

PUBLIC UTILITY COMMISSION

ORIGINAL

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 :
Application of PECO Energy Company :
 :
 Pursuant to Chapters 11, 19, 21, 22 :
 and 28 of the Public Utility Code, for : Docket No.
 approval of (1) a Plan of Corporate :
 Restructuring, including the creation : A-110550F0147
 of a holding company, and (2) the :
 merger of the newly formed holding :
 company and Unicom Corporation. :
 :
 Initial Hearing :
 :
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Pages 384 through 448 Hearing Room No. 1
DOCKETED State Office Building
 Broad and Spring Garden Streets
 Philadelphia, Pennsylvania

MAY 17 2000 Wednesday, May 10, 2000

Met, pursuant to notice, at 10:10 a.m.

BEFORE:

CHARLES E. RAINEY, JR., Administrative Law Judge

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE CHARLES RAINEY: Good
3 morning. My name is Charles Rainey and I am the
4 Administrative Law Judge who has been assigned to this
5 matter.

6 This is the matter of the application of PECO
7 Energy Company pursuant to Chapters 11, 19, 21, 22 and 28
8 of the Public Utility Code for approval of, one, a plan
9 of corporate restructuring including the creation of a
10 holding company and, two, the merger of the newly formed
11 holding company and Unicom Corporation. The docket
12 number is A-110550F0147.

13 I would like the parties at this time to identify
14 themselves for the record. And we will start with you,
15 Mr. Bonney.

16 MR. BONNEY: Thank you, Your Honor. Paul Bonney,
17 Counsel for PECO Energy. With me today is Ward Smith and
18 Delia Stroud and Kent Murphy.

19 JUDGE RAINEY: Thank you.

20 Mr. Jaffe.

21 MR. JAFFE: Robert Jaffe, Special Counsel, office
22 of Councilman Cohen, representing Councilman Cohen.

23 MR. KAPLAN: Donald A. Kaplan, Preston Gates Ellis
24 & Rouvelas Meeds for PPL Electric Utilities Corporation.
25 With me today is Caryn Houck of my firm and also

1 Paul E. Russell of PPL.

2 JUDGE RAINEY: Thank you.

3 MR. MACHLIN: Your Honor, Marc Machlin for Amtrak.
4 And with me today is Brian Downey.

5 JUDGE RAINEY: Thank you.

6 Mr. Bertocci.

7 MR. BERTOCCI: Philip Bertocci, Your Honor, for
8 CEPA, ACORN, Action Alliance of Senior Citizens and TAG.

9 MR. RYAN: Bernard Ryan for the Office of Small
10 Business Advocate.

11 JUDGE RAINEY: Thank you.

12 Mr. Mickens.

13 MR. MICKENS: Your Honor, Kenneth L. Mickens,
14 Senior Prosecutor for the Office of Trial Staff.

15 JUDGE RAINEY: Mr. Kleppinger.

16 MR. KLEPPINGER: Good morning, Your Honor. David
17 Kleppinger with McNeese Wallace and Nurick representing
18 the Philadelphia Area Industrial Energy Users Group, the
19 Industrial Energy Consumers of Pennsylvania and the City
20 of Philadelphia.

21 JUDGE RAINEY: Thank you.

22 Ms. McCloskey.

23 MS. MCCLOSKEY: Thank you, Your Honor. Tanya
24 McCloskey with the Office of Consumer Advocate. And with
25 me today is Stephen Keene.

1 JUDGE RAINEY: Mr. Epstein.

2 MR. EPSTEIN: Your Honor, good morning. Eric
3 Epstein, pro se.

4 JUDGE RAINEY: Thank you.

5 Mr. Adels.

6 MR. ADELS: Peter Meadows Adels for PennFuture and
7 ten named individuals known in this proceeding as the
8 PennFuture parties.

9 JUDGE RAINEY: Thank you.

10 MR. JAFFE: Your Honor, excuse me. I failed to
11 mention with me is Stan Shapiro from City Council.

12 JUDGE RAINEY: Thank you.

13 MR. FIORENTINO: Your Honor, Michael Fiorentino
14 representing the Clean Air Council and the three
15 individuals named in our filings.

16 JUDGE RAINEY: Thank you, Mr. Fiorentino.

17 MR. HAMERMESH: Matthew Hamermesh for MAPSA.

18 JUDGE RAINEY: Thank you.

19 MR. MUNSCH: John Munsch for Allegheny Power and
20 Allegheny Energy Supply Company LLC.

21 JUDGE RAINEY: Thank you.

22 Is there anyone else?

23 MR. HAWKE: William Hawke, Your Honor. Unicom
24 Corporation.

25 JUDGE RAINEY: Thank you, Mr. Hawke.

1 Now, there is an outstanding PPL motion to strike
2 portions of the testimony of PennFuture witness John
3 Rohrbach. I understand that there has been a stipulation
4 reached with respect to that outstanding motion.

5 Mr. Kaplan, do you want to address that?

6 MR. KAPLAN: Yes, Your Honor.

7 I have before me a stipulation between PennFuture
8 parties and PPL Electric Utilities Corporation that
9 withdraws paragraph 39 of the PPL objections filed in
10 this case and the motion to strike designating portions
11 of the testimony of John Rohrbach and under which the
12 PennFuture parties withdraw designated portions of the
13 testimony of John Rohrbach.

14 PennFuture has agreed not to file a motion to
15 strike the testimony of PPL witness Paul Gioia. PPL and
16 PennFuture will not offer any other objections to the
17 admission of the testimony of John Rohrbach or
18 Paul Gioia.

19 PPL Utilities will not cross-examine Mr. Rohrbach
20 and PennFuture will not cross-examine Mr. Gioia and both
21 PPL Utilities and PennFuture will support PECO's petition
22 to certify the record and other standard provisions.

23 I have a copy of that settlement signed, Your Honor
24 to offer for the record.

25 JUDGE RAINEY: Very well. Will you have this

1 document marked for the record in this case? Are we
2 going to mark this document for the record in this case?

3 MR. KAPLAN: Yes, Your Honor.

4 JUDGE RAINEY: What should it be marked as?

5 MR. KAPLAN: Joint PennFuture/PPL Exhibit No. 1.

6 JUDGE RAINEY: Thank you.

7 JUDGE RAINEY: So marked and entered into the
8 record in this case.

9 (Whereupon, the document was marked as Joint
10 PennFuture/PPL Exhibit No. 1 for identification,
11 and was received in evidence.)

12 JUDGE RAINEY: Pursuant to my Prehearing Order No.
13 2, numerous parties have prefiled testimonies with regard
14 to this case and also have indicated other exhibits and
15 documents which they desire to have admitted into
16 evidence in this particular case. I have been presented
17 with a document which purports to show all of the
18 testimony, exhibits and other documents which are to be
19 admitted into evidence in this case. It is my
20 understanding that all the parties here have a copy of
21 that document, which we will have marked as Parties'
22 Exhibit No. 1.

23 (Whereupon, the document was marked as Parties'
24 Exhibit No. 1 for identification, and was
25 received in evidence.)

1 JUDGE RAINEY: Are there any additions or
2 corrections to be made to the document?

3 MR. MICKENS: Your Honor, I would just like to
4 indicate that the OTS exhibit is OTS Exhibit No. 1 by
5 Kevan Deardorff. That is not specifically indicated on
6 the document. I just wanted to make that designation.

7 JUDGE RAINEY: Thank you, Mr. Mickens.

8 MR. FIORENTINO: Your Honor, Michael Fiorentino.

9 Two items. One, in number seven, the indication
10 for the Clean Air Council Statement No. 1 does not also
11 mention that there is an attached exhibit which is the
12 curriculum vitae of Mr. Altman. So if that could be
13 noted for the record.

14 And also, Your Honor, if I could ask for
15 clarification on this entire document, whether items
16 under number five and number six, the objections to the
17 joint petition and the reply from the joint petitioners,
18 if those are going to be considered as evidence or not.

19 JUDGE RAINEY: Thank you, Mr. Fiorentino.

20 The items -- number five is objections to the joint
21 petition and number six is replies from joint
22 petitioners. Those are more in the form of comments or
23 briefs. Those are documents which were drafted and
24 submitted by the attorneys in this case. No, they will
25 not be considered as evidence in this particular case.

