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April 14, 2005

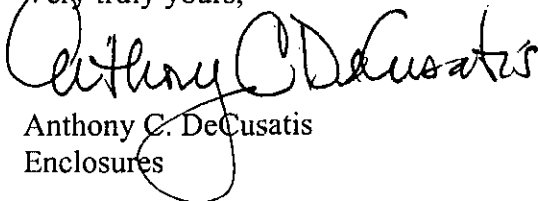
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: **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 No. A-110550F0160

Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding are an original and three copies of the Joint Applicants' Answer In Opposition To the Petition To Intervene of Senator Anthony H. Williams. Copies of the Answer In Opposition and Motion to Dismiss have been served upon the persons and in the manner set forth in the Certificate of Service attached to each of the enclosed documents. Additional copies of this letter and the Answer In Opposition and Motion to Dismiss are enclosed, which we request be date-stamped and returned to us in the stamped, self-addressed envelope we are providing.

Very truly yours,


Anthony C. DeCusatis
Enclosures

c: Per Certificate of Service

KJR

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SECRETARY'S BUREAU

ORIGINAL

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 ENTERPRISE GROUP INCORPORATED WITH AND INTO EXELON CORPORATION

DOCKET NO. A-110550F0160

DOCKETED JUL 12 2005

JOINT APPLICANTS' ANSWER IN OPPOSITION TO THE PETITION TO INTERVENE OF SENATOR ANTHONY H. WILLIAMS

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Pursuant to 52 Pa. Code §5.61, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants) file this Answer to the Petition To Intervene of Senator Anthony H. Williams (Petitioner). PECO Energy respectfully opposes Senator Williams' Petition for the reasons set forth below.

First, the Petitioner does not have standing to participate in this proceeding on a representational basis, which is the capacity in which the Petitioner seeks to intervene. See Paragraph No. 12 of the Petition to Intervene. In applying its regulation at 52 Pa. Code §5.72, the Commission requires a petitioner to establish that it has a direct, immediate and substantial interest in the subject matter of the specific proceeding in which it seeks to intervene. See Landlord Service Bureau, Inc. v. Equitable Gas Company, Docket No. C-000934801 (June 8, 1993), 1993 Pa. PUC LEXIS 54 (stating that the Commission will apply the direct, immediate and substantial interest test set forth

in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168 346 A.2d 269 (1975) to determine standing.) In so doing, the Commission has adopted and incorporated the standing criteria for civil suits and appellate review.

An elected official does not have the right to participate in administrative or judicial proceedings to advocate the interests of his or her constituents. Thus, in *Wilt v. Beal*, 26 Pa. Cmwlth. 298, 363 A.2d 876 (1976), a State Representative initiated an action in the original jurisdiction of the Commonwealth Court to enjoin what he perceived to be an unauthorized use of a state facility by the Department of Public Welfare. The Department contested Representative Wilt's standing to bring the suit. The Commonwealth Court held that Representative Wilt did not have standing:

Wilt complains that the purpose of the bill for which he had voted has been frustrated, this depriving him of the effectiveness of his vote. However, once Wilt's vote had been duly counted and the bill signed into law, his connection with the transaction as a legislator was at an end. Therefore, he retains no personal stake, as required by *William Penn, supra*, in the outcome of his vote which is different from the stake each citizen has in seeing the law observed. He therefore has no standing to sue in his capacity as a legislator.

26 Pa. Cmwlth. at 306, 363 A.2d at 881.

Similarly, in *George v. Pa. P.U.C.*, 735 A.2d 1282, 1287 (Pa. Cmwlth. 1999), a State Representative sought to challenge a final order of the PUC on the grounds that customers were denied due process because they did not receive adequate notice of the Commission's intended action before the order was entered. The Court rejected Representative George's argument on the grounds that he did not have standing to challenge the PUC's Order in a representational capacity:

Petitioner asserts that he received numerous calls from constituents who received written notice too late to participate in the comment period and who found the written notice impossible to understand. The PUC and the Intervenor argue that Petitioner lacks standing as a legislator to litigate the adequacy of the notice afforded his constituents because the PUC's action in this matter does not diminish or interfere with any specific power unique to Petitioner's function under the Pennsylvania Constitution as a state representative. The Court agrees.

Second, the Commission's regulation at 52 Pa. Code § 5.72(a)(2) provides that intervention is permissible only where the petitioner has an interest that is both directly affected and "which is not adequately represented by existing participants." For the reasons set forth above, the Petitioner cannot meet the first prong of that test. In addition, the interests the Petitioner seeks to assert are adequately represented by existing participants.

The Commonwealth has established the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA) to represent the interests of customers and the public in general in proceedings before the PUC.¹ All of those offices are active participants in this case. Hence, the interests the Petitioner desires to assert are already represented by arms of the state government statutorily delegated to fulfill that function on behalf of potentially affected parties and the participation of the Petitioner is not necessary to assure the proper development of the

¹ The OTS was created by 66 Pa. C.S. § 306, which authorizes and directs the OTS to participate in proceedings such as this one to represent the public interest. The OCA was created by 71 P.S. §§ 309-1, *et seq*, which authorize the OCA to represent the interests of all customers in all PUC proceedings. The OSBA is an agency of the Commonwealth authorized by 73 P.S. §§ 399.41 – 399.50 to represent the interests of small business consumers in proceeding before the Commission.

record in this case.² Under analogous circumstances, the Commonwealth Court held that a utility did not have standing to challenge a PUC regulation that required the utility to disclose customer usage information to third parties because the OCA was statutorily empowered to protect those interests:

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

The Mid-Atlantic Power Supply Association v. Pa. P.U.C., 746 Pa. Cmwlt. 1196, 1200 (Pa Cmwlt. 2000).

The Petitioner certainly has the right to represent and advocate the interests of his constituents in the Senate of Pennsylvania. However, he does not have a similar legal right to participate in a representational capacity in PUC proceedings. That right has been expressly conferred, by statute, upon specific agencies of state government who, as a consequence, are the only ones with the right to take positions before the PUC that bind the parties they represent.

² The interests that the Petitioner identifies in his Petition to Intervene, namely, whether the proposed transaction will yield affirmative benefits to customers and its impact on service, rates and PECO Energy's community involvement, are also issues that the OTS, OCA and the OSBA have indicated they intend to investigate. See Prehearing Memorandum of the Office of Trial Staff, ¶¶ 1-4, 5 and 7; Prehearing Memorandum of the Office of Consumer Advocate, § II (pp. 3-6); Prehearing Memorandum of the Office of Small Business Advocate, pp. 3-4.

Third and finally, PECO Energy respectfully submits that the Petition to Intervene is untimely. The Commission set March 7, 2005 as the deadline for the filing of protests or petitions to intervene in this proceeding. *See Pennsylvania Bulletin*, February 18, 2005. The Petition to Intervene is dated March 24, 2005.³ Accordingly, the Petition to Intervene is untimely, and the Petitioner has not alleged a good cause for not complying with the time limits previously established by the Commission in this case. The Petitioner did not attend the Prehearing Conference held in this matter, did not submit a Prehearing Memorandum as required by Paragraph 2 of the Prehearing Conference Order and has not identified witnesses or the specific issues to be pursued, as also directed in Paragraph 2 of the Prehearing Conference Memorandum.

ANSWER TO SPECIFIC AVERMENTS

1. Admitted.

2. Denied in part and admitted in part. It is admitted that intervention in proceedings before the Pennsylvania Public Utility Commission (PUC or Commission) is governed by the PUC's regulation at 52 Pa. Code § 5.72. It is denied that the criteria for intervention are those averred by the Petitioner or that Petitioner has the right to intervene in this proceeding. To the contrary, the Petitioner does not have standing to participate in this proceeding in his representative capacity for all of the reasons set forth above.

3. Denied. The averments of Paragraph No. 3 of the Petition are denied for the reasons set forth above and in Paragraph No. 2 of this answer, which are incorporated herein by reference.

³ PECO Energy was not served with the Petition to Intervene until April 11, 2005.

4. Denied in part and admitted in part. It is admitted that Petitioner represents the Eighth Senatorial District of Pennsylvania and that the location and size of that district are as averred by the Petitioner. For the reasons set forth above, which are incorporated herein by reference, it is denied that the Petitioner has the legal authority or mandate to intervene in this proceeding in a representational capacity on behalf of his constituents.

5. Denied. It is denied that PECO Energy's rates are as much as 9 cents above the national average. In further answer, the rates charged by PECO Energy are those previously established by the Commission, found to be just and reasonable, and not more than is necessary to provide a fair return on the fair value of its rate base, as required by the Public Utility Code (66 Pa. C.S. §§ 101 *et seq.*).

6. Denied. Initially, for the reasons set forth in the Joint Application of PECO Energy and PSE&G, the proposed transaction does not constitute a change in control as defined in the Commission's Statement of Policy at 52 Pa. Code § 69.901 and is not otherwise subject to approval under Section 1102(a) of the Public Utility Code (66 Pa. C.S. §1102(a)). For that reason, the Joint Applicants have requested that the Commission issue a declaratory order to that effect or, in the alternative, approve the Joint Application. However, even if the proposed transaction were required to meet the requirements of Section 1103 of the Public Utility Code for approval by the PUC, testimony and exhibits submitted by the Joint Applicants, as well as the Joint Application itself, identify significant affirmative benefits that fully satisfy the criteria for approval established in *York v. Pa. P.U.C.*, 449 Pa. 136, 295 A.2d 825 (1972). Contrary to the Petitioner's averments, the Joint Application and the accompanying testimony and

exhibits contain extensive discussion of the “tangible benefits” customers will realize from the merger.

