

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

RECEIVED  
2005 MAY -4 AM 10:10  
SECRETARY'S BUREAU

**Morgan Lewis**  
COUNSELORS AT LAW

**Anthony C. DeCusatis**  
215.963.5034  
adecusatis@morganlewis.com

ORIGINAL

May 2, 2005

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

DOCUMENT  
FOLDER

**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 Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of Citizens for Pennsylvania's Future et al. Copies of the Objections have been served upon the persons and in the manner set forth in the Certificate of Service attached to the enclosed document. Additional copies of this letter and of the Objections are also 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

RECEIVED  
JULY 14 10:10:19  
SECRET

**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**  
AUG 03 2005

**OBJECTIONS OF PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
TO THE INTERROGATORIES (SET I)  
OF CITIZENS FOR PENNSYLVANIA'S FUTURE ET AL**

Pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code §5.342, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Corporation (PSE&G) (collectively, the Joint Applicants), hereby object to the Interrogatories (Set I) Nos. 4 – 35 propounded by Citizens for Pennsylvania's Future et al (PennFuture). As explained below, the aforementioned interrogatories inquire into matters that are outside the scope of this proceeding. In addition, Interrogatory Nos. 10, 15, 21, 24 and 29, instead of being fact-based, ask the Joint Applicants to conduct legal research and provide the results to PennFuture, which is an improper use of the discovery process.

1. On April 22, 2005, PennFuture issued its Interrogatories (Set I), consisting of 35 questions, a copy of which is attached. Because April 22, 2005 was a Friday, pursuant to Prehearing Order No. 2, Paragraph 30, PennFuture's Interrogatories are deemed to have been issued on the following Monday, April 25, 2005.

**DOCUMENT  
FOLDER**

2. Interrogatory Nos. 4 – 32 request information pertaining to renewable energy and demand-side management programs of PECO Energy and PSE&G. E.g. Interrogatory Nos. 5, 7 and 8, which request information concerning “grants, subsidies or other financial incentives for renewable energy” provided by the Joint Applicants during the prior five years and the level of spending “forecasted or budgeted for the future;” and Interrogatory Nos. 30 – 32, which request similar information for “demand response” programs.

3. Interrogatory Nos. 33 – 35 request information pertaining to compliance with the requirements of the Clean Air Act by the fossil fueled generating plants owned and operated by affiliates of the Joint Applicants.

4. Interrogatory Nos. 10, 15, 21, 24 and 29 do not inquire as to factual matters, but, instead, request the Joint Applicants to conduct legal research and provide the results to PennFuture.<sup>1</sup>

5. Pennsylvania Act 213 of 2004, Alternative Energy Portfolio Standards (AEPS) Act (73 P.S. §§1648.1 et seq.) was enacted to establish specific requirements for Electric Distribution Companies (EDCs) in Pennsylvania to acquire electricity generated by alternative sources, including renewable sources, to meet their obligations as Providers of Last Resort and default suppliers. The AEPS Act defines EDCs obligations with respect to Alternative Energy Sources. The PUC has initiated a separate proceeding to develop specific rules for the implementation of Act 213.

---

<sup>1</sup> Interrogatory Nos. 15 and 16 also request information contained in the Joint Applicants’ tariffs. Such tariffs are public documents and, in any event, are available in their entirety on the Joint Applicants’ respective websites.

6. On December 16, 2004, the Commission issued an order pursuant to 66 Pa. C.S. §2807(e)(2) initiating a proposed rulemaking to develop regulations governing EDCs' provision of default service after the end of their respective generation rate caps. The rulemaking order was published on February 26, 2005. 35 Pa. Bulletin 1421. EDCs compliance with the AEPS Act is comprehended by the proposed rulemaking. See 35 Pa. Bulletin at 1424 ("The [EDC implementation] plan should also document ... the proposed method for complying with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.")

7. The PUC had created the Demand-Side Response Working Group to consider the feasibility and efficacy of expanding demand-side management and demand-response programs and policies for EDCs.<sup>2</sup>

8. In *Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, A-110300F0095 et al (June 20, 2001), 2001 Pa. PUC LEXIS 23 (*GPU/FirstEnergy*), the Clean Air Council (CAC) contended that the merger should be conditioned on the applicants expanding their programs for renewable energy and demand-side management, and PennFuture contended that the merger should also be conditioned upon a \$50 million payment to a statewide sustainable development fund to support renewable energy. The Administrative Law Judge (ALJ) rejected the positions of CAC and PennFuture because, *inter alia*, the proceeding was "not an industry-wide investigation into the merits of wind generation" and no connection existed between the merger and the programs and expenditures CAC and PennFuture advocated. The Commission affirmed the ALJ's recommendation and rejected CAC/PennFuture's position, stating:

---

<sup>2</sup> [www.puc.state.pa.us/electric/electric\\_dmndsideresp.aspx](http://www.puc.state.pa.us/electric/electric_dmndsideresp.aspx).

After consideration of this issue, we adopt the ALJ's recommendations regarding the proposed demand-side and renewable energy conditions in their totality. We reach this conclusion because neither the CAC nor PennFuture has established a connection between the merger and the need for the additional expenditures.

9. In light of the Commission's prior holding in *GPU/FirstEnergy* which is reinforced by its proposed rulemaking on default service and the existence of its on-going Demand-Side Response Working Group, it is clear that Interrogatory Nos. 4 – 32 inquire into matters that are outside the scope of this proceeding and, therefore, are objectionable.

10. In *GPU/FirstEnergy*, CAC and PennFuture also asked the Commission to attach various conditions to the merger pertaining to FirstEnergy's compliance with the federal Clean Air Act and the applicable state implementation plan. The ALJ rejected the proposed conditions because the PUC was "not the proper forum" to litigate issues pertaining to compliance with the federal Clean Air Act or a state implementation plan. The Commission agreed:

We conclude that, while the Exceptions of the CAC, PennFuture, and Citizen Power raise valid environmental concerns, we decline to adopt their proposals regarding FirstEnergy's DOJ/EPA lawsuit. The federal EPA and Pennsylvania's Department of Environmental Protection are the agencies that are vested with the authority to establish emission regulations and to police their enforcement. Therefore, it would be inappropriate for the Commission to attempt to perform those functions.

11. The Commission's rejection of the CAC/PennFuture proposals was affirmed by the Commonwealth Court. *ARIPPA v. Pa. P.U.C.*, 792 A.2d 636, 657 (2002).

12. Furthermore, in this case, the generating plants that are the subject of PennFuture's interrogatories are not owned by PECO Energy or PSE&G. Those plants were transferred to companies that are not subject to the jurisdiction of this Commission.

13. In light of this Commission's holding in *GPU/FirstEnergy* and the fact that the Joint Applicants do not own or operate the generating plants that are the subject of PennFuture's Interrogatory Nos. 33 – 35, it is clear those interrogatories inquire into matters that are outside the scope of this proceeding, outside the jurisdiction of the Commission and, therefore, are objectionable.

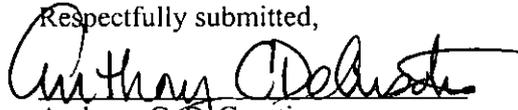
14. Finally, the discovery process should not be used as a device to get one party to conduct legal research for another. In *Malone v. The Pennsylvania Railroad Co.*, 17 Pa. D&C 2d 752 (1959), the court granted objections for that reason:

The second group of interrogatories seeks discovery of existing statutes, ordinances, regulations of the Interstate Commerce Commission or other administrative agencies which require defendant to conform to certain enumerated modes of conduct in the operation of its line. Although we agree with plaintiff that defendant is more likely to know of these applicable laws and regulations than is plaintiff, this is no valid reason for compelling defendant to supply plaintiff with legal research and other legal data which are matters of public record and equally available to plaintiff and defendant. Moreover, such answers would call for the legal opinions and conclusions of defendant which are not within the scope of our discovery rules. The objection to these interrogatories will therefore be sustained.

15. PennFuture's Interrogatory Nos. 10, 15, 21 and 24 ask the Joint Applicants to provide and/or "describe" "rules" and "legal requirements" for "renewable energy," "net metering" and "energy efficiency." These interrogatories are objectionable under the well-established rule applied in *Malone, supra*.

THEREFORE, for all of the foregoing reasons, the Joint Applicants' Objections to the Interrogatories (Set I) Nos. 4 - 35 of PennFuture should be granted.

Respectfully submitted,



Anthony C. DeCusatis  
*adecusatis@morganlewis.com*  
Thomas P. Gadsden, Esquire  
*tgadsden@morganlewis.com*  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234  
215.963.5001 (Fax)

Paul R. Bonney, Esquire  
*paul.bonney@exeloncorp.com*  
Kent D. Murphy, Esquire  
*kent.murphy@exeloncorp.com*  
Exelon Business Service Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215.841.4252  
215.841.4282 (Fax)

Counsel for PECO Energy Company

Daniel Clearfield  
*dclearfield@wolfblock.com*  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
717.237.7173

Richard P. Bonnifield  
*richard.bonnifield@pseg.com*  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
973.430.6441  
973.623.3261 (Fax)

Counsel for Public Service  
Electric and Gas Company

Dated: May 2, 2005

Appendix A  
Penn Future's Interrogatories  
(Set I)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Interrogatories of the PennFuture Parties**

**Set I**

In accordance with 52 Pa. Code § 5.341, Intervenors Citizens for Pennsylvania's Future (PennFuture), Joy Bergey, and Lisa Leighton (collectively, the PennFuture Parties) hereby propound the following Interrogatories to PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G), collectively referred to herein as "the Companies", to be answered by those officers, employees or agents as may be cognizant of the requested facts and who are authorized to answer on behalf of the Company.

Instructions

(a) These interrogatories shall be deemed to be continuing. The Respondent is obliged to change, supplement and correct all answers to interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed.

(b) The answers provided should first restate the question asked and also identify the person(s) supplying the information.

(c) All information is to be divulged that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The terms "PECO" or "PSE&G" or "the Company" or "the Companies" or "you", as used herein includes PECO Energy Company, Public Service Electric and Gas Company, and their attorneys, agents, employees, or other representatives.

(d) As used herein the word "document" includes, but is not limited to, the original and all copies (regardless of origin and whether or not including additional writing thereon or attached thereto) of memoranda, reports, books, manuals, instructions, directives, records, forms, letters, notices, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, and worksheets, in whatever form, stored or contained in or on whatever medium including computerized memory or magnetic media.

(e) As used herein, the terms "net metering", "low-impact hydropower", "geothermal energy", "biologically derived methane gas", "fuel cells", and "biomass energy" have the meanings assigned by the Pennsylvania Alternative Energy Portfolio Standards Act, Act 213 of 2004 (codified at 73 P.S. § 1648.1 et seq.), a copy of which is attached.

(f) As used herein, "renewable energy" includes the following sources: solar photovoltaic energy, wind power, low-impact hydropower, geothermal energy, biologically derived methane gas, fuel cells, and biomass energy.

(g) As used herein, "energy efficiency" includes but is not limited to programs that help customers reduce energy consumption.

(h) As used herein, "demand response programs" means programs designed to increase the ability of customers to shift the timing of their consumption of electricity, including but not limited to changes in consumption in response to real-time prices or time-of-use prices.

(i) As used herein, "Fossil Plants" means the Conemaugh, Cromby, Delaware, Eddystone, Keystone, and Schuylkill plants.

(j) As used herein, "particulate matter" means total particulate, particulate less than or equal to 10 micrometers ( $PM_{10}$ ), and particulate matter less than or equal to 2.5 micrometers ( $PM_{2.5}$ ). Where an interrogatory seeks information about particulate matter, please designate the type of particulate matter referenced in the response.

(k) As used herein, "air pollution controls" means any device or method, including but not limited to add-on controls and changes in processes or materials, for reducing or eliminating air pollution.

(l) As used herein, "air pollution" means the presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or radioactive substances, waste or other matter in a place, manner or concentration inimical or which may be inimical to public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property.

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

**Interrogatories of the PennFuture Parties  
Set I**

1. List all generating assets, including shares of assets, held by the Companies in Pennsylvania in each of the following categories:

- a. solar photovoltaic energy
- b. wind power
- c. low-impact hydropower
- d. geothermal energy
- e. biologically derived methane gas
- f. fuel cells
- g. biomass energy

For each generating asset, provide (in addition to the category listed above) the name, the owner, share of asset if less than 100%, location by state and county, capacity in megawatts, and capacity utilization on an annual average.

2. List all generating assets, including shares of assets, held by the Companies in New Jersey in each of the following categories:

- a. solar photovoltaic energy
- b. wind power
- c. low-impact hydropower
- d. geothermal energy
- e. biologically derived methane gas
- f. fuel cells
- g. biomass energy

For each generating asset, provide (in addition to the category listed above) the name, the owner, share of asset if less than 100%, location by state and county, capacity in megawatts, and capacity utilization on an annual average.

3. List all generating assets, including shares of assets, held by the Companies but not included in response to Items 1 or 2 above in each of the following categories:

- a. solar photovoltaic energy
- b. wind power
- c. low-impact hydropower
- d. geothermal energy
- e. biologically derived methane gas
- f. fuel cells
- g. biomass energy

For each generating asset, provide (in addition to the category listed above) the name, the owner, share of asset if less than 100%, location by state and county, capacity in megawatts, and capacity utilization on an annual average.

4. Describe any Company programs, plans, or strategies for renewable energy in Pennsylvania.

5. Describe any grants, subsidies, or other financial incentives for renewable energy available to the public from the Companies in Pennsylvania. Include the amount spent for each of the last five years and the amount of spending planned for each year you have forecasted or budgeted in the future. Include any funding recipients, projects involved, and the status of these projects.

6. Describe any Company programs, plans, or strategies for renewable energy in New Jersey.

7. Describe any grants, subsidies, or other financial incentives for renewable energy available to the public from the Companies in New Jersey. Include the amount spent for each of the last five years and the amount of spending planned for each year you have forecasted or budgeted in the future. Include any funding recipients, projects involved, and the status of these projects.

8. Describe any grants, subsidies, or other financial incentives for renewable energy available to the public from the Companies not included in your responses to Items 5 and 7 above. Include the amount spent for each of the last five years and the amount of spending planned for each year you have forecasted or budgeted in the future. Include any funding recipients, projects involved, and the status of these projects.

9. Provide the amounts of any monies collected by the Companies through a system benefit charge or other mechanism for renewable energy for the most recent five years, and describe how these monies were spent.

10. Describe any legal requirements for renewable energy applicable to the Companies.

11. Describe any Company programs regarding net metering in Pennsylvania for each of the last five years and for any years you have forecasted or budgeted in the future.
12. State the number of current net metered customers in Pennsylvania.
13. State the number of balanced billing and time-of-use customers eligible for net metering in Pennsylvania.
14. Describe the amount and purpose of Company expenditures regarding net metering in Pennsylvania. List funding recipients, amounts of funding, projects, and status of projects.
15. Provide copies of any tariffs or rules regarding net metering applicable to the Company in Pennsylvania.
16. Describe the application process to become a net metered customer of the Company in Pennsylvania. Provide a copy of any applications, instructions, or procedures.
17. Describe any Company programs regarding net metering in New Jersey for each of the last five years and for any years you have forecasted or budgeted in the future.
18. State the number of current net metered customers in New Jersey.
19. State the number of balanced billing and time-of-use customers eligible for net metering in New Jersey.
20. Describe the amount and purpose of Company expenditures regarding net metering in New Jersey. List funding recipients, amounts of funding, projects, and status of projects.
21. Provide copies of any tariffs or rules regarding net metering applicable to the Company in New Jersey.
22. Describe the application process to become a net metered customer of the Company in New Jersey. Provide a copy of any applications, instructions, or procedures.
23. Describe any Company programs regarding net metering for each of the last five years and for any years you have forecasted or budgeted in the future that are not included in your previous responses. Include the amount and purpose of company expenditures, funding recipients, any projects involved, and the status of these projects.
24. Describe any legal requirements for net metering applicable to the Companies.

25. Describe any Company programs regarding energy efficiency in Pennsylvania for each of the last five years and for any years you have forecasted or budgeted in the future. Include the amount and purpose of company expenditures, funding recipients, projects involved, and the status of these projects.

26. Describe any Company programs regarding energy efficiency in New Jersey for each of the last five years and for any years you have forecasted or budgeted in the future. Include the amount and purpose of company expenditures, funding recipients, projects involved, and the status of these projects.

27. Describe any Company programs regarding energy efficiency not included in your previous responses for each of the last five years and for any years you have forecasted or budgeted in the future. Include the amount and purpose of company expenditures, funding recipients, and projects involved.

28. Provide the amounts of any monies collected by the Companies through a system benefit charge or other mechanism for energy efficiency for the most recent five years, and describe how these monies were spent.

29. Describe any legal requirements for energy efficiency applicable to the Companies.

30. Describe any Company programs regarding demand response in Pennsylvania for each of the last five years and for any years you have forecasted or budgeted in the future. Include the amount and purpose of company expenditures, funding recipients, projects involved, and the status of these projects. Also include actual energy savings achieved in megawatts at winter peak and summer peak demand, and total annual savings in megawatt hours.

31. Describe any Company programs regarding demand response in New Jersey for each of the last five years and for any years you have forecasted or budgeted in the future. Include the amount and purpose of company expenditures, funding recipients, projects involved, and the status of these projects. Also include actual energy savings achieved in megawatts at winter peak and summer peak demand, and total annual savings in megawatt hours.

32. Describe any Company programs regarding demand response in not included in your previous responses for each of the last five years and for any years you have forecasted or budgeted in the future. Include the amount and purpose of company expenditures, funding recipients, projects involved, and the status of these projects. Also include actual energy savings achieved in megawatts at winter peak and summer peak demand, and total annual savings in megawatt hours.

33. For each of the Fossil Plants, provide a copy of the plant's current Title V/operating permit.

34. For each of the Fossil Plants, provide the following data regarding air emissions:

- a. for nitrogen oxides, for each of the most recent three calendar years for which data is available: annual emissions in tons and average annual emission rate in pounds of nitrogen oxides per million Btu
- b. for sulfur dioxide, for each of the most recent three calendar years for which data is available: annual emissions in tons and average annual emission rate in pounds of sulfur dioxide per million Btu
- c. for carbon dioxide, for each of the most recent three calendar years for which data is available: annual emissions in tons and average annual emission rate in pounds of carbon dioxide per million Btu
- d. for particulate matter, for each of the most recent three calendar years for which data is available: annual emissions in tons and average annual emission rate in the units referenced in the plant's Title V/operating permit
- e. for mercury, for each of the most recent three calendar years for which data is available: annual emissions in pounds and average annual emission rate in pounds of mercury per billion Btu and pounds of mercury per MWh

35. For each of the Fossil Plants, provide any studies, reports, or other documents since January 1, 2000 regarding potential air pollution controls at the Plants, that is, regarding controls not yet installed at the time of the studies, reports, or other documents.

**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 the Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of the Citizens for Pennsylvania's Future et al upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphedran@pennfuture.org](mailto:mcphedran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton and Joey Bergey

VIA FIRST CLASS MAIL

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Counsel for Public Service  
Electric and Gas Company

Karen S. Miller, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Counsel for Office of Small Business  
Advocate

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Counsel for City of Philadelphia

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for TRF  
Sustainable Development Fund

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jdillon@pplweb.com](mailto:jdillon@pplweb.com)

Counsel for PPL Services Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for Direct Energy LLC

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Counsel for Senator Anthony H. Williams

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

Counsel for New Jersey Large Energy Users  
Coalition

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company,  
Pennsylvania Power Company, FirstEnergy  
Solutions, Corp

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of  
Philadelphia, Inc.

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
Pamela G. Bishop, Esquire  
Assistant Counsel  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
Scott Perry, Esquire  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

---

Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

Date: May 2, 2005

2. Interrogatory Nos. 4 – 32 request information pertaining to renewable energy and demand-side management programs of PECO Energy and PSE&G. E.g. Interrogatory Nos. 5, 7 and 8, which request information concerning “grants, subsidies or other financial incentives for renewable energy” provided by the Joint Applicants during the prior five years and the level of spending “forecasted or budgeted for the future;” and Interrogatory Nos. 30 – 32, which request similar information for “demand response” programs.

3. Interrogatory Nos. 33 – 35 request information pertaining to compliance with the requirements of the Clean Air Act by the fossil fueled generating plants owned and operated by affiliates of the Joint Applicants.

4. Interrogatory Nos. 10, 15, 21, 24 and 29 do not inquire as to factual matters, but, instead, request the Joint Applicants to conduct legal research and provide the results to PennFuture.<sup>1</sup>

5. Pennsylvania Act 213 of 2004, Alternative Energy Portfolio Standards (AEPS) Act (73 P.S. §§1648.1 et seq.) was enacted to establish specific requirements for Electric Distribution Companies (EDCs) in Pennsylvania to acquire electricity generated by alternative sources, including renewable sources, to meet their obligations as Providers of Last Resort and default suppliers. The AEPS Act defines EDCs obligations with respect to Alternative Energy Sources. The PUC has initiated a separate proceeding to develop specific rules for the implementation of Act 213.

---

<sup>1</sup> Interrogatory Nos. 15 and 16 also request information contained in the Joint Applicants’ tariffs. Such tariffs are public documents and, in any event, are available in their entirety on the Joint Applicants’ respective websites.

**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 the Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of the Citizens for Pennsylvania's Future et al upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphebran@pennfuture.org](mailto:mcphebran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton and Joey Bergey

VIA FIRST CLASS MAIL

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Counsel for Public Service  
Electric and Gas Company

Karen S. Miller, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Counsel for Office of Small Business  
Advocate

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for City of Philadelphia

Counsel for TRF  
Sustainable Development Fund

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jdillon@pplweb.com](mailto:jdillon@pplweb.com)

Counsel for PPL Services Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for Direct Energy LLC

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Counsel for Senator Anthony H. Williams

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

Counsel for New Jersey Large Energy Users  
Coalition

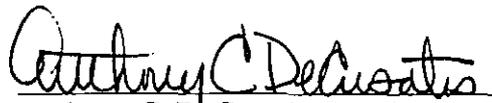
W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company, Pennsylvania  
Power Company, FirstEnergy Solutions, Corp

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of  
Philadelphia, Inc.

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
Pamela G. Bishop, Esquire  
Assistant Counsel  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
Scott Perry, Esquire  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

  
Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

Date: May 2, 2005

Kleinbard  
Bell Brecker LLP

KAHIGA A. TIAGHA  
Direct 215.496.7232

ORIGINAL

May 3, 2005

James McNulty  
Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Keystone Building  
Harrisburg, PA 17120

DOCUMENT  
FOLDER

RECEIVED

MAY 3 2005  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Amended Petition to Intervene of Pennsylvania Senator Anthony H. Williams in the above-referenced matter. The original petition submitted by Senator Williams and accepted for filing by the Pennsylvania Public Utility Commission is hereby amended, pursuant to 52 Pa.Code § 5.91, to modify the Senator's grounds for standing. Senator Williams is now participating in the present proceeding as a ratepayer of PECO.

If you have any questions with regard to this filing, please call me at 215.496.7232. Thank you for your attention to this matter.

Sincerely,

  
KAHIGA A. TIAGHA

Enclosures

KJR

{00027844;v1}

LAW OFFICES

Main 215.568.2000 | 1900 Market Street, Suite 700

Fax 215.568.0140 | Philadelphia, PA 19103

ktiagha@kleinbard.com

30

**ORIGINAL**

**RECEIVED**

MAY 8 2005

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

In re: **JOINT APPLICATION OF PECO  
ENERGY COMPANY AND PUBLIC  
SERVICES 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

**AMENDED PETITION OF PENNSYLVANIA STATE SENATOR ANTHONY H.  
WILLIAMS TO INTERVENE**

In accordance with the Pennsylvania administrative rules governing petitions to intervene, 52 Pa. Code § 5.72, and Chapters 11, 21, 22 and 28 of the Public Utility Code (the "Code") and the rules governing amending pleadings, 52 Pa. Code § 5.91, Senator Anthony H. Williams ("Senator Williams") hereby files this amended petition to intervene in the matter of the joint application of PECO Energy Company ("PECO") and Public Services Electric and Gas Company ("PSEG", together with PECO the "Applicants") for approval of the merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation (the "Joint Application"). Senator Williams hereby respectfully represents that:

1. The name and address of the petitioner is Senator Anthony H. Williams, 366 Capitol Building, Senate Box 203008, Harrisburg, PA 17120-3008.
2. This petition arises out of the Applicants desire to merge. Under Pennsylvania law, an individual may petition to intervene in a proceeding if he has 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." 52 Pa. Code § 5.72. Specifically, the interest must be of such nature that participation of the petitioner may be in the public interest. See id.

**DOCUMENT  
FOLDER**

3. The granting of this petition is necessary and appropriate to the implementation of the sections of the Code under which the present proceeding is brought.

4. Senator Williams is a resident of Philadelphia, Pennsylvania.

5. As a resident of Philadelphia, the Senator is supplied electricity by PECO. He pays PECO for the electricity he is supplied.

6. Currently, PECO customers including Senator Williams pay more than 13 cents per kilowatt for electricity, which is among the highest in the Commonwealth. Furthermore, the rate is higher than the national average by approximately nine (9) cents.

7. In his review of the Joint Application, Senator Williams has determined that, in spite of the requirements of the Code, the Applicants do not specifically detail how the merger will provide substantial benefits to the consumers. In the Joint Application, the benefits of the merger are realized solely by the merged companies. See Joint Application, pp. 16-20. There is no discussion about the tangible benefits to the consumers.

8. The approval should be contingent on the Applicants providing tangible proof of substantial benefits of the merger. Possible such benefits include better customer service and service quality and rate reductions due to the improved operations touted by the Applicants in the Joint Application.

9. Upon announcing the deal in December 2004, Exelon and PSEG noted that the merger would result in \$400 million of “gross synergies” in the first year of the joint existence, \$500 million in the following year. There is no indication in the Joint Application of whether PECO’s consumers will receive any portion of the “gross synergies” generated from the merger.

