

ORIGINAL

A Partnership Including  
Professional Corporations  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
202-756-8000  
Facsimile 202-756-8087  
www.mwe.com

Boston  
Chicago  
London  
Los Angeles  
Miami  
Moscow  
New York  
Orange County  
Silicon Valley  
Vilnius  
Washington, D.C.

Gregory K. Lawrence  
Attorney at Law  
glawrence@mwe.com  
202-756-8330

MCDERMOTT, WILL & EMERY

RECEIVED

June 6, 2000

By Express Mail

James S. McNulty, Secretary  
Office of the Secretary  
Pennsylvania Public Utility Commission  
North Office Building, P.O. Box 3265  
North Street and Commonwealth Avenue  
Harrisburg, PA 17105-3265

DOCKETED

JUN 13 2000

JUN 06 2000

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

A-116550 F0147

**RE: Change of Counsel Designation -- Application of PECO Energy Company for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger with Unicom Corporation.**

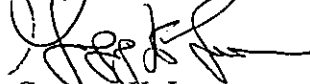
This letter provides notice of a change with respect to law firm and service list designations for Shell Energy Services Co., L.L.C. ("Shell Energy"). Please replace and revise the service list entry for Shell Energy as follows:

Gregory K. Lawrence  
MCDERMOTT, WILL & EMERY  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
Phone: 202.756.8000  
Fax: 202.756.8087  
glawrence@mwe.com

DOCUMENT  
FOLDER

Thank you for your prompt consideration in this matter.

Very truly yours,



Gregory K. Lawrence  
Attorney for  
Shell Energy Services Co., L.L.C.

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

A Partnership Including  
Professional Corporations  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
202-756-8000  
Facsimile 202-756-8087  
www.mwe.com

Gregory K. Lawrence  
Attorney at Law  
glawrence@mwe.com  
202-756-8330

Boston  
Chicago  
London  
Los Angeles  
Miami  
Moscow  
New York  
Orange County  
Silicon Valley  
Vilnius  
Washington, D.C.

**MCDERMOTT, WILL & EMERY**

June 6, 2000

RECEIVED

**By Express Mail**

James S. McNulty, Secretary  
Office of the Secretary  
Pennsylvania Public Utility Commission  
North Office Building, P.O. Box 3265  
North Street and Commonwealth Avenue  
Harrisburg, PA 17105-3265

JUN 06 2000  
A PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

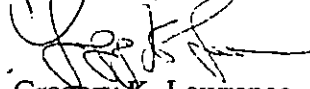
**RE: Change of Counsel Designation -- Application of PECO Energy Company for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger with Unicom Corporation.**

This letter provides notice of a change with respect to law firm and service list designations for Shell Energy Services Co., L.L.C. ("Shell Energy"). Please replace and revise the service list entry for Shell Energy as follows:

Gregory K. Lawrence  
MCDERMOTT, WILL & EMERY  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
Phone: 202.756.8000  
Fax: 202.756.8087  
glawrence@mwe.com

Thank you for your prompt consideration in this matter.

Very truly yours,



Gregory K. Lawrence  
Attorney for  
*Shell Energy Services Co., L.L.C.*

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



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

IN REPLY PLEASE  
REFER TO OUR FILE

DOCUMENT  
FOLDER

June 8, 2000

514791

00 JUN - 8 AM 10: 22

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

RECEIVED  
SECRETARY'S BUREAU

**DOCKETED**  
JUN 08 2000

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

Dear Secretary McNulty:

The Office of Trial Staff (OTS) will not be filing Exceptions to the  
Recommended Decision of Administrative Law Judge (ALJ) Charles E. Rainey, Jr.  
in the above-captioned matter. We do, however, reserve the right to file Reply  
Exceptions.

Copies are being served upon all active parties of record.

Very truly yours,

Kenneth L. Mickens  
Senior Prosecutor  
Office of Trial Staff

c: ALJ Charles E. Rainey, Jr.  
Parties of Record

32

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

00 JUN -8 AM 10: 22

RECEIVED  
SECRETARY'S BUREAU  
**Docket No.**  
**A-110550F0147**

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing, the **Letter in lieu of  
Exceptions**, dated June 8, 2000, either personally, by fax upon the persons  
addressed below:

Thomas P. Gadsden, Esquire  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Paul R. Bonney, Esquire  
PECO Energy Company  
2301 Market Street  
P. O. Box 8699  
Philadelphia, PA 19103-8699

Honorable Allyson Y. Schwartz  
Senate of Pennsylvania  
Senate Box 203004  
Harrisburg, PA 17120-3004

John Hanger  
Citizens for Pennsylvania's Future  
212 Locust Court  
Suite 410  
Harrisburg, PA 17101

Peter Meadows Adel  
Charles McPhedran  
PennFuture  
117 South 17th Street  
Suite 1801  
Philadelphia, PA 19103

Eric Joseph Epstein, Pro Se  
4100 Hillsdale Road  
Harrisburg, PA 17112

Christopher B. Craig, Esquire  
Senate Democratic Appropriations  
Committee  
Room 545 Main Capitol Building  
Harrisburg, PA 17120

Daniel C. Clearfield, Esquire  
Gerald Gornish, Esquire  
Kevin Moody, Esquire  
Wolf, Block, Schorr & Solis-Cohen, LLP  
212 Locust Street  
Suite 300  
Harrisburg, PA 17101

Amy Gold  
Shell Energy Services Company  
P. O. Box 4402  
Houston, TX 77210

Paul F. Forshay, Esquire  
Gregory K. Lawrence, Esquire  
Sutherland, Asbill & Brennan, LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004-2415

David M. Kleppinger, Esquire  
Charis M. Burak, Esquire  
McNees, Wallace and Nurick  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166

Paul E. Russell, Esquire  
PP&L Inc.  
Two North Ninth Street  
Allentown, PA 18101

Donald A. Kaplan, Esquire  
Leanne M. Bober, Esquire  
Preston Gates Ellis & Rouvelas Meeds, LLP  
1735 New York Avenue NW  
Suite 500  
Washington, DC 20006

Craig A. Doll, Esquire  
25 North Front Street  
Second Floor  
Harrisburg, PA 17101-1606

John S. Halsted, Esquire  
Gawthrop Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Joseph Otis Minott, Esquire  
Clean Air Council  
135 South 19th Street  
Suite 300  
Philadelphia, PA 19103

Michael Fiorentino, Esquire  
Clean Air Council  
105 North Front Street  
Suite 106  
Harrisburg, PA 17101

Brian P. Downey, Esq.  
Thomas B. Schmidt, III, Esq.  
John A. Greenbaum, Esq.  
Pepper Hamilton, LLP  
200 One Keystone Plaza  
North Front and Market Streets  
Harrisburg, PA 17108-1181

Kenneth M. Barna, Esquire  
Wayne R. Frigard, Esquire  
Rubin & Rudman, LLP  
50 Rowes Wharf  
Boston, MA 02110

Joseph A. Dworetzky, Esquire  
Matthew A. Hamermesh, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square  
27th Floor  
Philadelphia, PA 19103

Tanya J. McCloskey, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor Forum Place  
Harrisburg, PA 17101-1923

Gregory J. Pastore  
619 Pemberton Street  
Philadelphia, PA 19147

Philip A. Bertocci, Esquire  
Edward A. McCool, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102

John L. Munsch, Esquire  
Deborah J. Henry, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire  
Allegheny Energy Supply Company, LLC  
Roseytown  
RR 12 Box 1000  
Greensburg, PA 15601

James H. Cawley, Esquire  
Rhoads & Sinon  
12th Floor  
One South Market Street  
P. O. Box 1146  
Harrisburg, PA 17108

Stanford L. Levin, Ph.D.  
Southern Illinois University at Edwardsville  
Room 3130, Building III  
Edwardsville, IL 62026-1102

Bernard A. Ryan, Jr., Esquire  
Office of Small Business Advocate  
Suite 1102 Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 South Meramec Avenue  
St. Louis, MO 63105

David Cohen, Member  
Philadelphia City Council  
Room 588 City Hall  
Philadelphia, PA 19107

Robert Jaffe, Esquire  
Room 588 City Hall  
Philadelphia, PA 19107

John L. Hall, Esquire  
Unruh, Turner, Burke & Frees, PC  
P. O. Box 515  
17 West Gay Street  
West Chester, PA 19381-0515

Judith L. Mondre, President  
Mondre Energy, Inc.  
1601 Market Street  
Suite 1750  
Philadelphia, PA 19103

John Will Ongman, Esquire  
Marc D. Machlin, Esquire  
Wayne R. Frigard, Esquire  
Pepper Hamilton LLP  
600 Fourteenth St. NW  
Washington, DC 20005-2004

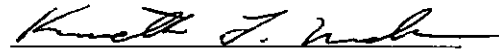
Carville B. Collins, Esquire  
Piper, Marbury, Rudnick & Wolfe  
6225 Smith Avenue  
Baltimore, MD 21209-3600

Honorable Charles E. Rainey Jr  
Administrative Law Judge  
PA Public Utilities Commission  
1302 State Office Building  
1400 W Spring Garden Street  
Philadelphia, PA 19130

Andrew Altman  
400 S Camac Street  
Philadelphia, PA 19147

Dennis Walters  
2314 Delancey Place  
Philadelphia, PA 19103

Donald McCloskey, President  
Municipal Building  
250 Pond Street  
Bristol, PA 19007



Kenneth L. Mickens  
Senior Prosecutor  
Office of Trial Staff

Docket No. A-110550F0147  
Date: June 8, 2000



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

IRWIN A. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
E-Mail: paoca@ptd.net

DOCUMENT  
FOLDER

June 9, 2000

RECEIVED  
00 JUN -9 PM 4:18  
SECRETARY'S BUREAU

James J. McNulty, Secretary  
PA Public Utility Commission  
Room B-20, North Office Bldg.  
Harrisburg, PA 17105-3265

Re: Application of PECO Energy Company, Pursuant  
To Chapter 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  
Docket No. A-110550F0147

DOCKETED  
JUN 12 2000

Dear Secretary McNulty:

The Office of Consumer Advocate will not be filing Exceptions in the above  
referenced case. We do reserve the right to file Reply Exceptions on June 14, 2000.

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

Sincerely,

Tanya J. McCloskey  
Senior Assistant Consumer Advocate

Enclosures

cc: All parties of record  
Honorable Charles E. Rainey, ALJ

56004

ORIGINAL

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 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 9<sup>th</sup> day of June, 2000

SERVICE BY FACSIMILE AND FIRST CLASS MAIL, AND INTER-OFFICE MAIL

Kenneth L. Mickens, Esq.  
Kandy Melillo, Esq.  
Office of Trial Staff  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pa 17105-3265

Hon. Allyson Y. Schwartz  
Senate Box 203004  
Main Capital Bldg.  
Room 182  
Harrisburg, PA 17120

Daniel Clearfield, Esq.  
Kevin Moody, Esq.  
Wolf, Block, Schorr and Solis-Cohen  
Suite 300  
212 Locust Street  
Harrisburg, PA 17101

Bernard A. Ryan, Jr., Esq.  
Small Business Advocate  
Suite 1102 Commerce Bldg.  
300 North Second Street  
Harrisburg, PA 17101

David Kleppinger, Esq.  
Charis M. Burak, Esq.  
McNees Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Christopher B. Craig, Esq.  
Senate Democratic Appropriations  
Committee  
Room 545 Main Capitol Bldg.  
Harrisburg, PA 17120

William T. Hawke, Esq.  
Malatesta Hawke & Mckeon, LLP  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17101

John Hanger  
Citizens for Pennsylvania's Future  
Suite 410  
212 Locust Court  
Harrisburg, PA 17101

RECEIVED  
00 JUN -9 PM 4: 18  
SECRETARY'S BUREAU

James H. Cawley, Esq.  
Rhoads & Sinon  
12<sup>th</sup> Floor  
One South Market Street  
Dauphin Building  
P. O. Box 1146  
Harrisburg, PA 17108

Eric J. Epstein, Esq.  
4100 Hillsdale Road  
Harrisburg, PA 17112

Michael Fiorentino, Esq.  
Clean Air Council  
Suite 106  
105 N. Front Street  
Harrisburg, PA 17101

Robert Jaffe, Esq.  
City of Philadelphia, City Council  
Room 588 City Hall  
Philadelphia, PA 19107

Paul Bonney, Esq.  
Ward Smith, Esq.  
Kent D. Murphy, Esq.  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, Pa 19101-8699

Paul Russell, Esq.  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101

Donald A. Kaplan, Esq.  
Leanne M. Bober, Esq.  
Preston, Gates, Ellis & Rouvelas Meeds  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006

Thomas P. Gadsden, Esq.  
Anthony DeCusatis, Esq.  
Morgan, Lewis & Bockius  
1701 Market Street  
Philadelphia, PA 19103-2921

Gregory Lawrence, Esq.  
C. A. Weiser, Esq.  
Sutherland, Asbill & Brennan, LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004-2415

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Greg Pastore  
619 Pemberton Street  
Philadelphia, PA 19147

John Will Ongman, Esq.  
Marc D. Machlin, Esq.  
Pepper Hamilton, LLP  
600 Fourteenth Street, NW  
Washington, DC 20005

Kenneth M. Barna, Esq.  
Rubin & Rudman, LLP  
50 Rowes Wharf  
Boston, MA 02110

Phil Bertocci  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102

John L. Munsch, Esq.  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Peter Meadows-Adels  
Charles McPhedran  
Suite 1801  
117 S. 17<sup>th</sup> Street  
Philadelphia, PA 19103

John L. Hall, Esq.  
Unruh Turner Burke & Frees PC  
P. O. Box 515  
West Chester, PA 19381-0515

Amy Hammersmith  
2312 Parrish Street  
Philadelphia, PA 19130

John S. Halstead, Esq.  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Norbert Smith, Esq.  
Patricia J. Clark, Esq.  
Allegheny Energy Supply  
Roseytown Road  
RR 12, Box 1000  
Greensburg, PA 15601

Joseph A. Dworetzky, Esq.  
Hangley, Aronchick, Segal & Pudlin  
27<sup>th</sup> Floor  
One Logan Square  
Philadelphia, PA 19103-6933

Carville B. Collins, Esq.  
Piper Marbury Rudick & Wolfe, LLP  
36 South Charles Street  
Baltimore, MD 21201-3018

Steven P. Hershey  
Connolly, Epstein, Chicco, Faxman, et al  
9<sup>th</sup> Floor  
1515 Market Street  
Philadelphia, PA 19102-1909

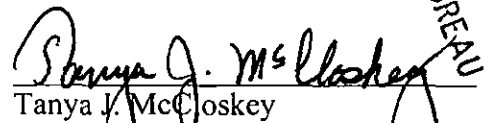
Amy Gold  
P. O. Box 4402  
Houston, TX 77210

Andrew Altman  
400 S. Camac Street  
Philadelphia, PA 19147

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

Craig A. Doll, Esq.  
25 North Front Street  
Second Floor  
Harrisburg, PA 17101-1606

Brian P. Downey, Esq.  
John A. Greenbaum, Esq.  
Pepper Hamilton, LLP  
200 One Keystone Plaza  
North Front and Market Streets  
P. O. Box 1181  
Harrisburg, PA 17108-1181

  
Tanya J. McCloskey  
Senior Assistant Consumer Advocate

Counsel For  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

55995

RECEIVED  
00 JUN -9 PM 4:18  
SECRETARY: P.U.C. BUREAU

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

DOCUMENT  
FOLDER

Bernard A. Ryan, Jr  
Small Business Advocate

June 9, 2000

(717) 783-2525  
(717) 783-2831 (FAX)

HAND\_DELIVERED

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

DOCKETED  
JUN 09 2000

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

Dear Mr. McNulty:

Please be advised that the Office Small Business Advocate will not be filing exceptions to the Recommended Decision of Judge Charles Rainey. A copy of this letter has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

Bernard A. Ryan, Jr.  
Small Business Advocate

Enclosures

cc: Cheryl Walker Davis, Director  
Office of Special Assistants

Hon. Charles F. Rainey, Jr.  
Administrative Law Judge

Parties of Record

RECEIVED  
00 JUN - 9 PM 12: 38  
PA P.U.C.  
SECRETARY'S BUREAU

42

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 :

Certificate\_of\_Service

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

Hon. Charles E. Rainey, Jr.  
Administrative Law Judge  
Pa. Public Utility Commission  
1302 Philadelphia State Office Bldg.  
Broad and Spring Garden Streets  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 - Fax

Donald A. Kaplan, Esquire  
Leanne M. Bober, Esquire  
Preston, Gates, Ellis &  
Rouvelas, Meeds  
1735 New York Avenue, NW, Suite 500  
Washington, DC 20006  
(202) 662-8466  
(202) 331-1024 (fax)

Paul Russell, Esquire  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101-1179  
(610) 774-4254  
(610) 774-6726 (fax)

Craig A. Doll, Esquire  
25 North Front Street, 2nd Fl.  
Harrisburg, PA 17101-1606  
(Conectiv)  
(717) 230-9555  
(717) 230-9750 (fax)

Tanya J. McCloskey, Esquire  
Office of Consumer Advocate  
555 Walnut Street 5th FL Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)

Thomas P. Gadsden, Esquire  
Morgan, Lewis & Bockius  
1701 Market Street  
Philadelphia, PA 19103-3300  
(215) 963-5448  
(215) 963-5299 (fax)

Kenneth L. Mickens, Esquire  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
(717) 787-1976  
(717) 772-2677 (fax)

Peter Meadows Adels, Esquire  
Adels, Charles, McPedran  
117 S. 17th Street, Suite 1801  
Philadelphia, PA 19103

RECEIVED  
SECRETARY'S BUREAU  
P.A. PUBLIC  
UTILITY  
COMMISSION

00 JUN -9 PM12:38

RECEIVED

Paul R. Bonney, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101  
(215) 841-5544  
(215) 568-3389 (fax)

Eric Joseph Epstein  
4100 Hillside Road  
Harrisburg, PA 17112

David M. Kleppinger, Esquire  
Charis M. Burak, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(PAIEUG, IECPA, DII & City of Phila.)  
(717) 232-8000  
(717) 236-2665 (fax)

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(724) 837-3000  
(724) 838-6177 (fax)

John S. Halsted, Esquire  
Gawthrop, Greenwood & Halstead  
119 North High Street  
West Chester, PA 19381-0562  
(610) 696-8225

Carol A. Weiser, Esquire  
Paul F. Forshay, Esquire  
Gregory K. Lawrence, Esquire  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue NW  
Washington, DC 20004-2415

Daniel Clearfield, Esquire  
Gerald Gornish, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
Locust Court Building, Suite 300  
212 Locust Street  
Harrisburg, PA 17101  
(Enron)  
(717) 237-7160  
(717) 237-7161 (fax)

Joseph A. Dworetzky, Esquire  
Matthew A. Hamermesh, Esquire  
Handley, Aronchick Segal & Pudlin  
One Logan Square 12th Floor  
Philadelphia, PA 19103  
(MAPSA)  
(215) 496-7014  
(215) 568-0300 (fax)

John L. Hall, Esquire  
Unruh, Turner, Burke & Frees  
P.O. Box 515  
West Chester, PA 19381-0515  
(610) 692-1371  
(610) 918-1361 (fax)

Amy Gold  
Shell Energy Services  
1221 Lamon  
Houston, TX 77010

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire  
Allegheny Energy Supply Company  
Roseytown  
RR 12, Box 1000  
Greensburg, PA 15601  
(724) 838-6217  
(724) 830-5184 (fax)

Philip A. Bertocci, Esquire  
Edward A. McCool, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102  
(CEPA)  
(215) 981-3702  
(215) 981-0434 (fax)

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

Andrew Altman  
400 S. Camac Street  
Philadelphia, PA 19147

Michael Fiorentino, Esquire  
Clean Air Council  
105 N. Front Street, Suite 106  
Harrisburg, PA 17101  
(717) 230-8807  
(717) 230-8808 (fax)

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141

John Will Ongman, Esquire  
Marc D. Machlin, Esquire  
Pepper Hamilton  
600 Fourteenth Street NW  
Washington, DC 20005  
(Amtrak)  
(202) 220-1415  
(202) 220-1665 (fax)

Kenneth M. Barna, Esquire  
Wayne R. Frigard, Esquire  
Rubin & Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110  
(Amtrak)  
(617) 330-7006  
(617) 549-9556 (fax)

John Hanger, Esquire  
Citizens for Pennsylvania's Future  
212 Locust Court, Suite 410  
Harrisburg, PA 17101

Christopher B. Craig, Esquire  
Senate Democratic Appropriations  
Committee  
Room 545, Main Capitol Building  
Harrisburg, PA 17120

William T. Hawke, Esquire  
Malatesta, Hawke & McKeon LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
(717) 236-1300  
(717) 236-4841 (fax)

Steven P. Hershey, Esquire  
Connolly, Epstein, Chicco, Faxman  
1515 Market Street, 9th Floor  
Philadelphia, PA 19102-1909

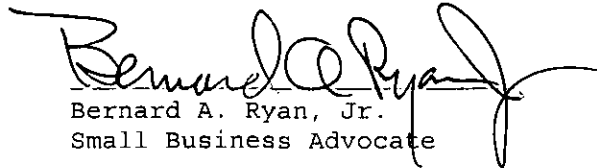
Robert Jaffe, Esquire  
City of Philadelphia, City Council  
Room 588 City Hall  
Philadelphia, PA 19107

Carville B. Collins, Esquire  
Piper Marbury Rudick & Wolfe  
36 South Charles Street  
Baltimore, MD 21201-3018

Hon. Allyson Y. Schwartz  
Senate Box 203004  
Room 182, Main Capitol Building  
Harrisburg, PA 17120

James H. Cawley, Esquire  
Rhoads & Sinon  
12th Floor, Dauphin Building  
One South Market Street  
P.O. Box 1146  
Harrisburg, PA 17108

Cheryl Walker Davis, Director  
Office of Special Assistants  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(FAX and first class mail)

  
Bernard A. Ryan, Jr.  
Small Business Advocate

Dated: June 7, 2000

DOCUMENT  
FOLDER

MCNEES, WALLACE & NURICK  
ATTORNEYS AT LAW

100 PINE STREET  
P. O. BOX 1166  
HARRISBURG, PA 17108-1166  
TELEPHONE (717) 232-8000  
FAX (717) 237-5300

<http://www.mwn.com>

RECEIVED

00 JUN -9 PM 2:31

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

CHARIS M. BURAK

DIRECT DIAL: (717) 237-5437

E-MAIL ADDRESS: CBURAK@MWN.COM

ORIGINAL

June 9, 2000

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

DOCKETED  
JUN 12 2000

VIA HAND DELIVERY

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


Dear Secretary McNulty:

Please be advised that the Philadelphia Area Industrial Energy Users Group ("PAIEUG") will not be filing Exceptions in the above-referenced proceeding. PAIEUG reserves the right, however, to file Reply Exceptions, as necessary.

As evidenced by the attached Certificate of Service, all parties in this proceeding are being duly served with a copy of this letter. If you have any questions, please contact the undersigned.

Very truly yours,

MCNEES, WALLACE & NURICK

By   
Charis M. Burak

CMB/lhe

c: Administrative Law Judge Charles E. Rainey, Jr. (via facsimile and first class mail)  
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).

VIA HAND DELIVERY

Tanya J. McCloskey, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, Fifth Floor  
Harrisburg, PA 17101

Bernard A. Ryan, Jr., Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Kenneth L. Mickens, Esq.  
Office of Trial Staff  
PA Public Utility Commission  
901 Rear North 7<sup>th</sup> Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Honorable Allyson Y. Schwartz  
4<sup>th</sup> District  
Senate Box 203004  
Harrisburg, PA 17120

John Hanger, Esq.  
212 Locust Court, Suite 410  
Harrisburg, PA 17101

Christopher B. Craig, Esq.  
Room 545 Main Capitol Building  
Harrisburg, PA 17120

Daniel Clearfield, Esq.  
Gerald Gornish, Esq.  
Kevin Moody, Esq.  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Michael Fiorentino, Esq.  
Clean Air Council  
105 N. Front Street  
Suite 106  
Harrisburg, PA 17101

RECEIVED  
00 JUN -9 PM 2:31  
PA.P.U.C.  
SECRETARY'S BUREAU

**CERTIFICATE OF SERVICE**

Docket No. A-110550F0147

Page 2

**VIA FACSIMILE AND FIRST CLASS MAIL**

Paul R. Bonney, Esq.  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Thomas P. Gadsden, Esq.  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Paul E. Russell, Esq.  
PP&L Inc.  
Two North Ninth Street  
Allentown, PA 18101-1179

Donald A. Kaplan, Esq.  
Leanne M. Bober, Esq.  
Preston, Gates, Ellis & Rouvelas, Meeds LLP  
Suite 500  
1735 New York Avenue NW  
Washington, DC 20006

Peter Meadows Adels, Esq.  
PennFuture  
117 S. 17<sup>th</sup> Street, Suite 1801  
Philadelphia, PA 19103

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

John S. Halsted, Esq.  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Kenneth M. Barna, Esq.  
Wayne R. Frigard, Esq.  
Rubin & Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110

Joseph A. Dworetzky, Esq.  
Hangley, Aronchick Segal & Pudlin  
One Logan Square 27<sup>th</sup> Floor  
Philadelphia, PA 19103

John L. Hall, Esq.  
Unruh, Turner, Burke & Frees, P.C.  
P. O. Box 515  
West Chester, PA 19381-0515

Joseph Otis Minott, Esq.  
135 S. 19<sup>th</sup> Street,  
Suite 300  
Philadelphia, PA 19103

Gregory K. Lawrence, Esq.  
Sutherland, Asbill & Brennan LLP  
1275 Pennsylvania Avenue NW  
Washington, DC 20004-2415

John Will Ongman, Esq.  
Pepper Hamilton LLP  
600 Fourteenth Street NW  
Washington, DC 20005-2004

John L. Munsch, Esq.  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Patricia J. Clark, Esq.  
Allegheny Energy Supply  
800 Cabin Hill Drive  
Greensburg, PA 15601

Philip A. Bertocci, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102

Amy Gold  
Shell Energy Services Co., L.L.C.  
P.O. Box 4402  
Houston, TX 77210

**CERTIFICATE OF SERVICE**

Docket No. A-110550F0147

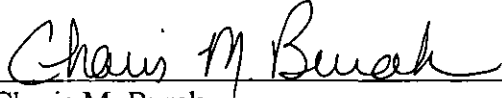
Page 3

**VIA FIRST CLASS MAIL**

Andrew Altman  
400 S Camac Street  
Philadelphia, PA 19147

Patricia McNamara  
6048 Ogonty Avenue  
Philadelphia, PA 19141

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

  
\_\_\_\_\_  
Charis M. Burak

Dated this 9<sup>th</sup> day of June , 2000, in Harrisburg, Pennsylvania.

DOCUMENT  
FOLDER

MCNEES, WALLACE & NURICK

ATTORNEYS AT LAW

100 PINE STREET  
P. O. BOX 1166  
HARRISBURG, PA 17108-1166  
TELEPHONE 1717 232-8000  
FAX 1717 237-5300

<http://www.mwn.com>

DOCKETED

JUN 12 2000

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

00 JUN -9 PM 2:31

RECEIVED

CHARIS M. BURAK

DIRECT DIAL: (717) 237-5437

E-MAIL ADDRESS: CBURAK@MWN.COM

June 9, 2000

VIA HAND DELIVERY

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

ORIGINAL

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

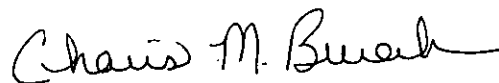
Dear Secretary McNulty:

Please be advised that the City of Philadelphia will not be filing Exceptions in the above-referenced proceeding. The City reserves the right, however, to file Reply Exceptions, as necessary.

As evidenced by the attached Certificate of Service, all parties in this proceeding are being duly served with a copy of this letter. If you have any questions, please contact the undersigned.

Very truly yours,

MCNEES, WALLACE & NURICK

By   
Charis M. Burak

CMB/lhe

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

45

**CERTIFICATE OF SERVICE**

Docket No. A-110550F0147

Page 2

**VIA FACSIMILE AND FIRST CLASS MAIL**

Paul R. Bonney, Esq.  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Thomas P. Gadsden, Esq.  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Paul E. Russell, Esq.  
PP&L Inc.  
Two North Ninth Street  
Allentown, PA 18101-1179

Donald A. Kaplan, Esq.  
Leanne M. Bober, Esq.  
Preston, Gates, Ellis & Rouvelas, Meeds LLP  
Suite 500  
1735 New York Avenue NW  
Washington, DC 20006

Peter Meadows Adels, Esq.  
PennFuture  
117 S. 17<sup>th</sup> Street, Suite 1801  
Philadelphia, PA 19103

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

John S. Halsted, Esq.  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Kenneth M. Barna, Esq.  
Wayne R. Frigard, Esq.  
Rubin & Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110

Joseph A. Dworetzky, Esq.  
Hangle, Aronchick Segal & Pudlin  
One Logan Square 27<sup>th</sup> Floor  
Philadelphia, PA 19103

John L. Hall, Esq.  
Unruh, Turner, Burke & Frees, P.C.  
P. O. Box 515  
West Chester, PA 19381-0515

Joseph Otis Minott, Esq.  
135 S. 19th Street,  
Suite 300  
Philadelphia, PA 19103

Gregory K. Lawrence, Esq.  
Sutherland, Asbill & Brennan LLP  
1275 Pennsylvania Avenue NW  
Washington, DC 20004-2415

John Will Ongman, Esq.  
Pepper Hamilton LLP  
600 Fourteenth Street NW  
Washington, DC 20005-2004

John L. Munsch, Esq.  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Patricia J. Clark, Esq.  
Allegheny Energy Supply  
800 Cabin Hill Drive  
Greensburg, PA 15601

Philip A. Bertocci, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102

Amy Gold  
Shell Energy Services Co., L.L.C.  
P.O. Box 4402  
Houston, TX 77210

**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).

**VIA HAND DELIVERY**

Tanya J. McCloskey, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, Fifth Floor  
Harrisburg, PA 17101

Bernard A. Ryan, Jr., Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Kenneth L. Mickens, Esq.  
Office of Trial Staff  
PA Public Utility Commission  
901 Rear North 7<sup>th</sup> Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Honorable Allyson Y. Schwartz  
4<sup>th</sup> District  
Senate Box 203004  
Harrisburg, PA 17120

John Hanger, Esq.  
212 Locust Court, Suite 410  
Harrisburg, PA 17101

Christopher B. Craig, Esq.  
Room 545 Main Capitol Building  
Harrisburg, PA 17120

Daniel Clearfield, Esq.  
Gerald Gornish, Esq.  
Kevin Moody, Esq.  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Michael Fiorentino, Esq.  
Clean Air Council  
105 N. Front Street  
Suite 106  
Harrisburg, PA 17101

RECEIVED  
00 JUN - 9 PM 2:31  
PA.P.U.C.  
SECRETARY'S BUREAU

**CERTIFICATE OF SERVICE**

Docket No. A-110550F0147

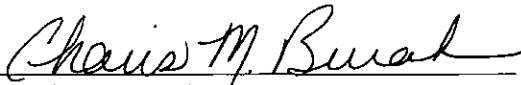
Page 3

**VIA FIRST CLASS MAIL**

Andrew Altman  
400 S Camac Street  
Philadelphia, PA 19147

Patricia McNamara  
6048 Ogonty Avenue  
Philadelphia, PA 19141

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

  
\_\_\_\_\_  
Charis M. Burak

Dated this 9<sup>th</sup> day of June , 2000, in Harrisburg, Pennsylvania.



# PECO ENERGY

Legal Department

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

James W. Durham  
Senior Vice President  
and General Counsel

Edward J. Cullen, Jr.  
Deputy General Counsel

Sandra H. Byrne  
Legal Administrator

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

June 9, 2000

## Hand Deliver

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

**DOCKETED**  
JUN 13 2000

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

Dear Secretary McNulty:

This letter is to inform you that PECO Energy takes no Exceptions to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. in the above captioned proceeding.

Sincerely,

*Paul R. Bonney*  
Paul R. Bonney

PRB/mbo

Enclosures

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

DOCUMENT  
FOLDER  
00 JUN - 9 PM 3:35  
PA.P.U.C.  
SECRETARY'S BUREAU  
RECEIVED  
63

DOCUMENT  
FOLDER

DONALD A. KAPLAN  
DONK@PRESTONGATES.COM  
(202) 662-8466

June 9, 2000

RECEIVED

JUN 09 2000

VIA FACSIMILE AND FEDERAL EXPRESS

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
North Office Building, Room B-20  
North Street and Commonwealth Avenue  
Harrisburg, Pennsylvania 17105-3265

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

Pursuant to your letter issued June 1, 2000 in the above-captioned case, enclosed for filing are an original and nine (9) copies of the Exceptions of PPL Electric Utilities Corporation - Intervenor to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr.

In compliance with your letter, a copy of this document is also being provided to the Office of Special Assistants and each party by 4:30 p.m. today. As evidenced by the attached Certificate of Service, all parties to the proceeding are also being served by overnight delivery. A copy of this document is also being provided on an appropriate disk in Microsoft Word 6.0 format to the Office of Special Assistants.

ND

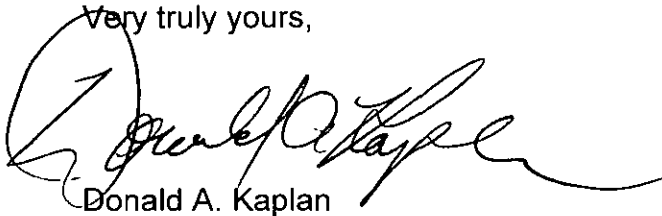
James J. McNulty, Secretary  
June 9, 2000  
Page 2

Pursuant to 52 Pa. Code § 1.11, the enclosed documents are to be deemed filed on June 9, 2000, which is the date they were deposited with an overnight express delivery service as shown on the delivery receipt attached to the mailing envelope.

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald A. Kaplan". The signature is fluid and cursive, with a large initial "D" and "K".

Donald A. Kaplan

Enclosures

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

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

---

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

Docket No. A-110550 F0147

RECEIVED

JUN 09 2000

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

---

**CERTIFICATE OF SERVICE**

---

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

**Via Federal Express**

**Parties to PECO Energy's Application A-110550 F0147:**

John Hanger, Esquire  
Citizens for Pennsylvania's Future  
212 Locust Court, Suite 410  
Harrisburg, PA 17101

Christopher B. Craig, Esquire  
The Honorable Vincent J. Fumo  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120

Peter Meadows Adels  
Charles McPhedran  
Citizens for Pennsylvania's Future  
117 S. 17<sup>th</sup> Street, Suite 1801  
Philadelphia, PA 19103

Eric Joseph Epstein  
Tri County OIC  
2107 North Sixth Street  
Harrisburg, PA 17110

Gregory K. Lawrence, Esquire  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, DC 20005-3096

Charis M. Burak, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166

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

Daniel Clearfield, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
Locust Court Building, Suite 300  
212 Locust Street  
Harrisburg, PA 17101

John S. Halsted, Esquire  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Irwin A. Popowsky, Esquire  
Tanya McCloskey, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1921

Joseph Otis Minnott, Esquire  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103

Thomas B. Schmidt, III, Esquire  
Brian P. Downey, Esquire  
Pepper Hamilton LLP  
200 One Keystone Plaza  
N. Front & Market Streets  
Harrisburg, PA 17108-1181

Kenneth M. Barna, Esquire  
Wayne R. Frigard, Esquire  
Rubin & Rudman, LLP  
50 Rowes Wharf  
Boston, MA 02110

Gerald Gornish, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
1650 Arch Street, 22<sup>nd</sup> Floor  
Philadelphia, PA 19103-2097

Kevin Moody, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
1650 Arch Street – 22<sup>nd</sup> Floor  
Philadelphia, PA 19103-2097

Bernard A. Ryan, Jr., Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

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

Michael Fiorentino, Esquire  
Clean Air Council  
105 N. Front Street, Suite 106  
Harrisburg, PA 17101

John Will Ongman, Esquire  
Marc D. Machlin, Esquire  
Pepper Hamilton LLP  
600 Fourteenth Street, NW  
Washington, DC 20005-2004

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire  
Allegheny Energy Supply Company, LLC  
Roseytown  
RR12, Box 1000  
Greensburg, PA 15601

Phil Bertocci, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102-2505

Joseph A. Dworetzky, Esquire  
Matthew Hamermesh, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square, 27th Floor  
Philadelphia, PA 19103-6933

John L. Munsch, Esquire  
Deborah J. Henry, Esquire  
Allegheny Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Kenneth L. Mickens, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
901 North 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17105-3265

Robert Jaffe, Esquire  
City Hall - Room 588  
Philadelphia, PA 19107

Paul R. Bonney, Esquire  
PECO Energy Company  
2301 Market Street S23-1  
Philadelphia, PA 19103

Christopher J. Townsend, Esq.  
Piper Marbury Rudnick & Wolfe  
203 N. LaSalle St., #1500  
Chicago, IL 60601

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141

James H. Cawley, Esquire  
Rhoads & Sinon  
One South Market Street 12<sup>th</sup> Floor  
Dauphin Building  
Harrisburg, PA 17108

John L. Hall, Esquire  
Unruh Turner Burke & Frees PC  
17 West Gay Street  
West Chester, PA 19381-0515

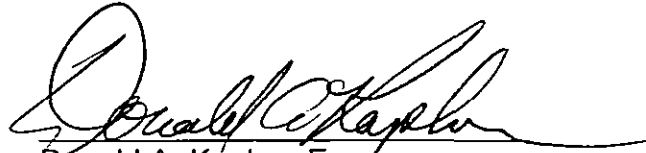
Gregory J. Pastore  
619 Pemberton Street  
Philadelphia, PA 19147

Amy Gold  
Shell Energy Services Co., L.L.C.  
P.O. Box 4402  
Houston, TX 77210

Thomas P. Gadsden, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Carville B. Collins, Esq.  
Piper Marbury Rudnick & Wolfe  
6225 Smith Ave.  
Baltimore, MD 21209-3600

Dated this 9th day of June, 2000

A handwritten signature in black ink, appearing to read "Donald A. Kaplan". The signature is fluid and cursive, with a large initial "D" and "K".