1 As I stated in the conversation that was held off
2 the record, with regard to this matter my concern is that
3 with regard to what is considered evidence in this case,
4 that those be matters which were the subject of prefiled
5 testimony by expert witnesses in this case and not the
6 attorneys. Certainly the parties in their briefs may
7 refer to or may use argument, but argument, again,
8 attorney argument, is not expert witness testimony, is
9 not evidence and so I don't want that line to be blurred
10 at all.

11 Now, off the record I noted there was a concern
12 that, Mr. Kaplan, you raised with regard to reference to
13 a statement by one of the joint settlement parties. But
14 I would again state that parties may use argument and
15 counter-argument, but argument is not expert witness
16 evidence and the line should not be confused there.

17 So that -- yes, sir, Mr. Jaffe?

18 MR. JAFFE: I just wanted to be clear that when we
19 are submitting the direct testimony of Councilman Cohen,
20 Professor Sternglass, Dr. Janette Sherman and
21 Mr. Mangano that these include resumes, articles, charts,
22 demonstrative evidence, that that is exactly what you do
23 want to move into the record and that is what we want to
24 make sure that is in fact done.

25 JUDGE RAINEY: Those matters which are attached to

1 the prefiled testimony?

2 MR. JAFFE: That are attached to the direct
3 testimony, which is not lawyerly writing but is the
4 direct testimony of the experts and not the lawyers.

5 JUDGE RAINEY: Yes. Exhibits which accompany
6 testimony certainly would come within the purview of the
7 evidence.

8 So what we will do, actually, number five,
9 objection to joint petition, and also six, replies from
10 joint petitioners, should be stricken from this
11 particular document and what we will do, then, would be
12 that number seven -- so we will go one, two, three, four,
13 statements in support of joint petition, and number
14 seven, joint petitioners' testimony in support of replies
15 and settlement and number eight, testimony filed in
16 opposition to settlement. So we will just exclude
17 numbers five and six and we don't need to renumber them.

18 Yes, Mr. Kleppinger?

19 MR. KLEPPINGER: Your Honor, before we finalize
20 this I just wanted to note a typographical correction.
21 On number four IECPA should be spelled instead of IEPCA
22 before the document is finalized.

23 JUDGE RAINEY: Thank you, Mr. Kleppinger.

24 Any other comments?

25 MS. McCLOSKEY: Your Honor?

1 JUDGE RAINEY: Yes, Ms. McCloskey.

2 MS. McCLOSKEY: I did bring two copies of the OCA
3 testimony for the court reporter. Do you want us to
4 provide that now?

5 JUDGE RAINEY: Why don't we do this. Why don't we
6 systematically -- just so that we have captured all that
7 the parties are desiring to put into the record as
8 evidence in this case, we will go party by party and if
9 you have copies for the court reporter you should submit
10 two copies for the court reporter and we will handle it
11 that way.

12 MR. EPSTEIN: Your Honor, there is one other typo.

13 JUDGE RAINEY: Yes, Mr. Epstein?

14 MR. EPSTEIN: Page four, under number eight, unless
15 something drastic has happened to PPL, I think it is PPL.
16 I am usually not accustomed to helping out Mr. Kaplan but
17 in the spirit of good will.

18 JUDGE RAINEY: Thank you, Mr. Epstein.

19 MR. EPSTEIN: I know it means a great deal to them.

20 MR. KAPLAN: Thank you, Mr. Epstein.

21 MR. ADELS: Your Honor, are we still off the record
22 here?

23 JUDGE RAINEY: We never went off the record. Do
24 you want to go off the record? We will go off the
25 record.

1 (Discussion off the record.)

2 JUDGE RAINEY: Back on the record.

3 Mr. Bonney, we will start with you.

4 MR. BONNEY: Your Honor, we do have two copies for
5 the court reporter of the documents that we intend to
6 submit. I don't know if you want PECO or all of the
7 parties to sponsor the joint petition for settlement and
8 the supplements to that.

9 JUDGE RAINEY: You can do that on behalf of all of
10 the parties.

11 MR. BONNEY: Very well. Then we will be sponsoring
12 the application of PECO Energy and the exhibits and
13 testimony that are listed under item one on the document
14 sheet.

15 Likewise item number two and all behalf of all of
16 the parties item number three.

17 Under item four, PECO statement in support of the
18 joint petition we will sponsor. And likewise under item
19 seven, PECO Statement No. 3-S, the supplemental testimony
20 of Tom Hill.

21 JUDGE RAINEY: Very well.

22 Mr. Adels.

23 MR. ADELS: We have two documents, Your Honor. One
24 is the statement in support of the joint petition which I
25 believe, Paul, was actually filed along with the joint

1 petition itself and is part of that document.

2 MR. BONNEY: I'm sorry?

3 MR. ADELS: I believe our statement of support was
4 filed along with the petition, the joint petition itself,
5 and is part of your document.

6 MR. BONNEY: I can check.

7 MR. ADELS: I am 98 percent sure. I certainly can
8 provide a separate copy if there is a reason to do so.

9 And then the second item I move into the record is
10 the testimony of John Rohrbach identified as PennFuture
11 Statement No. 1 on this document. And that is the
12 document that is also the subject of the stipulation
13 between PennFuture and PPL.

14 JUDGE RAINEY: Thank you, Mr. Adels.
15 Mr. Mickens.

16 MR. MICKENS: Yes, Your Honor. First of all, the
17 OTS statement in support of the joint petition was filed
18 along with the joint petition. So that is part of the --
19 that was attached to the joint petition.

20 In addition, we have OTS Statement No. 1, which is
21 the direct testimony of Kevan Deardorff. We also have
22 OTS Exhibit No. 1, which are the exhibits to accompany
23 the direct testimony of Kevan Deardorff.

24 And with regard to this document, Your Honor, when
25 these documents were originally disseminated to the

1 parties OTS Exhibit No. 1 actually due to a clerical
2 error a couple of areas that said OTS Statement No. 1 as
3 well as the original OTS Statement No. 1. That has been
4 corrected in the copies that have been provided to the
5 court reporter. Your Honor, if you would like a
6 corrected copy I have that for you as well.

7 JUDGE RAINEY: Thank you. I would appreciate that,
8 Mr. Mickens.

9 MR. MICKENS: Okay. I will give that to you.

10 The other document to be admitted into the record,
11 Your Honor, is OTS Statement No. 2. That is the direct
12 testimony of Paul J. Metro on behalf of the Office of
13 Trial Staff.

14 I would ask that all of the those documents be
15 admitted at this time. As I have said, I have given two
16 copies of each to the court reporter.

17 JUDGE RAINEY: Thank you, Mr. Mickens. We are
18 going to admit all of the documents which appear in
19 Parties' Exhibit No. 1 with the exclusion, as I
20 previously stated, of number five, objection to joint
21 petition, and number six, replies to joint petitioners.

22 Mr. Ryan.

23 MR. RYAN: Yes, Your Honor.

24 The Office of Small Business Advocate would move,
25 then, the statement in support of the joint petition

1 which was filed the day after the joint petition was
2 filed. It was filed with the secretary. It is listed as
3 item four of Parties' Exhibit No. 1. In view of your
4 ruling we won't refer to what is in six.

5 JUDGE RAINEY: Thank you, Mr. Ryan.

6 Mr. Epstein.

7 MR. EPSTEIN: Your Honor, I would move to admit
8 under section four Eric Joseph Epstein's statement in
9 support of the joint petition.

10 Additionally, under seven Eric Joseph Epstein's
11 testimony, Statement No. 1, regarding nuclear
12 decommissioning, planned operating life of PECO's nuclear
13 generating stations, spent fuel isolation, low level
14 radioactive waste isolation, ratepayer equity and
15 community investment.

16 Your Honor, today I have just one copy of my
17 testimony so I don't know what your preference is.
18 Hopefully we will wrap things up tonight or this
19 afternoon and I can Fed Ex it. Everything has been
20 already been filed with the Commission Secretary. Do you
21 have a particular preference?

22 JUDGE RAINEY: If you want to Federal Express that
23 to the court reporter.

24 MR. EPSTEIN: Okay. We will take care of that.

25 JUDGE RAINEY: Thank you.

1 MR. EPSTEIN: Thank you, Your Honor.

2 JUDGE RAINEY: Ms. McCloskey.

3 MS. McCLOSKEY: Thank you, Your Honor.

4 I would like to have admitted the statement in
5 support of the Office of Consumer Advocate, and that was
6 filed following the joint petition with the Secretary and
7 served upon all the parties. I do have two additional
8 copies that I would like to provide them to the court
9 reporter.

