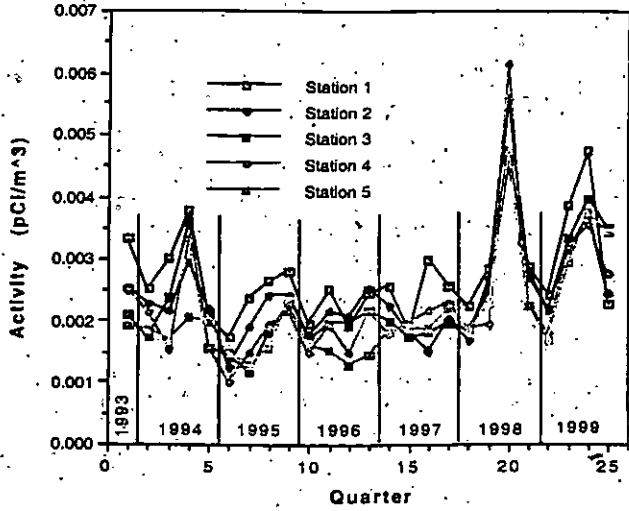
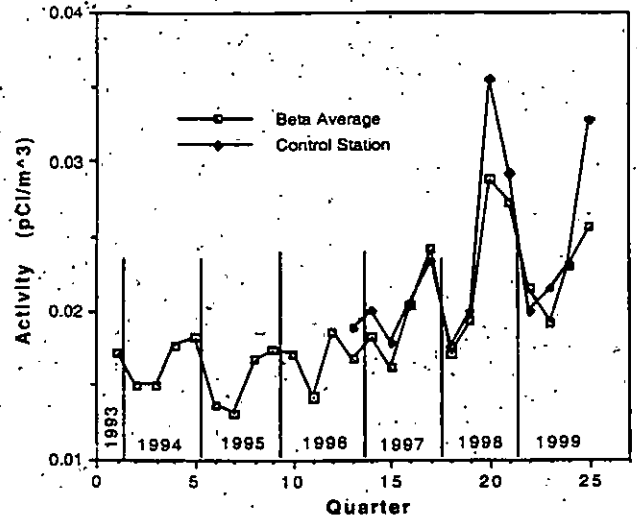
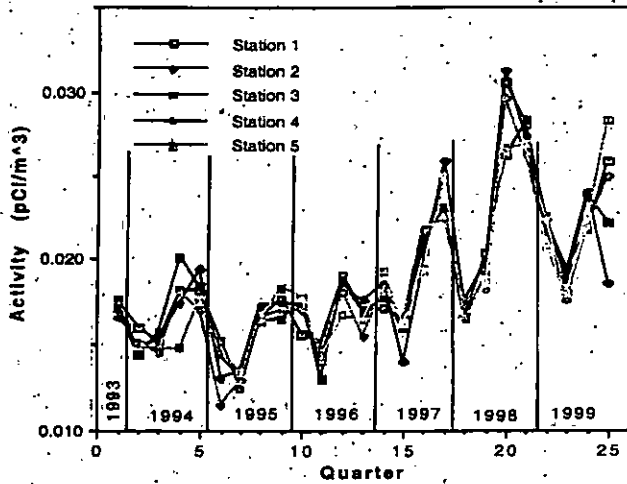


Figure 2

Figure 4

Seven-year Quarterly Beta Activity

Average Quarter Beta Activities With Control Station



Strontium-90 Levels Reaching Levels Of Atmospheric Nuclear Testing Years

from a December 2, 1999, *The Globe and Mail* (Toronto) article

Strontium 90, the atomic-age horror of 40 years ago, is still with us -- deep within us. Suddenly, children born 30 years after the last bomb exploded in the atmosphere are exhibiting unexpectedly significant amounts of Sr90.

A byproduct of nuclear fission, Sr90 is a marker for radiation poisoning that damages DNA much more quickly, even before birth, than any environmental pollutants. Nuclear particles remain lodged -- often for life -- in human tissues, where they continue to give off radiation and result in cancer, birth defects, and premature aging.

Where all this new radiation comes from is a matter of debate.

For scientists like Dr. Jay Gould of the U.S. Radiation and Public Health Project, there are only two possibilities: accidents of the kind that damaged the nuclear power plant at Three Mile Island, Pa., in 1976, or radiation escaping from properly functioning facilities. Evidence, he says, comes from data released by the U.S. Department of Energy that shows a decline in the amount of Sr90 in adult bone and diet from 1964 to 1970 -- after above-ground bomb testing ended.

"The amount declined on average by 16 per cent each year," he says. "If this decline had continued, there would be only trace amounts of Sr90 in baby teeth today." Amounts should be barely measurable -- about .3 or .4

picocuries per gram of calcium, he says. This would be in keeping with the half-life of radioactive material. In the case of Sr90 it is 29 years, or the time it takes for half its radioactive matter to decay.

Instead, scientists found levels as high as 2 to 17 picocuries per gram of calcium, he says. "This could not possibly be attributed to past bomb tests."

Dr. Gould, who served on the U.S. Environmental Protection Agency Science Advisory Board under President Jimmy Carter, also says anyone living within 150 kilometres of a nuclear facility has a greater risk of breast or prostate cancer. Recent studies suggest people stand to suffer 20 times more cell damage than was suspected at the time safety standards were set in the mid-1950s.

On the other hand, Dr. Murray Stewart, president and CEO of the Canadian Nuclear Association, says any increase in radiation is much more likely to be caused by previous above-ground testing. Radiation released from Canadian plants is "infinitesimally small," he says. "Studies have never shown any link between commercial reactors or commercial uranium to any incidence of cancer."

Atomic Energy Commission (AECL) spokesman Hal Tracy says the nuclear industry in Canada now accepts the theory that there is no safe threshold limit for radiation exposure. Any dose, no matter how small, has the

potential to cause harm and eventually there will be evidence of this harm, he says.

None of this sounds very encouraging to Dr. Gould. His study group, also known as the Tooth Fairy project, has been measuring the presence of Sr90 in the baby teeth of American children born some 20 years ago, and early results show levels to be "100 times higher than we expected."

Some 1,500 teeth have been collected from parents who had kept the teeth as keepsakes. The collection includes 550 teeth from children born between 1979 and 1982. These teeth had the same level of Sr90 as that found in a similar study conducted in 1953, says Dr. Gould.

The finding is not entirely unprecedented. Tests on baby teeth in Germany after fallout from the nuclear accident at Chernobyl, Ukraine, in 1986 showed a tenfold increase in Sr-90. Fallout also reached North America, says Dr. Gould.

For Dr. Gould, who next wants to test the teeth of Canadian children, Chernobyl and other similar accidents all point to responsibility for the continued presence of Sr90.

For the moment, his Tooth Fairy project offers no solutions, only deeply disturbing questions. Long after it should have diminished in potency, Sr90 promises to be a terrifying threat well into the next century.

Glossary of Terms

ALARA (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below Federal dose limits as is practical

AmerGen - corporation created by British Energy and PECO Energy. AmerGen owns and operates TMI-1 and Oyster Creek, and is contracted with GPU Nuclear to monitor TMI-2 during PDMS

Alpha, beta and gamma radiation. Alpha radiation is the least penetrating of the three types. Beta radiation may cause skin burns; beta-emitters are harmful if they enter the body. Beta particles are easily stopped by a thin sheet of metal. Gamma radiation (gamma rays) is very penetrating and is best stopped or shielded against with dense material, such as lead

B&W refers to Babcock & Wilcox, the company that supplied the TMI 1 & 2 reactors. B&W is now known as Framatome

BRP refers to the Bureau of Radiation

Protection, Pennsylvania Department of Environmental Protection

BWR - Boiling Water Reactor

CPM refers to "counts per minute" or the number of radioactive disintegrations per minute

DEP - Pennsylvania Department of Environmental Protection

EPA - United States Environmental Protection Agency

GPUN - General Public Utilities Nuclear sold TMI-1 and Oyster Creek to AmerGen in 1999. GPUN maintains a POL at TMI-2

Mean is the average

MWe - Megawatts

NRC - United States Nuclear Regulatory Commission

NCV - Non-Cited Violation issued by the NRC

pCi/m³ refers to picocuries of radiation

per cubic meter of air

PDMS refers to post-defueled monitored storage, which is the state in which TMI-2 is currently being kept

POL - Possession Only License, issued by the NRC for a non-operating nuclear reactor

PUC - Pennsylvania Public Utility Commission

PWR - Pressurized Water Reactor

Radalert is a hand-held radiation monitor that counts beta and gamma particles

Standard deviation refers to the expected number of readings which fall above or below the mean. In a normal distribution, these numbers are equal

Unicom - proposed corporate entity to be created by PECO Energy and Commonwealth Edison. If approved, Unicom would operate, possess, or monitor 20 nuclear plants in Illinois, New Jersey, and Pennsylvania

EFMR Monitor

**EFMR Monitoring Group
4100 Hillside Road
Harrisburg, PA 17112**

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00 APR 18 AM 8:19

307033

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

ORIGINAL

(717) 783-2525
(717) 783-2831 (FAX)

Bernard A. Ryan, Jr
Small Business Advocate

April 18, 2000

HAND DELIVERED

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

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

RECEIVED
00 APR 19 PM 3:12
P.A.P.U.C.
SECRETARY'S BUREAU

Dear Mr. McNulty:

I am enclosing for filing today an original and fifteen copies of the Reply Comments of the Office of Small Business Advocate in this proceeding. Copies are being served today on the Commissioners, Administrative Law Judge Rainey and all active parties. A Certificate of Service is enclosed.