10. Furthermore, the Joint Application states that the merged company’s “increased scale and scope” is expected to result in “improved service”. However, this declaration is not

accompanied by any details about how the service will improve. In the light of promised job loss and practical concerns of merging of two large corporate entities, the Applicants must provide greater detail regarding their plans to improve service quality.

11. The decision of the Pennsylvania Public Utility Commission (the "PUC") regarding the merger will directly impact Senator Williams.

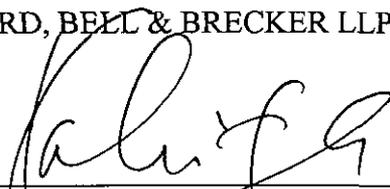
12. In the Joint Application, the Applicants make a perfunctory statement about the merged company's commitment to invest in the local Pennsylvania communities and their charitable institutions. The PUC should require the Applicants to submit a detailed plan on their intended investments in the local Pennsylvania communities in which they affirm to maintain or exceed current levels of investments.

13. Accordingly, as a consumer, Senator Williams has a real and substantial interest in the present proceeding.

14. Senator Williams respectfully requests to participate in the present proceeding as an active participant pursuant to 52 Pa. Code § 1.54(d) (2005).

Respectfully submitted

KLEINBARD, BELL & BRECKER LLP



---

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
215-568-2000  
215-568-0140 (facsimile)

*Attorneys for Senator Anthony H. Williams*

Dated: May 3, 2005

**CERTIFICATE OF SERVICE**

I, Kahiga A. Tiagha, hereby certify that on the 3 day of May, 2005, I caused true and correct copies of Formal Protest and Notice of Intervention of Pennsylvania State Senator Anthony H. Williams of Merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation to be served upon the following:

**VIA FEDERAL EXPRESS**

Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Keystone Building  
Harrisburg, PA 17120

**VIA FEDERAL EXPRESS & ELECTRONIC MAIL**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)

**RECEIVED**

MAY 8 2005

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

VIA FIRST CLASS MAIL & ELECTRONIC MAIL

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Counsel for Public Service  
Electric and Gas Company

Karen S. Miller, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Office of Small Business  
Advocate

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for City of Philadelphia

Counsel for TRF  
Sustainable Development Fund

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jdillon@pplweb.com](mailto:jdillon@pplweb.com)

Counsel for PPL Services Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for Direct Energy LLC

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonsllaw.com](mailto:lawyers@commonsllaw.com)

Counsel for Energy Coordinating Agency of  
Philadelphia, Inc.

Barnett Satinsky, Esquire  
Theodore H. Jobs, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

Counsel for New Jersey Large Energy Users  
Coalition

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company, Pennsylvania  
Power Company, FirstEnergy Solutions, Corp

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

Richard P. Bonnifield  
Vice President - Law  
Public Service Electric and Gas  
Company  
80 Park Plaza, TSE  
Newark, NJ 07102

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)

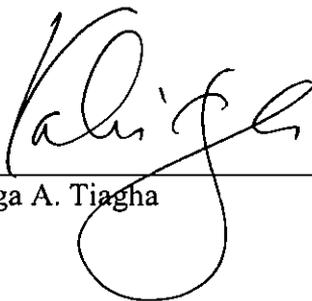
Pamela G. Bishop, Esquire  
Assistant Counsel  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)

Scott Perry, Esquire  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

Paul R. Bonney  
Deputy General Counsel  
Kent D. Murphy  
Assistant General Counsel

Peco Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699



---

Kahiga A. Tiagha

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

Morgan Lewis  
COUNSELORS AT LAW

ORIGINAL

Anthony C. DeCusatis  
215.963.5034  
adecusatis@morganlewis.com

May 3, 2005

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

DOCUMENT  
FOLDER

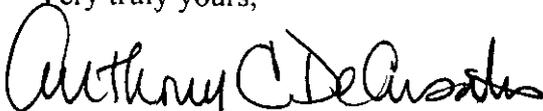
RECEIVED  
05 MAY - 9 AM 9:53  
PA.P.U.C.  
SECRETARY'S BUREAU

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**  
**Docket No. A-110550F0160**

Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding are an original and three copies of the Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of Mid-Atlantic Power Supply Association. Copies of the Objections have been served upon the persons and in the manner set forth in the Certificate of Service attached to the enclosed document. Additional copies of this letter and of the Objections are also 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

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RECEIVED**  
05 MAY -9 AM 9:53  
PA.P.U.C.  
SECRETARY'S BUREAU

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

**OBJECTIONS OF PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
TO THE INTERROGATORIES (SET I)  
OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION**

**DOCKETED**  
AUG 03 2005

Pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code §5.342, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Corporation (PSE&G) (collectively, the Joint Applicants), hereby object to the Interrogatories (Set I) Nos. 3-8 and 12-15 propounded by the Mid-Atlantic Power Supply Association (MAPSA). As explained below, the aforementioned interrogatories request information that is not related to issues within the scope of this proceeding and which MAPSA and its members are not entitled to obtain. In addition, Interrogatory Nos. 7 and 8 seek the identity of individual customers and/or customer-specific information without the prior consent of such customers contrary to the requirements of the Commission's regulations on the release of such information and customers' reasonable expectation of privacy.

1. On April 26, 2005, MAPSA issued its Interrogatories (Set I), consisting of 56 questions, a copy of which is attached.

**DOCUMENT  
FOLDER**

2. Interrogatory Nos. 3-6 request class load data, including stratified load data, for the GS, PD and HT rate classes, and information about any “Advanced Metering” that is in place for such customers.

3. Interrogatory No. 7 requests information specific to customers served under PECO Energy’s Rule 4.6 (Special Contracts) and the Economic Efficiency Rider of PECO Energy’s tariff including the date of expiration of each contract, the total load served thereunder and the terms and conditions of specific contracts, if any, that will continue in effect after January 1, 2010.

4. Interrogatory No. 8 asks PECO Energy to identify “by name” “each federal, state, county, and/or municipal customer with a peak demand in excess of 400 kW” and provide customer-specific information as to each, including monthly peak demand.

5. Interrogatory No. 12 asks the *Joint Applicants* to identify the fees and charges assessed to electric and natural gas suppliers in their respective service territories and provide specific information as to each, including the “annual revenues” derived therefrom from 1997 to date.

6. Interrogatory Nos. 13-15 ask for information concerning the Competitive Transition Charges (CTC) billed by PECO since 1997 and projected through the end of the CTC period as well as the specific CTC charge for each year from 1997 to date and projected to 2010.

7. The load data and metering information requested in Interrogatory Nos. 3-6 is not relevant to the issues presented in this case. Rather, they appear to be efforts by MAPSA to obtain information that would assist its members in their electricity marketing efforts. In that

regard, certain forms of stratified customer load data comparable to, but different from, that requested by MAPSA is provided by PECO Energy on a special website accessible only by Electric Generation Suppliers (EGSs) that are properly licensed to sell electricity in PECO Energy's service area. If the information requested by MAPSA's interrogatories were produced, it exceed the scope of permissible information already provided to EGSs for their legitimate marketing activities and would be available without regard to whether the recipients are licensed EGSs and meet other eligibility criteria to necessary to obtain access to customer information. The bottom line, however, is that Interrogatory Nos. 3-6 represent a "fishing expedition" designed to produce information, not obtainable through existing approved sources, to enhance the marketing efforts of MAPSA's members and not to obtain information that is within the bounds of legitimate discovery in this case.

8. Interrogatory Nos. 7 and 8 are objectionable for the same reasons as Interrogatory Nos. 3-6, as explained above. In addition, Interrogatory Nos. 7 and 8 request customer-specific information, which MAPSA's members would not be permitted to obtain under the Commission's current regulation at 52 Pa. Code §54.8(a), which provides, in pertinent part:

An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information.<sup>1</sup>

9. Interrogatory No. 11 seeks information about fees and charges PECO Energy and PSE&G may impose on electric and natural gas suppliers including how such fees and charges "were derived" and the annual "revenues" they produced each year since 1997. Such fees and charges, if any, have been approved by the PUC as to PECO Energy, and by the New Jersey

---

<sup>1</sup> For purposes of the regulations, private customer information includes the customer's historical billing data.

Board of Public Utilities (BPU) as to PSE&G. This is not a rate proceeding, and the approval of such fees and charges is not subject to collateral attack in this case. Moreover, the Public Utility Code provides other reasonable means for EGSs and natural gas suppliers to challenge such fees and charges if they so desire. E.g. 66 Pa. C.S. § 701 et seq. Accordingly, the information sought by Interrogatory No. 12 does not pertain to issues that are properly within the scope of this proceeding.

10. Interrogatory Nos. 13-15 request information concerning PECO Energy's Commission approved CTC. PECO Energy's CTCs were approved by the Commission in its restructuring proceeding,<sup>2</sup> and are not subject to collateral attack in this case. In addition, in *ARIPPA v. Pa. P.U.C.*, 792 A.2d 636, 667-68 (2002), the Commonwealth Court held that the stranded cost determination was not subject to reexamination in a subsequent proceeding:

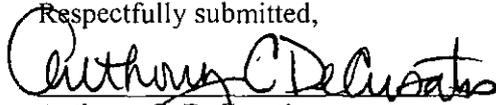
Pursuant to 66 Pa. C.S. §2803, stranded costs were to be fixed forever as part of the utility's restructuring plan ... the Competition Act froze rates ... in return for utilities receiving their stranded costs fixed in the restructuring plan, and the only authorization for relief from those rates set forth in the Competition Act was a rate increase [under Section 2804(4)(iii)(D)].

Accordingly, the information sought by Interrogatory Nos. 13 – 15 does not pertain to issues that are properly within the scope of this proceeding.

---

<sup>2</sup> *Re PECO Energy Company*, Docket Nos. R-00973953 and P-00971265 (May 14, 1998), 186 P.U.R. 4th 105.

THEREFORE, for all of the foregoing reasons, the Joint Applicants' Objections to the Interrogatories (Set I) Nos. 3-8 and 12-15 should be granted.

Respectfully submitted,  


Anthony C. DeCusatis  
*adecusatis@morganlewis.com*  
Thomas P. Gadsden, Esquire  
*tgadsden@morganlewis.com*  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234  
215.963.5001 (Fax)

Paul R. Bonney, Esquire  
*paul.bonney@exeloncorp.com*  
Kent D. Murphy, Esquire  
*kent.murphy@exeloncorp.com*  
Exelon Business Service Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215.841.4252  
215.841.4282 (Fax)

Counsel for PECO Energy Company

Daniel Clearfield  
*dclearfield@wolfblock.com*  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
717.237.7173

Richard P. Bonnifield  
*richard.bonnifield@pseg.com*  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
973.430.6441  
973.623.3261 (Fax)

Counsel for Public Service  
Electric and Gas Company

Dated: May 2, 2005

Appendix A

Mid Atlantic Power Supply Association

(Set I)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MID-ATLANTIC POWER SUPPLY ASSOCIATION INITIAL DATA REQUESTS TO  
 PECO ENERGY COMPANY, PUBLIC SERVICE ELECTRIC & GAS COMPANY,  
 PUBLIC SERVICE ENTERPRISE GROUP AND EXELON CORPORATION**

**To:**

Paul R. Bonney, Esquire Kent D. Murphy, Esquire PECO Energy Company 2301 Market Street, 22 <sup>nd</sup> Floor P.O. Box 8699 Philadelphia, PA 19103	Daniel Clearfield, Esquire Wolf Block Schorr & Solis-Cohen, LLP 212 Locust Street, Suite 300 Harrisburg, PA 17101
Anthony C. DeCusatis, Esquire Morgan, Lewis & Bockius, LLP 1701 Market Street Philadelphia, PA 19103-2921	Richard P. Bonnifield, Esquire, Vice President – Law PSEG Services Corporation 80 Park Plaza, T5E Newark, NJ 07102

The Mid-Atlantic Power Supply Association. (“MAPSA”), in accordance with the procedural schedule established in this proceeding, hereby submits its initial data requests to PECO Energy Company, Public Service Electric & Gas Company, Public Service Enterprise Group, and Exelon Corporation (collectively “Joint Applicants”). Written responses and documents should be served in accordance with the procedures set forth in the Prehearing Order entered in this proceeding to:

Steven S. Goldenberg, Esquire  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
Phone: 609-896-4586  
Fax: 609-896-1469  
E-mail: [sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Paul F. Forshay, Esquire  
Sutherland, Asbill & Brennan, LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Phone: 202-383-0100  
Fax: 202-637-3593  
E-mail: [paul.forshay@sablaw.com](mailto:paul.forshay@sablaw.com)

Theodore H. Jobes, Esquire  
FOX ROTHSCHILD LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
Phone: 215-299-2088  
Fax: 215-299-2150  
E-mail: [tjobes@foxrothschild.com](mailto:tjobes@foxrothschild.com)

### Instructions

A. These interrogatories shall be deemed to be continuing. PECO Energy Company (“PECO”), Public Service Electric & Gas Company (“PSE&G”), and Exelon Corporation (“Exelon”) (collectively “Joint Applicants”) are required to change, supplement and/or correct all answers to these interrogatories to conform to reasonably available information, including such information as becomes available after the answers are filed. Moreover, unless otherwise specified, each interrogatory requests an answer covering the period through the date on which the answers are served.

B. Each interrogatory shall be answered separately and in writing. Subparts to interrogatories shall be answered separately from one another. Each answer should first restate the question asked and should also identify the person(s) supplying the information that constitutes any and all portions of the answer. If more than one person is listed, the primary sponsoring witness for purposes of potential cross-examination at hearing should be specifically identified.

C. All requested information within the knowledge, possession, control, or custody of the Joint Applicants or any of its/their agents, or that which may be reasonably ascertained by the Joint Applicants or any of its/their agents, is to be provided. Specific references to the Joint Applicants or corporate names in the interrogatories includes agents, employees, or other representatives.

D. If Joint Applicants know of any document, communication, or information, but cannot give the specific information or the full information called for by a particular interrogatory, please provide all of the information that Joint Applicants have on the subject, and identify every person Joint Applicants believe to have the required document, communication, or information.

E. Joint Applicants shall answer all of the interrogatories, meaning no interrogatory is to be left unanswered. If the answer to a specific interrogatory is “no,” “not applicable,” or “unknown,” then such a statement shall be provided in writing. If the Joint Applicants do not answer an interrogatory on the basis of a claim of privilege, the basis of the privilege is to be stated in writing. Moreover, a log of such privileged documents is to be provided listing the privileged documents and the privilege asserted for each document.

F. Joint Applicants shall not respond to an interrogatory solely by reference to Joint Applicants’ testimony.

G. If an Interrogatory can be answered in whole or in part by reference to the response to another Interrogatory served in this proceeding, it is sufficient to so indicate by specifying the other Interrogatory by participant and number, by specifying the parts of the other response that are responsive and by specifying whether the response to the other Interrogatory is a full or partial response to the instant Interrogatory. If it constitutes a partial response, the balance of the instant Interrogatory shall be answered.

H. The conjunctions “and” and “or” each shall be interpreted individually in every instance to mean “and/or” and shall not be interpreted disjunctively to exclude any information that is otherwise within the scope of the interrogatory.

I. Any request to “provide” or “produce,” words that have similar import or meaning, a document, communication, workpaper, etc., shall be considered a request to produce documents.

## Definitions

A. As used herein, the word “document” or “workpaper” includes, but is not limited to, the original and/or all copies of memoranda, reports, books, manuals, instructions, directives, records, forms, notes, letters, notices, confirmations, telegrams, pamphlets, notations of any sort concerning conversations, telephone calls, e-mail messages, meetings or other communications, bulletins, transcripts, diaries, analysis, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments, and written comments concerning the foregoing, in whatever form, stored or contained in or whatever medium including electronic hard disks, floppy disks, CDs, internet resources and/or magnetic media, in whatever form, that (1) are in your possession, custody, or control or (2) are known or believed to be responsive to these interrogatories, regardless of who has possession, custody, or control.

B. As used herein, “representatives” shall include directors, officers, employees, agents, or other persons acting on behalf of the party to which these interrogatories are served.

C. As used herein, “identify” shall mean describe with particularity and provide the following information:

(1) With reference to a person, the persons full name, address, and present or last known business, and present or last known position with that business at the time of the transaction, occurrence, event, happening, or matter in question;

(2) With reference to an entity other than a natural person, the full name of the entity, the principal place of business, the entity’s primary business purpose;

D. When asked to provide a document, as defined above, please provide the following information with reference to the document:

- (1) The type of document (*e.g.*, letter, contract, pleading, memorandum, etc.);
- (2) The document's date and the date it was prepared;
- (3) The author(s) and the signatories (to the extent applicable) thereof, each addressee, and the names of the persons to whom the document was distributed;
- (4) The subject matter and substance of the document;
- (5) The present or last known custodian and location of the document;
- (6) The disposition if such document was, but is no longer, in your possession or subject to your control; and
- (7) Any information necessary to enable the custodian to locate the particular document and necessary for use in a request for production of documents.

E. As used herein, "person" or "persons" include natural persons as well as firms, partnerships, associations, institutions, joint ventures, corporations, governmental entities, administrative agencies, professional associations, and every other organization of whatever sort.

F. The term "Joint Applicants" means PECO Energy Company, Public Service Electric & Gas Company, Public Service Enterprise Group and Exelon Corporation, individually and collectively, and their affiliated companies, including their parent and holding companies, subsidiaries, and any person, joint venture, or other entity which they or their parent companies, affiliates and/or subsidiaries directly or indirectly control, or has the power to control, and their officers, employees, representatives, and agents.

## DATA REQUESTS

**MAPSA-PECO-1:** Provide a copy of all responses by Joint Applicants to Data Requests by other parties or participants in this proceeding.

**MAPSA-PECO-2:** Provide all workpapers created by or for each of Joint Applicants' witnesses in this proceeding.

**MAPSA-PECO-3:** For each tariff rate class below, set forth (a) the aggregate customer load; (b) the total number of customers in the class and (c) the number of customers for which advanced metering systems (e.g. interval, time of use, and pulse meters that have the capacity to transmit data to Joint Applicants via telephone wires or wirelessly) (collectively "Advanced Meters") are currently installed:

- (a) Rate GS – General Service
- (b) Rate PD – Primary Distribution Power
- (c) Rate HT – High Tension Power

**MAPSA-PECO-4:**

- (a) With regard to the GS rate class, state the number of customers with monthly peak demand in the following ranges:

- (1) Less than 300 kW
- (2) 300 kW to 400 kW
- (3) 400 kW to 500 kW
- (4) 500 kW to 600 kW
- (5) 600 kW to 700 kW
- (6) 700 kW to 800 kW
- (7) 800 kW to 900 kW
- (8) 900 kW to 1 MW
- (9) Greater than 1 MW

- (b) Within each such monthly peak demand range, state the number of customers with Advanced Meters, and identify the type(s) of Advanced Meters installed.

**MAPSA-PECO-5:**

- (a) With regard to the PD rate class, state the number of customers with monthly peak demand in the following ranges:

- (1) Less than 300 kW
- (2) 300 kW to 400 kW
- (3) 400 kW to 500 kW
- (4) 500 kW to 600 kW
- (5) 600 kW to 700 kW
- (6) 700 kW to 800 kW
- (7) 800 kW to 900 kW
- (8) 900 kW to 1 MW
- (9) Greater than 1 MW

- (b) Within each such monthly peak demand range, state the number of customers with Advanced Meters, and identify the type(s) of Advanced Meters installed.

**MAPSA-PECO-6:**

- (a) With regard to the HT rate class, state the number of customers with monthly peak demand in the following ranges:

- (1) Less than 300 kW
- (2) 300 kW to 400 kW
- (3) 400 kW to 500 kW
- (4) 500 kW to 600

- kW
- (5) 600 kW to 700 kW
  - (6) 700 kW to 800 kW
  - (7) 800 kW to 900 kW
  - (8) 900 kW to 1 MW
  - (9) Greater than 1 MW

- (b) Within each such monthly peak demand range, state the number of customers with Advanced Meters, and identify the type(s) of Advanced Meters installed.

**MAPSA-PECO-7:**

(a) With regard to existing Rule 4.6 Special Contracts, Economic Efficiency Rider Contracts (as provided for in PECO's Electric Service Tariff), Off Tariff Rate Agreements, or similar contractual or tariff arrangements pursuant to which a customer receives a discount from an otherwise applicable tariff rate (collectively "Special Contracts"), set forth, by rate class:

- (1) The number of outstanding Special Contracts with PECO customers;
- (2) The expiration date of each such Special Contract;
- (3) The total aggregate load represented by the Special Contracts; and
- (4) Whether some or all of the Special Contracts will remain in effect in the post-transition period (commencing in 2010) and, if so, whether and how the terms and conditions of such Special Contracts will differ from those currently in existence.

**MAPSA-PECO-8:** Identify, by name, location, monthly peak demand and rate class, each federal, state, county, and/or municipal customer with a monthly peak demand in excess of 400 kW.

**MAPSA-PECO-9:**

(a) Please provide a complete copy of the Settlement, together with all appendices and attachments thereto, and all pertinent Orders of Approval by the Pennsylvania Public Utility Commission ("Commission") in Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al., Docket Nos. R-

00973953 and P-00971265.

(b) Please provide a complete copy of all Agreements, together with all appendices and attachments and pertinent Commission Orders of Approval, that supplement or modify the Settlement referenced in (a) above.

**MAPSA-PECO-10:**

(a) Please provide a complete copy of the Settlement Petition and Settlement Agreement(s), together with all appendices and attachments thereto, and pertinent Commission Orders of Approval, in Application of PECO Energy for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket No. A-00110550F0147.

(b) Please provide a complete copy of all Agreements, together with all appendices and attachments and pertinent Commission Orders of Approval, that supplement or modify the Settlement Petition and/or Settlement Agreement(s) referenced in (a) above.

**MAPSA-PECO-11:**

(a) Please provide copies of all Codes of Conduct applicable to Joint Applicants' activities in each of the competitive wholesale and retail markets and jurisdictions (Federal and State) in which they operate.

(b) Please provide all PECO and PSE&G internal procedural, compliance and/or guidance manuals and documents that refer or relate to the identified Codes of Conduct and Joint Applicants' compliance with them.

(c) Identify any investigations and/or enforcement actions by a Federal and/or State regulatory authority with regard to Joint Applicants' compliance with an applicable Code of Conduct.

**MAPSA-PECO-12:** Identify all fees and charges that Joint Applicants presently assess against electric generation suppliers and natural gas suppliers that operate in Joint Applicants' respective service territories. With respect to each such fee and charge, set forth:

- (1) Its purpose;
- (2) Its amount;
- (3) How it was derived; and
- (4) Annual revenues received by Joint Applicants during the period 1997 to date.

**MAPSA-PECO-13:** Set forth, by year and rate class, the total revenues recovered by PECO

through the Competition Transition Charge ("CTC") during the period 1997 to date.

**MAPSA-PECO-14:** Set forth, by year and rate class, the total revenues that you project will be recovered by PECO through the CTC during 2005 and each ensuing year in which the CTC will be charged. Explain the reason(s) for any changes projected for the CTC from current levels until the CTC expires.

**MAPSA-PECO-15:** Set forth, by rate class, on a cents per kwh basis, the actual or projected CTC for each of the years 1997 through 2010. Set forth, with specificity, how the rate was /will be established for each year.

**MAPSA-PECO-16:** Set forth, by year, the switch rates for PECO's commercial and industrial customers of all rate classes during the period 1997 to date. Set forth the numbers of customers that switched to competitive supply and the annual aggregate load represented by these customers.

**MAPSA-PECO-17:** Set forth the current number of PECO's commercial and industrial customers with monthly peak demand greater than 500 kW that have switched to a third party supplier and the total aggregate load of those customers. Set forth the percentage of switching customers and their load in relation to PECO's total commercial and industrial customers and their aggregate load.

**MAPSA-PECO-18:** What is the current status of Exelon's retail marketing affiliate? If active, identify, by utility service territory and rate class, the number of retail customers currently served by the affiliate and the total load associated with these customers.

**MAPSA-PECO-19:** Provide a copy of all communications between Joint Applicants, the Securities and Exchange Commission and financial institutions regarding the announcement of the merger, including, without limitation, all documents referring to conferences with Wall Street analysts and rating agencies and transcripts of press conferences.

**MAPSA-PECO-20:** Do Joint Applicants, individually or collectively, intend to compete for retail electric and/or natural gas customers in Pennsylvania, New Jersey and/or Illinois? If so, identify all entities through which Joint Applicants intend to compete and the products and services that they will offer to end-use customers.

**MAPSA-PECO-21:** In the Joint Application, Joint Applicants state the view that the merger will be beneficial to retail competition in Joint Applicants' respective service territories. Please explain, with specificity, all other ways, other than as set forth in Joint Applicants' testimony, why Joint Applicants state the merger will be beneficial to retail competition.

**MAPSA-PECO-22:** Identify and produce any studies, analyses, surveys, workpapers and/or documents prepared by or for Joint Applicants, that analyze or address the impact of the merger on retail competition in a) Pennsylvania, b) New Jersey, and/or c) Illinois.

**MAPSA-PECO-23:** State whether, prior to Joint Applicants' announcement of the proposed merger, either or both of Joint Applicants had provided notice of an intent to retire any generation facilities. If so, identify each such generation facility and, with respect to each, set forth:

- (a) Its name and location;
- (b) Proposed date of retirement;
- (c) Its total megawatt capacity; and
- (d) Identify and produce all notices given regarding the proposed retirement.

**MAPSA-PECO-24:** Do Joint Applicants intend to develop new generation facilities within PJM? If so, set forth, with specificity:

(a) All positions in PJM queues for new generation facilities currently held by or for Joint Applicants;

- (b) The identity and location of each proposed facility;
- (c) Total megawatt capacity of each such facility;
- (d) When each such facility is projected to commence operation.