Donald A. Kaplan, Esq.  
Preston Gates Ellis &  
Rouvelas Meeds LLP  
Suite 500  
1735 New York Avenue, N.W.  
Washington, D.C. 20006  
Ph: (202) 628-1700  
Fax: (202) 331-1024

Counsel for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. A-110550 F0147

**DOCKETED**  
JUN 13 2000

**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION - INTERVENOR  
TO THE RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE  
CHARLES E. RAINEY, JR.**

**RECEIVED**

JUN 09 2000

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU  
Donald A. Kaplan, Esq.  
Caryn Blythe Houck, Esq.  
Preston Gates Ellis &  
Rouvelas Meeds LLP  
Suite 500  
1735 New York Avenue, N.W.  
Washington, D.C. 20006  
Ph: (202) 628-1700  
Fax: (202) 331-1024

**DOCUMENT  
FOLDER**

Paul E. Russell, Esq.  
Associate General Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, Pennsylvania 18101  
Ph: (610) 774-4254  
Fax: (610) 774-6726

Attorneys for PPL Electric Utilities  
Corporation

Dated: June 9, 2000

## TABLE OF CONTENTS

I.	Introduction and Summary of Argument.....	1
II.	Specific Exceptions .....	4
1.	The Recommended Decision Failed to Clarify that the Joint Petition May Not Be Used as Evidence to Support Relief Against Another Pennsylvania Electric Utility. ....	4
2.	The Recommended Decision Disregarded 66 Pa.C.S. §332(b) in Failing to Find that the Joint Petition Addresses Concerns That Are Unique to PECO and Are Neither Material Nor Relevant to the Activities of Other Public Utilities. ....	8
A.	The Law Requires that Irrelevant and Immaterial Evidence Be Excluded from Commission Proceedings. ....	10
B.	The Evidence Submitted in Support of the Joint Petition Demonstrates that the Settlement Is Relevant Only to PECO and its Merger with Unicom.....	11
3.	The Recommended Decision Is Contrary to the Unrebutted Testimony that Excluding Evidentiary Use of Settlements in Subsequent Proceedings Involving Other Public Utilities Will Make Settlements More, Rather than Less, Likely.....	22
4.	The Recommended Decision Erroneously Assumed that PPL Utilities Was Seeking to Prevent Parties from Using the Joint Petition in Future Settlement Discussions.....	26
5.	The Recommended Decision Erroneously Rejects PPL Utilities' Standing to Object to Various Provisions of the Joint Petition. ....	27
A.	The Recommended Decision Cites No Basis for Revisiting Its Ruling Granting PPL Utilities' Petition to Intervene. ....	28
B.	The Recommended Decision Misapplied the Law Governing Standing in Commission Proceedings.....	29

C. PPL Utilities Has Demonstrated a Direct, Immediate, and Substantial Interest in the Outcome of This Proceeding. .... 30

III. Conclusion..... 33

## TABLE OF AUTHORITIES

### CASES AND COMMISSION ORDERS

<i>AES Beaver Valley v. West Penn Power Co.</i> , 58 Pa. P.U.C. 729 (1985) .....	31
<i>Application of West Penn Power Co. For Approval Of Its Restructuring Plan Under Section 2806 Of The Pub. Ut. Code</i> , Docket No. R-00973981, 1998 Pa. P.U.C. LEXIS 166 (March 13, 1998) .....	9
<i>Public Advocate v. Philadelphia Gas Comm'n</i> , 161 PA. Commw. Ct. 428; 637 A.2d 676 (1994) .....	28
<i>Friends of the Atglen-Susquehanna Trail</i> , 717 A.2d 581 (Pa. Commw. Ct. 1998) .....	29
<i>George v. Pennsylvania Public Utility Commission</i> , 735 A.2d 1282 (1999) .....	20, 21, 30
<i>Investigation into equitable Gas Company's Revenue Allocation Among Transportation Customers</i> , I-900009 (Order entered January 16, 1992) .....	29
<i>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</i> , 186 PUR 4th 39, 57-58 (Order entered May 29, 1998) .....	15
<i>Mid-Atlantic Power Supply Association v. Pa. P.U.C.</i> , 746 A.2d 1196 (Pa. Commw. Ct. 2000) .....	30
<i>Pennsylvania Natural Gas Assoc. v. T.W. Phillips Gas and Oil Co.</i> , 75 Pa. P.U.C. 598 (1991).....	29
<i>Pennsylvania Petroleum Association v. Pennsylvania Power and Light Company</i> , 32 Pa. Commw. Ct. 19,377 A. 2d 1270 (1977) ; aff'd 488 Pa. 308, 412 A.2d 522 (1980). .....	30
<i>Pennsylvania P.U.C. v. Bell Tel. Co. of Pa.</i> , 1988 Pa. P.U.C. LEXIS 572 (November 10, 1988) .....	8
<i>Public Advocate v. Philadelphia Gas Comm'n</i> , 161 Pa. Commw. Ct. ....	28
<i>Re PECO Energy Co.</i> , R00973953, P-00971265, 186 PUR 4th 105, 1998 WL 420175 (Pa. PUC May 14, 1998) .....	21
<i>Re Full Settlement Competitive Provider of Last Resort</i> , R-00973953, P-00971265, 1999 WL 632808 (Pa. PUC Apr. 30, 1999) .....	20

*Re L&H Trucking Company, Inc.*, 55Pa. PUC 469 (1982)..... 30

*William Penn Parking Garage, Inc. v. City of Pittsburgh*,  
464 Pa. 168, 346 A.2d 269 (1975) ..... 27, 29

**STATUTES**

52 Pa. Code § 5.231(a) ..... 23

52 Pa. Code 5.401 ..... 8

52 Pa. Code 5.483 ..... 8

52 Pa. Code § 5.533 ..... 32

52 Pa. Code § 5.538 ..... 1

52 Pa. Code § 69.391 ..... 23

52 Pa. Code § 69.401 ..... 23

66 Pa. C.S § 335 (b) ..... 32

66 Pa. C.S § 2801 *et seq* ..... 4, 33

66 Pa. C.S § 332 (b) ..... 2, 8, 10, 11

66 Pa. C.S § 2804 (4)(iii)(E) ..... 17

66 Pa. C.S § 2807 (d)(1) ..... 21

**OTHER AUTHORITIES**

Morgan, *Basic Problems in Evidence* 183 (1962) ..... 10

Weinstein's Federal Evidence § 408.02[3] ..... 24

Fed. R. Civ. P. § 16(c)(4) ..... 9

Fed. R. Evid. 401 ..... 10

Fed. R. Evid. 408 ..... 24

Pa. R. Evid. 401 ..... 10

PPL Electric Utilities Corporation (formerly PP&L, Inc.) ("PPL Utilities") submits these Exceptions of PPL Electric Utilities Corporation - Intervenor to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. issued on June 1, 2000.

#### **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

As public utility proceedings have grown more complex and involved larger numbers of intervenors, the Pennsylvania Public Utility Commission ("Commission") and other regulatory agencies have increasingly turned to settlements to resolve these cases. While settlements provide many advantages and should be encouraged, a number of participants in Commission proceedings have sought to use settlements entered into with one public utility to support similar relief against other utilities.

PECO Energy Company ("PECO") and the other Joint Petitioners have entered into a far-reaching settlement of its application for approval of its corporate reorganization and merger with Unicom Corporation ("Unicom"). That settlement contains numerous concessions addressing the concerns raised by particular intervenors. It also alters in several respects PECO's 1998 Restructuring Settlement. Although the Joint Petition provides that it may not be cited as legal precedent, the Office of Consumer Advocate ("OCA") and the Commission Office of Trial Staff ("OTS") have indicated an intention to use provisions of the Joint Petition as evidence in future proceedings. Other Joint Petitioners, namely, the Office of Small Business Advocate ("OSBA"), PennFuture and Amtrak, apparently agree with

PPL Utilities that the Joint Petition may not be cited as evidence in future proceedings against other Pennsylvania public utilities.

The Recommended Decision, which rejected PPL Utilities' request that the Joint Petition be modified to resolve the aforementioned ambiguity, simply failed to address the distinction between the use of the settlement as "binding precedent" and its admissibility as *evidence* in future proceedings. Accordingly, the Commission must clarify that relief in future proceedings must be justified on its own merits — not because in the settlement of this proceeding PECO granted certain concessions.

The Recommended Decision ignored Section 332 (b) of the Public Utility Code (66 Pa.C.S. §332(b)) which establishes the Commission's policy against reliance upon irrelevant or immaterial evidence. The testimony of the Joint Petitioners demonstrated that the Joint Petition was crafted to address a series of concerns that are unique to PECO and have no relevance to the activities of other public utilities. As such, the provisions of the Joint Petition can be neither relevant nor material evidence that similar relief is appropriate or warranted in proceedings involving other Pennsylvania public utilities.

The Recommended Decision also ignored the unrefuted testimony that excluding evidence of settlement provisions in subsequent proceedings involving other public utilities will enhance, not detract from, the Commission's strong policy of encouraging settlements. If public utilities are not protected against this practice, they will be more likely to intervene in important proceedings, such as this one, and to resist settlement provisions that would be undesirable if applied to them. To

protect their interests, public utilities may be forced to treat all proceedings like rulemakings, thereby slowing the administrative process. In addition, public utilities may be reluctant to undertake important competition and efficiency-enhancing mergers or reorganizations if they perceive that the terms of a previous settlement which they consider onerous or inappropriate will be given evidentiary weight.

The Recommended Decision is also based on the erroneous assumption that PPL Utilities is seeking to restrict what may be proposed in settlement discussions. To the contrary, PPL Utilities made it clear that its relief addresses only the evidence that may be considered in Commission proceedings, *not* what may be proposed at the settlement bargaining table. Indeed the relief proposed by PPL Utilities is limited and sensible.

Finally, the Recommended Decision rejected PPL Utilities' standing to challenge various aspects of the Joint Petition discussed in the Objections of PPL Electric Utilities Corporation to the Joint Petition for Settlement ("PPL Objections"). That ruling is clearly erroneous and illogical and must be rejected.

Accordingly, if the Commission nonetheless wishes to approve this settlement, it must preclude the use of the Joint Petition as evidence, as well as precedent, in other proceedings. Any order approving the Joint Petition must provide that:

The fact that a provision is included in the Joint Petition shall not constitute or be cited as relevant or material evidence in support of the adoption of such provision in any other proceeding, including, but not limited to, a proceeding to reopen or modify another Pennsylvania public utility's settlement of its retail restructuring proceeding under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, *et seq.*

Such a provision is necessary to protect the procedural rights of other public utilities and to promote the use of settlements to resolve important and complex public utility proceedings.

## II. SPECIFIC EXCEPTIONS

### 1. **The Recommended Decision Failed to Clarify that the Joint Petition May Not Be Used as Evidence to Support Relief Against Another Pennsylvania Electric Utility.**

The Joint Petition, like most settlements, provides that it may not constitute or be cited as controlling precedent in future proceedings:

Acknowledging that it is expressly understood and agreed that the Settlement constitutes a negotiated resolution solely of issues addressed herein, the Merger and the Corporation Restructuring, the Joint Petitioners agree that this Settlement *shall not constitute or be cited as controlling precedent in any other proceeding*, including a proceeding involving a merger or an acquisition by another Pennsylvania electric utility.<sup>1</sup>

PPL Utilities, however, is asking the Commission to modify the Joint Petition to clarify that the increased use of settlements to resolve complex Commission proceedings does not justify the use of the Joint Petition or any other such settlement *as evidence* supporting relief against other Pennsylvania public utilities in subsequent Commission proceedings. By relying exclusively on Paragraph 72 of

---

<sup>1</sup> Joint Pet. at 41 (emphasis added).

the Joint Petition to reject of the relief sought by PPL Utilities, the Recommended Decision simply failed to address the issue raised by PPL Utilities. It also failed to resolve a clear disagreement among the Joint Petitioners regarding how they may use the Joint Petition in future proceedings involving PPL Utilities and other Pennsylvania utilities. Accordingly, unless the Commission modifies the Joint Petition as requested herein, PPL Utilities and other Pennsylvania public utilities can expect to see the Joint Petition cited as evidence in support of relief sought against them, even though, by its terms, the Joint Petition may not be cited as *legal precedent*.

Settlements have become the predominant means by which major cases before the Commission, such as the instant proceeding, are resolved.<sup>2</sup> Settlements have also become one of the principal means by which various interest groups advocate highly context-dependent, fact-specific proposals. Once a favored settlement provision is secured from a utility anxious to avoid a contested proceeding, interest groups seek to characterize that settlement provision as the “model” which all other utilities must follow. All too often, utilities that did not actively participate in the settled proceedings find themselves forced to defend against provisions proffered only upon the basis that they already were agreed to or implemented by another utility. OCA explained how it intends to employ this strategy in its Main Brief before the Administrative Law Judge. Rather than having to prove that a condition or relief is appropriate “based on all other facts of record in

---

<sup>2</sup> PPL Utilities fully supports the Commission’s policy of encouraging settlements of contested cases, particularly large, complex proceedings.

a case,"<sup>3</sup> OCA would rely upon the concessions PECO was willing to make in this proceeding:

If in a future proceeding, a party seeks to introduce evidence of a settlement, the utility, or other aggrieved party, can present evidence as to why the settlement provision is not relevant, should be accorded no weight, or should not be applied to it. If the aggrieved party feels that the Commission gave the evidence improper weight, or improperly admitted the evidence, that party can always challenge that decision.

*Id.* See also Statement in Supp. of the Office of Consumer Advocate, at 6 (filed Mar. 29, 2000) (emphasis added); OCA R. B. at 2,4; OTS R. B. at 5-6.<sup>4</sup> Neither PPL Utilities nor any other Pennsylvania public utility, however, should be required to prove "why the settlement provision is not relevant, should be accorded no weight, or should not be applied to it." OCA I.B. at 33.

Although OCA argues that "that there is nothing inappropriate in parties proposing terms in one case that have been successfully implemented in a prior settlement," a number of its Joint Petitioners apparently disagree that the Joint

---

<sup>3</sup> OCA I. B. at 33.

<sup>4</sup> Several other Joint Petitioners have indicated an intention to use this settlement as a model for seeking similar concessions from other Pennsylvania public utilities. Eric Joseph Epstein states that "all of the issues defined in the proceeding paragraph [summarizing the various issues he advocated in the settlement negotiations] were fully addressed; and, in some instances, *established a constructive and innovative paradigm for other Pennsylvania communities and nuclear utilities . . .*" Statement in Supp. of Joint Pet. for Sett. of Eric Joseph Epstein, at 2 (filed March 28, 2000) (emphasis added). See also Tr. 422. MAPSA explicitly sets forth its intended use of the Joint Petition in its letter in support of the Joint Petition. It notes that Paragraph 46 of the Joint Petition, regarding the release of additional customer historical billing data in addition to that provided under the 1998 Restructuring Settlement, "will provide a *model* for the development of competition throughout Pennsylvania and the nation." Statement of MAPSA in Supp. of Joint Pet., at 1-2 (filed Apr. 7, 2000) (emphasis added). MAPSA goes on to state that certain other provisions in the Joint Petition concerning the retail market "will provide a model for the market throughout Pennsylvania and the nation." *Id.* at 2. See also OCA Reply at 5 (filed April 17, 2000) (the practice of relying on settlements is "a useful paradigm for settling complex cases).

Petition may be cited as evidence to support relief in a future proceeding. In its Second Prehearing Memorandum, PennFuture stated that, "no evidence in this PECO case, including provisions of the Settlement, can be legally relevant to a future PPL case that does not yet exist."<sup>5</sup> In its Post-Hearing Brief, Amtrak declares: "this Settlement could not be considered 'evidence' on disputed facts in another proceeding."<sup>6</sup> Finally, OSBA in its Main Brief argues:

[I]ntervenors in such a future [PPL Utilities] case may very well ask for commitments from PPL similar to those made here by PECO, but none of those other parties can rely on this Joint Petition as support for their contentions in that later case . . . . This Joint Petition *obviously will be irrelevant in such a future case*, and reference to it would be subject to a successful objection by PPL if any party there tried to use this settlement to support its claim.<sup>7</sup>

The Joint Petitioners emphasize that this settlement has broad support.<sup>8</sup> This "breadth of support" does not necessarily mean that each of the settlement's provisions is in the public interest. It does, however, point to the fact that many compromises were clearly necessary to bring it all together. While those compromises may have been important in the context of this proceeding, they should not be exported to proceedings involving other Pennsylvania public utilities. Yet the ability to do that is precisely what a number of Joint Petitioners say they can do. Given the existing confusion and conflict between the parties on this point, the

---

<sup>5</sup> PennFuture Second Prehearing Memorandum at 6. See also Reply Brief of the PennFuture Parties at 11 (emphasis added):

No party in this proceeding has suggested that the fact that PECO agreed to a particular provision in the Settlement should on its own constitute binding precedent or *sufficient evidence* in another proceeding.

<sup>6</sup> Amtrak I. B. at 13.

<sup>7</sup> OSBA I. B. at 10 (Emphasis added).

Commission needs to clarify that they can not.<sup>9</sup>

**2. The Recommended Decision Disregarded 66 Pa.C.S. §332(b) in Failing to Find that the Joint Petition Addresses Concerns That Are Unique to PECO and Are Neither Material Nor Relevant to the Activities of Other Public Utilities.**

PPL Utilities is seeking a Commission ruling that the Joint Petitioners may not use settlement concessions by PECO in this proceeding to create their own evidence in support of imposing similar relief on PPL Utilities or other Pennsylvania public utilities in other proceedings. Unless that ruling is made, the adoption of settlement provisions in this proceeding would become "substantial evidence" in the next. The Recommended Decision ignored PPL Utilities' request that the Commission establish a policy against this practice by limiting the evidentiary value of those concessions.

The Commission already has a statutorily imposed requirement to exclude irrelevant and immaterial evidence, 66 Pa. C.S. 332(b).<sup>10</sup> The provision proposed by PPL Utilities would be an application of Section 332(b) that a provision in a

---

<sup>8</sup> PECO I. B. at 19. See OCA I. B. at 5.

<sup>9</sup> PECO cited two cases in its Initial Brief to the Administrative Law Judge, *Pennsylvania P.U.C. v. Bell Tel. Co. of Pa.*, 1988 Pa. P.U.C. LEXIS 572 (November 10, 1988) and *Application of West Penn Power Co. For Approval Of Its Restructuring Plan Under Section 2806 Of The Pub. Ut. Code*, Docket No. R-00973981, 1998 Pa. P.U.C. LEXIS 166 (March 13, 1998), PECO I. B. at 21-22, to argue that PPL Utilities has not raised a concern that the Commission needs to address. Both cases, however, are inapposite. First, *Bell*, which was decided more than a decade ago, applied to the citation of settlements as *legal precedent*. PPL Utilities is concerned with citing settlements as *evidence*. In *West Penn*, the evidence rejected pertained to a settlement of a proceeding before the *Maine Public Utilities Commission*, not this Commission.

<sup>10</sup> See also 52 Pa. Code 5.483 ("The presiding officer will have ...the power to exclude irrelevant, immaterial or unduly repetitive evidence..."); 52 Pa. Code 5.401 ("[T]here shall be excluded evidence... that is not of the kind which would affect reasonable and fair minded persons in the conduct of their daily affairs.").

settlement with one utility is neither relevant nor material evidence in a proceeding involving another Pennsylvania public utility.<sup>11</sup> It does not suggest, as OCA claims, “that this or a future Commission cannot be relied upon to consider each case on its merits to determine what condition or relief is appropriate based on all other facts of record in a case.”<sup>12</sup> Such a provision is necessary because, as noted above, OCA and other Joint Petitioners will cite to this settlement as evidence against another public utility, even if they cannot cite this case as “controlling precedent.” Joint Petition at 41. No public utilities should be forced to litigate the relevance of another utility’s settlement. As the testimony illustrates in this case, settlements, as a general rule, simply are so unlikely to be a source of probative evidence that a blanket rule excluding them is warranted.

PPL Utilities is not seeking to prevent the Commission from considering relief similar to the provisions of the Joint Petition. The parties to this settlement or anyone else would be free to ask for relief contained in the Joint Petition, only they would be required to justify that relief on its merits — not because another Pennsylvania public utility was willing to make such a concession. The testimony of PPL Utilities’ witness Gioia makes this clear:

---

<sup>11</sup> Such advance rulings on admissibility of controversial evidence are generally favored. See, e.g., Fed. R. Civ. P. § 16(c)(4).

<sup>12</sup> OCA I. B. at 33.

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

A. No, but the consideration of those terms in any subsequent proceeding should be on their own merits, in the context of the facts and circumstances of that proceeding. The mere fact that the terms were included in a settlement agreement that resolved a different proceeding should not be accorded any precedential value or evidentiary weight.<sup>13</sup>

**A. The Law Requires that Irrelevant and Immaterial Evidence Be Excluded from Commission Proceedings.**

Under 66 Pa C.S. § 332(b), the Commission “shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence.” Evidence is irrelevant if it has no “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”<sup>14</sup> Evidence is immaterial if it has “some probative value upon an issue in the action but of such slight value as not to be worth the time, expense and inconvenience which the process of proving it would require.”<sup>15</sup> Section 332(b) also provides that “[n]o sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party *and as supported by and in accordance with the reliable, probative and substantial evidence.*” 66 Pa C.S. § 332(b) (emphasis added).

---

<sup>13</sup> PPL Utilities St. 1, p. 7-8.

<sup>14</sup> Pa. R. Evid. 401; *accord*, Fed. R. Evid. 401 (identical to Pa. R. Evid. 401).

<sup>15</sup> Morgan, *Basic Problems in Evidence* 183 (1962).

The Joint Petition's provisions meet none of the legal or policy standards required for admissibility. Settlements involve compromises and trade-offs specifically crafted in order to reach agreement which, if taken out of the context of the particular proceeding settled, are neither relevant nor probative of the issues in controversy in other proceedings. The very nature of settlements requires that parties accept some aspects of the settlement to which they may be opposed in order to gain support for other aspects of the settlement with which they agree. Settlements thus often reward each settling party with provisions that address their specific concerns, even if those concerns bear little relationship to the major issues raised by the matter pending before the Commission.

As PennFuture has conceded, "no evidence in this PECO case, including provisions of the Settlement, can be legally relevant to a future PPL case that does not yet exist."<sup>16</sup> The testimony in this proceeding in support of the Joint Petition demonstrates that PennFuture is correct. None of the terms of the Joint Petition should be considered "reliable, probative and substantial evidence"<sup>17</sup> in any subsequent proceeding involving another Pennsylvania public utility.

**B. The Evidence Submitted in Support of the Joint Petition Demonstrates that the Settlement Is Relevant Only to PECO and its Merger with Unicom.**

In its Objections to the Joint Petition, PPL Utilities raised serious questions regarding whether the Joint Petition was consistent with law or in the public interest. In particular, PPL Utilities pointed out that because the record and the law failed to

---

<sup>16</sup> PennFuture Second Prehearing Memorandum at 6.

<sup>17</sup> 66 Pa. C.S. § 332(b).

support finding that the Joint Petition is in the public interest, the Commission must either reject the Joint Petition or direct the Joint Petitioners to demonstrate through the submission of substantial evidence that the proposed Settlement is lawful and in the public interest. PPL Objections at 17. The Administrative Law Judge agreed and ordered evidentiary hearings based, in part, on his "belief that evidentiary hearings would be necessary and helpful in the adjudication of the matter . . . ." Prehearing Order #2 (April 25, 2000) at 2.

In response to Administrative Law Judge Rainey's decision to order evidentiary hearings, the Joint Petitioners submitted a number of evidentiary statements. Those statements and the rest of the record demonstrate that the provisions of the Joint Petition are unique to PECO and should not be considered relevant or material to any issue in a proceeding involving another Pennsylvania public utility solely because they were approved in this one. As PPL Utilities' witness Gioia observed:

The specific facts and circumstances in a subsequent proceeding will almost certainly be different from the proceeding in which the settlement was achieved. Consequently, terms that were acceptable and appropriate as part of a settlement in one proceeding may be inappropriate and unacceptable in a subsequent proceeding. Once the terms of a settlement are taken out of the context of the specific facts and circumstances in which the settlement was made, there is no rational basis for presuming that they are reasonable and appropriate in a subsequent proceeding.<sup>18</sup>

An examination of the evidence submitted by the parties in the five areas addressed in the Recommended Decision makes clear that this settlement is only relevant in its specific context.

---

<sup>18</sup> PPL Utilities St. 1, p. 6.

## 1. ***Rate and Reliability Provisions***

The Settlement contains substantial rate reductions and an extension of the cap on PECO's retail transmission and distribution charges.<sup>19</sup> See Joint Pet. at 8-10. The evidence submitted by the Joint Petitioners in support of the rate reductions and rate cap extension, by failing to establish a link between the distribution cost savings flowing from the merger and those rate reductions, further demonstrates why this and other settlements should not be given evidentiary weight in future proceedings involving other Pennsylvania public utilities. The rate reduction provisions of the Joint Petition thus have no probative value in any other proceeding and, as PPL Utilities has requested, should be limited as both an evidentiary and policy matter to this case.

Four witnesses testified in support of the \$200 million in distribution rate reductions from 2002 through 2005. None of those witnesses could demonstrate that the proposed merger yielded an amount even approaching \$200 million in distribution cost savings – a fact that their statements that such estimates were conservative could not overcome. Thus, using PECO information provided in discovery, OTS witness Deardorff could find no more than \$113.1 million over the first five years of the merger.<sup>20</sup> Similarly, OCA's witness, LaCapra, estimates 30%

---

<sup>19</sup> As stated in the Joint Petition, PECO has agreed to reduce its retail electric distribution rates by \$60 million annually beginning on January 1, 2002. See Joint Pet. at 8. The Commission had previously approved of a \$60 million reduction for the duration of 2001. *Id.* Such \$60 million decrease will remain in effect until January 1, 2004, when the annual rate decrease will become \$40 million. *Id.* PECO will also extend the cap on its retail transmission and distribution charges agreed upon in PECO's 1998 Restructuring Settlement, which would otherwise expire on June 30, 2005, for an additional eighteen months, or through December 31, 2006. *Id.* at 10.

<sup>20</sup> See OTS Statement No. 1, pp. 2-3.

of \$66 million per year in PECO-related distribution savings, or \$99 million.<sup>21</sup> Silkman, sponsored by several parties, shows \$94 million in distribution savings over the same period.<sup>22</sup> Each of these witnesses then cites reports by stock market analysts to argue that the actual merger synergies will be even greater, thus capable of supporting \$200 million in rate cuts.<sup>23</sup> However, the correctness of these witnesses' initial estimates is confirmed by the supplemental testimony of PECO's witness Hill, who states:

Regarding PPL's second point, PECO expects to "pay for" the rate reductions, *at least in substantial part*, with synergies generated by the restructuring and merger.<sup>24</sup>

These witnesses have demonstrated that PECO and Unicom are voluntarily sharing some of the merger savings attributable to sources other than savings in PECO distribution expenses. The sources of those funds are, of course, normally beyond the Commission's jurisdiction. PECO's voluntary decision to fund these rate cuts is unique to this proceeding and says nothing about Commission policy or the obligation of any other public utility. Such a voluntary decision, of course, is the

---

<sup>21</sup> See OCA St. 1S, pp. 6-7. The Recommended Decision relies on the source of LaCapra's estimate, the testimony of PECO witness Flaherty, Exh. TJF-2 to PECO St. 4 to find that PECO is financially able to reduce retail distribution rates. The Recommended Decision, however, fails to recognize, as LaCapra recognized, that only 30% of the \$66 million in annual saving is attributable to PECO's regulated distribution business.

<sup>22</sup> See Senator Vincent J. Fumo and CEPA St. 1, p. 8.

<sup>23</sup> See OTS St. 1, pp. 3-4; OCA St. 1S, pp. 6-7; Senator Vincent J. Fumo and CEPA St. 1, pp. 8-9.

<sup>24</sup> See PECO St. 3S, p. 8 (emphasis added).

only way that Commission policy supports rate reductions in the context of a proposed restructuring and merger.<sup>25</sup>

Similarly, the testimony regarding the issue of service and reliability demonstrates that the settlement provisions addressing those issues should be given no weight beyond this proceeding. OCA witness LaCapra notes that PECO's merger partner, Unicom, is investing over \$1.6 billion to improve "significant reliability problems at the distribution level across the last few years" and expresses concern that given the relative size of the merging partners, "an imbalance exists that could lead to outcomes that adversely affect quality of service enjoyed by Pennsylvania ratepayers."<sup>26</sup> In this context, LaCapra finds that the service and

---

<sup>25</sup> The Recommended Decision relies upon and quotes the OCA brief asserting that the Commission has ordered rate reductions in merger proceedings. Recommended Decision at 36 (quoting OCA Main Brief at 10-11). OCA relied upon *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*, 186 PUR 4<sup>th</sup> 39, 57-58 (Order entered May 29, 1998). While it is not clear what the Commission "ordered" in that case — a merger proceeding in the context of two retail restructuring proceedings — it is clear that OCA disregards the plain language of the Commission in a subsequent case flatly rejecting OCA's efforts to obtain rate reductions in a merger proceeding:

What the OCA's Protest does raise is the prospect that rates should be reduced in the future because of the pass-through and allocation of merger savings to ratepayers. . . . Such a pass-through issue, however, does not address whether the merger itself is in the public interest but rather, as stated above, is more properly addressed in a future ratemaking case when the savings are real and not speculative as they are now. . . . In short, contrary to well-established Commission precedent, the OCA's Protest attempts to obtain future ratemaking concessions in a merger application proceeding instead of in a rate case.

*Re PG Energy, Inc.*, Docket No. A-120011F.002 (September 15, 1999) (citations omitted, emphasis added). In *PG Energy, Inc.*, the Commission subsequently approved a settlement that contained *voluntary* rate reductions. See *PG Energy, Inc.*, Docket No. A-12-11F.002 et al. (amended Order entered October 18, 1999).

<sup>26</sup> See OCA St. 1S, p. 12.

reliability improvement commitments mitigate the risks that service quality might experience a degradation as a consequence of the proposed merger. The only conclusion that can be drawn from this testimony is that when a large out-of-state utility in which "outages have occurred at an unacceptable rate in certain areas for several years"<sup>27</sup> merges with a Pennsylvania utility, commitments to protect Pennsylvania ratepayers from service degradation may be appropriate.

Widespread concerns expressed regarding PECO's reliability and post-merger effects or customers also demonstrate why the reliability provisions of the Joint Petition should not be admissible in future proceedings. Numerous witnesses sharply contrasted the reliability and service available from PECO with that offered by PPL Utilities. For example, Joseph P. Lewis, a customer of PECO, testified at the public input hearing on March 30, 2000 in Glenmoore, Pennsylvania that:

Two-thirds of our area is covered by PECO and one-third is covered by [PPL Utilities] and the response time to emergencies is drastically different. [PPL Utilities] is a pleasure to deal with. They respond promptly.<sup>28</sup>

Several additional witnesses expressed great frustration with PECO's reliability and service, in comparison to their experience with PPL Utilities.<sup>29</sup> The reliability

---

<sup>27</sup> *Id.* at 12 (quoting the response to Interrogatory OCA-1-7).

<sup>28</sup> Pub. Input Hr'g.Tr. 302-03.

<sup>29</sup> See, e.g., Pub. Input Hr'g. Tr. 304 (Joseph Lewis) ("...I would like to see the township petition PECO or the Public Utility Commission to let our township and maybe East Brandywine if they are interested sell their lines to PP&L and let them take care of us and we would be totally out of PECO if possible. I don't know if it is a reality or a possibility. I don't know who to talk to [to] find out, but I would like to."); Pub. Input Hr'g. Tr. 308 (Albert Greenfield) ("And I echo Joe Lewis' earlier testimony about joining with PP&L because I have had a very satisfactory relationship with PP&L."); Pub. Input Hr'g. Tr. 320 (Marvin Shapanka) ("So I for one – Mr. Lewis' suggestion if there is a viability to having PP&L buy this end of the line service from PECO and switch over, it would certainly get my vote...").

provisions of the Joint Petition expressly approved by the Recommended Decision are clearly context-dependant attempts to address these concerns; they simply are not relevant to other proceedings.

Finally, none of the witnesses except Hill addressed the concern in the PPL Objections that the extension of the rate cap may be inconsistent with PECO's obligations to the PJM to finance new transmission. PPL Objections at 21-22. Hill's defense of this provision, relied upon by the Recommended Decision, was that an exception to the rate cap was available under the Electricity Competition Act if such facilities were mandated, citing 66 Pa. C.S. § 2804(4)(iii)(E). See PECO St. 3S, p. 9. Clearly this provision and the related potential for a request to exceed the rate caps is premised upon PECO-specific factors and should be given no weight in future public utility proceedings.

## **2. Nuclear Provisions**

The Recommended Decision concluded it could approve the Joint Petition because the Commission had no authority to inquire into nuclear safety issues. Recommended Decision at 38-39. This lack of scrutiny is another reason why the precedential and evidentiary effect of settlement provisions in future proceedings should be limited. PECO agreed in the Joint Petition that when it seeks to increase its annual nuclear decommissioning expense allowance above the accrual level used to determine the Nuclear Decommissioning Cost Adjustment Charge, it will under certain circumstances voluntarily forego recovery of \$50 million of its total decommissioning cost obligations, plus 5% of any additional increase in the annual accrual level above the base annual accrual level. See Joint Pet. at 11.

The PPL Objections asked the Commission to consider whether PECO's agreement to forego recovery of \$50 million of its total decommissioning cost obligations represents a correct balance of interests. The Joint Petitioners' responses clearly apply only to a company with a corporate strategy of acquiring a substantial portfolio of nuclear generating plants. Thus, LaCapra cites a PECO press release announcing the merger which states that the combined company intends "to become the premier nuclear operator in the nation."<sup>30</sup> He goes on to testify that the combined company presents special risks that warrant unusual ratepayer protection and notes that, but for PECO's agreement in the Joint Petition, ratepayers would be responsible for increased decommissioning costs.<sup>31</sup> A question and answer provided by LaCapra summarizes this unique concern:

- Q. Is it appropriate to assign a portion of the anticipated merger benefits to protect ratepayers from the risk that decommissioning costs might exceed the total amount that is currently being collected through rates?
- A. As is discussed above, the PECO/Unicom corporate strategy appears focused on pursuing an expanding nuclear fleet, which does create risks for ratepayers. As a quid pro quo, it is fair to expect the companies to set aside a portion of the benefits that they projected to mitigate the concomitant risks.<sup>32</sup>

The Recommended Decision cited the PPL Utilities retail restructuring settlement to dismiss PPL Utilities' objections to support its conclusion. Recommended Decision at 38, n. 17 (citing PECO I. B. at 15, n. 6). The PPL Utilities provision differs from the PECO provision in the very respect about which

---

<sup>30</sup> OCA St. 1S, p. 10.

<sup>31</sup> See OCA St. 1S, p. 11, n. 6.

<sup>32</sup> *Id.* at 11.

PPL Utilities objected: PPL Utilities' Restructuring Settlement does not require PPL Utilities to bear the first \$50 million (or any sum) in decommissioning cost overruns before sharing the additional expense with ratepayers.<sup>33</sup>

Given PECO/Unicom's unique strategy and the obvious danger illustrated by the Recommended Decision of relying on settlement provisions which may appear to be similar but could, in fact, differ significantly from those being proposed, there is simply no basis for permitting the provisions regarding nuclear decommissioning to become part of the record of any other electric utility proceeding in Pennsylvania.

### **3. Environmental Provisions**

Through the Joint Petition, PECO has agreed to provide a direct grant of \$3.5 million to one environmental organization, Community Energy, Inc., "for its Pennsylvania Wind Energy Program." Joint Pet. at 22-23.<sup>34</sup> In addition, PECO has agreed to contribute to the Sustainable Development Fund ("SDF") \$12 million specifically to fund new wind facilities and \$4 million for a photovoltaic project. See Joint Pet. at 22-26.

These direct grants bypass the SDF which was established under the 1998 Restructuring Settlement. The SDF process does not prejudge which clean or renewable technologies should receive grants. It leaves those decisions to a neutral board.<sup>35</sup> By earmarking funds, the Joint Petition creates an environmental

---

<sup>33</sup> This distinction was pointed out in PPL Utilities Initial Brief at p. 24, n. 50.

<sup>34</sup> Witness Altman notes that CEI is a partnership between his sponsor, the Clean Air Council, and a Colorado environmental group that had launched a wind block program. CAC St. 1, p. 5.

<sup>35</sup> See Joint Petition For Full Settlement Of PECO Energy Company's Restructuring Plan And Related Appeals And Application For A Qualified Rate Order And Application For Transfer Of Generation Assets, filed in Docket No. R-00973953 (April 29, 1998), at 39.

program unique to PECO and supported by the facts unique to PECO's circumstances. As such, it provides no support for seeking comparable relief in other Commission public utility proceedings.<sup>36</sup>

#### **4. Electric Generation Supplier Benefits**

The Joint Petition contains a number of provisions addressing the concerns of Electric Generation Suppliers ("EGSs"). In particular, the Joint Petition would alter the CDS program negotiated in the 1998 Restructuring Settlement transforming it into a generation and capacity supply service only.<sup>37</sup> This revision would appear to be inconsistent with the Electric Competition Act. However, even if such a revision is accepted by PECO and approved by the Commission, the Joint Petition provides no basis for imposing this revised CDS construct on the customers of any other public utility.