DOCUMENT
FOLDER

Sincerely,

Bernard A. Ryan, Jr.
Bernard A. Ryan, Jr.
Small Business Advocate

Enclosures

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

15

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

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APR 19 2000

REPLY COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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The Office of Small Business Advocate (OSBA) intervened in this proceeding and was an active party in the extensive negotiations that culminated in the Joint Petition for Settlement filed with the Commission on March 23, 2000. For the reasons set forth in that Joint Petition and in the OSBA's Statement in Support of Joint Petition for Settlement filed March 24, 2000, the OSBA became a signatory to the Joint Petition. The OSBA now files this brief response to the Objections of PPL Electric Utilities Corporation to the Joint Petition for Settlement (the "PPL Objections").¹

1

The OSBA will not respond to the objections submitted on behalf of Philadelphia City Councilman David Cohen which essentially complain that PECO did not give up enough in the bargain. The OSBA, of course, would be happy to see some of the "improvements" the Councilman seeks in his objections. The Joint Petition for Settlement, however, is the result of vigorous negotiations among the parties, none of whom was able to achieve everything it sought. The OSBA remains convinced that the Joint Petition for Settlement provides a fair balancing of the

Initially, the OSBA notes that the standing of PPL Electric Utilities Corporation ("PPL") to raise the litany of objections it has included in the PPL Objections is shaky at best. Nowhere in the PPL Objections is it made clear just what interest of PPL would be directly and immediately impacted in some adverse way by Commission approval of the Joint Petition for Settlement. Not once, for example, does PPL contend that somehow it would suffer some competitive injury in the developing generation market in Pennsylvania as a result of the proposed settlement. In fact, other than the very speculative but oft-repeated claim of perhaps having to face similar contentions from some of the Joint Petitioners in a future PUC case in which PPL requests Commission approval of a proposed transaction, PPL has not demonstrated how it would be harmed in any way by Commission approval of this Joint Petition for Settlement to which it is not a signatory.²

Stripped of its overblown rhetoric, the PPL Objections constitute a pre-emptive strike at those Joint Petitioners, including the OSBA, who are most likely to become intervenors in a

many diverse and sometimes conflicting interests represented by the Joint Petitioners and is clearly in the best interest of the public.

2

A non-settling party has been found in numerous court cases to lack standing to object to judicial approval of a partial settlement precisely because the nonsettling part is not bound by the terms of that settlement. See, for example, Zupnick et al v. Fogel et al. 989 F2d93, 1993 US App. Lexis 5765 (U.S. Ct. of Appeals for Second Circuit, 1993), cert. denied 510 US 945 (1993), and the cases discussed therein.

future Commission proceeding in which PPL seeks Commission approval for a merger of its own.³ This effort to establish in advance a set of new and onerous restrictions on just what various interested parties might propose or negotiate for in that as yet unknown future proceeding must be summarily rejected by the Presiding Officer and the Commission.

The PPL Objections also constitute a not-so-thinly veiled attack on the Commission itself and its long-established practice of encouraging settlements in complex cases such as this. Acknowledging but then ignoring the carefully worded provision found in the Joint Petition for Settlement itself (and in most, if not all, settlements presented for Commission approval) which explicitly confirms the non-precedential nature of this proposed settlement, PPL repeatedly contends that Commission approval of the Joint Petition for Settlement will be cited in the future as precedent that PPL must follow if it later seeks the blessing of the Commission for a comparable transaction of its own. In advancing that argument PPL fails to recognize the distinction between a binding precedent (which approval of the Joint Petition for Settlement here would not be) and an approach that other parties might, or might not, choose to pursue in such a future proceeding.

³A proceeding that, of course, may never even come to be.

Should PPL someday have to satisfy the test that PECO faces here, namely, to establish that a corporate restructuring and proposed merger is in the public interest, PPL can surely expect that consumer representatives (including the OSBA), environmental coalitions, competitors, political officials and perhaps municipalities that would be affected by the PPL proposal will intervene in that future Commission proceeding to represent and advance the interests of their respective clients. The interests of those intervenors are, after all, a significant part of the "public interest" that the Commission would have to find advanced by PPL's proposal in any such case. And each of those intervening parties is sure to seek a sharing of the cost savings and other benefits that PPL expects to achieve via that future transaction, just as the intervenors have done in this proceeding involving PECO's restructuring and merger proposals. But no party in that still hypothetical proceeding will be able to establish its entitlement to a particular benefit from PPL simply by claiming that it was made available to them by PECO in this proceeding.

If such a PPL proceeding does occur in the future, the OSBA and other intervenors in that case may very well try to convince PPL to make similar benefits available voluntarily as part of a negotiated settlement that would help PPL achieve the desired PUC approval of its transaction without the risks and costs of

litigation before the Commission. Failing that, those future case intervenors would have to convince the Commission in a fully-litigated case that the inclusion of that feature is an essential element of satisfying the public interest test which must be met before the Commission can approve the proposed transaction and issue the required certificate of public convenience. In other words, PPL probably will face the same choice in that future case that PECO now faces here, namely, is a negotiated settlement with the active parties preferable to full litigation of the issues raised by the parties. PPL may make a different choice in such a future proceeding than PECO did here, but that choice will be PPL's to make. Commission approval of the Joint Petition for Settlement in this PECO case in no way compels the identical result in a future case before the Commission, an outcome that PPL repeatedly but unpersuasively contends will follow as surely as night follows day.

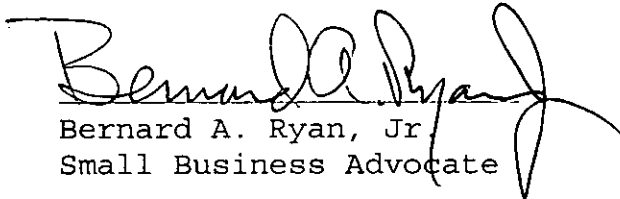
Reduced to its essentials, the PPL Objections are nothing less than an audacious (and offensive) effort to thwart the Commission's settlement process itself, a process that has been used successfully in recent years in a variety of novel and complex cases. It is clear that PPL has no real and direct interest whatsoever in the PECO corporate restructuring and merger that is the subject of this proceeding; the particulars of those proposed

transactions are not even discussed in the PPL Objections. Instead, PPL seeks the rejection by the Commission of a number of specific commitments made by PECO to the other Joint Petitioners during the negotiations leading to the Joint Petition for Settlement, apparently because PPL would not be willing to make similar commitments if it, not PECO, were the party needing PUC approval of a corporate restructuring and merger. That, however, is not what is before the Commission at this time and in this case. Not one of the Joint Petitioners has asked PPL to make any such commitments. PPL's objections are both speculative and overreaching, and they should be dismissed by the Presiding Officer and by the Commission.

To provide a more detailed and more specific response to the PPL Objections, the OSBA states its concurrence in the Reply Comments of the Office of Consumer Advocate that were filed earlier today by that Office. That OCA Reply provides a compelling and persuasive, point-by-point refutation of the objections PPL has raised against the Joint Petition for Settlement.

The OSBA respectfully urges Judge Rainey and the Commission to reject the PPL Objections, find the Joint Petition for Settlement to be in the public interest and approve that Joint Petition.

Respectfully submitted,


Bernard A. Ryan, Jr.
Small Business Advocate

Dated: April 18, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

00 APR 18 PM 3:12

Certificate_of_Service

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

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Christopher B. Craig, Esquire
Senate Democratic Appropriations
Committee
Room 545, Main Capitol Building
Harrisburg, PA 17120

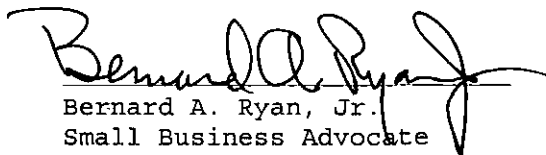
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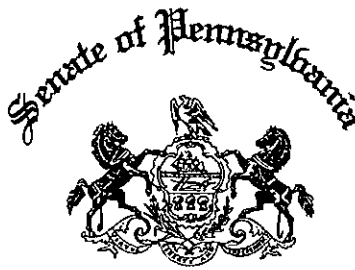
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Carville B. Collins, Esquire
Piper Marbury Rudick & Wolfe
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Baltimore, MD 21201-3018

Hon. Allyson Y. Schwartz
Senate Box 203004
Room 182, Main Capitol Building
Harrisburg, PA 17120


Bernard A. Ryan, Jr.
Small Business Advocate

Dated: April 18, 2000



3070
Senate Post Office
The State Capitol
Harrisburg, PA 17120-0030
Telephone: (717) 787-5662
Fax: (717) 783-5210

VINCENT J. FUMO
Chairman

PAUL S. DLUGOLECKI
Executive Director

DEMOCRATIC COMMITTEE ON APPROPRIATIONS

ORIGINAL

April 18, 2000

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00 APR 18 PM 3:54

Via Hand Delivery or First Class Mail

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room 206, North Office Building
Harrisburg, Pennsylvania 17105

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, PUC Dkt. No. A-110550 F0147.*

DOCUMENT
FOLDER

Dear Secretary McNulty:

Attached for your consideration and filing is an original and three (3) copies of the Pre-filed Direct Testimony of Richard H. Silkman, Ph.D., filed in this matter in response to the Comments and Objections of Councilman David Cohen. Dr. Silkman's testimony is filed on behalf of Senator Fumo, the Consumers Education and Protective Association, the Association of Community Organizations for Reform Now, the Action Alliance of Senior Citizens of Greater Philadelphia, and the Tenants' Action Group.

It has remained the primary objective of Senator Fumo to seek a comprehensive settlement of the above captioned matter that directs a substantial sharing of merger related benefits with PECO Energy Company ratepayers. The proposed settlement represents a realization of this objective. It is the position of Senator Fumo that the nature of the process which produced the negotiated resolution was intended to reach a compromise – not protracted litigation. In other words, it was a process that permitted the parties to craft a resolution of this matter themselves, not a process that forced parties to present a list of demands to the Public Utility Commission and expect a litigated resolution of the varying competing interests.