10 JUDGE RAINEY: Yes, please, Ms. McCloskey.

11 MS. McCLOSKEY: I would also like to have admitted
12 OCA Statement 1-S which is the testimony of Richard
13 LaCapra regarding the settlement, in support of the
14 settlement, on behalf of the Office of Consumer Advocate.
15 And I have two copies for the court reporter.

16 JUDGE RAINEY: Thank you, Ms. McCloskey.

17 Mr. Kleppinger.

18 MR. KLEPPINGER: Thank you, Your Honor.

19 First of all, under item number four, I move for
20 the admission of the statement of the industrial energy
21 consumers of Pennsylvania in support of the joint
22 petition which was previously filed. I can submit two
23 copies of that to the court reporter at a later date.

24 On behalf of the Philadelphia Area Industrial
25 Energy Users Group I would likewise move the admission of

1 their statement in support which was filed on March 29.
2 And I will provide two copies of that to the court
3 reporter at a later date.

4 With respect to direct testimony for the
5 Philadelphia Area Industrial Energy Users Group I would
6 like to have marked as PAIEUG Statement No. 1 the direct
7 testimony and exhibits of Lane Kollen, which has
8 previously been filed and served upon all parties, and
9 move for its admission.

10 Finally, on behalf of the City of Philadelphia I
11 would move for the admission of its statement in support
12 of the joint petition which was filed on April 17 with
13 the Commission. I will subsequently provide two copies
14 to the court reporter.

15 In addition, I would like to have marked for
16 identification City of Philadelphia Statement No. 1, the
17 direct testimony of Kent R. Miller, and move for its
18 admission at this time. And with respect to the direct
19 testimony I will provide those to the reporter today.

20 JUDGE RAINEY: Thank you, Mr. Kleppinger.

21 Mr. Fiorentino.

22 MR. FIORENTINO: Thank you, Your Honor.

23 On behalf of the Clean Air Council, Your Honor, and
24 under number four, statements in support of the joint
25 petition, I would like to mark for identification as

1 Clean Air Council No. 1 Counsel's statement of support
2 for the joint petition for settlement which was filed on
3 April 1st, 2000. I do have two copies for the court
4 reporter for that, Your Honor.

5 In addition, under paragraph number seven of the
6 parties' exhibit I would move to mark for identification
7 as Clean Air Council Exhibit No. 2 the direct testimony
8 of Andrew Altman and as Clean Air Council Exhibit 2-A the
9 attached curriculum vitae which has been attached as
10 Exhibit AA-1 of the direct testimony. I also have two
11 copies for the court reporter of that document.

12 JUDGE RAINEY: Thank you, Mr. Fiorentino.

13 MR. FIORENTINO: And I move for the admission of
14 both.

15 JUDGE RAINEY: Thank you, Mr. Fiorentino.

16 Mr. Hamermesh.

17 MR. HAMERMESH: Your Honor, on behalf of MAPSA I
18 would offer, first off all, MAPSA's letter in support of
19 the settlement which was submitted on April 7, 2000. I
20 would like to have that marked as Exhibit A and have it
21 admitted into evidence.

22 And secondly, the direct testimony of James
23 McCormick on behalf of MAPSA, I would ask that that be
24 marked as MAPSA Exhibit 2 and be admitted into evidence.

25 And I have copies of both of those for the court

1 reporter.

2 JUDGE RAINEY: Thank you, Mr. Hamermesh.

3 Mr. Machlin.

4 MR. MACHLIN: Thank you, Your Honor.

5 We would ask for the admission of the direct
6 testimony of Stanley R. Forczek on behalf of Amtrak. We
7 would ask that that be marked as Amtrak Statement No. 1.
8 And I have provided two copies of that to the court
9 reporter.

10 We would also ask for the admission of Amtrak's
11 letter in support of the settlement which is under item
12 four in the document. And we will provide a copy of that
13 to the court reporter tomorrow.

14 JUDGE RAINEY: Thank you.

15 Mr. Bertocci.

16 MR. BERTOCCI: Thank you, Your Honor.

17 On behalf of CEPA, ACORN, TAG and Action Alliance I
18 would like to introduce into evidence the statement of
19 support which was filed on March 29, I think shortly
20 after the settlement agreement. I have two copies for
21 the court reporter.

22 Also, as for testimony, I would like to enter into
23 evidence testimony that is jointly sponsored by Senator
24 Fumo and CEPA, et al. That would be marked Senator
25 Vincent J. Fumo and Consumers Education and Protective

1 Association Statement No. 1. It is the testimony of
2 Richard J. Silkman. I have two copies for the court
3 reporter.

4 JUDGE RAINEY: Thank you, Mr. Bertocci.

5 JUDGE RAINEY: Mr. Jaffe.

6 MR. JAFFE: Mr. Jaffe, for Councilman Cohen, Your
7 Honor.

8 On behalf of Councilman Cohen I want to move for
9 admission in opposition to the settlement the testimony
10 of Councilman David Cohen, the testimony of Dr. Ernest
11 Sternglass, the testimony of Janette Sherman and the
12 testimony of Joseph Mangano with all attachments,
13 articles and demonstrative evidence attached to these
14 testimonies.

15 JUDGE RAINEY: Thank you, Mr. Jaffe.

16 JUDGE RAINEY: Mr. Russell -- or Mr. Kaplan.

17 MR. KAPLAN: Thank you, Your Honor.

18 Pursuant to paragraph eight of the parties' exhibit
19 I would like to offer into evidence PPL Statement No. 1,
20 the testimony of Paul L. Goia on behalf of PPL Electric
21 Utilities Corporation, including the attachment thereto,
22 which is Mr. Goia's resume. And we have two copies for
23 the court reporter.

24 JUDGE RAINEY: Thank you, Mr. Kaplan.

25 MS. McCLOSKEY: Your Honor?

1 JUDGE RAINEY: Yes, Ms. McCloskey.

2 MS. McCLOSKEY: East Brandywine Township submitted
3 the testimony of Scott T. Piersol and it is listed on the
4 sheet. But I don't believe their Counsel was able to be
5 available today.

6 JUDGE RAINEY: I was about to ask --

7 MR. SMITH: Your Honor, I spoke to Mr. Rau, who is
8 Counsel for East Brandywine Township, and I am authorized
9 on behalf of East Brandywine Township to request that
10 Mr. Piersol's testimony be admitted into evidence.

11 JUDGE RAINEY: Thank you, Mr. Smith.

12 Is there anyone else?

13 MR. MUNSCH: Your Honor, John Munsch, Allegheny
14 Power and Allegheny Energy Supply. On March 27 Allegheny
15 Power and Allegheny Energy Supply filed a letter with the
16 Commission saying that it would not oppose nor would it
17 support the joint petition for settlement.

18 JUDGE RAINEY: Thank you, Mr. Munsch.

19 Anyone else?

20 (No audible response.)

21 JUDGE RAINEY: We will admit into the record as
22 evidence those documents which appear in Parties' Exhibit
23 No. 1, those documents which appear at numbers one
24 through eight, excluding five and six, noting the
25 corrections and revisions which were made by the parties

1 here today.

2 (Whereupon, the documents appearing in Parties'
3 Exhibit No. 1 in Sections 1, 2, 3, 4, 7 and 8 were
4 marked as noted in Parties' Exhibit No. 1 for
5 identification, and were received in evidence.)

6 JUDGE RAINEY: Mr. Jaffe, I understand that you
7 have some additional evidence which you would like to
8 introduce here today.

9 MR. JAFFE: Yes. The parties have discussed and
10 agreed, with I believe one exception, that Councilman
11 Cohen and Professor Sternglass would give oral testimony
12 under oath on the record in opposition to the settlement.
13 And they would take into consideration the time
14 constraints of the day and Your Honor in doing this. It
15 would be illustrative of the materials that we filed. It
16 would not be purely duplicative but it would be
17 illustrative.

18 MR. EPSTEIN: Your Honor, I would object for two
19 reasons. I think allowing this to go forward -- and I
20 acknowledge that I am the only one in opposition. That's
21 okay. I am used to be isolated. Several reasons come to
22 mind. I think giving them this status gives them an
23 extraordinary position in this proceeding that is not
24 afforded to other people. In the interest of brevity I
25 waived my right to cross PPL and to submit oral testimony

1 of my own. In addition, Councilman Cohen and Professor
2 Sternglass never made it to a public input hearing,
3 although public input hearings were scheduled in very
4 close proximity to his office. I can't see how this
5 would not violate section 5.401 of the admission of
6 evidence where it would be redundant.