The Recommended Decision upheld the CDS provision relying on PECO's brief, which, in turn, relied upon *George v. Pennsylvania Public Utility Commission*, 735 A. 2d 1282, 1287-89 (1999), a case that upheld the Commission's power under the Electric Competition Act to approve an alternative Provider of Last Resort

---

<sup>36</sup> None of the testimony submitted by the Joint Petitioners provides a principled basis for bypassing the SDF process. Contrary to the assertions in testimony submitted by PennFuture, PennFuture St. 1, p. 4-5, and CAC, CAC, St. 1, p. 4, PPL Utilities did not criticize the Joint Petition for supporting renewable resources or increasing the funding for the SDF. Indeed, the role of the SDF is to provide support for emerging technologies that would not be funded by the market today, but which could survive in a competitive market if given a chance. Contrary to Witness Altman's testimony, the fact that it is necessary for the Joint Petition to finance new wind facilities means, by definition, that market forces will not "produce new wind resources in direct proportion to market demand." CAC St. 1, p. 4.

<sup>37</sup> Joint Pet. at 31. The CDS rules which the Joint Petition seeks to change were considered by the PECO CDS collaborative and approved by the Commission just last year. See *Re Full Settlement Competitive Provider of Last Resort*, R-00973953, P-00971265, 1999 WL 632808 (Pa. PUC Apr. 30, 1999).

("PLR"). *George*, however, did not reach the issue of whether the Commission could assign PLR customers to what is, effectively, an EGS. The CDS provision of the Metropolitan Edison Company and Pennsylvania Electric Company retail restructuring settlements upheld in *George* was essentially identical to the CDS provision of the PECO retail restructuring settlement.<sup>38</sup>

The record of this proceeding does not contain an explanation for altering the CDS concept that emerged from the 1998 Retail Restructuring Settlements.<sup>39</sup> For that reason, it is particularly important that the Commission severely limit the impact of the Joint Petition in this area. Although PECO witness Hill claims that the Joint Petition "does not create a new CDS 'construct,'" PECO St. 3S, p. 11, the Commission should ensure that result by specifically limiting the evidentiary and precedential use of this provision.

## **5. Large Customer Agreements**

The Joint Petition also contains specific agreements with Amtrak and the City of Philadelphia. See Joint Pet. at 38. In particular, PECO has offered Amtrak the

---

<sup>38</sup> The goal of the CDS program is to promote the transition from traditional monopoly service by substituting an alternative Provider of Last Resort ("PLR"). It was intended to be a substitute utility service for residential customers who, for whatever reason, did not exercise their right to choose, not a substitute EGS service. Only by substituting an alternative utility service for PECO PLR service could CDS arguably be consistent with the statute which provides customers with the right to choose — and the right not to choose. See, e.g., 66 Pa. C.S. § 2807(d)(1).

<sup>39</sup> MAPSA witness McCormick states that the CDS provision is necessary "because PECO will no longer be able to leverage its monopoly distribution system into the market for generation." MAPSA St. 1, p. 6. However, PECO's Interim Code of Conduct was supposed to prevent such leveraging, See *RE PECO Energy Co.*, R 00973953, P-00971265, 186 PUR 4<sup>th</sup> 105, 1998 WL 420175 (Pa. PUC May 14, 1998), and there has been no allegation that the Interim Code of Conduct has failed to do so. Interestingly, while OCA witness LaCapra cited several provisions of the settlement that "offset" the possibility of "a further consolidation of PECO's dominant position in its service territory..." OCA St. 1S, p. 14, the CDS provision was not one of them.

option of executing a lump-sum buyout of its Transition Charges. See *id.* and Appendix F. PECO has also offered, and has asked the Commission to approve, a grant to the City of Philadelphia of additional rights and options under its Rule 4.6 contract. See *id.* and Appendix G.

Both Amtrak and Philadelphia submitted testimony to support their respective agreements, as did PECO.<sup>40</sup> In each case, the testimony and argument submitted by these large customers and relied upon by the Recommended Decision reinforced the uniqueness of their respective situations – although it is hard to argue that the electric power requirements of the nation’s only interstate passenger railroad and the Commonwealth’s largest city are not unique. In any case, the Joint Petition provisions pertaining to these agreements, along with the others discussed above, argue strongly for the limitations PPL Utilities has requested.

**3. The Recommended Decision Is Contrary to the Unrebutted Testimony that Excluding Evidentiary Use of Settlements in Subsequent Proceedings Involving Other Public Utilities Will Make Settlements More, Rather than Less, Likely.**

PPL Utilities offered testimony demonstrating that sound and compelling reasons exist for the Commission to articulate a clear policy that the specific terms of a settlement agreement will not be admitted as evidence in any subsequent proceeding on the sole basis of prior approval of those terms in another settlement. That testimony, by PPL Utilities witness Paul L. Gioia, a former chairman of the New York Public Service Commission, remains unrebutted. Nonetheless, the relief sought by PPL Utilities would encourage settlements, prevent delay and

---

<sup>40</sup> See Amtrak St. 1, pp. 8-11; City of Philadelphia St. 1, pp. 2-5; PECO St. 3S, p. 11.

unnecessary costs, and protect the rights of all interested parties to reasonable notice, a fair opportunity to be heard, and an appropriate decision-making process before being bound by a regulatory decision.

*Settlements conserve valuable resources and enable the Commission, its staff, and other parties to put their limited time and funds to more productive uses. Settlements also often produce a more creative and balanced resolution of issues than would result from a fully litigated proceeding. However, as PPL Utilities witness Gioia has testified,*

*[F]or the potential benefits of the settlement process to be achieved, it is important that parties feel free to accept a settlement agreement, including some terms with which they might not agree, with the assurance that their acceptance of those terms will not be cited as precedent, or be introduced as evidence, in a subsequent proceeding.*

PPL Utilities St. 1, p.5.

A number of Joint Petitioners<sup>41</sup> claimed that the relief sought by PPL Utilities in this proceeding would not support, but would, instead, interfere with the Commission's policy to promote settlements of large and complex matters.<sup>42</sup> Nothing could be further from the truth. The unrebutted testimony of PPL Utilities' witness Gioia explains how the failure to limit the evidentiary use of settlements could actually make it more difficult to achieve settlements in the future:

---

<sup>41</sup> See OCA I. B. at 34; OSBA I. B. at 9; City of Philadelphia I. B. at 2; CAC I. B. at 13; Penn Future R. B. at 12; OCA R. B. at 2, 6, 19; OTS R. B. at 7; PAIEUG R. B. at 6.

<sup>42</sup> See 52 Pa. Code § 5.231(a); 52 Pa. Code § 69.391; 52 Pa. Code § 69.401.

[P]arties may be more likely to intervene in proceedings where they otherwise might not do so in order to protect themselves against settlement provisions that would be undesirable if applied to them in other proceedings. These additional interventions would make settlements more difficult to achieve. For these reasons, the regulatory policy in favor of settlements, in the long run, would be adversely affected.<sup>43</sup>

None of the parties offered any evidence to the contrary.

Moreover, the courts and more recently, evidentiary rules, concur with the policy to which Mr. Gioia testifies by generally prohibiting the introduction as evidence of both offers of settlement and settlement agreements. See Pa. R. Evid. 408; Fed. R. Evid. 408. The rule is usually applied to prohibit a party's compromise or offer of compromise to be used against it to prove liability, however, the rationale behind the rule is the encouragement of free and frank settlement discussions, "in order to protect the courts against excessive litigation." Weinstein's Federal Evidence § 408.02[3]. That rationale would apply to the use of settlements as evidence to support relief against other Pennsylvania public utilities, since, as described by OCA, parties to a case would be permitted to present evidence as to why a settlement provision is not relevant or should be accorded no weight. OCA I. B. at 33. Of course, the most obvious way to do that would be to examine "the context of the specific facts and circumstances in which the settlement was made[.]" PPL St. 1, p. 6. That would invariably mean an examination, perhaps even discovery, into the settlement discussions themselves to learn what the parties intended and why they reached a compromise on a specific provision. If

---

<sup>43</sup> PPL Utilities St. 1, p. 5.

such a practice were permitted, the effect on the Commission's policy of encouraging settlements could be devastating.<sup>44</sup>

Moreover, considerations of fairness and due process require the relief requested by PPL Utilities. OCA and other Joint Petitioners clearly intend to use the provisions of the *Joint Petition* as a model to justify identical or similar relief in other proceedings against other Pennsylvania public utilities.<sup>45</sup> However, as PPL Utilities witness Gioia points out, no amount of speed and efficiency justifies elimination of parties' rights to reasonable notice, a fair opportunity to be heard, and an appropriate decision-making process before being bound by a decision:

Those requirements are extremely difficult, if not impossible, to achieve with respect to the terms that come out of a negotiated settlement. First, unless the Commission has characterized the proceeding as a generic or rule-making proceeding at the outset, parties may not have adequate notice that the Commission's decision will be accorded precedential effect or have evidentiary value in a subsequent proceeding. Second, the final terms of a settlement agreement often could not have been anticipated at the beginning of negotiations and may address matters beyond the scope of the original filing. Thus, according precedential effect or evidentiary value to the terms of a settlement agreement raises fairness and, possibly, due process issues with respect to third parties.<sup>46</sup>

It is not only the rights of the parties to subsequent proceedings that may be at stake if the Commission permits evidentiary reliance on settlement provisions, however. The restructuring of the electric power industry necessary "to provide electricity consumers with the maximum benefits of competition, including the

---

<sup>44</sup> Fundamental fairness and reciprocity require that if OCA and other proponents of using settlements against utilities are protected against the defensive use of settlements, their offensive use of settlements should be precluded as well.

<sup>45</sup> See *supra* notes 22-27 and accompanying text.

<sup>46</sup> PPL Utilities St. 1, pp. 6-7.

lowest prices and widest range of choices[.]” may also be discouraged.<sup>47</sup> The Commission should encourage utilities to consider actions that could provide benefits to the public that would otherwise not be obtainable. If parties perceive that the terms of a previous settlement which they consider inappropriate will be given evidentiary weight just because another utility agreed to those terms, they may be discouraged from proceeding with a proposed transaction even though that transaction, under its specific terms, would be in the public interest.<sup>48</sup>

**4. The Recommended Decision Erroneously Assumed that PPL Utilities Was Seeking to Prevent Parties from Using the Joint Petition in Future Settlement Discussions.**

The Recommended Decision erroneously assumed that PPL Utilities is seeking to restrict what may be proposed in settlement discussions. The Recommended Decision holds:

The parties to a settlement determine its terms and conditions to which they agree to be bound. The parties are neither required nor restrained from including in their settlement document any terms or conditions contained in the settlement document from another proceeding. If a party objects to the inclusion or omission from the settlement document of any term or condition, including any provision from a prior settlement document, then that party has the right not to sign off on the settlement document, and to continue to litigate. That is what PPL has chosen to do in this proceeding, and it may also do that in any subsequent proceedings where it is the subject of a merger or reorganization.<sup>49</sup>

However, PPL Utilities is not asking that the Commission restrict what parties to a settlement conference may propose, though many Joint Petitioners have

---

<sup>47</sup> *Id.* at 8.

<sup>48</sup> *Id.* at 9.

<sup>49</sup> Recommended Decision at 33 (footnote omitted).

erroneously made that claim. See OSBA I. B. at 10; OTS I. B. at 10; PennFuture I. B. at 20.

The policy PPL Utilities proposes is directed at *evidence submitted in Commission proceedings*, not proposals made in settlement conferences. See PPL Objections at 32-33; PPL Utilities Initial Brief at 13; PPL Utilities Reply Brief at 15-16. Since the Recommended Decision is based on a mistake regarding the nature of the relief sought by PPL Utilities, it must be rejected.

**5. The Recommended Decision Erroneously Rejects PPL Utilities' Standing to Object to Various Provisions of the Joint Petition.**

The Recommended Decision holds that PPL Utilities has not shown a "direct and immediate interest" in the issues in this proceeding other than the use of the Joint Petition as evidence in subsequent proceedings against itself and other Pennsylvania public utilities.<sup>50</sup> That holding, however, is contrary to the Administrative Law Judge's own ruling permitting PPL Utilities to participate as a full party in this proceeding. It also is based on an erroneous interpretation and application of the Commission's policies regarding standing. PPL Utilities clearly has a direct, immediate, and substantial interest in the outcome of this proceeding.<sup>51</sup>

---

<sup>50</sup> Recommended Decision at 35. The Recommended Decision thereby rejected the contentions of certain Joint Petitioners that PPL Utilities did not even have standing to raise that issue. PPL Utilities does not except from this aspect of the Recommended Decision.

<sup>51</sup> See *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975).

**A. The Recommended Decision Cites No Basis for Revisiting Its Ruling Granting PPL Utilities' Petition to Intervene.**

The Administrative Law Judge granted PPL Utilities' Petition to Intervene at the first prehearing conference, noting that no objections were raised to PPL Utilities' participation as a formal party to the proceeding. Prehearing Order at 2 (Jan. 28, 2000). At Paragraph 7 of PPL Utilities' Petition to Intervene, filed on December 16, 1999, PPL Utilities explicitly raised the issue of the broad impact of this case on future PPL Utilities proceedings — the same issue it raised in its Objections to the Joint Petition and the same issue it raises here:

In addition, Commission rulings in this proceeding could potentially have precedential effects for PP&L. Specifically, the PECO and PP&L Restructuring Settlements pursuant to the Electric Competition Act have many similar terms. Commission rulings in this proceeding that rely on such terms could affect future PP&L proceedings.

Nothing has occurred to warrant the Administrative Law Judge's decision to revisit his decision granting PPL Utilities' intervention. The Joint Petitioners had every opportunity to challenge PPL Utilities' standing to participate in this proceeding when it petitioned to intervene, but they failed to do so and the Administrative Law Judge granted the intervention.

The Joint Petitioners' failure to object to PPL Utilities' intervention precludes any objections at this time to PPL Utilities' standing. See *Public Advocate v. Philadelphia Gas Comm'n*, 161 Pa. Commw. Ct. 428; 637 A.2d 676 (1994). Once the Administrative Law Judge granted that intervention, the Administrative Law Judge and the Joint Petitioners had no choice but to address PPL Utilities' issues on the merits.

**B. The Recommended Decision Misapplied the Law Governing Standing in Commission Proceedings.**

The Recommended Decision relies on an overly narrow reading of the law and its applicability to the instant case. Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. See *Pennsylvania Natural Gas Assoc. v. T.W. Phillips Gas and Oil Co.*, 75 Pa. P.U.C. 598 (1991). In making its determination, the Commission uses the conventional standard for standing to appeal articulated by the Pennsylvania Supreme Court in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975.) To have standing to appeal (1) a party must have a direct interest in the subject matter, (2) the interest must be immediate and pecuniary, not a remote consequence of the judgment, and (3) the interest must be substantial. *Id.*

A party's objections to a settlement can clearly constitute a sufficiently "direct" or "substantial" interest to meet this standing test. See *Friends of the Atglen-Susquehanna Trail*, 717 A.2d 581 (Pa. Commw. Ct. 1998) (party which filed objections to settlement approved by the Commission has standing to appeal). An interest is sufficiently "substantial" as long as there is some discernible adverse effect on the party other than the general interest of compliance with the law. See *William Penn* at 282. Indeed none of the three cases cited in the Recommended Decision is applicable to PPL. PPL asserted a particularized concern with the use of settlements. The cases cited by the Administrative Law Judge addressed representational standing or generalized public safety and health concerns. See *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).<sup>52</sup>

The fact that PPL Utilities will not be affected by this settlement in the same way as a customer of PECO is in no way determinative of PPL Utilities' right to object to the Joint Petition.<sup>53</sup> Such arguments demonstrate a misunderstanding of the nature of the harm that PPL seeks to avoid.

**C. PPL Utilities Has Demonstrated a Direct, Immediate, and Substantial Interest in the Outcome of This Proceeding.**

PPL Utilities demonstrated that it has a direct, immediate, and substantial interest in this proceeding. First, PPL Utilities showed that settlements have become an important part of the process by which the Commission resolves complex utility regulation before the Commission.<sup>54</sup> A number of the Joint Petitioners have conceded this point.<sup>55</sup> Second, PPL Utilities described how it may be placed in the position of defending against relief proposed in future proceedings

---

<sup>52</sup> In its Initial Brief to the Administrative Law Judge, PECO cited to *George v. Pa. P.U.C.*, 735 A.2d 1282 (Pa. Commw. Ct. 1999), and *Mid-Atlantic Power Supply Association v. Pa. P.U.C.*, 746 A.2d 1196 (Pa. Commw. Ct. 2000) ("MAPSA"). Its reliance on these cases is clearly misplaced. Neither the state legislator in *George* nor PECO in *MAPSA* purported to represent their own interests. Rather, they were seeking to protect the interests of others, either constituents or ratepayers. PPL Utilities' concern here is that PPL Utilities, not some third party, will be forced to defend itself against arguments that it should be subject to rules and obligations similar to the provisions in the Joint Petition.

<sup>53</sup> See, e.g., PECO I. B. at 11-12 (arguing that PPL Utilities does not have standing and seeks to assert PECO's customers' interests).

<sup>54</sup> PPL Objections at 30-31; See PPL Utilities St. 1, p.4.

<sup>55</sup> See OCA Reply at 5 (filed April 17, 2000); OCA I. B. at 33-34; OSBA I. B. at 9; City of Philadelphia I. B. at 2; CAC I. B. at 13; OCA R. B. at 2,4; OTS R. B. at 5-6.

based upon the fact that a prior settlement with a different public utility contains critical concessions. It pointed to specific language in the statements in support of the Joint Petition indicating that several parties intended to pursue such an approach.<sup>56</sup>

It is simply irrelevant to PPL Utilities' objections that it may not be subject to PECO's rate cuts or will not have to pay PECO's decommissioning costs. What is relevant is that no party to the settlement has promised that they will not seek relief from PPL Utilities similar to that found in the Joint Petition on the ground that it was obtained from PECO in the Joint Petition. Only if the Joint Petitioners (or the Commission) can assure PPL that it will not see the Joint Petition cited to support reopening its retail restructuring settlement or seeking a condition to a proposed PPL merger or acquisition can the Joint Petitioners credibly argue that PPL Utilities does not have a "direct, immediate, and substantial interest" in this proceeding.<sup>57</sup>

OCA clearly identified PPL Utilities' direct, immediate, and substantial interest in this proceeding by describing how it intends to use this settlement as evidence in a future PPL Utilities proceeding:

---

<sup>56</sup> See PPL Utilities I. B. at 14-17.

<sup>57</sup> See *William Penn*. PECO's citation to *AES Beaver Valley v. West Penn Power Co.*, 58 Pa. P.U.C. 729 (1985), is similarly erroneous, since in that case, as in *George* and *MAPSA*, the objecting party could not allege its interests were at stake. Moreover, PECO has no basis for arguing as it does that *AES Beaver Valley* stands for the proposition that a party "cannot gain standing simply because the outcome may establish what it views as an undesirable precedent." PECO I. B. at 12 (citing *AES Beaver Valley*). There is nothing in that case which clearly states what interest PAIEUG, the party to which PECO refers, was asserting.

The parties to the settlement should not be precluded from ever referring to the terms of the settlement for whatever value they may have in a future proceeding, or during future settlement negotiations. . . . Indeed, the OCA can envision cases where the Commission may wish to be informed of prior settlements in order to determine whether consistency among similarly situated companies with the respect to certain issues is appropriate.<sup>58</sup>

To prevent PPL Utilities from being heard under the circumstances would truly be a violation of PPL Utilities' due process rights.

PPL Utilities is a member of a limited class of major electric utilities subject to the jurisdiction of the Commission which is uniquely vulnerable to the consequences of future application of the Joint Petition. PPL Utilities and the other Pennsylvania electric utilities are not, as OCA claims, "wholly disinterested parties."<sup>59</sup> The rulings sought here and the avowed intent by several parties to use the provisions of this settlement as evidence in support of relief against these utilities in future proceedings demonstrate that claim.<sup>60</sup>

---

<sup>58</sup> See OCA I. B. at 33.

<sup>59</sup> OCA I. B. at 3.

<sup>60</sup> The Secretarial letter enclosing the Recommended Decision provided for "in hand" service of Exceptions on Friday, June 9, 2000. That letter was mailed to the parties by certified mail, thus causing it to be received by PPL Utilities' counsel late Monday afternoon, June 5, four days into the eight day period for exceptions. The period of time set for Exceptions, in light of the means by which notice of the Recommended Decision was given, constitutes a violation of 66 Pa. C.S. § 335(B), which requires that "parties are entitled to a *reasonable opportunity* to submit for the consideration of the commission. . . exceptions to . . . recommended decisions . . . and supporting reason for the exceptions." (Emphasis added). See 52 Pa. Code § 5.533 (Providing for 20 days in which to file exceptions, unless some other period is provided). By submitting its exceptions in accordance with the procedural schedule set forth in the Secretarial letter, PPL Utilities is not waiving any claims to a denial of its statutory and constitutional due process rights to reasonable notification of the Recommended Decision and an opportunity to file exceptions thereto.

### III. CONCLUSION

PPL Utilities reiterates its request for the relief described above. The Commission should reject this section of the Recommended Decision and preclude the use of the Joint Petition's terms as evidence, as well as precedent, in other proceedings. Accordingly, PPL Utilities proposes that the following provision be added to the Joint Petition:

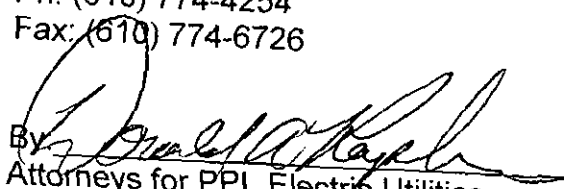
The fact that a provision is included in the Joint Petition shall not constitute or be cited as relevant or material evidence in support of the adoption of such provision in any other proceeding, including, but not limited to, a proceeding to reopen or modify another Pennsylvania public utility's settlement of its retail restructuring proceeding under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, *et seq.*

In addition, the Commission should establish a policy that it will not entertain evidence or arguments by participants in proceedings before the Commission justifying relief on the grounds that such relief was incorporated in a settlement with another public utility. If the Commission grants this relief, the procedural rights of other Pennsylvania public utilities will be protected and it will promote the future use of settlements to resolve important and complex public utility proceedings.

Respectfully submitted,

Donald A. Kaplan, Esq.  
Caryn Blythe Houck, Esq.  
Preston Gates Ellis &  
Rouvelas Meeds LLP  
Suite 500  
1735 New York Avenue, N.W.  
Washington, D.C. 20006  
Ph: (202) 628-1700  
Fax: (202) 331-1024

Paul E. Russell, Esq.  
Associate General Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, Pennsylvania 18101  
Ph: (610) 774-4254  
Fax: (610) 774-6726

BY   
Attorneys for PPL Electric Utilities  
Corporation

Dated: May 24, 2000



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

IRWIN A. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
E-Mail: paoca@ptd.net

DOCUMENT  
FOLDER

June 14, 2000

RECEIVED  
00 JUN 14 PM 4:04  
PA.P.U.C. BUREAU  
SECRETARY'S BUREAU

James J. McNulty, Secretary  
PA Public Utility Commission  
Room B-20, North Office Bldg.  
Harrisburg, PA 17105-3265

Re: Application of PECO Energy Company, Pursuant  
To Chapter 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  
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed please find for filing an original and nine (9) copies of the Office of  
Consumer Advocate's Reply Exceptions in the above-captioned proceeding.

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

Sincerely,

Tanya J. McCloskey  
Senior Assistant Consumer Advocate

Enclosures

cc: All parties of record  
Honorable Charles E. Rainey, ALJ  
Office of Special Assistants

56004

39

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**DOCKETED**  
JUN 15 2000

---

REPLY EXCEPTIONS  
OF THE OFFICE OF CONSUMER ADVOCATE

---

RECEIVED  
00 JUN 14 PM 4:04  
PA.P.U.C.  
SECRETARY'S BUREAU

DOCUMENT  
FOLDER

Tanya J. McCloskey  
Senior Assistant Consumer Advocate

Stephen J. Keene  
Assistant Consumer Advocate

For:

Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Date: June 14, 2000

TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. REPLY EXCEPTIONS ..... 5

    Reply to PPL Exc. 1: The ALJ Correctly Rejected The Additional Conditions That PPL Sought To Impose On The Settlement. ..... 5

    Reply to PPL Exc. 2: It Would Have Been Inappropriate For The ALJ To Determine In This Proceeding What Would Constitute Relevant Or Material Evidence In Some Future Hypothetical Proceeding. ..... 8

        A. Any Policy Statement That Would Determine The Relevance Or Materiality Of Evidence In All Future Proceedings Would Stifle The Settlement Process. ..... 8

        B. PPL’s Request That The Commission Rule Now That The Individual Settlement Provisions Are Relevant And Material Only To PECO Must Be Rejected ..... 10

            1. Introduction ..... 10

            2. PPL’s Discussion Of The Individual Settlement Provisions And Applicable Commission Policy And Law Is Erroneous And Should Be Corrected ..... 11

    Reply to PPL Exc. 3: The ALJ Correctly Concluded That Adoption Of PPL’s Position Was Contrary To The Public Interest. ..... 15

    Reply to PPL Exc. 4: The ALJ Correctly Concluded That The Restrictions Sought By PPL Would Have Far Ranging Implications And Could Disrupt The Settlement Process. ..... 18

    Reply to PPL Exc. 5: The ALJ Correctly Concluded That PPL Lacks Standing To Challenge The Individual Substantive Provisions Of The Settlement ..... 20

III. CONCLUSION ..... 24

TABLE OF CITATIONS

CASES

William Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975) . . . 21-23

ADMINISTRATIVE DECISIONS

Application of Bell Atlantic and GTE Corporation For Approval Of Agreement And Plan Of Merger,  
Docket No. A-310200F0002 (Order entered November 4, 1999) . . . . . 13

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, 186 PUR 4<sup>th</sup> 39 (Order entered May 29, 1998) . . . . . 12

Pennsylvania Public Utility Commission v. Equitable Gas Company, Docket No. R-00994784 (Order  
on Reconsideration entered June 9, 2000) . . . . . 3, 7

Pennsylvania Public Utility Commission v. UGI Utilities, Inc.—Gas Division, Docket No. R-  
00994786, Motion of Chairman Quain (May-2000-OSA-153, June 2, 2000) . . . . . 3, 7

PG Energy, Inc., Docket No. A-120011F.002 (Pa. PUC 1999) . . . . . 12, 13

STATUTES AND REGULATIONS

66 Pa.C.S. §332(b) . . . . . 8

52 Pa. Code §5.231 . . . . . 17

52 Pa. Code §5.75(b) . . . . . 21

## I. INTRODUCTION

On June 1, 2000, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Charles E. Rainey, Jr. In his Recommended Decision, Judge Rainey thoroughly reviewed the record in this proceeding and the Joint Petition for Settlement (Settlement) filed by the majority of the parties to this proceeding. After this review, Judge Rainey properly concluded that the Settlement was in the public interest and recommended that it be approved. Significantly, Judge Rainey flatly rejected the ill-considered and irrelevant objections of PPL Electric Utilities (PPL). PPL is the only party to file Exceptions to the ALJ's decision.

The OCA submits that the Commission should adopt ALJ Rainey's recommendation and need do no more here than adopt the thorough, well-reasoned Recommended Decision. The ALJ's Recommended Decision thoroughly discusses the myriad of issues raised by the Settlement, and recognizes the many benefits brought to PECO's ratepayers, its service territory and the community through this Settlement. Notably, the Settlement brings together a diverse group of Joint Petitioners consisting of parties representing all classes of PECO Energy ratepayers, PECO Energy, the City of Philadelphia, and parties working on a variety of issues both within and affecting PECO's service territory such as environmental groups and competitors. The Joint Petition provides a wide variety of benefits both for PECO's ratepayers and PECO's service territory, including rate reductions, a transmission and distribution rate cap extension, expansion of universal service programs, protections from the risks of diversified businesses, enhancements to reliability and customer service, enhancements to competition, protection for the environment, protections from the risks and costs of nuclear plant operation including extensive nuclear monitoring, limitations on

nuclear waste storage, research into the areas of nuclear decommissioning and nuclear plant radiation exposure to improve worker safety, commitments to the community in the areas of corporate presence and charitable and civic giving, and commitments to various large customers. The OCA submits that the ALJ correctly concluded that the Settlement and each of its terms are in the public interest.

In Exceptions to the ALJ's Recommended Decision, PPL continues its request that the Commission impose limitations that would preclude the Joint Petitioners and all other Pennsylvanians from ever mentioning or referring to this settlement in any future Commission proceeding. Although the Joint Petitioners have expressly agreed (and the ALJ has ruled) that the settlement "is a negotiated resolution solely of issues herein" and "shall not constitute or be cited as controlling precedent in any other proceeding," PPL continues to demand that the Commission rule now, without qualification, that no term of this settlement can ever be cited as "evidence" by any party in any future proceeding for any purpose. What this means is that all references to this settlement must be stricken from any future testimony or briefs and that the Commission must never be informed on the record of any case that a particular provision of this settlement was adopted.

The OCA submits that future Commissions must not be precluded from ever being informed of the existence of a settlement or accepting evidence of a settlement, evidence to which the Commission can give proper weight -- or no weight at all -- based on the circumstances and facts of the case. Future Commissions must be able to make determinations as to what facts may be relevant in a given proceeding and must be permitted to give appropriate weight to all of the evidence before it.

Indeed, the Commission recognized as much just last week in its Order on Reconsideration in Equitable Gas Company's restructuring proceeding under the Natural Gas Competition and Choice Act. Pennsylvania Public Utility Commission v. Equitable Gas Company, Docket No. R-00994784, slip op. at 7-8 (Order on Reconsideration entered June 9, 2000). In that unanimous Order, in considering a particular universal service issue under the Natural Gas Competition and Choice Act, the Commission referenced the mandates of the Act and the specific evidence of record applicable to Equitable, but also noted the consistency of the Commission's approach with other natural gas restructuring companies where the issue had been resolved by settlement. Id. Similarly, in a recent Motion by Chairman Quain adopted by the Commission in UGI-Gas Company's restructuring case, the Chairman noted the value of ensuring that the industry achieve the goals of the Natural Gas Competition and Choice Act in a consistent manner and then referenced the resolution of a common universal service issue in other cases that were concluded by settlement. Pennsylvania Public Utility Commission v. UGI Utilities, Inc.—Gas Division, Docket No. R-00994786, Motion of Chairman Quain (May-2000-OSA-153, June 2, 2000).

The OCA submits that there is nothing wrong with the Commission acknowledging the existence of prior settlements in reaching a resolution of a proceeding. The Commission does not operate in a vacuum and should not be limited in determining whether the results of other proceedings are relevant. The Commission should be able to consider all relevant information without the need for full-blown litigation.

One can easily envision many instances where the Commission would wish to be informed of prior settlement terms, which while not binding precedent, would at least give the Commission useful information in trying to establish consistent policies. For example, all electric

utilities, save one, might agree in settlements to certain data exchange protocols with electric generation suppliers. While the remaining utility might have valid reasons for objecting to such a protocol, might not the Commission at least wish to know that the protocol had been voluntarily adopted by other utilities? Should the Commission be forever barred from being given facts about every utility action simply because that action was taken as part of a settlement rather than as a result of full-blown litigation?

PPL's Exceptions are devoid of merit and do not address the merits of this merger or the settlement itself. For the reasons set forth below, and in the OCA's Reply Comments, its Main Brief and its Reply Brief, the OCA submits that PPL's requested conditions should be soundly rejected by the Commission. The Settlement should be expeditiously approved as in the public interest.

## II. REPLY EXCEPTIONS

Reply to PPL Exc. 1: The ALJ Correctly Rejected The Additional Conditions That PPL Sought To Impose On The Settlement.

In its Exceptions, PPL continues to request that the Commission impose additional conditions on the Settlement if it is to be approved. The OCA has addressed PPL's request in detail in its Reply to PPL's Objections to the Settlement, the OCA's Main Brief at 30-34 and the OCA's Reply Brief at 4-10. PPL continues to argue that the Commission should impose a condition upon the Settlement that would determine now that the settlement and its provisions can never be referred to as evidence in any future proceeding. PPL Exc. at 4-8.

The OCA submits that the Commission should reject PPL's Exceptions. PPL's attempt to limit both this Commission and the parties in future proceedings is simply unreasonable and unnecessary. The underlying premise of PPL's argument is that this Commission or a future Commission will not consider a future, as yet hypothetical case, on its own merits and will somehow force PPL to accept a settlement provision that it does not want to accept. Such a premise is devoid of merit.

After considering the position of PPL, the ALJ correctly rejected PPL's arguments.

The ALJ succinctly summarized the flaw in PPL's argument as follows:

I do not believe that it is in the public interest to adopt PPL's recommended wording since such language may be interpreted as restricting parties in subsequent proceedings from even recommending provisions from prior settlements, and also restricting the Commission from modifying settlements to include provisions from prior settlements when it is in the public interest to do so. Therefore, I reject PPL's recommendation in regard to this matter as being contrary to the public's interest.

R.D. at 34.

The OCA submits that the ALJ properly concluded that PPL's proposal is bad public policy and bad law. As the ALJ recognized, and as the parties have agreed, this Settlement, by its own terms, does not constitute controlling precedent. The Settlement, at paragraph 72, specifically 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. No Joint Petitioner disputes that the Settlement cannot constitute controlling precedent and the settlement and the law provide adequate support in this regard.

PPL continues to seek to go further, however, and control all other potential uses of this settlement in the future. At pages 5-6 of its Exceptions, PPL attempts to suggest that the Joint Petitioners have some improper motive because PPL fears that this settlement may be used in support of some relief against PPL. PPL argues that the OCA in particular "intends to employ this strategy" and somehow argue for relief that is not based on the facts of record in some future, hypothetical case. PPL Exc. at 5-6. A review of the quote from the OCA's Brief to which PPL objects reveals that it is nothing more than the recitation of basic legal practice before this Commission and every Court. What the OCA said is as follows:

If in a future proceeding, a party seeks to introduce evidence of a settlement, the utility, or other aggrieved party, can present evidence as to why the settlement provision is not relevant, should be accorded no weight, or should not be applied to it. If the aggrieved party feels that the Commission gave the evidence improper weight, or improperly admitted the evidence, that party can always challenge that decision. But, the parties to the Settlement should not be

precluded from ever referring to the terms of the settlement for whatever value they may have in a future proceeding, or during future settlement negotiations. To do so would be to infringe upon the due process rights of the Joint Petitioners in future cases. Indeed, the OCA can envision cases where the Commission might wish to be informed of prior settlements in order to determine whether consistency among similarly situated companies with respect to certain issues is appropriate.

OCA M.B. at 33. The OCA continues to support this argument and submits that it suggests no improper motive, but simply the operation of the law.

In fact, as noted above, the Commission itself has recently found information from restructuring settlements to be useful in reviewing cases before it. In the recent Equitable Gas Company and UGI Gas Company restructuring cases, for example, the Commission *specifically* noted the settlements of other natural gas companies, in addition to all of the other evidence of record, when considering whether a consistent approach to an issue was appropriate under the Natural Gas Competition and Choice Act and what that approach should be. See, Equitable Gas, supra. and UGI Gas, supra. Under PPL's proposal, however, the Commission would be precluded from ever even considering other settlements or common procedures that might have been adopted simply because they were adopted as part of a settlement. Such a result cannot be in the public interest.

Moreover, the OCA submits that there is nothing wrong, and certainly nothing illegal, with parties attempting to approach similar cases in a similar manner, whether it be through litigation or through settlement. The cases now before the Commission in both the gas and electric area are large cases often with many common issues. The parties will always seek to implement their policy positions through a case, whether in litigation or in settlement. If PPL does not like the policy or

resolution of an issue in a prior case, and a party seeks to advocate a similar condition for PPL, PPL always retains the right to litigate the issue, and to appeal to the Courts if it thinks the Commission has wrongly imposed a condition upon it. PPL has never been, and can never be, forced to settle any case since the decision as to whether to *litigate* or settle a case will always rest with PPL. PPL's attempt to restrict the Joint Petitioners and other parties from pursuing any position they deem appropriate in a future case must be rejected. PPL always retains the right to fully defend itself in that future, hypothetical case. But to limit Joint Petitioners, and other parties, in regard to arguments or positions that they may forward in a future case would severely impinge upon the due process rights of the Joint Petitioners, let alone parties to future cases who are not parties here.

The OCA submits that the Commission and the Joint Petitioners should not be circumscribed by a condition that presupposes the irrelevance of any settlement provision in a future, hypothetical case. The OCA submits that this approach constitutes poor regulatory and public policy and could derail the settlement process that has worked so well in electric and natural gas restructuring in Pennsylvania. This Commission has developed a useful paradigm for settling complex cases and the Commission should not allow this process to be scuttled.

Reply to PPL Exc. 2: It Would Have Been Inappropriate For The ALJ To Determine In This Proceeding What Would Constitute Relevant Or Material Evidence In Some Future Hypothetical Proceeding.

A. Any Policy Statement That Would Determine The Relevance Or Materiality Of Evidence In All Future Proceedings Would Stifle The Settlement Process.

At pages 6-11 of its Exceptions, PPL argues that the ALJ somehow disregarded 66 Pa.C.S. §332(b) by not concluding now that evidence in some as yet unknown proceeding is irrelevant and immaterial. The OCA submits, however, that PPL's argument is absurd and would

cast the ALJ and the Commission in the role of fortune teller. The OCA does not see how the Commission could conclude now, with any certainty or assurance, that evidence in some as yet unfiled, unnamed, and wholly hypothetical case, would be irrelevant and immaterial to anything that the Commission may need to consider in the future. If at the time of a case, a party believes that evidence that another party seeks to admit into the record is immaterial and irrelevant, the time that it is sought to be admitted is the appropriate time to argue the relevance and materiality of the evidence. The arguments that PPL sets forth at pages 6-11 are all the types of arguments that should be made to the ALJ and the Commission when there is an actual case and at the time of the actual case.<sup>1</sup>

PPL also attempts to argue for a “blanket rule” excluding settlements from evidence in any and every case. PPL Exc. at 9. As the OCA discussed in its Reply Brief at pages 6-8, the Company now seems to be asking the Commission to enter a policy statement on this matter in this proceeding. The OCA submits that PPL’s attempt to *impose* a state-wide policy regarding settlements in the context of this proceeding is improper. PPL’s own position is internally inconsistent. PPL seeks a policy directive that *would* serve as a binding norm in all future cases, yet PPL argues that nothing that comes out of this proceeding should ever be used by the parties in any way. PPL’s request does not even allow for parties in some future case to comment on or defend against the policy. Clearly the Commission cannot issue a policy statement without notice and opportunity to be heard by all affected parties. PPL’s request must be rejected.