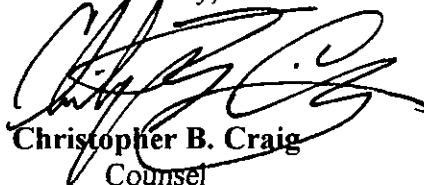
14

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Page 2

It is worthwhile noting that of the more than 36 parties involved in this case, only two (PPL and Councilman Cohen) have voiced any objection. Yet neither party has bothered to present any evidence, testimony or documentation supporting their objections. Though it is a rather simple exercise to craft a "wish list" of demands, it is a very different task to achieve a balanced settlement to which a vast majority of the parties can agree. The objections of PPL and Councilman Cohen represent little more than an attempt to undermine this agreement – seeking instead to obtain greater value at the expense of the signatories to the settlement.

A copy of this letter and the attached testimony has been sent to all counsel of record. Please do not hesitate to contact me if I may provide any additional information.

Sincerely,



Christopher B. Craig
Counsel

Attachment

cc: All counsel of record.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY :
COMPANY, PURSUANT TO CHAPTERS :
11, 19, 21, 22 AND 23 OF THE PUBLIC :
UTILITY CODE, FOR APPROVAL: :
OF (1) A PLAN OF CORPORATE :
RESTRUCTURING, INCLUDING THE :
CREATION OF A HOLDING COMPANY :
AND (2) THE MERGER OF THE NEWLY :
FORMED HOLDING COMPANY AND :
UNICOM CORPORATION :

APPLICATION
DOCKET NO. A-110550F0147

ORIGINAL

307066

DOCKETED

APR 19 2000

**PREFILED DIRECT TESTIMONY OF
RICHARD H. SILKMAN, PH.D.**

ON BEHALF OF

SENATOR VINCENT J. FUMO
CONSUMERS EDUCATION AND PROTECTIVE ASSOCIATION, ET AL

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APRIL 18, 2000

1 **A.** I have served on the faculties of the State University of New York at Stony Brook
2 (1978-1983) and the University of Southern Maine (1983-1986), where I also served as the
3 Acting Director of the Public Policy and Management Program (1986). I was appointed by
4 Governor John McKernan to become the Director of the Maine State Planning Office (1987-
5 1992), a cabinet level agency with broad policy and planning responsibilities, including
6 economic development, energy, telecommunications, taxation, budgetary, land-use
7 management and health care. In this capacity, I chaired a number of state level committees
8 and multi-agency task forces and was on the Board of Directors of a variety of quasi-
9 governmental agencies including the Maine Development Foundation, the Maine Science and
10 Technology Commission and the Maine World Trade Association. I also chaired a number
11 of Staff Advisory Committees of the National Governors' Association, including its Task
12 Force on Health Care (1989-90), Telecommunications Committee (1987-88) and Human
13 Resources Committee (1990-91). As chair of the Staff Advisory Committee on
14 Telecommunications, I developed the National Governors' Association policy position on
15 telecommunications.

16

17 I have been a member of the Board of Directors of the Council of Governors' Policy
18 Advisors (CGPA), an affiliate of the National Governors' Association (1988-92), and its
19 President (1990-1991). I have an undergraduate degree in economics (with honors) from
20 Purdue University (1972) and a Ph.D. in economics from Yale University (1980).

21

1 I currently serve as a consultant on telecommunications and energy matters for a variety of
2 clients in Maine and the northeast. In the telecommunications industry, I have testified as an
3 expert witness on matters related to rate design, the valuation of subsidiaries, interconnection
4 issues and the interface between regulated activities and the competitive market, and have
5 served on the faculty of numerous educational seminars and consulted for trade association
6 groups on matters related to the Telecommunications Act of 1996. In addition, I have been
7 actively involved in the market valuation of a number of businesses and business
8 opportunities in this field.

9

10 My clients in the energy area include a trade association of Maine's largest industrial
11 consumers of electricity, a Fortune 500 multi-state retail grocery company, a consortium of
12 consumer organizations, and a variety of municipal governments and agencies. In
13 representing these clients and others, I have negotiated many special electric rate contracts
14 with investor owned public utilities, have testified before the Maine, Massachusetts, New
15 Hampshire, California and Pennsylvania Public Utilities Commissions on matters of rate
16 design, the justness and reasonableness of rates, electric utility industry restructuring, and
17 utility mergers, and have been actively involved in electric utility restructuring issues and
18 legislation in a variety of states.

19

20 I have currently been retained by the Legislature in the State of New Hampshire to provide
21 advice and counsel on matters related to a comprehensive restructuring agreement entered

1 into between Public Service Company of New Hampshire (a subsidiary of Northeast Utilities)
2 and the Office of the Governor.

3
4 A brief copy of my resume is attached to my testimony as Exhibit RHS-1.

5
6 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY IN THIS CASE.**

7 **A.** The purpose of my testimony is to respond to the Comments and Objections of
8 Philadelphia Councilman David Cohen filed in response to the Joint Petition for Settlement of
9 the PECO-Unicom merger litigation. It is my intention to describe the value of the proposed
10 ratepayer / consumer benefits contained within the Settlement and compare it to the
11 regulatory value of the merger transaction.

12
13 **Q. PLEASE DESCRIBE YOUR ROLE AND INVOLVEMENT IN THIS CASE.**

14 **A.** My role in this case initially focused on evaluating the potential for merger-related
15 synergies between PECO Energy (PECO) and UNICOM Corporation (UNICOM), and the
16 effects those synergies should have on delivery service rates for customers in the PECO
17 service territory. In this regard, Senator Fumo's Office asked that I review and evaluate the
18 negotiation positions put forward by PECO Energy and the Office of Consumer Advocate.
19 Subsequently, the Senator's Office asked that I review the entire scope of issues contained in
20 the initial proposals for settlement presented by PECO.

1 **Q. DID YOU DISCUSS ANY ASPECTS OF THE PROPOSALS FOR SETTLEMENT WITH THE**
2 **VARIOUS PARTIES, AND DID YOU ATTEND ANY OF THE NEGOTIATION SESSIONS?**
3

4 **A.** Over the past few months, I have had conversations with certain of the parties
5 supporting this Joint Petition for Settlement, including the Office of Consumer Advocate
6 (OCA), Community Legal Services (CLS) – as counsel for CEPA *et al.* and PECO, as well
7 as with Senator Fumo’s Office (Senator). I did not attend any of the negotiation sessions.
8

9 **Q. HAVE YOU REVIEWED ALL OF THE MATERIALS FILED BY ALL OF THE PARTIES IN**
10 **THIS CASE?**
11

12 **A.** No, I have not. I have reviewed portions of the multi-volume filing made by PECO and
13 responses by PECO to selected interrogatories. In addition, I have reviewed Volumes I and
14 II (Appendices) of the Joint Petition for Settlement and the comments filed by Councilman
15 David Cohen and PPL Electric Utilities Corporation. Finally, I reviewed prior drafts of
16 settlement proposals and a limited amount of financial information related to PECO and
17 UNICOM.
18

19 **Q. PLEASE SUMMARIZE YOUR TESTIMONY RELATED TO THE JOINT PETITION FOR**
20 **SETTLEMENT ENTERED INTO AMONG MANY OF THE PARTIES IN THIS CASE.**
21

22 **A.** I believe that the Joint Petition for Settlement represents a reasonable resolution of the
23 critical issues in this case, and that its approval by this Commission is in the public interest.
24 The Joint Petition provides for the recovery by PECO ratepayers of what I estimate to be the

1 full dollar value of merger-related synergies associated with the T&D component of PECO.
2 In addition, it requires the development and implementation of service standards that will
3 protect ratepayers from service quality degradation; it augments universal service programs
4 that will benefit low-income residential consumers in the Philadelphia area; it includes a
5 variety of measures that will promote the development of renewable energy and lower air
6 emissions in eastern Pennsylvania; and it increases the likelihood that PECO will maintain a
7 strong economic and community presence in Philadelphia after the merger is completed.

8
9 As with all settlement agreements, this one attempts to balance the interests of the various
10 parties. Accordingly, specific items in the Joint Petition for Settlement may fall short of the
11 litigation position of the parties; but taken as a whole, I believe the Joint Petition for
12 Settlement is in the public interest.

13
14 **Q. PLEASE DISCUSS THE ISSUE OF MERGER-RELATED SYNERGIES AND HOW THESE ARE**
15 **TREATED IN THE JOINT PETITION FOR SETTLEMENT.**
16

17 **A.** The merger of corporations that are similar in the types of services they supply is
18 referred to as a “horizontal” merger. One of the chief advantages of horizontal mergers is the
19 ability to lower overall costs through the capture and realization of scale economies
20 associated with the larger size of the combined entity. Specifically, horizontal mergers are
21 generally able to lower average production costs through the elimination of duplicate

1 facilities, personnel, operating systems and administrative functions. The elimination or
2 “rationalization” of these redundancies is what is meant by “merger-related synergies”.

3

4 The Joint Petition for Settlement proposes to reduce delivery service rates for PECO
5 ratepayers by varying amounts in each of the years 2001 through 2006 in anticipation of
6 PECO’s ability to achieve operational savings in the regulated portion of the company as a
7 result of the merger.

8

9 **Q. HOW LARGE ARE THESE PROPOSED REDUCTIONS?**

10 **A.** The reductions are as follows:

11	2001	\$ 0 million
12	2002	\$ 60 million
13	2003	\$ 60 million
14	2004	\$ 40 million
15	2005	\$ 40 million
16	2006	\$ 0 million

17

18

19 **Q. PLEASE COMMENT ON THE ADEQUACY OF THESE DELIVERY SERVICE RATE**
20 **REDUCTIONS.**

21

22 **A.** There are no hard and fast rules that determine the scope or magnitude of merger-
23 related synergies in the electric utility industry. Each merger must be examined on its own
24 merits. Certain mergers, especially where the merging utilities serve adjacent service
25 territories, may result in relatively large merger-related synergies. Other mergers, where the

1 functions and service territories of the merging utilities are not related, may result in much
2 lower levels of merger-related synergies. Still other mergers, where the merging utilities
3 engage in or provide complementary functions, may result in high levels of merger-related
4 synergies.