7. Denied. The averments of Paragraph No. 7 of the Petition are denied for the reasons set forth in Paragraph No. 6, above, which are incorporated herein by reference. Contrary to the Petitioner’s averments, the benefits to customers from the proposed transaction have been set forth in detail in the Joint Application and in the testimony and exhibits that accompany it.

8. Denied. The averments of Paragraph No. 8 of the Petition are denied for the reasons set forth in Paragraph No. 6, above, which are incorporated herein by reference. Contrary to the Petitioner’s averments, the benefits to customers from the proposed transaction have been set forth in detail in the Joint Application and in the testimony and exhibits that accompany it. In further answer, the “gross synergies” identified by the merger partners include synergies attributable to non-regulated entities and the synergies attributable to regulated entities other than PECO Energy. The synergies that will be generated by the regulated public utility subsidiaries of the merger partners, and PECO Energy in particular, have been identified and quantified in PECO Statement No. 2, which was filed with the Joint Application.

9. Denied in part and admitted in part. It is admitted that the Joint Application states that the increased scale and scope to be created by the proposed transaction is expected to result in improved service to customers. It is denied that the Joint Applicants failed to provide “details” about the service improvements anticipated as a result of the merger.

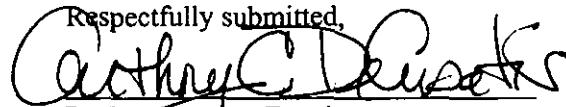
10. Denied as stated. The interests in this proceeding of residents of the Eighth Senatorial District that are customers of PECO Energy are already represented by the OTS, the OCA and OSBA. As previously explained, Pennsylvania's appellate courts have held that the Petitioner, in his capacity as a legislator, does not have an interest in this proceeding that will permit his intervention as a litigant with party status on behalf of the residents of the Eighth Senatorial District.

11. Denied. The Joint Applicants' commitment to invest in the communities they serve through charitable contributions and economic development initiatives is expressly stated and extensively discussed in the Joint Application and the accompanying testimony. The balance of the averments of Paragraph No. 11 of the Petition is a prayer for relief to which a response is not required. In any event, although the Joint Applicants' commitment to the communities will be maintained by the proposed merger, there is no basis in law for granting the relief Petitioner requests. The submission of "detailed plans" for either charitable giving or contributions to economic development has never been a requirement for the approval of a transaction under Section 1103 of the Public Utility Code and, in fact, the Commission has previously held that it does not have authority to require such contributions from the public utilities it regulates. *Pa. P.U.C. v. Pennsylvania-American Water Company*, Docket No. R-00038304 (January 30, 2004) (Slip Op. at 87) ("Quite simply, the Commission is without authority to require PAWC, or any public utility, to either make or increase charitable contributions derived solely from shareholder funds and kept entirely 'below-the-line' for rate making purposes.")

12. Denied. For the reasons set forth above, which are incorporated herein by reference, the Petitioner, in his representational capacity, does not have a legally

cognizable interest in this proceeding and, therefore, does not have standing to intervene in this case on the grounds he asserts.

THEREFORE, for the reasons set forth above, PECO Energy respectfully opposes the Petition to Intervene of Senator Anthony H. Williams.

Respectfully submitted,


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Counsel for Public Service
Electric and Gas Company

Dated: April 14, 2005

ORIGINAL

**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
ENTERPRISE GROUP INCORPORATED
WITH AND INTO EXELON
CORPORATION**

Docket No. A-110550F0160

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Joint Applicants' Answer In Opposition To The Petition To Intervene and Motion to Dismiss Of Senator Anthony H. Williams upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

VIA FEDERAL EXPRESS & ELECTRONIC MAIL

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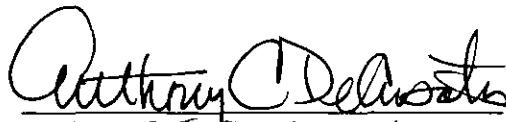
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Anthony C. DeCusatis, Esquire
Counsel for PECO Energy Company

Date: April 14, 2005

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SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Joint Application of Peco Energy :
Company and Public Service :
Electric and Gas Company for : Docket No.
Approval of the Merger of Public : A-110550F0160
Service Enterprise Group :
Incorporated with and into :
Exelon Corporation :**

**Eric Joseph Epstein's Response to Joint
Applicants' Answer in Opposition to the Petition
to Intervene of Eric Joseph Epstein**

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

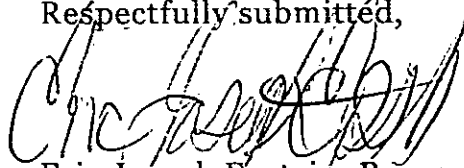
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JUL 12 2005

**DOCUMENT
FOLDER**

Dear Secretary McNulty:

Enclosed for filing in the Above-Captioned proceeding is an original and three (3) copies of each of Eric Joseph Epstein's Response to Joint Applicants' Answer in Opposition to the Petition to Intervene of Eric Joseph Epstein.

Respectfully submitted,



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

KJR

DATED: April 15, 2005

I. History of the Proceeding

1) On December 22, 2004, Peco Energy Company ("PECO" or "PECO Energy") and Public Service Electric and Gas ("PSE&G") announced a proposed merger;

2) On February 4, 2005, PECO Energy served Mr. Epstein with a hard copy of the Joint Application of PECO and PSE&G for Approval of the Merger of PSE&G with the Pennsylvania Public Utility Commission ("PUC" or "Commission"). The filing was delivered by Federal Express and included Supporting Testimony and Supporting Exhibits;

3) On February 19, 2005, the Notice of the Proposed Merger appeared in the Pennsylvania Bulletin, and the filing deadline was set for March 7, 2005;

4) On March 7, 2005, Eric Joseph Epstein, Protested the 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;

5) On March 11, 2005, a Confidentiality Agreement was executed between Edward J. Cullen, Vice President & Deputy General Counsel, Corporate & Commercial, Exelon Business Services Company and Eric Joseph Epstein;

6) Eric Epstein filed Interrogatories, Set I on March 14, 2005; and,

7) Epstein filed Interrogatories, Set II on March 18, 2005.

8) On March 24, 2005, PECO and PSE&G filed Joint Applicants' Answer in Opposition to the Petition to Intervene of Eric Joseph Epstein; and Joint Applicants' Motion to Dismiss the Protest of Eric Joseph Epstein;

9) On March 29, 2005, the Honorable Marlane R. Chestnut Administrative Law Judge, PA PUC, convened a Prehearing Conference at State Office Building in Philadelphia;

10) Mr. Epstein and the Joint Applicants' provided oral arguments relating to Mr. Epstein's Petition to Intervene;

11) On March 31, 2005, Judge Chestnut issued Revised Prehearing Order #2, and noted Mr. Epstein's status as an Active Party was, "pending my decision on the Outstanding Objection and Motion" (Page 8, Footnote 1); and,

12) On April 12, 2005, Epstein Interrogatories, Set III were served on all parties identified in the Revised Prehearing Order # 2.

II. Eligibility to Intervene.

13) **CHAPTER 5. FORMAL PROCEEDINGS, § 5.72. Eligibility to Intervene**, defines rights of intervention as:

(a) *Persons*. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

14) Mr. Epstein's eligibility to intervene is clearly afforded under CHAPTER 5. FORMAL PROCEEDINGS, § 5.72. (a) *Persons* (2) and (3);

15) Mr. Epstein possesses a “direct, immediate and substantial interest” in the Proposed merger (1);

16) These “interests” (identified in Paragraphs: 18, 19, 20, 21, 22 & 23) are not represented or protected by Active Parties in the Present proceeding;

17) Moreover, Mr. Epstein may be bound by the “action of the Commission in the proceeding”;

18) As a Signatory to the Negotiated Settlement (2), the Proposed Merger between Exelon and PSE&G, (as well as Settlement discussions scheduled for May 9- May 20, 2005), have the potential to address, open, reopen and renegotiate issues from the Unicom Settlement Agreement;

¹ In applying its regulation at 52 Pa. Code §5.72, the Commission requires a Petitioner to establish that it (or h/she) has a direct, immediate and substantial interest in the subject matter of the specific proceeding in which it (h/she) seeks to intervene. See *Landlord Service Bureau, Inc. v. Equitable Gas Company*, Docket No. C-000934801 (June 8, 1993), 1993 Pa. PUC LEXIS 54 (stating that the Commission will apply the direct, immediate and substantial interest test set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168 346 A.2d 269 (1975) to determine standing.)

Excerpted from: Joint Applicant’s Answer in Opposition to the Petition to Intervene of Senator Anthony H. Williams, April 14, 2005, pp. 1-2

² Mr. Epstein served as a negotiator and is signatory to the Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of A Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation Application Docket No. A-110550F0147, March 23, 2000.