---

<sup>1</sup> Also at page 11, PPL attempts to argue that PennFuture has conceded that the provisions of the settlement are not relevant in future cases. But, what PennFuture actually said is that it is not relevant to a case “that does not yet exist.” PennFuture Second Prehearing Memo at 6. PennFuture’s point, which PPL misses, is that without an actual case, a determination cannot be made.

B. PPL's Request That The Commission Rule Now That The Individual Settlement Provisions Are Relevant And Material Only To PECO Must Be Rejected.

1. Introduction

At pages 11-22 of its Exceptions, PPL asks the Commission to make a finding that based on the evidence presented in support of the settlement, the Commission should conclude that the settlement is only relevant in its specific context—that of the PECO/Unicom merger. PPL Exc. at 12. PPL also continues a somewhat indirect attack on several of the individual provisions of the settlement. The OCA submits that PPL's request again asks the Commission to prejudge future as yet unfiled cases and limit the Joint Petitioners' (and other non-parties') rights in those future cases. Such a limitation would impinge upon the due process rights of Joint Petitioners and other potential parties in these future cases and could impair the development of a full record in future cases before the Commission.

From pages 13- 22 of its Exceptions, PPL critiques the general settlement provisions and recites the testimony presented by the Joint Petitioners in support of the provision. From this testimony, PPL concludes, and asks the Commission to find, that these provisions are unique to PECO and can only be relevant to PECO. Nowhere in its Exceptions, however, does PPL directly challenge the provisions as being contrary to the public interest for purposes of this case, and nowhere has PPL challenged the merger as being contrary to the public interest.

The OCA submits that PPL's arguments here might be appropriate in some future, hypothetical proceeding to distinguish one case from another. But here, PPL misses two key points. First, the decision it is asking to be made here can only be made in the hypothetical future case by the Commission at that time. In the present case, there is no way for the Commission to prejudge

the determination as to whether evidence in some future case is relevant or should be accorded any weight. Second, PPL's position begs the question of what decision the Commission might make in this hypothetical, future case if in fact, the Commission were faced with substantially similar or identical facts and issues. Might not the Commission want to know how other utilities are addressing a particular issue, even if the issue had been resolved by a settlement? Should parties be precluded from even mentioning such prior resolutions unless these resolutions were the result of full-blown litigation? Must a fact be established through costly litigation before it becomes a fact?

The OCA submits that it is simply improper to tie the hands of a future Commission in this case when the facts of the future case are unknown. When and if the hypothetical, future case that PPL worries about ever becomes a reality, the Commission can consider all of the arguments that PPL has made in this case. PPL's request for declarations at this time that the provisions of this Joint Settlement cannot possibly be relevant to any other case must be rejected. If and when a provision of this Joint Settlement is ever referred to in a future proceeding, the Commission can decide all of the arguments forwarded by PPL at the time.

2. PPL's Discussion Of The Individual Settlement Provisions And Applicable Commission Policy And Law Is Erroneous And Should Be Corrected.

At pages 13-22, PPL addresses the individual settlement provisions. PPL no longer seems to suggest that the settlement provisions are not supported by substantial evidence of record. Indeed, because of PPL's initial objections which challenged the provisions of the settlement for lack of substantial evidence, the parties were forced to go to the expense of presenting expert testimony on all of the major settlement provisions. Now, PPL has discovered, to no one's surprise, that the evidence actually applies to the merger at hand rather than some as yet unimagined merger between

other unknown utilities. But, in fact, the Settlement has said that all along. The Settlement specifically said:

*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. . .*

Joint Petition, ¶72. The Merger and Corporate Restructuring is a specifically defined term in the settlement referring to PECO's Corporate Restructuring and the Merger with Unicom.

As the OCA has set forth in its Statement in Support, its Reply Comments, Main Brief and Reply Brief, the OCA fully supports the provisions of the Joint Settlement and submits that these provisions are in the public interest and consistent with Commission policy and applicable law. The OCA will not address each provision in detail, but fully supports ALJ Rainey's discussion of the public interest benefits, and Commission policy and applicable law as it relates to each of the Settlement provisions. R.D. at 25-50. In these Reply Exceptions, the OCA will address several points made by PPL in its discussion which the OCA submits are simply wrong.

In footnote 25 at page 15 of its Exceptions, PPL continues to argue that the Commission has a policy against rate reductions in the context of a merger proceeding. PPL argues that the ALJ and the OCA have "ignored the plain language" of the Commission's Order in PG Energy, Inc., Docket No. A-120011F.002 (Pa. PUC 1999) (PG Energy). PPL also argues that it is not clear what the Commission decision really held in the fully litigated Duquesne/APS electric utility merger case that required that 100% of the merger related savings be flowed back to customers in the form of distribution rate reductions and reductions in stranded cost. See, Joint Application of DOE, 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, 186

PUR 4<sup>th</sup> 39, 57-58 (Order entered May 29, 1998)(APS/DQE Merger). Although now recognizing that the Commission's Order in PG Energy was subsequently amended to include the reflection of merger savings, PPL continues to attempt to rely upon the original order, which was entered without a hearing, without assignment to an ALJ, and without any substantive litigation. The OCA submits that PPL's reliance upon the original PG Energy order should be rejected and the Commission should make it clear that rate reductions to reflect merger savings may be appropriate where supported by the record evidence in a particular case. See also, Application of Bell Atlantic and GTE Corporation For Approval Of Agreement And Plan Of Merger, Docket No. A-310200F0002, slip op. at 27 (Order entered November 4, 1999).

At page 19-20 of its Exceptions, PPL attacks the environmental provisions of the Joint Settlement and argues that the provisions that call for funding of certain projects utilizing PECO's Sustainable Development Fund as the entity to receive the funds and oversee their expenditures are improper. The OCA first questions what interest PPL has in PECO's Sustainable Development Fund. The PECO Sustainable Development Fund is governed by an independent Board of Directors and its decision regarding acceptance of these designated settlement funds and the identified projects is now a matter between the Board and PECO. The Joint Settlement does not bypass the Board as PPL asserts but provides the Board with additional funding and projects. PECO's Sustainable Development Fund Board does not need the assistance of PPL in determining whether or not it wishes to accept these funds and projects. If anything, the settlement provisions support the Sustainable Development Fund by providing it with funding and additional sustainable projects which it can implement in a manner consistent with the goals of the Fund.

At page 20-21 of its Exceptions, PPL requests that the Commission “severely limit” the impact of the provisions in the Joint Settlement regarding PECO’s Competitive Default Service Program (CDS). The OCA is very concerned with PPL’s request and submits that it should be soundly rejected. CDS is a critical service for Pennsylvania and it will be critical for Pennsylvania customers that a truly successful CDS program is developed and moves forward. The recent failure of the CDS bids in GPU Energy service territory call into question the appropriate design of CDS. It will be particularly important that new methods of obtaining Competitive Default Service be explored and the results of these new methods be shared in the electric industry. The OCA submits that it is irresponsible to ask to “severely limit” the parties, or the Commission in this regard. PPL’s proposed “severe limits” can only lead to weeks or months of wrangling over whether any evidence at all of PECO’s attempts to secure a competitive default provider can be relevant to another proceeding since PECO proceeded under a provision of the Settlement. The Commission should be able to have ready access to important information regarding securing this critical default service in a timely manner. If the revised PECO CDS program succeeds where the GPU program failed, the Commission should not be precluded from receiving evidence of this fact in a future proceeding simply because it arose from a settlement. Clearly, the Commission must retain full power to consider all evidence and to act timely in this critical area.<sup>2</sup>

---

<sup>2</sup> PPL also argues that the record does not contain a cogent explanation for altering the CDS concept that emerged from the restructuring settlement. But as PECO witness Hill acknowledged, GPU Energy’s CDS bid failed to attract bidders. PECO St. 3S at 11. The failure of a major utility’s competitive default service bid to attract bidders is certainly a cogent explanation as to why the procedure should be modified.

PPL also tries to counter MAPSA witness McCormick’s testimony as to the need for these CDS modifications by asserting that OCA witness LaCapra did not testify that the CDS  
(continued...)

For the reasons set forth above and in the OCA's Statement in Support of the Settlement, the OCA's Reply Comments to Objections to the Settlement, the OCA's Main Brief, and the OCA's Reply Brief, the OCA submits that the provisions of the Joint Settlement are reasonable and in the public interest. PPL has not raised a single credible argument that the Joint Settlement is not in the public interest. The Joint Settlement and its provisions should be found to be in the public interest and approved.

Reply to PPL Exc. 3: The ALJ Correctly Concluded That Adoption Of PPL's Position Was Contrary To The Public Interest.

At pages 22-26 of its Exceptions, PPL argues that the ALJ erred in concluding that adoption of PPL's position would be contrary to the public interest. PPL argues that the ALJ should have adopted the testimony of its witness and concluded that adoption of PPL's requested relief would make settlements more likely.<sup>3</sup> To the contrary, the OCA submits that the position of PPL and its witness is so distant from the actual concept and operation of the law that it deserves no further consideration.

For many years in Pennsylvania, settlements have moved forward, with good result, without the condition requested by PPL. The Commission, the Courts, and settling parties have long

---

<sup>2</sup>(...continued)

provision would help to offset the possibility of PECO's dominant market position. PPL Initial Brief at 28,fn.58. But, as OCA witness LaCapra testified at the outset of his testimony, he was not going to address or mention each and every settlement provision. OCA St. 1-S at 8. If successful, the OCA does believe that the CDS will help to mitigate a potential consolidation of PECO's dominant position in the market in its service territory.

<sup>3</sup> PPL argues that the testimony of its witness was "unrebutted." PPL ignores the fact that the ALJ did not provide for responsive testimony in this case. Additionally, the testimony of its witness is of a policy nature and is readily addressed by the Commission and the parties through the filing of Briefs.

recognized, and expressly included language in settlements, that states that the settlement cannot be cited as controlling precedent. This Joint Settlement has just such a paragraph—Paragraph 72. The recognition that a settlement cannot be used as controlling precedent, *i.e.* another utility cannot be required to implement the same provision based only on the strength of the settlement, is the protection the law provides. This protection has been found adequate for many years and there is no need for the Commission to change its practice or process.

Rather than encouraging or supporting settlements, adoption of PPL's requested relief would impede the settlement process. As discussed above, it should come as no surprise that in large complex cases, with similar issues, parties will try to forward their policy positions through both settlement and litigation. If a party must now always be concerned that it can only refer to its position in future cases if it was fully litigated rather than settled, parties will be discouraged from settling any case. Under PPL's proposal, parties should simply litigate each case to avoid being precluded in a future case from presenting its policy which was agreed to in a settlement.

At page 24 of its Exceptions, PPL suggests that if the Commission allows settlement provisions to be admitted as evidence in future proceedings, it will invariably lead to discovery of settlement negotiations. But, PPL's own Brief and Exceptions in this matter belie its position. As PPL's Brief and Exceptions demonstrate, what must be inquired into is the applicability of a settlement term in a prior case to the facts of a new case. This is the exact exercise in which PPL engaged in its Brief and Exceptions to this case. PPL Exc. at 11 to 22. Although the OCA does not believe that the Commission should make this decision now in a vacuum, this is the type of analysis that could easily be performed in the future case. As it has done here, PPL can point to obvious differences between companies and cases that would justify completely different treatment in a

future case. At this time, however, we can not possibly know whether similar issues will arise in a future case, nor can we know whether information about a provision approved here might be useful in a future case. To prejudge these issues now would be improper.

Moreover, the Commission has strict rules regarding the confidentiality of settlement discussions and precludes admission into evidence of proposals of settlement from admission in evidence against a counsel or participant claiming the privilege. 52 Pa. Code §5.231. The Commission's rules forward the Commission's settlement process and are not jeopardized by rejecting PPL's position in this case. As noted above, the Commission has followed these rules and processes for decades and has not seen the "devastating" effect that PPL warns of even though the settlement conditions forwarded by PPL have never been adopted.<sup>4</sup>

At page 25 of its Exceptions, PPL again fears that the OCA and other Joint Petitioners will try to "use the provisions of the Joint Petition to justify identical or similar relief in other proceedings." PPL alleges that this would deny PPL reasonable notice and a fair opportunity to be heard. The OCA submits that this argument is so distant from the actual reality of the practice of law before the Commission that it is hard to respond. Each and every new proceeding before the Commission will follow all of the procedural rules set forth by the Commission and the Courts. There is simply no reason now to think that they won't. In those cases, if a party refers to a prior settlement provision in response to the Company's direct case, or if the Company seeks to introduce

---

<sup>4</sup> PPL also cites to the federal rules of evidence at page 24 of its Exceptions. PPL notes that the reason behind the federal rules is driven by the concern that a compromise not be used against a party to prove liability. PPL's rationale here, however, is different and does not support the limitation requested by PPL.

it as part of its case, the parties to that proceeding will be accorded due process and a fair opportunity to be heard on all issues regarding the admission of that evidence.

The OCA submits that it is a basic premise of the law that every party in every case before the Commission must be free to present appropriate requests for relief and the Company or another party can respond to 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 than any other request. The Commission will consider the request, the evidence in support of the request, the evidence in opposition to the request, and decide the case on the merits. PPL's entire argument here presupposes that the Commission will not faithfully perform its review in the future. The OCA strongly disagrees with this supposition.

For the reasons set forth in the OCA's Reply Comments at 5-12, the OCA's Main Brief at 28-34, the OCA's Reply Brief at 11 to 14, the OCA submits that PPL's conditions would stifle the settlement process that has worked so well at the Commission. As such, the ALJ correctly concluded that PPL's conditions were contrary to the public interest.

Reply to PPL Exc. 4: The ALJ Correctly Concluded That The Restrictions Sought By PPL Would Have Far Ranging Implications And Could Disrupt The Settlement Process.

At pages 26-27 of its Exceptions, PPL argues that the ALJ erred by assuming that PPL was seeking to prevent parties from using the Joint Petition in future settlement discussions. The OCA submits, however, that the ALJ properly considered all of PPL's filings, including its Objections to the Settlement, and concluded that the relief requested by PPL was far ranging and would be disruptive of the settlement process.

To fully understand the import of PPL's requested relief, the OCA submits that it is important to remember where this all started—with PPL's Objections to the Settlement. The heart of PPL's complaint can be found at page 13, Paragraph 22 of its Objections. PPL there claimed 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 was arguing that it was not treated fairly by the 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 characterization of this process and 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 has worked to the benefit of all Pennsylvanians.

In its Objections to the Settlement, PPL argued 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. PPL Objections at 13, 29-30. A comparison of PECO and PPL's restructuring settlements, however, would demonstrate that there were differences between the settlements that reflected 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 its believes that the settlement process will treat it unfairly.

Although in its testimony and its Initial Brief, PPL sought to introduce slight modifications to its position, which the ALJ recognized, the ALJ was correct to conclude that the result of granting PPL's relief could be an impediment to the settlement process that has worked so well in Pennsylvania. Clearly, if PPL believes that it can preclude a party from even introducing evidence of a settlement provision or approach by another utility that was agreed upon in a prior settlement, PPL will also effectively bar that position in settlement for the very reason that it cannot be admitted in the case. The ALJ correctly rejected PPL's attempt to downplay the negative effect of its requested relief.

The OCA submits that the Commission should adopt the ALJ's recommendation. The Commission should not permit PPL's conditions to derail the settlement process in Pennsylvania.

Reply to PPL Exc. 5: The ALJ Correctly Concluded That PPL Lacks Standing To Challenge The Individual Substantive Provisions Of The Settlement.

In its Exceptions, PPL argues that it has standing to participate in this proceeding and challenge the individual provisions of the Settlement. PPL Exc. at 29-30. In addition, PPL argues that since its Petition to Intervene was granted by the ALJ, it is too late in the process to challenge PPL's standing. PPL Exc. at 27-28. The OCA submits, however, that the ALJ correctly concluded that PPL does not have a direct, immediate and substantial interest in the individual substantive settlement provisions to challenge those issues before the Commission. R.D. at 35.

The OCA agrees with PPL that it has standing to raise issues that directly, immediately and substantially affect its interest. But PPL, in its wide ranging Objections before the ALJ also challenged the merits of substantive settlement provisions in which it did not have any

direct, substantial or immediate interest. The ALJ correctly found that PPL did not have standing to challenge these “other issues,” a challenge which it now appears PPL has largely dropped. R.D. at 35.

Initially, the OCA submits that under the Commission’s regulations, admission to a proceeding as an intervenor does not automatically confer standing on the intervenor on any or all issues. The Commission regulations state:

Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding.

52 Pa. Code §5.75(b). In this case, the ALJ was correct to consider whether PPL had a direct, immediate and substantial interest in the provisions of the Settlement which it challenged. See, William Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975)(William Penn)

As the OCA set forth in its Main Brief in this matter, the Pennsylvania Supreme Court has clearly enunciated the principles of standing which have been applied in proceedings before the Pennsylvania Public Utility Commission. William Penn, supra. In William Penn, the Court adopted a three part test that must be satisfied to demonstrate that a party is or may be aggrieved and thus, has standing to litigate an issue. The Court held that a party must have an interest that is substantial, direct and immediate. The requirement of a “substantial” interest has been described by the Court as follows:

Thus, the requirement of a “substantial” interest simply means that the 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.

William Penn, 346 A.2d at 282. A “direct” interest has been described by the Court as follows:

The requirement that an interest be “direct” simply means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains.

Id. Finally, the Court described the “immediate” requirement as follows:

The remaining requirements of the traditional formulation of the standing test are that the interest be “immediate” and “not a remote consequence of the judgment.” As in the case of “substantial” and “pecuniary,” these two requirements reflect a single concern. Here that concern is with the nature of the causal connection between the action complained of and the injury to the person challenging it.

Id. at 283.

The OCA submits that the ALJ correctly concluded that PPL has not shown a direct, immediate and substantial interest in the issues it raised regarding the substantive provisions of the Settlement. As the ALJ recognized, PPL’s only interest in attacking the substantive provisions of the Settlement is its concern that it might find these provisions objectionable if the provisions were applied to it in a future proceeding. R.D. at 35. PPL has stated no other interest on the record of this proceeding. The ALJ correctly recognized that this interest is not direct, immediate and substantial.

The OCA submits that PPL does not have standing to challenge the substantive provisions of the Settlement. In particular, the OCA submits that PPL does not have a legally recognizable interest in the rate reductions for PECO’s customers, the rate cap extension for PECO’s customers, the decommissioning fund for PECO’s nuclear plants, the universal service provisions regarding the CAP for PECO’s customers, the environmental benefits provided for PECO’s service territory and customers, the competitive benefits that will benefit PECO’s customers, or the contract provisions with certain of PECO’s customers. This Settlement addresses the risks and benefits to

PECO's customers and the public interest from PECO's corporate restructuring and merger with Unicom.


*If* PPL someday files a merger case and *if* one of the parties to this proceeding intervenes, and *if* someone in that case suggests a similar term, *then* PPL will have every right and opportunity to object, litigate and defend its case on the merits. But here, PPL's interest, at best, is one of a remote consequence of judgment—the very interest that the Courts have held does not confer standing on a party. William Penn, 346 A.2d at 283.

As such, the OCA submits that the Commission should adopt the ALJ's finding that PPL does not have standing to challenge the substantive provisions of this settlement. This proceeding is not a rulemaking. It is a proceeding with specific parties for a specific case. For these reasons, PPL's attack on the settlement provisions should be rejected and the ALJ's conclusion adopted.

### III. CONCLUSION

The Exceptions of PPL and its objections to this comprehensive settlement are baseless and should be resoundingly rejected by the Commission. The Commission should state in no uncertain terms that it will not allow PPL to derail this Settlement, nor will the Commission limit its ability to make evidentiary rulings in some future case whose parties and whose subject matter can only be imagined at this time. A 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 reaches a fair balance of diverse interests, is in the public interest and fully in accord with Commission policy and applicable law. The Commission should quickly reject PPL's lone objections to this Settlement and expeditiously approve the Settlement.

Respectfully submitted,

  
Tanya J. McCloskey  
Senior Assistant Consumer Advocate

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Dated: June 14, 2000  
58663

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, Reply Exceptions, 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 14<sup>th</sup> day of June, 2000

SERVICE BY AND FIRST CLASS MAIL, AND INTER-OFFICE MAIL

Kenneth L. Mickens, Esq.  
Kandy Melillo, Esq.  
Office of Trial Staff  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pa 17105-3265

Hon. Allyson Y. Schwartz  
Senate Box 203004  
Main Capital Bldg.  
Room 182  
Harrisburg, PA 17120

Daniel Clearfield, Esq.  
Kevin Moody, Esq.  
Wolf, Block, Schorr and Solis-Cohen  
Suite 300  
212 Locust Street  
Harrisburg, PA 17101

Bernard A. Ryan, Jr., Esq.  
Small Business Advocate  
Suite 1102 Commerce Bldg.  
300 North Second Street  
Harrisburg, PA 17101

David Kleppinger, Esq.  
Charis M. Burak, Esq.  
McNees Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Christopher B. Craig, Esq.  
Senate Democratic Appropriations  
Committee  
Room 545 Main Capitol Bldg.  
Harrisburg, PA 17120

William T. Hawke, Esq.  
Malatesta Hawke & Mckeon, LLP  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17101

John Hanger  
Citizens for Pennsylvania's Future  
Suite 410  
212 Locust Court  
Harrisburg, PA 17101

James H. Cawley, Esq.  
Rhoads & Sinon  
12<sup>th</sup> Floor  
One South Market Street  
Dauphin Building  
P. O. Box 1146  
Harrisburg, PA 17108

Eric J. Epstein, Esq.  
4100 Hillsdale Road  
Harrisburg, PA 17112

Michael Fiorentino, Esq.  
Clean Air Council  
Suite 106  
105 N. Front Street  
Harrisburg, PA 17101

Robert Jaffe, Esq.  
City of Philadelphia, City Council  
Room 588 City Hall  
Philadelphia, PA 19107

Paul Bonney, Esq. **Via Facsimile**  
Ward Smith, Esq.  
Kent D. Murphy, Esq.  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, Pa 19101-8699

Paul Russell, Esq. **Via Facsimile**  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101

Donald A. Kaplan, Esq. **Via Facsimile**  
Leanne M. Bober, Esq.  
Preston, Gates, Ellis & Rouvelas Meeds  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006

Thomas P. Gadsden, Esq.  
Anthony DeCusatis, Esq.  
Morgan, Lewis & Bockius  
1701 Market Street  
Philadelphia, PA 19103-2921

Gregory Lawrence, Esq.  
C. A. Weiser, Esq.  
Sutherland, Asbill & Brennan, LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004-2415

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Greg Pastore  
619 Pemberton Street  
Philadelphia, PA 19147

John Will Ongman, Esq.  
Marc D. Machlin, Esq.  
Pepper Hamilton, LLP  
600 Fourteenth Street, NW  
Washington, DC 20005

Kenneth M. Barna, Esq.  
Rubin & Rudman, LLP  
50 Rowes Wharf  
Boston, MA 02110

Phil Bertocci  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102

John L. Munsch, Esq.  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Peter Meadows-Adels  
Charles McPhedran  
Suite 1801  
117 S. 17<sup>th</sup> Street  
Philadelphia, PA 19103

John L. Hall, Esq.  
Unruh Turner Burke & Frees PC  
P. O. Box 515  
West Chester, PA 19381-0515

Amy Hammersmith  
2312 Parrish Street  
Philadelphia, PA 19130

John S. Halstead, Esq.  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Norbert Smith, Esq.  
Patricia J. Clark, Esq.  
Allegheny Energy Supply  
Roseytown Road  
RR 12, Box 1000  
Greensburg, PA 15601

Joseph A. Dworetzky, Esq.  
Hangley, Aronchick, Segal & Pudlin  
27<sup>th</sup> Floor  
One Logan Square  
Philadelphia, PA 19103-6933

Carville B. Collins, Esq.  
Piper Marbury Rudick & Wolfe, LLP  
36 South Charles Street  
Baltimore, MD 21201-3018

Steven P. Hershey  
Connolly, Epstein, Chicco, Faxman, et al  
9<sup>th</sup> Floor  
1515 Market Street  
Philadelphia, PA 19102-1909


Amy Gold  
P. O. Box 4402  
Houston, TX 77210

Andrew Altman  
400 S. Camac Street  
Philadelphia, PA 19147

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

Craig A. Doll, Esq.  
25 North Front Street  
Second Floor  
Harrisburg, PA 17101-1606

Brian P. Downey, Esq.  
John A. Greenbaum, Esq.  
Pepper Hamilton, LLP  
200 One Keystone Plaza  
North Front and Market Streets  
P. O. Box 1181  
Harrisburg, PA 17108-1181

  
Tanya J. McCloskey  
Senior Assistant Consumer Advocate

Counsel For  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

55995

**Pepper Hamilton LLP**  
Attorneys at Law

200 One Keystone Plaza  
North Front and Market Streets  
P.O. Box 1181  
Harrisburg, PA 17108-1181  
717.255.1155  
Fax 717.238.0575

**ORIGINAL**  
June 14, 2000

717.255.1195  
greenbaumj@pepperlaw.com

**VIA HAND DELIVERY**

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

**DOCUMENT  
FOLDER**

RECEIVED  
00 JUN 14 PM 4:17  
P.A.P.U.C.  
SECRETARY'S BUREAU

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

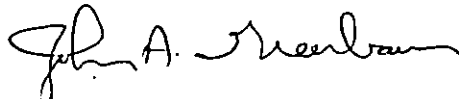
Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of Reply of the National Railroad Passenger Corporation to the Exceptions of PPL Electric Utilities Corporation to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr.

A copy of each of the reply and diskette has been provided to the Office of Special Assistants.

Thank you for your attention in this matter.

Sincerely,



John A. Greenbaum

Enclosures

- cc: Charles E. Rainey, Jr., Administrative Law Judge (via fax and hand delivery, w/enc.)
- Office of Special Assistants (via hand delivery, w/enc.)
- All parties to this proceeding (via first class mail, w/enc.)

Philadelphia, Pennsylvania	Washington, D.C.	Detroit, Michigan	New York, New York
Pittsburgh, Pennsylvania	Wilmington, Delaware	Berwyn, Pennsylvania	Cherry Hill, New Jersey

40

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. A-1105550147

DOCUMENT  
FOLDER

**REPLY OF THE NATIONAL RAILROAD PASSENGER CORPORATION  
TO THE EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION  
TO THE RECOMMENDED DECISION OF ADMINISTRATIVE  
LAW JUDGE CHARLES E. RAINEY, JR.**

On June 1, 2000, Administrative Law Judge Charles E. Rainey, Jr. issued a recommended decision approving the Joint Petition for Settlement (“Joint Petition” or “Settlement”).<sup>1</sup> As Judge Rainey indicated, this Settlement is supported by nearly all of the parties to this proceeding. On June 9, 2000, however, PPL Electric Utilities Corporation (“PPL”), filed exceptions challenging Judge Rainey’s ruling. The National Railroad Passenger Corporation (“Amtrak”), a signatory to the Joint Petition, hereby submits this Reply to PPL’s submission.

**DOCKETED**  
JUN 15 2000

RECEIVED  
000 JUN 14 PM 4:17  
P.A.P.U.C.  
SECRETARY'S BUREAU

---

<sup>1</sup> See Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr., issued June 1, 2000 (hereinafter “Recommended Decision”).

As explained below, the Joint Petition reflects the efforts of dozens of parties with differing interests, including PECO Energy Company (“PECO”), State agencies, customer groups, individual customers, power marketers, counties, municipalities, and other advocacy groups. At this point, the only party opposing the Settlement is PPL, and PPL does not object to the substantive provisions of the Settlement. Its challenge relates solely to the potential use of the Joint Petition as “relevant or material evidence” in a later proceeding. PPL urges the Commission to impose a new condition prohibiting any “evidentiary” use of Settlement. As Judge Rainey concluded, however, such relief is completely unnecessary. In any future merger proceeding involving PPL, if an intervenor attempts to use the PECO-Unicom Settlement as evidence, PPL is free to raise any appropriate objections. The Commission can then issue a ruling at that time. There is simply no reason for the Commission to address this hypothetical issue now.

PPL also asks this Commission to adopt a general rule or policy prohibiting the introduction of settlements as evidence. Whatever the wisdom of such policy-making, it has no place in this proceeding, which relates to a specific merger and restructuring. Accordingly, since the proposed Settlement commands very broad support and unquestionably serves the public interest, the Commission should approve it on an expedited basis.

## I. BACKGROUND AND PROCEDURAL HISTORY

On November 22, 1999, PECO filed an application seeking approval of its proposed corporate restructuring and merger with Unicom Corporation (“Unicom”). Over the next three months, more than fifty (50) parties sought and were granted permission to intervene in this case. The parties engaged in substantial discovery. Consistent with the Commission’s strong policy of encouraging settlements, *see* 52 Pa. Code §5.231(a), the parties simultaneously worked to achieve an amicable global resolution of the issues raised in this proceeding.

On March 24, 2000, PECO and the other signatories filed the proposed Settlement with the Commission. The Commission then solicited comments on the Settlement. The only two parties to oppose the Settlement were PPL and Councilman David Cohen.<sup>2</sup> These parties asked the Commission either to reject the Joint Petition or, in the alternative, to impose additional conditions.

The parties supporting and opposing the Settlement then filed testimony and, on May 10, 2000, Judge Rainey presided over a hearing on the objections to the Joint Petition. At that hearing, the pre-filed testimony of various witnesses and related documents were admitted into evidence and some additional testimony was taken. The parties subsequently submitted post-hearing briefs and, on June 1, 2000, Judge Rainey issued his Recommended Decision approving the Settlement.

---

<sup>2</sup> Councilman Cohen has not filed exceptions to the Recommended Decision.

## II. LEGAL STANDARD FOR APPROVAL OF PECO'S APPLICATION

A public utility must apply for a "certificate of public convenience" from the Commission whenever it desires "to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including . . . merger. . . , any tangible or intangible property used or useful in the public service." 66 Pa.C.S. § 1102(a)(3). The certificate of public convenience may be granted 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. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

66 Pa.C.S. § 1103(a).

Ordinarily, the applicant (here, PECO) must "demonstrate that the [corporate action] will affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." City of York v. Pa. Pub. Util. Com., 449 Pa. 136, 141, 295 A.2d 825, 832 (1972). In this case, PECO is seeking approval for two related corporate transactions -- corporate restructuring and merger -- and the utility needs certificates of public convenience for both actions. To obtain approval, PECO, either alone or with the other settling parties, must demonstrate that under the terms of the Settlement, the proposed merger and restructuring is in the public interest. *See, e.g.*,

In re DOE, Inc., 186 PUC 4th 39, 1998 WL 406768 at \*6 and \*10-11 (it is the applicant's "burden to show that the merger will be in the public interest" and merger will be permitted only if the Commission finds it "is necessary or proper for the service, accommodation, convenience, or safety of the public").

At this point, PPL appears to acknowledge that the Joint Petition is in the public interest. PPL argues only that the Settlement cannot and should not be introduced as evidence in any future proceeding. Yet PPL's evidentiary argument need not be addressed now. Instead, this question, like all evidentiary matters, should be addressed if and when it arises in a specific case.

### **III. ARGUMENT**

#### **A. THE JOINT PETITION SHOULD BE APPROVED BECAUSE IT IS IN THE PUBLIC INTEREST**

As set forth above, the Commission should approve the proposed merger and restructuring if it determines that such action "is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103(a). The evidence in this case establishes that under the terms of the Settlement, the proposed transaction "will affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." City of York v. Pa. Pub. Util. Com., 449 Pa. 136, 141, 295 A.2d 825, 832 (1972). The Settlement serves the public interest by reducing PECO's rates, extending the rate cap on PECO's transmission and distribution

service, expanding universal service programs for low-income consumers, requiring PECO to improve the reliability of its service, and enhancing the ability of power marketers to compete in PECO's service territory. The Settlement also gives Amtrak the option to pay a lump sum and buy out any remaining obligation to pay competitive transition charges ("CTCs"). Both the General Assembly and the Commission already have determined that it is in the public interest to provide utility customers with such "alternative" payment options. (*See* 66 Pa. C.S. § 2808(b); 1998 Restructuring Petition at 21 (April 29, 1998).)

**1. PECO Rate Reductions And Rate Cap Extension**

As Judge Rainey has explained, the proposed Settlement requires PECO to reduce its rates by \$200 million over a period of approximately four years. (*See Recommended Decision* at 10.) Assuming that the merger is consummated, the savings to customers are substantial and guaranteed. (*See* Testimony of Richard LaCapra, p. 9 and Testimony of Richard Silkman, p.7.)

Additionally, PECO's current rate cap on transmission and distribution service will be extended for another 18 months, or until December 2006. (*Recommended Decision* at 10, Testimony of Richard LaCapra p. 9, lines 16-24.) Subject to very limited exceptions, then, PECO is prohibited from requesting increased rates for a very substantial period of time. This provides a substantial benefit to consumers and therefore is in the public interest.

## **2. Reliability Improvements By PECO.**

The Joint Petition also requires PECO to improve its system-wide reliability. (Recommended Decision at 11.) Specifically, PECO must implement a quality of service plan, reduce the number of customers with repeat outages, and correct service problems on its five worst circuits each year. In addition, the Settlement imposes stricter quantitative benchmarks for evaluating PECO's reliability, and it establishes various enforcement mechanisms. (*Id.*; Testimony of Scott Pierrol, p. 2; LaCapra, p. 13.) Under this Settlement, then, PECO's customers will reap the benefits of improved reliability, which is certainly in the public interest.

## **3. Expansion In PECO's Universal Service Programs.**

As Judge Rainey has explained, the Joint Petition provides substantial benefits for low-income ratepayers. (Recommended Decision at 11.) The Settlement enhances and expands PECO's universal service programs for PECO's electric and gas customers. (LaCapra, p. 9, lines 29-34.) It also requires PECO to provide additional funding for low-income fuel funds. In addition, PECO has agreed to improve the monitoring of universal service programs to determine whether "special needs" programs are necessary to address the unmet needs of the target population. (Silkman p. 13, lines 17-22). Overall, the Joint Petition will allow the universal service program to serve significantly more customers and will ensure that the needs of these customers are not overlooked. (LaCapra pp. 9-10, lines 36-16.)

#### 4. Strengthening The Ability Of Power Marketers To Compete.

As explained above, PPL does not claim that the proposed merger will have anti-competitive effects. PPL focuses on other, less fundamental issues.<sup>3</sup>

In any event, the proposed Settlement includes many provisions that are designed to strengthen the ability of power marketing firms to compete in PECO's service territory. (See Recommended Decision at 11-13, 30.) To start with, for industrial and commercial ratepayers, the proposed Settlement alters the mechanism for reconciling PECO's CTC revenue each year. For CTC reconciliation purposes, the industrial and commercial classes will be combined into a larger group, thereby reducing year-to-year volatility in CTCs. By creating a higher level of economic certainty, this adjustment will enhance the ability of power marketers to compete for customers in PECO's service territory. (See Testimony of John Rohrbach p. 11.)

Furthermore, the Settlement provides that, at a price of \$52 per MW-day, PECO will make available to licensed electric generation suppliers 600 MW per day of installed capacity ("ICAP"). (Joint Petition, Appendix C; LaCapra Testimony, p. 4, lines 25-28.) This capacity will be made available on a contract basis for three years beginning on January 1, 2001. Effectively, PECO must sell off enough ICAP to allow

---

<sup>3</sup> Judge Rainey has made a specific finding that the Settlement will "promote retail electric competition." Recommended Decision at 30. "PECO witness William H. Hieronymous presented unrefuted testimony that the loss of Commonwealth Edison Company ('ComEd' is a subsidiary of Unicom) as a competitor in the Pennsylvania electric market, is of little effect since ComEd has had almost no participation in the Pennsylvania market." (*Id.*)

over 50,000 Philadelphia area customers to obtain generation service from new suppliers. (Rohrbach, p. 11, lines 11-14; Testimony of James McCormick, p. 3; LaCapra, p. 14, lines 22-37.) By forcing additional sales of installed capacity under defined terms, the Settlement will enhance the ability of power marketers to compete in PECO's service territory. (*Id.*)

Finally, the Settlement is designed to enhance and expedite the flow of customer information to power marketing firms. (*See Recommended Decision* at 12; McCormick at pp. 4-5.) Customer billing procedures and procedures for electronic data interchange ("EDI") will be improved. In addition, the Settlement establishes an expedited dispute resolution process to resolve disputes relating to the speed or quality of the customer data supplied by PECO. (*Id.*; *see also* La Capra, pp. 14-15.) All of these changes are designed to strengthen the ability of power marketing firms to compete. Ultimately, to the extent that competition intensifies, consumers will be the ultimate beneficiaries. For that reason, these provisions of the Settlement are certainly in the public interest.

**5. Authorization For Amtrak To Obtain A Lump Sum CTC Buy-Out.**

As explained above, the Settlement gives Amtrak the option to buy out any remaining obligation to pay CTCs to PECO. The lump sum buy-out clause implements provisions in PECO's 1998 Electric Restructuring Settlement and in the Electricity

Generation Customer Choice and Competition Act. (Testimony of Stanley R. Forczek, p. 9, lines 12-28; *see also* 66 Pa. C.S. § 2808(b)). As Judge Rainey has explained, PECO's 1998 Restructuring Settlement was itself approved by the Commission and found to be in the public interest. (Recommended Decision at 44-45; Forczek p. 3, lines 6-11.)