7 Clearly I don't disagree with the substance of what
8 both men are saying but I do disagree with the fact that
9 they are given extraordinary status to present an oral
10 overview of their testimony, something that is not
11 granted to other folks. I just wanted to have my
12 objections noted for the record and I hope you will
13 consider them.

14 JUDGE RAINEY: Thank you, Mr. Epstein.

15 Mr. Jaffe.

16 MR. JAFFE: Yes, sir.

17 JUDGE RAINEY: Do you have any objection to -- do
18 you have any opposition to Mr. Epstein cross-examining
19 the witnesses today with regard to their presentations?

20 MR. JAFFE: No, I don't, Your Honor. Mr. Epstein
21 is free to cross-examine as he sees fit both witnesses.

22 JUDGE RAINEY: Are there any objections amongst any
23 of the parties to Mr. Epstein presenting any rebuttal
24 testimony to the testimony that we put on here today by
25 Councilman Cohen?

1 (No audible response.)

2 JUDGE RAINEY: Hearing none, that is the way I
3 think we will proceed here today. So I will overrule
4 your objection, Mr. Epstein, but I will allow you the
5 privilege of cross-examination and also any oral rebuttal
6 testimony which you would desire to put on.

7 Mr. Jaffe, do you want to call your first witness?

8 MR. JAFFE: Yes, I would, Your Honor. I would like
9 to call the Honorable David Cohen.

10 If there is another chair that we would grab --

11 JUDGE RAINEY: Off the record for a moment.

12 (Pause.)

13 JUDGE RAINEY: Back on the record.

14 Whereupon,

15 DAVID COHEN

16 having been duly sworn, testified as follows:

17 JUDGE RAINEY: Please be seated and provide your
18 full name.

19 THE WITNESS: David Cohen, C-O-H-E-N. No middle
20 initial.

21 JUDGE RAINEY: And your business address?

22 THE WITNESS: City Councilman-at-large, room 588,
23 City Hall, Philadelphia.

24 JUDGE RAINEY: Please proceed, Mr. Jaffe.

25

DIRECT EXAMINATION

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BY MR. JAFFE:

Q. Councilman Cohen, good morning.

A. Good morning.

Q. Could you briefly just tell the Court and the parties here your background, education and your profession?

A. I am a native of Philadelphia. I was born in south Philadelphia. I lived most of my childhood in North Philadelphia in the Tioga area. I went to the public school system. Graduated with a bachelor of science in education from the school of education at the University of Pennsylvania. I then went to the University of Pennsylvania law school. Graduated from there summa cum laude at the top of my class in 1937. Then spent a year as a Gowan Memorial Fellow at the University of Pennsylvania law school, following which I spent nearly five years as an attorney with the federal government in the Rural Electrification Administration, an agency of government now part of the Department of Agriculture which has as its mission the electrification of all of the farms in the United States.

Q. And you have been serving as a councilman for how long here?

A. Well, I was elected in my first term in 1967.

1 I served one term at that time. I ran for mayor. The
2 voters showed their good judgement and elected someone
3 else. And then I returned to City Council in the
4 election in 1979 and for the rest of the 20 years I have
5 been elected I believe it is six times to the office of
6 Councilman-at-large.

7 Q. And Councilman-at-large represents --

8 A. The entire City of Philadelphia. Every voter
9 voted and I was one of the three council members who
10 received more votes in the last election than the mayor.

11 Q. During your tenure on Philadelphia City Council
12 have you expressed any environmental concerns?

13 A. I was the chief sponsor and largely the author
14 of the clean air code in the City of Philadelphia adopted
15 in my first term in the 1968-69 period. When I returned
16 to council I was responsible for the recycling act. I
17 have been involved in every environmental issue that is
18 known to come before the City Council.

19 Q. And --

20 A. And before that time -- let me put a plug in
21 for the government, which is not always doing the wrong
22 thing; on rare occasions it does good things -- we did
23 electrify the farms throughout the United States. I
24 think they are just about over 99 percent electrified.
25 My particular job was to form legal organizations none as

1 cooperatives to whatever extent the laws of each state
2 permitted to either erect transmission lines from
3 generating sources to the farm areas or if necessary to
4 build generators. I am very much aware of the extreme
5 importance of electric energy.

6 Q. And do you have any opinions with reasonable
7 professional certainty as an attorney, as an attorney who
8 worked for the Rural Electrification Administration, as
9 to the effects of this merger?

10 A. Yes, I do. I have been very much interested as
11 a result of both my work and my public activity in
12 running for office and representing people and in the
13 in-between period being very active in the community. I
14 am very much concerned about both making energy available
15 to people in the most efficient manner and the most
16 helpful manner. And I am deeply concerned and believe
17 that this merger will be harmful to the people throughout
18 the Philadelphia area specifically and probably
19 throughout the nation.

20 My deep concern about this merger is that it unites
21 major electric companies that very heavily depend on
22 nuclear power, which in the judgement of myself -- and my
23 judgement is based upon my general understanding about
24 the field that nuclear power is dirty energy, not clean
25 energy, that it presents very severe health hazards to

1 people. I am very concerned that PECO operates -- it is
2 one of the largest operators currently of nuclear power
3 plants, that it merged with a company from Britain to
4 form another company Amerigen and that British power
5 company that it merged with is also a very heavy operator
6 of nuclear power plants; that Unicom, the company that it
7 proposes to merge with, is also a very large user of
8 nuclear power. And this takes place as a time when I
9 understood the law of Pennsylvania to be a law that was
10 encouraging competition, it was encouraging bringing in
11 more companies. Instead I see this as a move toward
12 monopolization, not decentralization.

13 I see this as reviviiing the threat of nuclear
14 power. Until the recent activity by PECO the general
15 understanding was that the nuclear power was being
16 phased-out, that there had been no new reactors ordered
17 since, I believe the late '70's. I think it was 1978.
18 That a number of nuclear power plants have been
19 decommissioned. I am not sure of the exact number but I
20 think it was more than ten throughout the United States.
21 And then in 1995 or '96, not well known at all to people
22 throughout the country, I believe it was the nuclear
23 regulatory agency which suddenly eliminated the health
24 factor as a factor to be considered in the grant of
25 permits. And that is very disturbing factor because of

1 what I understand and believe to be the known dangers
2 coming from the operation of a nuclear plant.

3 Q. Are you referring to relicensure?

4 A. I am referring to both things, to both the
5 elimination of the health factor as a consideration for
6 the grant of permits and for the fact that just I believe
7 it was in April of this year that the nuclear regulatory
8 agency again granted permission for an extension of 20
9 years to a nuclear plant and at the present time that
10 nuclear plant I believe is no more than 33 years old. I
11 think it is the oldest nuclear plant in the United
12 States. And the grant of that permit for an additional
13 20 years means that probably other companies are going to
14 try to pursue the same strategy and I believe that to be
15 an extraordinarily dangerous strategy and it is laying
16 the basis for renewal of a strong push in the direction
17 of more nuclear plants when our goal to protect the
18 environment ought to be to be phasing out permanently
19 nuclear plants as soon as possible.

20 Currently, right now, as this hearing is taking
21 place Germany is in the process of seeking to totally bar
22 all nuclear plants or at least if they don't succeed in
23 doing it immediately to phase out all nuclear power
24 within the next 30 years.

25 And that is the reason for my extreme concern about

1 the danger to the health of Philadelphia.

2 I was very active in Philadelphia in preventing the
3 establishment of a trash to steam plant here in
4 Philadelphia down at the old Navy Yard site. That
5 occurred during Mayor Wilson Goode's term. A contract
6 was presented to City Council. I was chairman of the
7 committee that considered that. And for environmental
8 reasons we prevented that from happening. Today the Wall
9 Street Journal, all the business organizations, are in
10 agreement that that was the right decision, that trash to
11 steam is not a forward-moving activity but in fact was a
12 threat to the environment as well as being a fiscal
13 disaster.

14 Nuclear plants are being bought up by Amerigen at a
15 very low rate, very low cost factor, because nuclear
16 plants generally don't operate effectively either from
17 the health point of view or from a financial point of
18 view. Many of them are for sale at very low prices.
19 Amerigen, PECO, are interested in buying these plants up
20 and upgrading them for as long as possible. And nuclear
21 plants like most other things become less effective the
22 longer they operate and the parts become old. Nuclear
23 plants generate, even when they operate perfectly,
24 generate a certain amount of radioactive materials into
25 the atmosphere creating health dangers.