Pages 2, 12-13, & 50, acknowledge Eric Joseph Epstein’s legal obligations to abide by, and implement the terms of, the Unicom Settlement.

Please refer to Enclosure I.

19) Additionally, Eric Joseph Epstein and PECO Energy negotiated a separate Agreement (referred to as Appendix B: Nuclear Monitoring and Waste Storage Agreement) (3), that recognizes Mr. Epstein's "participation" as being in the "public interest,"

4. (1) PECO recognizes that Mr. Epstein and the EFMR Monitoring Group at Peach Bottom, herein referred to as the "Group", have a special interest in the continued safe operation of the Peach Bottom Atomic Power Station ("Peach Bottom"). For purposes of maintaining continuity and enhancing community awareness of Peach Bottom during the term of this Agreement, PECO will recognize the Group."

20) The issues contained in the Agreement not only meet the "public interest" threshold but represent dedicated interests managed and administered by Mr. Epstein for rate payers, citizens and communities in South Central Pennsylvania;

21) "Public interest" issues that benefit PECO Energy rate payers include:

- 6. Robotics Research. (p. 9).
- 7. Use of Mixed Uranium (MOx) Fuel "PECO shall refrain from the use of MOx fuel in any nuclear reactor included in the PECO Nuclear Plants" (p. 10).
- 8. Community Responsibility and Cooperate Culture. 5% per annum increase for South Central Pennsylvania (p 10).
- 9. Storage of spent fuel/Radioactive waste. PECO agrees that, during the term of this Agreement, PECO will not store spent fuel or radioactive waste from any nuclear reactor other than those located at the Peach Bottom site." (p. 10).

³ Please refer to Enclosure II for a copy of Appendix B: Nuclear Monitoring and Waste Storage Agreement.

Also, please note that Paragraph 17 clearly defines "Successors, Assigns, Etc.", and Paragraph 18 explicitly states that, "this Agreement and all of its conditions and provisions are for the sole benefit of Mr. Epstein and PECO..."

22) Mr. Epstein filed a Statement of Support included in the RECOMMENDED DECISION on June 1, 2000, and was subsequently seated on the Low Income Usage Reduction (LIURP) ADVISORY COMMITTEE (p. 10) to ensure Universal Service Provisions of the Unicom Settlement were distributed to PECO Energy rate payers in Delta Borough, Fawn Township, Chanceford Township, Lower Chanceford Township and Peach Bottom Township in York County; and;

23) Mr. Epstein may be the only Active Party (4) in a position to monitor if reductions in shareholder services will flow back to rate payers as represented in the Direct Testimony of William D. Arndt (5).

III. The Issues Mr. Epstein Raised in his Prehearing Memorandum are Germane to this Proceeding

23) Mr. Epstein owns and operates a nonprofit business in South Central Pennsylvania, i.e., EFMR Monitoring, Incorporated, that invests in economic development, distributes potassium iodide at no costs, and provides emergency planning and radiation monitoring at no charge to PECO rate payers;

4 Eric Joseph Epstein has been a Philadelphia Electric Company/PECO Energy Company shareholder in good standing since September 24, 1987. Mr. Epstein is also an active participant in the Company's dividend reinvestment program. Mr. Epstein's shareholder status is proprietary, and available upon request by Parties which execute a Confidentiality Agreement with Eric Joseph Epstein.

5 Volume III, PECO Statement No. 2, Direct Testimony of William D. Arndt, NET REGULATED SAVINGS, p.5, CORPORATE AND ADMINISTRATIVE PROGRAMS, Lines 1-9, p. 18, Line 14; and, i. Shareholder Services, p. 24 Lines 4-11.

6 On January 22, 2005, Mr. Epstein notified Mr. Bonney that he had been hired by Dauphin County as an expert witness in the Three Mile Island-1 tax reassessment case involving Exelon Corporation. Therefore, **Mr. Epstein is precluded from raising issues in this Proceeding relating to land valuation or property appraisals.**

24) While Mr. Epstein's business complements the efforts of the Pennsylvania Department of Environmental Protection (DEP) (7), he remains the only entity in south central Pennsylvania that operates a real-time environmental monitoring system;

25) In addition, Eric Joseph Epstein has been recognized as an expert witness before the Commission on nuclear economics in multiple proceedings (Vitae available upon request);

26) Mr. Epstein has worked cooperatively with AmerGen, FirstEnergy, PPL, PECO Energy, PPLICA, PAIEUG, the OCA and the OTS to resolve nuclear tariffs;

27) The Office of Consumer Advocate explicitly stated in its Prehearing Memorandum the potential exposure for PECO rate payers as a result of the proposed nuclear consolidation, i.e., Additional Nuclear Risks to PECO Rate payers (f. 8);

7 The DEP's Prehearing Memorandum stated, "The Joint Applicants own or operate several nuclear power stations within the states of New Jersey and Pennsylvania that are subject to the Department's radiation protection and nuclear safety surveillance and oversight program established by the Radiation Protection Act, 35 P.S. §§ 7110.101 et seq. The Department is concerned whether and how the proposed merger will affect its current program and the related efforts of the Department and other Commonwealth agencies to respond to events at the Joint Applicants' nuclear power stations in the future (p. 4).

8 This merger will bring PSEG's nuclear plants under one corporate control with PECO's nuclear plants. This presents additional risks, such as the costs and uncertainties of unforeseen nuclear decommissioning and waste management costs, the costs and uncertainties of major outages, the potential significant liabilities that could result from increased safety requirements, and the significant costs of future capital additions. The OCA will examine the risks to rate payers posed by the combination of nuclear plants under one corporate structure. In addition, then OCA will examine conditions that may be necessary to protect PECO rate payers from the additional risks" (p. 5);

28) PAIEUG specifically raised concerns about the impact of the proposed merger on nuclear tariffs in its Prehearing Memorandum, i.e. “How the proposed merger will effect PECO's nuclear decommissioning cost adjustment surcharge” (c. p. 2”);

29) The Office of Trial Staff, like Mr. Epstein, raised market share (9) issues of, “Whether the virtual divestiture of the nuclear generation will adequately mitigate the market power issues created by the merger” (OTS.6, p. 3); and

30) Mr. Epstein is the only Party with a binding Agreement with PECO Energy that ensures adequate staffing levels as nuclear generation becomes linked to a regionalized work force (10).

IV. Proposed Action

33) THEREFORE, for the reasons set forth above, Mr. Epstein respectfully requests that the Joint Applicants’ Answer in Opposition to the Petition to Intervene of Eric Joseph Epstein be rejected.

9 The increased capacity of Exelon’s nuclear generation through “power uprates” and license extensions has a direct impact on the virtual divestiture of the Company’s nuclear generating assets.

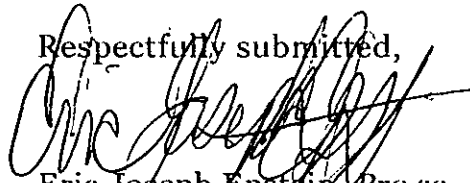
Currently, the Joint Applicants have no plans to include “power uprates” or license extensions in their “virtual market” mitigation plan.

However, PSE&G has proposed filing for an extended license at the Hope Creek Generating Station, Unit 1 in June 2007 (ML003700352), and the Salem Generating Station, Units 1 and 2 in July-September, 2007 (ML003700352).

These proposals could have a material adverse affect on PECO Energy's decommissioning funding stream, and potentially increase T&D rates.

10 Appendix B: Nuclear Monitoring and Waste Storage Agreement. 9. Community Responsibility and Corporate Culture, (3), p. 10.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Joseph Epstein", written over the typed name below.

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DATED: April 15, 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

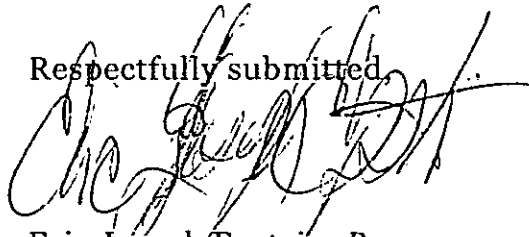
**Joint Application of Peco Energy :
Company and Public Service :
Electric. and Gas Company for : Docket No.
Approval of the Merger of Public : A-110550F0160
Service Enterprise Group :
Incorporated with and into :
Exelon Corporation :**

ERIC JOSEPH EPSTEIN'S, *Pro se*
SERVICE LIST

CERTIFICATION OF SERVICE

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

Respectfully submitted,



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ENCLOSURE I

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

JOINT PETITION FOR SETTLEMENT

March 23, 2000

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**BEFORE THE
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AND (2) THE MERGER OF THE NEWLY :
FORMED HOLDING COMPANY AND :
UNICOM CORPORATION :**

JOINT PETITION FOR SETTLEMENT

This Joint Petition for Settlement (“Joint Petition”) is submitted by the following parties in the above-captioned proceeding: PECO Energy Company (“PECO” or the “Company”); the Office of Trial Staff (“OTS”); the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); Citizens for Pennsylvania’s Future and the ten named individuals that joined in its Protest and Petition to Intervene (collectively, “PennFuture”); Senator Vincent J. Fumo; the City of Philadelphia; Clean Air Council and the three named individuals that joined in its Protest and Petition to Intervene (“CAC”); the Consumers Education and Protective Association *et al.* (“CEPA”)¹; Enron Energy Services, Inc. (“Enron”); the Philadelphia Area Industrial Energy Users Group (“PAIEUG”); the Industrial Energy Consumers

¹ As used herein, “CEPA” refers collectively to the Consumer Education and Protective Association (“CEPA”), the Association of Community Organizations for Reform Now (“ACORN”) and the Tenants’ Action Group (“TAG”), which are represented by common counsel and submitted a joint protest and petition to intervene.

of Pennsylvania (“IECPA”); Conectiv Energy (“Conectiv”); Eric Joseph Epstein; Patricia McNamara; the National Railroad Passenger Corporation (“Amtrak”); and the Mid-Atlantic Power Supply Association (“MAPSA”) (all such parties collectively referred to as the “Joint Petitioners”).

