

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of PECO Energy Company :  
and Public Service Electric and Gas Company :  
for Approval of the Merger of Public Service : A-110550F0160  
Enterprise Group Incorporated with and Into :  
Exelon Corporation :

**DOCKETED**  
AUG 0 8 2005

PREHEARING ORDER #2

A prehearing conference in this case was held on March 29, 2005 at 10:00 a.m. in Philadelphia, PA. Present were: (1) PECO Energy Company (PECO) and Public Service Electric & Gas Company (PSE&G) (collectively, joint applicants); (2) the Office of Consumer Advocate (OCA); (3) the Office of Small Business Advocate (OSBA); (4) the Office of Trial Staff (OTS); (5) the Philadelphia Area Industrial Users Group (PAIEUG); (6) Pepco Holdings, Inc. and subsidiaries Conectiv Energy Supply, Inc., Pepco Energy Services, Inc., Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company (collectively, PHI); (7) Citizens for Pennsylvania's Future, Joy Bergey and Lisa Z. Leighton (PennFuture parties); (8) Department of Environmental Protection (DEP); (9) New Jersey Large Energy Users Coalition (NJLEUC); (10) Exelon Utility Coordinated Council, Locals 614 and 777 of the International Brotherhood of Electrical Workers and Frank Kuders (Labor Parties); (11) Eric Joseph Epstein (Epstein); (12) PPL Electric Utilities Corporation (PPL Electric), PPL EnergyPlus, LLC (PPL EnergyPlus), PPL Brunner Island, LLC, PPL Hollywood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL University Park, LLC, Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, PPL companies); (13) the City of Philadelphia (Philadelphia); (14) the Energy Coordinating Agency of Philadelphia, Inc. (ECA); (15) Direct Energy Services LLC (Direct Services); (16) Amerada Hess Corporation (AHC); (17) Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and FirstEnergy Solutions, Corp. (FES) (FirstEnergy companies); (18) Action Alliance of Senior Citizens of Greater Philadelphia,

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Association of Community Organizations for Reform Now and Tenants' Action Group (Action Alliance et al.); (19) The Reinvestment Fund, through its Sustainable Development Fund (TRF/SDF); (20) Mid-Atlantic Power Supply Association (MAPSA); and (21) Philadelphia Gas Works (PGW).<sup>1</sup>

In accordance with Prehearing Order #1, dated December 6, 2005, I received Prehearing Memoranda from

(1) OSBA	(2) OTS	(3) PPL companies
(4) PennFuture parties	(5) Labor parties	(6) OCA
(7) Direct Energy (Stewart)	(8) PHI	(9) Mr. Epstein
(10) TRF/SDF	(11) PAIEUG	(12) City of Philadelphia
(13) FirstEnergy companies	(14) NJLEUC	(15) DEP
(16) MAPSA	(17) Strategic Energy	(18) ECA
(19) Action Alliance et al	(20) joint applicants	(21) PGW
(22) AHC		

This Order discusses the procedural matters addressed at the prehearing conference.

1. The Petition to Intervene filed on February 16, 2005 by PAIEUG was granted.
2. The Petition to Intervene filed on March 2, 2005 by PHI was granted.

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<sup>1</sup> Strategic Energy, LLC (Strategic) had present a representative, whom after the hearing I was informed is not an attorney admitted to practice in Pennsylvania. Therefore, Strategic will be deemed to have been not present.

3. The Petition to Intervene filed on March 4, 2005 by the PennFuture parties was granted.

4. The Petition to Intervene filed on March 4, 2005 by the City of Philadelphia was granted.

5. The Petition to Intervene filed on March 4, 2005 by TRF/SDF was granted.

6. The Protest filed on March 4, 2005 by the Action Alliance et al. was recognized.

7. The Petition to Intervene filed on March 7, 2005 by DEP was granted.

8. The Petition to Intervene filed on March 7, 2005 by NJLEUC was granted in part. On March 24, 2005, the joint applicants filed an Answer in opposition to this Petition, alleging lack of standing. The Petition to Intervene is granted only to those members of NJLEUC that currently are customers of PECO Energy Company. NJLEUC is directed to provide a list of its members intervening in this proceeding on or before April 1, 2005.