1 And the problem is enormous of what do you do with
2 the radioactive waste. The federal government has been
3 trying to locate a place in Nevada that is supposed to be
4 safe for tens of thousands of years to store radioactive
5 waste. It has never actually been fully in operation
6 because there is no safe way of transmitting radioactive
7 waste.

8 In the Daily News -- this is Wednesday. Just on
9 Monday of this week there is a report of a New Jersey
10 power company seeking to use the temporary facilities
11 that the state of New Jersey has apparently provided for
12 the storage of radioactive waste only to be told we are
13 all jammed up now, we can't handle any more.

14 The fact is nobody knows what dangers we are
15 providing for generations to come and I think the Public
16 Utility Commission has the responsibility under its
17 requirement to work in the public interest. It has a
18 legal responsibility to determine that the merger of
19 these nuclear power plants are dangerous to the health of
20 the people and to deny this merger.

21 Q. Just one more question I would like to ask you.
22 As a city councilman do you have any questions, problems,
23 issues, concerning how the merged company is going to be
24 run?

25 A. Well, yes. I have many concerns.

1 Q. Is there something briefly you would want to
2 state?

3 A. Well, Unicom is known to be an enormously
4 inefficient operation and I am concerned for the economic
5 effects on the City of Philadelphia.

6 Q. Economic effects?

7 A. The impact on the City of Philadelphia.
8 Fortunately, a private agreement with the City of
9 Philadelphia was worked out which contains some
10 additional safeguards beyond those which PECO originally
11 proposed. I think they moved in the right direction. I
12 don't think they went far enough. I am concerned about
13 the maintenance of employment. I am concerned about the
14 maintenance of the headquarters of PECO. PECO will
15 become, apparently, not the dominant force in this
16 company. So I am concerned for those normal things.

17 But that is not what compelled me to feel it
18 necessary to appear personally and to testify. I think
19 and I do it from a lifetime of concerns about the
20 environment, from an appreciation of the important role
21 of electric energy and from a concern for the environment
22 and future generations. I don't know how we can sanely
23 and reasonably as public officials and public servants
24 support policies that lead to the creation of an unknown
25 danger of enormous magnitude that threatens, that could

1 threaten, the existence of human population throughout
2 this country, throughout the world.

3 Who knows what would happen if a terrorist seized
4 control of some storage plant and threaten to release the
5 radioactive material that is in that plant. There are so
6 many unknowns and therefore I think that a sound public
7 policy that public servants ought to be committed to is a
8 policy of phasing out as quickly as possible the use of
9 nuclear power.

10 I would urge the Commission that if it saw fit
11 ultimately to grant permission for this merger that there
12 ought to be a condition that none of these nuclear plants
13 -- that the merged company will not seek to extend the
14 life of any of these plants, that they will seek the
15 decommissioning of any plants as soon as that plant shows
16 serious signs of malfunctioning.

17 MR. JAFFE: Thank you, Your Honor.

18 JUDGE RAINEY: Cross-examination, Mr. Epstein?

19 MR. EPSTEIN: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. EPSTEIN:

22 Q. Councilman Cohen, I just need some
23 clarification and I want to make sure the record is
24 empirically correct. Your expertise is not necessarily
25 environmental but legal, according to your testimony?

1 A. It is both.

2 Q. So would you consider yourself an expert on
3 nuclear issues?

4 A. On all environmental matters affecting the
5 public health of citizens. That is an obligation I have
6 as a public official in Philadelphia.

7 Q. I just want the record to be clarified, and
8 perhaps you misspoke, but the PUC has no jurisdiction
9 over license extensions. It is actually the NRC. When
10 you refer to the nuclear regulatory agency it is actually
11 the Nuclear Regulatory Commission. Yucca Mountain, which
12 you said was never fully operational, has not been built
13 yet. Waste right now is being taken to --

14 JUDGE RAINEY: Mr. Epstein, you are providing
15 testimony. You will be given an opportunity to provide
16 rebuttal.

17 BY MR. EPSTEIN:

18 Q. The second question, Mr. Cohen. Can you please
19 identify the Pennsylvania safe energy, environmental and
20 anti-nuclear groups that you are testifying on behalf of
21 today?

22 A. I am testifying on behalf of myself today.

23 Q. Thank you.

24 A. I think the record is absolutely clear. Didn't
25 you read the --

1 Q. I have read it and that is why I am going to
2 follow up with additional questions.

3 You referred to a breast cancer study around the
4 Three Mile Island area?

5 A. No, I did not.

6 Q. You did not refer to it?

7 A. Not in my oral testimony.

8 Q. But in your testimony, your formal testimony,
9 you referred to it.

10 A. I may have.

11 Q. I have been born and raised in that area. I
12 have been intimately involved with the issue for over two
13 decades. Could you reference what study that is?

14 A. No, I could not.

15 Q. Just so that the record states, and I am not
16 testifying, it says another study showed that near the
17 TMI plant breast cancer increased markedly following
18 normal operation after startup of the accident. So I
19 presume you are referring to the startup of unit one?

20 A. I cannot say for certain that.

21 Q. Okay. Another question, I have, this is from
22 your testimony. Is it your opinion or is it from your
23 expertise that nuclear power plants are designed to
24 operate 30 years?

25 A. Would you repeat that question?

1 Q. In your testimony you had discussed, I believe
2 it is on page --

3 A. Are you talking about the written testimony?

4 Q. Yes.

5 A. I have not alluded to my written testimony
6 today, Mr. Epstein, in the interest of time.

7 Q. Well, I am trying to be brief. Real brief. So
8 in the interest of time if you could just answer the
9 question. Basically, according to your expertise -- you
10 opened this up --

11 A. I am not testifying today as an expert on
12 nuclear energy. I am testifying on the importance of
13 health considerations for the known fact that nuclear
14 power creates severe danger to human life.

15 Q. I'm not disagreeing with that. We share the
16 same view.

17 A. Well, then, I am not testifying as a scientist.
18 Professor Sternglass can testify on that. I am
19 testifying on public policy, as an expert on that.

20 Q. Right. And as such --

21 A. And on health matter, Mr. Epstein.

22 Q. And as such, as an expert, I think it is useful
23 to make sure that the evidence that you have entered is
24 empirically verifiable. I think we both agree on this
25 issue. My concern is making statements that are

1 verifiable. And I am asking you what --

2 A. I don't think that is your concern at all,
3 Mr. Epstein.

4 Q. That is my concern.

5 JUDGE RAINEY: Why don't we do this.

6 MR. EPSTEIN: I have just two legal questions, real
7 brief, and I'm done.

8 JUDGE RAINEY: You have legal questions for --

9 MR. EPSTEIN: Yes. Just two. Basically one was
10 why Mr. Cohen based his testimony --

11 THE WITNESS: Do you say that the substance of my
12 position is wrong? Or are you quibbling with respect to
13 technicalities?

14 MR. EPSTEIN: I'm not quibbling with --

15 THE WITNESS: Because that seems to me to be what
16 you are doing.

17 MR. EPSTEIN: Well, you are entitled to your
18 opinion. What I'm quibbling with, and I think we have
19 come a long way and I don't want to go further into this,
20 I think what you need to say has to be empirically
21 verifiable.

22 THE WITNESS: Everything I have said has been
23 empirically justified by strong bodies of authority in
24 the nuclear field.

25 JUDGE RAINEY: We are spending too much time here

1 in argumentation. Do you have a specific question,
2 Mr. Epstein, that you want to ask?

3 MR. EPSTEIN: Yes.

4 JUDGE RAINEY: Will you ask the question, please?

5 BY MR. EPSTEIN:

6 Q. Based on what information do you anticipate
7 that nuclear power plants are supposed to operate for 30
8 years?

9 A. Say the beginning part of that question.

10 Q. You are the only one that I have encountered
11 who has said that nuclear power plants were constructed
12 to operate for a 30 year period. The conventional wisdom
13 is 40 years. I'm wondering what evidence --

14 A. In Germany the conventional wisdom is 30 years.

15 Q. But we are in America.

16 A. In the United States it is 40 years --

17 JUDGE RAINEY: Mr. Epstein, would you allow the
18 Councilman to answer the question without your
19 interjection? You will have an opportunity to put in
20 your own rebuttal testimony.