The terms and conditions set forth in this Joint Petition represent a comprehensive settlement (“Settlement”) among the aforementioned parties that resolves all issues pertaining to the above-captioned Application.² The Joint Petitioners aver that this comprehensive Settlement is in the public interest and, therefore, request that the Commission: (1) approve without modification the proposed Settlement as set forth herein; (2) issue the Certificates of Public Convenience and enter Orders granting the approvals and making the findings requested in PECO’s Application; and (3) approve the tariff supplements, appended hereto, that are necessary to implement the rate reductions and other changes agreed to as part of the proposed Settlement.

In support of their request, the Joint Petitioners state as follows:

I. SUMMARY OF SETTLEMENT

The Joint Petitioners have agreed to the proposed Settlement terms and conditions set forth in this document as a means to resolve, fairly and equitably, all issues arising from the Application filed by PECO for approval of the proposed corporate restructuring and merger. As a result of this Settlement, further protracted litigation is avoided and customers can begin to realize the benefits of this Settlement

² The Joint Petitioners understand that West Penn Power Company, The Potomac Edison Company and Monogahela Power Company (“Allegheny Power”) and Allegheny Energy Supply Company, LLC (“AESC”) will submit a separate letter indicating they do not oppose or take exception to the Settlement. Additionally East Brandywine Township and Wallace Township have indicated that they are taking no position on the Settlement at this time. PECO agrees that East Brandywine Township and Wallace Townships are in no way precluded from pursuing a separate agreement with PECO as to additional reliability upgrades and assurances.

("PECO's Pre-Existing Nuclear Interest Funds"). No part of the cost of decommissioning Acquired Nuclear Interests shall be paid from PECO's Pre-Existing Nuclear Interest Funds.

15. The Joint Petitioners agree that if the actual expenditures necessary to accomplish the full decommissioning of PECO's Pre-Existing Nuclear Interests are less than the full balance of PECO's Pre-Existing Nuclear Interest Funds, PECO is entitled to obtain release of such funds for the purpose of sharing the amount between customers and shareholders. In the event of such release, PECO will be permitted to retain for its own benefit (1) the first \$50.0 million of the net after tax released amount and (2) 5.0% of the remaining net after-tax released amount. The balance of the released funds not retained by PECO shall be returned to retail customers in a manner to be directed by the Commission.

16. Nothing in this Settlement is designed to prevent PECO from entering into purchase power agreements with any entity, affiliated or otherwise, for the procurement of nuclear generation.

17. PECO also agrees that, in the event that any nuclear generating unit owned by PECO or a PECO affiliate experiences an incident or accident that results in uninsured damage claims in excess of \$1 billion, PECO shall: (i) notify the PUC within 60 days of such incident or accident, and (ii) within 90 days thereafter, demonstrate that PECO's net cash flows are sufficient for PECO to provide safe, adequate, continuous, efficient, reliable and reasonable distribution service to its Pennsylvania customers at reasonable rates.

18. **Nuclear Monitoring and Waste Storage.** PECO shall enter into an agreement with Eric Joseph Epstein which shall be substantially in the same form as that attached hereto as Appendix B. This Agreement shall specifically address certain issues relating to the continued safe operation of

Peach Bottom 2 and 3, robotics research, and community involvement concerns raised by Mr. Epstein.

This Agreement is referenced for informational purposes only. The parties do not specifically request the Commission to approve this Agreement as part of the Joint Petition for Settlement.

C. Reliability And Customer Service.

19. PECO commits to a Quality of Service Plan ("Service Plan") designed to provide higher levels of reliability and customer service in PECO's service territory. The Company also agrees to continue its commitment and efforts to resolve reliability problems identified in several specific areas, which include, but are not limited to, the on-going efforts in East Brandywine Township, Aston Township, Wallace Township, York County as well as other areas. The Company agrees that it will continue to respond to customer and community concerns regarding reliability and will not argue that this Settlement or Service Plan limits or eliminates its responsibility to address reliability concerns throughout its service territory.

20. The Company agrees to establish service quality standards that enhance reliability and customer service over the period from January 1, 2001 to December 31, 2005. The Company and the Joint Petitioners further agree to reconvene in 2005 to determine if further action is necessary and, if so, the nature and scope thereof.

21. The Company, OCA, OTS, the City of Philadelphia and other interested parties agree to work cooperatively to provide higher levels of reliability and customer service over the period from January 1, 2001 through December 31, 2005. The parties also agree to work cooperatively to determine necessary action to be implemented pursuant to the Service Plan each year.

22. The Service Plan will include specific measurement areas where the Company will be

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ENCLOSURE II

APPENDIX B

NUCLEAR MONITORING AND WASTE STORAGE AGREEMENT

This Settlement Agreement (the "Agreement") is made between Eric J. Epstein ("Mr. Epstein"), and PECO Energy Company, its successors and assigns ("PECO"), and is based on the following recitals, all of which are hereby agreed to be true:

RECITALS

A. PECO Energy Company has ownership interests in Peach Bottom Nuclear Station Units 1, 2, and 3; Limerick Nuclear Station Units 1 and 2, and Salem Nuclear Station Units 1 and 2 ("PECO Nuclear Plants").

B. PECO has made a filing at the Pennsylvania Public Utility Commission, in Docket No. A-110550F0147, in which it has requested authorization to transact a corporate restructuring and a merger with Unicom Corporation ("PECO Merger Proceeding"). As a result of that filing, PECO intends to create a parent holding company ("Exelon"), as contemplated by the Amended and Restated Agreement and Plan of Exchange and Merger, dated as of January 7, 2000 Among PECO Energy Company, NewHoldco Corporation and Unicom Corporation, or any successor agreement thereto. In that connection, PECO intends to transfer its ownership interest in the PECO Nuclear Plants to an affiliated electric generation company ("Exelon GENCO"); file one or more applications to extend or renew one or more of the operating licenses of the various nuclear generating units included in the PECO Nuclear Plants; and file one or more applications to enlarge or otherwise expand the radioactive waste storage capacity located at any one or more of the PECO Nuclear Plants nuclear station sites (the proceedings initiated to address license extensions and storage capacity expansion shall be referred to herein as "Other Nuclear Application Proceedings").

C. Mr. Epstein has an interest in the continued safe operation of PECO Nuclear Plants, is an intervenor to the PECO Merger Proceeding and is prepared to file, and to encourage

others to file a petition for leave to intervene and opposition in any one or more of the License Transfer Proceedings and the Other Nuclear Application Proceedings.

D. Through this Agreement, PECO and Mr. Epstein wish to resolve Mr. Epstein's concerns about the License Transfer Proceedings and the Other Nuclear Application Proceedings, and settle all possible claims and disputes of any nature between Mr. Epstein, on the one hand, and PECO, on the other hand, relating in any way to the the proposed corporate restructuring and merger with Unicom; all License Transfer Proceedings initiated in connection with the corporate restructuring or merger; and any of the Other Nuclear Application Proceedings filed within the five-year term of this Agreement

E. This Agreement is also intended in order to, among other things, provide for the payment by PECO of costs associated with certain Authorized Activities, as defined herein, related to the PECO Nuclear Plants which will be undertaken by or on behalf of Mr. Epstein in accordance with any statutory or regulatory requirements which are or may hereafter become applicable to this Agreement.

NOW, THEREFORE, recognizing that it is in the public interest to provide for the timely dissemination and availability of information regarding the operation of the PECO Nuclear Plants and the ability of the community living or working in the vicinity of those plants to monitor their environment, and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby represent, warrant and agree as follows:

1. Term of Agreement. Except as otherwise provided in this Agreement, the term of this Agreement, and the parties' rights and obligations under this Agreement, shall be for a period of five (5) years, commencing on the Exelon Merger Effective Date, and ending on the fifth anniversary thereof, unless otherwise extended by mutual agreement of the parties hereto. The Exelon Merger Effective Date shall be the calendar date on which the corporate restructuring and merger involving PECO Energy Company and Unicom Corporation, as contemplated by the

Exelon Merger Agreement, becomes effective. PECO agrees to provide Mr. Epstein with notice identifying the Exelon Merger Effective Date.

2. Status of Petition for Leave to Intervene. Upon the execution of this Agreement, Mr. Epstein represents and warrants that he will neither 1) file, nor encourage others to file, a petition for leave to intervene or express opposition in any License Transfer Proceeding or any Other Nuclear Application Proceeding(s), nor 2) file, nor encourage others to file, a complaint, petition for leave to intervene in any proceeding, or express opposition before any agency or court related to any License Transfer Proceeding or Other Nuclear Application Proceeding(s), either on his own behalf or on behalf of any group with which he is affiliated.