**MAPSA-PECO- 25:** What effect, if any, will the proposed merger have on Joint Applicants' plans to operate the new generation facilities identified in the preceding Data Request? If it is Joint Applicants' intention to operate the facilities, what effect will the introduction of each such new facility have on Joint Applicants' market power, and your mitigation proposals?

**MAPSA-PECO- 26:** Would Joint Applicants agree to a moratorium on new generating facility development as a condition precedent to the approval of the proposed merger? If not, state why not.

**MAPSA-PECO 27:** Under the terms of the Joint Application, what would prevent Joint Applicants from divesting only old or inefficient high-cost units and later replacing them with new, more efficient plants?

**MAPSA-PECO-28:** Identify and produce all sensitivity analyses and other studies performed by or for Dr. Hieronymous in connection with his testimony in this proceeding.

**MAPSA-PECO-29:**

- (a) Would it be accurate to state that for purposes of his testimony, Dr. Hieronymous utilized historical gas prices from the year 2004, together with an escalator to 2006, to estimate fuel prices on a going forward basis? If not, set forth, with specificity, all methodologies utilized by Dr. Hieronymous to estimate fuel prices on a going forward basis.
- (b) For purposes of its testimony, did Dr. Hieronymous differentiate fuel prices by geographic location?
- (c) For purposes of its testimony, did Dr. Hieronymous differentiate the prices for different types of fuel?

**MAPSA-PECO-30:** Identify and produce all studies and analyses performed, and documents and data analyzed by or for Joint Applicants, to determine whether the Joint Applicants' proposed restrictions on the sale of divested assets will foster or impede wholesale and retail competition within PJM.

**MAPSA-PECO-31:**

- (a) Identify all PJM generation owners that would be precluded from purchasing divested generation assets under the guidelines proposed by Joint Applicants.
- (b) Identify all generation owners that would be permitted to purchase divested generation assets under the guidelines proposed by Joint Applicants.
- (c) If appropriate, set forth with specificity, why, in Joint Applicants' view, the proposed divestiture plan would not foster a result in which Joint Applicants will emerge as the predominant generation-owning firm in one or more relevant markets, with other firms owning significantly smaller market shares on a comparative basis.

**MAPSA-PECO-32:** Identify and produce all studies and analyses conducted by or for Joint Applicants in connection with the promulgation of Joint Applicants' divestiture guideline recommendations.

**MAPSA-PECO-33:** Identify the license expiration dates for each plant in Joint Applicants'

nuclear fleet.

**MAPSA-PECO-34:** Set forth, with specificity, Joint Applicants' current plan for the retirement or decommissioning of any plants in Joint Applicants' nuclear fleet.

**MAPSA-PECO-35:** State whether Joint Applicants have developed, or would be willing to develop, plans to expand Joint Applicants' transmission assets within PJM as a means to mitigate congestion and transmission capacity-related concerns. If so, produce any such existing plans.

**MAPSA-PECO-36:** In their mitigation proposal, do Joint Applicants allot to each MW to be divested the same potential to reduce Joint Applicants' market power? If not, set forth which divested MWs are considered more likely to reduce Joint Applicants' market power and which are considered less likely to do so. Produce all studies and analyses performed by or for Joint Applicants in making their assessment.

**MAPSA-PECO-37:** State whether Joint Applicants agree that the location of a generating plant and its fuel type may be properly viewed as important factors in assessing a plant's potential contribution to the mitigation of Joint Applicants' market power? If not, state, with specificity, why not.

**MAPSA-PECO-38:** State whether it is Joint Applicants' position that for purposes of Joint Applicants' mitigation proposal, there is a direct 1 MW-to-1 MW correlation between transmission capacity enhancements and the divestiture of generation. If so, identify and produce all studies and analyses prepared by or for Joint Applicants to support this position, and all empirical evidence reviewed.

**MAPSA-PECO-39:** State whether it is Joint Applicants' position that for purposes of Joint Applicants' mitigation proposal, there is a direct 1 MW-to-1 MW correlation between the retirement of generation assets and the divestiture of generation assets. If so, identify and produce all studies and analyses prepared by or for Joint Applicants to support this position, and all empirical evidence reviewed.

**MAPSA-PECO-40:** State whether it is Joint Applicants' position that for purposes of Joint Applicants' mitigation proposal, there is a direct 1 MW-to- 1 MW correlation between capacity associated with a coal-fired plant and capacity associated with a natural gas-fired plant. If so, identify and produce all studies and analyses prepared by or for Joint Applicants to support this position, and all empirical evidence reviewed.

**MAPSA-PECO-41:** *With regard to Joint Applicants' interim mitigation proposal to bid Joint Applicants' nuclear capacity at \$0 into the PJM day-ahead market, set forth, with specificity, how this proposal will mitigate Joint Applicants' market power.*

**MAPSA-PECO-42:** Do Joint Applicants agree that nuclear units typically do not set market prices? If you do not agree, please provide the basis for your disagreement, and produce all

studies, analyses, empirical evidence and documents relied upon.

**MAPSA-PECO-43:**

- (a) Would Joint Applicants agree that if their nuclear capacity was bid at \$0, this would guarantee that Joint Applicants' nuclear units would run on virtually a continuing basis and that Joint Applicants would receive the market clearing price during all hours in which the units operate?
- (b) What would prevent Joint Applicants' nuclear units from benefiting from strategic behavior engaged in by Joint Applicants' other generating units that actually set market prices?

**MAPSA-PECO-44:** Identify all *Financial Transmission Rights* held by Joint Applicants in PJM.

**MAPSA-PECO-45:** State whether it is Joint Applicants' position that their "virtual divestiture" proposal differs from a firm contract to sell energy. If so, explain, with specificity, how Joint Applicants' "virtual divestiture" proposal differs from a firm contract to sell energy.

**MAPSA-PECO-46:** Pursuant to Joint Applicants' "virtual divestiture" proposal, what specific asset(s) is/are divested?

**MAPSA-PECO-47:** Does the "virtual divestiture" proposal include the divestiture of any of Joint Applicants' capacity?

**MAPSA-PECO-48:** What indicia of ownership attach to any "virtually" divested assets? Specifically, would the "virtually divested asset" carry with it the right to:

- (a) Determine when the generating plant is operated?
- (b) Set the price at which the plant is bid into PJM?
- (c) Determine when, and for how long, the plant will shut down for maintenance?
- (d) Determine whether, and to what extent, capital improvements are to be made to the plant?
- (e) Decide whether and when to retire the unit?

**MAPSA-PECO-49:** Provide all studies and analyses prepared by or for Joint Applicants that address the assets to be included as part of (a) Joint Applicants' "physical" divestiture plan and (b) the "virtual" divestiture plan.

**MAPSA-PECO-50:** With regard to Joint Applicants' "virtual" auction proposal, based on existing market shares, which companies with generation assets within PJM would be considered eligible bidders in the proposed auction?

**MAPSA-PECO-51:** Which of the current winners of the New Jersey Basic Generation Service auction would be eligible to bid in the "virtual" divestiture auction, based on their existing market shares?

**MAPSA-PECO-52:** Identify and produce all studies, analyses and empirical evidence produced by or for Joint Applicants that address whether the potential restrictions on buyers of physically or "virtually" divested assets will facilitate competition in PJM.

**MAPSA-PECO-53:** With regard to Joint Applicants' proposal to enter into long-term 15 year or longer entitlements to PJM East baseload energy, produce a copy of the proposed contract. If a proposed contract has yet to be drafted, summarize, with specificity, the anticipated material terms of such a contract, focusing specifically on those terms that will insure that these contracts will be effective mitigation measures.

**MAPSA-PECO-54:** What assurance can be provided that the entire 2600 MWs will be sold in the "virtual" auction?

- (a) To the extent that all or a portion of the 2600 MWs remain unsold in the auction, do Joint Applicants have a contingency plan to assure that these assets will be removed from Joint Applicants' control?
- (b) If so, what is the contingency plan?

**MAPSA-PECO-55:** At the expiration of the 15 year "virtual" divestiture period, would this mitigation device terminate irrespective of the extent of Joint Applicants' market power then existing in PJM? If so, what other services will exist in 15 years to mitigate Joint Applicants' continuing market power?

**MAPSA-PECO-56:** Would Joint Applicants agree to the implementation of additional mitigation measures if, in fact, at the expiration of the 15 year period, Joint Applicants' market power in the relevant markets has not been sufficiently and permanently mitigated?

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RECEIVED**  
05 MAY -9 AM 9:54  
PA.P.U.C.  
SECRETARY'S BUREAU

**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 the Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of the Mid-Atlantic Power Supply Association upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Steven S. Goldenberg, Esquire  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

*Counsel for New Jersey Large Energy Users Coalition*

**VIA FIRST CLASS MAIL**

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Counsel for Public Service  
Electric and Gas Company

Karen S. Miller, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Counsel for Office of Small Business  
Advocate

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Counsel for City of Philadelphia

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for TRF  
Sustainable Development Fund

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jdillon@pplweb.com](mailto:jdillon@pplweb.com)

Counsel for PPL Services Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for Direct Energy LLC

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Counsel for Senator Anthony H. Williams

Charles McPhedran, Esquire  
*Citizens for Pennsylvania's Future*  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphebran@pennfuture.org](mailto:mcphebran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton and  
Joey Bergey

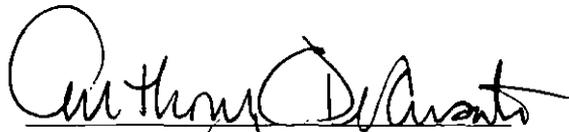
W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company, Pennsylvania  
Power Company, FirstEnergy Solutions, Corp

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of  
Philadelphia, Inc.

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
Pamela G. Bishop, Esquire  
Assistant Counsel  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
Scott Perry, Esquire  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

  
Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

Date: May 3, 2005

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

**Morgan Lewis**  
COUNSELORS AT LAW

**Anthony C. DeCusatis**  
215.963.5034  
adecusatis@morganlewis.com

**ORIGINAL**

**RECEIVED**  
05 MAY -9 AM 9:43  
PA.P.U.C.  
SECRETARY'S BUREAU

May 4, 2005

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

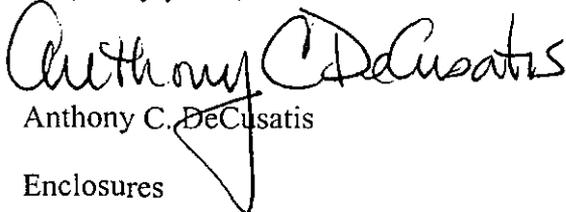
**DOCUMENT  
FOLDER**

**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 Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set II) of the Office of Small Business Advocate. Copies of the Objections have been served upon the persons and in the manner set forth in the Certificate of Service attached to the enclosed document. Additional copies of this letter and of the Objections are also 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

61

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RECEIVED**  
05 MAY -9 AM 9:43  
PA.P.U.C.  
SECRETARY'S BUREAU  
DOCKET NO. A-110550 F0160  
A-110550 F0160

**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-110550 F0160**  
A-110550 F0160

**OBJECTIONS OF PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
TO THE INTERROGATORIES (SET II)  
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

**DOCKETED**  
AUG 03 2005

Pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code §5.342, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Corporation (PSE&G) (collectively, the Joint Applicants), hereby object to the Interrogatories (Set II) Nos. 17 and 20-22 propounded by the Office of Small Business Advocate (OSBA). As explained below, the aforementioned interrogatories request information pertaining to subjects that are outside the scope of this proceeding.

1. On April 27, 2005, the OSBA issued its Interrogatories (Set II) consisting of 12 questions numbered 14-25, a copy of which is attached.
2. Interrogatory Nos. 17, 20 and 21 request detailed information concerning the components and derivation of estimated "synergies" that may be experienced after the proposed merger by non-utility subsidiaries of the Joint Applicants' parent companies with respect to those non-utility subsidiaries' unregulated businesses.

**DOCUMENT  
FOLDER**

3. Interrogatory No. 22 requests detailed information concerning each nuclear generating plant owned by Exelon Generation Company LLC (Exelon Generation) “at the time of the restructuring” and as of 2004. Such information includes the “stranded cost attributable to [each] unit” at both of the specified times (OSBA-II-22.c.).

4. The possible “synergies” estimated for non-utility subsidiaries of the post-merger parent company are not a subject within the scope of this proceeding. Customers of PECO Energy do not bear the costs such non-utility companies incur and, therefore, the possibility that such non-utility companies could experience future avoided costs or cost savings has no impact on the issues that are within the scope of this proceeding or even within the jurisdiction and authority of this Commission. Moreover, OSBA Interrogatory Nos. 17.b., 20 and 21 request information concerning possible post-merger “synergies” of nuclear generating facilities that are neither owned nor operated by either of the Joint Applicants. Furthermore, generation was removed from Commission regulation by the Electricity Generation Customer Choice and Competition Act (the Competition Act). *See* 66 Pa. C.S. §2802(14) (“The generation of electricity will no longer be regulated as a public utility function....”).

5. Interrogatory No. 22 also requests information pertaining to nuclear generating plants that, as explained above, are not owned or operated by the Joint Applicants and, in any event, were removed from regulation by the Competition Act. The request for the “allowed stranded cost attributable to [each] unit” is objectionable for the additional reason that the stranded cost recovery granted by the Commission as part of PECO Energy’s restructuring case<sup>1</sup>

---

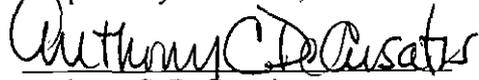
<sup>1</sup> *Re PECO Energy Company*, Docket Nos. R-00973953 and P-00971265 (May 14, 1998), 186 P.U.R.4th 105.

is not subject to reexamination or collateral attack in a subsequent merger proceeding, as the Commonwealth Court held in *ARIPPA v. Pa. P.U.C.*, 792 A.2d 636, 667-68 (2002):

Pursuant to 66 Pa. C.S. §2803, stranded costs were to be fixed forever as part of the utility's restructuring plan ... the Competition Act froze rates ... in return for utilities receiving their stranded costs fixed in the restructuring plan, and the only authorization for relief from those rates set forth in the Competition Act was a rate increase [under Section 2804(4)(iii)(D)]

THEREFORE, for all of the foregoing reasons, the Joint Applicants' Objections to the Interrogatories (Set II) Nos. 17 and 20-22 of the OSBA should be granted.

Respectfully submitted,



Anthony C. DeCusatis  
*adecusatis@morganlewis.com*  
Thomas P. Gadsden, Esquire  
*tgadsden@morganlewis.com*  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234  
215.963.5001 (Fax)

Paul R. Bonney, Esquire  
*paul.bonney@exeloncorp.com*  
Kent D. Murphy, Esquire  
*kent.murphy@exeloncorp.com*  
Exelon Business Service Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215.841.4252  
215.841.4282 (Fax)

Counsel for PECO Energy Company

Daniel Clearfield  
*dclearfield@wolfblock.com*  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
717.237.7173

Richard P. Bonnifield  
*richard.bonnifield@pseg.com*  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
973.430.6441  
973.623.3261 (Fax)

Counsel for Public Service  
Electric and Gas Company

Dated: May 4, 2005

Appendix A

OSBA Interrogatories  
(Set II)

Interrogatories of the  
Office of Small Business Advocate to  
PECO Energy Company  
Docket No. A-110550F0160

14. To what extent has PSEG bid (or responded to an RFP) as a wholesale supplier in Pennsylvania, New Jersey or elsewhere? Include the following information with respect to each auction or RFP, as appropriate: a) applicable jurisdiction; b) date of auction/RFP; c) whether PSEG was awarded a contract; and d) the amount of load (MW) awarded.
15. To what extent has Exelon bid (or responded to an RFP) as a wholesale supplier in Pennsylvania, New Jersey or elsewhere? Include the following information with respect to each auction or RFP, as appropriate: a) applicable jurisdiction; b) date of auction/RFP; c) whether Exelon was awarded a contract; and d) the amount of load (MW) awarded.
16. Please provide the certificate number for any authority PSEG holds or has previously held to act as an Electric Generation Supplier or Natural Gas Supplier in Pennsylvania. Specify the time periods during which such certificates were, or remain, valid.
17. Reference the Company's response to OSBA-I-2. Please confirm the following results. If such results are incorrect, please rectify the outcomes, as appropriate:
  - a. Using year 2 as the baseline, the total direct non-regulated savings amount to \$250 million, of which approximately \$170 are nuclear synergies, \$45 million are trading/marketing synergies and \$35 million are fossil generation synergies. All of the above synergies are assumed to reflect a steady-state result, i.e., to continue in perpetuity.
  - b. Using year 2 as the baseline, the total direct nuclear synergies of \$170 million are comprised of \$75 million of increased production at PSEG's nuclear plants, and \$95 million of nuclear cost savings.
18. Reference the Company's response to OSBA-I-8. Please explain whether the capacity factors assigned to the *Exelon*-operated nuclear plants include in Dr. Hieronymus' market power analysis are based on industry averages, or actual operating results. For each Exelon-operated nuclear plant, provide the following:
  - a) actual capacity factor; and b) the corresponding industry average capacity factor.

19. Reference the MW capacity figures listed in the pre-merger columns of Exhibit J-14. Please explain whether actual or industry average nuclear capacity factors were used to derive the Exelon, PSEG and total Market Size results reported in Dr. Hieronymus' mitigation analysis.
20. Reference the Company's response to OSBA-I-2(c). Please provide a list of all PSEG-owned nuclear units included in the referenced nuclear improvement synergy analysis, along with the stand-alone nuclear capacity factor baseline(s) assigned to the PSEG-owned units.
21. Reference the Company's response to OSBA-I-2(c). Please provide a copy of all workpapers used to estimate the year 2 nuclear improvement synergies expected from the merger.
22. Please provide the following information with respect to each nuclear facility owned by Exelon at the time of restructuring in Pennsylvania:
  - a. Annual capacity factor at the time of restructuring, and the current (i.e., 2004) annual capacity factor;
  - b. Exelon ownership share at the time of restructuring, and the current ownership share;
  - c. The allowed stranded cost attributable to the unit at the time of restructuring, and the current stranded cost balance; and
  - d. The rated capacity of the unit (MW) at the time of restructuring, and the current (i.e., 2004) rated capacity.
23. Please provide a copy of PECO's fully unbundled cost-of-service study (i.e., as revised in Exhibit RAC-11) submitted in Docket No. R-00973953.
24. Reference the Company's response to OSBA-I-12. Please revise the table included in the Company's response to reflect the requested 6-10 kW demand interval.
25. Reference the Company's response to OSBA-I-11. Please provide a detailed proof of revenue, by function (i.e., distribution, transmission, CTC and generation), for Rate GS customers in 2004. The proof of revenue should show the amount of kWh times the applicable rate, in each rate block, and tie to the total billed kWh of 8,335,804,940 reported for 2004.

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RECEIVED**  
05 MAY -9 AM 9:43  
PA.P.U.C.  
SECRETARY'S BUREAU

**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 PECO Energy Company and Public Service Electric and Gas Company's Objections to the OSBA's Interrogatories Set II upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY AND ELECTRONIC MAIL**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)  
[kniesboul@state.pa.us](mailto:kniesboul@state.pa.us)  
(Hard copy and Electronic Copy)

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

Karen S. Miller, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Counsel for Office of Small Business Advocate

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Counsel for Public Service  
Electric and Gas Company

Counsel for Strategic Energy, LLC

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[Daniel.cantu-hetzler@phila.gov](mailto:Daniel.cantu-hetzler@phila.gov)  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for City of Philadelphia

Counsel for TRF  
Sustainable Development Fund

Charles McPhedran, Esquire  
I-PH/2183319.1

Jonathan M. Stein, Esquire

Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcpهدran@pennfuture.org](mailto:mcpهدran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton and  
Joey Bergey

Steven S. Goldenberg, Esquire  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Counsel for MAPSA

Jesse A. Dillon, Esquire  
Donald A. Kaplan, Esquire  
Richard L. Rosen, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jadillon@pplweb.com](mailto:jadillon@pplweb.com)  
[donk@prestongates.com](mailto:donk@prestongates.com)  
[richard.rosen@aporter.com](mailto:richard.rosen@aporter.com)

Counsel for PPL Services Corporation

Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)  
[tjobes@foxrothschild.com](mailto:tjobes@foxrothschild.com)  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Counsel for NJLEU Coalition  
and MAPSA

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for Direct Energy LLC

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of  
Philadelphia, Inc.

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
Pamela G. Bishop, Esquire  
Assistant Counsel  
Scott Perry, Esquire  
Assistant Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company, Pennsylvania  
Power Company, FirstEnergy Solutions, Corp.

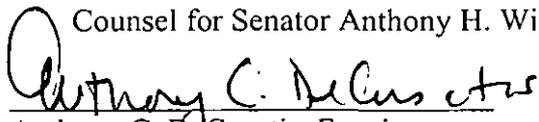
Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)

Counsel for Philadelphia Gas Works

Date: May 4, 2005

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Counsel for Senator Anthony H. Williams

  
Anthony C. DeCusatis  
Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

**Morgan Lewis**  
COUNSELORS AT LAW

**ORIGINAL**

**Anthony C. DeCusatis**  
215.963.5034  
adecusatis@morganlewis.com

May 5, 2005

**DOCUMENT  
FOLDER**

**RECEIVED**  
05 MAY -9 - AM 9:47  
PA.P.U.C.  
SECRETARY'S BUREAU

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 Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of the Energy Coordinating Agency. Copies of the Objections have been served upon the persons and in the manner set forth in the Certificate of Service attached to the enclosed document. Additional copies of this letter and of the Objections are also 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

60

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RECEIVED**  
05 MAY - 9 AM 9:47  
PA.P.U.C.  
SECRETARY'S BUREAU

**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**  
AUG 03 2005

**OBJECTIONS OF PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
TO THE INTERROGATORIES (SET I)  
OF THE ENERGY COORDINATING AGENCY**

Pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code §5.342, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Corporation (PSE&G) (collectively, the Joint Applicants), hereby object to the Interrogatories (Set I) propounded by the Energy Coordinating Agency (ECA). As explained below, the aforementioned interrogatories inquire into matters that are outside the scope of this proceeding, are overly broad, would require an unreasonable search and would be unduly burdensome.

1. On April 28, 2005, ECA issued its Interrogatories (Set I), consisting of 13 questions, a copy of which is attached.

2. Interrogatory Nos. 1 and 2 request annual sales data for residential, residential heating and general service customers of PECO Energy and PSE&G for "each of the last ten years." Similar information, also for the last ten years, is requested in

**DOCUMENT  
FOLDER**

Interrogatory No. 3 for “residential and commercial customers elsewhere in the Exelon service territory.”

3. The customer class sales data sought by Interrogatory Nos. 1-3 is not relevant to the subject matter or issues in this case. The lack of relevance is underscored by Interrogatory No. 3, which asks for ten years of data for customers “elsewhere in the Exelon service territory.” That request, though vague and, therefore, objectionable on that basis as well, presumably is referring to customers served by Commonwealth Edison Company (ComEd). Sales data for customers located in northern Illinois has no reasonable connection to this case or to the Joint Applicants. In addition, the ten year period (1995-2005) specified by the interrogatories is excessive.

4. Interrogatory Nos. 4-7 request information concerning “energy efficiency, demand response or demand side management services or programs.” Interrogatory Nos. 8 and 9 request information concerning “net metering policies and tariffs for customer sited renewable energy generators.” Interrogatory Nos. 10 and 11 request documents and information concerning “distributed generation” and “generation owed or operated by customers of PECO at the customers’ premises.” Interrogatory No. 12 requests documents concerning “solar energy.” Interrogatory No. 13 requests “documents and plans” concerning “compliance with the solar energy requirements under Act 213 of 2004, the Alternative Energy Portfolio Standards Act.” As explained below, these interrogatories request information concerning subjects and issues that are not part of this proceeding, are the subject of separate proceedings before the PUC, have previously been judged to be improper in a merger proceeding, and as to Interrogatory Nos. 10-13 are overly broad, would require an unreasonable search and are unduly burdensome.

5. Pennsylvania Act 213 of 2004, the Alternative Energy Portfolio Standards (AEPS) Act (73 P.S. §§1648.1 et seq.) was enacted to establish specific requirements for Electric Distribution Companies (EDCs) in Pennsylvania to acquire electricity generated by alternative sources, including renewable sources, to meet their obligations as Providers of Last Resort and default suppliers. The AEPS Act defines EDCs' obligations with respect to Alternative Energy Sources. The PUC has initiated a separate proceeding to develop specific rules for the implementation of Act 213.

6. On December 16, 2004, the Commission issued an order pursuant to 66 Pa. C.S. §2807(e)(2) initiating a proposed rulemaking to develop regulations governing EDCs' provision of default service after the end of their respective generation rate caps. The rulemaking order was published on February 26, 2005. *35 Pa. Bulletin* 1421. EDCs compliance with the AEPS Act is comprehended by the proposed rulemaking. *See 35 Pa. Bulletin* at 1424 ("The [EDC implementation] plan should also document ... the proposed method for complying with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.")

7. The PUC created the Demand-Side Response Working Group to consider the feasibility and efficacy of expanding demand-side management and demand-response programs and policies for EDCs. <sup>1</sup>

8. In *Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, A-110300F0095 et al (June 20, 2001), 2001 Pa. PUC LEXIS 23 (*GPU/FirstEnergy*), the Clean Air Council (CAC) contended that the merger should be

---

<sup>1</sup> [www.puc.state.pa.us/electric/electric\\_dmndsideresp.aspx](http://www.puc.state.pa.us/electric/electric_dmndsideresp.aspx).

conditioned on the applicants expanding their programs for renewable energy and demand-side management, and Citizens for Pennsylvania's Future (PennFuture) contended that the merger should also be conditioned upon a \$50 million payment to a statewide sustainable development fund to support renewable energy. The Administrative Law Judge (ALJ) rejected the positions of CAC and PennFuture because, *inter alia*, the proceeding was "not an industry-wide investigation into the merits of wind generation" and no connection existed between the merger and the programs and expenditures CAC and PennFuture advocated. The Commission affirmed the ALJ's recommendation and rejected CAC/PennFuture's position, stating:

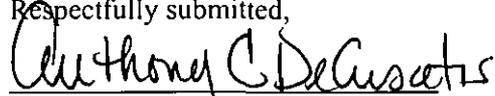
After consideration of this issue, we adopt the ALJ's recommendations regarding the proposed demand-side and renewable energy conditions in their totality. We reach this conclusion because neither the CAC nor PennFuture has established a connection between the merger and the need for the additional expenditures.