21 Councilman Cohen, did you have any further response
22 to that question that was asked?

23 MR. JAFFE: Your Honor, I think he answered the
24 question.

25 MR. EPSTEIN: Final question.

1 JUDGE RAINEY: Your second question?

2 MR. EPSTEIN: Yes.

3 BY MR. EPSTEIN:

4 Q. Final question. Are the ratepayers of
5 Pennsylvania -- let rephrase this, Councilman Cohen. Is
6 PECO Energy or any other nuclear utility in this state
7 under any obligation to pay for decommissioning of
8 nuclear power plants? Any legal obligation?

9 A. Well, it seems to me that the ratepayers have
10 paid very heavily for the commissioning of these plants
11 and on decommissioning my understanding is that PECO has
12 only accepted an obligation of \$50 million.

13 Q. My question is just a yes or no. Are the
14 nuclear utilities in this Commonwealth under law, are
15 they obligated to share any decommissioning expenses?

16 A. I understand as to \$50 million PECO may be
17 obligated. I do not know technically whether they do or
18 not. But one thing I do know is that the ratepayers
19 suffer whenever there are payments made for
20 malfunctioning nuclear power plants.

21 MR. EPSTEIN: That's fine.

22 JUDGE RAINEY: Thank you, Councilman Cohen.

23 Do you have any redirect, Mr. Jaffe?

24 MR. JAFFE: No, Your Honor.

25 JUDGE RAINEY: Very well. Councilman Cohen, you

1 may stand down. Thank you for your testimony.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 JUDGE RAINEY: Do we want to set up for your next
5 witness?

6 MR. JAFFE: Yes, it will take five minutes.

7 JUDGE RAINEY: Why don't we go off the record. We
8 will take a five minute break.

9 (Recess.)

10 JUDGE RAINEY: Let's go back on the record.

11 Mr. Sternglass, I will need to swear you in.

12 Whereupon,

13 ERNEST J. STERNGLASS

14 having been duly sworn, testified as follows:

15 JUDGE RAINEY: Please give your full name for the
16 record.

17 THE WITNESS: My name is Ernest J. Sternglass,
18 S-T-E-R-N-G-L-A-S-S.

19 JUDGE RAINEY: Would you please provide your
20 address?

21 THE WITNESS: My home address is 4601 Fifth Avenue,
22 Pittsburgh, Pennsylvania, 15213. And I am on the faculty
23 of the school of medicine at the University of
24 Pittsburgh, department of radiology.

25 JUDGE RAINEY: Thank you.

1 Mr. Jaffe.

2 DIRECT EXAMINATION

3 BY MR. JAFFE:

4 Q. Sir, have you studied the health effects from
5 low level radiation?

6 A. Yes. I have written two books about it. And I
7 have testified on this subject before the Joint Committee
8 for Atomic Energy for the first time in August of 1963 at
9 the request of the Kennedy administration in order to
10 help to have the first nuclear treaty to end nuclear
11 testing in the atmosphere ratified in the Senate.

12 Q. Do you have any concerns about the health
13 effects from nuclear generation, nuclear power plants?

14 A. Yes. I have done extensive studies that show
15 that we have grossly underestimated the effects,
16 particularly on the newborn, on the fetus, on the embryo
17 and on older individuals whose immune systems have been
18 damaged over the years.

19 Q. Do you hold this opinion with reasonable
20 professional certainty concerning the effect on public
21 health, safety and welfare from energy generated from
22 nuclear power plants?

23 A. Yes, absolutely.

24 Q. And can you explain, understanding the time
25 constraints of the day and the situation that we are

1 under, explain and illustrate what we have submitted to
2 the Court and the other parties of your studies and why
3 you hold this opinion with reasonable professional
4 certainty?

5 A. Right. For the last 30 years I have been
6 concerned about the effects of low lever radiation first
7 in conjunction with my position as director of the
8 laboratory for imagining at the University of Pittsburgh
9 school of medicine and the department of radiology to
10 reduce dose to people and especially the developing fetus
11 as early as possible to the lowest possible degree. It
12 was based on the work of Mr. Ellis Stewart at Oxford who
13 first in 1956 discovered that two or three diagnostic
14 X-rays doubled the risk of leukemia and cancer. And as a
15 result of his testimony I wrote an article in Science
16 published in June of 1963, a copy of which went to the
17 White House, in which I pointed out that the continuation
18 of nuclear bomb testing would raise a significant
19 increase in childhood leukemia and cancer around the
20 world.

21 Q. Could you focus your testimony on the energy
22 generated from nuclear power plants and the concerns that
23 you have for that aspect? Because that is what we are
24 here today for.

25 A. Yes. I was assistant to the director of the

1 Westinghouse research lab who devised the first nuclear
2 reactor core for the nuclear submarine, the Nautilus, and
3 also the Shippingport nuclear power station near
4 Pittsburgh. For 15 years I worked on the problems of
5 designing instrumentation to measure radiation and I have
6 patents in the area of nuclear power for space
7 propulsion.

8 Since 1967 I joined the University of Pittsburgh's
9 school of medicine, where I directed the laboratory
10 developed by the NIH to reduce X-ray dose by moving
11 towards electronic image intensifying today.

12 Now, with regard to nuclear plants, I first became
13 aware of releases from nuclear power plants as a result
14 of Dr. John Goffman's testimony in Congress in late 1969
15 and '70. Until then I had focused only on the problem of
16 nuclear bomb testing. He showed that if nuclear plants
17 were allowed to emit as much as they were then being
18 allowed there would be 32,000 extra cancer deaths each
19 year in the country. This is all in the Congressional
20 Record.

21 And becoming aware of that, I studied the Dresden
22 nuclear power plant operated by Commonwealth Edison and
23 discovered to my dismay that there was a great increase
24 in infant mortality in Illinois on the whole when the
25 plant started and when shut down in order to replace a

1 defective core it declined. That was my first evidence
2 and I presented this evidence at State Assembly hearings
3 in the state of Pennsylvania in I believe 1970-71.

4 Since then I have testified at hearings arranged by
5 Governor Schapp of Pennsylvania in July of 1973, on the
6 finding of increased levels of strontium-90 around the
7 Shippingport plant near Pittsburgh, and increases in
8 infant morality and leukemia among older people. Those
9 hearings were held at the behest of environmental groups
10 and I represented myself and the environmental groups in
11 those hearings, the record of which is available to state
12 officials.

13 Q. Could you explain very cogently what you have
14 submitted to this Court and to the parties so that you
15 believe we understand it?

16 A. Yes.

17 Q. You have graphs and charts that we have
18 submitted to the parties that you just want to put up so
19 you can better illustrate today?

20 A. Right.

21 Q. Thank you.

22 A. Not everyone has seen this, including the
23 Judge.

24 Some ten years ago I was asked by the Sierra Club
25 in Philadelphia to examine the possible health effect of

1 nuclear plant operation in the Philadelphia area. And
2 one of the first things I found is that radiation in
3 Philadelphia as measured in pasteurized milk by the EPA
4 in 1985 to 1986 began to rise sharply after the start of
5 commercial operation of Limerick in February of 1986. It
6 increased ten-fold from a level of one to ten picocuries
7 per liter and in May the Chernobyl fallout arrived from
8 Russia and it grows further from ten to as much as 15 or
9 15-and-a-half, 16 picocuries per liter, after which it
10 gradually declined. So we know that radioactivity was
11 emitted and measured in human milk consumed in this area.

12 That is the first slide.

13 The next slide is the Philadelphia 1977-1988 white
14 population percent of low weight babies. And what this
15 shows is that right after the Three Mile Island accident
16 at the time in 1979 there was a jump in the number of
17 babies born under five-and-a-half pounds and then when
18 the reactors were shut down for a few years it declined
19 sharply from a high of 8.5 down to as low as 6.4 percent
20 of all babies born. Then when Limerick began operating
21 in 1984 it rose again. And then Chernobyl came and there
22 was a further rise until 1988, which is the last year for
23 which I had data.

24 Mind you, I want to remind you that when babies are
25 born underweight there is a very severe impact not only

1 on their physical wellbeing but on their mental function
2 and neurological problems are greatly aggravated by being
3 underweight. There is a story in the New York Times in
4 the last week that shows that this is a problem that
5 persists for life. It is a very serious problem, far
6 more even so than acute cases of leukemia because it
7 affects so many people.