3. Absence of Contested Proceeding. This Agreement and all of PECO's performance obligations under this Agreement are absolutely conditioned upon the absence of any contested proceeding, before the NRC or before any reviewing court, challenging any aspect of any proposed license transfer made in connection with the corporate restructuring or merger with Unicom. Notwithstanding this Agreement, in the event that a hearing is otherwise ordered by the NRC or a complaint or petition for review initiating a lawsuit is filed in any court which seeks to challenge any aspect of the proposed license transfer, this Agreement will become voidable at the option of PECO.

4. Recognition of EFMR Monitoring Group

(1) PECO recognizes that Mr. Epstein and the EFMR Monitoring Group at Peach Bottom, hereinafter referred to as the "Group," have a special interest in the continued safe operation of the Peach Bottom Atomic Power Station ("Peach Bottom"). For the purposes of *maintaining continuity and enhancing community awareness of Peach Bottom during the term of this Agreement*, PECO will recognize the Group.

(2) The Group shall report to a Board consisting of three (3) persons, and Mr. Epstein or his designee will be the Coordinator of the Group and the Board.

(3) Excluding Mr. Epstein, all Group members must live or work in the geographic vicinity of Peach Bottom (i.e., within a twenty-five (25) mile radius of Peach Bottom). Board members will be proposed by Mr. Epstein, PECO or other members of the community living or working in the geographic vicinity of Peach Bottom. All Board members must be approved by PECO and Mr. Epstein, but approval of proposed Board members will not be unreasonably withheld by either party.

(4) The Group will not be recognized or discussed in the Peach Bottom Technical Specifications or FSAR or in any other NRC-authorized or NRC-licensed program.

(5) At the end of the initial five year term of this Agreement, the Board may recommend that PECO continue its recognition of the Group. Based on any such recommendation, PECO may choose, in its absolute, unreviewable discretion, to continue recognition of the Group beyond the initial five year term of this Agreement.

5. Benefits to Which the Group is Entitled

(1) General Status. The Group is not generally entitled to any special benefits or privileges not available to the general public. The only benefits and privileges available to the Group are those specified in this Agreement.

(2) Reports, Etc.

(a) The Group will be entitled to receive from PECO copies of its Annual Radiation Environmental Operating Report(s) and its Annual Environmental Report within ten days of their issuance by PECO, or receipt by PECO, as applicable. PECO will also forward copies of the Exelon Annual Report to Shareholders and the Mason Dixon Report on a timely basis.

(b) The Group will also be placed on a mailing list for receipt of copies of all PECO press releases related to Peach Bottom and other information provided to the media relating to Peach Bottom in a timely manner.

(3) Annual Briefing. PECO will provide the Group with an annual briefing related to Peach Bottom. For the purposes of this Agreement, the annual briefing shall be scheduled to take place at the same time and location as the annual briefing to EFMR at Three Mile Island under the

certain "Settlement Agreement" dated January 9, 1999, between Mr. Epstein and AmerGen Energy Company, L.L.C., relating to Three Mile Island Unit 1 (TMI-1). Within thirty days prior to the scheduled date of such briefing, the Group will provide PECO with a list of the specific topics which it wants PECO to cover at the briefing. PECO will provide a general overview of Peach Bottom operations during the past year at the briefing and make a good faith effort to cover all of the designated topics, respond to specific questions at the briefing, and provide appropriate follow-up information to the Group.

(4) Certain NRC Meetings. Subject to applicable NRC restrictions and requirements, PECO will provide the Group with at least seventy-two hours advance notice of, and an opportunity to attend, any public meeting with the NRC with respect to Peach Bottom regarding the following subject areas: (a) core-shroud or core cooling system issues; (b) radioactive waste issues, including but not limited to, low level waste, high level waste, and spent fuel issues; (c) security issues; and (d) radiation monitoring.

(5) Other Information in the Event of NRC Shutdown Order. In the event that the NRC issues an Order requiring the shutdown of Peach Bottom, other than a generic Order affecting all plants or all plants of a specific class or type, PECO agrees to provide the Group with access to the following information, subject to the terms and conditions set forth below:

(a) Within a reasonable time after receipt of a written request from the Group, PECO shall make available for review by authorized Group representatives copies of any INPO Final Site Evaluation Reports relating to Peach Bottom or INPO Final Corporate Support Evaluation Reports relating to Peach Bottom which were given to PECO during the prior twelve (12) month period. The Group may review such reports once during the calendar year. PECO will excise from INPO Final Corporate Support Evaluation Reports any references to plants other than Peach Bottom. Authorized Group representatives shall include Mr. Epstein and other Group representative(s) specifically authorized by PECO. PECO's authorization may not be unreasonably withheld.

(b) Any review of INPO reports conducted by Group representatives pursuant to this Agreement shall be subject to the following conditions:

(i) Any review of INPO reports shall be made at PECO's offices in the presence of PECO representatives. The Group's representative(s) will not request or otherwise obtain copies of any or all of a report, but they may take notes while reviewing a report.

(ii) Any notes taken by the Group's representatives during a review of an INPO report may be viewed solely by Group personnel, and shall at all times remain in the physical custody, protection and control of the Group.

(iii) Neither the Group, nor the Group representative(s) who reviewed any INPO report, may disclose to any persons (other than members of the Group), or otherwise publicize any information obtained from any review of an INPO report. The Group, however, may make comments to the NRC which include factual information obtained from the review of an INPO report, may disseminate copies of any official written comments made to the NRC, and may publicly provide information necessary to explain those official written comments. The Group shall not, however, make statements stating or paraphrasing conclusions or observations in any INPO report, nor otherwise reveal confidential information contained in any INPO report.

(iv) Notwithstanding any provisions in Paragraph 5.(5)(b)(iii) immediately above, neither the Group nor its representative(s) may disclose to any persons, other than the members of the Group or the NRC, the names of any persons contained in any INPO report or any information from which identification of such persons could reasonably be made. In the event any comments made to the NRC pursuant to Paragraph 5.(5)(b)(iii) immediately above include the names of any persons contained in any INPO report, or any information from which identification of such persons could reasonably be made, the Group shall (x) request in advance that the NRC keep such names or information confidential pursuant to 10 CFR §§ 2.790, 9.17, and (y) not release any copies of its official written comments without excising those names or such information from the comments.

(v) Before any representative of the Group may review any INPO report pursuant to this Agreement or view any notes taken in connection with such a review by any Group representative(s), such person shall first advise PECO in writing that he or she has read and understands Paragraph 5.(5) of this Agreement and all subparts thereof and agrees to be bound thereby.

(6) Certain Equipment and Services. The Group will be entitled to the benefits discussed in Section 8 of this Agreement regarding certain equipment and services to be provided by PECO. Costs allocated to PECO under Section 8 will not be charged to the Group's budget.

(7) Budget.

(a) PECO will provide the Group with an annual budget to be used to defray the reasonable administrative expenses of the Group directly related to its expressed intent to monitor Peach Bottom activities through the appropriate use of Rad Alerts and Low-Volume Air Samplers. The annual operating budget will consist of thirteen thousand dollars (\$13,000.00) per year, indexed to inflation as described in Paragraph 5.(7)(d). Reasonable administrative expenses would include, for example, reasonable expenses for payments for statistician and/or newsletter editorial services, the purchase of computers, computer upgrades, printers, software, computer supplies, photocopying machine, facsimile machine, a dedicated telephone line and answering machine, file cabinets, batteries, and other office equipment and supplies (*e.g.*, pencils, pens, paper clips, envelopes, letterhead postage), service contracts for maintenance of such equipment, and reimbursement for reasonable expenses incurred in traveling related to the Group's monitoring activities. Any use of the budget for reimbursement for fuel expenses must be supported by a written log including, at a minimum, the date of trip, the points of origination and destination, and odometer readings before and after the trip. This listing of examples of expenses that are or are not covered by the Group's budget is not intended to be exhaustive. However, no part of the budget shall be used for the payment of salaries, benefits, or any other form of direct or indirect compensation for any member or agent of the Group or for the payment of legal fees or expenses, consultant fees or expenses, or expert fees or expenses, except that the Group may use part of the supplemental payment pursuant to Paragraph 5.(7)(b) for the purpose of compensating Mr. Epstein for his time and reasonable expenses in negotiating this Agreement. PECO reserves the right to determine whether specified expenses not listed above are reasonable administrative expenses. The Group will resolve any reasonable doubts regarding the allowance of any expense by seeking PECO's approval of the expense in advance. The Group will use all funds paid to the Group under this Section and all earnings accumulated or to be accumulated thereon (the "Funds") for the purposes described in this paragraph (the "Authorized Activities").

(b) Within thirty (30) days after the Exelon Merger Closing Date, PECO will pay Mr. Epstein on behalf of the Group, in the form of a check made out to Mr. Epstein the amount of twelve thousand eight hundred twelve dollars and ninety-seven cents (\$12,812.97), as a supplemental payment for purposes of funding the Group's continuation of activities pursuant to the Settlement Agreement dated September 14, 1992 between Mr. Epstein and GPU, subject to the terms of this Agreement.