9. In light of the Commission's prior holding in *GPU/FirstEnergy* which is reinforced by its proposed rulemaking on default service and the existence of its on-going Demand-Side Response Working Group, it is clear that Interrogatory Nos. 4-13 inquire into matters that are outside the scope of this proceeding and, therefore, are objectionable.

10. The requests that PECO Energy provide "any and all documents" (Interrogatory Nos. 11 and 12) and "any and all documents and plans" (Interrogatory No. 13) are overly broad, would require an unreasonable search and, therefore, are unduly burdensome. As a consequence, they are objectionable for those reasons as well.

THEREFORE, for all of the foregoing reasons, the Joint Applicants' Objections to the Interrogatories (Set I) of the Energy Coordinating Agency should be granted.

Respectfully submitted,



Anthony C. DeCusatis  
*adecusatis@morganlewis.com*  
Thomas P. Gadsden, Esquire  
*tgadsden@morganlewis.com*  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234  
215.963.5001 (Fax)

Paul R. Bonney, Esquire  
*paul.bonney@exeloncorp.com*  
Kent D. Murphy, Esquire  
*kent.murphy@exeloncorp.com*  
Exelon Business Service Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215.841.4252  
215.841.4282 (Fax)

Counsel for PECO Energy Company

Daniel Clearfield  
*dclearfield@wolfblock.com*  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
717.237.7173

Richard P. Bonnifield  
*richard.bonnifield@pseg.com*  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
973.430.6441  
973.623.3261 (Fax)

Counsel for Public Service  
Electric and Gas Company

Dated: May 5, 2005

Appendix A  
Energy Coordinating Agency's Interrogatories  
(Set I)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JOINT APPLICATION OF PECO</b>	<b>:</b>	
<b>ENERGY COMPANY AND PUBLIC</b>	<b>:</b>	<b>DOCKET NO. A-110550F0160</b>
<b>SERVICE ELECTRIC AND GAS</b>	<b>:</b>	
<b>COMPANY FOR APPROVAL OF THE</b>	<b>:</b>	
<b>MERGER OF PUBLIC SERVICE</b>	<b>:</b>	
<b>ENTERPRISE GROUP</b>	<b>:</b>	
<b>INCORPORATED WITH AND INTO</b>	<b>:</b>	
<b>EXELON CORPORATION</b>	<b>:</b>	

**Interrogatories of the Energy Coordinating Agency  
Set I**

In accordance with 52 Pa. Code § 5.341, Intervenor, the Energy Coordinating Agency, hereby propounds the following Interrogatories to PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G), collectively referred to therein as "the Companies", to be answered by those officers, employees or agents as may be cognizant of the requested facts and who are authorized to answer on behalf of the Company.

Instructions

(a) These interrogatories shall be deemed to be continuing. The Respondent is obliged to change, supplement and correct all answers to interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed.

(b) The answers provided should first restate the question asked and also identify the person(s) supplying the information.

(c) All information is to be divulged that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The terms "PECO" or "PSE&G" or "the Company" or "the Companies" or "you", as used herein includes PECO Energy Company, Public Service Electric and Gas Company, and their attorneys, agents, employees, or other representatives.

(d) As used herein the word "document" includes, but is not limited to, the original and all copies (regardless of origin and whether or not including additional writing thereon or attached thereto) of memoranda, reports, books, manuals, instructions, directives, records, forms, letters, notices, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, and worksheets, in whatever form, stored or contained in or on whatever medium including computerized memory or magnetic media.

(e) As used herein, the terms “net metering”, “ has the meaning assigned by the Pennsylvania Alternative Energy Portfolio Standards Act, Act 213 of 2004 (codified at 73 P.S. § 1648.1 et seq.).

(f) As used herein, “renewable energy” includes the following sources: solar photovoltaic energy, wind power, low-impact hydropower, geothermal energy, biologically derived methane gas, fuel cells, and biomass energy.

(g) As used herein, “energy efficiency” includes but is not limited to programs that help customers reduce energy consumption.

(h) As used herein, “demand response programs” means programs designed to increase the ability of customers to shift the timing of their consumption of electricity, including but not limited to changes in consumption in response to real-time prices or time-of-use prices.

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

**Interrogatories of the Energy Coordinating Agency Set I**

1. For each of the last ten years, please provide the total annual sales for each of the following customer classes and the average monthly sales in kilowatt hours for PECO Energy rates R, RH, and GS customers in Pennsylvania.
2. For each of the last ten years, please provide the total annual sales for each of the following customer classes and the average monthly sales in kilowatt hours for PSE&G rates R, RH, and GS customers in New Jersey.
3. For each of the last ten years, please provide the total annual sales for each of the following customer classes and the average monthly sales in kilowatt hours for residential and commercial customers elsewhere in the Exelon service territory.
4. Provide the number of PECO Energy employees in Pennsylvania who manage, oversee, or provide energy efficiency, demand response or demand side management services or programs to customers in each of the following years: 1995 and 2005.
5. Provide the number of PSE&G employees in New Jersey who manage, oversee, or provide energy efficiency, demand response, or demand side management services or programs to customers in each of the following years: 1995 and 2005.
6. Provide the number of employees not covered in the responses to 4 and 5 above who manage, oversee, or provide energy efficiency, demand response or demand side management services or programs to customers in each of the following years: 1995 and 2005.
7. How will the merger affect the energy efficiency, demand side management, and demand response programs in PECO and in PSE&G territories. How will the number of employees, number of contractors and program budgets likely be impacted by the merger.
8. Please state whether PECO will support or oppose adoption in its service territory of the net metering policies and tariffs for customer sited renewable energy generators that are currently in effect in the PSE&G service territory. Please include in the response to his question any and all reasons for supporting or opposing adoption of said net metering policies and/or tariffs.
9. Please state whether PECO will support or oppose adoption in its service territory of the interconnection policies and tariffs for customer sited renewable energy generators that are currently in effect in the PSE&G service territory. Please include any and all reasons for supporting or opposing adoption of said interconnection policies and/or tariffs.

10. Please provide any documents that PECO has prepared or commissioned, in whole or in part, within the last five years that discuss the topic or concept of distributed generation.

11. Please provide any and all documents that PECO has prepared or commissioned, in whole or in part, within the last five years that discuss generation owned or operated by customers of PECO at the customers' premises.

12. Please provide any and all documents that PECO has prepared or commissioned on solar energy within the last five years.

13. Please provide any documents and plans that PECO has prepared or commissioned for compliance with the solar energy requirements under Act 213 of 2004, the Alternative Energy Portfolio Standards Act or liabilities of PECO under said Act.

**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 the Objections of PECO Energy Company and Public Service Electric and Gas Company to Energy Coordinating Agency's Interrogatories (Set I) upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of Philadelphia, Inc.

# ORIGINAL

VIA FIRST CLASS MAIL

Liz Robinson  
Executive Director  
Energy Coordinating Agency  
Of Philadelphia, Inc.  
1924 Arch Street  
Philadelphia, PA 19103

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Counsel for Public Service  
Electric and Gas Company

Karen S. Miller, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Counsel for Office of Small Business  
Advocate

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Counsel for City of Philadelphia

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for TRF  
Sustainable Development Fund

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

05 MAY - 9 AM 9:47

RECEIVED

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jdillon@pplweb.com](mailto:jdillon@pplweb.com)

Counsel for PPL Services Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for Direct Energy LLC

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Counsel for Senator Anthony H. Williams

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

Counsel for New Jersey Large Energy Users  
Coalition

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

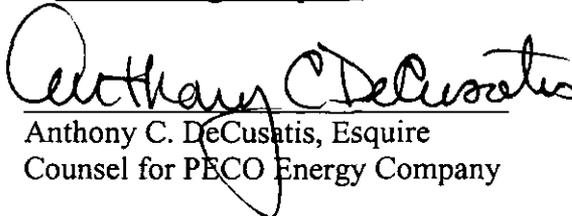
Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company,  
Pennsylvania Power Company, FirstEnergy  
Solutions, Corp

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphedran@pennfuture.org](mailto:mcphedran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton  
and Joey Bergey

Date: May 5, 2005

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
Pamela G. Bishop, Esquire  
Assistant Counsel  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
Scott Perry, Esquire  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301  
Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

  
Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

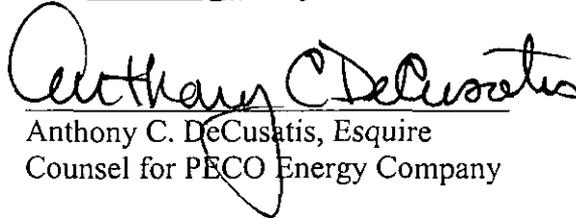
Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company,  
Pennsylvania Power Company, FirstEnergy  
Solutions, Corp

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphedran@pennfuture.org](mailto:mcphedran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton  
and Joey Bergey

Date: May 5, 2005

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
Pamela G. Bishop, Esquire  
Assistant Counsel  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
Scott Perry, Esquire  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)  
Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301  
Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

  
Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

HOGAN & HARTSON  
L.L.P.

ORIGINAL

KEVIN J. LIPSON  
PARTNER  
(202) 637-5614  
KJLIPSON@HHLAW.COM

May 6, 2005

KJR

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910  
WWW.HHLAW.COM

BY FEDERAL EXPRESS

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

RECEIVED

MAY 6 2005

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

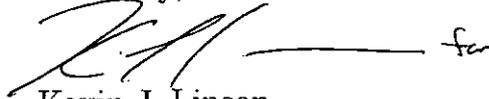
**Re: Joint Application of PECO Energy Co. and Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group Incorporated with and into Exelon Corp.; Docket No. A-110550F0160**

Dear Secretary McNulty::

Enclosed herewith for filing please find an original and three (3) copies of Edison Mission Energy, EME Homer City Generation, LP and Edison Mission Marketing & Trading, Inc.'s Motion to Intervene Out-of-Time in the captioned proceeding. Also enclosed is an original and three (3) copies of a Motion for Admission Pro Hac Vice.

Please date stamp the two extra copies of both motions and return them via Federal Express using the enclosed return label. Thank you for your attention to this matter.

Sincerely,



Kevin J. Lipson  
Counsel for Edison Mission Energy, EME  
Homer City Generation, LP and Edison  
Mission Marketing & Trading, Inc.

DOCUMENT  
FOLDER

Enclosures

cc: Parties of Record

59

RECEIVED

MAY 6 2005

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

DOCUMENT  
FOLDER

PETITION OF  
EDISON MISSION ENERGY, EME HOMER CITY GENERATION, LP  
AND EDISON MISSION MARKETING & TRADING, INC.  
TO INTERVENE OUT-OF-TIME

Edison Mission Energy ("EME"), EME Homer City Generation, LP ("Homer City") and Edison Mission Marketing & Trading, Inc. ("EMMT") (together, the "EME Companies") by its attorneys and pursuant to the rules and regulations of the Pennsylvania Public Utility Commission (the "Commission"), 52 Pa. Code §§ 5.71-5.76, hereby submits this Petition to Intervene Out-of-Time in the above-captioned proceeding. In support of intervention with full party status, the EME Companies submit the following:

1. The names and addresses of the EME Companies' attorneys are:

Kevin J. Lipson  
Hogan & Hartson LLP  
555 Thirteenth Street, N.W.  
Washington, DC 20004  
Telephone: (202) 637-5614  
Facsimile: (202) 637-5910  
e-mail: [KJLipson@hhlaw.com](mailto:KJLipson@hhlaw.com)

DOCKETED

MAY 25 2005

David Newmann  
Hogan & Hartson LLP  
1835 Market Street  
28<sup>th</sup> Floor  
Philadelphia, PA 19103  
Phone: (267) 675-4600  
Fax: (267) 675-4601

The EME Companies also ask that copies of all documents be served on:

Deborah A. Golden  
Vice President and General Counsel  
Midwest Generation, LLC  
One Financial Place, Suite 3500  
440 South LaSalle Street  
Chicago, IL 60605  
Telephone: (312) 583-6165  
Facsimile: (312) 583-4917  
e-mail: [dgolden@mwgen.com](mailto:dgolden@mwgen.com)

John P. Mathis  
Vice President and Associate General Counsel  
Edison Mission Energy  
555 12<sup>th</sup> Street, NW  
Suite 640  
Washington, DC 20004  
Telephone: (202) 638-0079  
Fax: (202) 638-0534  
e-mail: [jmathis@edisonmission.com](mailto:jmathis@edisonmission.com)

2. This filing is in response to the Joint Application, dated February 4, 2005, filed by PECO Energy Company ("PECO") and Public Service Electric and Gas Company ("PSE&G") (collectively "Joint Applicants"), which, to the extent necessary, seeks to obtain the Commission's approval 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 ultimate corporate parent of the Joint Applicants.

3. EME is organized under the laws of the state of Delaware and has a principal place of business at 18101 Von Karman Avenue, Irvine, California. EME is indirectly owned by Edison International, an exempt holding company that also owns Southern California Edison Company, a public utility serving retail customers in Southern California.

4. EME owns and operates generation assets in various geographical areas of the U.S. Homer City, a wholly owned subsidiary of EME, owns an approximately 1800 MW coal-fired generating plant in Homer City, PA. EMMT is a wholly-owned subsidiary of EME and engages, *inter alia*, in market-based purchases and sales of energy and capacity in the U.S. electric power markets, including in the PJM Interconnection ("PJM") control area which includes Pennsylvania. Specifically, EMMT markets the energy and capacity from the Homer City plant both into PJM and the New York ISO markets, as well as to wholesale purchasers in bilateral transactions.

5. The Joint Applicants' proposed transaction affects the interests of EME Companies as a power generation owner/operator and wholesale power competitor in the Midwest and PJM markets. The EME Companies thus have an unique interests that could be directly affected by the outcome of this proceeding and that cannot be adequately represented by any other party. Further, because of the EME Companies' interests (and the

interests of its customers) in fair competition and reasonable rates, granting of this Petition is in the public interest.

6. The EME Companies' interests are also affected because the proposed acquisition could result in increased prices in the markets in which EME Companies operate and because Exelon's proposed mitigation plan filed with the Federal Energy Regulatory Commission is likely inadequate to assuage market-power concerns raised by this merger. The EME Companies are concerned that the transaction would increase the merged company's incentives and ability to exercise unlawfully its market power and lead to higher power costs.

7. The EME Companies acknowledge that it is filing this Petition to Intervene after March 7, 2005, the date fixed for the filing of interventions in the notice published in the Pennsylvania Bulletin on February 18, 2005. However, the EME Companies submit that good cause exists for the Commission to accept its Petition to Intervene. See 52 Pa. Code § 5.74. The EME Companies were delayed in the filing of this Petition because of the complexity of the merger application and the complex structure (including the market-power mitigation plan) of the proposed transaction, which made the decision to intervene difficult and time consuming. The EME Companies accept the record in the proceeding as it stands at this time. As such, the grant of the requested intervention at this very early stage in the proceeding would not unduly confuse, delay, or

otherwise disrupt the prosecution of this merger proceeding. Additionally, while the EME Companies' petition raises issues that will not be adequately represented by other parties, granting this intervention would not shift the burden of proof or significantly broaden the issues. The Commission has granted late interventions, especially where, as here, the requested intervention will not impact the orderly progression of the case, significantly broaden the issues, or shift the burden of proof. <sup>1/</sup>

8. Importantly, because of its in-depth knowledge of the relevant markets, the EME Companies would be able to assist this Commission in its consideration of the relevant issues.

WHEREFORE, the EME Companies pray that the Pennsylvania Public Utility Commission grant this Petition to Intervene and grant the EME Companies full party status in this matter.

Respectfully submitted,



Kevin J. Lipson  
David Newmann  
Hogan & Hartson, L.L.P.  
555 Thirteenth St., N.W.  
Washington, D.C. 20004  
(202) 637-5614

Attorneys for  
Edison Mission Energy, EME  
Homer City Generation, LP,  
and Edison Mission Marketing  
& Trading, Inc.

Dated: May 6, 2005

---

<sup>1/</sup> See, e.g., *In re Milton Transportation, Inc.*, 56 Pa. P.U.C. 623 (1982).

## VERIFICATION

I, Deborah A. Golden, Vice President and General Counsel, Midwest Generation, LLC, hereby state that the facts set forth in the foregoing Petition to Intervene are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

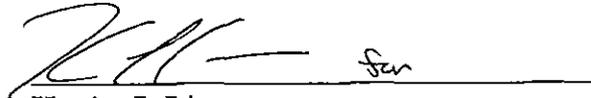
  
Deborah A. Golden  
Vice President and General Counsel  
Midwest Generation, LLC  
One Financial Place, Suite 3500  
440 South LaSalle Street  
Chicago, IL 60605  
Telephone: (312) 583-6165

Date: April 28, 2005

**CERTIFICATION OF SERVICE**

I hereby certify that I have this day served by first-class mail a copy of the foregoing Petition to Intervene Out-of-Time and Motion for Admission Pro Hac Vice on all parties set forth on the attached service list.

Dated at Washington, D.C., this 6<sup>th</sup> day of May, 2005.

A handwritten signature in black ink, appearing to read "KJL", is written over a horizontal line. To the right of the signature, the word "for" is written in a cursive script.

Kevin J. Lipson  
Hogan & Hartson, L.L.P.  
555 Thirteenth St., N.W.  
Washington, D.C. 20004

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

SERVICE LIST

Paul Bonney, Esquire  
Kent D. Murphy, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215-841-4941            215-568-3389 (fax)  
[paul.bonney@exeloncorp.com](mailto:paul.bonney@exeloncorp.com)  
[kent.murphy@exeloncorp.com](mailto:kent.murphy@exeloncorp.com)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
2 Locust Street, Suite 300  
Harrisburg, PA 17101  
717-237-7160            717-237-7161 (fax)  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)  
(Public Service Electric and Gas Company)

David M. Kleppinger, Esquire  
Charis Mincavage, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108  
717-232-8000            717-237-5300 (fax)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
(Philadelphia Area Industrial Energy Users Group,  
City of Philadelphia)

Craig Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
717-230-9555            717-566-9901 (fax)  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)  
(Pepco Holdings, Inc. and subsidiaries)

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
215-545-9693      215-545-9637 (fax)  
[mcphehdran@pennfuture.org](mailto:mcphehdran@pennfuture.org)

Daniel W. Cantu'-Hertzler, Esquire  
Darlene D. Heep, Esquire  
City of Philadelphia  
Law Department  
One Parkway Building, 16<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102-1595  
215-683-5061      215-683-5175  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Richard P. Mather, Sr., Esquire  
Pamela G. Bishop, Esquire  
Scott Perry, Esquire  
Department of Environmental Protection  
Rachel Carson State Office Building, 9<sup>th</sup> Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
717-787-7060      717-783-7911 (fax)  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Steven Goldenberg, Esquire  
Fox Rothschild LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648  
609-986-4586      609-896-1469 (fax)  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)  
(New Jersey Large Energy Users Coalition, MAPSA)

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
717-783-6184      717-772-2677 (fax)  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)

roeckenrod@state.pa.us

Tanya J. McCloskey, Esquire  
James Mullins, Esquire  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101  
717-783-5048            717-783-7152 (fax)  
tmccloskey@paoca.org  
jmullins@paoca.org

Karen S. Miller, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
717-783-2525            717-783-2831 (fax)  
karenmil@state.pa.us

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357  
570-743-2233            570-743-8145 (fax)  
scott@publicutilityhome.com  
(Exelon Utility Coordinated Council Locals 614 and 777  
of the International Brotherhood of Electrical Workers,  
and Frank Kuders)

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
717-541-1101            717-541-5487 (fax)  
ericepstein@comcast.net

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
610-774-5013            610-774-6726  
jadillon@pplweb.com

Todd S. Stewart, Esquire  
Hawke, McKeon, Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
717-236-1300          717-236-4841  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)  
(Direct Energy Services, LLC)

Carolyn D. Commons, Esquire  
Commons & Commons LLP  
2967 W. School House Lane, #1210  
Philadelphia, PA 19144  
215-849-4400          215-849-5555 (fax)  
[lawyers@commonsllaw.com](mailto:lawyers@commonsllaw.com)  
(Energy Coordinating Agency of Philadelphia, Inc.)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
717-233-5731          717-231-6600 (fax)  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)  
(Amerada Hess Corporation)

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer  
1105 Berkshire Boulevard, Suite 330  
Wyomissing, PA 19610-1222  
610-372-4761          610-372-4177  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)  
(Metropolitan Edison Company, Pennsylvania Electric Company,  
Pennsylvania Power Company, FirstEnergy Solutions Corp.)

Julie Coletti, Esquire  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
412-394-4356          412-394-6681 (fax)  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-3742      215-981-0434 (fax)  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

(Action Alliance of Senior Citizens of Greater Philadelphia,  
Association of Community Organizations for Reform Now,  
Tenants' Action Group)

Roger E. Clark, Esquire  
The Reinvestment Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591  
215-574-5814      215-574-5914 (fax)  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Charles E. Thomas, Jr., Esquire  
Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108  
717-255-7600      717-236-8278 (fax)  
[cthomasjr@ttanlaw.com](mailto:cthomasjr@ttanlaw.com)  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)  
(Philadelphia Gas Works)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAY 6 2005

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 )

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Docket No. A-110550F0160

MOTION FOR ADMISSION PRO HAC VICE

Pursuant to Pa.B.A.R. No. 301 and Section 1.22 of the Pennsylvania Public Utility Commission's rules, I, David Newmann, a member of the bar of this Commonwealth, respectfully move for the admission of the following individual to appear as attorney on behalf of Edison Mission Energy, EME Homer City Generation, LP and Edison Mission Marketing & Trading, Inc. (together the "EME Companies"), in the above-captioned proceeding:

Kevin J. Lipson, Esq.  
Hogan & Hartson, L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004

DOCUMENT  
FOLDER

In support thereof, movant states:

1. I am an active member of the Pennsylvania Bar (Attorney No. 82401) and practice at Hogan & Hartson, 1835 Market Street, 28<sup>th</sup> Floor, Philadelphia, PA 19103.
2. Kevin J. Lipson, Esq., is a member in good standing of the District of Columbia bar since 1980.

DOCKETED

MAY 25 2005

3. Mr. Lipson has advised and represented EME Companies with respect to the issues in this case, and his participation on behalf of EME Companies is required.
4. I am and will remain attorney of record for in the EME Companies in the above-captioned case.

WHEREFORE, I move that Kevin J. Lipson be admitted to practice pro hac vice on behalf of Edison Mission Energy, EME Homer City Generation, LP and Edison Mission Marketing & Trading, Inc., in the above-captioned proceeding.

Respectfully submitted,



---

David Newmann (PA #82401)  
Hogan & Hartson, L.L.P.  
1835 Market Street  
Philadelphia, PA 19103  
Phone: (267) 675-4600  
Fax: (202) 675-4601

Dated: May 6, 2005

**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	)	Docket No. A-110550F0160
Public Service Enterprise Group	)	
Incorporated with and into	)	
Exelon Corporation	)	

**ORDER**

NOW, \_\_\_\_\_, 2005, upon consideration of foregoing motion to grant admission pro hac vice for Kevin J. Lipson, for the limited purpose of representing the Edison Mission Energy, EME Homer City Generation, LP and Edison Mission Marketing & Trading, Inc., in the above-captioned proceeding, the motion is granted.

---

MARLANE R. CHESTNUT  
Administrative Law Judge

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

RECEIVED

2005 MAY 11 AM 9:31

SECRETARY'S BUREAU

**ORIGINAL**  
Morgan Lewis  
COUNSELORS AT LAW

**Anthony C. DeCusatis**  
215.963.5034  
adecusatis@morganlewis.com

May 9, 2005

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

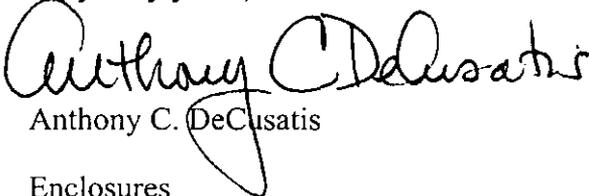
**DOCUMENT  
FOLDER**

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 Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of the Pennsylvania Department of Environmental Protection. Copies of the Objections have been served upon the persons and in the manner set forth in the Certificate of Service attached to the enclosed document. Additional copies of this letter and of the Objections are also 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

RECEIVED

2005 MAY 11 AM 9:31

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

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

**DOCKETED**  
AUG 03 2005

**OBJECTIONS OF PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
TO THE INTERROGATORIES (SET I)  
OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code §5.342, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Corporation (PSE&G) (collectively, the Joint Applicants), hereby object to the Interrogatories (Set I) Nos. 33-41 and 74-97 propounded by the Pennsylvania Department of Environmental Protection (DEP). As explained below, the aforementioned interrogatories inquire into matters that are outside the scope of this proceeding and outside the jurisdiction and authority of the Commission.

1. On April 29, 2005, DEP issued its Interrogatories (Set I), consisting of 97 questions, a copy of which is attached. Because April 29, 2005 was a Friday, pursuant to Prehearing Order No. 2, Paragraph 30, DEP's Interrogatories are deemed to have been issued on the following Monday, May 2, 2005.

2. Interrogatory Nos. 33-41 concern the use of "foreign sources of energy" at generating units that are neither owned nor operated by the Joint Applicants.