5
6 In its Direct Testimony and in response to interrogatories filed in this case, PECO has
7 identified a variety of merger-related synergies that it expects to realize as a result of its
8 merger with UCM – see OTS-11. The pattern of these savings over the period 2001 through
9 2005 is as follows:

10

2001	2002	2003	2004	2005
1.29%	-1.58%	-2.50%	-2.93%	-3.29%

11
12
13 where the percentages in the table represent net merger-related costs as a percent of total
14 T&D revenues of approximately \$1.043 billion.

15
16 I believe that these figures are conservative and well below the synergies expected in other
17 similar mergers. My belief is echoed by Goldman Sachs:

18
19 “Excluding approximately \$150 million of costs to achieve, management is projecting
20 \$100 million of pretax cost savings in year one (60% from regulated operations and 40%
21 from nonregulated), increasing to \$180 million by year three. The projected cost savings
22 represent 5.5% of both companies’ aggregate operation and maintenance (O&M)
23 expense budgets, somewhat below the 10%-15% reduction estimated for other utility

1 mergers but reasonable given the two utilities' discontiguous service territories." (Sept.
2 27, 1999 – Amtrak-I-D-11)

3
4
5 A similar assessment was offered by Salomon Smith Barney – “Other previous mergers had
6 stated goals of operations and maintenance savings of approximately 10%.” In addition,
7 Salomon reported that “Management indicated that the cost savings estimates are very
8 conservative ...” (emphasis added).

9
10 I believe that the merger will realize larger merger-related synergies, and that therefore
11 PECO's ratepayers should see larger rate reductions in delivery service. Specifically, I
12 believe that total savings as a result of the merger to be closer to 6% of overall T&D related
13 revenues, which is approximately 10% of operations and maintenance costs for the T&D
14 component of PECO Energy. This level is at the lower end of the 10-15% range based on
15 the lack of geographic proximity between of the two utilities and the inability to rationalize
16 transmission and distribution operations and maintenance services. Accordingly, I believe
17 that merger-related synergies will represent the following percentages of total T&D revenue
18 requirements under the existing rate cap:

19

2001	2002	2003	2004	2005	2006
1.50%	-2.00%	-3.75%	-5.00%	-6.00%	-6.00%

1 **Q. HOW DOES YOUR ESTIMATE OF MERGER-RELATED SYNERGIES COMPARE TO THE**
2 **DELIVERY SERVICE RATE REDUCTIONS CONTAINED IN THE JOINT PETITION FOR**
3 **SETTLEMENT?**
4

5 **A.** The proposed rate reductions in the Joint Petition for Settlement and my estimates of
6 the merger-related synergies are very close. As shown on the table in Exhibit RHS-2 (page 1
7 of 2), I estimate the total merger-related savings relative to the current delivery service rate
8 cap to be about \$222 million over the period 2001 through 2006. This is about 10% higher
9 than what is contained in the Joint Petition for Settlement. The net present value, however,
10 between the two savings streams is almost identical. The net present value of my estimates is
11 \$150 million as compared to the Joint Petition for Settlement amount of \$152 million, both
12 discounted at the Weighted Cost of Capital contained in the restructuring case of 8.71%.
13 This is because the pattern of my savings estimates differs from that in the Joint Petition for
14 Settlement.

15
16 This is shown very clearly in the graph in this same exhibit comparing PECO's originally filed
17 proposed rate reductions with my estimates and the rate reductions contained in the Joint
18 Petition for Settlement. My estimates of merger-related synergies are negative in the year
19 2001 as a result of costs that must be incurred to obtain future savings, and then increase
20 steadily over the next four (4) years as the merged company is able to realize the full savings
21 potential of the merger. In contrast, the Joint Petition for Settlement ramps up much faster,
22 but provides for no rate reductions vis a vis the rate cap in the last year, 2006.

1

2 While I believe that my scenario is a more likely scenario in terms of timing of merger-related
3 synergies, the proposed pattern in the Joint Petition for Settlement results in rate reductions
4 sooner – something that certainly has value to PECO’s ratepayers, given the uncertainty that
5 now characterizes the electric utility industry. In any case, the total rate reduction for
6 PECO’s ratepayers in the Joint Petition for Settlement is virtually identical to my estimates of
7 merger-related synergies, and thus I believe the Joint Petition for Settlement’s treatment of
8 this issue to be reasonable and in the public interest.

9

10 **Q. DO YOU AGREE WITH COUNCILMAN COHEN THAT “THE DISTRIBUTION RATE CAP**
11 **PROVIDED IN PARAGRAPH 11 SHOULD BE LENGTHENED AT LEAST FIVE YEARS, AND**
12 **THE DOLLAR RATE REDUCTIONS OFFERED IN PARAGRAPH 10 THROUGH 2005**
13 **SHOULD BE AT LEAST DOUBLED, AND THEN MAINTAINED AT THE LOWEST LEVEL**
14 **ESTABLISHED IN THE YEAR 2005 FOR ANOTHER FIVE YEARS”?**
15

16 **A.** No, I do not. First, with respect to the distribution rate cap, I am concerned that any
17 lengthening of the cap beyond 2006 will expose ratepayers to risks that their rates may be higher
18 than they should otherwise be. My concern stems from three sources. The first source of
19 concern I have is related to sales growth. If the demand for electricity grows at any reasonable
20 rate over the period of Councilman Cohen’s proposed distribution rate cap, the benefits of any
21 such growth in sales will accrue to PECO and not to ratepayers. This is especially true during a
22 period of low inflation such as what we are currently experiencing.

23

1 My second source of concern relates to technological changes in the manner in which utilities
2 provide metering and billing services. The rapid growth of the internet and the dramatic
3 reductions in usage costs will ultimately alter the manner in which electric utilities read meters
4 and bill their customers. Remote meter reading, tied directly to billing services, may result in
5 substantial reductions in the costs utilities incur to read meters and process bills. Since both of
6 these areas represent significant cost centers to electric utilities currently, productivity gains in
7 these areas may result in important cost savings that should be passed on to ratepayers.

8
9 Finally, I believe that the same internet based technology that will alter information flows
10 between utilities and their customers will provide utilities with unprecedented levels of real time
11 data related to transmission and distribution system components and performance. This
12 information, coupled with enhanced artificial intelligence systems, will identify problems in the
13 grid in advance of their failure, thereby reducing the costs of operations and maintenance to the
14 utilities.

15
16 While it is not possible to predict with certainty when each of these opportunities may become
17 available and may begin to have a real impact on the costs of providing delivery service, it is clear
18 that the longer a rate cap remains in effect, the more likely it becomes that any benefits from
19 these opportunities will accrue to the utility's shareholders rather than to its ratepayers. I believe
20 that the 10 years proposed by Councilman Cohen imposes too large a risk on PECO's ratepayers

1 that, in the final few years of this proposed cap, they will pay rates in excess of the costs PECO
2 incurs to serve them.

3
4 I also take issue with Councilman Cohen's assertion that the rate reductions contained in the
5 Joint Petition for Settlement should be doubled. Councilman Cohen has not provided any
6 analytical or empirical support for this position. In contrast, as I have demonstrated earlier in my
7 testimony, the rate reductions contained in the Joint Petition for Settlement are (1) of an order of
8 magnitude that is consistent with the range of savings generally found in mergers of this type,
9 and (2) that the full amount of these savings are being returned to ratepayers in the form of rate
10 reductions. Further, as shown in Exhibit RHS-2, the level of rate reductions contained in the
11 Joint Petition for Settlement are more than twice those identified by PECO in its merger filing
12 and in responses to interrogatories in this case.

13
14 **Q. ARE THERE OTHER PROVISIONS OF THE JOINT PETITION FOR SETTLEMENT THAT**
15 **PROVIDE BENEFITS TO PECO'S RATEPAYERS?**
16

17 **A.** Yes. There are five areas in particular where ratepayers will benefit from the Joint Petition
18 for Settlement. First, low income ratepayers will benefit from the enhancements to the Electric
19 CAP program contained in the 1998 Electric Restructuring Settlement as well as from an
20 additional \$3 million for low-income fuel funds and an agreement to improve the monitoring of
21 universal service programs to determine whether "special needs" programs are necessary to
22 address specific unmet needs of the target population.

1

2 Second, PECO has committed to a rigorous reliability and customer service initiative that
3 establishes clear service quality standards that are designed to enhance reliability and customer
4 service. With respect to reliability, Paragraph 23 of the Joint Petition for Settlement identifies
5 seven areas of performance wherein PECO must achieve certain target indicators or take specific
6 actions. Similarly, Paragraph 24 of the Joint Petition for Settlement sets forth specific standards
7 that PECO must meet with respect to customer service.

8

9 The focus placed on reliability and customer service is an important element in any utility merger
10 where the locus of control is changing and the interests of management expanding. By
11 incorporating in advance specific expectations of performance post-merger, the parties have
12 established these areas as important areas of concern for ratepayers and a place where the
13 merged company should focus its attention.

14

15 Third, PECO will forego recovery of \$50 million of its total nuclear decommissioning cost
16 obligations plus 5% of any additional increase above an established base level. Because of the
17 uncertainty associated with estimating decommissioning costs that will occur well in the future, it
18 is difficult to put a definitive value on this provision of the Joint Petition for Settlement.
19 Nevertheless, it does represent a concession on the part of PECO that is of some value to
20 PECO's ratepayers.

21

1 Fourth, the Joint Petition for Settlement includes a number of provisions that are designed to
2 stimulate the market for renewable energy. The contributions PECO has agreed to make to the
3 wind and solar programs will help both of these initiatives get started in Pennsylvania and will
4 spur the development and implementation of these technologies.

5
6 Finally, the Joint Petition for Settlement imposes a requirement that PECO's activities within
7 Philadelphia remain relatively comparable after the merger to what they have been historically.
8 Specifically, the Joint Petition for Settlement addresses employment obligations, maintenance of
9 a corporate headquarters in Philadelphia and continuation of charitable and civic giving and
10 general contributions. These provisions will ensure that the impact of the merger on Philadelphia
11 outside of the provision of electric service will be minimal during the next five years. This level
12 of stability and certainty will ease the transition from PECO to the newly created company and
13 will provide important benefits to the Philadelphia economy.