(c) Within thirty (30) days of the commencement of the initial term of this Agreement, PECO will pay, in the form of a check made out to the Group, the amount of thirteen thousand dollars (\$13,000.00). In each succeeding year on the anniversary date thereof, PECO will pay, in the form of a check made out to the Group, the amount of thirteen thousand dollars (\$13,000.00), increased for inflation as provided Paragraph 5.(7)(d) below, subject to receipt of a certificate, satisfactory in form and substance to PECO as described in Section 5.(7)(e) below, and subject to any credit recognized pursuant to Section 5.(7)(g) below.

(d) Following the first payment made after the commencement of the initial term of this Agreement, the annual budget in each year shall be increased from the budget in the prior year, to adjust for inflation, at the rate of 5% per annum,.

(e) The Group will provide to PECO, not later than thirty (30) days prior to the completion of each fiscal year, a certificate, signed by a duly authorized representative of the Group, which shall include the following:

(i) A statement that all Funds provided by PECO were used for reimbursement of costs of Authorized Activities as described in the Agreement;

(ii) An identification (in sufficient detail to permit audit thereof in accordance with this Agreement) of the work services, materials and equipment and related costs performed, rendered or acquired in connection with the Authorized Activities which gave rise to the costs for which the Funds were used; and

(iii) A cumulative year-by-year summary of the Funds, identifying original funds provided by PECO and interest or other earnings.

(f) The Group shall maintain reasonable accounting and other records of the Funds and the expenditures made by the Group for the Authorized Activities which shall be made available for examination by PECO or its duly authorized representative upon request.

(g) The Group's first fiscal year will commence on the date the funds are received from PECO and will conclude on the last day of the same month plus one year. Subsequent fiscal years will be on a succeeding twelve (12) month basis. Expenses incurred but not yet paid for can be reported in the year incurred or actually paid, provided the reporting of the expense is consistently applied across fiscal years. With the exception of reimbursement for expenses reported in the year incurred, any funds not spent in one fiscal year will be counted as a credit against the next year's payment of the Group's budget.

(h) At the end of the last fiscal year for which PECO has agreed to recognize the Group, the Group will provide to PECO the certificate described in Section 5.(7)(e) above. The Group will reimburse PECO for any funds expended during the last fiscal year which are found not to relate to the Authorized Activities. All funds not spent by the Group will be returned to PECO within forty-five (45) days following the end of such last fiscal year.

(i) PECO shall have the option to extend the term of this Agreement by a term of at least one year after the end of its initial five year term. If PECO chooses not to exercise such option, PECO shall pay, in the form of a check made out to the Group, the amount of five thousand dollars (\$5,000.00) for purposes of winding up the affairs of the Group. This amount is not subject to adjustment for inflation as provided in Paragraph 5.(7)(d) relating to the Group's annual budget.

6. Robotics Research. PECO agrees that it shall expend at least \$500,000 during the term of this Agreement for the purpose of targeted research into the use of robotics in the topical areas of nuclear generation plant radiation exposure management and nuclear plant decommissioning technology. PECO will provide the Group a report into such activities at the annual briefing provided in connection with Section 5(3) above but shall have complete discretion into how such funds will be expended.

7. Use of Mixed Uranium (MOX) Fuel. During the term of this Agreement, PECO shall refrain from the use of MOX fuel in any nuclear reactor included in the PECO Nuclear Plants.

8. Equipment, Installation, and Access.

(1) PECO will supply the Group with thirty (30) new Rad Alerts at a cost not to exceed \$230 per Rad Alert, plus postage, and reimburse the Group for the cost of one Low-Volume Air Sampler (\$7,900).

(2) PECO will reimburse the Group for the cost (not to exceed \$250) of installing the Low-Volume Air Sampler at a site at Peach Bottom that is chosen by the Company.

(3) PECO will provide access to the Low-Volume Air Sampler during the weekday hours of 9AM-5PM for the purposes of ensuring that the Low-Volume Air Sampler is properly calibrated and otherwise operating properly.

9. Community Responsibility and Corporate Culture.

(1) PECO is committed to corporate involvement and investment in the local community proximate to Peach Bottom and will increase the current level of community spending by at least five (5) percent per annum commensurate with the existing practices of PECO in connection with the safe operation of Peach Bottom. PECO will provide an accounting of such spending at the annual briefing described in section 5.(3) above.

(2) PECO will continue to participate in industry groups such as INPO and the BWR Vessel Group, to the extent such participation is consistent with good utility practices.

(3) PECO also recognizes that the safe and reliable operation of Peach Bottom requires the maintenance of a highly skilled and technically qualified workforce, and it is therefore committed to maintain a highly skilled and technically qualified workforce of sufficient number to be consistent with good utility practices.

10. Storage of Spent Fuel/Radioactive Waste. PECO agrees that, during the term of this Agreement, PECO will not store spent fuel or radioactive waste from any nuclear reactor other than those located at the Peach Bottom site.

11. Acknowledgment By NRC Staff. Although PECO and Mr. Epstein agree that the NRC Staff will have no obligations or duties of any kind whatsoever arising under the provisions of this Agreement, the parties have agreed to jointly recommend to the NRC Staff that the NRC Staff acknowledge receipt of this Agreement upon the approval of the proposed license transfer by the NRC. Mr. Epstein and the Group further agree that the NRC will have no obligation to implement, enforce, or supervise any of the terms, conditions, or duties created by this Agreement as a result of such acknowledgment.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties and no other agreement with regard to the matters herein shall be binding on the parties except by written amendment to this Agreement. Except for the terms and conditions enumerated in this Agreement, the parties hereby acknowledge and agree that none of the parties has made any other promises, warranties or representations to any other party hereto regarding any aspect of the settlement of the matters referred to in this Agreement, and that any such promises, warranties, or representations that may be alleged to have been made are hereby merged herein.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.

14. No Presumption Against the Drafters. This Agreement shall be deemed to have been drafted jointly by PECO and Mr. Epstein and shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

15. No Admissions. Neither the drafting or execution of this Agreement nor anything contained herein is intended to be, or shall be deemed to be, an admission of fact by any party with respect to any matter relating to the proposed license transfer.

16. Further Assurances. Mr. Epstein and PECO will execute, after the execution of this Agreement, all documents reasonably necessary to effectuate the intent of this Agreement.

17. Successors, Assigns, Etc. This Agreement is binding upon and for the benefit of Mr. Epstein and PECO and their respective heirs, executors, administrators, successors, and assigns, wherever the context requires or admits.

18. Sole Benefit. Subject to the provisions of Section 16 of this Agreement, it is the intention of the parties that this Agreement and all of its conditions and provisions are for the sole benefit of Mr. Epstein and PECO, and for the benefits of no other person. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than Mr. Epstein or PECO any legal or equitable right, remedy, or claim under, or in respect to, this Agreement or any of its provisions.

19. Reservation of Rights. Notwithstanding any provision in this Agreement, nothing herein shall abridge the right or ability of any party to this Agreement, or any employee, member, consultant or contractor of any party, or any group or member of the public to appear before the NRC, and nothing herein shall abridge the right or ability of such party, person or group to communicate or to deal with the NRC or with the Staff or any other part of the NRC. The NRC Staff, in acknowledging this Agreement, does so solely to acknowledge the existence of this Agreement and the settlement between PECO and Mr. Epstein. The NRC Staff neither agrees or disagrees with its other terms or provisions as they are agreements between PECO and Mr. Epstein. Further, nothing in this Agreement shall be interpreted to in any way limit any right, duty, discretion, authority or regulatory responsibility of the NRC, its staff, contractors, or consultants.

20. Binding Effect, Severability. This Agreement shall be binding upon Mr. Epstein and PECO in accordance with its terms even if the NRC Staff does not formally acknowledge this

Agreement. If any provision of this Agreement is held to be invalid or unenforceable, all of the remaining provisions of this Agreement shall nevertheless remain in full force and effect and shall be binding upon the parties.

21. Authorizations. Each person signing this Agreement represents and warrants that he or she is duly authorized and empowered to act on behalf of and sign for the party for whom he or she has signed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of this __th day of March, 2000.

Eric Joseph Epstein

Date: _____

By: _____

PECO Energy Company

Date: _____

By: _____

RECEIPT OF THIS AGREEMENT ACKNOWLEDGED by the Staff of the United States Nuclear Regulatory Commission on the _____ day of _____, 2000.

United States Nuclear Regulatory
Commission

Date: _____

By: _____

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April 22, 2005

DOCUMENT
FOLDER

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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Harrisburg, PA 17105-3265

**Re: 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 No. A-110550F0160**

Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding are an original and three copies of the Joint Applicants' Response To The Pleading Filed By Eric Joseph Epstein On April 15, 2005 In Support Of His Petition To Intervene. Copies of the Joint Applicants' Response have been served upon the persons and in the manner set forth in the attached Certificate of Service. An additional copy of this letter and the Response are enclosed, which we request be date-stamped and returned to us in the stamped, self-addressed envelope we are providing.