**DOCUMENT  
FOLDER**

3. Interrogatory Nos. 74-86 also concern generating units that are not owned or operated by the Joint Applicants. These interrogatories request information pertaining to compliance with the federal Clean Air Act and the Pennsylvania and New Jersey Air Pollution Control Acts, including current “compliance status,” ability to comply with the “recently promulgated and applicable Clean Air Act requirements” and “plans or arrangements” for future compliance.

4. Interrogatory Nos. 87-97 pertain to nuclear powered generating units that are neither owned nor operated by the Joint Applicants. These interrogatories inquire into operational and safety-related matters, such as “plans and arrangements . . . to manage low-level radioactive waste,” standardization of operations at such plants and “passive and real-time radiological monitoring.”

5. As previously explained, neither PECO Energy nor PSE&G own or operate any generating plants. All of the generating plants that are the subject of DEP’s Interrogatory Nos. 33-41 and 74-97 are owned and operated by subsidiaries of the Joint Applicants’ respective parent companies that are not utilities and are not subject to regulation by this Commission. In addition, all generation, whether or not owned by a Pennsylvania electric distribution company, was removed from Commission regulation by the Electricity Generation Customer Choice and Competition Act (the Competition Act). *See* 66 Pa. C.S. §2802(14) (“The generation of electricity will no longer be regulated as a public utility function. . .”). Accordingly, Interrogatory Nos. 33-41 and 74-97, which inquire into matters pertaining to generation owned by companies other than the Joint Applicants, are improper and objectionable.

6. In *In Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, A-110300F0095 et al (June 20, 2001), 2001 Pa. PUC LEXIS 23 (*GPU/FirstEnergy*), the Clean Air Council (CAC) and Citizens for Pennsylvania's Future (PennFuture) asked the Commission to attach various conditions to the proposed merger relating to FirstEnergy's compliance with the federal Clean Air Act and the applicable state implementation plan. The ALJ rejected the proposed conditions because the PUC was "not the proper forum" to litigate such issues. The Commission agreed:

We conclude that, while the Exceptions of the CAC, PennFuture, and Citizen Power raise valid environmental concerns, we decline to adopt their proposals regarding FirstEnergy's DOJ/EPA lawsuit. The federal EPA and Pennsylvania's Department of Environmental Protection are the agencies that are vested with the authority to establish emission regulations and to police their enforcement. Therefore, it would be inappropriate for the Commission to attempt to perform those functions.

The Commission's rejection of the CAC/PennFuture proposals was affirmed by the Commonwealth Court. *ARIPPA v. Pa. P.U.C.*, 792 A.2d 636, 657 (2002).

7. In light of this Commission's holding in *GPU/FirstEnergy*, the fact that the Joint Applicants do not own or operate the generating plants that are the subject of DEP's Interrogatory Nos. 74-86, and the Competition Act's removal of PUC jurisdiction over generation, it is clear those DEP's Interrogatory Nos. 74-86 inquire into matters that are outside the scope of this proceeding, outside the jurisdiction of the Commission and, therefore, are objectionable.

8. Issues pertaining to the operation or safety of nuclear generation facilities are outside the jurisdiction of the PUC. In *Pacific Gas & Electric Co. v. State Energy*

*Resource Conservation and Development Commission*, 461 U.S. 190, 52 P.U.R. 4th 169

(1983), the United States Supreme Court held:

But as we view the issue, Congress, in passing the 1954 [Atomic Energy] act and in subsequently amending it, intended that the federal government should regulate the radiologic safety aspects involved in the construction and operation of a nuclear plant, but that the states retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns.<sup>1</sup>

This Commission has long recognized that its “traditional responsibility” does not authorize it to address nuclear plant operational and safety-related matters. In fact, the Commission has repeatedly rejected attempts to inquire into these areas in its proceedings in the past. Thus, in *Pa. P.U.C., v. Metropolitan Edison Co.*, 54 Pa. P.U.C., 276 (1980), the Commission held:

This record contains many allegations concerning Met Ed’s responsibility for the construction, maintenance, operation and cleanup of the Three Mile Island nuclear units. To the extent that these allegations relate to the safety of the people of Pennsylvania, *this commission is required to recognize that the federal government has completely preempted the states in the licensing and regulation of the commercial use of nuclear reactors and in the protection of the public from radiologic hazards. Northern States Power Co. v. Minnesota*, (CA8th 1971) 90 P.U.R. 401, 447 F.2d 1143, *affd mem* (1972) 405 U.S. 1035. (Emphasis added.)

Similarly in *Re Petition of Metropolitan Edison Co.*, 65 Pa. P.U.C. 190, 197 (1987), the Commission reiterated its lack of jurisdiction in the area of nuclear operations, safety and decommissioning:

---

<sup>1</sup> As previously explained, the “traditional” state regulatory function as to all generation has been removed from the Commission’s jurisdiction by the Competition Act.

[T]he various proposals for an independent inspector are troublesome, particularly since this Commission has no jurisdiction over the safety aspects of the Saxton decommissioning program. The federal government has occupied the field of nuclear safety via the Atomic Energy Act, thus preempting state regulation of the same subject matter. *Pacific Gas & Electric Co. v. State Energy Resource Conservation And Development Commission*, 461 U.S. 190, 212-213 (1983).

9. In *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*), one of the protestants attempted to raise issues concerning the operation, safety and monitoring of nuclear generating facilities which, at that time, were owned by PECO Energy. The presiding Administrative Law Judge ruled that such issues were outside the scope of the proceeding and also outside the scope of the PUC's jurisdiction. *PECO-Unicom Proceeding, supra*, Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. (June 1, 2000) pp. 46-48 ("The Pennsylvania Public Utility Commission has recognized that the NRC has exclusive jurisdiction over nuclear safety issues.")<sup>2</sup> See also Initial Decision of Administrative Law Judge Marlane R. Chestnut issued April 25, 2005 in this case, denying the Petition to Intervene and dismissing the Protest of Eric Joseph Epstein (p. 8).

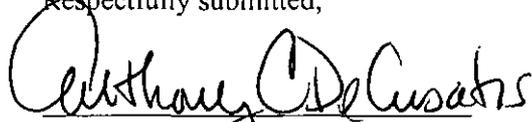
---

<sup>2</sup> Judge Rainey's Recommended Decision was approved by the Commission in its final Order entered on June 22, 2000.

10. Based upon the Commission's prior holdings, the fact that the Joint Applicants do not own or operate the nuclear power plants that are the subject of DEP's Interrogatory Nos. 87-97, and the Competition Act's removal of PUC jurisdiction over generation, it is clear that DEP Interrogatory Nos. 87-97 inquire into matters that are outside the scope of this proceeding, outside the jurisdiction of the Commission and, therefore, are objectionable.

THEREFORE, for all of the foregoing reasons, the Joint Applicants' Objections to the Interrogatories (Set I) Nos. 4 - 35 of PennFuture should be granted.

Respectfully submitted,



Anthony C. DeCusatis  
*adecusatis@morganlewis.com*  
Thomas P. Gadsden, Esquire  
*tgadsden@morganlewis.com*  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234  
215.963.5001 (Fax)

Paul R. Bonney, Esquire  
*paul.bonney@exeloncorp.com*  
Kent D. Murphy, Esquire  
*kent.murphy@exeloncorp.com*  
Exelon Business Service Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215.841.4252  
215.841.4282 (Fax)

Counsel for PECO Energy Company

Daniel Clearfield  
*dclearfield@wolfblock.com*  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
717.237.7173

Richard P. Bonnifield  
*richard.bonnifield@pseg.com*  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
973.430.6441  
973.623.3261 (Fax)

Counsel for Public Service  
Electric and Gas Company

Dated: May 2, 2005

**Appendix A**  
**DEP's Interrogatories**  
**(Set I)**

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE 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 : :

**INTERROGATORIES OF THE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SET I**

In accordance with 52 Pa. Code § 5.341, the Commonwealth of Pennsylvania, Department of Environmental Protection (the Department) hereby propounds the following Interrogatories to PECO Energy Company (PECO), Public Service Electric and Gas Company (PSE&G), Public Service Enterprise Group Incorporated (PSEG), and/or Exelon Corporation (Exelon), to be answered by those officers, employees or agents as may be cognizant of the requested facts and who are authorized to answer on behalf of the Company.

Instructions

(a) These interrogatories shall be deemed to be continuing. The Respondent is obliged to change, supplement and correct all answers to interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed.

(b) The answers provided should first restate the question asked and also identify the person(s) supplying the information.

(c) All information is to be divulged that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby.

(d) The term "Companies" includes PECO Energy Company, Public Service Electric and Gas Company, Public Service Enterprise Group Incorporated, and or Exelon Corporation, their subsidiaries, attorneys, agents, employees, or other representatives.

(e) As used herein the word "document" includes, but is not limited to, the original and all copies (regardless of origin and whether or not including additional writing thereon or attached thereto) of memoranda, reports, books, manuals, instructions, directives, records, forms, letters, notices, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, and worksheets, in whatever form, stored or contained in or on whatever medium including computerized memory or magnetic media.

(f) The term "PECO" used herein, includes, PECO Energy Company, its corporate parent and its subsidiaries, and its attorneys, agents, employees or other representatives.

(g) The Term "PSE&G" as used herein includes Public Service Electric and Gas Company, its corporate parent and its subsidiaries, and its attorneys, agents employees and other representatives.

(h) The term "recently promulgated or applicable Clean Air Act Requirements" means those recently promulgated or applicable requirements set forth in the following Clean Air Act rulemakings of the United States Environmental Protection Agency:

1. Final non-attainment designations for PM<sub>2.5</sub> (PM-2.5 Rule). 70 FR 943-1019 (January 5, 2005).

2. Final non-attainment designation for 8-hour ozone standards (8-hour ozone rule). 69 FR 23951-24000 (April 30, 2004).

3. "Clean Air Interstate Rule or CAIR" signed March 10, 2005 amending 40 CFR Parts 51, 72, 73 74, 77, 78 and 96.

4. "Clean Air Mercury Rule or CAMR" signed on March 15, 2005 amending 40 CFR Parts 60, 63, 72 and 75.

(i) The term "foreign sources of energy" as used herein means energy that is obtained from sources outside the United States of America.

(j) The term "units that are not currently in compliance with applicable state and federal air quality requirements" includes units that are subject to notices of violation, administrative orders, consent orders and agreements, consent decrees and compliance schedules in permits that list or otherwise identify violations of applicable requirements under the Clean Air Act, the Pennsylvania Air Pollution Control Act, the New Jersey Air Pollution Control Act and the regulations promulgated thereunder.

**In the Matter of the Joint Application of PECO Energy Company and Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group with and into Exelon Corporation**

**Docket No. A-110550F0160**

**Interrogatories of the Department of Environmental Protection  
Set I**

1. Has PECO undertaken any efforts to promote distributed power generation including any steps to encourage existing customers to provide a portion of their electric power needs?
2. If the answer to question 1 is yes, describe the efforts PECO has undertaken.
3. Will the proposed merger affect these efforts in any way?
4. If the answer to question 3 is yes, describe the effects.
5. Has PSE&G undertaken any efforts to promote distributed power generation including any steps to encourage existing customers to provide a portion of their electric power needs?
6. If the answer to question 5 is yes, describe the efforts PSE&G has undertaken.
7. Will the proposed merger affect these efforts in any way?
8. If the answer to question 7 is yes, describe the effects.
9. Has PECO undertaken efforts to promote reliability of service that supports local emergency service infrastructure?
10. If the answer to question 9 is yes, describe the efforts.
11. Will the proposed merger affect in any way PECO's efforts to promote reliability of service to provide emergency service infrastructure?
12. If the answer to question 11 is yes, describe the effects.
13. Has PSE&G undertaken efforts to promote reliability of service that supports local emergency service infrastructure?
14. If the answer to question 13 is yes, describe the efforts.
15. Will the proposed merger affect in any way PSE&G's efforts to promote reliability of service to provide emergency service infrastructure?
16. If the answer to question 15 is yes, describe the effects.

17. Has PECO undertaken efforts to promote micro-grid generation to promote reliability of service?
18. If the answer to question 17 is yes, describe these efforts.
19. Will the merger affect these efforts in any way?
20. If the answer to question 19 is yes, describe the effects.
21. Has PSE&G undertaken efforts to promote micro-grid generation to promote reliability of service?
22. If the answer to question 21 is yes, describe these efforts.
23. Will the merger affect these efforts in any way?
24. If the answer to question 23 is yes, describe the effects.
25. Has PECO undertaken efforts to maintain a diverse and reliable energy portfolio that minimizes any adverse risk associated with relying on any single source of energy?
26. If the answer to question 25 is yes, describe these efforts.
27. Will the proposed merger affect these efforts in any way?
28. If the answer to question 27 is yes, describe the effects.
29. Has PSE&G undertaken efforts to maintain a diverse and reliable energy portfolio that minimizes any adverse risk associated with relying on any single source of energy?
30. If the answer to question 29 is yes, describe these efforts.
31. Will the proposed merger affect these efforts in any way?
32. If the answer to question 31 is yes, describe the effects.
33. Do the Companies rely upon foreign sources of energy to operate peak generation units?
34. Has PECO undertaken steps to reduce its dependence on foreign sources of energy to operate peak generation units?
35. If the answer to question 34 is yes, describe these steps.
36. Will the proposed merger affect these efforts in any way?
37. If the answer to question 36 is yes, describe the effects.

38. Has PSE&G undertaken steps to reduce its dependence on foreign sources of energy to operate peak generation units?
39. If the answer to question 38 is yes, describe these steps.
40. Will the proposed merger affect these efforts in any way?
41. If the answer to question 40 is yes, describe the effects.
42. Have the Companies undertaken steps to reduce current or anticipated impacts on consumers from rising fuel costs associated with the generation of electric energy?
43. If the answer to question 42 is yes, describe these steps.
44. Will the proposed merger affect these efforts in any way?
45. If the answer to question 44 is yes, describe the effects.
46. Has PECO undertaken steps to promote the use of renewable energy?
47. If the answer to question 46 is yes, describe these steps to promote the use of renewable energy.
48. Will the proposed merger affect these efforts in any way?
49. If the answer to question 48 is yes, describe the effects.
50. Has PSE&G undertaken steps to promote the use of renewable energy?
51. If the answer to question 50 is yes, describe these steps to promote the use of renewable energy.
52. Will the proposed merger affect these efforts in any way?
53. If the answer to question 52 is yes, describe the effects.
54. Does PECO have plans, programs or efforts to promote energy conservation?
55. If the answer to question 54 is yes, describe these plans, programs or efforts to promote energy conservation.
56. Will the proposed merger affect these plans, programs or efforts?
57. If the answer to question 56 is yes, describe the effects.
58. Does PSE&G have plans, programs or efforts to promote energy conservation?
59. If the answer to question 58 is yes, describe these plans, programs or efforts to promote energy conservation.

60. Will the proposed merger affect these plans, programs or efforts?
61. If the answer to question 60 is yes, describe the effects.
62. Does PECO have plans, programs or efforts to promote energy efficiency in the generation and use of electric energy?
63. If the answer to question 62 is yes, describe these plans, programs or efforts.
64. Will the proposed merger affect these plans, programs or efforts?
65. If the answer to question 64 is yes, describe the effects.
66. Does PSE&G have plans, programs or efforts to promote energy efficiency in the generation and use of electric energy?
67. If the answer to question 66 is yes, describe these plans, programs or efforts.
68. Will the proposed merger affect these plans, programs or efforts?
69. If the answer to question 68 is yes, describe the effects.
70. Will the proposed merger result in staffing changes, relocations of offices and a substantial broadened transmission network?
71. If the answer to question 70 is yes, can these changes affect the reliability of service to consumers?
72. Have the Companies developed measures to ensure continued reliability of service to avoid an increased frequency of the disruption of service and prolonged disruptions if a disruption in service occurs?
73. Describe the measures that will ensure the reliability of service.
74. Identify these Mitigation Eligible Units listed on the Companies' Exhibit J-12 that use fossil fuels and have permits or approvals under local, state or federal air quality programs established under the Clean Air Act, 42 U.S.C. §§ 7401-7674 *et seq.*, the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4000.1 *et seq.* or the New Jersey Air Pollution Control Act, NJ ST 2C:2C-1 *et seq.*, and the regulations promulgated thereunder.
75. For those Mitigation Eligible Units listed in response to question 74, identify any units that are not currently in compliance with applicable local, state and federal air quality requirements.
76. For those Mitigation Eligible Units listed in response to question 75, describe the nature of the non-compliance and the Companies' plans to bring those units back into compliance with all applicable air quality requirements.

77. Identify those Mitigation Eligible Units that will be actually divested to support the Companies mitigation plan.
78. Will the proposed merger affect the compliance status of any of the Mitigation Eligible Units?
79. Will the divestiture of any Mitigation Eligible Units affect the compliance status of the Units?
80. If the answer to question 78 or 79 is yes, describe the effects of the proposed merger or divestiture on the compliance status.
81. Identify those Mitigation Eligible Units listed on the Companies' Exhibit J-12 that are subject to regulation under the recently promulgated and applicable Clean Air Act requirements.
82. Identify those Units, identified in response to question 81 that are able to comply with the recently promulgated and applicable Clean Air Act requirements without any physical changes, any operational changes or any emission credits.
83. For those Units that are not currently able to comply with the recently promulgated and applicable Clean Air Act requirements, describe the plans or arrangements that the Companies have or will develop to comply with these new upcoming air quality requirements.
84. Will the proposed merger affect these plans or arrangements?
85. Will the proposed divestiture of certain Mitigation Eligible Units affect these plans or arrangements?
86. If the answer to questions 84 or 85 is yes, describe the effects of the proposed merger or divestiture on these plans or arrangements.
87. Identify the Companies' nuclear power stations that are located within the area covered by the Appalachian States Low-Level Radioactive Waste Compact.
88. Identify those nuclear power stations that are listed on the Companies' Exhibit J-12 that are located in New Jersey, which is outside the area covered by the Appalachian States Low-Level Radioactive Waste Compact.
89. Describe the plans and arrangements that currently exist or are anticipated to manage the low-level radioactive waste that is generated at the nuclear power stations identified in response to question 87.
90. Describe the plans and arrangements that currently exist or are anticipated to manage the low-level radioactive waste that is generated at the nuclear power stations identified in response to question 88.

91. Describe the current schedules and plans for decontaminating and decommissioning the nuclear power plants identified in question 87 and 88, the funds currently available and those projected to be needed to safely dispose for low-level radioactive waste generated during decontaminating and decommissioning.
92. Will the proposed merger affect in any way the plans or arrangements described in response to questions 89, 90 or 91?
93. If the response to question 92 is yes, describe the effects of the merger on the plans or arrangements.
94. After the merger, what actions will be taken to standardize operations at nuclear facilities currently owned or operated by PSEG (or its subsidiaries) with operations at Exelon (or its subsidiaries) nuclear facilities?
95. How will the Companies ensure that resources available to the Companies' Pennsylvania nuclear facilities are not diverted to nuclear facilities currently owned or operated by PSEG (or its subsidiaries) after the merger?
96. Describe the current passive and real-time radiological environmental monitoring programs and systems and the plans do the Companies have to implement and maintain uniform real-time external radiation monitoring systems in the event of an unmonitored release at the Companies' Pennsylvania and New Jersey nuclear facilities?
97. How will the merger affect the Companies' plans (if any) to implement and maintain real-time external radiation monitoring systems in the event of an unmonitored release at the Companies' Pennsylvania and New Jersey nuclear facilities?

**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 the Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of the Pennsylvania Department of Environmental Resources upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
Pamela G. Bishop, Esquire  
Assistant Counsel  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
Scott Perry, Esquire  
Assistant Counsel  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

VIA FIRST CLASS MAIL

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Counsel for Public Service  
Electric and Gas Company

Karen S. Miller, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Counsel for Office of Small Business  
Advocate

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Counsel for City of Philadelphia

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for TRF  
Sustainable Development Fund

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jdillon@pplweb.com](mailto:jdillon@pplweb.com)

Counsel for PPL Services Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for Direct Energy LLC

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Counsel for Senator Anthony H. Williams

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

Counsel for New Jersey Large Energy Users  
Coalition

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company,  
Pennsylvania Power Company, FirstEnergy  
Solutions, Corp

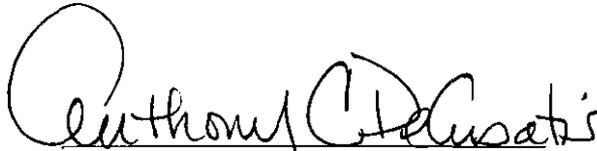
Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of Philadelphia, Inc.    Counsel for Philadelphia Gas Works

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphebran@pennfuture.org](mailto:mcphebran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton  
and Joey Bergey

Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)

  
Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

Date: May 9, 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**

**DOCUMENT  
FOLDER**

**Eric Joseph Epstein's, Pro se,  
Exceptions to the Initial Decision of Administrative Law  
Judge Marlene R. Chestnut Issued on April 26, 2005**

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

RECEIVED  
05 MAY 16 AM 9:25  
PA.P.U.C.  
SECRETARY'S BUREAU

Dear Secretary McNulty:

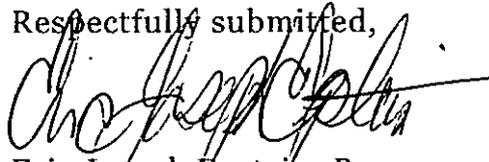
Enclosed please find for filing an original and Exceptions to the Initial Decision of Administrative Law Judge, Marlene R. Chestnut nine (9) copies Protest in the matter of Joint Application of Peco Energy Company and Public Service Electric, and Gas Company for Approval of the Merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation pursuant to 52 Pa. Code S 5.71, to intervene.

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

**DOCKETED**

MAY 16 2005

Respectfully submitted,



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

DATED: May 13 , 2005

KJR  
48

## Table of Contents

**I. The Commission Has Broad Discretion In Determining Standing.....pp.1-2**

**II. The ALJ Did Not Consider Whether Standing Is Appropriate Under Section 5.72 (a) (3).....pp. 2-3**

**III. The Statutory Parties Participation In This Proceeding Does Not Serve As A Bar To Mr. Epstein's Participation.....pp.4-8**

**IV. The ALJ Failed to Acknowledge that Mr. Epstein Raised Issues Relating to Economic Development, Community Investment, Environmental Degradation and Shareholder Services.....pp. 9-13**

**V. CONCLUSION.....p. 13**

## Table of Authorities

<b>Cases</b>	<b>Pages(s)</b>
• Barasch v. Pennsylvania Public Utility Commission, 119 Pa. Commonwealth Ct. 81, 546 A.2d 257 (1989)	4
• Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Company, 75 Pa P.U.C. 598 (1991)	2
<b>Administrative decisions:</b>	
• 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	3
• The Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Appendix B: Nuclear Monitoring and Waste Storage Agreement	3
• Negotiated Settlement, No. 44 to Tariff Electric PA P.U.C. (R 00038102/C0001-C0002) (2003)	7
<b>Miscellaneous</b>	
• Title 4 -- Administration, Part I. Governor's Office [4 Pa. Code. Ch. 6] [ <b>Executive Order</b> 2001-6] [31 Pa. B. 5935] Governor's Task Force on Security (2001)	8

## Table of Authorities (Continued)

<b>Statutes and Regulations</b>	<b>Pages(s)</b>
• Atomic Energy Act of 1954	2, 6
• Atomic Energy Act (1954) and Regulations: 10CFR 20 Subpart E, 10CFR 20 30.36, 40.42, 50.82-83, 70.38 and Guidance: NURGEG-1757, Vol. 1-3, NURGEG-1700 & NURGEG-1748 & SECY 03-0069	6
• Atomic Energy Act, 42, U.S.C. § 2151 <i>et seq.</i>	5
• Department of Energy Organization Act, 42, U.S.C. § 7101	3
• Energy Reorganization Act, 42 U.S.C. § 5801 <i>et seq.</i>	3, 5
• Low-Level Radioactive Waste Disposal Act, 35 P.S. §§ 7130.101 <i>et seq.</i> , and the Appalachian States Low-Level Disposal Compact, 35 P.S. §§ 7125.1 <i>et seq.</i>	5
• National Energy Policy Act, 1992	7
• 52 Pa. Code §5.72 of the Commission's Regulations and 66 Pa. C.S. §703 of the Public Utility Code	1
• Under 66 Pa.C.S. § § 504 and 3301 § 57.47. Filing of annual financial reports	8
• 52 Pa. Code §5.72	1
• 52 Pa. Code §5.72(a) (2)	3
• 52 Pa. Code §5.72(a) (3)	2

## Table of Authorities (Continued)

<b>Statutes and Regulations</b>	<b>Pages(s)</b>
• § 57.37. Standard for system safety and reliability	8
• § 57.52. Emergency load control and energy conservation by electric utilities.	8
• CHAPTER 59. GAS SERVICE: issued under the Public Utility Code, 66 Pa.C.S. § 501	
• § 69.1101 Local Land Use-Plans & Ordinances	5
• 71 P.S. §309-6	4
• 75 Pa. P.U.C. at 603	2
• Pa. P.U.C., Docket No. M-00011445, January 11, 2001	5

# **Exceptions of Eric Joseph Epstein**

## **I. The Commission Has Broad Discretion In Determining Standing.**

The Commission's Rules of Administrative Practice and Procedure are sufficiently broad and have been liberally applied by this Commission. Eric Joseph Epstein's ("Mr. Epstein" or "Epstein") unique knowledge and perspective concerning nuclear safety, particularly relating to nuclear economics, nuclear waste isolation and radiological decommissioning, is sufficient to satisfy the requirements for standing under 52 Pa. Code §5.72 of the Commission's regulations and 66 Pa. C.S. §703 of the Public Utility Code.

Mr. Epstein submits that he is eligible to intervene in this proceeding pursuant to subsections (2) and (3) of 52 Pa. Code §5.72. Administrative Law Judge Marlene R. Chestnut's ("ALJ", "Judge Chestnut" or "the Court") Initial Decision, rejects Mr. Epstein's standing stating that "the fact that he participated in prior PECO proceedings is irrelevant" (Initial Decision, p. 4.) Further, Judge Chestnut rebuffed Mr. Epstein's claim to a unique interest which may be directly affected by this proceeding because such "interest ... can be adequately represented by existing participants" (Initial Recommendation, p. 5.)