8 This is the data for Philadelphia, certain
9 conditions originating in the perinatal period, deaths
10 due to various conditions that have to do with what
11 happened to the child during interuterine development.
12 We now know that this is a very serious and you can see
13 in this very clearly that after 1980, the venting at
14 Three Mile Island, there was a continued further rise to
15 a peak of 280 children that died typically at the rate of
16 16.7 and then sharply declined when Three Mile Island was
17 shut down. Then again after Limerick began operating in
18 1984 it rose again from 13.4 to its high at 15.8 and then
19 Chernobyl aggravated it further and we have a peak in
20 1987 followed by a decline.

21 There can therefore be no question that this could
22 not have been produced either by pesticides, chemicals,
23 X-rays or any other form of environmental pollution which
24 did not change so radically in those few years. The two
25 peaks clearly show an association with fallout.

1 Now, the next thing we examined is the Philadelphia
2 chronic obstructive lung disease. Pulmonary disease.
3 And again we find that after the Limerick reactor began
4 operating in 1984 it rose sharply from about 28.5 per
5 hundred thousand population to about 36, 37, then
6 declined again. And then the Chernobyl fallout arrived
7 in 1986 and it rose once more.

8 Once again, these two peaks and these rises are
9 statistically highly significant and there can be no
10 question that a change in normal air pollution, use of
11 automobiles, pesticides, herbicides or medical X-rays
12 could not explain this.

13 Then I also investigated based on Philadelphia
14 statistics diabetes mellitus, which is a function of
15 damage to the immune system. And we find a high level
16 arrives after 1979-80, the Three Mile Island accident, a
17 sharp decline when the plants were shut down, down to a
18 much lower level of 19.5 from a high of about 23.3. And
19 then after Limerick began operating in 1984 first -- that
20 is, Limerick's criticality took place then, it did not
21 fully operate commercially until '86 -- but during that
22 time it rose from 323 cases to 400 and this, again, was
23 repeated, a decline, when this was changed, the emissions
24 declined. And then when the Chernobyl fallout arrived
25 again there was arise. The Chernobyl fallout was noticed

1 in many areas of the nation, in Detroit, and I have
2 documented it in Miami and Long Island. Everywhere
3 around the world Chernobyl produced the serious effects
4 similar to bomb tests since it involved the release of
5 something like the equivalent of 200 to 400 Hiroshima
6 bombs worth of radioactivity into our environment.

7 This is septicemia, Philadelphia, 1980 to '88.
8 That is a form of blood poisoning which unfortunately
9 represents a weakening of the immune system's ability to
10 fight bacteria. You can see it rose from 15 to more than
11 35 during that period, each time cumulatively damaging
12 the bone marrow, which is crucial in defending against
13 septicemia. Chernobyl again and Limerick again produced
14 significant increases in this finding.

15 Philadelphia total mortality, the total number of
16 deaths in this area due to all causes combined, showed a
17 large peak in 1980 after the Three Mile Island accident
18 in '79 and the venting in 1980. It declined from close
19 to 1,250, 1,248, to something like 1,200, a dramatic
20 decline, after the plants were shut down. And it only
21 began to rise again after Limerick from 19,792 in 1984 to
22 a high of 20,544 deaths in this country -- in this
23 Philadelphia area -- when Chernobyl further added to the
24 fallout. Again, there is no way that any changes in
25 medical care, any changes in early diagnosis, any changes

1 in the use of X-rays, any changes of other pollutants in
2 the environment could possibly and reasonably expect this
3 kind of pattern.

4 One of the more serious problems is malignant
5 neoplasms. That is cancers of all types. From 1980 to
6 '88 the statistical report for the City of Philadelphia
7 in '88, which I have plotted here, shows that it rose
8 from a low of 263.7 cases per 100,000 to 288 in a
9 relatively short time. And, again, when Limerick first
10 after the Three Mile Island venting, a broad peak in 1985
11 -- 1981, '82, '83. Then Limerick started initial tests
12 in 1984. Then Chernobyl came in 1986. And the same year
13 Limerick went into full power operation and it rose from
14 a low of 4,451 cases to 4,738 cases. And, again, these
15 kinds of patterns of peaks and declines cannot be readily
16 explained by other known causes of cancer that we are
17 aware of.

18 And this led me to the conclusion that Philadelphia
19 is particularly threatened because it is downwind from a
20 series of nuclear plants, namely, the Peach Bottom plant
21 that has very serious problems and received the highest
22 fine ever for a utility. Then there was Three Mile
23 Island, there was Limerick recently and Salem. All of
24 which affect the milk delivered, the water, the
25 vegetation, the food eaten here. And all of these things

1 have increased the level of strontium-90 in the
2 Philadelphia area to the highest of any area that we have
3 studied.

4 Q. Professor Sternglass, if I can ask you, was
5 there any updating that you wanted to make to this
6 presentation of statistics or information that you've
7 gotten very recently?

8 A. Yes, I do. I want to present to this body, to
9 this Court, the latest findings that we obtained from the
10 Centers for Disease Control about the nature of what
11 happened in recent years here in Philadelphia that we
12 have just obtained from the internet. And I think it is
13 of great importance that you see how high the
14 Philadelphia cancer death rate over age 65 which we have
15 particularly investigated since it is most sensitive,
16 these are individuals who have already sustained severe
17 immune damage from all kinds of environmental problems.
18 And you can see that it is far above the U.S. level,
19 which gradually peaked out in 1994 after rising since
20 almost 1940. After the end of the last bomb testing in
21 1980 there has been a gradual slowing down of the rise of
22 cancers in the U.S. But Philadelphia is far above and in
23 fact as far as I know now one of the highest rates in the
24 entire nation is now experienced in Philadelphia. And
25 this is in sharp contrast to another set of data that we

1 have just obtained, namely, as described in the case of
2 the study by Mangano on the reactor that was shut down in
3 Rancho Seco published in the March edition of the
4 Environmental Epidemiology and Toxicology Journal --

5 Q. Mr. Sternglass, I believe this is contained
6 within the direct testimony of Councilman Cohen.

7 A. Right. But I want to make the comparison
8 whereas in this area the cancer rates were high above the
9 U.S. level, they were far below when the Sacramento
10 reactor was turned off in 1989 after having serious
11 problems since December of '86.

12 Therefore, we find that there is no question, any
13 reasonable question, that the operation of nuclear
14 reactors seriously affects both cancer rates among
15 children and adults as described in an article that has
16 been published by Mangano and another article that has
17 just been submitted to the British Medical Journal. When
18 a reactor is shut down in a large populated area it shows
19 that there is a dramatic and sudden decline which is far
20 below the U.S. whereas in this area, in Philadelphia,
21 cancer death rates continue to rise instead of declining.

22 And that is the most important result, together
23 with the fact that breast cancer in San Francisco, a city
24 comparable in size to Philadelphia, dramatically declined
25 from its high in '84 to a low level of -- roughly it

1 declined from 165 to a low of 75 per 100,000 women over
2 65 whereas the U.S. still is way above the rest because
3 San Francisco after the end of all atmospheric testing in
4 1980 and the last Chinese underground test that leaked in
5 1993 plunged to the lowest levels and there is no known
6 change either in diagnosis or therapy that anyone could
7 advance or any change in pollutants or pesticides or
8 herbicides that could possibly explain it other than the
9 removal of the synergistic action of radioactivity that
10 our government has unfortunately underplayed because of
11 national security reasons.

12 MR. JAFFE: Thank you, Your Honor, for your
13 courtesy.

14 JUDGE RAINEY: Thank you, Mr. Sternglass.
15 Cross-examination.

16 MR. EPSTEIN: I just have one question

17 CROSS-EXAMINATION

18 BY MR. EPSTEIN:

19 Q. Mr. Sternglass, do you remember coming to our
20 area in '87 to testify on the proposed evaporation of
21 radioactive water from Three Mile Island?

22 A. I believe I do.

23 Q. Okay. I just wanted to remind you I was the
24 one who paid for that trip.

25 A. Thank you.

1 Q. You're welcome.

2 JUDGE RAINEY: I assume, Mr. Jaffe, you have no
3 redirect.

4 MR. JAFFE: No. I didn't know they were such pals.

5 JUDGE RAINEY: Mr. Sternglass, you may stand down.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 JUDGE RAINEY: Why don't we take a brief break so I
9 can again ascend to the bench.

10 (Recess.)