9. The Petition to Intervene filed on March 7, 2005 by the Labor Parties was granted. On March 24, 2005, the joint applicants filed an Answer in opposition to this Petition, alleging lack of standing on the part of the non-PECO Energy employees, and issues that are outside the scope of this proceeding and outside the Commission's jurisdiction. While the Petition to Intervene was granted, the Labor Parties are directed to carefully limit the issues they intend to address to those appropriately considered in this proceeding.

10. The Petition to Intervene and Protest filed on March 7, 2005 by Mr. Epstein was taken under advisement. On March 24, 2005, the joint applicants filed an Answer in opposition to this Petition and a Motion to Dismiss the Protest, alleging lack of standing and

issues are outside the scope of this proceeding and outside the Commission's jurisdiction. Until the outstanding Answer and Motion are resolved, Mr. Epstein is cautioned to carefully limit the issues he intends to address to those appropriately considered in this proceeding and within the Commission's jurisdiction.

11. The Petition to Intervene filed on March 7, 2005 by PPL companies was granted.

12. The Motion to Intervene filed on March 7, 2005 by Direct Energy was granted. On March 24, 2005, the joint applicants filed an Answer in opposition to this Petition, alleging lack of standing.

13. The Petition to Intervene filed on March 7, 2005 by AHC was granted.

14. The Petition to Intervene filed on March 7, 2005 by ECA was granted.

15. The late-filed Petition to Intervene filed on March 11, 2005 by FirstEnergy companies was granted.

16. The late-filed Petition to Intervene and Protest filed on March 11, 2005 by Strategic was granted. On March 24, 2005, the joint applicants filed an Answer in opposition to this Petition as well as a Motion to Dismiss the Protest, alleging lack of standing and untimeliness.

17. The late-filed Protest filed on March 26, 2005 by MAPSA was granted. At the prehearing conference, joint applicants objected on the basis that several members of MAPSA are intervening as separate entities in this proceeding.

18. The late-filed Petition to Intervene filed on March 28, 2005 by PGW was granted.

19. The Motion for Admission Pro Hac Vice filed on February 24, 2005 by Daniel Clearfield, Esq., on behalf of Richard P. Bonnifield, Esq., was granted. Mr. Bonnifield is therefore admitted pro hac vice to represent PSE&G in this proceeding. In accordance with Pa. B.A.R. 301(a), Mr. Clearfield remains counsel of record for PSE&G.

20. The Motion for Admission Pro Hac Vice filed on March 23, 2005 by Jesse A. Dillon, Esq., on behalf of Melanie J. Sabo, Esq., was granted. Ms. Sabo is therefore admitted pro hac vice to represent the PPL companies in this proceeding. In accordance with Pa. B.A.R. 301(a), Mr. Dillon remains counsel of record for the PPL companies.

21. The Motion for Admission Pro Hac Vice filed on March 23, 2005 by Jesse A. Dillon, Esq., on behalf of Donald A. Kaplan, Esq., was granted. Mr. Kaplan is therefore admitted pro hac vice to represent the PPL companies in this proceeding. In accordance with Pa. B.A.R. 301(a), Mr. Dillon remains counsel of record for the PPL companies.

22. The Motion for Admission Pro Hac Vice filed on March 23, 2005 by Jesse A. Dillon, Esq., on behalf of Richard L. Rosen, Esq., was granted. Mr. Rosen is therefore admitted pro hac vice to represent the PPL companies in this proceeding. In accordance with Pa. B.A.R. 301(a), Mr. Dillon remains counsel of record for the PPL companies.

23. The Motion for Admission Pro Hac Vice filed on March 23, 2005 by Jesse A. Dillon, Esq., on behalf of James R. Weiss, Esq., was granted. Mr. Weiss is therefore admitted pro hac vice to represent the PPL companies in this proceeding. In accordance with Pa. B.A.R. 301(a), Mr. Dillon remains counsel of record for the PPL companies.