Additionally, the ALJ stated that standing requires that an aggrieved party have an interest which is substantial, direct and immediate (Initial Decision, p. 7.) Ultimately, the ALJ determined that Mr. Epstein did not have standing because he has not established "the direct and immediate interest necessary to permit his intervention in this proceeding ... he is not a customer of PECO, is not an energy marketer with customers in PECO's service territory and does not live in its service territory" (Initial Decision pp. 6-7.)

However, standing to participate in proceedings before an administrative agency falls primarily within the discretion of the agency (Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Company, 75 Pa P.U.C. 598 (1991).) Here the Commission states “[u]nlike 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” (75 Pa. P.U.C. at 603.)

Moreover, the Commission also acknowledged the concept of “representational standing” and indicated that “a party asserting representational standing should not be denied such status solely because the party itself does not have an interest as a customer, competitor, or consumer” (75 Pa. P.U.C. at 603.) Mr. Epstein has claimed such representational status in that he “represents dedicated interests managed and administered by Mr. Epstein for ratepayers, citizens and communities in South Central Pennsylvania” (Eric Joseph Epstein’s Response, Paragraphs 20 and 21.)

## **II. The ALJ Did Not Consider Whether Standing Is Appropriate Under Section 5.72 (a) (3) & Under Section 5.72 (a) (2).**

Significantly, the ALJ failed to specifically discuss whether Mr. Epstein’s intervention satisfied the requirements of 52 Pa. Code §5.72(a) (3) concerning another interest that may be in the public interest, and 52 Pa. Code §5.72(a) (2) which acknowledge, “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.”

Mr. Epstein recognizes that the nuclear power production issues relating to licensing and operations fall primarily under the jurisdiction of the Nuclear Regulatory Commission (NRC) (Atomic Energy Act of 1954.)

However, Mr. Epstein submits that the unique and “special” interest that he represents would assist the Commission in determining to what extent its jurisdictional decisions impact upon or are affected by decisions made by the NRC. More importantly, Mr. Epstein’s unique expertise affords him the ability to compare explanations made by PECO Energy (“PECO” or “the Company”) to the NRC and related explanations made by the Company to this Commission.

Specifically, Eric Joseph Epstein and PECO Energy negotiated a separate Agreement (referred to as Appendix B: Nuclear Monitoring and Waste Storage Agreement) that recognizes Mr. Epstein has a “special interest” in “enhancing community awareness”:

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. (1)

This unique and “special interest” also satisfies the requirements of Section 5.72 (a) (3), and confers eligibility on Mr. Epstein 52 Pa. Code §5.72(a) (2).

---

1 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; The Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Appendix B: Nuclear Monitoring and Waste Storage Agreement (2001-2006.)

### **III. The Statutory Parties Participation In This Proceeding Does Not Serve As A Bar To Mr. Epstein's Participation.**

The ALJ further argued that even if Mr. Epstein “had a direct, immediate and substantial interest which may be directly affected in this proceeding, that interest certainly can be adequately represented by existing participants” (Initial Decision, p. 5).

Neither the Company, the Court or any Active Party to this proceeding has questioned Mr. Epstein's expertise in the field of nuclear decommissioning and nuclear waste isolation. And PECO Energy has made it clear that the merger's “market mitigation” measures will not include the divestiture of their nuclear interests. To the contrary, Exelon plans to uprate and extend the licenses of Limerick 1 & 2, Three Mile Island-1, Hope Creek or Salem 1 & 2 would have on the proposed “virtual marketplace” and “virtual divestitures”. (2)

Mr. Epstein submits that although several parties to this proceeding have expressed an interest in aspects of these issues, no other party can supplant Mr. Epstein's recognized expertise in nuclear economics, nuclear safety, and nuclear waste isolation.

Moreover, the Office of Consumer Advocate's authorizing legislation specifically provides as follows: “[n]othing 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. Pennsylvania Public Utility Commission*, 119 Pa. Commonwealth Ct. 81, 546 A.2d 257 (1989).)

In short, the other parties cannot adequately represent the interest represented by Mr. Epstein and their participation does not operate as a bar to Mr. Epstein's participation.

---

<sup>2</sup> Peach Bottom 2 & 3 license extensions have been granted by the NRC. However, Exelon may seek additional capacity for both Units. Peach Bottom 1 is permanently off-line.

The NRC and the PUC do not operate in regulatory isolation, e.g., Pa. P.U.C., Docket No. M-00011445, January 11, 2001 (§ 69.1101 Local Land Use-Plans & Ordinances). The Pennsylvania Public Utility Commission must necessarily recognize that the impact of Exelon's 20-year extensions for Limerick 1 & 2, Three Mile Island 1, Peach Bottom 2 & 3, Hope Creek 1, and Salem 1 & 2, and increasing operating capacity through power uprates, have a "direct and immediate impact" on nuclear decommissioning tariffs (3).

These significant and long-lived increases are *not* factored in Exelon's "one-for-one" nuclear mitigation plan (4). Taken together, these developments will produce at **least 30 metric tons of high-level radioactive waste** (HLRW) annually per reactor (5), and an indeterminate stockpiling of low-level radioactive waste (LLRW) after the Barnwell site closes in 2008. (6)

With Barnwell's closure in 2008, there will be no LLRW site for Exelon's Pennsylvania reactors. This development compromises the future isolation and disposal of low-level radioactive waste produced by decommissioning actives. As production increases, so to does the volume and curie content of LLRW and HLRW waste byproducts. PECO ratepayers must ultimately foot the bill for increases radioactive waste isolation costs associated with the proposed merger.

---

3 On April 29, 2005, Exelon announced it was seeking a 20-year license extension for its reactor at Three Mile Island-1. PSE&G has filed Letters of Intent to Apply for License Renewals at Hope Creek Generating Station, Unit 1 (June, 2007); and, Salem Generating Station, Units 1 and 2 (July, 2007).

4 Witness: Volume IV, PECO Statement No. 3, Direct Testimony of William H. Hieronymous, p. 3, Lines 5-19 & p. 4 Lines: 1-19. Exhibit No. J-1.; p. 8, Lines 17-18, Exhibit No. J-1, and p. 3 Lines 5-19 and, p. 4, 1-19; p. 1-3, Exhibit No. J-12.

5 The DOE's authority to manage HLRW is established under the Atomic Energy Act, 42, U.S.C. § 2151 *et seq.*, the Energy Reorganization Act, 42 U.S.C. § 5801 *et seq.* and the Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*

6 Low-Level Radioactive Waste Disposal Act, 35 P.S. §§ 7130.101 *et seq.*, and the Appalachian States Low-Level Disposal Compact, 35 P.S. §§ 7125.1 *et seq.*

The most expensive components of nuclear decommissioning, as established by PECO's consultant TLG before the PUC (7), are low-level radioactive waste and high-level radioactive waste isolation. These costs are dramatically increased by 20-year license extensions and power uprates. In other words, Exelon's proposed merger with PSE&G, which is specially designed to increase nuclear power production, will necessarily create NDCA funding shortfalls. (Please refer to *Enclosure*).

While the Nuclear Regulatory Commission possesses statutory authority to approve amendments relating to license extension and power uprates under the Atomic Energy Act (1954), the NRC has **no jurisdiction or legal authority** to impose rate making obligations on licensees or compel companies to adjust and collect rates (Regulations: 10CFR 20 Subpart E, 10CFR 20 30.36, 40.42, 50.82-83, 70.38 and Guidance: NURGEG-1757, Vol. 1-3, NURGEG-1700 & NURGEG-1748 & SECY 03-0069.)

The NRC, under NUREG-1757, explicitly limits its "financial assurance and record keeping requirements to financial assurance plans, and instruments, record keeping plan". The Nuclear Regulatory Commission has only recently begun investigating whether or not to place limits on on where and what and how licensees can invest monies raised through state ratemaking protocols. The NRC is currently revising 10 CFR 20.1403(d), NUREG-1757, Volume 1, Section 17.8, and "seeking advice from affected parties on institutional controls and financial assurance for restricted use."

---

7 *Decommissioning Cost Analysis for Limerick Generation Station*, prepared and completed by TLG for Exelon Nuclear, May, 2003;

*Decommissioning Cost Analysis for Peach Bottom Atomic Power Station Units 2 and 3*, prepared and completed by TLG for PSEG, December 5, 2003; and,

*Decommissioning Cost Analysis for Salem Generation Station Units 1 and 2*, prepared and completed by TLG for PSEG, December 5, 2003.

However, the NRC does not act in isolation to set cleanup and decommissioning standards. In fact the NRC acknowledged its limitations and recently organized a multi-agency (8) task force to establish and implement standards for nuclear power plants and and materials sites. This is of utmost importance to the PUC and PECO rate payers because these agencies will establish decommissioning cleanup standards known as "Greenfield". The PUC is mandated to fund decommissioning through "Greenfield", i.e., restoration of "unrestricted use".

Regardless of the disposition of PECO's generating assets (9), "nuclear decommissioning costs associated with nuclear generating stations formerly owned by PECO continue to be recovered currently through rates charged by PECO to customers. (10) Amounts recovered, currently \$33 million per year, are remitted to Generation as allowed by the PUC". (11)

Under orders from the Pennsylvania Public Utility Commission (PUC), PECO is permitted to collect from ratepayers up to \$33 million annually for the full funding of the expected costs to decommission the former nuclear PECO nuclear plants. Based on the provisions of the PUC order, the PECO ratepayers are financially responsible for the majority of any shortfalls...(11)

8 Participating agencies include: the Environmental Protection Agency; the Department of Defense; the Department of Energy; the Department of Homeland Security; the United States Geological Survey; the National Institute for Standards and Technology; and, the Food and Drug Administration.

9 PECO, Generation and the Business Services Company are also interconnected through Exelon's "Intracompany Money Pool" which provides "an additional short-term borrowing option that will generally be more favorable to the borrowing participant than the cost of external financing".

*Exelon Corporation Annual Report: 2005, Financial Information, p.75.*

10 Negotiated Settlement, No. 44 to Tariff Electric, PA P.U.C.  
(R 00038102/C0001-C0002) (2003)

11 *Exelon Corporation Annual Report: 2005, Financial Information, p. 15.*

12 *Exelon Corporation Annual Report: 2005, Financial Information, p. 161.*

Paradoxically, PECO Energy is actually eligible for reimbursement expenses associated with decommissioning and decontamination costs attributable to the Department of Energy's nuclear fuel enrichment facilities (National Energy Policy Act, 1992.)

Since the advent of deregulation, the PUC has been assigned jurisdiction on nuclear-related issues as a result of 9/11 (Title 4 -- Administration, Part I. Governor's Office [4 Pa. Code. Ch. 6] [**Executive Order 2001-6**] [31 Pa. B. 5935] Governor's Task Force on Security.) And *Protecting Critical Infrastructure: Confidential Response of the Pennsylvania Public Utility Commission and the Pennsylvania Emergency Management to House Resolution 361*, demonstrated the important role the PUC plays in protecting transmission infrastructure and providing reliable electrical supplies. (13)

The PUC has assumed a vested interest in the transportation (14) of highly enriched fuel, toxic waste, industrial supplies, and various byproducts shipped to and from nuclear power plants.

Governor Mark Sewheiker's first official act on October 6, 2001 was to issue an Executive Order establishing the Governor's Task Force on Security. The Task Force included the Chairman of the Pennsylvania Public Utility Commission.

---

13 § 57.37. Standard for system safety and reliability.

§ 57.52. Emergency load control and energy conservation by electric utilities.

14 *Protecting Critical Infrastructure: Confidential Response of the Pennsylvania Public Utility Commission and the Pennsylvania Emergency Management to House Resolution 361*, 1.3, 1.5, VI, 2.4, 2.8, 2.9 & IX.

#### **IV. The ALJ Failed to Acknowledge that Mr. Epstein Raised Issues Relating to Economic Development, Community Investment, Environmental Degradation & Shareholder Services.**

The Court and PECO Energy choose to ignore the fact that the majority of issues identified by Mr. Epstein in his Pre-Hearing Memorandum, Statement of Issues, were not related to nuclear power production. Mr. Epstein outlined the following items meriting PUC investigation:

- a) Establish if the proposed merger is in the “public interest”;
- b) Investigate whether PECO Energy’s cost and quality of service is accurate, legitimate and appropriately allocated;
- c) Review the savings claimed by PECO Energy are just and appropriate and will be shared with rate payers in south central Pennsylvania;
- d) Examine the impact of adapting PSE&Gs “Best Practices” on reliability, cost of service, and savings for PECO Energy rate payers;
- e) Investigate cost sharing, responsibilities, liabilities and cost burdens associated with environmental transgression(s) and remediation(s); especially along Texas Eastern pipeline (s)...
- g) Examine if the merger will impact cost sharing for expenses related to implementation of reliability standards, substation voltage interruptions, and transmission line and grid “disturbances”...
- m) Examine whether reductions in shareholder services will flow back to PECO Energy rate payers;

Mr. Epstein clearly identified non-nuclear issues relating to south central Pennsylvania, and provided an expert witness to address the vagaries associated with “Best Practices” and operating synergies.

In fact, Mr. Epstein's Witness, Nancy Kymn Harvin, Ph.D., business consultant and human resources specialist to PSEG Nuclear (1998-2003) and Duke Energy (2003), was scheduled to address the proposed merger's impact on PECO Energy's commitment to high-quality service, sharing of "Best Practices", and, the adaptation of the PSE&G's customer services model.

Active environmental and public interest parties based in Philadelphia and around the state are vital to protecting the interests of their constituents. Mr. Epstein does not dispute that the groups identified in Judge Chestnut's Initial Decision (p. 5) have specific zones of interest.

However, none of these organizations have identified specific issues of concern to PECO ratepayers or citizens living and working in south central Pennsylvania. Clearly, these communities deserve to have the benefit of indigenous advocacy in relation to numerous regional issues, i.e., low income and universal service needs of PECO customers living in southern York County, fish kills and water recreation on the Susquehanna River, security, radiation monitoring, PCB contamination of pole lines and transmission lines, compressor station noise and odorant venting along gas transmission lines. (15)

Mr. Epstein was seated on the Low Income Usage Reduction (LIURP) Advisory Committee formed by PECO Energy 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;

As a direct result of Appendix B: Nuclear Monitoring and Waste Storage. Agreement. 9. Community Responsibility and Corporate Culture, (3), p. 10, Mr. Epstein has ensured a 5% annual increase in commitment spending by PECO Energy during the terms of the Agreement.

---

15 The Pennsylvania legislature empowered the Public Utility Commission to enforce safety standards for pipeline facilities and to regulate safety practices of certificated utilities engaged in the transportation of natural gas" under Chapter 59 issued under the Public Utility Code, 66 Pa.C.S. § 501.

Additionally, economic development and community investment needs in south central Pennsylvania are not necessarily aligned with urban ratepayers or suburban residents of the Grater Philadelphia-area.

It is discriminatory to establish two classes of public interest, and to leave south central Pennsylvanians dependent on well-intentioned groups from different geographic locations.

And, *ipso facto*, it is illogical to argue that Mr. Epstein's interest can be "adequately represented by existing participants". And that these parties, simply through Active Parties status conferred in the Present Case, can somehow be endowed "to the extent relevant...[to] address issues relating to prior arguments entered into by PECO in the proceedings" (p.5)

Mr. Epstein has not, and will not, waive any of the rights, duties and obligations assigned to him by the Unicom Negotiated Settlement, nor has he assigned or authorized any of the provisions of Appendix B to any Active Party in this proceeding.

Moreover, Judge Chestnut's Initial Decision presumes a Public Input Hearing in Southern York County, yet only Mr. Epstein has advocated for such a venue. Without a York County hearing, south central Pennsylvania citizens and rate payers will be forced to take a day off of work a drive to a Philadelphia-area public input hearing. (16)

---

<sup>16</sup> The Honorable Charles E. Rainey, Jr., Administrative Law Judge, granted Mr. Epstein's Motion to Schedule an Additional Public Input Hearing in York, Pennsylvania during the Unicom Merger Proceedings.

The Court correctly granted standing to IBEW 777 at Three Mile Island (TMI). Clearly, the people who live and work around TMI have a “direct and immediate” stake in the outcome of this Proceeding. (17) As was previously noted in the Petition to Intervene of Eric Joseph Epstein, as well as the Protest of Eric Joseph Epstein (March 7, 2005), Mr. Epstein has served in a recognized leadership position on issues relating to TMI for 23 years. (18)

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 free of charge, and provides emergency planning and radiation monitoring at no charge to PECO rate payers, area residents and concerned citizens living in proximity to Peach Bottom Atomic Power Station and the Three Mile Island Nuclear Generating Station. Mr. Epstein is also a founding Board Member of the Greater Middletown Economic Development Corporation where he represents the business interests of EFMR, and is seated along with the Exelon’s Vice President of Three Mile Island.

Finally, Mr. Epstein is the only Active Party in a position to monitor if reductions in shareholder services will flow back to PECO rate payers as represented in the Direct Testimony of William D. Arndt 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.

---

17 The Petition to Intervene filed on March 7, 2005 by the Labor Parties was granted. (Pre hearing Memorandum #2, March 30, 2005, p. 4).

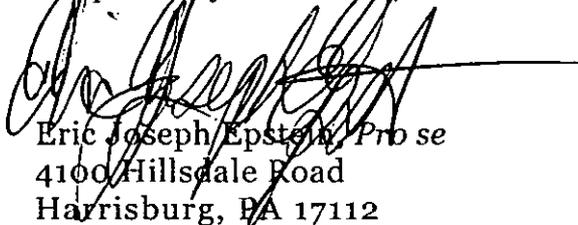
18 The elected officials and political bodies formally recognizing Mr. Epstein and his affiliated organizations, include: Governor Mark Schweiker; the Pennsylvania Senate; the Pennsylvania House of Representatives; the City of Harrisburg; the City Council of Harrisburg; Senator Arlen Specter (R); Representative George Gekas (R); Representative Tim Holden (D); State Senator Jeff Piccola (R- Dauphin and York Counties); State Representative Bruce Smith (R-York County); Mayor Stephen Reed (D-City of Harrisburg); and, Mayor Robert Reid (R-the Borough of Middletown.)

Although Exelon's Board approved the proposed merger with PSE&G, shareholders like Mr. Epstein were not given an opportunity to vote on the merger. Nor were shareholders afforded the opportunity to question the merits of being assessed \$4.4 million and losing support services while the Boards of Directors received value-added premiums.

## V. CONCLUSION

Eric Joseph Epstein respectfully requests that the Initial Decision of Administrative Law Judge Marlene R. Chestnut Issued on April 26, 2005, not be adopted, and Mr. Epstein be accorded Full and Active Party Status to the Proceeding involving 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 Docket No. A-110550F0160

Respectfully submitted,



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

DATED: May 13 , 2005

**Enclosure**

## *Enclosure*

### **Power Uprates and PECO Energy NDCA Tariffs**

A 20 percent increase, known as an extended power uprate, is the maximum allowed by the NRC. All of PECO's NDCA plants as well as TMI-1 have been subject to "stretch power uprates" and "measurement uncertainty recaptures".

However, all of the NDCA generating stations and TMI-1 may request double digit power increases which would substantively increase their megawatt output. Together with 20-year license extensions, power uprates will increase PECO Energy's decommissioning liabilities geometrically (See discussion on p. 6).

As the chart below demonstrates, Exelon has the capacity to add several hundred megawatts of non-mitigated nuclear power in the near future with significant impacts on the PUC's ratemaking obligations.

In April, 2005, Exelon has acknowledged that its decommissioning liabilities will exceed "provisions of the PUC order", and "expects total decommissioning costs to exceed this threshold and expects to be held responsible for the entire \$50 million over the remaining life of the assets" (19) in addition to 5% cost sharing formula approved by the PUC.

19 *Exelon Corporation Annual Report: 2005, Financial Information*, p. 161.

**Approved Power Uprates for AmerGen, Exelon and PSEG  
(1977-2004) a**

<b>Plant</b>	<b>%</b>	<b>MWt</b>	<b>APPROVED</b>	<b>TYPE b</b>	<b>~MWe c</b>
Salem 1	2.0	73	1986	S	24.3
TMI-1	1.3	33	1988	S	11.0
Peach Bottom-2	5.0	165	1994	S	55.0
Limerick-2	5.0	165	1995	S	55.0
Peach Bottom 3	5.0	165	1995	S	55.0
Limerick 1	5.0	165	1996	S	55.0
Salem-1	1.4	48	2001	MU	16.0
Salem-2	1.4	48	2001	MU	16.0
Hope Creek	1.4	46	2001	MU	15.3
Peach Bottom-2	1.62	56	2002	MU	17
Peach Bottom-3	1.62	56	2002	MU	17

a Data updated through March 2004 by the Nuclear Energy Institute (NEI). The Institute is a pro-nuclear lobby based in Washington, D.C. Exelon is a member in good standing.

b **TYPE**  
 S = Stretch  
 E = Extended  
 MU = Measurement Uncertainty Recapture

c MWe is an NEI estimate, i.e., roughly 33% of the MWt capacity increase.

**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 :**

---

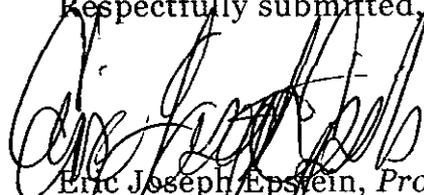
**ERIC JOSEPH EPSTEIN'S, *Pro se*  
SERVICE LIST**

---

**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,



Eric Joseph Epstein, *Pro se*  
4100 Hillsdale Road  
Harrisburg, PA 17112  
(717)-541-1101 Phone  
(717)-541-5487 Fax  
ericepstein@comcast.net

**DATE: May 13, 2005**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
PA PUC  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130

PECO Energy Company c/o  
Paul Bonney, Esquire  
Kent D. Murphy, Esquire  
2301 Market Street  
Philadelphia, PA 19101-8699

PSE&G c/o  
Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
212 Locust Street  
Harrisburg, PA 17101

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

PAIEUG c/o  
David M. Kleppinger, Esquire  
Charis Mincavage, Esquire  
McNees, Wallace & Nurick  
100 Pine Street, PO Box 1166  
Harrisburg, PA 17108-1166

Office of Consumer Advocate c/o  
Tanya J. McCloskey, Esquire  
Senior Assistant, Esquire  
James A. Mullins, Esquire  
Assistant c/o  
Forum Place - 5th Floor  
555 Walnut Street  
Harrisburg, PA 17120

City of Philadelphia - Dept.  
Daniel Contu-Hertzler, Esquire  
Darlene Heap, Esquire  
1515 Arch Street  
Floor 16  
Philadelphia, PA 19102

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
Washington, D.C. 20515

PSE&G Legal c/o  
Richard P. Bonnifield  
Vice President - Law  
80 Park Plaza, T5E  
Newark, NJ 07102

Thomas & Thomas et al  
Charles E. Thomas, Jr. Esquire  
Thomas T. Niesen, Esquire  
212 Locust Street, Suite 500  
P. O. Box 9500  
Harrisburg, PA 17108

PA DEP c/o  
Richard P. Mather, Esquire  
Pamela G. Bishop, Esquire  
Scott Perry, Esquire  
RCSOB, Floor 9  
400 Market Street  
Harrisburg, PA 17101-2301

Office of Trial Staff c/o  
Kenneth Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Senior Prosecutor  
Pennsylvania PUC  
Commonwealth Keystone Building  
Commonwealth Avenue and North Street  
Harrisburg, PA 17120

Office of Small Business Advocate  
c/o Assistant SBA  
Karen S. Miller, Esquire  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
18 Walnut Street, Suite 1100  
Philadelphia, PA 19102

Community Legal Services  
Jonathan M. Stein, Esquire  
Phil Bertocci, Esquire  
1424 Chestnut Street, 4th Floor  
Philadelphia, PA 19102-2505

Roger E. Clark, Esquire  
Attorney of Record  
Environmental Energy Project  
905 Denston Drive  
Ambler, PA 19002

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
2000 Market Street - Floor 10  
Philadelphia, PA 19103

Energy Coordinating Agency c/o  
Carolyn D. Commons, Esquire  
2967 W. School House Lane  
#1210  
Philadelphia, PA 19144

PPL Legal c/o  
Jesse Dillon, Esquire  
Two North 9th Street  
Allentown, PA 18101

Pepco Holdings, Inc. c/o  
Craig Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403

Amerada Hess Corporation  
Rhoads & Sinon c/o  
Jan P. Paden, Esquire  
One South Market Square  
Floor 12, P. O. Box 1146  
Harrisburg, PA 17108-1146

Senator Anthony Williams  
Steven J. Engelmeyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker  
1900 Market Street, Suite 700  
Philadelphia, PA 19103

Donald Kaplan, Esquire  
James Weiss, Esquire  
Melanie Sabo, Esquire  
Preston, Gates, Ellis, et al  
1735 New York Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

Steven Goldenberg, Esquire  
Fox Rothschild  
Princeton Pike Corporate Center  
997 Lenox Drive - Bldg. 3  
Lawrenceville, N.J. 08648

Direct Energy c/o  
Todd Stewart, Esquire  
Hawk, McKeon, et al  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105

Strategic Energy c/o  
Julie Colleti, Esquire  
Two Gateway Center  
Pittsburgh, PA 15222

Met Ed, Penn Elec, et al c/o  
W. Edwin Ogden, Esquire  
Ryan, Russell, et al  
1105 Berkshire Blvd.  
Suite 330  
Wyomissing, PA 19610-1222

COMMONWEALTH OF PENNSYLVANIA



ORIGINAL

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

William R. Lloyd, Jr.  
Small Business Advocate

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

May 16, 2005

**HAND DELIVERED**

James J. McNulty, Secretary  
Pa. Public Utility Commission  
Commonwealth Keystone Building  
P. O. Box 3265  
Harrisburg, PA 17105

**DOCUMENT  
FOLDER**

**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 are the original and nine (9) copies of the Exceptions on behalf of the Office of Small Business Advocate to the Initial Decision of Administrative Law Judge Marlane R. Chestnut, issued on April 26, 2005, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

William R. Lloyd, Jr.  
Small Business Advocate  
Attorney ID No. 16452

SECRETARY'S BUREAU

2005 MAY 16 PM 3:31

RECEIVED

Enclosures

cc: Cheryl Walker Davis, Director  
Office of Special Assistants

KJR

Parties of Record

Brian Kalcic

77

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOINT APPLICATION OF PECO ENERGY :  
COMPANY AND PUBLIC SERVICE :  
ELECTRIC & GAS COMPANY FOR : DOCKET NO. A-110550F0160  
APPROVAL OF THE MERGER OF PUBLIC :  
SERVICE ENTERPRISE GROUP, INC., :  
WITH AND INTO EXELON CORPORATION :**

**DOCKETED**  
MAY 17 2005

**EXCEPTIONS  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

**DOCUMENT  
FOLDER**

**Karen S. Miller  
Assistant Small Business Advocate  
Attorney ID No. 85709**

**For:**

**William R. Lloyd, Jr.  
Small Business Advocate  
Attorney ID No. 16452**

**Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525**

**Dated: May 16, 2005**

**RECEIVED**  
2005 MAY 16 PM 3:31  
SECRETARY'S BUREAU

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. EXCEPTION ..... 2

    A. The Commission has jurisdiction to regulate the generation of electricity.  
        (ID at 9, Conclusion of Law No. 4) ..... 2

III. CONCLUSION ..... 6

## I. INTRODUCTION

On February 4, 2005, PECO Energy Company (“PECO”) and Public Service Electric and Gas Company (“PSE&G”) (collectively, “Joint Applicants”) filed with the Pennsylvania Public Utility Commission (“Commission”) a Joint Application requesting the Commission’s approval, if such approval is necessary, of the proposed merger of Public Service Enterprise Group Inc. (“PSEG”), PSE&G’s corporate parent, with and into Exelon Corporation (“Exelon”), PECO’s corporate parent. The Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Protest in this proceeding on March 2, 2005.