Very truly yours,



Anthony C. DeCusatis
Enclosures

c: Per Certificate of Service

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SECRETARY'S OFFICE

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 :
ENTERPRISE GROUP :
INCORPORATED WITH AND INTO :
EXELON CORPORATION :

DOCKET NO. A-110550F0160

DOCKETED
OCT 20 2005

JOINT APPLICANTS' RESPONSE
TO THE PLEADING FILED BY ERIC JOSEPH EPSTEIN
ON APRIL 15, 2005 IN SUPPORT OF HIS
PETITION TO INTERVENE

**DOCUMENT
FOLDER**

Introduction

With the leave of the Administrative Law Judge, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants) file this Response to the pleading filed on April 15, 2005 by Eric Joseph Epstein in support of his Petition to Intervene.

On March 7, 2005, Mr. Epstein filed a Petition to Intervene in the above-captioned proceeding and a Protest to the Joint Application. On March 24, 2005, the Joint Applicants filed an Answer in Opposition to Mr. Epstein's Petition to Intervene and a Motion to Dismiss his Protest. Oral argument on the opposing pleadings was heard at the Prehearing Conference, and the Administrative Law Judge took those matters under advisement (Prehearing Order No. 2, p. 3). On April 15, 2005, Mr. Epstein filed a pleading styled as a Response to the Joint Applicants' Answer in which he reiterated positions articulated in his Petition to Intervene.

**Mr. Epstein's Response Does Not Provide Any Valid Basis
For His Intervention In This Case**

Mr. Epstein's April 15 pleading simply reiterates, in somewhat different form, some of the same contentions he advanced in his Petition to Intervene, which were shown to be without merit in the Joint Applicants' Answer to that Petition. As explained therein, Mr. Epstein is not a customer of PECO Energy, does not reside in its service territory and cannot claim standing in this, or any other, PUC proceeding simply because he owns shares in PECO Energy's parent, Exelon Corporation (Exelon). In his April 15 pleading, Mr. Epstein relies on some of those prior arguments, which boil down to two main points.

First, Mr. Epstein asserts that he has an interest in issues pertaining to the safety of nuclear power plant operations, has formed a nuclear monitoring organization to pursue that interest and, therefore, allowing him to raise those issues in this case would be "in the public interest" (Epstein Pleading ¶¶ 15, 16, 20 and 21). Second, Mr. Epstein was given a "seat at the table" in the settlement of the application proceeding involving the formation of Exelon and the merger of PECO Energy and Unicom Corporation,¹ which led to PECO Energy entering into a Nuclear Monitoring And Waste Storage Agreement (Monitoring Agreement). Neither of those claims provides a valid basis for his intervention with party status in this case.

¹ *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 at Docket No. A-00110550F0147 (the PECO-Unicom Proceeding)*

While Mr. Epstein clearly has an interest in, and deep convictions about, issues of nuclear power plant safety, this is not the proceeding in which, and the PUC is not the agency before which, to pursue those interests. As explained in the Joint Applicants' Answer (¶¶ 4 and 11) and Motion to Dismiss (¶ 8), this Commission had held that the issues Mr. Epstein wants to interject in this case are outside the scope of such a proceeding and outside the scope of the PUC's jurisdiction entirely. Significantly, the Administrative Law Judge, with the PUC's affirmance, made exactly that ruling in the *PECO-Unicom Proceeding*, which Mr. Epstein acknowledges should be the controlling authority for deciding his intervention request (Epstein Pleading ¶¶ 18 and 19). *PECO-Unicom Proceeding, supra*, Recommended Decision (June 1, 2000) pp. 46-48 ("The Pennsylvania Public Utility Commission has recognized that the NRC has exclusive jurisdiction over nuclear safety issues.") Moreover, the Commission's regulatory expertise lies in the areas of service, rates and the economic issues that pertain to structural changes like the one presented in the Joint Application, and not in the areas of "robotics research," use of "mixed uranium fuel" in power reactors and radioactive waste disposal, which Mr. Epstein desires to pursue (*see* Epstein Pleading ¶ 21).

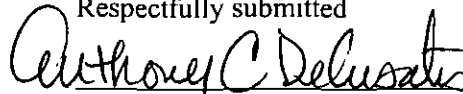
Mr. Epstein cannot get a jurisdictional "hook" from the Monitoring Agreement. Portions of the Monitoring Agreement, which Mr. Epstein did not cite (¶¶ 2 and 3), state that the Agreement was entered into as part of a larger compromise and settlement in which Mr. Epstein agreed not to intervene at, or otherwise pursue issues before, the Nuclear Regulatory Commission (NRC) with respect to the proposed merger of PECO Energy and Unicom. Thus, the Monitoring Agreement evidenced a clear understanding that the matters of interest to Mr. Epstein were within the jurisdiction of the NRC. And,

while the Monitoring Agreement was mentioned in the Joint Petition for Settlement of the *PECO-Unicom Proceeding*, the PUC's jurisdiction over the Agreement was disavowed by the parties in Paragraph No. 18 of that document, which states: "This Agreement is referenced for informational purposes only. The parties do not specifically request the Commission to approve this Agreement as part of the Joint Petition for Settlement." Simply stated, the claim that the Monitoring Agreement provides a connection either to the jurisdiction of the PUC or to this proceeding is contrary to the terms of the Settlement in the *PECO-Unicom Proceeding*. Additionally, nothing in the Monitoring Agreement provides that the PUC either would or could enforce its terms.

Finally, there are means by which Mr. Epstein may present issues allegedly affecting the public interest to the Commission without being granted intervention with full party status in this case. Thus, when public input hearings are held in this case, Mr. Epstein can avail himself of the opportunity to present testimony there. In addition, the Office of Trial Staff and Office of Consumer Advocate are arms of the state authorized by statute to represent the public interest in PUC proceedings. Frequently, those offices raise meritorious issues that are brought to their attention by persons or entities that do not have, or do not claim, standing to participate in a proceeding in their own right. In fact, Mr. Epstein acknowledges (§ 26) that he has "worked cooperatively" with those offices in the past, and there is no reason he cannot do so in this case.

WHEREFORE, for the reasons set forth above and in the Joint Applicants' Answer to Mr. Epstein's Petition to Intervene, the Petition to Intervene of Eric Joseph Epstein should be denied.

Respectfully submitted



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Electric and Gas Company

Dated: April 22, 2005

1-PH/2183629.1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOINT APPLICATION OF PECO
ENERGY COMPANY AND PUBLIC
SERVICE ELECTRIC AND GAS
COMPANY FOR APPROVAL OF THE Docket No. A-110550F0160
MERGER OF PUBLIC SERVICE
ENTERPRISE GROUP INCORPORATED
WITH AND INTO EXELON
CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Joint Applicants' Response To The Pleading Filed By Eric Joseph Epstein On April 15, 2005 In Support Of His Petition To Intervene upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

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Counsel for PECO Energy Company

Date: April 22, 2005

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April 25, 2005

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

DOCUMENT
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SECRETARY'S BUREAU

RE: 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
A-110550F.0160

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Response of the Office of Consumer Advocate to the Joint Applicants' Answer in Opposition to the Petition to Intervene of Senator Anthony H. Williams, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

James A. Mullins
Assistant Consumer Advocate

Enclosure
cc: Parties of Record
84101.doc

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of PECO Energy Company and :
Public Service Electric & Gas Company For :
Approval of the Merger of Public Service :
Enterprise Group, Incorporated, with and into :
Exelon Corporation :

Docket No. A-110550-0160

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SECRETARY'S BUREAU

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RESPONSE OF THE OFFICE OF CONSUMER ADVOCATE
TO THE JOINT APPLICANTS' ANSWER IN OPPOSITION TO THE PETITION TO
INTERVENE OF SENATOR ANTHONY H. WILLIAMS

The Pennsylvania Office of Consumer Advocate ("OCA") submits this Response to the Joint Applicants' Opposition to the Petition to Intervene of Senator Anthony H. Williams:

I. INTRODUCTION

On February 4, 2005, PECO and PSEG, as Joint Applicants, filed an Application with the Pennsylvania Public Utility Commission ("PUC" or the "Commission") seeking to obtain the approval of the Commission under Chapters 11, 22 and 28 of the Public Utility Code, for the merger of Public Service Enterprise Group Incorporated ("PSEG"), the corporate parent of PSE&G, with and into Exelon Corporation ("Exelon"), the corporate parent of PECO and the ultimate corporate parent of the Joint Applicants. The Joint Applicants request that the Commission issue Certificates of Public Convenience for PSE&G and PECO evidencing its approval or that the Commission determine that such approval is not necessary.