11 JUDGE RAINEY: Back on the record.

12 Mr. Epstein, do you have any rebuttal testimony
13 which you would like to give?

14 MR. EPSTEIN: I don't know if it is rebuttal as
15 much as a clarification. Because I don't think there is
16 much difference in the political views --

17 JUDGE RAINEY: Let me swear you in, Mr. Epstein.
18 Whereupon,

19 ERIC JOSEPH EPSTEIN
20 having been duly sworn, testified as follows:

21 DIRECT TESTIMONY

22 JUDGE RAINEY: Please be seated. Provide your full
23 name.

24 THE WITNESS: Eric Joseph Epstein.

25 JUDGE RAINEY: Your address?

1 THE WITNESS: 4100 Hillsdale Road, Harrisburg, Pa.
2 17112.

3 JUDGE RAINEY: Please proceed.

4 THE WITNESS: All I essentially wanted to do was --
5 because I don't think there is a discrepancy between what
6 was just presented and my personal views or involvement
7 in the agreement -- I wanted to make it clear that I
8 think there is a difference making a statement and trying
9 to solve complex societal problems. And that is what my
10 involvement with this agreement was.

11 If I can briefly state, I think for the
12 anti-nuclear safe energy community -- any community --
13 this agreement would be beneficial. I think one thing
14 that has been ignored is what happens to plant workers.
15 Under this agreement a half million dollars has been
16 dedicated to reducing radioactive exposure to plant
17 workers. We believe strongly that workers are part of
18 our community.

19 In addition, there is a 25 percent net increase in
20 spending for our community, which is beneficial. One
21 thing that neither Councilman Cohen nor Dr. Sternglass
22 alluded to is that we got an agreement from PECO not to
23 use MOX, which is a fuel that could lead to nuclear
24 proliferation. I think this is a landmark item that
25 shareholders have tried to get through for the last ten

1 years.

2 In addition, we will be able to independently
3 monitor for radioactive releases at Peach Bottom the way
4 we now do at TMI.

5 And frankly PECO is under no obligation to share
6 decommissioning costs. They have agreed to share \$50
7 million of any cost overrun in addition to a 5/95 cost
8 sharing formula, which I think is great precedent and
9 good law.

10 All I wanted to do, because I believe that things
11 need to be verified and empirical, I just want to point
12 out from I believe it was Councilman Cohen's testimony so
13 that the record is clear -- and stop me if I am out of
14 bounds -- there was a reference made to Yucca Mountain
15 never being fully operational. Yucca Mountain has not
16 been built yet.

17 In terms of his concerns for license extension,
18 which I share, that falls under the purview of the NRC
19 and not the PUC.

20 For further clarification, there is a monitored
21 retrievable storage site opened right now. It's the
22 waste isolation pilot project in New Mexico. So perhaps
23 the Councilman confused the two.

24 I believe the Councilman was referring to Calvert
25 Cliffs for relicense extension. It is not the oldest

1 plant in the country. The plant that operated the
2 longest was Maine Yankee, which operated for 32 out of 40
3 years. In addition, most nuclear power plant are
4 designed to operate for 40 years not 30. That is how we
5 save for decommissioning and that is how we apply rate
6 increases as well.

7 Finally, Mr. Cohen stated that ten nuclear power
8 plants have been decommissioned. As of this point
9 Shippingport is the only nuclear power plant that is
10 decommissioned, and it is a 52 megawatt plant. Other
11 large nuclear power plants that are close would probably
12 be Tragen out of Oregon and Maine Yankee in Maine.

13 This is just a way to clarify because I don't
14 believe the Councilman and I have substantive arguments.
15 I believe it is a difference in principle -- or rather
16 strategy over principle.

17 That is it, sir.

18 JUDGE RAINEY: Thank you.

19 Cross-examination, Mr. Jaffe?

20 MR. JAFFE: No, sir.

21 JUDGE RAINEY: Very well. You may stand down,
22 Mr. Epstein.

23 (Witness excused.)

24 JUDGE RAINEY: I assume that there is nothing else
25 in the way of any further testimony to be given here

1 today.

2 I would note that PECO has an outstanding petition
3 for certification before the Commission -- it's second
4 petition for certification of the record with regard to
5 this particular matter. That has not been acted on by
6 the Commission. So we will assume at this particular
7 juncture and time that I will be rendering an initial
8 decision with regard to this matter.

9 Now, in my Prehearing Order No. 2 I did provide a
10 briefing schedule with regard to this matter. Why don't
11 we go off the record briefly to discuss whether or not we
12 need to make any revisions to the briefing schedule which
13 I established in my Prehearing Order No. 2.

14 So we will go off the record and I will entertain
15 any suggestions.

16 (Discussion off the record.)

17 JUDGE RAINEY: Back on the record.

18 There was a discussion which took place off the
19 record with regard to the briefing schedule which I
20 established in my Prehearing Order No. 2. It is my
21 determination that we will stay with the established
22 briefing schedule in this case.

23 Briefs will be due, initial briefs, on May 17,
24 2000. That would be in-hand. And reply briefs would be
25 due on May 24, 2000, in-hand to me and they may be

1 express mailed out to the other parties.

2 MS. McCLOSKEY: Excuse me, Your Honor. Could that
3 be first class mail to the other parties?

4 JUDGE RAINEY: First class mail. I'm sorry,
5 Ms. McCloskey. First class mail to all the other parties
6 with regard to the reply briefs.

7 The briefs must respond to the evidence presented
8 by the opposing parties. They should include specific
9 page references to the testimony and the exhibits as well
10 as any transcript references. All of the other
11 requirements as provided in my Prehearing Order No. 2 are
12 still in effect.

13 Are there any questions with regard to the briefing
14 schedule in this case?

15 (No audible response.)

16 JUDGE RAINEY: Are there any other matters which we
17 need to take up here today?

18 Mr. Bonney.

19 MR. BONNEY: Thank you, Your Honor.

20 I would just ask that the record be marked closed.

21 JUDGE RAINEY: Well, I have some hesitation because
22 sometimes the record is not marked closed until after
23 receipt of the briefs. Your concern is with respect to
24 any additional hearings?

25 MR. BONNEY: My concern is that no party present

1 additional evidence. We have had more than ample
2 opportunity to do that and I think the record should be
3 marked closed.

4 JUDGE RAINEY: Is there any intent on the part of
5 any parties to present anything additionally?

6 (No audible response.)

7 JUDGE RAINEY: I don't see that any hands have gone
8 up or anyone has indicated there would be any additional
9 testimony. Certainly I would not expect that there would
10 be anything additional placed into the record of this
11 particular case.

12 Are there any other concerns?

13 Mr. Kleppinger.

14 MR. KLEPPINGER: Your Honor, just a caveat that
15 there are going to be statements in support that weren't
16 submitted to the court reporter which would not be
17 covered by the closure of the record. They have already
18 been noted.

19 JUDGE RAINEY: Sure. Things that were referred to
20 today and the parties did not have adequate copies to
21 present to the court reporter, of course those parties
22 will present those matters to the court reporter
23 posthaste.

24 Yes, Mr. Epstein?

25 MR. EPSTEIN: Just to request to Mr. Kaplan that in

1 the future your Fed Ex's are fine but the faxes are eating
2 up my copy card at Mail Boxes, Etc. So just a plea that
3 you send Fed Ex and stop with the faxes if possible.

4 MR. KAPLAN: Will you accept a Fed Ex as equivalent
5 to in-hand delivery?

6 MR. EPSTEIN: Yes. That would be fine.

7 JUDGE RAINEY: Okay. I would trust that the
8 parties would take up amongst themselves any other
9 technical problems that you are having with regard to any
10 receipt of information from other parties.

11 If there are no other matters to be taken up here
12 today I would like to that the parties for their
13 participation as well as the witnesses who appeared
14 before us today.

15 This hearing is adjourned.

16 (Whereupon, at 12:06 p.m., the hearing was
17 concluded.)

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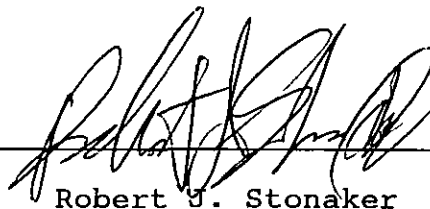
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C E R T I F I C A T E

1
2 I hereby certify, as the stenographic reporter,
3 that the foregoing proceedings were taken
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5 typewriting by me or under my direction; and that this
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