24. The Motion for Admission Pro Hac Vice filed on March 25, 2005 by Theodore H. Jobes, Esq., on behalf of Steven S. Goldenberg, Esq., was granted. Mr. Goldenberg is therefore admitted pro hac vice to represent NJLEUC in this proceeding. In accordance with Pa. B.A.R. 301(a), Mr. Jobes remains counsel of record for NJLEUC.

25. The Motion for Admission Pro Hac Vice filed on March 25, 2005 by Theodore H. Jobes; Esq., on behalf of Steven S. Goldenberg, Esq., was granted. Mr. Goldenberg is therefore admitted pro hac vice to represent MAPSA in this proceeding. In accordance with Pa. B.A.R. 301(a), Mr. Jobes remains counsel of record for MAPSA.

26. Petitions to intervene and motions for admission pro hac vice, if not defective on their face, shall be deemed granted if not objected to within three business days after filing. If objected to, such pleadings will be addressed by order.

27. Pursuant to 52 Pa. Code §1.55, each party - active and inactive - shall be limited to one entry on the service list, although there can be more than one name listed. Each party, if it has not yet done so, is directed to provide the e-mail address, fax number, telephone number and address of the person or persons they wish to have listed on the service list within five days of the date of this Order.

28. My informal e-mail distribution list is as follows. Any changes should be communicated to me, via e-mail ([machestnut@state.pa.us](mailto:machestnut@state.pa.us)) as soon as possible. Please include my secretary, Kathy Niesborella ([kniesborel@state.pa.us](mailto:kniesborel@state.pa.us)) on anything you send to me.

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29. Pursuant to 52 Pa. Code §1.54(d), participants will be considered to be either active or inactive. Active parties will receive all documents and must copy all other active parties (and any inactive party that requests it from that party) on documents they send to the Commission or the presiding officer. They are expected to attend hearings, present witnesses and conduct discovery and cross-examination. Inactive parties will receive only hearing notices and orders. Inactive participants may testify at public input hearing sessions. Briefs, reply briefs, exceptions, reply exceptions and other pleadings may be filed by both active and inactive parties.

Any party that files a petition to intervene and was not present at the first prehearing conference can be granted active party status only upon written request to the presiding officer. Of course, a party's designation as "active" or "inactive" is irrelevant to whether it is invited to participate in particular settlement discussions, which are conducted by the parties themselves.

The active parties are those who were present at the prehearing conference or who filed a Petition to Intervene which was granted: PECO, PSE&G, OCA, OTS, OSBA, PAIEUG, PHI, PennFuture parties, DEP, NJLEUC (PECO customers only), labor parties, Mr. Epstein<sup>2</sup>, PPL companies, Philadelphia, ECA, Direct Services, AHC, FirstEnergy companies, Action Alliance et al., TRF/SDF, Strategic, MAPSA and PGW.

30. Pursuant to 52 Pa. Code §5.342(d), the Commission's regulations relating to discovery are modified as follows. It should be noted that when an interrogatory or motion is served on a Friday or the day before a holiday, the appropriate period is deemed to start on the next business day.

- a) The response period for replying to written interrogatories is 15 calendar days.
- b) Objections to interrogatories are to be communicated orally to the propounder of the interrogatory within five calendar days of receipt and in writing within seven calendar days of receipt of the interrogatory. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.
- c) Motions to dismiss objections and to compel response shall be filed with the Commission and served on me and the other parties within ten calendar days of receipt of the objections. Answers to such motions shall be filed and served within four calendar days after filing of the motion.

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<sup>2</sup> Pending my decision on the outstanding Objection and Motion.

- d) If the objections are not resolved, counsel will alert the presiding officer by e-mail or telephone of the need for a ruling, and a conference call will be scheduled. The presiding officer will make a ruling over the telephone and not reduce it to writing unless requested to do so.
- e) Interrogatories which are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
- f) Pursuant to 52 Pa. Code §5.341(b), neither interrogatories nor responses are to be served on the Commission or the presiding officer, although a certificate of service may be filed with the Commission's Secretary.
- g) Interrogatories and responses are to be served electronically as well as on paper.