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On March 7, 2005, the OCA filed a Notice of Intervention and Protest in order to ensure that the merger is approved by the Commission only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to PECO's ratepayers; (3) it does not adversely affect retail competition in Pennsylvania; and (4) it is in accordance with the Public Utility Code. Petitions to Intervene and/or Protests were also filed by the following parties on or before March 7, 2005: Office of Small Business Advocate ("OSBA"); Action Alliance of Senior Citizens of Greater Philadelphia, Association of Community Organizations for Reform Now ("ACORN"), and Tenants' Action Group ("TAG")(collectively, "Action Alliance, *et al.*"); the Sustainable Development Fund ("SDF"); the Energy Coordinating Agency ("ECA"); Exelon Utility Coordinated Council ("EUCC"), International Brotherhood of Electrical Workers ("IBEW") Locals 614 and 777, and Frank Kuders (collectively, "Labor Parties"); the Department of Environmental Protection ("DEP"); Eric Joseph Epstein ("Epstein"); Direct Energy, LLC ("Direct Energy"); City of Philadelphia ("City"); Amerada Hess Corporation ("Amerada Hess"); Citizens for Pennsylvania's Future, Joy Bergey, and Lisa Leighton (collectively, "PennFuture Parties"); Philadelphia Area Industrial Energy Users Group ("PAIEUG"); Pepco Holdings, Inc. and certain subsidiaries ("PHI"); New Jersey Large Energy Users Coalition ("NJLEUC"); and PPL Electric Utilities Corporation ("PPL Electric"), PPL EnergyPlus, LLC ("PPL EnergyPlus"), PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL University Park, LLC, Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, "PPL Companies"). The Office of Trial Staff ("OTS") also entered its appearance. The OCA also received Protests or Petitions to Intervene after March 7, 2005 from Strategic Energy, LLC ("Strategic") and the FirstEnergy Companies ("FE Companies").

On March 24, 2005, Senator Anthony Williams filed a Petition to Intervene in the proceeding and on April 14, 2005, the Joint Applicants filed their Answer opposing that intervention.

In their Answer, the Joint Applicants argue that: 1) Senator Williams does not have standing to participate in this proceeding on a representational basis, 2) the Commission's regulation at 52 Pa. Code § 5.72(a)(2) provides that intervention is permissible only where the petitioner has an interest that is both directly affected and "which is not adequately represented by existing participants", and 3) that the Petition to Intervene is untimely. Of significance to the OCA is the Joint Applicants' assertion that the OCA's presence in this case diminishes Senator Williams' right to participate in this case. This line of reasoning has been historically rejected and, as explained below, the OCA submits that it should be rejected in this instance as well.

II. ARGUMENT

A. The OCA's Participation In This Proceeding Does Not Serve As A Bar To The Participation Of Senator Williams.

The OCA submits that the Joint Applicants' reliance on the Consumer Advocate's participation in this proceeding as a reason to exclude Senator Williams' participation is without merit. Specifically, Section 309-6 of the Consumer Advocate's authorizing legislation specifies that: "Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court." 71 P.S. §309-6; see also, Barasch v. Pa. P.U.C., 119 Pa. Commw. 81, 546 A.2d 1296, 95 P.U.R. 4th 528 (1988), modified on denial of reargument by, 119 Pa. Commw. 81, 550 A.2d 257 (Pa. Commw., 1989)(notice to the Office of Consumer Advocate does not constitute notice to the customers of a utility). In South River

Power Partners, L.P., v. Pennsylvania Public Utility Commission, 673 A.2d 422 (1996), the Commonwealth Court stated that:

we must reject South River's contention that the active participation in this case by the Office of the Consumer Advocate and various other interested parties eliminates the need for notice to be provided to West Penn's customers.

Id. at 426. The Court continued:

While the majority of West Penn's customers would undoubtedly be content to allow the Office of Consumer Advocate to fight their battle for them, due process requires at a minimum that West Penn's customers be notified of the PUC hearing and be afforded an opportunity to participate in that proceeding if they so choose.

South River at 427. The OCA submits that the interests represented by the OCA and by Senator Williams may not be identical, nor do the OCA and Senator Williams have access to the exact same base of experience on which to shape their participation in this proceeding. Therefore, participation of Senator Williams will not be duplicative of the OCA's efforts and cannot be precluded based on the OCA's participation.

The Joint Applicants cite to The Mid-Atlantic Power Supply Association v. Pennsylvania Public Utility Commission (746 A.2d 1196 (2000)) in an attempt to preclude the participation of Senator Williams in this proceeding. In that case, PECO and Mid-Atlantic Power Supply Association (MAPSA) sought review of the PUC's order which established procedures for full implementation of retail choice by consumers of electricity. In its Petition for Review, PECO contended that the PUC had failed to protect the privacy rights of PECO customers and that the PUC's Final Order violated Section 1201 of the "Commonwealth Documents Law" and the Regulatory Review Act as it pertains to PECO. MAPSA at 1200. MAPSA contested PECO's standing to participate and the Commonwealth Court agreed that PECO lacked standing. However, the Court made it clear that "PECO does not represent the

interests of its ratepayers.” Id. The Court noted that the OCA, which does represent the interests of all of PECO’s ratepayers, was participating in the case. MAPSA and the case at hand are not analogous as the Joint Applicants argue. In MAPSA, PECO sought to represent the interests of its ratepayers--an interest that it does not represent. PECO was not a consumer who was being denied standing due to the OCA’s participation as PECO suggests. In the case at hand, Senator Williams is a consumer and is seeking to enter the case to forward consumer interests. The OCA’s enabling statute and case law specifically allow for this type of participation.

B. The Public Utility Commission’s Rules On Standing Are Broad Enough To Allow Senator Williams’ Participation In This Proceeding.

The OCA submits that Commission rules allow for Senator Williams’ participation in this proceeding. Section 5.72(a) of the Pennsylvania Code provides:

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
- (3) Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa.Code §5.72(a). The OCA submits that, in addition to the interest asserted by Senator Williams under (a)(2), provision (a)(3) provides for Senator Williams’ participation in this proceeding. Senator Williams’ participation is in the public interest because the vantage point from which Senator Williams will participate cannot be duplicated by any of the other parties to this proceeding. The unique nature of Senator Williams’ position--compared to the other parties--warrants the Senator’s participation in this case.

Furthermore, the OCA submits that the Commission's Rules of Administrative Practice and Procedure are broad enough and are liberally applied so as to allow for the participation of Senator Williams in this proceeding. Therefore, under Section 5.72 of the Pennsylvania Code, supra, and Section 701 of the Public Utility Code, supra, Senator Williams is able to participate in this proceeding particularly in light of the Commission's additional discretion in governing proceedings before it.

The OCA submits that standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co., 75 PaPUC 598 at 603. As the court stated in Pennsylvania Natural Gas Association:

Unlike standing to appeal, which is determined by the application of guidelines pronounced by the appellate courts, standing before an administrative agency is primarily within the discretion of the agency. Whether parties should be permitted to intervene in a commission proceeding is within the discretion of the commission to be exercised within each individual case. See, W.J. Dillner Transfer Co. v. Pa. P.U.C., 175 Pa. Sup. 461, 107 A.2d 159 (1954); Arsenal Board of Trade v. Pa.P.U.C., 166 Pa. Sup 548, 72 A.2d 612 (1950); and City of Pittsburgh v. Pa.P.U.C., 153 Pa. Sup. 83, 33 A.2d 641 (1943).

Id. citing Re L&H Trucking Co., Inc. 55 Pa.P.U.C. 469 (1982).

Additionally, the OCA submits that the Commission has stated with regard to the issue of standing that the quasi-judicial nature of Commission proceedings does not require the strict standards imposed by the Courts. Appalachian Gas Sales, Inc. v. Philadelphia Electric Co., 67 Pa. P.U.C. 246 at 250, quoting, Re Radio Broadcasting Co., 57 Pa. P.U.C. 399. Therefore, the Joint Applicants disregard the flexibility and discretion afforded to the Commission in determining who has standing to participate in proceedings before it. By incorporating the decisions in the Pennsylvania Natural Gas Association and Appalachian Gas Sales cases with the

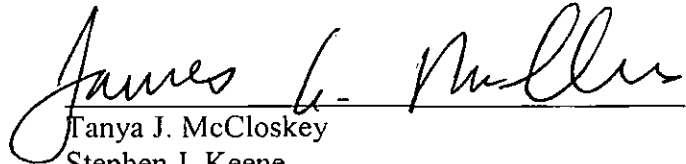
test for standing that requires the alleged aggrieved person to show a direct, immediate and substantial interest in the matter, it is clear that the Commission has the discretion to allow Senator Williams to participate in this proceeding.

Therefore, the OCA submits that Senator Williams has standing to participate in this proceeding before the Commission and his participation should be allowed.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the Joint Applicant's Answer should be rejected with respect to the arguments in opposition to the intervention of Senator Williams.

Respectfully submitted,



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Dated: April 25, 2005
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CERTIFICATE OF SERVICE

Joint Application of PECO Energy :
Company and Public Service :
Electric and Gas Company for : Docket No. A-110550F.0160
Approval of the Merger of Public :
Service Enterprise Group Incorporated :
with and into Exelon Corporation :

I hereby certify that I have this day served a true copy of the foregoing document, the Response of the Office of Consumer Advocate to the Joint Applicants' Answer in Opposition to the Petition to Intervene of Senator Anthony H. Williams, 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 25th day of April 2005.

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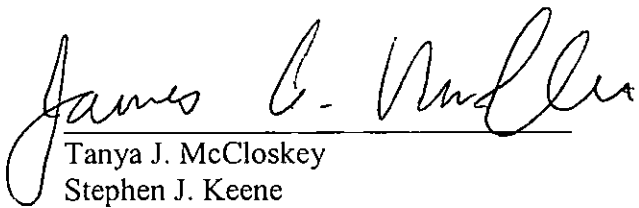
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