Ultimately, if Amtrak is able to use one of the buy-out options granted by this Settlement, and if this action reduces Amtrak's energy costs, this cost reduction would be in the public interest. (Recommended Decision at 45.) In providing intercity passenger service, Amtrak itself serves the public. Simultaneously, Amtrak supplies traction power to commuter authorities, which also serve the public. In addition, any actions which reduce Amtrak's operating costs are consistent with federal law, which encourages Amtrak to move toward operational self-sufficiency and reduce its dependence on government subsidies. (Forczek p. 10, 3-8.)

PPL has not introduced any testimony or other evidence questioning this aspect of the Settlement. At this point, PPL appears to acknowledge that the lump sum buy-out provision is in the public interest.

**B. PPL'S CHALLENGE TO THE JOINT PETITION SHOULD BE REJECTED.**

**1. PPL's Request For An Advance Ruling On Any Future Evidentiary Use Of The Settlement Is Contrary To Established Law.**

PPL acknowledges that Commission policy strongly favors voluntary settlements. (*See* 52 Pa. Code § 5.231(a); 52 Pa. Code § 69.391; 52 Pa. Code § 60.401.) PPL's fundamental objection is that the Settlement here could be given "evidentiary weight" in a later proceeding. (*See* Testimony of Paul L. Gioia, on behalf of PPL Electric Utilities Corporation, p. 4, lines 3-10).<sup>4</sup> Since the Joint Petition is a product of negotiations, PPL argues that its provisions "can be neither relevant nor material evidence that similar relief is appropriate or warranted in proceedings involving other Pennsylvania public utilities." (PPL Exceptions at 2.)

Whatever the strength of this "evidentiary" argument, it does not justify the imposition of a new condition in this proceeding. PPL does not suggest that the Commission's evidentiary rules, which already prohibit the introduction of irrelevant or

---

<sup>4</sup> PPL's witness, a New York lawyer, previously had expressed concern about the "precedential effect" that could be given to this Settlement. (Gioia Testimony at p. 4, lines 3-10.) At this point, however, PPL appears to recognize that no additional conditions are required to address this concern. It is already well-established that settlements of matters before this Commission cannot be used as precedent in subsequent matters before this body. (*See PPL Exceptions* at 8-9; *Recommended Decision* at 34; *see also Pa. PUC v. The Bell Telephone Company of Pennsylvania*, 1988 Pa. PUC LEXIS 572 (November 10, 1988).) In addition, the Joint Petition specifically provides that it "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). Thus, there is no danger that the Settlement could be cited as binding precedent in any future proceeding involving PPL or any other utility.

immaterial evidence, are in any way deficient. 66 Pa.C.S. §332(b). Indeed, if PPL's theory is correct, the Settlement never will qualify as relevant or material evidence in any future proceeding. For that reason alone, it is unnecessary to impose a new condition in this case.

Nor does PPL establish that Commission action is required to address PPL's broad policy concerns relating to the use of settlements. If settlements never can be introduced as evidence because they are irrelevant or immaterial, then PPL's exceptions are without merit because the hypothetical injury it identifies never will occur. If, on the other hand, those settlements can be introduced because they are material and relevant, PPL's proposed condition should be rejected because it would restrict the rights of litigants to introduce material and relevant evidence. In either case, PPL's legal theory does not provide a basis for rejecting the Settlement or imposing an additional condition.

Furthermore, PPL's requested relief would not address its own concern about being forced to intervene in every case involving electric utilities. (*See* PPL Exceptions at 2.) If the Commission were to impose a condition that this particular Settlement could not be introduced as evidence in any future proceeding, that condition would not be binding on parties to other proceedings. By its own logic, PPL still would be forced to intervene in every proceeding involving electric utilities before the Commission.

In order to avoid this result, the Commission would have to make a much broader change in its policy. The Commission would be forced, in effect, to amend its evidentiary rules to provide that settlements are *per se* irrelevant and immaterial. Yet such a rulemaking, whatever its wisdom, is well beyond the scope of this proceeding and would require participation by many parties not represented here.

In urging the adoption of a new policy, PPL acknowledges that the current proceeding is not a “generic” policy-setting proceeding or a “rule-making proceeding.” As Judge Rainey recognized, it would be profoundly unfair to convert this case into such a proceeding at this stage. (Recommended Decision at 34.) Accordingly, PPL’s challenge should be rejected, and PPL should be afforded the opportunity to raise its “evidentiary” objection in future proceedings, if necessary.

**2. PPL’s Evidentiary Objection Is Not Ripe For Disposition At This Time.**

At this point, PPL argues only that it is theoretically possible that some party might seek to introduce the Settlement in a later proceeding (which has not been initiated, may never be initiated, and, if initiated, may not involve PPL.) On that basis, the utility argues that the Commission should impose a condition forbidding any use of this Settlement as “relevant or material evidence.” Essentially, PPL seeks to hold this proceeding hostage in order to advance an agenda that is unrelated to the terms of the Settlement.

PPL's position should be rejected on several independent grounds. To start with, PPL has not shown that it has a direct and substantial interest in the proposed Settlement. Nowhere in its latest submission does PPL attempt to show that approval of the Settlement would result in any immediate harm. Indeed, the condition proposed by PPL would state only that the provisions of the Settlement "shall not constitute or be cited as relevant or material evidence" in any subsequent proceeding. (PPL Exceptions at 33.)

In any future proceeding, however, PPL would be free to oppose use of this Settlement as precedent or as "evidence" on disputed facts. Nowhere in its submission does PPL attempt to show that it would be incapable of protecting its legitimate interests in a later proceeding. At this point, then, the question of whether the Settlement qualifies as "relevant or material evidence" is entirely hypothetical and is not ripe for review.

In Pennsylvania, an issue may not be adjudicated unless it is ripe for determination. "The ripeness doctrine is a concept of standing premised on the notion that 'judicial machinery should be conserved for problems which are real and present or imminent, not squandered on problems which are abstract or hypothetical or remote.'" Van Doren v. Mazurkiewicz, 695 A.2d 967, 971 (Pa. Cmwlth. 1997) citing Western Pennsylvania Water Co. v. Pennsylvania Public Utility Commission, 471 Pa. 347, 361, 370 A.2d 337, 344 (1977) (Roberts, J., dissenting). In this case, PPL has not identified any "injury" that is real, present, or imminent. For that reason alone, the Commission need not, and should not, address PPL's argument.

**3. Since PPL Does Not Have A Direct, Immediate, And Substantial Interest, It Does Not Have Standing To Challenge The Settlement.**

Judge Rainey correctly concluded that PPL lacks standing to challenge the substantive provisions of the proposed Settlement. (Recommended Decision at 35.)

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.<sup>5</sup> 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 unless it can demonstrate that it has a “direct, immediate and substantial interest.”

PPL has failed to meet this basic test. In its testimony, PPL does not establish that the PECO-Unicom merger or the Settlement will result in any direct or immediate injury. Its only interest here is abstract and hypothetical. PPL previously has argued 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

---

<sup>5</sup> 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. Cmwlth. 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).

settlement as a precedent. Under PPL's own theory, any potential injury is in the future and is highly uncertain.

PPL is a sophisticated electric utility that is fully capable of defending its interests in any future merger proceeding. If PPL does in fact 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. 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.

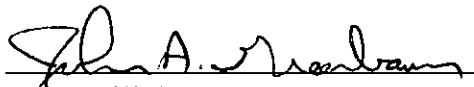
Lastly, relying upon the Commonwealth Court's opinion in Public Advocate v. Philadelphia Gas Commission, 637 A.2d 676 (Pa. Cmwlth. 1994), PPL argues that it has standing to raise any issue because its intervention petition was granted without opposition. The Public Advocate decision, however, does not support PPL's position here. The standing issue in that case was not raised until the appeal, and the court held only that "2 Pa. C. S. §753 bars the introduction on appeal of any issue not raised before the agency." *Id.* at 679. Nowhere in its decision does the court suggest that a party whose intervention motion is granted has standing from that time forward to present claims of any kind.

#### IV. CONCLUSION

For the reasons stated above, PPL's exceptions should be rejected, and the proposed Settlement covering PECO's merger and restructuring should be approved.

Respectfully submitted,

Kenneth M. Barna  
Wayne R. Frigard  
RUBIN AND RUDMAN LLP  
50 Rowes Wharf  
Boston, MA 02110  
(617) 330-7006 (voice)  
(617) 549-9556 (fax)  
wfrigard@rubinrudman.com

  
John Will Ongman  
Marc D. Machlin  
PEPPER HAMILTON LLP  
600 14th Street, N.W.  
Washington, D.C. 20005-2004  
(202) 220-1439 (voice)  
(202) 220-1665 (fax)  
ongmanj@pepperlaw.com  
machlinm@pepperlaw.com

Brian P. Downey  
John A. Greenbaum  
PEPPER HAMILTON LLP  
200 One Keystone Plaza  
North Front and Market Streets  
Harrisburg, PA 17108-1181  
(717) 255-1164 (voice)  
(717) 238-0575 (fax)  
downeyb@pepperlaw.com

Counsel for National Railroad Passenger Corporation

Dated: June 14, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 14th day of June, 2000, served the foregoing document upon the parties listed below via first class mail delivery, postage prepaid:

Eric Joseph Epstein  
Tri County OIC  
2107 North Sixth Street  
Harrisburg, PA 17110  
(717) 238-7318  
(717) 238-6251 Fax  
email: eepstein@igc.apc.org  
(Pro Se)

Tanya McCloskey, Esquire  
Irwin Popowsky, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place 5th Floor  
Harrisburg, PA 17101  
(717) 783-5048  
(717) 783-7152 Fax  
email: paoca@ptd.net  
(Counsel for Office of Consumer Advocate)

John Hanger, Esquire  
212 Locust Court, Suite 410  
Harrisburg, PA 17101  
(717) 214-7920  
(717) 214-7927 Fax  
email: hanger @pennfuture.org  
(Counsel for Citizens for Pennsylvania's Future)

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
901 North 7th Street, 3rd Floor  
Harrisburg, PA 17105-3265  
(717) 787-1976  
(717) 772-2677 Fax  
email: mickens@puc.state.pa.us  
(Counsel for Office of Trial Staff)

David Kleppinger, Esquire  
Charis M. Burak, Esquire  
McNees, Wallace & Nurick  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000  
(717) 237-5300 Fax  
email: dkleppin@mwn.com  
: cburak@mwn.com  
(Counsel for Philadelphia Area Industrial Energy Users Group & Industrial Energy Consumers of Pennsylvania)

Christopher B. Craig, Esquire  
Senate Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(717) 787-5662  
(717) 783-5210 Fax  
email: ccraig@dem.pasen.gov  
(Counsel for Senator Fumo)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101  
(717) 230-9555  
(717) 230-8534 Fax  
email: cdoll76342@aol.com  
(Counsel for Connectiv Energy)

Honorable Allyson Y. Schwartz  
Room 182  
Main Capital Building  
Harrisburg, PA 17120-3004  
(717) 787-1427  
(717) 772-0572 Fax  
email: schwartz@dem.pasen.gov

James H. Cawley, Esquire  
Rhoads & Sinon  
12th Floor  
One South Market Street  
Harrisburg, PA 17101  
(717) 233-5731  
(717) 231-6600 Fax  
email: [jcawley@rhoads-sinon.com](mailto:jcawley@rhoads-sinon.com)  
(Counsel for Mid-Atlantic Power Supply)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
Suite 300, 212 Locust Street  
Harrisburg, PA 17101  
(717) 237-7173  
(717) 237-7161 Fax  
email: [dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)  
(Counsel for Enron Energy Services, Inc.)

Michael Fiorentino, Esquire  
105 North Front Street, Suite 106  
Harrisburg, PA 17101  
(717) 230-8807  
(717) 230-8808 Fax  
email: [mfioren@paonline.com](mailto:mfioren@paonline.com)  
(Counsel for Clean Air Counsel)

Joseph Otis Minott, Esquire  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
(215) 567-4004  
(215) 567-5791 Fax  
email: [joe\\_minott@cleanair.org](mailto:joe_minott@cleanair.org)  
(Counsel for Clean Air Counsel)

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire  
Allegheny Energy Supply Company, LLC  
Roseytown  
RR 12, Box 1000  
Greensburg, PA 15601  
(724) 838-6217  
(724) 830-5184 Fax  
email: [pclark@alleghenyenergy.com](mailto:pclark@alleghenyenergy.com)  
: [nsmith2@alleghenyenergy.com](mailto:nsmith2@alleghenyenergy.com)  
(Counsel for Allegheny Energy)

John L. Munsch, Esquire  
Deborah J. Henry, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(724) 838-6210  
(724) 838-6177 Fax  
email: [jmunsch@alleghenyenergy.com](mailto:jmunsch@alleghenyenergy.com)  
: [dhenry1@alleghenyenergy.com](mailto:dhenry1@alleghenyenergy.com)  
(Counsel for Allegheny Power)

John L. Hall, Esquire  
Unruh, Turner, Burke & Frees  
P.O. Box 515  
West Chester, PA 19381-0515  
(610) 692-1371  
(610) 692-1379 Fax  
email: [jhall@utbf.com](mailto:jhall@utbf.com)  
(Counsel for Wallace Township)

Gregory J. Pastore  
619 Pemberton Street  
Philadelphia, PA 19147  
215-923-0425 Fax  
email: [gregpastore@yahoo.com](mailto:gregpastore@yahoo.com)

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141  
(215) 424-8045 Fax  
email: [cepa1966@aol.com](mailto:cepa1966@aol.com)

Gregory K. Lawrence, Esquire  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
(202) 756-8000  
(202) 756-8087 Fax  
email: glawrence@mwe.com  
(Counsel for Shell Energy Services  
Company, L.L.C.)

Amy Gold, Esquire  
Shell Energy Services Co., L.L.C.  
P.O. Box 4402  
Houston, TX 77210  
(713) 241-8941 Fax  
email: amygold@shellus.com  
(Counsel for Shell Energy Services  
Company, L.L.C.)

John Halsted, Esquire  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381  
(610) 696-8225  
(610) 344-0922 Fax  
email: gghlaw@gawthrop.com  
(Counsel for East Brandywine Township)

Paul R. Bonney, Esquire  
Ward L. Smith, Esquire  
Kent D. Murphy, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-4254  
(215) 568-3389 Fax  
email: pbonney@peco-energy.com  
(Counsel for PECO Energy Company)

Thomas P. Gadsden, Esquire  
Anthony C. DeCusatis, Esquire  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
(215) 963-5234  
(215) 963-5299 Fax  
email: gads5234@mlb.com  
(Counsel for PECO Energy Company)

Peter Meadows Adels, Esquire  
Charles McPhedran, Esquire  
117 South 17th Street, Suite 1801  
Philadelphia, PA 19103  
(215) 569-9637 Fax  
email: meadowsadels@pennfuture.org  
(Counsel for Citizens for Pennsylvania's  
Future)

Paul Russell, Esquire  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 19101  
(610) 774-6726 Fax  
email: perussell@papl.com  
(Counsel for PP&L)

Donald A. Kaplan, Esquire  
Caryn Blythe Houck, Esquire  
Preston, Gates Ellis & Rouvelas Meeds LLP  
Suite 500, 1735 New York Ave., N.W.  
Washington, D.C. 20006  
(202) 331-1024 Fax  
email: donk@prestongates.com  
email: carynh@prestongates.com  
(Counsel for PP&L)


Philip Anton Bertocci, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102-2505  
(215) 981-3702  
(215) 981-0434 Fax  
email: pbertocci@clsphila.org  
(Counsel for CEPA, et al.)

Gerald Gornish, Esquire  
Kevin Moody, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
1650 Arch Street, 22nd Floor  
Philadelphia, PA 19103  
(215) 977-2000  
(215) 405-3718 Fax  
email: ggornish@wolfblock.com  
: kmoody@wolfblock.com  
(Counsel for Enron Energy Services, Inc.)

Robert Jaffe, Esquire  
Room 588  
City Hall  
Philadelphia, PA 19107  
(215) 686-1927 Fax  
email: lagranger@aol.com  
(Counsel for Councilman David Cohen)

Joseph A. Dworetzky, Esquire  
Hangley Aronchick Segal & Pudis  
One Logan Square, 27th Floor  
Philadelphia, PA 19103-6933  
(215) 496-7054  
(215) 568-0300 Fax  
email: mah@hangley.com  
(Counsel for Mid-Atlantic Power Supply)

Carville B. Collins, Esquire  
Piper Marbury Rudnick & Wolfe  
6225 Smith Avenue  
Baltimore, MD 21209-3600  
(410) 580-4125  
(410) 580-3794 Fax  
email: carville.collins@piperrudnick.com  
(Counsel for Newenergy East, L.L.C.)

  
John A. Greenbaum

RECEIVED  
00 JUN 14 PM 4:17  
PA.P.U.C.  
SECRETARY'S BUREAU



# PECO ENERGY

Legal Department

PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia, PA 19101-8699  
215 841 5544  
Fax 215 568 3389

James W. Durham  
Senior Vice President  
and General Counsel

Edward J. Cullen, Jr.  
Deputy General Counsel

Sandra H. Byrne  
Legal Administrator

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

# ORIGINAL

June 14, 2000

RECEIVED  
JUN 14 PM 4:22  
PA.P.U.C.  
SECRETARY'S BUREAU

## Hand Deliver

# DOCUMENT FOLDER

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

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

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and nine copies of PECO Energy Company's Reply to the Exceptions of PPL Electric Utilities Corporation in the above-captioned matter.

Sincerely,

Paul R. Bonney

PRB/mbo

Enclosures

cc: Administrative Law Judge Charles E. Rainey, Jr.  
Certificate of Service  
Cheryl Walker Davis – (also with disk copy)

38

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-110550F014

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

09 JUN 14 PM 4:22

RECEIVED

DOCKETED  
JUN 15 2000

---

REPLY OF PECO ENERGY COMPANY  
TO THE EXCEPTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION

---

DOCUMENT  
FOLDER

Paul R. Bonney, Esquire  
Ward L. Smith, Esquire  
Kent D. Murphy, Esquire  
Delia W. Stroud, Esquire  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215-841-4252 (Telephone)  
215-568-3389 (Fax)  
pbonney@peco-energy.com (E-mail)  
Counsel for PECO Energy Company

Dated: June 14, 2000

**TABLE OF CONTENTS**

**I. INTRODUCTION ..... 1**

**II. ARGUMENT ..... 2**

**A. The Commission Can Approve The Settlement Whether Or  
Not It Grants The Declaratory Relief Requested By PPL ..... 2**

**B. The ALJ Properly Determined That PPL Did Not Have  
Standing To Oppose The Settlement On The Bases Set  
Forth In Its Objections Filed On April 12, 2000 ..... 4**

**III. CONCLUSION ..... 10**

## I. INTRODUCTION

On June 1, 2000, Administrative Law Judge Charles E. Rainey, Jr. (“ALJ”) issued a *Recommended Decision* approving the *Joint Petition for Settlement* (“Settlement”) filed on March 23, 2000 in the above-captioned matter. The *Recommended Decision* provides a comprehensive, well-reasoned analysis and resolution of the issues presented in this case, and the Commission should adopt it as its final Order.

PPL Electric Utilities Corporation (“PPL”) is the only party that filed Exceptions to the *Recommended Decision*.<sup>1/</sup> As more fully explained below, PPL does not object to the Settlement but, instead, seeks a broadly based declaratory order or policy statement by the Commission concerning the evidentiary weight to be afforded settlements in future, unrelated proceedings. That issue is independent of, and bifurcated from, the Settlement at hand and, therefore, the Settlement can and should be approved by the Commission irrespective of how it rules on PPL’s Exceptions.

---

<sup>1/</sup> PPL and Philadelphia City Councilman David Cohen were the only parties that opposed the Settlement. Councilman Cohen filed testimony and submitted briefs proposing certain modifications to the Settlement, which were not adopted by the ALJ (R.D., pp. 46-49). However, Councilman Cohen did not file Exceptions to the *Recommended Decision*.

## II. ARGUMENT

### A. **The Commission Can Approve The Settlement Whether Or Not It Grants The Declaratory Relief Requested By PPL**

As noted by the ALJ (R.D., p. 35), PPL initially opposed the Settlement on the basis that various terms, such as the reduction in PECO's rates, the extension of its rate cap and the service reliability provisions, were not supported by substantial evidence. In response to PPL's objections, evidentiary hearings were held. As a direct consequence of the extensive testimony and other evidence presented by the settling parties, PPL dropped those objections and no longer contends that the record lacks substantial evidence to support a finding that the Settlement is in the public interest. Rather, in its Exceptions, PPL pursues its real interest -- to obtain a declaration or policy statement by the Commission that the terms of a settlement have no precedential value and should be afforded no evidentiary weight in subsequent proceedings.

At the outset, it must be emphasized that whatever the Commission decides regarding PPL's request for a declaratory order or policy statement, it can and should approve the Settlement at hand without modification. The question posed by PPL is separate, distinct and bifurcated from the substantive issue of whether this Settlement is in the public interest and should be approved.

As to the substance of PPL's proposal, the ALJ found and determined that Section 72 of the *Joint Petition* ensures that the terms of the Settlement do not constitute "precedent" and cannot be cited as such in any subsequent proceeding. Upon approval of the Settlement by the

Commission, Section 72 will have the force and effect of a Commission order (R.D., pp 31-34).

While the Settlement itself provides ample protection to PPL against the terms and conditions thereof being used or cited as precedent, PPL would have that protection in any event based upon the Commission's prior decisions on this point:

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). Similarly, in *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), the Commission rejected 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."

In view of the specific protection afforded by Section 72 and prior Commission decisions, PPL's concerns that the Settlement would have precedential value in subsequent proceedings involving PPL are unwarranted. In any event, the Commission can easily allay those concerns simply by reiterating its prior holdings on this point. However, PPL's recommendation that the Commission declare the terms of a settlement inadmissible in subsequent proceedings goes too far.

In essence, PPL is asking the Commission for a declaratory order, regulation or policy statement that would prejudice the relevance and materiality of a settlement's terms in future proceedings before the factual scenario and substantive issues are known and before the parties in interest have had the opportunity to present their arguments. Not only is this contrary to sound administrative and evidentiary principles, but it denies due process of law to parties in future proceedings. Issues involving the admissibility and weight of evidence are not matters of law or policy only. Rather, they are highly fact sensitive, as PPL itself explained in detail in its Exceptions (pp. 11- 22). Therefore, relevance and materiality should be left to the presiding officer to decide, subject to ultimate Commission oversight, by applying the rules of evidence to the facts and circumstances of the cases where these issues arise. Moreover, if the Commission were to decide that it is appropriate to offer some guidance on this issue, it should do so in a generic proceeding at a separate docket and, in any event, should not establish an unbending rule that attempts to prejudice the admissibility of evidence in future proceedings.

**B. The ALJ Properly Determined That PPL Did Not Have Standing To Oppose The Settlement On The Bases Set Forth In Its Objections Filed On April 12, 2000**

In its Objections filed on April 12, 2000, PPL opposed the Settlement on the basis that various "concessions" to which PECO agreed were not supported by substantial evidence.<sup>2/</sup> For example, PPL objected to PECO's reduction of its distribution rates because, in PPL's view, the

---

<sup>2/</sup> PPL never opposed the fundamental relief requested by PECO, namely, Commission approval of its proposed corporate restructuring to create a holding company structure and the merger of the new holding company with Unicom Corporation.

record did not demonstrate that PECO could sustain a revenue loss of that magnitude without suffering financial hardship and the potential impairment of service. *See* PPL Objections, pp. 20-22.

In addition to contesting the substance of PPL's arguments, a number of parties, including PECO, challenged PPL's standing to object to the Settlement because PPL did not, and could not, establish that it has a substantial, direct and immediate interest at stake that would be adversely affected if the Commission approved the Settlement and, therefore, could not pass the tri-partite test for standing articulated by the Pennsylvania Supreme Court in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975) and adopted by the Commission. *See L & H Trucking Company v. Pa. P.U.C.*, 55 Pa. P.U.C. 469 (1982).<sup>3/</sup> Thus, because PPL is not a PECO retail customer, it neither pays PECO rates nor is affected by any potential service impairments. Rather, by attempting to interject itself into the proceeding as an arbiter of the "public interest" in relation to issues that could not affect it, PPL's alleged interest is no different from the "abstract interest of all citizens in having others comply with the law,"

---

<sup>3/</sup> As PPL's Exceptions make clear, its motivation for intervening and objecting to the Settlement was to avoid the possibility that it might establish what PPL considered an undesirable precedent. Of course, an entity that is not otherwise aggrieved by an administrative or judicial decision cannot gain standing simply because the outcome may create adverse precedent. *See William Gas Processing--Gulf Cost Company, L.P. v. Federal Energy Regulatory Commission*, 145 F.3d 377-378 (D.C. Cir. 1998) ("Although Williams regards the precedential effect of the [FERC's decision] as injurious, it does not push that as its main injury, as it recognizes our long line of decisions rejecting claims of standing based merely on supposed adverse precedential effect.") *See also AES Beaver Valley v. West Penn Power Company*, 58 Pa. P.U.C. 729, 730-731 (1985).

which the Supreme Court expressly stated in *William Penn, supra*, is inadequate to confer standing. See PECO Main Brief, pp. 8-12.

Based in large part on PPL's Objections, the ALJ directed the parties to present written testimony and scheduled an evidentiary hearing to ascertain whether substantial evidence supported a finding that the Settlement is in the public interest. The parties to the Settlement presented extensive testimony and accompanying exhibits, which are outlined in a table in PECO's Main Brief (pp. 16-18). PPL, on the other hand, presented no testimony or other evidence addressed to the substance of the Settlement. See R.D., pp. 21-22. In view of the substantial evidence submitted by PECO and the other settling parties, PPL filed a Main Brief that addressed its only real concern, namely, the precedential effect and evidentiary weight to be afforded settlements by the Commission in future proceedings.

The absence from PPL's Main Brief of any opposition to the Settlement based on an alleged lack of substantial evidence clearly implied that PPL had dropped that argument. Nonetheless, the ALJ appropriately decided that he should address PPL's Objections in the Recommended Decision. Consequently, the ALJ initially considered the standing issue and concluded that PPL lacked standing to oppose the Settlement on the bases set forth in its Objections (R.D., p. 42). Additionally, the ALJ conducted a careful analysis of the record with respect to each PECO "concession" which PPL initially questioned. As set forth in detail in the Recommended Decision (pp. 35-45), the ALJ found and determined that each provision of the Settlement is supported by substantial evidence and, therefore, even if the Commission were to reach PPL's Objections, they should be rejected on the merits.

Because PPL dropped its opposition to the Settlement, it did not take exception to the ALJ's dismissal of its Objections or his findings and conclusions that the Settlement is supported by substantial evidence, is consistent with the law and should be approved. However, in an apparent effort to protect its ability to request that the Commission issue declaratory relief on the evidentiary significance of settlements in subsequent proceedings, PPL has taken exception to the determination that PPL lacked standing to raise its now-abandoned Objections. On this point, some clarification is needed.

First, as explained in the Recommended Decision (p. 35), the ALJ determined that PPL lacked standing “[to attack] those provisions in the Settlement Petition which it might find objectionable if those provisions were applied to it in a future proceeding,” i.e., the Objections initially raised by PPL and subsequently dropped. He did not rule that PPL lacked standing to raise the issue of the effect of settlements in later proceedings. In fact, he addressed that issue before even taking up the standing argument. *See* R.D., pp. 31-34.

Second, no one disputes that PPL has standing to petition the Commission to issue a declaratory order on the evidentiary significance of settlements. However, that issue is generic in nature and does not share a common nucleus of law or fact with the question of whether the Commission should approve the Settlement at hand. Stated differently, while PPL has the right to raise the evidentiary question for the Commission's consideration at some point, it does not have the right to insist that the issue be decided here. Indeed, because PPL's evidentiary issue pertains to hypothetical future proceedings where as yet undetermined parties may attempt to

offer this or a comparable settlement in evidence, PPL's generalized concerns do not present a case or controversy that the Commission needs to decide in this case.

Third, as to the issues that actually were comprehended by the ALJ's standing determination, the Recommended Decision is clearly correct for the reasons set forth herein and in PECO's Main Brief (pp. 8-12). In none of the areas addressed in PPL's Objections did it have a substantial, direct and immediate interest that would be adversely affected by the terms of the proposed Settlement. PPL took exception to this aspect of the Recommended Decision and argued that the ALJ, having granted PPL's *Petition to Intervene*, could not subsequently determine that PPL lacked standing (PPL Exceptions, p. 28). In support of its position, PPL relied upon *Public Advocate v. Philadelphia Gas Comm'n*, 161 Pa. Cmwlth. 428, 637 A.2d 676 (1994) *rev'd* 544 Pa. 129, 674 A.2d 1056 (1996). That case says nothing about the point in an administrative proceeding at which standing can be raised. Rather, the Court held that, because the appellant had not objected to the Gas Commission's participation in the administrative proceeding below, it could not raise the issue for the first time on appeal.

Furthermore, standing issues are not necessarily apparent at the time a *Petition to Intervene* is filed because the parties do not know the full factual scenario or the specific issues that an intervenor may ultimately raise. A party may have standing to raise some issues, but not others. Aggrievement must be ascertained in relation to the issues and interests actually asserted.

Additionally, PPL argues that under *Friends of the Atglen-Susquehanna Trail v. Pa. P.U.C.*, 717 A.2d 581 (Pa. Cmwlth. 1998), simply filing objections to a settlement is a *prima*

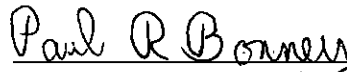
*facie* demonstration of standing. However, the holding of that case is far different. The Court did not rely upon the appellants' filing of objections to a settlement to find standing but, instead, conducted an independent analysis and concluded that standing was statutorily conferred by Section 512 of the Historic Preservation Act. *See* 717 A.2d at 585.

In the balance of its exception on standing, PPL argues that it has a substantial, direct and immediate interest in this proceeding because the settling parties cannot give a guarantee that no one will ever offer the Settlement or some part thereof as evidence in a subsequent PPL proceeding. This alleged nexus is simply too tenuous to meet the *William Penn* test for standing. More importantly, and as explained previously, PPL's argument does not present a case or controversy within the context of the Commission's consideration of this Settlement but, instead, seeks an advisory opinion on an issue that might arise in future proceedings. As such, it is simply not ripe for decision in this case.

### III. CONCLUSION

For the reasons set forth herein and in PECO's Main and Reply Briefs filed on May 17 and 24, 2000, respectively, the exceptions of PPL Electric Utilities Corporation should be denied and the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. should be adopted as the action of this Commission.

Respectfully submitted,



Paul R. Bonney, Esquire

Ward L. Smith, Esquire

Kent D. Murphy, Esquire

Delia W. Stroud, Esquire

Assistant General Counsel

PECO Energy Company

2301 Market Street

P.O. Box 8699

Philadelphia, PA 19101-8699

215-841-4252 (Telephone)

215-568-3389 (Fax)

pbonney@peco-energy.com (E-mail)

Counsel for PECO Energy Company

Dated: June 14, 2000

Certificate of Service

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

John Hanger  
212 Locust Court, Suite 410  
Harrisburg, PA 17101  
email: hanger@pennfuture.org  
(Counsel for Citizens for Pennsylvania's Future)

Peter Meadows Adels  
Charles McPhedran  
117 South 17<sup>th</sup> St., Suite 1801  
Philadelphia, PA 19103  
email: meadowsadels@pennfuture.org  
(Counsel for Citizens for Pennsylvania's Future)

Christopher B. Craig  
Senate Democratic Appropriations Committee  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
email: ccraig@dem.pasen.gov  
(Counsel for Senator Fumo)

Eric Epstein  
4100 Hillside Road  
Harrisburg, PA 17112  
email: eepstein@igc.apc.org  
(Pro Se)

Gregory K. Lawrence  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
(Counsel for Shell Energy Services Company, L.L.C.)

Amy Gold  
Shell Energy Services Co., L.L.C.  
P.O. Box 4402  
Houston, TX 77210  
(Counsel for Shell Energy Services Company, L.L.C.)

Charis M. Burak  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108  
email: cburak@mwn.com  
(Counsel for Philadelphia Area Industrial Energy Users Group & Counsel to the Industrial Energy Consumers of Pennsylvania)

David M. Kleppinger  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108  
email: dkleppin@mwm.com  
(Counsel for Philadelphia Area Industrial Energy Users Group & Counsel to the Industrial Energy Consumers of Pennsylvania)

Paul E. Russell  
PP&L, Inc.  
Two North Ninth Street  
Allentown, PA 18101  
email: perussell@papl.com  
(Counsel for PP&L)

Donald A. Kaplan  
Leanne M. Bober  
Preston Gates Ellis & Rouvelas Meeds LLP  
Suite 500  
1735 New York Ave., NW  
Washington, DC 20006  
email: donk@prestongates.com  
(Counsel for PP&L)

Gerald Gornish  
Wolf, Block, Schorr and Solis-Cohen LLP  
1650 Arch Street - 22<sup>nd</sup> Fl.  
Philadelphia, PA 19103  
email: ggornish@wolfblock.com  
(Counsel for Enron Energy Services, Inc.)

Daniel Clearfield, Esquire  
Kevin Moody, Esquire  
Wolf, Block, Schorr and Solis-Cohen LLP  
1650 Arch Street - 22<sup>nd</sup> Fl.  
Philadelphia, PA 19103  
email: dclearfield@wolfblock.com  
kmoody@wolfblock.com  
(Counsel for Enron Energy Services, Inc.)

John Halsted, Esquire  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381  
email: gghlaw@gawthrop.com  
(Counsel for East Brandywine Township)

Bernie Ryan  
Office of Small Business Advocate  
Suite 1102, Commerce Bldg.  
300 North Second Street  
Harrisburg, PA 17101  
(Counsel for Small Business Advocate)

Tanya McCloskey/ Irwin A. Popowsky, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
email: paoca@ptd.net  
(Counsel for Office of Consumer Advocate)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101-1108  
email: cdoll76342@aol.com  
(Counsel for Conectiv Energy)

RECEIVED  
00 JUN 14 PM 4:22  
PA P.U.C.  
SECRETARY'S BUREAU

Joseph Otis Minott, Esquire  
135 South 19<sup>th</sup> Street- Suite 300  
Philadelphia, PA 19103  
email: joe\_minott@cleanair.org  
(Counsel for Clean Air Council)

Thomas Schmidt, III, Esquire/  
Brian P. Downey, Esquire  
Pepper Hamilton LLP  
200 One Keystone Plaza  
North Front and Market Streets  
Harrisburg, PA 17108  
email: downeyb@pepperlaw.com  
(Counsel for Amtrak)

Kenneth M. Barna, Esquire  
Wayne R. Frigard, Esquire  
Rubin and Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110  
email: wfrigard@rubinrudman.com  
(Counsel for Amtrak)

Phil Bertocci, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4<sup>th</sup> Fl.  
Philadelphia, PA 19102  
email: pbertocci@clsphila.org  
(Counsel for CEPA, et al.)

Joe Dworetzky, Esquire/Matthew Hamermesh, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 27<sup>th</sup> Fl.  
Philadelphia, PA 19103  
email: jad@hangley.com  
mah@hangley.com  
(Counsel for Mid-Atlantic Power Supply)

John L. Munsch, Esquire  
Deborah J. Henry, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
email: jmunsch@alleghenyenergy.com  
dhenry1@alleghenyenergy.com  
(Counsel for Allegheny Power)

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
901 North 7<sup>th</sup> Street, 3<sup>rd</sup> Fl.  
Harrisburg, PA 17102  
email: mickens@puc.state.pa.us  
(Counsel for Office of Trial Staff)

Robert Jaffe, Esq.  
City Hall - Room 588  
Philadelphia, PA 19107  
email: lagranger@aol.com  
(counsel of Councilman David Cohen)

Christopher J. Townsend, Esq.  
Piper Marbury Rudnick & Wolfe  
203 N. LaSalle St, #1500  
Chicago, IL 60601  
email: chris.townsend@piperrudnick.com

Michael Fiorentino, Esquire  
105 North Front Street, Suite 106  
Harrisburg, PA 17101  
email: mfioren@paonline.com  
(Counsel for Clean Air Council)

John Will Ongman  
Marc Machlin  
Pepper Hamilton LLP  
600 Fourteenth St., NW  
Washington, DC 20005  
email: ongmanj@pepperlaw.com  
machlinm@pepperlaw.com  
(Counsel for Amtrak)

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire  
Allegheny Energy Supply Company, LLC  
Roseytown  
RR 12, Box 1000  
Greensburg, PA 15601  
email: pclark@alleghenyenergy.com  
nsmith2@alleghenyenergy.com  
(Counsel for Allegheny Energy)

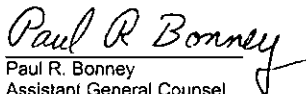
Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141  
email: cepa1966@aol.com

John Hall, Esquire  
Unruh, Turner, Burke & Frees  
17 West Gay Street  
West Chester, PA 19381  
email: jhall@utbf.com  
(Counsel for Wallace Township)

Greg Pastore  
619 Pemberton Street  
Philadelphia, PA 19147  
email: gregpastore@yahoo.com

Carville B. Collins, Esq.  
Piper Marbury Rudnick & Wolfe  
6225 Smith Ave  
Baltimore, MD 21209-3600  
email: carville.collins@piperrudnick.com

Cheryl Walker Davis  
Office of Special Assistants  
Pennsylvania Public Utility Commission  
North Office Building - Room 210  
Harrisburg, PA 17105

  
Paul R. Bonney  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252

Dated: June 14, 2000



June 14, 2000

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

**ORIGINAL**

**Philadelphia**  
135 South 19th Street  
Suite 300  
Philadelphia, PA 19103  
215-567-4004  
Fax 215-567-5791  
E-Mail members@cleanair.org  
www.cleanair.org

**Harrisburg**  
105 N. Front St.  
Suite 106  
Harrisburg, PA 17101  
717-230-8807  
Fax 717-230-8808

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

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

**DOCUMENT  
FOLDER**

Dear Mr. McNulty:

Enclosed for filing please find an original and nine (9) copies of the Reply Exceptions of Clean Air Council, et al, in the above-referenced proceeding.