The parties are expected to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions.<sup>3</sup>

31. The parties are to confer among themselves in an attempt to resolve all or some of the issues associated with the company's filing.

32. Pursuant to 52 Pa. Code §§ 5.222 and 5.243, the joint applicants suggested that because of the large number of active parties and proposed witnesses, the parties be arranged for purposes of discovery, hearing and briefing, into the following issue groups: (1) customers, employees, savings, rates and service issues ; (2) markets and competition issues; and (3) environmental issues. This is an excellent idea, and the parties are directed to confer to see if this

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<sup>3</sup> Counsel for the joint applicants noted that a confidentiality agreement had been prepared and was being circulated.

can be done, as this would result in a more efficient use of party and Commission time and resources. They are directed to inform me in writing (via e-mail is acceptable) as to whether and to what extent this can be accomplished on or before April 29, 2005. If necessary, a further prehearing conference can be scheduled to discuss this or other procedural issues that may arise.

33. The following schedule was adopted:

Initial discovery request period ends	May 1, 2005
Non-applicant parties, direct testimony	June 28, 2005
All parties, rebuttal testimony (Accelerated discovery on a best-efforts, 10-day basis)	July 29, 2005
All parties, surrebuttal testimony	August 14, 2005
Hearings (transcripts to be provided on a 3-day basis)	August 23 - Sept. 1, 2005
Main briefs	September 23, 2005
Reply briefs	September 30, 2005
Initial decision	November 7, 2005

34. In accordance with the schedule listed above, testimony is to be served and received in-hand by the parties no later than 4:30 p.m. on the dates listed. Parties are directed to also serve their testimony electronically on other parties. Do not file your testimony with the Commission, although you may file a certificate of service. Do not fax or e-mail testimony to me.

35. Testimony should be premarked with numerical, sequential statement numbers. All statements must list on the cover sheet the issues addressed in that statement. Witnesses not identified in a party's prehearing memorandum will not be permitted to testify, except by special permission of the presiding Administrative Law Judge for good cause.

36. All participants are directed to comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal or surrebuttal which should have been included in the active participant's case-in-chief or which substantially varies from the active participant's case-in-chief, unless the evidence is introduced in support of a proposed settlement.

37. All hearings will be held in Philadelphia. The initial day will commence at 10:00 a.m. and subsequent days at 9:00 a.m., unless changed by the presiding officer. Parties will complete the daily witness listing and cross-examination grid as directed.

38. An original and nine copies of all briefs must be filed with the Secretary, in accordance with 52 Pa. Code §5.502(a), and one copy received in-hand by me and all parties no later than 4:30 p.m. on the dates listed. In addition, each party is directed to e-mail its briefs in Microsoft Word 2002 or equivalent to all active parties and me, and to include a copy on disk with the briefs filed with the Secretary. If you do not e-mail your briefs to me, please include a copy on disk.

39. All briefs shall comply with the requirements of 52 Pa. Code §§5.501 and 5.502, and in addition to the mandatory contents set forth in 52 Pa. Code §5.501(a), all main briefs, regardless of length, must contain:

- A. A table of contents;
- B. A history of the proceeding;
- C. A discussion;
- D. Proposed findings of facts (with record citations to transcript pages or exhibits where supporting evidence appears);
- E. Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and
- F. Proposed ordering paragraphs specifically identifying the relief sought; and

40. If a reply brief is not filed, it will be assumed that the party does not dispute the assertions, contentions, arguments, etc. made by the other parties in their main briefs. *While it is not necessary in a reply brief to repeat a particular argument or discussion contained in the main brief, the reply brief should note where the responsive argument is located in the main brief and how it responds to the other parties' assertions, contentions, arguments, etc.*

41. Any brief not filed and served on or before the date fixed therefore will not be accepted for filing, except by special permission of the presiding Administrative Law Judge for good cause.

Date: March 30, 2005

  
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MARLANE R. CHESTNUT  
Administrative Law Judge

Joint Application of PECO Energy Company and Public Service Electric and Gas Company for  
Approval of the Merger of Public Service Enterprise Group Incorporated with and Into Exelon  
Corporation  
Docket Number A-110550F0160

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