14
15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 **A. Yes.**

17

18

1 **List of Exhibits**

2

3 RHS-1 Brief Resume for Dr. Richard Silkman

4 RHS-2 Merger-Related Synergies

5

1
2 **DR. RICHARD H. SILKMAN**
3 *Curriculum Vitae*
4
5
6

7 **PERSONAL:**

8 Born: May 21, 1951; married, three children
9

10
11 **EDUCATION:**

12 Purdue University, B.S. (w/ Distinction), Economics, 1972

13 Yale University, M.A. Economics, 1975

14 Yale University, Ph.D. Economics, 1980
15
16
17

18 **SELECTED RECENT EXPERIENCE:**
19
20

21 Partner - The Maine Energy Aggregation Company, LLC Present
22 148 Middle Street
23 Portland, Maine 04101
24 Phone (207) 772-6190
25 Fax (207) 772-6320
26

27 The Maine Energy Aggregation Company, LLC (MEAC) is a newly formed company to
28 provide a full range of consulting services under contract to the Maine Electric Consumer
29 Cooperative (MECC). The MECC is an electricity buyer's cooperative with over 200
30 members and approximately 250 MW of total load. The MEAC has recently completed a full
31 Request for Proposals process on behalf of the MECC resulting in the securing of a full
32 requirements supply contract for members of the MECC.
33
34
35

36 Owner - Richard Silkman Associates 1992 – Present
37 76 Main Street
38 Yarmouth, Maine 04096
39 Phone (207) 846-0539
40 Fax (207) 846-0494
41

42 Richard Silkman Associates is a consulting firm established by Richard Silkman in
43 1992, specializing in economic regulation, energy and telecommunications and in
44 economic impact analyses. Dr. Silkman is a nationally recognized expert in the
45 regulation of public utilities and energy policy. He has appeared as an expert witness
46 before public utility commissions and a number of legislative bodies. Silkman

1 Associates currently provides energy consulting services to a variety of large energy
2 users on matters related to electric utility deregulation and is actively involved in the
3 negotiation of special tariffs and contracts at the wholesale and retail levels for
4 electricity and natural gas for a wide range of industrial and commercial clients
5 throughout the Northeast and Mid-Atlantic states. Silkman Associates has also
6 provided consulting services to private companies and public authorities and agencies
7 to perform economic impact analyses of products, investment activities and various
8 public policies.
9

10
11 Vice President - The O'Brien Group, Inc. 1995 – Present
12 70 Franklin Street
13 Boston, MA
14 Phone: (617) 737-2255
15 Fax: (617) 737-3399
16

17 The O'Brien Group, Inc. is a privately held consulting company established to develop,
18 manage and implement strategies and programs to help ensure that the full range of client
19 activities are integral parts of coordinated strategies that best support their immediate and
20 long-term government relations and public affairs objectives. The O'Brien Group, Inc.
21 provides consulting services across a broad spectrum of industries and issues to position
22 clients in their marketplaces.
23

24
25 Director Maine State Planning Office 1987 – 1992
26

27 Dr. Silkman was appointed by Governor John R. McKernan, Jr. to direct the Maine State
28 Planning Office, a cabinet-level office with a staff of approximately forty (40). In this
29 capacity, Dr. Silkman served as the chief policy advisor to the Governor on matters related to
30 economic policy, energy, hydropower and river management policy, telecommunications
31 regulation, state tax policy, health care regulation and cost-containment and land-use and
32 natural resources policy. During his tenure as Director, Silkman chaired a number of
33 commissions and task forces including the Land for Maine's Future Board, the Land and
34 Water Resources Council, the Gulf of Maine Council on the Marine Environment and the
35 Governor's Tax Policy Committee, and was a member of the Board of Directors of the
36 Maine Development Foundation, Maine Science and Technology Commission and Maine
37 World Trade Association.
38

39 Dr. Silkman also was very much involved in national organizations during his term in state
40 government. He served on the Board of Directors and as President of the Council of
41 Governors' Policy Advisors (CGPA), an affiliate of the National Governors Association.
42 CGPA is a professional association of senior policy advisors to the nation's governors, with
43 approximately 200 members from the 50 states and territories. In addition, Dr. Silkman
44 chaired or co-chaired staff advisory committees of the National Governors' Association in
45 Telecommunications, Health Care and Human Resources.

Dr. Silkman was on the faculty of the State University of New York at Stony Brook and subsequently of the University of Southern Maine, where he served as Acting Director of the Public Policy and Management Program. During his tenure at both institutions, Dr. Silkman taught courses in applied economics, statistics, economic regulation and policy analysis, and served as a consultant to a number of private companies and public sector agencies.

SELECTED RECENT PROJECTS:

Dr. Silkman has been retained (along with Anthony Buxton, Esq.) by the New Hampshire Legislature to provide expert consulting services and advice regarding the proposed Settlement Agreement between PSNH and the Governor's Office.

Dr. Silkman has provided testimony on behalf of a coalition of State Senators in Pennsylvania related to a general proceeding involving interconnection and competitive issues in telecommunications and the proposed merger of Bell Atlantic and GTE.

Dr. Silkman provided testimony on behalf of the California Office of Ratepayer Advocacy (through a subcontract with Economics and Technology, Inc.) in the 1998 PG&E rate case. This testimony utilized a new mathematical technique to evaluate the efficiency with which electric transmission and distribution utilities provide electric service to their customers.

Dr. Silkman has been retained by Cablevision Systems to assist it in its efforts to ensure that electricity restructuring in Massachusetts results in competitive markets and fair and commercially reasonable relationships between regulated utilities and unregulated subsidiaries and affiliates.

Dr. Silkman has been retained by Champion International to provide economic consulting services related to the development of a 175 MW "within the fence" natural gas-fired cogeneration project at its Bucksport, Maine mill. In this capacity, Dr. Silkman has been actively involved in the negotiation of a 15-year Purchased Power Agreement with H.Q. (U.S.) and a complementary natural gas supply agreement involving the Maritimes & Northeast Pipeline from Sable Island, Canada. In addition, Dr. Silkman worked closely with Champion during dispute resolution with NEPOOL regarding the development of an interconnection protocol and agreement for this facility, filed testimony at FERC in support of Champion's efforts to obtain NEPOOL Section 18.4 approval for interconnection, and has continued to advise Champion in its attempts to secure a final interconnection agreement with CMP and NEPOOL.

1 Dr. Silkman has been retained by the Philadelphia City Council to assist it in
2 understanding and evaluating the impacts of natural gas deregulation on its municipal gas
3 company and on its citizens and businesses.
4

5 Dr. Silkman has been retained by a consortium of consumer groups to provide expert
6 advice and testimony regarding PECO Energy's efforts to secure Pennsylvania Public
7 Utility Commission approval to securitize \$3.6 billion of stranded costs and of its
8 comprehensive restructuring plan. In this capacity, Dr. Silkman led the negotiating team
9 that developed a settlement proposal of most of the major issues associated with
10 restructuring. This settlement, which has subsequently been rejected by the Pennsylvania
11 Public Utility Commission, included a write-off of \$2 billion of stranded costs by PECO
12 and guaranteed rate reductions of 10% for ratepayers.
13

14 Dr. Silkman has served as the external project manager for a comprehensive effort by
15 Hannaford Bros., Fortune 500 grocery company to reduce its greater than \$30 million a year
16 energy costs. This effort has included negotiating special rate contracts with electric utilities
17 at rates well-below retail tariffs, negotiating natural gas supply and pricing contracts with gas
18 marketers, securing more favorable gas transportation tariffs with local distribution
19 companies and installing self-generation (natural gas engine-generators) at multiple retail
20 locations in Maine and New Hampshire. These efforts have received national attention,
21 leading to the Company's recognition as one of the 6 most savvy energy buyers in 1996 by a
22 leading trade publication in the field.
23

24 Dr. Silkman has served and continues to serve as the lead economic consultant for the
25 Industrial Energy Consumer Group, a consortium of large energy users in Maine. In this
26 capacity, he has been involved with negotiating hundreds of millions of dollars of electricity
27 supply contracts incorporating substantial rate reductions and in regulatory proceedings
28 where regulated electric utilities have been denied millions of dollars of rate increases.
29

30 Dr. Silkman was retained by a governmental commission on Long Island, New York to
31 perform an economic impact analysis of a system of "Transferable Development Rights"
32 designed to protect an environmentally sensitive region in the northeast, while balancing the
33 property interests of a variety of constituencies.
34

35 Dr. Silkman has performed an economic impact analysis of a major electric utility project
36 seeking authority to switch fuels at one of its northeastern generating stations.
37

38 Dr. Silkman served as the lead economic consultant for NYNEX in Maine in its efforts to
39 seek a redesign of its telephone rates to bring them more in line with costs. In this capacity,
40 he performed an econometric analysis of demand elasticity for the Telephone Company and
41 provided testimony on the economic theory of efficient rate design and the public benefits of
42 investments to modernize the telecommunications network.
43