On March 7, 2005, Eric Joseph Epstein filed a Protest and Petition to Intervene in this proceeding. On March 24, 2005, the Joint Applicants filed an Answer in Opposition to Mr. Epstein’s Petition to Intervene as well as a Motion to Dismiss Mr. Epstein’s Protest (“PECO Motion”). In their pleadings, the Joint Applicants alleged that Mr. Epstein lacks standing to participate in this proceeding and seeks to raise issues that are both outside the scope of this proceeding and beyond the jurisdiction of the Commission. Mr. Epstein filed a Response to the Joint Applicants’ Answer and Motion on April 18, 2005.

On April 26, 2005, Administrative Law Judge (“ALJ”) Marlane R. Chestnut issued her Initial Decision (“ID”) with respect to Mr. Epstein’s Protest and Petition to Intervene. In her ID, ALJ Chestnut granted the PECO Motion, denied Mr. Epstein’s Petition to Intervene, and dismissed his Protest. In support of that action, the ALJ determined that “Mr. Epstein is not a customer of PECO, does not live in PECO’s service territory, is not an energy marketer within PECO’s service territory and therefore lacks standing to participate in this proceeding as either an intervener or protestant.” ID at 2. Further, the ALJ determined that “many of the issues [Mr. Epstein] identified are outside the scope of this proceeding.” Id.

The OSBA submits this exception pursuant to 52 Pa. Code § 5.533(a) to address the ALJ's determination that most of the issues raised by Mr. Epstein, which relate to nuclear generation, "are either outside the scope of this proceeding or outside the Commission's jurisdiction." Id. at 8. Specifically, the OSBA disagrees with the ALJ's Conclusion of Law No. 4 that "[t]he Commission is without jurisdiction to regulate the generation of electricity as a public utility function." Id. at 9. The OSBA also disagrees with the ALJ's supporting determinations that "the Commission no longer regulates the generation of electricity," Id. at 8, and that "policing the operation of the wholesale generation market, including the appropriate remedies or sanctions for improper conduct, . . . involves matters outside the PUC's authority," Id. at 9 (quoting with approval PECO Motion at ¶ 11).

The OSBA submits that the Commission continues to have statutory authority to regulate various aspects of the generation of electricity and, indeed, is currently exercising that authority. Therefore, the ALJ's Conclusion of Law that the Commission has no jurisdiction to regulate electricity generation is in error.

## **II. EXCEPTION**

### **A. The Commission has jurisdiction to regulate the generation of electricity. (ID at 9, Conclusion of Law No. 4)**

The ALJ states as a Conclusion of Law that "[t]he Commission is without jurisdiction to regulate the generation of electricity as a public utility function." ID at 9, Conclusion of Law No. 4. The OSBA respectfully disagrees with this conclusion. Rather, pursuant to the Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa. C.S. Ch. 28, the Commission has authority to regulate certain aspects of the generation of electricity and currently exercises this authority.

The ALJ cites Section 2802 of the Public Utility Code, 66 Pa. C.S. § 2802, for the proposition that “the Commission no longer regulates the generation of electricity.” ID at 8-9. However, the Competition Act’s limitations upon the Commission’s jurisdiction over the generation function are not as all-encompassing as the ALJ’s statement would suggest. The Competition Act actually states that “[t]he generation of electricity will no longer be regulated as a public utility function except as otherwise provided for in this chapter.” 66 Pa. C.S. § 2802(14) (emphasis added). Furthermore, the Competition Act includes several provisions that grant the Commission specific powers with respect to the regulation of electricity generation, including, but not limited to, the following:

1. Pursuant to Sections 2806(d)-(f) of the Public Utility Code, 66 Pa. C.S. §§ 2806(d)-(f), the Commission was required to review and either approve or reject each electric utility’s restructuring plan, which includes the utility’s generation rates. Therefore, the General Assembly did not fully deregulate generation rates. Rather, electric utilities’ generation rates are controlled by the restructuring orders adopted by the Commission. Furthermore, Section 2804(4)(ii) of the Public Utility Code, 66 Pa. C.S. § 2804(4)(ii), mandates a generation rate cap while the utility is recovering stranded costs. Consequently, PECO’s generation rates are capped and, therefore, subject to Commission oversight through December 31, 2010.

2. Section 2807(e) of the Public Utility Code, 66 Pa. C.S. § 2807(e), addresses the obligation of each electric distribution company (“EDC”) to provide electric service following the expiration of that EDC’s generation rate cap. In accordance with authority granted under Section 2807(e)(2), the Commission is currently engaged in the promulgation of regulations that spell out the details of this obligation. For example, in connection with the duty

to serve customers who do not choose alternative suppliers or whose alternative suppliers do not deliver the promised electricity, an EDC is required to “acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.” 66 Pa. C.S. § 2807(e)(3) (emphasis added). It is the Commission’s duty—and, therefore, within the Commission’s jurisdiction—to define how the “prevailing market price” for electricity is to be determined, as well as to decide what “reasonable costs” the utility may recover.

3. During the transition to full competition, each electric utility has a duty to mitigate its generation-related transition or stranded costs to the extent practicable. 66 Pa. C.S. § 2808(c)(4). In connection with this duty, the Commission must “consider the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs.” *Id.* Therefore, as long as PECO remains in its transition period (which will be the case through 2010), the Commission retains its jurisdiction over PECO’s generation-related stranded costs.

4. Section 2811(a) of the Public Utility Code, 66 Pa. C.S. § 2811(a), requires the Commission to “monitor the market for the supply . . . of electricity to retail customers and take steps . . . to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.” The ALJ cites with approval PECO’s assertion that “‘policing the operation of the wholesale generation market, including the appropriate remedies or sanctions for improper conduct, is primarily the role of the PJM Interconnection LLC and the Federal Energy Regulatory Commission and, therefore involves matters outside the PUC’s authority.’” ID at 9, quoting PECO Motion at ¶ 11. However, because the operation of the wholesale electricity market necessarily impacts the retail electricity market, the restriction adopted by the ALJ would

effectively strip the Commission of its ability to carry out its statutory duty under Section 2811.

As demonstrated by the foregoing examples, the Competition Act includes numerous provisions that confer jurisdiction upon the Commission with respect to electricity generation. The ALJ's conclusion that the Commission has no jurisdiction to regulate generation is a severe overstatement of the General Assembly's limitations on the Commission's authority. As such, its adoption by the Commission would preclude parties to this proceeding from raising legitimate generation-related issues that are properly within the Commission's jurisdiction.

### III. CONCLUSION

Wherefore, the OSBA respectfully requests that the Commission:

A. Reverse Conclusion of Law No. 4, ID at 9, which holds that the Commission is without jurisdiction to regulate the generation of electricity as a public utility function; or, in the alternative,

B. Determine whether Mr. Epstein has standing to intervene in this proceeding on narrower grounds and without reaching the question of the extent to which the Commission does, or does not, have jurisdiction over the generation of electricity.

Respectfully submitted,



Karen S. Miller  
Assistant Small Business Advocate  
Attorney ID No. 85709

For:

William R. Lloyd, Jr.  
Small Business Advocate  
Attorney ID No. 16452

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831

Dated: May 16, 2005

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

JOINT APPLICATION OF PECO ENERGY :  
COMPANY AND PUBLIC SERVICE :  
ELECTRIC & GAS COMPANY FOR : DOCKET NO. A-110550F0160  
APPROVAL OF THE MERGER OF PUBLIC :  
SERVICE ENTERPRISE GROUP, INC., :  
WITH AND INTO EXELON CORPORATION :

RECEIVED

MAY 16 2005

CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

I certify that I am serving two copies of the Exceptions on behalf of the Office of Small Business Advocate, by e-mail and first class mail upon the persons addressed below:

Hon. Marlane R. Chestnut  
Administrative Law Judge  
Pa. Public Utility Commission  
Rm. 1302, Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 - Fax  
[machestnut@state.pa.us](mailto:machestnut@state.pa.us)

Tanya McCloskey, Esquire  
James A. Mullins, Esquire  
Office of Consumer Advocate  
555 Walnut Street 5th FL Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Paul R. Bonney, Esquire  
Kent D. Murphy, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-4941  
(215) 568-3389 (fax)  
[kent.murphy@exeloncorp.com](mailto:kent.murphy@exeloncorp.com)  
[paul.bonney@exeloncorp.com](mailto:paul.bonney@exeloncorp.com)

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
(717) 787-1976  
(717) 772-2677 (fax)  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Thomas P. Gadsden, Esquire  
Anthony C. DeCusatis, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
(215) 963-5448  
(215) 963-5001 (fax)  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[adecusatis@morganlewis.com](mailto:adecusatis@morganlewis.com)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
(717) 237-7160  
(717) 237-2767 (fax)  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

David M. Kleppinger, Esquire  
Charis Mincavage, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000  
(717) 236-2665 (fax)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102-2505  
(215) 981-3700  
(215) 981-0434 (fax)  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Richard P. Mather, Sr., Esquire  
Pamela G. Bishop, Esquire  
Scott Perry, Esquire  
Dept. of Environmental Protection  
RCSOB, 9<sup>th</sup> Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
(717) 787-7060  
(717) 783-7911 (fax)  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Mr. Eric Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
(717) 541-1101  
(717) 541-5487 (fax)  
[ericepstein@comcast.net](mailto:ericepstein@comcast.net)

Richard P. Bonnifield, Esquire  
Vice President - Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
(973) 430-6441  
[richard.bonnifield@pseg.com](mailto:richard.bonnifield@pseg.com)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
(717) 566-9000  
(717) 566-9901 (fax)  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

I. David Rosenstein, Esquire  
PepcoHoldings, Inc.  
P.O. Box 6066  
Newark, DE 19714-6066  
(302) 451-5441  
(302) 451-5262 (fax)  
[david.rosenstein@connectiv.com](mailto:david.rosenstein@connectiv.com)

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
(Labor Parties)  
(570) 743-2233  
(570) 743-8145 (fax)  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
(Energy Coordinating Agency Phila.)  
(215) 849-4400  
(215) 849-5555  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Roger E. Clark, Esquire  
The Reinvestment Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591  
(215) 574-5814  
(215) 574-5914 (fax)  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Charles McPhedran, Senior Attorney  
PennFuture  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
(215) 545-9693  
(215) 545-9637 (fax)  
[mcphebran@pennfuture.org](mailto:mcphebran@pennfuture.org)

Jesse A. Dillon, Esquire  
Senior Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
(610) 774-5013  
(610) 774-6726 (fax)  
[jadillon@pplweb.com](mailto:jadillon@pplweb.com)

Donald A. Kaplan, Esquire  
James R. Weiss, Esquire  
Melanie J. Sabo, Esquire  
Preston Gates Ellis & Rouvelas Meeds LLP  
1735 New York Avenue, NW, Suite 500  
Washington, DC 20006-4759  
(202) 628-1700  
(202) 331-1024 (fax)  
[donk@prestongates.com](mailto:donk@prestongates.com)  
[jimwe@prestongates.com](mailto:jimwe@prestongates.com)  
[melanies@prestongates.com](mailto:melanies@prestongates.com)

Darlene Heep, Esquire  
Daniel W. Cantu-Hertzler, Esquire  
City of Philadelphia  
One Parkway Building 16<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102-1595  
(215) 683-5170  
(215) 683-5175 (fax)  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)  
[daniel.cantu-hertzler@phila.gov](mailto:daniel.cantu-hertzler@phila.gov)

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
(Direct Energy, LLC)  
(717) 236-1300  
(717) 236-4841 (fax)  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Theodore H. Jobes, Esquire  
Barnett Satinsky, Esquire  
Fox Rothschild LLP  
2000 Market Street - 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
(NJ Large Energy Users Coalition)  
(215) 299-2088  
(215) 299-2150 (fax)  
[tjobes@foxrothschild.com](mailto:tjobes@foxrothschild.com)  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

Steven S. Goldenberg, Esquire  
Fox Rothschild LLP  
Princeton Corporate Center  
997 Lenox Drive, Bldg. 3  
Lawrenceville, NJ 08648-2311  
(NJ Large Energy Users Coalition)  
(609) 896-4586

Richard L. Rosen, Esquire  
Arnold & Porter LLP  
555 12<sup>th</sup> Street NW  
Washington, DC 20004-1206  
(202) 942-5499  
(202) 942-5999 (fax)  
[richard.rosen@aporter.com](mailto:richard.rosen@aporter.com)

David W. Francis, Esquire  
Jan P. Paden, Esquire  
Rhoades & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
(717) 233-5731  
(717) 231-6600 (fax)  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)  
[jpaden@rhoads-sinon.com](mailto:jpaden@rhoads-sinon.com)

Julie A. Coletti, Esquire  
Strategic Energy LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
(412) 394-4356  
(412) 258-4866 (fax)  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Thomas T. Niesen, Esquire  
Charles E. Thomas, Jr., Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
(717) 255-7600  
(717) 236-8278 (fax)  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)  
[cthomasjr@ttanlaw.com](mailto:cthomasjr@ttanlaw.com)

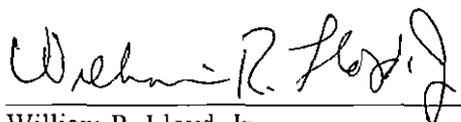
Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
(215) 568-2000  
(215) 568-0140 (fax)  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Boulevard, Suite 330  
Wyomissing, PA 19610-1222  
(610) 372-4761  
(610) 372-4177 (fax)  
[eogden@rvanrussell.com](mailto:eogden@rvanrussell.com)

Steven P. Hershey, Esquire  
Denise Adamucci, Esquire  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
(215) 684-6668  
(215) 684-6628 (fax)  
[steven.hershey@pgworks.com](mailto:steven.hershey@pgworks.com)  
[denise.adamucci@pgworks.com](mailto:denise.adamucci@pgworks.com)

Kevin J. Lipson, Esquire  
Hogan & Hartson L.L.P.  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004-1109  
(202) 637-5600  
(202) 637-5910 (fax)  
[kjlipson@hhlaw.com](mailto:kjlipson@hhlaw.com)

Cheryl Walker Davis, Director  
Office of Special Assistants  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[cwalkerdav@state.pa.us](mailto:cwalkerdav@state.pa.us)



William R. Lloyd, Jr.  
Small Business Advocate  
Attorney ID No. 16452

Date: May 16, 2005

RECEIVED  
2005 MAY 16 PM 3:31  
SECRETARY'S BUREAU



OFFICE OF CHIEF COUNSEL  
Rachel Carson State Office Building  
P. O. Box 8464  
Harrisburg, PA 17105-8464  
May 16, 2005

Bureau of Regulatory Counsel

Telephone 717-787-7060  
Telecopier 717-783-7911

Honorable James McNulty  
Secretary  
Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

DOCUMENT  
FOLDER

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.  
PUC Docket No. A-110550F0160.

Dear Secretary McNulty:

In accordance with the Public Utility Commission's Rules of Practice and Procedure at 52 Pa. Code § 1.59, please find for filing an original and nine copies of the Commonwealth of Pennsylvania, Department of Environmental Protection's Exceptions to the Initial Decision of Administrative Law Judge Marlane R. Chestnut in the above referenced matter. Thank you for your assistance.

Sincerely,

Richard P. Mather, Sr.  
Deputy Chief Counsel

cc: Certificate of Service  
Honorable Marlane Chestnut, PUC ALJ

enclosure

RECEIVED  
2005 MAY 16 AM 11:23  
SECRETARY'S BUREAU



69

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

2005 MAY 16 AM 11:23

RECEIVED

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

DOCUMENT  
FOLDER

DOCKETED

MAY 16 2005

DEPARTMENT OF ENVIRONMENTAL PROTECTION'S  
EXCEPTIONS TO THE INITIAL DECISION  
OF ADMINISTRATIVE LAW JUDGE MARLANE R. CHESTNUT

Pursuant to 52 Pa. Code § 5.533, the Commonwealth of Pennsylvania,

Department of Environmental Protection ("Department") files this Exception to the Initial Decision of Administrative Law Judge Marlane R. Chestnut issued April 26, 2005.

**I. INTRODUCTION**

On February 4, 2005, PECO Energy Company ("PECO") and Public Service Electric and Gas Company ("PSE&G") (collectively the "Joint Applicants") filed a Joint Application for Approval of Merger, to obtain the approval of the Public Utility Commission ("Commission"), if such approvals are required, 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.

On March 7, 2005, Eric Joseph Epstein filed a Protest and Petition to Intervene in the proceeding. On March 24, 2005, the Joint Applicants filed an Answer in Opposition to Mr. Epstein's Petition to Intervene and a Motion to Dismiss Mr. Epstein's Protest,

alleging that Mr. Epstein lacked standing and that the issues raised by Mr. Epstein were outside the scope of this proceeding and outside the Commission's jurisdiction.

On April 26, 2005, the Initial Decision of Administrative Law Judge Marlane R. Chestnut was issued, granting the Joint Applicants' Motion to Dismiss and denying Mr. Epstein's Petition to Intervene because Mr. Epstein lacks standing to intervene in this proceeding or to protest the proposed merger. Initial Decision at 9, 10.

The Initial Decision also addresses, without actually deciding, whether Mr. Epstein would have been able to participate in this proceeding based on the issues he raised if he had standing. Initial Decision at 2, 8-9. At this early stage of the proceedings, such discussions and the corresponding Conclusions of Law are unnecessary, advisory in nature and have prejudiced the Department as the Joint Applicant's rely on them as a basis to object to interrogatories propounded by the Department. Therefore, the Department excepts to those portions of the Initial Decision that address whether issues raised by Mr. Epstein are within the scope of this proceeding and respectfully requests that the Commission remove those sections from its final decision. Those sections include, History of the Proceeding at page 2, Discussion Section B, Issues at 8-9 and Conclusions of Law 4, 5, and 6 at page 9.

## II. EXCEPTIONS

**EXCEPTION No. 1:** Discussions and Conclusions of Law in the Initial Decision Defining the Scope of This Proceeding Should be Removed from the Commission's Final Decision. I.D. at 2, 8-9 (History of the Proceeding at page 2, Discussion Section B. at 8-9, Conclusions of Law 4, 5 and 6).

A. Discussions and Conclusions of Law in the Initial Decision defining the scope of these proceedings are advisory in nature.

The Department does not take issue with the conclusion that Mr. Epstein lacks standing to intervene in this proceeding or to protest the proposed merger. However, upon finding that Mr. Epstein lacked standing it became unnecessary to discuss or issue Conclusions of Law relating to Mr. Epstein's claims or the extent of the Commission's jurisdiction. As a prudential matter, adjudicatory bodies traditionally avoid ruling on issues once a dispositive matter is decided. This practice is well founded as such rulings may have unintended consequences, as is the case here where the Joint Applicants rely on the extraneous discussions and Conclusions of Law in the Initial Decision as the basis to object to interrogatories propounded by the Department. See, Objections of PECO Energy Company and Public Service Electric and Gas Company to the Interrogatories (Set I) of Pennsylvania Department of Environmental Protection (attached hereto as Appendix "A").

Significantly, the Initial Decision does not actually hold that all of Mr. Epstein's issues are outside the scope of this proceeding or the Commission's Jurisdiction. Page 2 of the Initial Decision states "*many* of the issues he identified are outside the scope of this proceeding." Initial Decision at 2 (emphasis added).

Page 8 of the Initial Decision states:

Mr. Epstein identified various potential issues in his Petition to Intervene and Protest. All of these issues relate in some way to nuclear generation, and *most* therefore are either outside the scope of this proceeding or outside the Commission's jurisdiction. Initial Decision at 8 (emphasis added).

Page 9 of the Initial Decision concludes:

Therefore, even if Mr. Epstein had standing to intervene in this proceeding or to file a pretest against the proposed merger, *most if not all* of the issues he raises are either outside the scope of this proceeding or not within the Commission's jurisdiction.

Initial Decision at 9 (emphasis added).

Given the fact that the Initial Decision does not determine whether all issues raised by Mr. Epstein are out outside the scope of this proceeding and outside the Commission's jurisdiction, any discussions or Conclusions of Law on these issues are akin to advisory opinions and should be removed from the final decision of the Commission.

B. Determining the scope of the proceedings at this time is premature.

Ruling on a motion to dismiss a Petition to Intervene and Protest is not an appropriate time to advise the parties as to the scope of this proceeding. Given the context of the decision, a preliminary procedural skirmish between the Joint Applicants and an individual petitioner, the admitted parties had no reason to participate in the matter and no reason to suspect a decision that would alter the entire course of these proceedings. The impacts of providing such an opinion include unnecessary disputes among the parties, stifled settlement talks and perhaps more significant, an inappropriate limitation on the amount of relevant information available to the Commission when determining whether this merger is in the public interest.

Although the Commission no longer directly regulates the generation of electricity, the Electricity Generation Customer Choice and Competition Act requires that the Commission consider whether a proposed merger is "likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market

power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market." 66 Pa.C.S. § 2811(e)(1).

The breadth of this inquiry is quite broad. When coupled with the Commission's duty to determine whether a certificate of public convenience is in the public interest pursuant to 66 Pa.C.S. § 1103(a), matters associated with electricity generation are appropriate to consider. See, ARIPPA v. Pa. P.U.C., 792 A.2d 636 at 657 (Pa. Cmwlth. 2002), (the Commission has the power to deny a certificate of public convenience that is inconsistent with the public interest, including environmental concerns).

Thus, recognizing PECO's contention that concerns or inquiries into entities that are "not a utility and not otherwise subject to the jurisdiction of this Commission" is somehow inappropriate is not only unnecessary, it is incorrect. Initial Decision at 9. Because some level of inquiry into the generation electricity is appropriate and necessary, discussions and Conclusions of Law advising the parties as to the limits of the proceeding at this early stage without all the relevant facts before the Commission is premature and should be removed from the final decision of the Commission.

### **III. CONCLUSION**

For the foregoing reasons, the Department of Environmental Protection respectfully excepts to those portions of the Initial Decision of Administrative Law Judge Marlane R. Chestnut pertaining to issues outside the scope of this proceeding, found at History of the Proceeding at page 2, Discussion Section B., Issues. at 8-9 and

Conclusions of Law 4, 5 and 6, and requests that the Commission remove those sections from its final decision.