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

Sincerely,

Michael Fiorentino, Esq.  
Staff Attorney

Enclosures

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

**RECEIVED**  
PA P.U.C.  
SECRETARY'S BUREAU  
00 JUN 14 PM 4: 20

37

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKET NO. A-110550F0147

RECEIVED  
00 JUN 14 PM 4:20  
PA.P.U.C.  
SECRETARY'S BUREAU

DOCUMENT  
FOLDER

REPLY EXCEPTIONS

OF

CLEAN AIR COUNCIL, ET AL

Regarding  
the Joint Petition for Settlement

DOCKETED  
JUN 15 2000

Attorneys for Clean Air Council:

Michael Fiorentino  
105 N. Front St.  
Suite 106  
Harrisburg, PA 17101  
(P) (717)-230-8806  
(F) (717)-230-8808  
mfioren@paonline.com

Joseph Otis Minott  
135 S. 19th St.  
Suite 300  
Philadelphia, PA 19103  
(P) (215)-5567-4004  
(F) (215)-567-5791  
joe\_minott@cleanair.org

June 14, 2000

**I. INTRODUCTION:**

Clean Air Council, et al, are intervenors in the above-captioned action, and incorporate by reference the procedural history provided in their Main Brief, which was filed on May 17, 2000, pursuant to Administrative Law Judge Charles E. Rainey, Jr.'s Prehearing Order #2.

On June 1, 2000, Judge Rainey issued a Recommended Decision in the above-captioned matter. The Council has been served with Exceptions thereto by PPL Electric Utilities Corporation ("PPL"). To the best of the Council's knowledge no other party has filed Exceptions to the Recommended Decision.

Clean Air Council now submits these Reply Exceptions responding to PPL's Exceptions of June 9, 2000.

**II. SUMMARY:**

PPL has focussed throughout its Exceptions, and in its previous arguments, on an issue which has no bearing on whether or not PECO's Application and the Joint Petition for Settlement meets the legal standard for approval by this Commission. As stated by Judge Rainey, this Settlement affirmatively promotes the service, accommodation, convenience and safety of the public in a substantial way, and therefore should be approved. PPL's concern regarding the evidentiary effect of an approved settlement is not legally cognizable at this time, and should be rejected.

PPL has continued to attack various provisions of the Settlement, declaring them to be contrary to the public interest. In this latest offering, the Exceptions, PPL still disparages the provisions, but does so while re-iterating that the provisions are unique to PECO and could not be duplicated in other utility service territories. As Judge Rainey stated, PPL has no direct, immediate and substantial interest in the substantive provisions of the settlement and therefore its arguments and testimony which challenge the public interest determination on any such

provisions should be completely and wholly disregarded by the Commission.

### **III. SPECIFIC REPLIES:**

#### **REPLY TO EXCEPTION #1**

PPL seeks clarification that no part of the Joint Petition may be introduced as evidence to support relief against any other Pennsylvania utility. PPL here references the Office of Consumer Advocate's ("OCA") argument from Briefs that in a future proceeding PPL can dispute the relevance of evidence of a prior settlement. PPL argues this is an improper shifting of a burden. In fact, however, what the OCA has stated is the entirely appropriate and standard manner in which relevance is raised: the party opposing evidence always has the burden of arguing why the evidence proffered is irrelevant.

PPL's arguments have evolved. Because it is not satisfied with the Joint Petition's statement that the terms of the settlement cannot be cited as controlling precedent, PPL argues now that no evidentiary use is permissible. Therefore, in future cases, parties who would always have the burden of showing that a proposal was in the public interest would not be able to submit testimony which draws similarities between the proposal and some portion of the Joint Petition, and thereby demonstrate its relevance to that future proposal. The denial of the ability to demonstrate analogous circumstances, through testimony, in effect removes the value of even citing the Joint Petition in argument at all.

#### **REPLY TO EXCEPTION #2**

PPL claims error in that the Recommended Decision did not offer an advanced ruling on the evidentiary limits of relevance and materiality imposed by the Public Utility Code. 66 Pa.C.S. 332(b) The Council submits that the Recommended Decision also did not err on this

point. The charge of an Administrative Law Judge (“ALJ”) is to make recommendations on the issues which are properly before the Commission. The issue before the PUC in this case is whether PECO’s Application and the Joint Petition for Settlement are in the public interest. What is not before the Commission is the relevance of evidence in some non-existent future controversy.

PPL takes the opportunity in this exception to ostensibly indicate the PECO-specific nature of the major groupings of substantive settlement provisions of the Joint Petition in furthering its argument under the relevance and materiality section of the Code. Yet PPL still does not concede its original Objection that the Joint Petition is contrary to the public interest, and simultaneously expends considerable effort attacking provisions thereof on substantive grounds. PPL’s arguments in this regard are meritless when countenanced by the overwhelming evidence submitted in favor of the Joint Petition. Nevertheless, the Commission should not even consider these arguments by PPL because, as ALJ Rainey stated, it lacks the requisite “direct, immediate, and substantial” interest to challenge the substance of those provisions.

### **REPLY TO EXCEPTION #3**

PPL implies here that if a witness makes an assertion and no party presents testimony to rebut it, that an ALJ is then bound to decide a matter consistent with that assertion. Such an argument represents a fundamental misunderstanding of the role of the ALJ, or for that matter, of any judge in the American system of jurisprudence. Clearly, a factfinder is able to consider testimony offered and accord to it whatever weight is deemed appropriate. In this instance, Judge Rainey was apparently not persuaded by the testimony of PPL’s witness, and determined not to allow it to control his decision.

The underlying argument which PPL raises in its Exception #3 is meritless and it was appropriate for Judge Rainey to dismiss it. Excluding the evidentiary use of settlement-derived

programs in subsequent proceedings is in fact likely to have an opposite effect than that suggested by PPL.

Finally, PPL's reliance on the treatment of settlement offers and agreements in the Federal Rules of Evidence (§408) and the Pennsylvania Rules of Evidence (§408) to support its arguments here is ineffectual and clearly distinguished. PPL basically acknowledges the purpose of §408 applies to offers and agreements of parties within a single action which is under adjudication. The rationale does not extend to the scenario PPL envisions in future unrelated proceedings.

#### **REPLY TO EXCEPTION #4**

PPL protests that it has not sought to prevent parties from using the Joint Petition in future settlement discussions. The Recommended Decision, however, did not make an "erroneous assumption." To the contrary, Judge Rainey came to a supportable conclusion about PPL's intentions in this regard. Even if PPL should claim it does not wish to limit what may be proposed in settlement discussions, that will be the practical effect. If parties are deprived of the ability to reference prior settlements' use of similar provisions and the success that may have been achieved thereon to support an argument that those provisions are in the public interest, then the necessary public interest showing will become difficult out of proportion to reality. Utilities such as PPL will intervene to ensure that a settlement is not unopposed and must be "litigated" as this case has been. Or, in the alternative, in a future case where PPL is the party seeking Commission approvals, PPL would feel empowered to ignore the settlement proposals of any number of parties. PPL could do so with the knowledge that the raising of those settlement proposals as litigation remedies would be denied because the best evidence to support them could not be introduced.

#### **REPLY TO EXCEPTION #5**

Although PPL is correct that its standing in this case was not challenged, it is wrong to claim that that conferral automatically grants a direct, immediate and substantial interest in any and all provisions of the Joint Petition.

**CONCLUSION:**

PPL's fundamental argument, that the historical *fact* of a program or operational modification which was part of a settlement can never be offered to support an argument for similar action in subsequent proceedings is wrong as a matter of law. PPL's additional attacks on the provisions of the Joint Petition should be rejected. Clean Air Council submits that the Commission should adopt the Recommended Decision of Judge Rainey in this matter.

Respectfully submitted,



---

Michael Fiorentino, Esquire  
Atty. ID# 73576  
Counsel for Protestants and Petitioners  
Clean Air Council  
105 N. Front St.  
Suite 106  
Harrisburg, PA 17101

---

Joseph Otis Minott, Esquire  
Atty. ID# 36463  
Counsel for Protestants and Petitioners  
Clean Air Council  
135 S.19th St.  
Suite 300  
Philadelphia, PA 19103

Dated: June 14, 2000

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

RECEIVED  
00 JUN 14 PM 4:20  
PA.P.U.C.  
SECRETARY'S BUREAU

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 14th day of June, 2000, served a true and correct copy of the foregoing Protestants/Intervenors Clean Air Council, et al's Reply Exceptions on the following parties of record as indicated:

The Honorable Charles E. Rainey (By Hand)  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building,  
1400 West Spring Garden St.  
Philadelphia, PA 19130

Kenneth L. Mickens, Esquire (By Hand)  
Pennsylvania Public Utility Commission  
PA Public Utility Commission  
Office of Trial Staff  
P.O. Box 3256  
Harrisburg, PA 17105-3265

David Kleppinger, Esquire (By Hand)  
Derrick Williamson, Esquire  
Charis M. Burak, Esquire  
McNees, Wallace & Nurick  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Christopher B. Craig, Esquire (By Hand)  
Democratic Committee on Appropriations  
Room 545, Main Capitol Building  
Harrisburg, PA 17120

Irwin A. Popowsky/Tanya McCloskey, Esquire  
Office of Consumer Advocate (By Hand)  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101

Paul R. Bonney, Esquire (By Fax, 1st Class Mail)  
PECO Energy Co.  
2301 Market St.,  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Daniel Clearfield, Esquire (By Hand)  
Wolf, Block, Schorr and Solis-Cohen LLP  
Locust Court Bldg., Suite 300  
Harrisburg, PA 17101

Gerald Gornish, Esquire (By Hand)  
Wolf, Block, Schorr and Solis-Cohen  
1650 Arch Street, 22nd Floor  
Philadelphia, PA 19103

Paul Russell, Esquire (By Fax, Fed Ex)  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101

Craig A. Doll, Esquire (By Hand)  
214 State Street  
Harrisburg, PA 17101

John L. Munsch, Esquire (By Fax, 1st Class)  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Michael L. Kessler, Esquire (By Fax, 1st Class)  
Vice President, General Counsel  
American Energy Solutions, Inc.  
1781 Duffield Lane  
Alexandria, VA 22307-1174

Philip Bertocci, Esquire (By Fax, 1st Class)  
Community Legal Services, Inc.  
1424 Chestnut Street, 5th Floor  
Philadelphia, PA 19102

Thomas Schmidt, III, Brian P. Downey,  
John A. Greenbaum (By Hand)  
Pepper Hamilton LLP  
200 One Keystone Plaza  
North Front and Market Streets  
P.O. Box 1181  
Harrisburg, PA 17108-1181

Eric Joseph Epstein, Pro Se (By 1st Class)  
4100 Hillsdale Road  
Harrisburg, PA 17112

John Hanger, Esquire (By Hand)  
212 Locust Court, Suite 410  
Harrisburg, PA 17101

Gregory J. Lawrence, Esquire (By Fax, 1st Class)  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2415

John Halsted, Esquire (By Fax, 1st Class)  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381

Peter Meadows Adels, Esquire (By Fax, 1st Class)  
Charles McPhedran, Esquire  
117 South 17th Street, Suite 1801  
Philadelphia, PA 19103

Amy Gold (By Fax, 1st Class)  
Shell Energy Services Co., L.L.C.  
P. O. Box 4402  
Houston, TX 77210

Donald A. Kaplan, Esquire (By Fax, 1st Class)  
Leanne M. Bober, Esquire  
Preston Gates Ellis & Rouvelas Meeds LLP  
Suite 500  
1735 New York Avenue, N.W.  
Washington, DC 20006

John Will Ongman, Esquire (By Fax, 1st Class)

Pepper Hamilton LLP  
6000 Fourteenth Street, NW  
Washington, DC 20005

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire (By Fax, 1st Class)  
Allegheny Energy Supply Company, LLC  
Roseytown  
RR 12, Box 1000  
Greensburg, PA 15601

Patricia McNamara (By Fax, 1st Class)  
6048 Ogontz Avenue  
Philadelphia, PA 19141

John Hall, Esquire (By Fax, 1st Class)  
Unruh, Turner, Burke & Frees  
P.O. Box 515  
West Chester, PA 19381-0515

James H. Cawley, Esquire (By Hand)  
Rhoads & Sinon - 12th Floor  
One South Market Street  
Harrisburg, PA 17108

Bernard A. Ryan, Jr., Esquire (By Hand)  
Office of Small Business Advocate  
Suite 1102, Commerce Bldg.  
300 North Second Street  
Harrisburg, PA 17101

Robert Jaffe, Esquire (By Fax, 1st Class)  
City Hall - Room 588  
Philadelphia, PA 19107

Greg Pastore (By Fax, 1st Class)  
619 Pemberton Street  
Philadelphia, PA 19147

Carville B. Collins, Esquire (By Fax, 1st Class)  
Piper, Marbury, Rudnick & Wolfe  
6225 Smith Avenue  
Baltimore, MD 21209-3600

Joseph Dworetzky, Esquire (By Fax, 1st Class)  
Matthew A. Hamermesh, Esquire  
Hangley, Aronchick, Segal & Pudlin  
One Logan Square -- 27th Floor  
Philadelphia, PA 19103



Michael Fiorentino  
Joseph Otis Minott  
Attorneys for Protestants

1424 Chestnut Street, Philadelphia, PA 19102-2505  
Phone: 215.981.3700, Fax: 215.981.0434  
Web Address: www.clsphila.org

JUN 14 2000

June 14, 2000

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
North Office Building, Room B-20  
North Street and Commonwealth Avenue  
Harrisburg, PA 17105

Filed by Fed Ex  
145-8926-9862  
DOCKETED  
JUN 15 2000

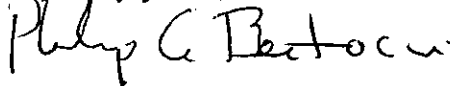
**Re: Application of PECC Energy Company Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, A-00110550F0147**

Dear Mr. McNulty:

I represent the low income consumer groups Consumers Education and Protective Association (CEPA), the Association of Community Organizations for Reform Now (ACORN), Action Alliance of Senior Citizens, and the Tenants' Action Group (TAG) (collectively "CEPA et al.") in the above-captioned matter.

CEPA et al. support without qualification the Reply Exceptions to be filed this date by the Office of Consumer Advocate.

Very truly yours,



PHILIP A. BERTOCCI

cc: Administrative Law Judge Charles E. Rainey, Jr.  
Office of Special Assistants, Room 210  
Service List

RECEIVED

**CERTIFICATE OF SERVICE**

JUN 14 2000

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

I hereby certify that I have this day served a true copy of the foregoing letter regarding Reply Exceptions 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 14<sup>th</sup> day of June 2000

**FIRST CLASS U.S. MAIL POSTAGE PREPAID**

Kenneth L. Mickens, Esquire  
Kandy Melillo, Esquire  
Office of Trial Staff  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Thomas P. Gadsden, Esquire  
Anthony DeCusatis, Esquire  
Morgan, Lewis & Bockius  
1701 Market Street  
Philadelphia, PA 19103-2921

Gregory K. Lawrence, Esquire  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, DC 20005-3096

Hon. Allyson Y. Schwartz  
Senate Box 203004  
Main Capital Bldg.  
Room 182  
Harrisburg, PA 17120

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

Amy Hammersmith  
2312 Parrish Street  
Philadelphia, PA 19130

Peter Meadows-Adels, Esquire  
Charles McPhedran, Esquire  
Suite 1801  
117 S. 17<sup>th</sup> Street  
Philadelphia, PA 19103

John Hanger  
Citizens for Pennsylvania's Future  
Suite 410  
212 Locust Street  
Harrisburg, PA 17101

Michael Fiorentino, Esquire  
Joseph Otis Minott, Esquire  
Clear Air Council  
Suite 106  
105 N. Front Street  
Harrisburg, PA 17101

Brian P. Downey, Esquire  
John A. Greenbaum, Esquire  
Pepper Hamilton, LLP  
200 One Keystone Plaza  
North Front and Market Streets  
P.O. Box 1181  
Harrisburg, PA 17108-1181

Gerald Gornish, Esquire  
Wolf, Block, Schorr and Solis-Cohen, LLP  
1650 Arch Street  
Philadelphia, PA 19103-2097

Irwin A. Popowsky, Esquire  
Tanya McCloskey, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101

Joseph A. Dworetzky, Esquire  
Hangle, Aronchick, Segal & Pudlin  
27<sup>th</sup> Floor  
One Logan Square  
Philadelphia, PA 19103-6933

James H. Cawley, Esquire  
Rhoads & Sinon  
12<sup>th</sup> Floor  
One South Market Street  
Dauphin Building  
P.O. Box 1146  
Harrisburg, PA 17108

Norbert Smith, Esquire  
Patricia J. Clark, Esquire  
Allegheny Energy Supply  
Roseytown Road  
RR 12, Box 1000  
Greensburg, PA 15601

Amy Gold  
P.O. Box 4402  
Houston, TX 77210

John L. Hall, Esquire  
Unruh Turner Burke & Frees PC  
P.O. Box 515  
West Chester, PA 19381-0515

Andrew Altman  
400 S. Camac Street  
Philadelphia, PA 19147

Robert Jaffe, Esquire  
City of Philadelphia, City Council  
Room 588 City Hall  
Philadelphia, PA 19107

Greg Pastore  
619 Pemberton Street  
Philadelphia, PA 19147

John Will Ongman, Esquire  
Marc D. Machlin, Esquire  
Pepper Hamilton, LLP  
600 Fourteenth Street, NW  
Washington, DC 20005

John S. Halstead, Esquire  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Kenneth M. Barna, Esquire  
Rubin & Rudman, LLP  
50 Rowes Wharf  
Boston, MA 02100

Donald A. Kaplan, Esquire  
Leanne M. Bober, Esquire  
Preston, Gates, Ellis & Rouvelas Meeds  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006

Daniel Clearfield, Esquire  
Kevin Moody, Esquire  
Wolf, Block, Schorr and Solis-Cohen  
Suite 300  
212 Locust Street  
Harrisburg, PA 17101

Bernard A. Ryan, Jr., Esquire  
Small Business Advocate  
Suite 1102 Commerce Bldg.  
300 North Second Street  
Harrisburg, PA 17101

Carville B. Collins, Esquire  
Piper Marbury Rudick & Wolfe, LLP  
36 South Charles Street  
Baltimore, MD 21201-3018

David Kleppinger, Esquire  
Charis M. Burak, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

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

William T. Hawke, Esquire  
Malatesta Hawke & McKeon, LLP  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17101

Paul Russell, Esquire  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Eric J. Epstein, Esquire  
4100 Hillsdale Road  
Harrisburg, PA 17112

SERVICE BY FACSIMILE AND FIRST CLASS MAIL, POSTAGE PREPAID

Paul Bonney, Esquire  
Ward Smith, Esquire  
Kent D. Murphy, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

*Philip A Bertocci*

---

PHILIP A. BERTOCCI

Counsel for CEPA, ACORN  
Action Alliance and TAG

COMMUNITY LEGAL SERVICES, INC.  
1424 Chestnut Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215)-981-3702

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

Bernard A. Ryan, Jr.  
Small Business Advocate

June 14, 2000

(717) 783-2525  
(717) 783-2831 (FAX)

**HAND DELIVERED**

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

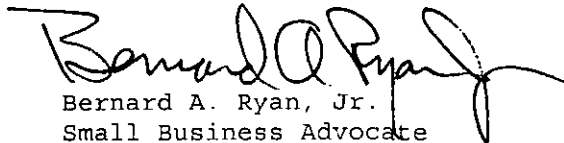
DOCUMENT  
FOLDER

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

Dear Mr. McNulty:

Enclosed for filing are the original and nine (9) copies of the Reply Exceptions on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all parties of record.

Sincerely,

  
Bernard A. Ryan, Jr.  
Small Business Advocate

Enclosures

cc: Cheryl Walker Davis, Director  
Office of Special Assistants

Hon. Charles F. Rainey, Jr.  
Administrative Law Judge

Parties of Record

RECEIVED  
00 JUN 14 PM 2:47  
PA.P.U.C.  
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 : 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 :

**DOCKETED**  
JUN 14 2000

---

REPLY EXCEPTIONS  
OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE

---

DOCUMENT  
FOLDER

RECEIVED  
00 JUN 14 PM 2:47  
PA P.U.C. BUREAU  
SECRETARY'S BUREAU

Bernard A. Ryan, Jr.  
Small Business Advocate

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525

Dated: June 14, 2000

33

TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. ARGUMENT ..... 2

    A. Preliminary Comments ..... 2

    B. Replies to PPL’s Specific Exceptions ..... 3

        1. The Joint Petition as Evidence in Later Cases ..... 3

        2. The PECO-Specific Nature of the Evidence ..... 4

        3. Settlements Will Not Be More Difficult to Achieve ..... 5

        4. The RD Makes No Mistake About PPL’s Intentions ..... 6

        5. PPL’s Questionable Standing to Object to the Joint Petition ..... 7

III. CONCLUSION ..... 9

## I. INTRODUCTION

On June 1, 2000, the Secretary of the Pennsylvania Public Utility Commission issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Charles E. Rainey, Jr. in this matter. The ALJ recommended that the Commission adopt the Joint Petition for Settlement that was filed March 23, 2000 (the "Joint Petition") by most of the active parties in this case.

The Office of Small Business Advocate (OSBA) obviously did not file Exceptions to the ALJ's Recommended Decision which approved the settlement in which this Office is a Joint Petitioner. The only party that did file Exceptions to the Recommended Decision was PPL Electric Utilities Corporation ("PPL").

In these Reply Exceptions, the OSBA responds to the five exceptions PPL has taken to Judge Rainey's Recommended Decision. Exceptions 1-4 are, however, actually variations on the same theme, namely, that the Commission should now declare that any consideration of the Joint Petition must be forever excluded from future Commission proceedings (especially any that may hereafter be initiated by PPL). For the reasons summarized in these Reply Exceptions (all of which were more fully developed in the main and reply briefs previously filed by the OSBA and by the other Joint Petitioners), the PPL Exceptions should be denied. The Joint Petition for Settlement should be approved by the Commission.

## II. ARGUMENT

### A. Preliminary Comments

The arguments set forth by PPL in the exceptions it filed to the Recommended Decision were all advanced by PPL in its prior comments and briefs concerning the Joint Petition. Those arguments were then convincingly rebutted by the signatory parties to the Joint Petition, including this Office, the Commission's Office of Trial Staff, the Office of Consumer Advocate, PECO Energy Company, Senator Vincent J. Fumo, the City of Philadelphia, the Philadelphia Area Industrial Energy Users Group, various environmental organizations such as Citizens for Pennsylvania's Future and the Clean Air Council, the Mid-Atlantic Power Supply Association, Enron Energy Services, the Consumers Education and Protective Association, and a number of other parties. All of PPL's objections to the Joint Petition have now been soundly and appropriately rejected by Judge Rainey.

In these Reply Exceptions the OSBA will respond briefly to PPL's five stated exceptions. We will not, however, address every contention included in the 34 pages of PPL Exceptions, although we clearly do not agree with any of them. For more extended responses to PPL's contentions, the OSBA would refer the Commission to the main and reply briefs filed previously by the Joint Petitioners as well as Judge Rainey's well-reasoned Recommended Decision that fully addresses the PPL objections.

At the outset, the OSBA calls the Commission's attention to the incredible scope of PPL's attempt to prevent any use or reference whatsoever to this Joint Petition in any Commission proceeding that may occur in the future. That overriding theme of the PPL Exceptions essentially amounts to a request that the Commission now issue a declaratory ruling on evidentiary issues that may later arise in a still-hypothetical proceeding in which PPL, not PECO, would be the moving

party. Such a request, based as it is on pure speculation and conjecture, should be seen for what it truly is - an effort to severely restrict all other interested parties, including the OSBA and the other statutory parties, in how they would develop and present their positions in such a future case. Moreover, other parties (including other EDCs and EGSs) had no notice at all that such a far-reaching ruling would be considered by the Commission in this proceeding.

The prospective relief that is sought by PPL via these Exceptions is unprecedented, inappropriate, unnecessary, and violative of the due process rights of other interested parties. Evidentiary issues regarding the use of this Joint Petition in a future Commission proceeding, if they arise at all, can and should be resolved in that future proceeding by the active parties in that case, the Administrative Law Judge assigned to preside over that matter and the Commissioners in office at that time.

**B. Replies to PPL's Specific Exceptions**

In response to the specific exceptions that PPL has taken to Judge Rainey's Recommended Decision, the OSBA submits that:

**1. The Joint Petition as Evidence in Later Cases**

PPL's claim that Judge Rainey failed to address the PPL request to have the Joint Petition barred as evidence for all purposes in all subsequent PUC proceeding is simply wrong. PPL's proposal that the Commission go so far beyond the common practice (incorporated into the Joint Petition here as paragraph 72) of having the settling parties specifically agree that the provisions of the settlement will have no effect as controlling legal precedent was categorically rejected by Judge Rainey. No "clarification" of that rejection is needed.

"Therefore, in any subsequent litigated proceedings, parties may not cite to the provisions of the Settlement Petition as if those provisions bind the Commission to impose the same provisions in all subsequent proceedings.

I believe that Paragraph 72 of the Settlement Petition adequately meets PPL's legitimate concerns, and is in the public interest. However, I do not believe that it is in the public interest to adopt PPL's recommended wording since such language may be interpreted as restricting parties in subsequent proceedings from even recommending provisions from prior settlements, and also restricting the Commission from modifying settlements to include provisions from prior settlements when it is in the public interest to do so. Therefore, I reject PPL's recommendation in regard to this matter as being contrary to the public's interest."

Recommended Decision at p. 34.

PPL understandably does not want to hear the "No" that Judge Rainey so clearly announced as his answer to PPL's over-reaching proposal. There simply is no good reason to extend the Commission's long-standing prohibition against the use of settlements as legal precedents in future Commission cases in the way that PPL has requested here. There is also no lack of clarity in the Judge's ruling on that score. And there certainly is no disagreement among the Joint Petitioners regarding the PPL proposal; all of them have vigorously and consistently opposed PPL's attempt to so handicap parties in future PUC proceedings, as a review of the numerous briefs filed by the Joint Petitioners in this proceeding will establish.<sup>1</sup>

## **2. The PECO-Specific Nature of the Evidence**

PPL's second exception (beginning on p. 8) is just another effort, albeit phrased a bit differently, to get a prospective evidentiary ruling in this case that PPL could later use to hobble the Joint Petitioners in an entirely different case that company may someday initiate before the

---

<sup>1</sup>  
The comment in the OSBA's main brief to the effect that the Joint Petition would be irrelevant in a future case "... if any party there tried to use this settlement to support its claim" is both correct and consistent with positions taken by other Joint Petitioners. Read in context (something PPL has had difficulty doing in this case), that sentence clearly refers to the Joint Petition's non-existent precedential effect, not to an evidentiary dispute that may someday arise in a case involving an as-yet unfiled request by PPL for Commission approval of a transaction it may later wish to enter. No Joint Signatory has ever argued to the contrary.

Commission. The sections of the Public Utility Code cited by PPL in its second exception are exquisitely clear, and certainly will apply in such a future proceeding, if and when PPL ever files an application similar to PECO's here. But there is no reason for the Commission to rule today on an evidentiary dispute that does not now exist, and may never come to be.

Certainly, the evidence adduced in this case related to PECO and its customers, and to the transactions described in the PECO application, as they were later modified by the Joint Petition. A Joint Petitioner here who wanted to argue in a subsequent PPL proceeding that a particular provision of this Joint Petition should be imposed on PPL by the Commission in that later proceeding would have the burden of showing **at that time and in the context of that case** that the provision was also reasonable and appropriate for PPL. Whatever experience is gained from the operation of the particular provision following the implementation of the PECO settlement would undoubtedly be part of that proof in PPL's later case. But no Joint Petitioner could successfully argue in the PPL case that just because the desired provision was part of this PECO settlement, it should be (or had to be) also imposed on PPL.

### **3. Settlements Will Not Be More Difficult to Achieve**

In its third exception PPL once again pursues its corporate goal of trying to convert this PECO application case into a Commission rule-making proceeding concerning evidence that may not be introduced in future PUC cases. In doing so, PPL first comments approvingly on the value of negotiated settlements in Commission cases.<sup>2</sup> PPL proceeds to argue that unless the Commission bans all references to a prior case settlement in subsequent PUC cases, settlement activity in those later PUC cases will be jeopardized, if not brought to a screeching halt. The PPL argument then

---

<sup>2</sup>Given its actions here, PPL obviously excludes this proceeding from that general rule.

attempts to transform the generally-accepted (and salutary) view that the settlement of one case does not constitute a legal precedent that must be followed in a later case into an exclusionary rule of evidence. The transformation PPL seeks is neither wise nor warranted.

PPL obviously hopes to place all evidence about the resolution of this proceeding completely beyond the reach of the Commission's Administrative Law Judges, and, indeed, of the Commissioners themselves, in all future PUC proceedings. PPL provides no convincing rationale for imposing such an unprecedented and unwise limitation on the forum, a limitation that would forever foreclose future Judges and Commissioners from deciding for themselves, **at that future time and in the context of that future proceeding**, just what evidence has or does not have probative value regarding the controversy then before the Commission. PPL is trying to rig the rules in its favor before the contest even begins. The condition it seeks to have engrafted upon the Joint Petition would handcuff all protestants and intervenors in future PPL proceedings by placing unwarranted restrictions on their advocacy and their litigation strategies in those as-yet hypothetical PUC cases.<sup>3</sup>

#### **4. The RD Makes No Mistake About PPL's Intentions**

In its fourth exception PPL misconstrues and then attacks Judge Rainey's common-sense comment to the effect that all parties are free to accept or to reject any proposal that may be advanced by any other party in settlement negotiations. See PPL Exceptions at p. 26, quoting from the Judge's R.D. No one, certainly not the OSBA, argued in this proceeding that PPL's proposal

---

3

More comprehensive discussions of the public policy and due process considerations that compel the rejection of PPL's overreaching proposal will be found in the Main Briefs of the Office of Trial Staff (at pages 11-17), the Office of Consumer Advocate (at pages 30-34) and PECO Energy Company (at pages 21-22) that were previously filed in this proceeding.

would restrict what could be requested by other parties in settlement talks. The OSBA did make the reasonable observation that commitments made by PECO here as part of this settlement can simply be rejected by PPL if similar commitments are later requested from PPL during settlement discussions in the mysterious PPL proceeding that apparently lies ahead of us.

Someday in the future PPL may find itself in a position comparable to PECO's here, with PPL needing Commission approval for a proposed transaction of its own. In that case, other parties (including the OSBA and other Joint Petitioners) most likely will seek concessions from PPL in those settlement discussions. If PPL is unwilling to accept what PECO has agreed to here, all PPL has to do is "just say no." PPL and the other parties will then proceed to litigate that still-hypothetical case to a final decision by the Commission. While an intervenor in such a future case can ask for commitments from PPL that are similar to those agreed to in this case by PECO, it is perfectly clear that no party in that later case could successfully argue that the Joint Petition here establishes a binding legal precedent the Commission must follow there. Instead, in the face of opposition from PPL, the proponent of any provision "borrowed" from this Joint Petition would have the burden of establishing **in that case** the need for (and the legality of) a Commission mandate imposing a comparable obligation on PPL.

##### **5. PPL's Questionable Standing to Object to the Joint Petition**

PPL's fifth exception challenges (at pages 27-32) Judge Rainey's determination that PPL is not directly and immediately affected by the provisions of the Joint Petition, and thus lacks standing to contest those provisions. R.D. 35. While the OSBA agrees with the ALJ on that point (and so argued at pages 8-9 of its main brief), we now simply point out that Judge Rainey in his Recommended Decision went on to address, and to reject, the "other issues" PPL raised in opposing the Joint Petition. See R.D. at pp. 35-45. PPL has certainly had its day in Judge Rainey's court, and

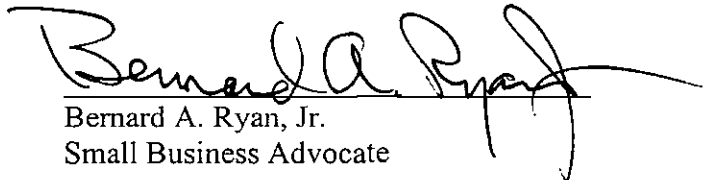
all of its arguments (both procedural and substantive) against the Joint Petition have been found to be insubstantial and unavailing. As a consequence, it no longer matters whether PPL has or does not have legal standing to raise any objections to the Joint Petition.

All of PPL's objections to the Joint Petition were carefully reviewed by Judge Rainey, and all of them were rejected by him. PPL's dubious legal standing to pursue objections to a settlement reached by the other parties, a settlement that has no direct, immediate or substantial impact upon PPL itself, was not the basis for the Judge's recommendation that the Commission approve the Joint Petition without modification. The PPL objections were rejected on their merits (or lack thereof), not because of questions about PPL's standing to assert those objections.

### III. CONCLUSION

The Office of Small Business Advocate respectfully recommends that the Commission adopt the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. and approve the Joint Petition for Settlement without any modification.

Respectfully submitted,

  
Bernard A. Ryan, Jr.  
Small Business Advocate

Date: June 14, 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 :

Certificate\_of\_Service

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

Hon. Charles E. Rainey, Jr.  
Administrative Law Judge  
Pa. Public Utility Commission  
1302 Philadelphia State Office Bldg.  
Broad and Spring Garden Streets  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 - Fax

Donald A. Kaplan, Esquire  
Leanne M. Bober, Esquire  
Preston, Gates, Ellis &  
Rouvelas, Meeds  
1735 New York Avenue, NW, Suite 500  
Washington, DC 20006  
(202) 662-8466  
(202) 331-1024 (fax)

Paul Russell, Esquire  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101-1179  
(610) 774-4254  
(610) 774-6726 (fax)

Craig A. Doll, Esquire  
25 North Front Street, 2nd  
Harrisburg, PA 17101-1606  
(Conectiv)  
(717) 230-9555  
(717) 230-9750 (fax)

Tanya J. McCloskey, Esquire  
Office of Consumer Advocate  
555 Walnut Street 5th FL Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)

Thomas P. Gadsden, Esquire  
Morgan, Lewis & Bockius  
1701 Market Street  
Philadelphia, PA 19103-2921  
(215) 963-5448  
(215) 963-5299 (fax)

Kenneth L. Mickens, Esquire  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
(717) 787-1976  
(717) 772-2677 (fax)

Peter Meadows Adels, Esquire  
Adels, Charles, McPedran  
117 S. 17th Street, Suite 1801  
Philadelphia, PA 19103

RECEIVED  
00 JUN 14 PM 2:47  
PA P.U.C. BUREAU  
SECRETARY'S BUREAU

Paul R. Bonney, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101  
(215) 841-5544  
(215) 568-3389 (fax)

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

David M. Kleppinger, Esquire  
Charis M. Burak, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(PAIEUG, IECPA, DII & City of Phila.)  
(717) 232-8000  
(717) 236-2665 (fax)

John L. Munsch, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(724) 837-3000  
(724) 838-6177 (fax)

John S. Halsted, Esquire  
Gawthrop, Greenwood & Halstead  
119 North High Street  
West Chester, PA 19381-0562  
(610) 696-8225

Gregory K. Lawrence, Esquire  
McDermott, Will & Emery  
600 Thirteenth Street, NW  
Washington, DC 20005-3096  
(202) 756-8000  
(202) 756- 8087 (fsx)

Daniel Clearfield, Esquire  
Gerald Gornish, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
Locust Court Building, Suite 300  
212 Locust Street  
Harrisburg, PA 17101  
(Enron)  
(717) 237-7160  
(717) 237-7161 (fax)

Joseph A. Dworetzky, Esquire  
Matthew A. Hamermesh, Esquire  
Handley, Aronchick Segal & Pudlin  
One Logan Square 12th Floor  
Philadelphia, PA 19103  
(MAPSA)  
(215) 496-7014  
(215) 568-0300 (fax)

John L. Hall, Esquire  
Unruh, Turner, Burke & Frees  
P.O. Box 515  
West Chester, PA 19381-0515  
(610) 692-1371  
(610) 918-1361 (fax)

Amy Gold  
Shell Energy Services  
1221 Lamon  
Houston, TX 77010

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire  
Allegheny Energy Supply Company  
Roseytown  
RR 12, Box 1000  
Greensburg, PA 15601  
(724) 838-6217  
(724) 830-5184 (fax)

Philip A. Bertocci, Esquire  
Edward A. McCool, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102  
(CEPA)  
(215) 981-3702  
(215) 981-0434 (fax)

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

Andrew Altman  
400 S. Camac Street  
Philadelphia, PA 19147

Michael Fiorentino, Esquire  
Clean Air Council  
105 N. Front Street, Suite 106  
Harrisburg, PA 17101  
(717) 230-8807  
(717) 230-8808 (fax)

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141

John Will Ongman, Esquire  
Marc D. Machlin, Esquire  
Pepper Hamilton  
600 Fourteenth Street NW  
Washington, DC 20005  
(Amtrak)  
(202) 220-1415  
(202) 220-1665 (fax)

Kenneth M. Barna, Esquire  
Wayne R. Frigard, Esquire  
Rubin & Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110  
(Amtrak)  
(617) 330-7006  
(617) 549-9556 (fax)

John Hanger, Esquire  
Citizens for Pennsylvania's Future  
212 Locust Court, Suite 410  
Harrisburg, PA 17101

Christopher B. Craig, Esquire  
Senate Democratic Appropriations  
Committee  
Room 545, Main Capitol Building  
Harrisburg, PA 17120

William T. Hawke, Esquire  
Malatesta, Hawke & McKeon LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
(717) 236-1300  
(717) 236-4841 (fax)

Steven P. Hershey, Esquire  
Connolly, Epstein, Chicco, Faxman  
1515 Market Street, 9th Floor  
Philadelphia, PA 19102-1909

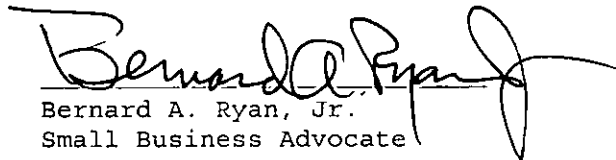
Robert Jaffe, Esquire  
City of Philadelphia, City Council  
Room 588 City Hall  
Philadelphia, PA 19107

Carville B. Collins, Esquire  
Piper Marbury Rudick & Wolfe  
36 South Charles Street  
Baltimore, MD 21201-3018

Hon. Allyson Y. Schwartz  
Senate Box 203004  
Room 182, Main Capitol Building  
Harrisburg, PA 17120

James H. Cawley, Esquire  
Rhoads & Sinon  
12th Floor, Dauphin Building  
One South Market Street  
P.O. Box 1146  
Harrisburg, PA 17108

Cheryl Walker Davis, Director  
Office of Special Assistants  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(hand delivered)

  
Bernard A. Ryan, Jr.  
Small Business Advocate

Dated: June 14, 2000

MCNEES, WALLACE & NURICK  
ATTORNEYS AT LAW

100 PINE STREET  
P. O. BOX 1166  
HARRISBURG, PA 17108-1166  
TELEPHONE (717) 232-8000  
FAX (717) 237-5300  
<http://www.mwn.com>

RECEIVED  
00 JUN 14 PM 2:37  
PA P.U.C. BUREAU  
SECRETARY'S BUREAU

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

DOCKETED

June 14, 2000 JUN 14 2000

VIA HAND DELIVERY

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

DOCUMENT  
FOLDER

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

Dear Secretary McNulty:

Please be advised that the City of Philadelphia will not be filing Reply Exceptions in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties in this proceeding are being duly served with a copy of this letter. If you have any questions, please contact the undersigned.