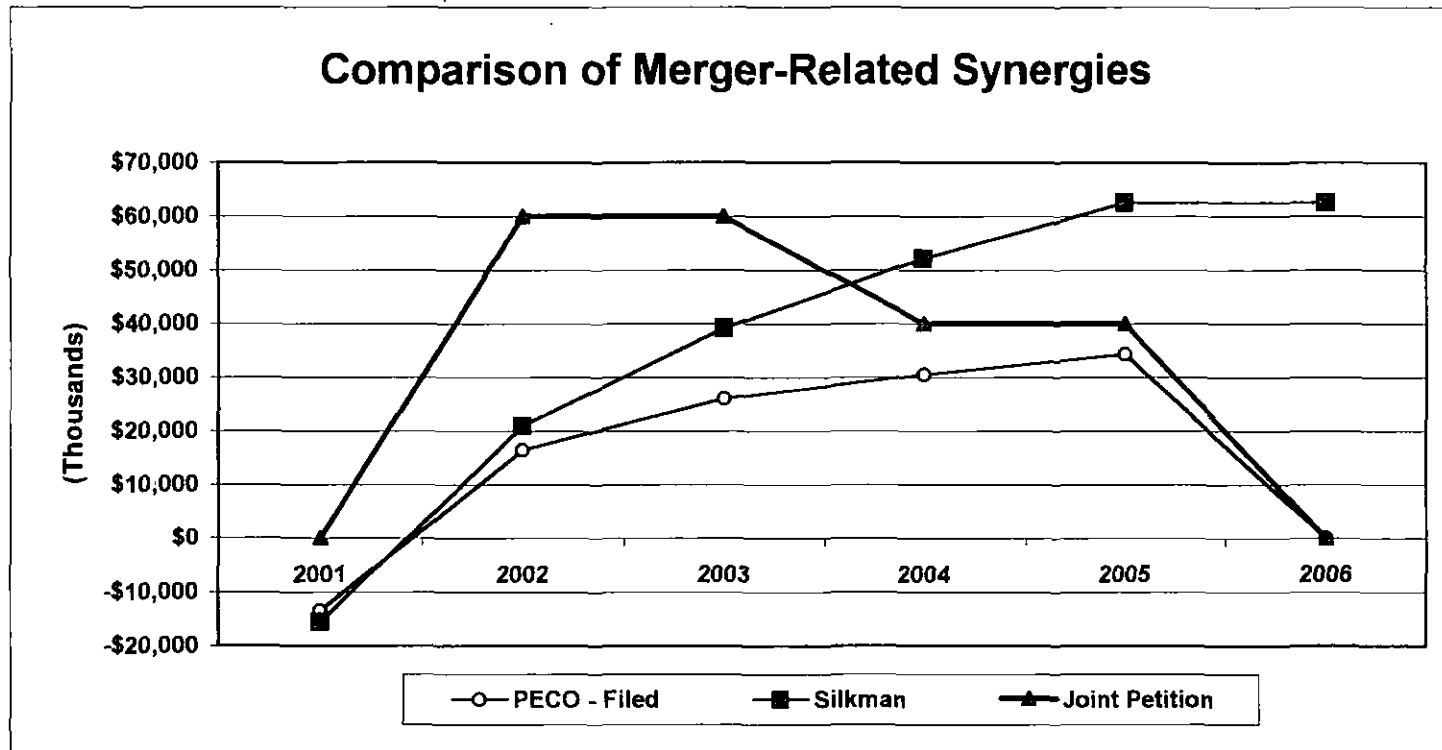
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8

Dr. Silkman served as a consultant to a regional paper company and an expert witness in a successful action it filed with the regulatory commission challenging the reasonableness of its electric utility to provide service at higher voltage.

Dr. Silkman served as a consultant to a national consortium of telecommunication companies, managing the consortium's relationship with national organizations, including the National Governors' Association and the Council of Governors' Policy Advisors.

COMPUTATION OF MERGER-RELATED SYNERGIES

Rate Cap T&D Average Rate	\$0.02980	per kWh					
Estimated Annual Sales	35,000	GWh					
Rate Cap Revenue Requirement	\$1,043,000						
Discount Rate	8.71%	WAC from Settlement Agreement					
	2001	2002	2003	2004	2005	2006	
Pro Forma Synergies - Annual	1.50%	2.00%	3.75%	5.00%	6.00%	6.00%	
Pro Forma Revenues	\$1,058,645	\$1,022,140	\$1,003,888	\$990,850	\$980,420	\$980,420	
Rate Cap Revenues	\$1,043,000	\$1,043,000	\$1,043,000	\$1,043,000	\$1,043,000	\$1,043,000	
Pro Forma Synergies - Amount	-\$15,645	\$20,860	\$39,113	\$52,150	\$62,580	\$62,580	Silkman
Annual Savings	-\$1,058,645	-\$1,022,140	-\$1,003,888	-\$990,850	-\$980,420	-\$980,420	
Total Savings		\$221,638					
NPV of Total Savings		\$150,178					
Joint Petition for Settlement							
Proposed Rate Reductions	\$0	\$60,000	\$60,000	\$40,000	\$40,000	\$0	Joint Petition
Total Savings		\$200,000					
NPV of Total Savings		\$152,460					
PECO Estimated Synergies							
Proposed Percentage Reductions	1.29%	1.58%	2.50%	2.93%	3.29%	0.00%	PECO - Filed
Proposed Rate Reductions	-\$13,503	\$16,447	\$26,055	\$30,557	\$34,265	\$0	
Total Savings		\$93,821					
NPV of Total Savings		\$66,224					



**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	+	PUC Dkt. No. A-110550 F0147
(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	+	

CERTIFICATION OF SERVICE

I, Christopher B. Craig, attorney for Senator Vincent J. Fumo, hereby certify that a copy of the foregoing document has been served in person or by first class mail at the addresses indicated below. I further certify that the manner of service satisfies the requirements of 52 Pa.Code §§ 5.74 and 1.54.

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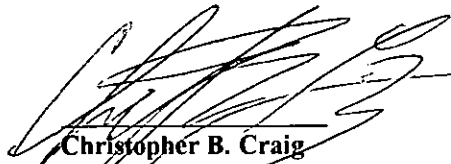
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Counsel for Senator Vincent J. Fumo



April 18, 2000

James McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

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

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the following:

1. The Reply of the PennFuture Parties to the Objections of PPL Electric Utilities Corporation and Councilman David Cohen to the Joint Settlement Petition in the referenced proceeding; and
2. The Testimony of John Rohrbach in the referenced proceeding.

Copies of these documents have been served on all parties of record as indicated on the attached Certificate of Service.

Sincerely,

Peter Meadows Adels
General Counsel
PennFuture

cc. Administrative Law Judge Rainey

SECRETARY'S BUREAU
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ORIGINAL

APPLICATION
DOCKET NO. A-110550F0147

Reply Of the PennFuture Parties
to the Objections of PPL Electric Utilities Corporation
and Councilman David Cohen
to the Joint Petition for Settlement

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After engaging in extensive formal and informal discovery and negotiations, APR 19 2000
PECO Energy Company ("PECO") and almost all parties in the referenced proceeding
filed a Joint Petition for Settlement ("Settlement") on March 23, 2000. Joint Petitioners
include a diverse group of parties including the Office of Consumer Advocate and Office
of Trial Staff, and the Office of Small Business Advocate, as well as intervenors on
behalf of residential, business and industrial consumers, competitive market suppliers,
municipalities, and environmentalists. PennFuture and the ten named individuals joining
in its Petition and Protest ("PennFuture Parties") are signatories to the Joint Petition.¹

By Order dated March 28, 2000, Administrative Law Judge Charles E. Rainey
directed that Public Input Hearings be conducted through April 4, 2000, that objections or

¹ PennFuture and the ten named individuals were granted intervenor status as formal parties by Order of
ALJ Rainey dated January 28, 2000.

comments to the Settlement be filed by April 13, 2000 and that Replies to the Objections or Comments be filed by April 18, 2000.

At the Public Input Hearings, numerous parties testified in support of the Settlement and provided testimony that the Settlement should be approved consistent with the public interest. Many interested parties filed Comments or Statements in Support of the Settlement. A few interested parties filed statements indicating that they did not oppose the Settlement although they were not signatories to the Settlement.

Only two parties, PPL Electric Utilities Corporation ("PPL") and Philadelphia City Councilman David Cohen ("Councilman Cohen"), filed Objections to the Settlement. These Reply Comments and the attached testimony of John Rohrbach are filed on behalf of the PennFuture Parties in response to the Objections. PennFuture submits that PPL's Objections should be dismissed out of hand and that neither the objections of PPL nor those of Councilman Cohen provide a legal, factual or equitable basis for rejection of the Settlement or the continuation of any hearings or further litigation of this proceeding.

I. Objections of Councilman Cohen

1. Councilman Cohen's Objections do not appear to challenge a conclusion that the Settlement is in the public interest or assert that any aspect of the Settlement is not in the public interest. Rather, Councilman Cohen's Objections suggest his view that PECO can and should be doing more than was committed in the Settlement to promote the public interest, such as demonstrating a stronger commitment to renewable energy and taking greater steps to improve the health and economy of the Philadelphia region. Many

signatories to the Settlement probably agree with one or more of Councilman Cohen's concerns. Perhaps more might have been better, but the Settlement represents the best efforts of a diverse group of parties to reach a single agreement on a core of provisions that all could agree are in the public interest. The scope of the Settlement and the breadth of the parties in support of the Settlement attest to the power of direct negotiation to yield results that strongly support the public interest. This result has certainly been aided by the Commission's strong support of settlements in the past.

II. PPL's Objections should be dismissed

2. PPL objects to the Settlement on various grounds, none of which are related to the merger, none of which are related to PECO, and none of which are related to the Settlement. It appears that PPL's Objections are solely related to its concerns about some hypothetical future proceeding involving PPL (PPL Objections, Section V) and proposes relief that the Commission could not grant even if it were to consider doing so.

Perhaps of greatest importance, none of PPL's Objections are relevant to the legal standard under which the Commission must decide this case. Although PPL's concerns with precedent should be dismissed out of hand, they illustrate that precedent can be an important issue when it comes to settlements. The Commission should not set a precedent that gives any credibility to a self-serving, obstructionist attempt by a non-interested party to scuttle a settlement between another utility and a diverse group representing every interest in what could have been a very contentious proceeding.

3. Public Utility Code Section 1103(a) identifies the legal standard applicable to approval of the proposed merger: the PUC shall grant a certificate of public convenience approving the merger “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” (hereafter, “the public interest”) Section 1103(b) is equally clear the “for the purpose of enabling the commission to make such a finding or determination, it shall hold such hearings...as it may deem necessary or proper in enabling it to reach a finding or determination.”

4. The Commission has conducted hearings and has developed a record more than sufficient to find that the proposed merger, as modified by the Settlement, is in the public interest. The record includes a voluminous original filing by PECO, supplemental filings by PECO, the Settlement document and supporting exhibits, the testimony at the Public Input Hearings, and the Statements in Support of the Settlement that have been filed. The terms of the Settlement alone provide overwhelming evidence of the numerous ways in which the merger as presently proposed serves the public interest.

5. PPL’s objection that the record in this proceeding could not support a finding that the merger is in the public interest is dramatic for two reasons. First, PPL’s arguments suggest that evidentiary hearings are required in all cases, even those with settlements, although PPL provides no legal argument or citation in support of this suggestion. Indeed, PPL’s Objections make it difficult to comprehend that a case could be settled without the need for extensive adversarial proceedings.

6. PPL’s Objections broadly state that the Commission must reject the Settlement because the Joint Petitioners have failed to submit “additional legal and evidentiary

support...to demonstrate that it is lawful and in the public interest.” PPL’s Objections ignore, obfuscate, or mischaracterize the facts and the law in this regard.

7. PPL states that the law requires specific findings of fact in support of each and every provision of the merger, even in the event of a settlement, but cites no supporting cases (paragraph 23). PPL’s statement is a direct misstatement of the law and is not consistent with its own past practice, such as in seeking Commission approval of its own restructuring case.

8. In this case, the Public Utility Code requires that the Commission find that the merger, taken as a whole, is in the public interest. There is no legal basis for a suggestion that the Commission is required to find that each isolated provision of the Settlement is in the public interest. For example: the Commission is not required to find that the merger will result in any particular level of savings for the company; the Commission is not required to find that any particular level of rate reductions or rate cap extension is necessary for the merger to be in the public interest; the Commission is not required to find that the merger will result in any particular level of economic development or improvement to the competitive market; the Commission is not required to find that the merger will result in any particular improvement to the environment, health or safety. Rather, the Commission need only find that the merger is a positive step forward in these and/or other measures of the public interest.

9. PPL’s objection that the existing record in this proceeding could not support a finding that the merger is in the public interest is dramatic for a second reason. PPL argues that the record, absent evidentiary adversarial hearings, cannot support a finding

that the merger, as supplemented by the Settlement, is in the public interest. From that argument, only two logical conclusions could follow.

The first conclusion would be to conclude that the merger Application, as initially filed by the utility, could not be found in the public interest absent evidentiary hearings as a matter of law. Surely PPL is aware that the Commission grants Certificates of Public Convenience at almost every Public Hearing without evidentiary hearings. Surely PPL is aware that the Commission regularly approves utility filings as submitted without evidentiary hearings. Surely PPL is aware that the Commission has approved PPL filings without evidentiary hearings on numerous occasions. We're not aware that any consumer group, even the most radical, has previously argued that a utility filing, even if unopposed, could not be approved without evidentiary hearings as a matter of law. Surely PPL is aware that it has cited no case in support of this amazing argument.

The second and sole other logical conclusion would be that the Application, as initially filed, could have been approved by the Commission without evidentiary hearings, but that voluntary modification by PECO through the Settlement somehow renders approval without evidentiary hearings contrary to law. That conclusion requires an assumption that a settlement inherently undermines the public interest value of the utility application. Surely PPL is aware that the Commission has approved settlements without evidentiary hearings on numerous occasions. Surely, PPL is aware that the Commission, consistent with the practice of most public utility commissions, regulatory agencies, and courts of law, shows great respect for a determination by virtually all interested parties in a proceeding that a settlement can be found to be in the public interest without requiring further evidentiary hearings. Surely PPL is aware that virtually

every interested party in these proceedings, including many that have an extensive public record of questioning PECO's view of the public interest and have engaged in extensive informal and formal discovery and negotiations, has concluded that approval of the Settlement can be found to be in the public interest without the need for further evidentiary hearings and continued litigation.

10. PPL also objects that the Settlement provisions have nothing to do with the merger (paragraph 21). Without belaboring the point, the merger raises issues about how PECO can maintain and improve the quality and lower the cost of its service to the public. It is inconceivable that PPL sincerely argues that lower rates, service quality improvements, consumer education, enhanced programs for the competitive market, new renewable development, public health and safety improvements, and the other provisions of the Settlement are not at least related to the merger or PECO's public service, even if one might object, as does Councilman Cohen, that the benefits from the Settlement are not sufficiently great to render the merger in the public interest.

11. To the contrary, as discussed in paragraphs 17-21 and 22, below, it is PPL's Objections that have nothing to do with the merger, PECO, or the Settlement.

12. PPL states that "several of the provisions (of the Settlement) appear on their face to be contrary to Commission policy and/or applicable law" (paragraph 21). PPL has provided no legal or factual support for its incredible assertion that any of the merger benefit provisions of the Settlement are contrary to Commission policy or applicable law.

13. At most, PPL's Objections state its view that some provisions of the Settlement may not specifically be required by Commission policy or applicable law. By its nature as a settlement, the Joint Petition does not argue that any specific provision of

the Settlement is required as a matter of law. The Commission need not find that any particular provision of the Settlement is required as a matter of law. Rather, the nature of the Joint Petition, as with any comparable settlement approved by the Commission, reflects a judgment that the settlement as a whole is in the public interest, and therefore is in compliance with applicable law.

14. PPL's Objection in this regard assumes a novel legal conclusion that a utility is not permitted to agree to do something that it is not required to do as a matter of law. PPL has provided no argument or legal basis for its assumption. Indeed, the settlement provisions reflect PECO's voluntary agreement to spend corporate funds or time to provide public benefits. Each and every provision of the Settlement is funded or supported by PECO, not ratepayers.

15. If not presented as part of the Settlement, some provisions would require Commission approval but some would not. For example, PECO may not unilaterally reduce its rates without Commission approval. However, even the regulated PECO public utility could unilaterally agree not to raise distribution rates in the future, improve its quality of service or provide information to the public. Certainly PECO may support community organizations or invest in renewable generation without Commission approval. The fact that these or other provisions are presented to the Commission as part of a request for Settlement approval in no way renders them contrary to law or Commission policy.

16. Thus, PPL's Objections fail to present any valid argument that the Joint Petition must be denied based on applicable law. In fact, PPL barely alleges, and

certainly does not substantiate, that the merger as modified by the Settlement is not in the public interest.

17. PPL's Objections do not request the opportunity, nor indicate any intention, to present evidence on whether the merger is in the public interest. Rather, PPL solely requests "the continuation of litigation with respect to the legality and the necessity for evidentiary support of the provisions of the contested Joint Petition." (paragraph 3. See also, Section VI.)

18. Evidentiary hearings are not required to determine the matter of law requested. PPL has filed its Objections to the Settlement, including its legal argument in support of its Objections, and has utterly failed to demonstrate that there exists a legal basis for granting its objections.

19. Fundamentally, PPL argues that it is its own opposition to the Settlement, not a substantive legal requirement, which requires denial of the Petition, further evidentiary hearings, and continued litigation of these proceedings. While never identifying its claim as such, PPL fundamentally suggests that its due process rights would be compromised if the Commission does not require further evidentiary hearings. Yet, PPL has not sought to present any evidence in these proceedings, so any due process right to present evidence is in no way compromised by the lack of additional evidentiary hearings. PPL's Objections seek further hearings only on the legal question of whether the existing record is sufficient to support a Commission finding that the merger, as modified by the Settlement, is in the public and may be approved as a matter of law. PPL's opportunity to file its Objections has more than provided it the opportunity to present its legal argument and any process that may be due.

20. PPL's attempt to characterize the instant matter as a "contested case" is disingenuous at best. PPL has not asserted that the merger or the Settlement are not in the public interest and has indicated no willingness or intent to produce evidence in that regard. (paragraph 23-24.) Moreover, surely the PPL is aware that the Commission has approved settlements on numerous occasions without further evidentiary hearings, even if one minor party opposes the settlement on substantive terms.

22. PPL's participation in this proceeding does not give it standing to contest the Settlement. PPL is not a PECO ratepayer and is not aggrieved in any way by the merger or the terms of the Settlement. Indeed, PPL is not an interested party in this proceeding. Rather, PPL is aggrieved that PECO has settled this case and concerned that it might be an interested party in other future cases.

In fact, PPL's Objections betray that it is not concerned with whether this merger is in the public interest. Rather, PPL appears interested only in how the Commission might decide some hypothetical future merger or restructuring case involving PPL. Since such cases do not exist, they of course are not relevant to whether this merger is in the public interest.

23. PPL's concern about the use of a PECO settlement as binding precedent is an affront to the Commission and every signatory to the Settlement. All interested parties, the ALJs, the Commissioners, and almost any party that ever appears the Commission are well aware that a settlement is not legally binding precedent. The Settlement document includes a recitation of this basic, long-established principle. Therefore, the concern is not relevant to approval of the Settlement.

24. Perhaps the most offensive aspect of PPL's Objections is the request that the Commission issue an order telling potential parties what they may not propose in some hypothetical, future case. PPL is well aware that the Commission cannot and would not stifle other parties' speech. The Commission may always reject any proposal. PPL may always argue such a proposal on the merits. PPL need not agree to any proposal in a future settlement with which it disagrees.

For the foregoing reasons, the PennFuture Parties submit that the Objections of PPL and Councilman Cohen be dismissed and that the Settlement be approved.

Respectfully submitted,

A handwritten signature in black ink that reads "Peter Adels (or)". The signature is written in a cursive, somewhat stylized font.

Peter Meadows Adels

DATED: April 18, 2000

1
2
3 **BEFORE THE**
4 **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

15
16
17 **TESTIMONY OF JOHN ROHRBACH**
18 **ON BEHALF OF PENNFUTURE**
19

20
21 **INTRODUCTION**
22

23
24 **Q. Please state your name, address and for whom you are testifying?**
25

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

30
31 **Q. What is the purpose of your testimony?**
32

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

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

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

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

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

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

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

1 **Part One: Response to PPL's Objections**

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

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

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

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

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

2
3 **Q. Please elaborate.**

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

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

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

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

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

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

1 public benefit of this program investment by PECO.