Very truly yours,

MCNEES, WALLACE & NURICK

By   
Charis M. Burak

CMB/lhe

c: Administrative Law Judge Charles E. Rainey, Jr. (via facsimile and first class mail)  
Cheryl Walker Davis, Esq., Office of Special Assistants  
Certificate of Service

CERTIFICATE OF SERVICE

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

VIA FIRST CLASS MAIL

Tanya J. McCloskey, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, Fifth Floor  
Harrisburg, PA 17101

Bernard A. Ryan, Jr., Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Kenneth L. Mickens, Esq.  
Office of Trial Staff  
PA Public Utility Commission  
901 Rear North 7<sup>th</sup> Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Craig A. Doll, Esq.  
25 North Front Street  
Second Floor  
Harrisburg, PA 17101-1606

Honorable Allyson Y. Schwartz  
4<sup>th</sup> District  
Senate Box 203004  
Harrisburg, PA 17120

John Hanger, Esq.  
212 Locust Court, Suite 410  
Harrisburg, PA 17101

Christopher B. Craig, Esq.  
Room 545 Main Capitol Building  
Harrisburg, PA 17120

Daniel Clearfield, Esq.  
Gerald Gornish, Esq.  
Kevin Moody, Esq.  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Michael Fiorentino, Esq.  
Clean Air Council  
105 N. Front Street  
Suite 106  
Harrisburg, PA 17101

RECEIVED  
00 JUN 14 PM 2:37  
PA.P.U.C.  
SECRETARY'S BUREAU

**CERTIFICATE OF SERVICE**

Docket No. A-110550F0147

Page 2

Paul R. Bonney, Esq.  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Thomas P. Gadsden, Esq.  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Paul E. Russell, Esq.  
PP&L Inc.  
Two North Ninth Street  
Allentown, PA 18101-1179

Donald A. Kaplan, Esq.  
Leanne M. Bober, Esq.  
Preston, Gates, Ellis & Rouvelas, Meeds LLP  
Suite 500  
1735 New York Avenue NW  
Washington, DC 20006

Peter Meadows Adels, Esq.  
PennFuture  
117 S. 17<sup>th</sup> Street, Suite 1801  
Philadelphia, PA 19103

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

John S. Halsted, Esq.  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Kenneth M. Barna, Esq.  
Wayne R. Frigard, Esq.  
Rubin & Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110

Joseph A. Dworetzky, Esq.  
Hangley, Aronchick Segal & Pudlin  
One Logan Square 27<sup>th</sup> Floor  
Philadelphia, PA 19103

John L. Hall, Esq.  
Unruh, Turner, Burke & Frees, P.C.  
P. O. Box 515  
West Chester, PA 19381-0515

Joseph Otis Minott, Esq.  
135 S. 19th Street,  
Suite 300  
Philadelphia, PA 19103

John Will Ongman, Esq.  
Pepper Hamilton LLP  
600 Fourteenth Street NW  
Washington, DC 20005-2004

John L. Munsch, Esq.  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Patricia J. Clark, Esq.  
Allegheny Energy Supply  
800 Cabin Hill Drive  
Greensburg, PA 15601

Philip A. Bertocci, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102

Gregory K. Lawrence, Esq.  
McDermott, Will & Emery.  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096

CERTIFICATE OF SERVICE

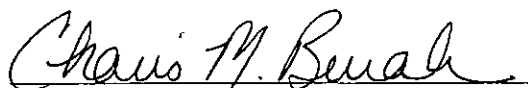
Docket No. A-110550F0147

Page 3

Andrew Altman  
400 S Camac Street  
Philadelphia, PA 19147

Patricia McNamara  
6048 Ogonty Avenue  
Philadelphia, PA 19141

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

  
Charis M. Burak

Dated this 14<sup>th</sup> day of June , 2000, in Harrisburg, Pennsylvania.



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

IN REPLY PLEASE  
REFER TO OUR FILE

June 14, 2000

JAMES J. MC NULTY, SECRETARY  
PA PUBLIC UTILITY COMMISSION  
P O BOX 3265  
HARRISBURG PA 17105-3265

ORIGINAL

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

DOCUMENT  
FOLDER

515735

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the Reply  
Exceptions of the Office of Trial Staff for filing in the above-captioned  
proceeding.

Copies are being served upon all active parties of record.

Very truly yours,

*Kenneth L. Micken*  
Kenneth L. Micken  
Senior Prosecutor  
Office of Trial Staff

RECEIVED  
SECRETARY'S BUREAU

00 JUN 14 AM 11:56

26

KLM:alb  
c: Parties of Record

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 RESTRUCTUR- :  
ING, 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

515736

---

REPLY EXCEPTIONS  
OF THE  
OFFICE OF TRIAL STAFF

---

DOCKETED  
JUN 14 2000

DOCKETED  
JUN 14 2000

DOCUMENT  
FOLDER

Kenneth L. Mickens  
Senior Prosecutor

Kandace F. Melillo  
Prosecutor

Office of Trial Staff  
Pennsylvania Public  
Utility Commission

RECEIVED  
SECRETARY'S BUREAU

00 JUN 14 AM 11:56

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-1976

Dated: June 14, 2000

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION.....	1
II. REPLY EXCEPTIONS.....	3
A. The Recommended Decision Clearly Rejects PPL’s Proposition That The Settlement Cannot Be Used As Evidence Against Another Pennsylvania Utility .....	3
B. The Recommended Decision Did Not Disregard 66 Pa. C.S. §332(b) In Dismissing PPL’s Concern That The Joint Petition Only Addresses Matters Pertaining To PECO And Is Neither Material Nor Relevant To Activities Of Other Utilities .....	6
C. PPL’s Request For An Exclusionary Ruling In This Proceeding Which Would Be Applicable In All Subsequent Commission Proceedings Is Premature And Preemptive Of Regulatory Authority.....	7
D. The Settlement Terms Relate Directly To The Evidence In The Record In This Proceeding.....	9
E. The ALJ’s Findings Concerning The Joint Petition’s Nuclear Decommissioning Provisions Do Not Support PPL’s Claim That The Commission Should Limit The Joint Petition’s Applicability To Other Pennsylvania Electric Utilities .....	10
F. PPL’s Disingenuous Contention That Its Proposed “Unrebutted” Exclusionary Rule Will Make Settlements More Likely Is Without Merit	11
G. The ALJ Correctly Determined That PPL’s Proposal Could Be Interpreted As Preventing Parties From Using The Joint Petition In Future Settlement Discussions.....	13
H. The Recommended Decision’s Ruling On PPL’s Standing Cannot Be Challenged By PPL .....	14
III. CONCLUSION .....	16

**TABLE OF CITATIONS**

**Page**

CASES

<u>R.M. v. Pennsylvania Housing Finance Agency, 740 A.2d 302 (1999)</u> .....	8
<u>Rheems Water Company v. Pennsylvania Public Utility Commission, __ Pa. Commonwealth Ct. __, 620 A.2d 609 (1993)</u> .....	6

STATUTES

45 P.S. §§1201, 1202, 1205, and 1207.....	8
52 Pa. Code §5.231.....	4
52 Pa. Code §5.231 (a).....	13
66 Pa. C.S. §2811(e)(2).....	7
66 Pa. C.S. §332(b).....	6, 7
66 Pa. C.S. §§501 and 1103(a).....	9
66 Pa. C.S. §331(d).....	7
Federal Rules of Evidence 408 (Fed. R. Evid. 408).....	12
Pennsylvania Rules of Evidence 408 (Pa. R. Evid. 408).....	12

## I. INTRODUCTION

On November 22, 1999, PECO Energy Company (“PECO” or the “Company”) filed an Application with the Pennsylvania Public Utility Commission (“Commission”) requesting that the Commission authorize: (1) the formation of a holding company and the transfer of certain assets and common facilities from PECO to its newly established corporate affiliates; and, (2) the merger of the newly formed holding company with Unicom Corporation (“Unicom”).

Various parties, including the Office of Trial Staff (“OTS”), intervened and/or filed Notices of Appearance in this proceeding. Following complex settlement discussions among the parties, a Joint Petition for Settlement (“Settlement” or “Joint Petition”), which was signed or not opposed by almost all of the parties, was filed with the Commission on March 23, 2000. Only two parties filed Objections to the Settlement—PPL Electric Utilities Corporation (“PPL”) (“PPL Objections”) and Philadelphia City Councilman David Cohen (“Councilman Cohen”) (“Cohen Objections”).<sup>1</sup>

---

<sup>1</sup> The Cohen Objections differ from the PPL Objections in that the former objections acknowledge that the Settlement improves upon the terms provided in PECO’s original Application (from a ratepayer perspective), but seeks even greater concessions from the Company. OTS submits that while it understands Councilman Cohen’s concerns, OTS believes that the Settlement is the best that could have been negotiated under the circumstances presented in this proceeding. Consequently, OTS has maintained that the Cohen Objections should be denied. See, OTS Reply Brief, p. 1.

In Prehearing Order #2, issued on April 25, 2000, Administrative Law Judge Charles E. Rainey, Jr. ("ALJ Rainey") determined, in light of the Objections, that technical evidentiary hearings would be convened. Accordingly, for the purpose of presenting testimony either in favor of or in opposition to the Settlement, a hearing was held in Philadelphia on May 10, 2000. The record closed on May 10, 2000. Main and Reply Briefs were filed by the parties on May 17, 2000 and May 24, 2000, respectively.

ALJ Rainey's Recommended Decision in this proceeding was issued June 1, 2000. In the Recommended Decision ALJ Rainey determined that the Settlement should be approved in its entirety. Recommended Decision, p. 24.

PPL and Councilman Cohen filed exceptions to the Recommended Decision on June 9, 2000. OTS responds herein to the Exceptions filed by PPL.<sup>2</sup> For the reasons stated herein, PPL's Exceptions should be dismissed.

---

<sup>2</sup> OTS does not respond to the Cohen Exceptions for the reasons stated in f. n. 1 of these Reply Exceptions.

## II. REPLY EXCEPTIONS

### A. The Recommended Decision Clearly Rejects PPL's Proposition That The Settlement Cannot Be Used As Evidence Against Another Pennsylvania Utility.

At p. 4 of its Exceptions, PPL argues that it has asked the Commission to modify the Joint Petition to clarify that the increased use of settlements to resolve proceedings does not justify the use of the Joint Petition or any other such settlement as evidence supporting relief against other Pennsylvania utilities in subsequent Commission proceedings. In this regard, PPL argues that “[b]y relying on Paragraph 72<sup>3</sup> of the Joint Petition to reject of [sic] the relief sought by [PPL], the Recommended Decision simply failed to address the issue raised by PPL.... It also failed to resolve a clear disagreement among the Joint Petitioners regarding how they may use the Joint Petition in future proceedings involving [PPL] and other utilities.”

In fact, a modification of the Recommended Decision is not required. ALJ Rainey's Recommended Decision specifically identifies the evidentiary issue raised by PPL witness Paul Gioia. See, Recommended Decision pp. 21-22. Later, in discussing his resolution of the issue, ALJ Rainey states “... PPL witness Gioia inferred that PPL is concerned that if the Commission finds that the terms and

---

<sup>3</sup> Paragraph 72 of the Joint Petition provides as follows:

Acknowledging that it is expressly understood and agreed that the Settlement constitutes a negotiated resolution solely of issues addressed herein, the Merger and the Corporation Restructuring, the Joint Petitioners agree that this Settlement shall not constitute or be cited as controlling precedent in any other proceeding involving a merger or an acquisition by another Pennsylvania electric utility. Joint Petition, p. 41.

conditions in the [Joint] Petition in this case acceptable, the Commission and/or parties will impose upon PPL in any subsequent proceedings in which PPL is the subject of a merger or reorganization, provisions from the present [Joint] Petition which PPL would find objectionable if applied to it.” Recommended Decision, p. 31. Thus, it is clear that the ALJ properly identified the issue raised by PPL. The ALJ then fully discussed the reasons supporting his rejection of PPL’s claim. Recommended Decision, pp. 31-34.

PPL alleges that the ALJ relied exclusively upon the language in Paragraph 72 of the Joint Petition in reaching his determination. PPL Exceptions, pp. 4-5. However, a cursory reading of the ALJ’s Recommended Decision reveals that he also based his finding upon: (1) the fact that the Commission encourages settlements (52 Pa. Code §5.231), Recommended Decision, p. 33; (2) the fact that if a party objects to the terms of a settlement, that party has the right not to sign-off on the settlement document and continue to litigate,<sup>4</sup> Id; and, (3) the fact that PPL has the right not to sign-off on an objectionable settlement provision in any future proceeding in which it is the subject of a merger or reorganization. Id These reasons further buttress the ALJ’s determination that the Joint Petition need not be amended in the manner proposed by PPL.

---

<sup>4</sup> That is precisely what PPL has chosen to do in the instant proceeding.

PPL's claim that the Recommended Decision also fails to resolve a disagreement among the Joint Petitioners regarding how they may use the Joint Petition in future proceedings, should be rejected for similar reasons. Since there is no ambiguity, this matter can be disposed of without determining whether PPL has accurately detected a disagreement among the Joint Petitioners on this issue.<sup>5</sup> The ALJ has clearly stated that the Commission will determine how settlement provisions may be used for evidentiary purposes:

When a settlement agreement is presented to the Commission for approval, the Commission will review the document and determine whether its terms and conditions are in the public interest. In its review, the Commission may modify the agreement if it believes that modification of the agreement is in the public interest. Modification of the agreement may include the Commission's inclusion of some terms and conditions from a prior settlement agreement in another proceeding, if the Commission believes it is justifiable and warranted.

Recommended Decision, pp. 33-34.

Accordingly, it is clear that the Recommended Decision addressed the issue of the evidentiary treatment of settlement provisions in subsequent proceedings. PPL's exception should be denied.

---

<sup>5</sup> Indeed the fact that the ALJ specifically addressed this issue renders any possible conflict among the Joint Petitioners on this question, irrelevant.

**B. The Recommended Decision Did Not Disregard 66 Pa. C.S. §332(b) In Dismissing PPL's Concern That The Joint Petition Only Addresses Matters Pertaining To PECO And Is Neither Material Nor Relevant To Activities Of Other Utilities.**

---

PPL alleges at p. 8 of its Exceptions that the Recommended Decision ignored PPL's request that the Commission establish a policy against the practice of using settlement concessions by a utility in one proceeding to "to create their own evidence in support of imposing similar relief on [PPL] or other Pennsylvania public utilities in other proceedings." However, the Recommended Decision clearly finds that the Settlement is supported by substantial evidence and, by implication, rejected PPL's claim based upon 66 Pa. C.S. §332(b).

The Recommended Decision indicates that in future proceedings the Commission will consider including settlement provisions from prior settlements if such provisions are "justifiable and warranted." Recommended Decision, p. 34. This language supports the notion that the Commission will consider only evidence that is both relevant and material. The Commission's authority in this area is particularly apparent as to mergers. The Commonwealth Court has found that the Commission has broad authority to fashion appropriate remedies to ensure that a proposed merger is in the public interest. See, Rheems Water Company v. Pennsylvania Public Utility Commission, \_\_ Pa. Commonwealth Ct. \_\_, 620 A.2d 609 (1993). In addition, in considering the proposed merger of electric utilities, the Commission is authorized to approve such merger only "upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning

and workable competitive retail market.” 66 Pa. C.S. §2811(e)(2). PPL’s request to limit the kind of information that could be considered evidence in a subsequent proceeding, would only serve to limit the Commission’s ability to effectively review these merger requests as it is required to do by statute.

**C. PPL’s Request For An Exclusionary Ruling In This Proceeding Which Would Be Applicable In All Subsequent Commission Proceedings Is Premature And Preemptive Of Regulatory Authority.**

On pages 10-12 of its Reply Exceptions, PPL also argues that 66 Pa. C.S. §332(b) requires the exclusion of irrelevant and immaterial evidence from Commission proceedings. According to PPL, since the terms of the Settlement fail to meet this “relevant and material” standard in any subsequent proceeding, and are only relevant to the PECO/Unicom merger, a provision should be added to the Joint Petition to specifically exclude all reference to the Joint Petition in any subsequent proceeding. See, PPL Exceptions, p. 33.

PPL’s request should be rejected. First of all, PPL’s request is premature and would effectively pre-empt the authority of administrative law judges to rule on the admissibility of evidence in future on-the-record proceedings. As provided in 66 Pa. C.S. §331(d), it is the presiding officer in the first instance, and not PPL, who has the authority to rule on the admissibility of proffered evidence in the context of that subsequent proceeding. PPL’s request is essentially a premature motion to strike or exclude potential testimony about the Joint Petition in subsequent proceedings wherein PPL might not even be a participant and may not have standing to participate. This is totally improper.

Also, PPL is requesting that its exclusionary rule be expanded to include all settlements in any Commission proceeding. PPL Exceptions, p. 33.<sup>6</sup> As demonstrated in the OTS Main Brief, at pages 14-16, while PPL has characterized its request as an articulation of “policy,” PPL is actually requesting a generic and binding change in the Commission’s evidentiary practice and procedure (i.e., a regulation). See, R.M. v. Pennsylvania Housing Finance Agency, 740 A.2d 302 (1999). However, PPL has not provided herein for any of the legal requirements, including public notice, comments, and publication, which must be satisfied before a new regulation can take effect. See, e.g., 45 P.S. §§1201, 1202, 1205, and 1207. Furthermore, a merger application is clearly not the appropriate forum for instituting a rulemaking, such as would be required to effectuate PPL’s request. For these additional reasons, PPL’s request for an exclusionary rule should be denied.

Finally, PPL’s request unreasonably and inappropriately seeks to restrict the Commission’s authority to consider previously approved settlements in future proceedings. Administrative Law Judge Rainey recognized the unreasonableness of this request in his Recommended Decision at page 34 as follows:

I do not believe that it is in the public interest to adopt PPL’s recommended wording since such language may be interpreted as restricting parties in subsequent proceedings from even recommending provisions from prior settlements, and also restricting the Commission from modifying settlements to include provisions from

---

<sup>6</sup> PPL asks the Commission to “establish a policy that it will not entertain evidence or arguments by participants in proceedings before the Commission justifying relief on the grounds that such relief was incorporated in a settlement with another public utility.” PPL Exceptions, p. 33.

prior settlements when it is in the public interest to do so. (Emphasis added)

ALJ Rainey is correct. As provided in 66 Pa. C.S. §§501 and 1103(a), the Commission has broad statutory powers to regulate public utilities and to determine appropriate conditions to be placed upon merger approvals. This broad authority to consider evidence and fashion appropriate remedies to ensure that proposed mergers are in the public interest would be thwarted by PPL's proposed generic exclusionary rule. Without question, PPL's request is unreasonable, inappropriate, and ultra vires and should be denied.

**D. The Settlement Terms Relate Directly To The Evidence In The Record In This Proceeding.**

At pp. 13-17 of its Exceptions, PPL argues that the testimony provided by the settling parties does not fully support the \$200 million distribution rate reduction provided for under the settlement. Specifically, PPL alleges that OTS witness Kevan Deardorff "could find no more than \$113.1 million over the first five years of the merger." PPL Exceptions, p. 13.

In fact, PPL has failed to accurately characterize Mr. Deardorff's testimony. Mr. Deardorff did identify \$113.1 million of merger savings over a five-year period. However, he indicated that this amount was conservative in nature because the merger savings analysis was performed by PECO. Mr. Deardorff testified that "[i]t was in the best interest of PECO's shareholders to provide conservative cost saving synergy estimates." OTS St. 1, p. 3. Support for this opinion is found in the record. Mr. Deardorff offered a Value Line sheet for

Unicom that estimates the merger savings in the third year to be \$180 million. OTS Ex. 1, Sched. 3. PECO estimates the third year savings to be \$156.3 million. OTS Ex. 1, Sched. 1. Mr. Deardorff has also testified that in the recent Bell Atlantic/NYNEX merger, the actual cost savings greatly exceeded initial estimates. In fact, the Chairman of the Board of Directors of Bell Atlantic stated in its 1997 Annual Report that actual synergy savings were nearly twice the levels originally estimated. OTS St. 1, p. 4. This evidence provides direct support for the \$200 million distribution rate reduction. PPL's claim to the contrary, should be rejected.

**E. The ALJ's Findings Concerning The Joint Petition's Nuclear Decommissioning Provisions Do Not Support PPL's Claim That The Commission Should Limit The Joint Petition's Applicability To Other Pennsylvania Electric Utilities.**

PPL claims at pp. 17-19 of its Exceptions that the ALJ's finding that the Commission has no authority to inquire into nuclear safety issues (Recommended Decision, pp. 38-39), supports its argument that the Joint Petition's provisions cannot be cited as evidence in future proceedings. Specifically, PPL argues that the Commission could mistakenly rely upon the PECO provision believing that it is identical to the PPL nuclear decommissioning situation. PPL Exceptions, p. 19. In response, OTS refers to the discussion under Reply Exception B.

In addition, OTS submits that the Commission would obviously carefully review the applicability of the nuclear decommissioning provisions in the instant Settlement to nuclear decommissioning issues in a subsequent proceeding

involving PPL. If PPL has not agreed to absorb a portion of its nuclear decommissioning liability as PECO has, the Commission would clearly not attempt to apply the PECO nuclear decommissioning provisions. In fact, it is hard to believe that PPL actually fears such an illogical application. In any event, the record indicates that PPL's exception should be denied.

**F. PPL's Disingenuous Contention That Its Proposed "Unrebutted" Exclusionary Rule Will Make Settlements More Likely Is Without Merit.**

In its Exceptions at pages 22-26, PPL contends that testimony from its witness Paul Gioia, that failure to adopt an exclusionary rule (excluding evidence of prior settlements) would hinder subsequent settlements, is unrebutted by any party. This contention is disingenuous at best. As indicated in ALJ Rainey's Prehearing Order #2, the procedural schedule in this case, adopted after the filing of the Joint Petition, did not provide for the filing of rebuttal testimony in response to Mr. Gioia's testimony.

Furthermore, contrary to PPL's assertions, OTS did present evidence, in the form of a Reply to the Objections of PPL, which contradicted PPL's claims. As indicated on Parties Exhibit No. 1, the **Reply of the Office of Trial Staff to the Objections of PPL Electric Utilities Corporation to the Joint Petition for Settlement** (OTS Reply) was admitted into evidence at the May 10, 2000 hearing in Philadelphia. In this document, OTS responded to PPL's contentions in its Objections that failure to restrict use of prior settlements would have a "chilling effect" on future settlements. PPL Objections, pp. 30-33. As indicated in the OTS

Reply, at page 7, there is no need to restrict the parties' use of prior settlements because "PPL can easily avoid the result it fears by simply refusing to agree to terms that it believes would place it at a competitive disadvantage."

PPL seems to overlook the fact that no party herein is seeking to bind PPL to the Joint Petition in a possible future merger case filed by PPL. No party is seeking to take away PPL's due process rights to argue that the provisions of the Joint Petition herein should not be applied to PPL in that possible future merger proceeding. However, PPL is seeking to restrict the parties herein and the Commission from even considering the use of the Joint Petition as guidance in future proceedings. As stated previously, PPL seeks to do this without providing due process to affected potential parties through a rulemaking proceeding. This is totally unfair, inappropriate, and unreasonable and should be soundly rejected, as wisely recommended by ALJ Rainey.

PPL also contends, on p. 24 of its Exceptions, that the Pennsylvania Rules of Evidence 408 (Pa. R. Evid. 408) and Federal Rules of Evidence 408 (Fed. R. Evid. 408) concur with the policy to which Mr. Gioia testifies by generally prohibiting the introduction as evidence of both offers of settlement and settlements agreements. However, as acknowledged by PPL, these rules are applied to prohibit a party's compromise or offer of compromise to be used against it to prove liability. PPL Exceptions, p. 24. Thus, they are not applicable to the instant situation.

Also, OTS notes that the Commission already has regulations to protect parties from the introduction into evidence of unaccepted offers of settlement. See, 52 Pa. Code §5.231 (a). In this instant case, OTS and the other parties are not seeking to introduce unaccepted offers of settlement. Instead, OTS is seeking to preserve the right of future litigants and the Commission to reference the Settlement, which is a public document and was agreed to by all signatories, in future proceedings. For all the reasons set forth herein, that right should be *reserved and not restricted in the manner sought by PPL.*

**G. The ALJ Correctly Determined That PPL's Proposal Could Be Interpreted As Preventing Parties From Using The Joint Petition In Future Settlement Discussions.**

On p. 26-27 of its Exceptions, PPL contends that the ALJ erroneously assumed that PPL was seeking to restrict what may be proposed in settlement discussions. However, contrary to these contentions, PPL's Objections to the Joint Petition specifically request that the parties be required to agree not to propose that a provision in the Joint Petition be adopted in any other proceeding, based on the fact that such provision was included in the Joint Petition. PPL Objections, p. 32. This request clearly could be interpreted as preventing parties from proposing use of the Joint Petition in any future settlement discussions.

Also, as a practical matter, the exclusionary rule sought by PPL would have a "chilling effect" on settlement proposals. Parties would obviously be reluctant to negotiate for terms, such as are in a prior approved settlement, if those terms

could not be introduced into evidence in the event the settlement discussions were not completely successful.

Thus, ALJ Rainey's discussion regarding the effect of PPL's proposal on future settlement discussions (Recommended Decision, p. 33) is germane and should not be disregarded, as requested by PPL.

**H. The Recommended Decision's Ruling On PPL's Standing Cannot Be Challenged By PPL.**

The ALJ found that PPL has not shown a "direct and immediate interest" in the issues in this proceeding other than the use of the Joint Petition as evidence in subsequent proceedings against PPL. Recommended Decision, p. 35. PPL argues in its Exceptions that the holding is "contrary to the [ALJ's] own ruling permitting [PPL] to participate as a full party in the proceeding." PPL Exceptions, p. 27. PPL also claims the ALJ misapplied the law governing standing and that PPL has demonstrated immediate and substantial interest in this proceeding. PPL Exceptions, pp. 29-33.

However, OTS submits that this exception is not available to PPL because the ALJ did not rely upon his stated belief that he could dismiss the "other issues" for lack of standing. Instead, he discussed and rejected each of PPL's "other issues" on the merits. Recommended Decision, pp. 35-45. Since PPL received a full hearing on the merits concerning the "other issues," it has no basis upon which

to challenge the ALJ's belief that he could dismiss the "other issues" due to lack of standing.<sup>7</sup> Consequently, PPL's exception should be denied.

---

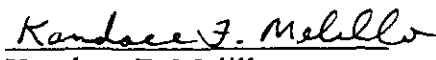
<sup>7</sup> PPL's claim at p. 28 of its Exceptions that the Recommended Decision cites no basis for revisiting its ruling granting PPL's petition to intervene, should be denied for the same reasons.

### III. CONCLUSION

For the reasons stated herein and in OTS' Main and Reply Briefs, OTS submits that the Commission should adopt its recommendations. Accordingly, the Settlement should be approved in its entirety.

Respectfully submitted,

  
Kenneth L. Mickens  
Senior Prosecutor

  
Kandace F. Melillo  
Prosecutor

Pennsylvania Public  
Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: June 14, 2000



John Hanger  
Citizens for Pennsylvania's Future  
212 Locust Court  
Suite 410  
Harrisburg, PA 17101

Peter Meadows Adel  
Charles McPhedran  
PennFuture  
117 South 17th Street  
Suite 1801  
Philadelphia, PA 19103

Eric Joseph Epstein, Pro Se  
4100 Hillsdale Road  
Harrisburg, PA 17112

Christopher B. Craig, Esquire  
Senate Democratic Appropriations  
Committee  
Room 545 Main Capitol Building  
Harrisburg, PA 17120

Daniel C. Clearfield, Esquire  
Gerald Gornish, Esquire  
Kevin Moody, Esquire  
Wolf, Block, Schorr & Solis-Cohen, LLP  
212 Locust Street  
Suite 300  
Harrisburg, PA 17101

Amy Gold  
Shell Energy Services Company  
P. O. Box 4402  
Houston, TX 77210

Paul F. Forshay, Esquire  
Gregory K. Lawrence, Esquire  
Sutherland, Asbill & Brennan, LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004-2415

David M. Kleppinger, Esquire  
Charis M. Burak, Esquire  
McNees, Wallace and Nurick  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166

Paul E. Russell, Esquire  
PP&L Inc.  
Two North Ninth Street  
Allentown, PA 18101

Donald A. Kaplan, Esquire  
Leanne M. Bober, Esquire  
Preston Gates Ellis & Rouvelas Meeds, LLP  
1735 New York Avenue NW  
Suite 500  
Washington, DC 20006

Craig A. Doll, Esquire  
25 North Front Street  
Second Floor  
Harrisburg, PA 17101-1606

John S. Halsted, Esquire  
Gawthrop Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Joseph Otis Minott, Esquire  
Clean Air Council  
135 South 19th Street  
Suite 300  
Philadelphia, PA 19103

Michael Fiorentino, Esquire  
Clean Air Council  
105 North Front Street  
Suite 106  
Harrisburg, PA 17101

Brian P. Downey, Esq.  
Thomas B. Schmidt, III, Esq.  
John A. Greenbaum, Esq.  
Pepper Hamilton, LLP  
200 One Keystone Plaza  
North Front and Market Streets  
Harrisburg, PA 17108-1181

Kenneth M. Barna, Esquire  
Wayne R. Frigard, Esquire  
Rubin & Rudman, LLP  
50 Rowes Wharf  
Boston, MA 02110

Joseph A. Dworetzky, Esquire  
Matthew A. Hamermesh, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square  
27th Floor  
Philadelphia, PA 19103

Tanya J. McCloskey, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor Forum Place  
Harrisburg, PA 17101-1923

Gregory J. Pastore  
619 Pemberton Street  
Philadelphia, PA 19147

Philip A. Bertocci, Esquire  
Edward A. McCool, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102

John L. Munsch, Esquire  
Deborah J. Henry, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire  
Allegheny Energy Supply Company, LLC  
Roseytown  
RR 12 Box 1000  
Greensburg, PA 15601

James H. Cawley, Esquire  
Rhoads & Sinon  
12th Floor  
One South Market Street  
P. O. Box 1146  
Harrisburg, PA 17108

Stanford L. Levin, Ph.D.  
Southern Illinois University at Edwardsville  
Room 3130, Building III  
Edwardsville, IL 62026-1102

Bernard A. Ryan, Jr., Esquire  
Office of Small Business Advocate  
Suite 1102 Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 South Meramec Avenue  
St. Louis, MO 63105

David Cohen, Member  
Philadelphia City Council  
Room 588 City Hall  
Philadelphia, PA 19107

Robert Jaffe, Esquire  
Room 588 City Hall  
Philadelphia, PA 19107

John L. Hall, Esquire  
Unruh, Turner, Burke & Frees, PC  
P. O. Box 515  
17 West Gay Street  
West Chester, PA 19381-0515

Judith L. Mondre, President  
Mondre Energy, Inc.  
1601 Market Street  
Suite 1750  
Philadelphia, PA 19103

John Will Ongman, Esquire  
Marc D. Machlin, Esquire  
Wayne R. Frigard, Esquire  
Pepper Hamilton LLP  
600 Fourteenth St. NW  
Washington, DC 20005-2004

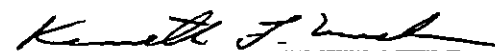
Carville B. Collins, Esquire  
Piper, Marbury, Rudnick & Wolfe  
6225 Smith Avenue  
Baltimore, MD 21209-3600

Honorable Charles E. Rainey Jr  
Administrative Law Judge  
PA Public Utilities Commission  
1302 State Office Building  
1400 W Spring Garden Street  
Philadelphia, PA 19130

Andrew Altman  
400 S Camac Street  
Philadelphia, PA 19147

Dennis Walters  
2314 Delancey Place  
Philadelphia, PA 19103

Donald McCloskey, President  
Municipal Building  
250 Pond Street  
Bristol, PA 19007



Kenneth L. Mickens  
Senior Prosecutor  
Office of Trial Staff

Docket No. A-110550F0147  
Date: June 14, 2000

MCNEES, WALLACE & NURICK  
ATTORNEYS AT LAW

100 PINE STREET  
P. O. BOX 1166  
HARRISBURG, PA 17108-1166  
TELEPHONE (717) 232-8000  
FAX (717) 237-5300  
<http://www.mwn.com>

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

June 14, 2000

RECEIVED  
00 JUN 14 PM 2:37  
PA.P.U.C.  
SECRETARY'S BUREAU

VIA HAND DELIVERY

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

DOCUMENT  
FOLDER

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

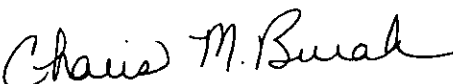
Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of the Reply Exceptions of the Philadelphia Area Industrial Energy Users Group ("PAIEUG").

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 transmittal letter and kindly return it for our filing purposes. Thank you for your attention to this matter.

Very truly yours,

MCNEES, WALLACE & NURICK

By   
Charis M. Burak

CMB/lhe

c: Administrative Law Judge Charles E. Rainey, Jr. (via facsimile and first class mail)  
Cheryl Walker Davis, Esq., Office of Special Assistants (via hand delivery) (with diskette in Word 6.0 format)  
Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. A-110550F0147

**DOCKETED**

JUN 14 2000

RECEIVED  
00 JUN 14 PM 2:37  
PA.P.U.C.  
SECRETARY'S BUREAU

---

REPLY EXCEPTIONS OF  
THE PHILADELPHIA AREA  
INDUSTRIAL ENERGY USERS GROUP

---

Bethlehem Steel Corporation  
The Boeing Company  
The Budd Company  
Ford Motor Company  
Franklin Mills Associates Limited  
Partnership

Kimberly-Clark Corporation  
Nabisco, Inc.  
Rohm and Haas Company  
Sunoco, Inc. (R&M)  
Temple University  
Thomas Jefferson University

**DOCUMENT  
FOLDER**

David M. Kleppinger  
Charis M. Burak  
McNEES, WALLACE & NURICK  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000 (phone)  
(717) 237-5300 (fax)

Counsel to the Philadelphia Area Industrial  
Energy Users Group

Dated: June 14, 2000

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF CITATIONS .....	ii
I. INTRODUCTION .....	1
II. ARGUMENT .....	3
A. Background .....	3
B. Reply to Specific PPL Exceptions .....	4
1. The R.D. Correctly Recognizes That The Joint Petition Is In The Public Interest Because It Does Not Constitute Nor Can Be Cited As Controlling Precedent .....	4
2. PPL’s Proposed Modification Is Unnecessary Because The Commission Currently Has The Power To Determine Whether Submitted Evidence Is Material And Relevant .....	8
3. PPL’s Proposed Modification To The Joint Petition Would Have a Chilling Effect Upon All Future Settlements .....	10
4. The R.D. Correctly Determines That PPL’s Proposed Language Modification Would Restrict Parties From Recommending Provisions From Prior Settlements, As Well As Prevent The Commission From Modifying Settlements When It Is In The Public Interest To Do So .....	11
5. The R.D.’s Rejection Of PPL’s Standing To Object Is Moot In Light Of The ALJ’s Substantive Findings .....	12
III. CONCLUSION .....	14

TABLE OF CITATIONS

<u>Statutes and Rules:</u>	<u>Page</u>
66 Pa. C.S. § 332(b) .....	5
52 Pa. Code § 5.483 .....	5
52 Pa. Code § 5.401 .....	5

## **I. INTRODUCTION**

On November 22, 1999, PECO Energy Company ("PECO" or "Company") filed an Application with the Pennsylvania Public Utility Commission ("PUC" or "Commission") requesting 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 ("Unicom"), the parent company of Commonwealth Edison Company ("ComEd").

On December 16, 2000, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a Petition to Intervene in PECO's merger proceeding. PAIEUG is an ad hoc association of energy-intensive industrial customers receiving electric and natural gas utility services from PECO. PAIEUG members use substantial volumes of electricity and natural gas in their manufacturing and operational processes. These energy costs are a significant element of the member companies' respective costs of operation. PAIEUG member companies are listed on the cover page of these Reply Exceptions.

After intensive settlement negotiations among the parties, PECO filed a Joint Petition for Settlement ("Joint Petition" or "Settlement") on behalf of the Company and the majority of the parties to this proceeding, including PAIEUG. Thereafter, PAIEUG filed a Statement in Support of the Joint Petition. On March 28, 2000, Administrative Law Judge Charles E. Rainey, Jr. ("ALJ Rainey") issued an Order Revising Procedural Schedule, which permitted parties to file Objections or Comments to the Settlement by April 13, 2000. Two parties to the proceeding, PPL Electric Utilities Corporation ("PPL") and Philadelphia City Councilman David Cohen, filed Objections to the Joint Petition. On April 17, 2000, PAIEUG filed Reply Objections requesting that PPL and Councilman Cohen's Objections be dismissed.