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

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

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

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

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

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

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

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

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

1 market each year until 2009 is supremely hypocritical. Note that as an
2 advisor to a Commissioner during the PPL restructuring settlement I
3 supported that settlement. I bring up the above points because PPL has
4 challenged the Settlement's renewable investment as market failure.
5

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

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

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

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

2
3 **Q. Describe the settlement's wind investment provisions?**

4
5 A. The Settlement provides that PECO will provide a total of \$32 million in
6 support of renewable energy, of which \$24 million is newly committed
7 funds and the remainder is an accelerated payment of funds previously
8 committed to the Sustainable Development Fund (SDF). Of these
9 commitments, PECO will contribute \$15.5 million to support new wind
10 energy development, enough to build turbines to produce more than 30
11 mW of wind power. This will enable construction of sufficient renewable
12 power for 7500 homes each year, and will remove 51,000 tons of carbon
13 dioxide from the air, reducing global warming. This is the equivalent of
14 planting 7.2 million trees or not driving 126 million miles. The benefits of
15 a growing renewable energy presence in Pennsylvania are significant.
16 They include increased permanent and construction employment levels,
17 the development of "second crops" for farmers based on the land leased
18 to the developers of wind projects, and increased tax revenues for local
19 governments are all benefits associated with renewable energy.

20
21 PECO also will provide \$4 million for installation of rooftop photovoltaic
22 panels to provide personal solar power. PECO will provide \$2.5 million to
23 fund public education on renewable electricity.

24
25 **Q. Please continue. What are the Settlement's other provisions for**
26 **renewable power?**

27
28 A. The first aspect of the settlement addressing retail choice requires that
29 PECO engage in cooperative process to develop streamlined technical

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

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

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

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

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

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

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

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

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

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

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

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

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

20 1. PECO agrees not to market, advertise or promote its Provider of
21 Last Resort service January 1, 2004

22
23 2. PECO will reconcile transition charge revenues for all commercial
24 and industrial accounts as a single class, minimizing volatility of the
25 charges.

26
27 3. Large industrial customers are granted a one-time option to
28 terminate their PECO contract and switch to a competitive supplier.

29

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

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

18
19 **Q. Can you comment on these aspects of the Settlement?**

20
21 A. The above provisions are important additions or adjustments to the
22 current array of policies helping make Pennsylvania's retail choice
23 become the most successful such effort in the US. The above provisions
24 are necessary to continue Pennsylvania's commitment to retail choice in
25 the PECO service territory. They will also benefit green power consumers
26 who want clean energy products at the best possible price. Presently
27 about 80,000 Pennsylvania consumers have purchased some kind of
28 cleaner energy product.

29
30

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

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

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

17
18 **Q. Please continue.**

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

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

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

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

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

21
22
23 **Q. Does this conclude your direct testimony?**

24
25 A. Yes, it does.

Certificate of Service

I hereby certify that I have this day served the foregoing documents on the following in the matter of PECO Energy Company's Application For Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation by hand delivery, fax, and/or e-mail:

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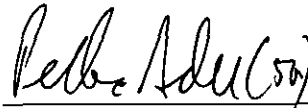
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Dated: April 18, 2000

RECEIVED
00 APR 18 PM 3:57
PA.P.U.C.
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

307383
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
THE CREATION OF A HOLDING
COMPANY AND 92) THE MERGER OF
THE NEWLY FORMED HOLDING
COMPANY AND UNICOM
CORPORATION

00 APR 20¹⁹ AM 8:08

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SECRETARY'S BUREAU

Docket No. A-110550 F0147

DOCKETED

APR 20 2000

ORIGINAL

TESTIMONY OF ERIC JOSEPH EPSTEIN REGARDING
NUCLEAR DECOMMISSIONING, PLANNED OPERATING
LIFE OF PECO'S NUCLEAR GENERATING STATIONS,
SPENT FUEL ISOLATION, LOW-LEVEL RADIOACTIVE
WASTE ISOLATION and
RATE PAYER EQUITY & COMMUNITY INVESTMENT:

Correction & Clarifications

DOCUMENT
FOLDER

DATE: APRIL 19, 2000

45

CORRECTIONS & CLARIFICATIONS

Page 17:

REMEDIES:

- 1) PECO agreed not to import High Level Radioactive Waste onto Peach Bottom;
- 2) PECO agreed not to utilize Mixed Uranium Oxide [MOX] fuel at Limerick, Peach Bottom or Salem.

Clarification: PP&L also expressed interest in MOX and joined a consortium of "electric companies considering the use of plutonium [MOX] left over from the Cold War as fuel for their nuclear reactors...Under the proposal, the utility companies would burn fuel pellets that include small amounts of plutonium oxide in addition to the pellets' traditional ingredient, uranium oxide..." (Ritchenya A. Shepherd, *Associated Press*, September 5, 1996.)

Page 20:

REMEDIES:

- 1) PECO agreed not to import Low-Level Radioactive Waste onto Peach Bottom;
- 2) PECO agreed not to use Mixed Uranium Oxide fuel at Limerick, Peach Bottom or Salem.

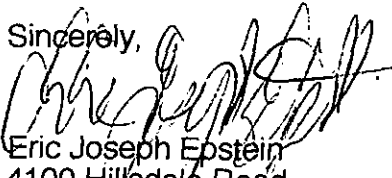
Clarification: PP&L also expressed in MOX and joined a consortium of "electric companies considering the use of plutonium left over from the Cold War as fuel for their nuclear reactors...Under the proposal, the utility companies would burn fuel pellets that include small amounts of plutonium oxide in addition to the pellets' traditional ingredient, uranium oxide..." (Ritchenya A. Shepherd, *Associated Press*, September 5, 1996.)

On page Page 22, my Testimony read:

"To allow PECO to recover 100% of decommissioning funding from rate payers, after the Company was awarded almost \$10 billion in stranded costs as a result of the 1998 Negotiated Settlement, would be a *de facto* endorsement of corporate socialism."

Correction: The \$10 billion dollar figure is incorrect, and should be supplanted by "5.26 billion."

Sincerely,



Eric Joseph Epstein
4100 Hillside Road
Harrisburg, Pennsylvania 17112

ORIGINAL

Before the

PENNSYLVANIA PUBLIC UTILITY COMMISSION

307384

00 APR 28 AM 8:08

Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21 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

RECEIVED
SECRETARY'S BUREAU

Application No. A-110550F0147

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery in accordance with the requirements of 52 Pa. Code § Section 1.54.

The Honorable Judge Charles E. Rainey
Administrative Law Judge
Pennsylvania Public Utility Commission
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1400 West Spring Garden Street
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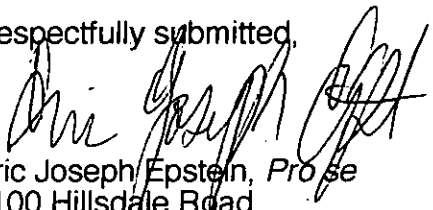
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Respectfully submitted,



Eric Joseph Epstein, Pro se
4100 Hillside Road
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DATE: April 19, 2000



CITY OF PHILADELPHIA
CITY COUNCIL
OFFICE OF THE PRESIDENT

ANNA C. VERNA
PRESIDENT
Room 494 City Hall
Philadelphia, Pennsylvania 19107
686-3412-13
Fax No. 563-3162
COUNCILWOMAN - 2nd DISTRICT

ORIGINAL

308199

A-110550 F0147

April 20, 2000

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room 206
North Office Building
Harrisburg, Pennsylvania 17120

DOCUMENT
FOLDER

RECEIVED
SECRETARY'S BUREAU

00 APR 26 AM 8:16

Re: **Merger of PECO Energy Company
and the UNICOM Corporation**

Dear Secretary McNulty:

Please be advised that there are no actions before the City Council of Philadelphia in the above referenced matter. While individually Councilman David Cohen has an action before the Commission regarding the PECO Energy merger with UNICOM, it does not involve City Council as a whole.

If you have any questions, please contact me at 215-686-3412.

DOCKETED
APR 27 2000

Sincerely,

Anna C. Verna
ANNA C. VERNA

ACV/dmc

44



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITIES
COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265
April 21, 2000

IN REPLY PLEASE
REFER TO OUR FILE

In Re: **A-110550F0147**

(See letter of 2-22-00)

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.

Cancellation Notice

This is to inform you of the following cancellations:

Type, Date: **Initial Hearing - Tuesday, April 25, 2000**
 Further Hearing - Wednesday, April 26, 2000
 Further Hearing - Thursday, April 27, 2000
 Further Hearing - Friday, April 28, 2000

Time: **10:00 a.m. - all days**

Location: **Philadelphia**

Presiding: **Administrative Law Judge Charles E. Rainey, Jr.**

Please mark your records accordingly.

pc: Judge Rainey
June Perry - BPL 111
Eric Levis - BPL 101
Office of Trial Staff (2)
Consumer Advocate
Small Business Advocate
Bill Barrett - FUS
Susan Licon
Beth Plantz
Docket Section
Calendar File

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APR 24 2000

**DOCUMENT
FOLDER**

EEF



**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265
April 24, 2000

IN REPLY PLEASE
REFER TO OUR FILE

In Re: **A-110550F0147**

(See letter dated 04/21/2000)

Application of PECO Energy Company

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

Hearing Notice

This is to inform you that hearings on the above-captioned case will be held as follows:

Type: **Initial and Further Hearings**

Date: **Wednesday-Thursday May 10-11, 2000**

Time: **10:00 a.m.**

Location: **In Hearing Room Number 1
Philadelphia State Office Building
Broad and Spring Garden Streets
Philadelphia, Pennsylvania**

Presiding: **Administrative Law Judge Charles E. Rainey, Jr.
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
Telephone: (215) 560-2105
Fax: (215) 560-3133**

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APR 25 2000

DOCUMENT
FOLDER

Please mark your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Rainey
Steve Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File