Pursuant to ALJ Rainey's April 28, 2000 Prehearing Order No. 2, establishing evidentiary hearings regarding the Joint Petition, PAIEUG filed a Prehearing Memorandum on May 2, 2000 and attended the one-day evidentiary hearing held May 10, 2000. The parties then filed Main and Reply Briefs on May 17, 2000 and May 24, 2000. PAIEUG submitted both a Main Brief ("PAIEUG M.B.") and a Reply Brief ("PAIEUG R.B.") regarding the Joint Petition. As explained therein, the Joint Petition is in the public interest because it provides significant benefits to PECO ratepayers, results in a fair and reasonable compromise among the parties, and significantly diminishes the time and costs involved in litigating this proceeding. As a result, the Joint Petition should be approved by the PUC without modification.

On June 1, 2000, the Commission issued ALJ Rainey's Recommended Decision ("R.D.") regarding the Joint Petition. On June 9, 2000, PAIEUG received Exceptions from only PPL. PAIEUG did not file Exceptions, but submitted a letter reserving the opportunity to file Reply Exceptions.

Pursuant to the established schedule, PAIEUG submits the following Reply Exceptions in response to the Exceptions filed by PPL. In support of these Reply Exceptions, PAIEUG offers argument and support for the presiding ALJ's well-reasoned R.D. recommending the approval of the Joint Petition without modification.

## II. ARGUMENT

### A. **Background**

Upon the filing of PECO's Application, the parties to the proceeding, including PAIEUG, engaged in intensive settlement negotiations culminating in the filing of the Joint Petition, with only PPL and Councilman Cohen opposing the Settlement. During the course of this proceeding, PPL has continually proffered unfounded concerns that if the Commission approved the terms and conditions of the Joint Petition in this case, the Commission or parties to the proceeding would impose similar provisions upon PPL in subsequent proceedings. See R.D. at 31. In order to alleviate PPL's unsubstantiated concerns, the Joint Petition contains the following language, which addresses the use of the Settlement in subsequent proceedings.

72. **Other Proceedings.** Acknowledging that it is expressly understood and agreed that the Settlement constitutes a negotiated resolution solely of issues addressed herein, the Merger and the 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 for Settlement, Paragraph 72.

While this provision clearly ensures that the Settlement will not be used or cited as controlling precedent in future proceedings, PPL claims that this provision does not alleviate PPL's fears. Instead, PPL proposes to step outside the boundaries of this proceeding and modify the Joint Petition to preclude its use as relevant and material evidence in all subsequent proceedings before the PUC. See PPL M.B., p. 3.

As addressed by the various parties to the proceeding, and concurred with by the ALJ, PPL's proposed language modification is too restrictive, and is not in the public interest. See R.D. at 34. As a result, the R.D. finds that because Paragraph 72 of the Joint Petition adequately meets the concerns of PPL and is in the public interest, the Settlement should be adopted without modification. See id. at 31-34.

Based upon these findings, PPL submitted Exceptions arguing that the R.D. was incorrect in dismissing PPL's proposed modifications. PAIEUG now takes this opportunity to respond to the specific exceptions raised by PPL.

**B. Reply to Specific PPL Exceptions**

1. *The R.D. Correctly Recognizes That The Joint Petition Is In The Public Interest Because It Does Not Constitute Nor Can Be Cited As Controlling Precedent.*

In his R.D., ALJ Rainey recognizes that Paragraph 72 of the Joint Petition "provides that the Settlement Petition in this case does not constitute controlling precedent and cannot be cited as such in any other proceeding, including a proceeding involving a merger or an acquisition by another Pennsylvania electric utility." R.D. at 34. According to PPL, however, the R.D. is inadequate because it fails to provide that the Joint Petition may not be used as evidence in subsequent Commission proceedings. See PPL Exceptions, pp. 4-8. As it has done numerous times throughout this proceeding, PPL once again demonstrates its obstructionist behavior in requesting relief far beyond the scope of this proceeding, as well as attempting to substantiate its meritless arguments through statements taken completely out of context.

Paragraph 72 of the Joint Petition, as well as Pennsylvania law, provides that the terms of the Joint Petition cannot be used as controlling precedent in future proceedings. See PAIEUG

R.B., pp. 5-6. As noted by ALJ Rainey, this provision adequately addresses PPL's fears that the Commission or a party would impose upon PPL, in any subsequent proceeding, provisions from PECO's Joint Petition that PPL would find objectionable. See R.D. at 31-34. As correctly noted by ALJ Rainey, modifying the Joint Petition with PPL's proposed language would not be in the public interest because this modification would restrict parties in subsequent proceedings from even recommending provisions from prior settlements. See id. As a result, ALJ Rainey correctly determines that the Joint Petition alleviates the concerns of PPL, while still protecting the rights of other parties in future proceedings.

Moreover, PPL's concerns, that irrelevant and immaterial provisions from a prior settlement will be introduced into a future proceeding, are already thoroughly addressed in Commission regulations. Specifically, Section 332(b) provides that "[a]ny oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence." 66 Pa. C.S. § 332(b). The presiding officer has the authority to "exclude irrelevant, immaterial or unduly repetitive evidence." 52 Pa. Code § 5.483. In addition, "[r]elevant and material evidence is admissible subject to objections on other grounds, but there shall be excluded evidence that is...not of the kind which would affect reasonable and fair-minded persons in the conduct of their daily affairs." Id. at § 5.401.

Based upon the aforementioned, PPL's concerns that improper evidence would be admitted into a proceeding, if PPL's proposed language modifications are not adopted, are moot since the presiding officer in each proceeding has the authority to determine whether evidence presented for admission is relevant and material. Although PPL implies that its proposed

modification must be adopted because the PUC does not have the ability to determine whether evidence is material or relevant, PAIEUG has the utmost confidence that the Commission's expertise in this area will assure that only relevant and material evidence will be admitted into the proceeding after careful review and consideration. As a result, there is no need to implement PPL's overly-restrictive language when Paragraph 72 of the Joint Petition, along with Commission regulations, alleviate PPL's concerns while still protecting the public interest. See PAIEUG R.B., p. 4.

In an attempt to substantiate its already weak argument, PPL also submits that the proposed language modification must be implemented in order to protect PPL from the Joint Petitioners, who are merely biding their time until these provisions can be implemented on PPL's system. See PPL Exceptions, pp. 5-8. According to PPL, the parties to this proceeding view the Joint Petition as a "strategic mechanism" to force provisions upon utilities on the basis that they were agreed to or implemented by another utility. See id. at 5. Unfortunately, PPL's concerns seem to stem from nothing more than sheer paranoia. While PPL continually attempts to shift the focus of this proceeding to the "suffering" that will be inflicted upon PPL if PECO's Joint Petition is approved, PAIEUG submits that the true concern of the Joint Petitioners is to resolve PECO's merger proceeding in the most time effective and resource efficient manner, even with the hindrances that PPL has so consistently raised. See PAIEUG R.B., pp. 2-3. PAIEUG recognizes that PPL's basis for its argument is weak at best, however, to imply that PPL's modification must be implemented because the parties are currently plotting strategies for future hypothetical proceedings falls nothing short of absurd.

Not surprisingly, PPL attempts to substantiate its "paranoia theory" argument by taking, out of context, several arguments made by various parties in support of the Joint Petition. See PAIEUG R.B., pp. 2-3. Specifically, PPL cites provisions of Statements in Support filed by Eric Epstein, the Mid-Atlantic Power Supply Association ("MAPSA"), and the Office of Consumer Advocate ("OCA"), which were filed in order to address the public interest aspects of the Settlement. See PPL Exceptions, p. 6. Unfortunately, in its rush to condemn the parties, PPL fails to recognize that these statements are nothing more than assertions made by the parties to provide support regarding the public interest aspects of the Settlement.<sup>1</sup> For this reason, PAIEUG submits that the "strategy" that PPL claims is intended to be employed by the various parties should be recognized as nothing more than statements substantiating the proposals in the Joint Petition.

In addition, PPL argues that confusion reigns among the Joint Petitioners as to how the Joint Petition may be used in future proceedings. See PPL Exceptions, pp. 7-8. PAIEUG submits that the only confusion is that created by PPL through the manipulation of statements by other parties for its own benefit. The Joint Petitioners are quite clear that Paragraph 72 explicitly provides for the uses and restrictions of the Joint Petition in future proceedings. Based upon the aforementioned, the PUC should reject PPL's proposed modification and approve the R.D. without modification.

---

<sup>1</sup>In fact, while PAIEUG responded to this identical argument as set forth in PPL's Main Brief, PPL still fails to comprehend the faults in its argument or respond to PAIEUG's clarifications. See PAIEUG R.B., p 3.

2. *PPL's Proposed Modification Is Unnecessary Because The Commission Currently Has The Power To Determine Whether Submitted Evidence Is Material And Relevant.*

The R.D. correctly determines that "Paragraph 72 adequately meets PPL's legitimate concerns, and is in the public interest." R.D. at 34. For this reason, ALJ Rainey recommends that the Joint Petition be approved without modification. See id. PPL argues, however, that the R.D. fails to address PPL's request to establish a policy statement to prohibit the use of settlement provisions as "substantial evidence" in future proceedings. See PPL Exceptions, p. 8.

As discussed more thoroughly in PAIEUG's Reply Brief, PPL's request is inappropriate, misplaced and unnecessary in this proceeding. See PAIEUG R.B., pp. 6-8. PPL, through the guise of a policy statement, is requesting the PUC to promulgate regulations, without fulfilling any of the necessary procedural requirements. In order for the Commission to issue a policy statement, certain procedures must be followed, including the giving of public notice, providing for a comment period, obtaining legal approval of the proposed regulation, and publishing the text of the proposed regulation in the Pennsylvania Bulletin. PPL attempts to bypass these requirements by insisting that the PUC issue the regulation in the course of a merger proceeding. Not only does PPL's request eliminate the due process rights of the parties, by failing to allow them to comment on the proposed regulation, but it also oversteps the bounds of this proceeding by turning a merger application into a proposed rulemaking proceeding. See id. at 5-6.

Once again, PPL tries to shift the focus from PECO's proposed merger to whether PPL will be "forced" to provide any type of benefits to its ratepayers in a future proceeding. While PPL has implied numerous times throughout this proceeding that it would be loathe to implement any ratepayer benefits should a similar proceeding arise for PPL, the current proceeding at issue

is not the proper opportunity to raise these issues. PPL's actions are unjustified and misplaced, and should be rejected by the PUC.

Moreover, PPL's policy request is completely unnecessary. As discussed more fully herein, current statutes and regulations provide the PUC authority to determine whether evidence is relevant and material, and thus, admissible in a proceeding. PPL has presented no evidence that a blanket policy statement removing the authority of the PUC to determine the admissibility of evidence would be in the public interest. PPL's request would also substantially limit the due process rights of all parties in future proceedings. PPL's request would prevent a party from introducing evidence and allowing the PUC to determine the applicability and usefulness of the evidence. To follow PPL's modification would require the PUC to prejudge every possible use the Joint Petition may have as evidence in each and every possible future proceeding. See PAIEUG R.B., pp. 5-7. As a result, PPL's proposed policy statement is unnecessary, and must be rejected.

Moreover, PPL attempts to substantiate the purported need for a policy statement by arguing that the provisions of the Joint Petition are so unique to this proceeding that the Settlement can never be relevant or material in any future proceeding. See PPL Exceptions, pp. 11-22. As part of this argument, PPL analyzes the provisions of the Joint Petition to determine that these provisions are relevant and material to the current proceeding. See id. Based upon this analysis, PPL suggests that the R.D. is lacking by not finding that the provisions of the Joint Petition are material and relevant only to PECO's merger proceeding. See id. at 8. In other words, PPL faults the ALJ for not making a broad and sweeping finding that the Joint Petition can not and will not ever be relevant in any possible future proceeding before the PUC. PPL's

request amounts to nothing more than speculative relief for a hypothetical future proceeding. For the PUC to determine today what evidence will be material and relevant in a future proceeding falls nothing short of ridiculous, however, that is exactly what PPL is asking through its requested relief.

PPL's policy request is inappropriate and misplaced in this proceeding, and should be rejected as such. Moreover, PPL's request that the PUC promulgate rulings providing speculative relief in hypothetical future proceedings must be dismissed as misguided and preposterous.

3. *PPL's Proposed Modification To The Joint Petition Would Have A Chilling Effect Upon All Future Settlements.*

As recognized by ALJ Rainey, the PUC encourages settlements and believes that the results achieved from a settlement are often preferable to those attained at the conclusion of a fully litigated proceeding. See R.D. at 33. While PPL claims that its proposed language modification to the Joint Petition would further encourage settlements, PAIEUG submits that such a proposal would only result in a chilling effect on any future settlement negotiations. Compare PPL Exceptions, pp. 22-26 with PAIEUG R.B., p. 6.

According to PPL, if the proposed language modification is not implemented, other parties (i.e., utilities) will be more likely to intervene in proceedings to assert their positions, thus making settlement more difficult to achieve. See PPL Exceptions, p. 24. PAIEUG agrees with PPL that PPL's intervention and actions in this proceeding have completely hindered and impeded any progress made through settlement negotiations. In fact, PPL's behavior falls nothing short of an obvious and calculated attempt to obstruct a settlement that has been

carefully and laboriously reached by the parties. Unlike PPL, however, PAIEUG does not believe that preventing the PUC from determining whether provisions of a settlement are relevant and material will have a positive effect on settlement negotiations. Rather, PPL's proposal would have a chilling effect on settlements by allowing disinterested parties to obstruct negotiations, thus increasing the time and effort expended by all parties. See PAIEUG R.B., p. 6. PPL has clearly demonstrated throughout the course of this proceeding the negative and detrimental effect a party, not concerned with the proceeding at hand but merely determined to protect their own interests at any cost, can have on settlement negotiations. PPL's position that its proposed language will improve settlement negotiations rings hollow considering its actions in the current proceeding. As a result, PPL's proposed language modification should be rejected as meritless.

4. *The R.D. Correctly Determines That PPL's Proposed Language Modification Would Restrict Parties From Recommending Provisions From Prior Settlements, As Well As Prevent The Commission From Modifying Settlements When It Is In The Public Interest To Do So.*

The R.D. correctly determines that PPL's proposed modification could be interpreted as restricting parties in subsequent proceedings from recommending provisions from prior settlements, as well as preventing the Commission from modifying settlements to include provisions from prior settlements when it is in the public interest to do so. See R.D. at 34. According to PPL, the proposed modification will not restrict what parties to a settlement conference will propose. This suggestion by PPL is nothing more than an attempt to "soften" its proposed language, which, in reality, severely limits parties' negotiating abilities during settlement conferences. While PPL claims that the modification will not restrict what parties to a

settlement conference may propose, PAIEUG submits that the ALJ is correct in determining that the modification could be interpreted as restricting parties in subsequent proceedings from even recommending provisions from prior settlements. See id.

Moreover, PPL fails to address the ALJ's finding that the proposed language modification would restrict the Commission from modifying settlements to include provisions from prior settlements when it is in the public interest to do so. See id. As a result, PPL seemingly concedes that the proposed language modification will severely restrict the PUC's authority to modify settlement proposals.<sup>2</sup> Obviously, PPL is more concerned with protecting itself from any possible "adverse" provisions, than with the removal of PUC authority to modify proposed settlements to ensure they are in the public interest. PPL's self-serving concerns should not be permitted to wreak havoc with the PUC's statutory authority, and for this reason PPL's exceptions should be rejected.

5. *The R.D.'s Rejection Of PPL's Standing To Object Is Moot In Light Of The ALJ's Substantive Findings.*

PPL's Main Brief raises several additional objections to provisions of the Joint Petition, in addition to the aforementioned proposed language modification and requested policy statement. According to ALJ Rainey, PPL lacks standing to attack these provisions because PPL is not directly and immediately affected by those provisions in this proceedings; however, while PPL's other objections could be dismissed based upon lack of standing, ALJ Rainey nonetheless addresses these issues on their merits. See R.D. at 35. According to his analysis, ALJ Rainey rejects PPL's additional objections because the Joint Petition is supported by substantial

---

<sup>2</sup> Considering PPL's requested relief in the current proceeding, this result is quite ironic.

evidence and the provisions of the Settlement are in the public interest. See id. at 35-53. As a result, ALJ Rainey recommends that the Settlement be approved without modification. See id. at 53.

In its Exceptions, PPL argues that the R.D. erroneously denies PPL's standing in this proceeding. See PPL Exceptions, pp. 27-32. PAIEUG submits that PPL's argument regarding standing is completely moot because the ALJ, while denying PPL's standing, thoroughly addresses each issue raised by PPL and determines, on a substantive basis, that PPL's objections are meritless. As a result, even if PPL has standing to address these provisions of the Settlement, PPL's objections to the Joint Petition are meritless on a substantive basis and must be rejected. To accommodate PPL's objections based simply upon the argument that PPL has standing to address these provisions is unnecessary because PPL's objections have already been addressed and dismissed based upon substantive reasons. For these reasons, PAIEUG submits that PPL's argument regarding standing be rejected, and the Joint Petition be approved without modification.

III. CONCLUSION

**WHEREFORE**, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission adopt Administrative Law Judge Charles E. Rainey, Jr.'s Recommended Decision without modification, consistent with the foregoing Reply Exceptions and PAIEUG's Main and Reply Briefs.

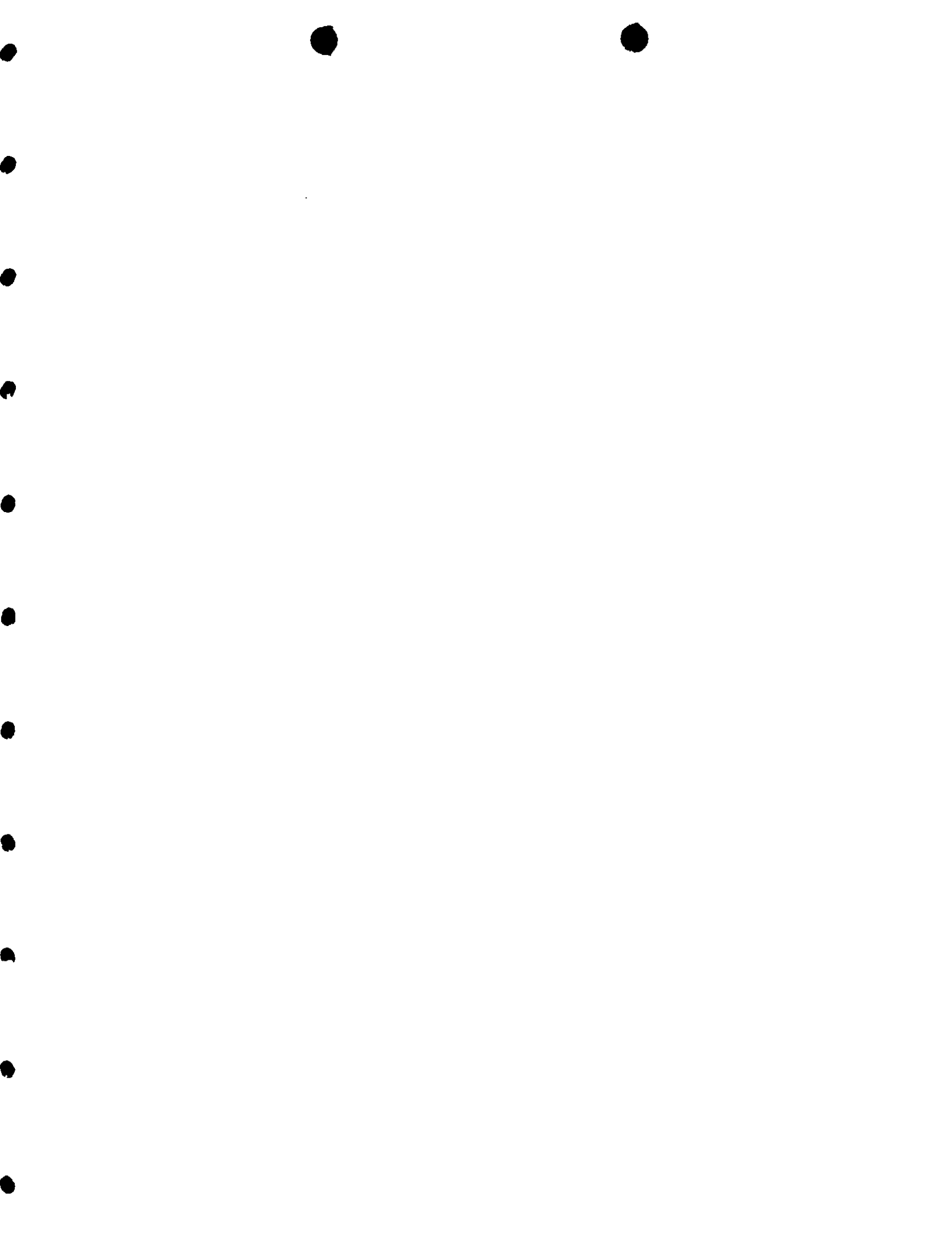
Respectfully submitted,

McNEES, WALLACE & NURICK

By Charis M. Burak  
David M. Kleppinger  
Charis M. Burak  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000  
(717) 237-5300

Counsel to the Philadelphia Area Industrial  
Energy Users Group

Dated: June 14, 2000



**CERTIFICATE OF SERVICE**

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

**VIA FIRST CLASS MAIL**

Tanya J. McCloskey, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, Fifth Floor  
Harrisburg, PA 17101

Bernard A. Ryan, Jr., Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Kenneth L. Mickens, Esq.  
Office of Trial Staff  
PA Public Utility Commission  
901 Rear North 7<sup>th</sup> Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Craig A. Doll, Esq.  
25 North Front Street  
Second Floor  
Harrisburg, PA 17101-1606

Honorable Allyson Y. Schwartz  
4<sup>th</sup> District  
Senate Box 203004  
Harrisburg, PA 17120

John Hanger, Esq.  
212 Locust Court, Suite 410  
Harrisburg, PA 17101

Christopher B. Craig, Esq.  
Room 545 Main Capitol Building  
Harrisburg, PA 17120

Daniel Clearfield, Esq.  
Gerald Gornish, Esq.  
Kevin Moody, Esq.  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Michael Fiorentino, Esq.  
Clean Air Council  
105 N. Front Street  
Suite 106  
Harrisburg, PA 17101

**CERTIFICATE OF SERVICE**

Docket No. A-110550F0147

Page 2

Paul R. Bonney, Esq.  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Thomas P. Gadsden, Esq.  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Paul E. Russell, Esq.  
PP&L Inc.  
Two North Ninth Street  
Allentown, PA 18101-1179

Donald A. Kaplan, Esq.  
Leanne M. Bober, Esq.  
Preston, Gates, Ellis & Rouvelas, Meeds LLP  
Suite 500  
1735 New York Avenue NW  
Washington, DC 20006

Peter Meadows Adels, Esq.  
PennFuture  
117 S. 17<sup>th</sup> Street, Suite 1801  
Philadelphia, PA 19103

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

John S. Halsted, Esq.  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381-0562

Kenneth M. Barna, Esq.  
Wayne R. Frigard, Esq.  
Rubin & Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110

Joseph A. Dworetzky, Esq.  
Hangley, Aronchick Segal & Pudlin  
One Logan Square 27<sup>th</sup> Floor  
Philadelphia, PA 19103

John L. Hall, Esq.  
Unruh, Turner, Burke & Frees, P.C.  
P. O. Box 515  
West Chester, PA 19381-0515

Joseph Otis Minott, Esq.  
135 S. 19th Street,  
Suite 300  
Philadelphia, PA 19103

John Will Ongman, Esq.  
Pepper Hamilton LLP  
600 Fourteenth Street NW  
Washington, DC 20005-2004

John L. Munsch, Esq.  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Patricia J. Clark, Esq.  
Allegheny Energy Supply  
800 Cabin Hill Drive  
Greensburg, PA 15601

Philip A. Bertocci, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102

Gregory K. Lawrence, Esq.  
McDermott, Will & Emery.  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096

**CERTIFICATE OF SERVICE**

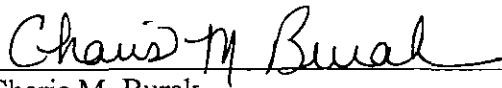
Docket No. A-110550F0147

Page 3

Andrew Altman  
400 S Camac Street  
Philadelphia, PA 19147

Patricia McNamara  
6048 Ogonty Avenue  
Philadelphia, PA 19141

Dennis Winters  
2314 Delancey Place  
Philadelphia, PA 19103

  
Charis M. Burak

Dated this 14<sup>th</sup> day of June , 2000, in Harrisburg, Pennsylvania.



explained in PennFuture's Brief. All funds expended by the Sustainable Development Fund would need the approval of its Board.

Generally, PennFuture supports the Reply Exceptions of the Office of Consumer Advocate.

Respectfully submitted,

The PennFuture Parties

A handwritten signature in cursive script that reads "Peter Meadows Adels" followed by a stylized set of initials.

Peter Meadows Adels, General Counsel

PennFuture

DATED: June 14, 2000

Certificate of Service

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

Paul Bonney  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(Counsel for PECO)

Christopher B. Craig  
Senate Democratic Appropriations Committee  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
(Counsel for Senator Fumo)

Paul R. Forshay  
Gregory K. Lawrence  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2415  
(Counsel for Shell Energy Services Company, L.L.C.)

Amy Gold  
Shell Energy Services Co., L.L.C.  
P.O. Box 4402  
Houston, TX 77210  
(Counsel for Shell Energy Services Company, L.L.C.)

David Kleppinger, Charis M. Burak  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108  
(Counsel for Philadelphia Area Industrial Energy Users Group & Counsel to the Industrial Energy Consumers of Pennsylvania)

Eric Epstein  
4100 Hillside Road  
Harrisburg, PA 17112

Paul E. Russell  
PP&L, Inc.  
Two North Ninth Street  
Allentown, PA 18101  
(Counsel for PP&L)

Donald A. Kaplan  
Leanne M. Bober  
Preston Gates Ellis & Rouvelas Meeds LLP  
Suite 500  
1735 New York Ave., NW  
Washington, DC 20006  
(Counsel for PP&L)

Gerald Gornish  
Wolf, Block, Schorr and Solis-Cohen LLP  
1650 Arch Street - 22<sup>nd</sup> Fl.  
Philadelphia, PA 19103  
(Counsel for Enron Energy Services, Inc.)

Daniel Clearfield  
Kevin Moody  
Wolf, Block, Schorr and Solis-Cohen LLP  
1650 Arch Street - 22<sup>nd</sup> Fl.  
Philadelphia, PA 19103  
(Counsel for Enron Energy Services, Inc.)

John Halsted  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381  
(Counsel for East Brandywine Township)  
148804

Kenneth L. Mickens  
PAPUC Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(Counsel for Office of Trial Staff)

RECEIVED  
05 JUN 14 PM 1:06  
P.A.P.U.C. BUREAU  
SECRETARY'S BUREAU

Tanya McCloskey, Irwin A. Popowsky  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
(Counsel for Office of Consumer Advocate)

Craig A. Doll  
214 State Street  
Harrisburg, PA 17101-1108  
(Counsel for Conectiv Energy)

Joseph Otis Minott, Andrew Altman  
Clean Air Council  
135 South 19<sup>th</sup> Street- Suite 300  
Philadelphia, PA 19103  
(Counsel for Clean Air Council)

Michael Fiorentino  
Clean Air Council  
105 North Front Street; Suite 106  
Harrisburg, PA 17101  
(Counsel for Clean Air Council)

Thomas Schmidt, III, Brian P. Downey  
Pepper Hamilton LLP  
200 One Keystone Plaza  
North Front and Market Streets  
Harrisburg, PA 17108  
(Counsel for Amtrak)

John Will Ongman, Marc Machlin  
Pepper Hamilton LLP  
600 Fourteenth St., NW  
Washington, DC 20005  
(Counsel for Amtrak)

Kenneth M. Barna, Wayne R. Frigard  
Rubin and Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110  
(Counsel for Amtrak)

Patricia J. Clark, Norbert J. Smith  
Allegheny Energy Supply Company, LLC  
Roseytown Road  
RR 12, Box 1000  
Greensburg, PA 15601  
(Counsel for Allegheny Energy)

Phil Bertocci  
Community Legal Services, Inc.  
1424 Chestnut Street, 4<sup>th</sup> Fl.  
Philadelphia, PA 19102  
(Counsel for CEPA, et al.)

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141

Joe Dworetzky, Matthew Hamermesh  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 27<sup>th</sup> Fl.  
Philadelphia, PA 19103  
(Counsel for Mid-Atlantic Power Supply)

James H. Cawley  
Rhoads & Simon - 12<sup>th</sup> Fl.  
One South Market Street  
Harrisburg, PA 17108  
(Counsel for Mid-Atlantic Power Supply)

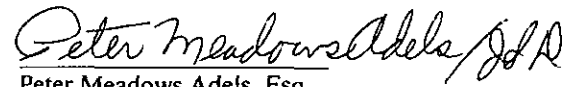
John L. Munsch, Deborah J. Henry  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(Counsel for Allegheny Power)

John Hall  
Unruh, Turner, Burke & Frees  
17 West Gay Street  
West Chester, PA 19381  
(Counsel for Wallace Township)

Greg Pastore  
619 Pemberton Street  
Philadelphia, PA 19147

Robert Jaffe  
Room 588 City Hall  
Philadelphia, PA 19107

Carville Collins  
Piper Marbury Rudnick & Wolfe  
6225 Smith Avenue  
Baltimore, MD 21209-3600



Peter Meadows Adels, Esq.  
Citizens for Pennsylvania's Future  
117 S. 17<sup>th</sup> St., Suite 1801  
Philadelphia, PA 19103  
215-569-9695  
[meadowsadels@pennfuture.org](mailto:meadowsadels@pennfuture.org)

Dated: June 14, 2000

A 110550 F0147

Certificate of Service

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

John Hanger  
212 Locust Court, Suite 410  
Harrisburg, PA 17101  
email: hanger@pennfuture.org  
(Counsel for Citizens for Pennsylvania's Future)

Peter Meadows Adels  
Charles McPhedran  
117 South 17<sup>th</sup> St., Suite 1801  
Philadelphia, PA 19103  
email: meadowsadels@pennfuture.org  
(Counsel for Citizens for Pennsylvania's Future)

Christopher B. Craig  
Senate Democratic Appropriations Committee  
Room 545, Main Capitol Building  
Harrisburg, PA 17120  
email: ccraig@dem.pasen.gov  
(Counsel for Senator Fumo)

Eric Epstein  
4100 Hillside Road  
Harrisburg, PA 17112  
email: eepstein@igc.apc.org  
(Pro Se)

Gregory K. Lawrence  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
(Counsel for Shell Energy Services Company, L.L.C.)

Amy Gold  
Shell Energy Services Co., L.L.C.  
P.O. Box 4402  
Houston, TX 77210  
(Counsel for Shell Energy Services Company, L.L.C.)

Charis M. Burak  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108  
email: cburak@mwn.com  
(Counsel for Philadelphia Area Industrial Energy Users Group & Counsel to the Industrial Energy Consumers of Pennsylvania)

David M. Kleppinger  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108  
email: dkleppin@mwm.com  
(Counsel for Philadelphia Area Industrial Energy Users Group & Counsel to the Industrial Energy Consumers of Pennsylvania)

Paul E. Russell  
PP&L, Inc.  
Two North Ninth Street  
Allentown, PA 18101  
email: perussell@papl.com  
(Counsel for PP&L)

Donald A. Kaplan  
Leanne M. Bober  
Preston Gates Ellis & Rouvelas Meeds LLP  
Suite 500  
1735 New York Ave., NW  
Washington, DC 20006  
email: donk@prestongates.com  
(Counsel for PP&L)

Gerald Gornish  
Wolf, Block, Schorr and Solis-Cohen LLP  
1650 Arch Street - 22<sup>nd</sup> Fl.  
Philadelphia, PA 19103  
email: ggornish@wolfblock.com  
(Counsel for Enron Energy Services, Inc.)

Daniel Clearfield, Esquire  
Kevin Moody, Esquire  
Wolf, Block, Schorr and Solis-Cohen LLP  
1650 Arch Street - 22<sup>nd</sup> Fl.  
Philadelphia, PA 19103  
email: dclearfield@wolfblock.com  
kmoody@wolfblock.com  
(Counsel for Enron Energy Services, Inc.)

John Halsted, Esquire  
Gawthrop, Greenwood & Halsted  
119 North High Street  
West Chester, PA 19381  
email: gghlaw@gawthrop.com  
(Counsel for East Brandywine Township)

Bernie Ryan  
Office of Small Business Advocate  
Suite 1102, Commerce Bldg.  
300 North Second Street  
Harrisburg, PA 17101  
(Counsel for Small Business Advocate)

Tanya McCloskey/ Irwin A. Popowsky, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
email paoca@ptd.net  
(Counsel for Office of Consumer Advocate)

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101-1108  
email: cdoll76342@aol.com  
(Counsel for Conectiv Energy)

RECEIVED  
00 JUN -9 PM 3:35  
PA.P.U.C.  
SECRETARY'S BUREAU

DOCUMENT  
FOLDER

DOCKETED  
JUN 13 2000

Joseph Otis Minott, Esquire  
135 South 19<sup>th</sup> Street- Suite 300  
Philadelphia, PA 19103  
email: joe\_minott@cleanair.org  
(Counsel for Clean Air Council)

Thomas Schmidt, III, Esquire/  
Brian P. Downey, Esquire  
Pepper Hamilton LLP  
200 One Keystone Plaza  
North Front and Market Streets  
Harrisburg, PA 17108  
email: downeyb@pepperlaw.com  
(Counsel for Amtrak)

Kenneth M. Barna, Esquire  
Wayne R. Frigard, Esquire  
Rubin and Rudman LLP  
50 Rows Wharf  
Boston, MA 02110  
email: wfrigard@rubinrudman.com  
(Counsel for Amtrak)

Phil Bertocci, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4<sup>th</sup> Fl.  
Philadelphia, PA 19102  
email: pbertocci@clsphila.org  
(Counsel for CEPA, et al.)

Joe Dworetzky, Esquire/Matthew Hamermesh, Esquire  
Hangley Aronchick Segal & Pudlin  
One Logan Square - 27<sup>th</sup> Fl.  
Philadelphia, PA 19103  
email: jad@hangley.com  
mah@hangley.com  
(Counsel for Mid-Atlantic Power Supply)

John L. Munsch, Esquire  
Deborah J. Henry, Esquire  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
email: jmunsch@alleghenyenergy.com  
dhenry1@alleghenyenergy.com.  
(Counsel for Allegheny Power)

Kenneth L. Mickens, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
901 North 7<sup>th</sup> Street, 3<sup>rd</sup> Fl.  
Harrisburg, PA 17102  
email: mickens@puc.state.pa.us  
(Counsel for Office of Trial Staff)

Robert Jaffe, Esq.  
City Hall - Room 588  
Philadelphia, PA 19107  
email: lagranger@aol.com  
(counsel of Councilman David Cohen)

Christopher J. Townsend, Esq.  
Piper Marbury Rudnick & Wolfe  
203 N. LaSalle St, #1500  
Chicago, IL 60601  
email: chris.townsend@piperrudnick.com

Michael Fiorentino, Esquire  
105 North Front Street, Suite 106  
Harrisburg, PA 17101  
email: mfioren@paonline.com  
(Counsel for Clean Air Council)

John Will Ongman  
Marc Machlin  
Pepper Hamilton LLP  
600 Fourteenth St., NW  
Washington, DC 20005  
email: ongmanj@pepperlaw.com  
machlinm@pepperlaw.com  
(Counsel for Amtrak)

Patricia J. Clark, Esquire  
Norbert J. Smith, Esquire  
Allegheny Energy Supply Company, LLC  
Roseytown  
RR 12, Box 1000  
Greensburg, PA 15601  
email: pclark@alleghenyenergy.com  
nsmith2@alleghenyenergy.com  
(Counsel for Allegheny Energy)

Patricia McNamara  
6048 Ogontz Avenue  
Philadelphia, PA 19141  
email: cepa1966@aol.com

John Hall, Esquire  
Unruh, Turner, Burke & Frees  
17 West Gay Street  
West Chester, PA 19381  
email: jhall@utbf.com  
(Counsel for Wallace Township)

Greg Pastore  
619 Pemberton Street  
Philadelphia, PA 19147  
email: gregpastore@yahoo.com

Carville B. Collins, Esq.  
Piper Marbury Rudnick & Wolfe  
6225 Smith Ave  
Baltimore, MD 21209-3600  
email: carville.collins@piperrudnick.com

*Paul R Bonney*

Paul R. Bonney  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-4252

Dated: June 9, 2000

**DATE:** June 15, 2000

**SUBJECT:** A-110550F0147

**TO:** Cheryl W. Davis, Director  
Office of Special Assistants

**FROM:** James McNulty  
Secretary  
nvl

BUCKETED  
JUN 14 2000

DOCUMENT  
FOLDER

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

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

**PPL Electric Utilities Corp**

Reply Exceptions have been received from:

**Office of Trial Staff  
Pennfuture Parties**

cc: Annette Shelley

**DATE:** June 15, 2000

**SUBJECT:** A-110550F0147

**TO:** Cheryl W. Davis, Director  
Office of Special Assistants

**FROM:** James McNulty  
Secretary  
nvl

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

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

**Electric Utilities Corporation**

Reply Exceptions have been received from:

**Office of Trial Staff  
Office of Small Business Advocate  
Office of Consumer Advocate  
Peco Energy Company  
Pennfuture Parties  
Phila Area Industrial Energy Users Group  
Clean Air Council Et Al  
National Railroad Passenger Corporation**

**DOCUMENT  
FOLDER**

**DOCKETED**

**JUN 15 2000**

cc: Annette Shelley