Respectfully submitted,



Richard P. Mather, Sr.  
Deputy Chief Counsel  
rmather@state.pa.us

Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
717-787-7060  
717-783-7911 (Fax)

Dated: May 16, 2005

RECEIVED

2005 MAY 16 AM 11:23

SECRETARY'S BUREAU

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE 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 do hereby certify that on this day, I served a true and correct copy of the Department of Environmental Protection's Exceptions to the Initial Decision of Administrative Law Judge Marlane R. Chestnut, issued by the Office of Administrative Law on April 26, 2005, upon the participants listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)

Paul Bonney, Esquire  
Kent D. Murphy, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
[paul.bonney@exeloncorp.com](mailto:paul.bonney@exeloncorp.com)  
[kent.Murphy@exelon.com](mailto:kent.Murphy@exelon.com)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Richard P. Bonnifield, Esquire  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
[Richard.bonnifield@pseg.com](mailto:Richard.bonnifield@pseg.com)

Craig Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[Cdoll76342@aol.com](mailto:Cdoll76342@aol.com)

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphedran@pennfuture.org](mailto:mcphedran@pennfuture.org)

Daniel W. Cantu – Hertzler, Esquire  
Darlene D. Heep, Esquire  
City of Philadelphia  
Law Department  
One Parkway Building, 16<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[Darlene.heep@phila.gov](mailto:Darlene.heep@phila.gov)

Tonya J. McCloskey, Esquire  
James Mullins, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place - 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Karen S. Miller, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Carolyn D. Commons, Esquire  
Commons & Commons LLP  
2967 W. School House Lane, #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
[jadillon@pplweb.com](mailto:jadillon@pplweb.com)

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd, Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Todd S. Stewart, Esquire  
Hawke, McKeon, Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Roger E. Clark, Esquire  
The Reinvestment Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591  
[Roger.clark@trfund.com](mailto:Roger.clark@trfund.com)

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)  
[tjobes@foxrothschild.com](mailto:tjobes@foxrothschild.com)

Steven Goldenberg, Esquire  
Fox Rothschild LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Charles E. Thomas, Jr., Esquire  
Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong and Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108  
[Cthomasjr@ttanlaw.com](mailto:Cthomasjr@ttanlaw.com)  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Julie Coletti, Esquire  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

David M. Kleppinger, Esquire  
Charis Mincavage, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
[ericepstein@comcast.net](mailto:ericepstein@comcast.net)

Thomas P. Gadsden, Esquire  
Anthony C. DeCusatis, Esquire  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[tgadsen@morganlewis.com](mailto:tgadsen@morganlewis.com)  
[adecusatis@morganlewis.com](mailto:adecusatis@morganlewis.com)



Richard P. Mather, Sr.  
Depty Chief Counsel  
PA Attorney ID No. 36922  
rmather@state.pa.us

Commonwealth of Pennsylvania  
Department of environmental Protection  
RCSOB, 9th Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
717-787-7060  
717-783-7911 (Fax)

Dated: May 16, 2005

ORIGINAL



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

IRWINA. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
consumer@paoca.org

May 16, 2005

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

RECEIVED  
2005 MAY 16 PM 3:48  
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 nine (9) copies of the Exceptions to the Initial Decision of Honorable Marlane Chestnut regarding the Petition to Intervene of Eric Epstein, 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  
84376.doc

KJR

DOCUMENT  
FOLDER

76

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 :

---

OFFICE OF CONSUMER ADVOCATE'S  
EXCEPTIONS TO  
HONORABLE MARLANE CHESTNUT'S INITIAL DECISION  
REGARDING THE PETITION TO INTERVENE OF ERIC EPSTEIN

---

**DOCUMENT  
FOLDER**

**DOCKETED**  
MAY 18 2005

Tanya J. McCloskey  
Stephen J. Keene  
Senior Assistant Consumer Advocates

James A. Mullins  
Aron J. Beatty  
Assistant Consumer Advocates

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

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

Dated: May 16, 2005

RECEIVED  
2005 MAY 16 PM 3:48  
SECRETARY'S BUREAU



## TABLE OF AUTHORITIES

### CASES

<u>ARIPPA v. Pa. PUC</u> , 792 A.2d 636 (Pa. Commw. 2002) .....	6
<u>Joint Application for Approval of the merger of GPU, Inc. with FirstEnergy Corp.</u> , 2001 Pa. PUC Lexis 23 (2001) .....	6, 7
<u>The Mid-Atlantic Power Supply Association v. Pennsylvania Public Utility Commission</u> , 746 A.2d 1196 (2000) .....	9, 10

### STATUTES

66 Pa.C.S. § 2210(a) .....	4, 5
66 Pa.C.S. § 2210(b) .....	6
66 Pa.C.S. § 2802(14) .....	3
66 Pa.C.S. § 2807(e) .....	4
66 Pa.C.S. § 2808(c)(1) .....	3
66 Pa.C.S. § 2811(e) .....	4
66 Pa.C.S. §2811(e)(1) .....	4
66 Pa.C.S. §2811(e)(2) .....	5

### REGULATIONS

52 Pa. Code § 5.72(a) .....	9
52 Pa. Code § 5.72(a)(3) .....	2, 11

## 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.

On March 7, 2005, Eric Joseph Epstein filed a Protest and Petition to Intervene in the proceeding. The Joint Applicants filed an Answer in Opposition to Mr. Epstein’s Petition to Intervene and a Motion to Dismiss Mr. Epstein’s Protest on March 24. In their pleadings, the Joint Applicants alleged that Mr. Epstein lacked standing and that the issues raised by him were outside the scope this proceeding, as well as the Commission’s jurisdiction.

On April 26, 2005, the Initial Decision (“I.D.”) of Administrative Law Judge (“ALJ”) Marlane R. Chestnut was issued. In her I.D., ALJ Chestnut granted the Joint Applicants’ Motion to Dismiss and denied Mr. Epstein’s Petition to Intervene. ALJ Chestnut found that Mr. Epstein did not have a direct, immediate and substantial interest that would be affected and that Mr. Epstein has identified issues which are outside the scope of this proceeding or outside the Commission’s jurisdiction. I.D. at 2, 8. After discussing Mr. Epstein’s standing, ALJ Chestnut addressed the substantive issues related to Mr. Epstein’s Petition. As explained below, ALJ Chestnut’s interpretation of the Commission’s jurisdiction and scope of this proceeding when discussing these issues is overly narrow and should not be accepted. Furthermore, ALJ

Chestnut's discussion and conclusions of law are untimely at this early juncture in the proceeding. Consequently, the OCA submits that the substantive discussions regarding the scope of this proceeding and the conclusions of law contained in the I.D. should not be adopted. Additionally, the OCA submits that Mr. Epstein has met the standard for intervention in 52 Pa. Code § 5.72(a)(3) and should be permitted to participate on appropriate issues.

## II. EXCEPTIONS

OCA Exception No. 1: The ALJ Erred In Her Analysis Of The Commission's Jurisdiction In This Proceeding As It Relates To Electricity Generation.

### A. Introduction

In the Initial Decision, ALJ Chestnut states that Mr. Epstein has identified issues, which relate in some way to nuclear generation, and are, therefore outside the scope of this proceeding or outside the Commission's jurisdiction. I.D. at 8. In her discussion, ALJ Chestnut states:

In addition, the Commission no longer regulates the generation of electricity, Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S.A. §2802. With respect to generation issues, the Commission's role in this proceeding is to determine whether the proposed merger "is likely to result in anticompetitive or discriminatory conduct" pursuant to 66 Pa.C.S.A. §§2210(a), 2811(e).

I.D. at 8. The OCA submits that the ALJ's interpretation of the Commission's jurisdiction in this proceeding was unnecessary for the purposes of resolving the Petition to Intervene and unduly narrows the Commission's jurisdiction and potentially the scope of this proceeding. Importantly, the ALJ's discussion does not correctly represent the purpose of the Electricity Generation Customer Choice and Competition Act, is overly narrow and should not be accepted. The Act does not stand for the proposition that the Commission has no jurisdiction over generation. The Act stands for the proposition that generation service will be subject to competition. Additionally, the

Act explicitly confers jurisdiction with the Commission in merger matters related to the effects of the combination of generation resources.

B. The Commission Has Jurisdiction And Authority To Examine Electricity Generation Issues In This Merger Proceeding.

ALJ Chestnut's assertion that the Commission no longer regulates the generation of electricity is an overstatement of the statutory standard. Section 2802 of the Act—upon which the ALJ relies—states in relevant part:

This chapter requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth. *The generation of electricity will no longer be regulated as a public utility function except as otherwise provided for in this chapter.* Electric generation suppliers will be required to obtain licenses, demonstrate financial responsibility and comply with such other requirements concerning service as the commission deems necessary for the protection of the public.

66 Pa.C.S. § 2802(14)(*emphasis added*). The Act states that electricity generation is no longer regulated in the traditional sense, *i.e.*, revenue requirement = rate base X rate of return + depreciation. However, the Commission still maintains significant jurisdiction and authority over generation matters. Indeed, PECO ratepayers continue to support generation functions in numerous respects. For example, PECO ratepayers pay—and will continue to pay through 2010—stranded cost charges for the uneconomic portion of PECO's generating plants. PECO's customers also are responsible, even beyond 2010, for paying all of the decommissioning costs for PECO's nuclear plants. 66 Pa.C.S. § 2808(c)(1). Customers pay these costs in base rates and in a nuclear decommissioning cost adjustment clause, and will do so for the remaining life of these nuclear plants.

PECO also serves as the provider of last resort for generation service in its service territory. The provider of last resort generation service is subject to the Commission's regulations governing this service. 66 Pa.C.S. § 2807(e).

As can be seen, the Commission's continued jurisdiction over electricity generation is clear from the Act. The ALJ's conclusion that the Commission no longer regulates the generation of electricity is an overstatement of the purpose of the Act.

ALJ Chestnut also concludes that the Commission's role in this proceeding is only to determine if the merger is likely to result in anticompetitive or discriminatory conduct, not to police the wholesale generation market. I.D. at 8-9. The ALJ references 66 Pa.C.S. §§ 2811(e) and 2210(a) for support for her contention that the PUC's jurisdiction is limited in this proceeding. Specifically, ALJ Chestnut relies on the language in Section 2811(e)(1) which reads:

In the exercise of authority the commission otherwise may have to approve the mergers or consolidations by electric utilities or electricity suppliers, or the acquisition or disposition of assets or securities of other public utilities or electricity suppliers, the commission shall consider whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.

66 Pa.C.S. §2811(e)(1). However, Section 2811(e)(2) also applies and this Section clearly delineates the Commission's authority and responsibility to only approve mergers subject to appropriate terms and conditions that address conduct that impacts retail electricity generation markets. Section 2811(e)(2) states:

(e) APPROVAL OF PROPOSED MERGERS,  
CONSOLIDATIONS, ACQUISITIONS OR DISPOSITIONS.

(2) Upon request for approval, the commission shall provide notice and an opportunity for open, public evidentiary hearings. If the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, *the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.*

66 Pa.C.S. § 2811(e)(2) (*emphasis added*). Therefore, read in conjunction with Section 2811(e)(1), Section 2811(e)(2) makes it clear that the Commission's authority in merger proceedings such as this one is much broader than set forth by ALJ Chestnut.

ALJ Chestnut also relies on the language in Section 2210(a) (regarding the natural gas markets), which reads:

The commission shall monitor the market for the supply and distribution of electricity to retail customers and take steps as set forth in this section to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.

66 Pa.C.S. § 2210(a). However, paragraph (b) of Section 2210 reads:

(b) PROCEDURE.-- Upon request for any approval identified in subsection (a), the commission shall provide notice and an opportunity for open; public evidentiary hearings. If the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers from obtaining benefits of a properly functioning and effectively competitive retail natural gas market, *the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and effectively competitive retail natural gas market.*

66 Pa.C.S. § 2210(b). Therefore, as with paragraphs (e)(1) and (e)(2) of Section 2811, a reading of paragraph (b) in conjunction with paragraph (a) of Section 2210 makes it clear that the Commission has jurisdiction and significant authority to preside over the many issues regarding retail markets that are likely to arise in the case at hand. Consequently, the OCA submits that Sections 2811 and 2210 cannot be relied upon to understate the Commission's vested authority in merger applications. As explained below, the Pennsylvania Commonwealth Court has made clear that this vested authority is, in fact, broader than set forth by ALJ Chestnut.

In Joint Application for Approval of the merger of GPU, Inc. with FirstEnergy Corp., 2001 Pa. PUC Lexis 23 (2001), *affirmed as to the merger, remanded on other grounds*, ARIPPA v. Pa. PUC, 792 A.2d 636 (Pa. Commw. 2002), the Commission reiterated that there is no "inherent right to merge" and that the Commission is obligated to consider the benefits and detriments as they impact on all affected parties. Id. at \*23-\*24. In protecting the public interest, the Commission's review is broader than what the ALJ suggests. In imposing conditions on the GPU/FE merger, the Commission captured the parameters of the public interest standard when it stated: "The conditions we impose herein are critical to our approval of the merger, and are designed to counteract any possible detriments that may result to Pennsylvania customers and to the Commonwealth as a result of the consummation of the proposed merger."

Id. at \*29. The Commission further clarified that:

for this merger to be approved by the Commission, the Applicants must meet their burden of proving by a preponderance of the evidence that the merger will provide substantial, affirmative benefits to Pennsylvania consumers and Pennsylvania. Also, the merger must also be in the public interest. Furthermore, the Commission may impose conditions on the merger.

GPU at \*24-25. Therefore, the Commission must review the impact on the Commonwealth and communities, as well as ratepayers. Such a review is much broader than that identified by ALJ Chestnut.

Additionally, the Joint Application--in the Section entitled "Benefits of the Merger"—lists benefits which the Joint Applicants claim affirmatively promote the public interest. For example, Paragraph 27(a) states:

*The combined company will have increased scale and scope in both energy delivery and generation. In addition, the combined company will have greater diversification and balance in its energy delivery business and generation portfolio. This increased scale, scope and diversification is expected to result in improved service and reliability with greater earnings predictability.*

Joint Application at p.16. Paragraph 27(a)(iii) addresses generation specifically and reads:

*With respect to the generation business, the combined company will, before planned divestitures, have 52,000 megawatts of domestic capacity in multiple states, including approximately 20,000 megawatts of low-cost nuclear generation. This generation diversification is expected to create a more balanced portfolio in terms of geography, fuel mix, dispatch and load-servicing capacity. Exelon has a proven track record of improving and sustaining safety and operating and cost performance at its nuclear plants, which is grounded on a nuclear management model that Exelon has successfully implemented at the plants it operates. As a consequence, Exelon has achieved first quartile performance across the entire fleet of nuclear plants it operates. Exelon intends to apply this same nuclear management model to the Salem and the Hope Creek Generating Stations and thereby improve the operating performance of those plants while assuring the highest levels of safety. If the capacity factors of PSEG's nuclear units improve, the availability of more low cost nuclear generation will put downward pressure on wholesale power prices in the PJM region. As Dr. Hieronymus explains, lower wholesale prices, in turn, should inure to the benefit of retail customers.*

Id. at 17. Paragraph 27(c) states that "the combined company will have expanded nuclear operations and should be able to capitalize on Exelon's nuclear operating and cost structure

improvements, as well as the sharing of best practices across organizations.” Likewise, as to synergies, Paragraph 27(e) reads:

The Merger will create the opportunity to achieve meaningful cost savings for the regulated and unregulated businesses of Exelon and PSEG through the sharing of best practices, the elimination of duplicative functions, improved operating efficiencies in nuclear and other generation operations and supply chain benefits from improved sourcing. The synergies that will accrue to the Pennsylvania jurisdictional regulated businesses of PECO over time will, at least in part, offset the increasing cost of providing regulated retail utility service and, thereby, may reduce the size of future rate increases.

Joint Application at 18-19. Therefore, as can be seen, the Joint Applicants themselves have held these benefits out as serving the public interest in Pennsylvania.

Finally, the OCA submits that it is premature to set the parameters of this proceeding in such a narrow fashion absent further input by the parties. Interventions are still being filed by prospective parties, discovery between the parties is ongoing and the filing of intervenor testimony is nearly 7 weeks away. To unnecessarily focus the issues in such a narrow manner is untimely.

OCA Exception No. 2: The ALJ Erred In Determining That Mr. Epstein Does Not Have Standing To Participate In This Proceeding.

ALJ Chestnut asserts that Mr. Epstein does not have standing to participate in this proceeding because Mr. Epstein’s stated issues do not:

rise to the level of an interest which is “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.”

I.D. at 4. However, the OCA submits that Section 5.72(a) of the Pennsylvania Code does provide for the participation of Mr. Epstein. Subpart (a)(3) reads:

(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:

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

52 Pa. Code § 5.72(a). Sub-paragraph (3) permits Mr. Epstein's participation in this proceeding.

The public interest standing set forth in sub-paragraph (3) provides for the participation of Mr. Epstein because Mr. Epstein's expertise is relevant to this proceeding. For instance, Mr. Epstein was intimately involved with the establishment of PECO's existing Nuclear Decommissioning Cost Adjustment Clause. This recovery mechanism continues to be a part of PECO's tariff and it may be addressed in the case at hand. Therefore, Mr. Epstein's familiarity with this mechanism—and other nuclear issues which may be related—indicates that the public interest will be served by allowing his participation.

ALJ Chestnut also cites to The Mid-Atlantic Power Supply Association v. Pennsylvania Public Utility Commission, 746 A.2d 1196 (2000) and the participation of the OCA, Office of Small Business Advocate, the PUC's Office of Trial Staff and other parties as support for her contention that Mr. Epstein should not be allowed to participate in this proceeding. Specifically, ALJ Chestnut states:

[I]t is beyond argument that even if Mr. Epstein as an individual had a direct, immediate and substantial interest which may be directly affected in this proceeding, that interest certainly can be adequately represented by existing participants. All customer groups – as well as the public interest generally – are represented in this proceeding and, as noted by Mr. Epstein in his Response, have identified issues related to nuclear power generation in their respective Prehearing Memoranda. These parties are the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Office of Trial Staff (OTS), the Philadelphia Area Industrial Energy Users Group (PAIEUG), as well as the Pennsylvania Department of Environmental Protection (DEP).

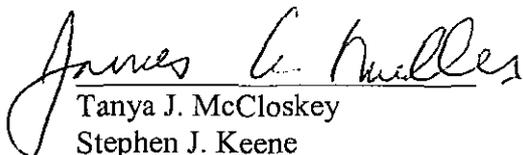
I.D. at 5. Based on the above, the OCA is concerned that the ALJ has used the OCA's presence as a justification to deny intervention. The OCA's enabling statute specifies that: "Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court." 71 P.S. §309-6.

Additionally, in MAPSA, 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. 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, however. In MAPSA, PECO sought to represent the interests of its ratepayers--an interest that it does not represent. In the case at hand, Mr. Epstein is an individual seeking to forward consumer-related issues and public interest issues. Therefore, under the public interest provision of sub-paragraph (3), Mr. Epstein should be granted standing to participate in this proceeding.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the substantive discussions regarding the scope of this proceeding and the conclusions of law contained in the I.D. should not be adopted. Additionally, the OCA submits that Mr. Epstein has met the standard for intervention in 52 Pa. Code § 5.72(a)(3) and should be permitted to participate on appropriate issues.

Respectfully submitted,



Tanya J. McCloskey  
Stephen J. Keene  
Senior Assistant Consumer Advocates

James A. Mullins  
Aron J. Beatty  
Assistant Consumer Advocates

Counsel for: Irwin A. Popowsky  
Consumer Advocate

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

Dated: May 16, 2005  
00084304

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, Exceptions to the Initial Decision of Honorable Marlane Chestnut regarding the Petition to Intervene of Eric Epstein, 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 16<sup>th</sup> day of May 2005.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, P.O. Box 3265  
Harrisburg, PA 17105-3265

RECEIVED  
2005 MAY 16 PM 3:49  
SECRETARY'S BUREAU

SERVICE BY E-MAIL and FIRST CLASS MAIL

Paul R. Bonney  
Deputy General Counsel  
Kent Murphy  
Assistant General Counsel  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Thomas P. Gadsden, Esquire  
Anthony C. DeCusatis, Esquire  
Morgan, Lewis, & Bockuis, LLP  
1701 Market Street  
Philadelphia, PA 19103

Richard P. Bonnifield  
Vice President – Law  
80 Park Plaza, TSE  
Newark, NJ 07102

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
Suite 300  
212 Locust Street  
Harrisburg, PA 17101

Karen S. Miller  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Commerce Building – Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

David Kleppinger, Esquire  
Charis Mincavage, Esquire  
McNees Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Roger E. Clark, Esquire  
Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 17106

Eric Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Jesse Dillon, Esquire  
PP&L Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard, LLP  
Harrisburg Energy Center  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105

Donald Kaplan, Esquire  
James Weiss, Esquire  
Melanie Sabo, Esquire  
Preston Gates Ellis & Rouvelas Meads LLP  
Suite 500  
1735 New York Avenue, NW  
Washington, DC 20006

Jan Paden, Esquire  
David Francis, Esquire  
Rhoads & Sinon  
1 South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146

John Hanger  
Citizens for Pennsylvania's Future  
610 North Third Street  
Harrisburg, PA 17101

Craig A. Doll  
Attorney At Law  
25 West Second Street  
Hummelstown, PA 17036-0403

Philip Bertocci, Esquire  
Jonathan M. Stein, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street, 4<sup>th</sup> Fl.  
Philadelphia, PA 19102

Richard P. Mather, Sr., Deputy Chief Counsel  
Pamela Bishop, Assistant Counsel  
Scott Perry, Assistant Counsel  
Department of Environmental Protection  
P O Box 8464  
9th Floor, MSSOB  
Harrisburg, PA 17105-8464

Paul F. Forshay, Esquire  
Sutherland, Asbill & Brennan, LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Liz Robinson  
Energy Coordinating Agency  
1924 Arch Street  
Philadelphia, PA 19103

Daniel W. Cantu-Hertzler, Esquire  
Darlene Heap, Esquire  
Law Department  
City of Philadelphia  
1515 Arch Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19102

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer, LLP  
1105 Berkshire Boulevard  
Suite 330  
Wyomissing, PA 19610-1222

Carolyn D. Commons  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
FOX ROTHSCHILD LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
Steven Goldenberg, Esquire

Steven Goldenberg, Esquire  
FOX ROTHSCHILD LLP  
Princeton Pike Corporate Center  
997 Lenox Drive  
Building 3  
Lawrenceville, NJ 08648

Scott Rubin, Esquire  
3 Lost Creek Dr.  
Selinsgrove, PA 17870

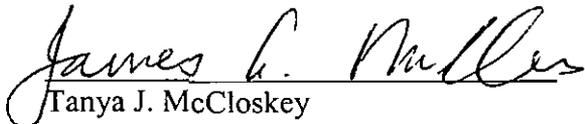
Julie Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street  
Suite 1100  
Philadelphia, PA 19102

Charles E. Thomas, Jr., Esquire  
Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street  
Suite 500  
Harrisburg, PA 17108-9500

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103

Kevin J. Lipson, Esquire  
Hogan & Hartson, L.L.P.  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004-1109



Tanya J. McCloskey  
Stephen J. Keene  
Senior Assistant Consumer Advocates  
James A. Mullins  
Aron J. Beatty  
Assistant Consumer Advocates

Counsel for  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
83179.doc



ORIGINAL

OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.  
Small Business Advocate

May 20, 2005

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

RECEIVED  
2005 MAY 20 PM 3:12  
SECRETARY'S BUREAU

**HAND DELIVERED**

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

DOCUMENT  
FOLDER

**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:

I am delivering for filing today the original plus three copies of the Notice of Appearance on behalf of the Office of Small Business Advocate in the above captioned matter.

A copy has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

Carol F. Pennington  
Assistant Small Business Advocate  
Attorney ID No. 50468

Enclosures

cc: Hon. Marlane R. Chestnut  
Administrative Law Judge  
Parties of Record  
Brian Kalcic

BTL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF PECO ENERGY :  
COMPANY AND PUBLIC SERVICE :  
ELECTRIC & GAS COMPANY FOR : DOCKET NO. A-110550F0160  
APPROVAL OF THE MERGER OF PUBLIC :  
SERVICE ENTERPRISE GROUP, INC., :  
WITH AND INTO EXELON CORPORATION :

**DOCUMENT  
FOLDER**

NOTICE OF APPEARANCE

The Office of Small Business Advocate, pursuant to 52 Pa. Code § 1.24, hereby enters the appearance of **Carol F. Pennington**, replacing Karen S. Miller as counsel of record, in the above captioned proceeding.

Documents in this proceeding should now be served on the following:

Carol F. Pennington  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101  
(717) 783-2525  
(717) 783-2831  
[cpenningto@state.pa.us](mailto:cpenningto@state.pa.us)

RECEIVED  
2005 MAY 20 PM 3:12  
SECRETARY'S BUREAU

**DOCKETED**

JUN 4 2005

*Carol F. Pennington*

Carol F. Pennington  
Assistant Small Business Advocate  
Attorney ID No. 50468

For:

William R. Lloyd, Jr.  
Small Business Advocate  
Attorney ID No. 16452

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831 (fax)

Dated: May 20, 2005

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF PECO ENERGY :  
COMPANY AND PUBLIC SERVICE :  
ELECTRIC & GAS COMPANY FOR : DOCKET NO. A-110550F0160  
APPROVAL OF THE MERGER OF PUBLIC :  
SERVICE ENTERPRISE GROUP, INC., :  
WITH AND INTO EXELON CORPORATION :

RECEIVED  
2005 MAY 20 PM 3:12  
PA. Pub.  
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I certify that I am serving the Notice of Appearance on behalf of the Office of Small Business Advocate, by e-mail and first class mail upon the persons addressed below:

Hon. Marlane R. Chestnut  
Administrative Law Judge  
Pa. Public Utility Commission  
Rm. 1302, Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 - Fax  
[machestnut@state.pa.us](mailto:machestnut@state.pa.us)

Tanya McCloskey, Esquire  
James A. Mullins, Esquire  
Office of Consumer Advocate  
555 Walnut Street 5th FL Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Paul R. Bonney, Esquire  
Kent D. Murphy, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-4941  
(215) 568-3389 (fax)  
[kent.murphy@exeloncorp.com](mailto:kent.murphy@exeloncorp.com)  
[paul.bonney@exeloncorp.com](mailto:paul.bonney@exeloncorp.com)

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
(717) 787-1976  
(717) 772-2677 (fax)  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Thomas P. Gadsden, Esquire  
Anthony C. DeCusatis, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
(215) 963-5448  
(215) 963-5001 (fax)  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[adecusatis@morganlewis.com](mailto:adecusatis@morganlewis.com)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
(717) 237-7160  
(717) 237-2767 (fax)  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

David M. Kleppinger, Esquire  
Charis Mincavage, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000  
(717) 236-2665 (fax)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102-2505  
(215) 981-3700  
(215) 981-0434 (fax)  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Richard P. Mather, Sr., Esquire  
Pamela G. Bishop, Esquire  
Scott Perry, Esquire  
Dept. of Environmental Protection  
RCSOB, 9<sup>th</sup> Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
(717) 787-7060  
(717) 783-7911 (fax)  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Mr. Eric Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
(717) 541-1101  
(717) 541-5487 (fax)  
[ericepstein@comcast.net](mailto:ericepstein@comcast.net)

Richard P. Bonnifield, Esquire  
Vice President - Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
(973) 430-6441  
[richard.bonnifield@pseg.com](mailto:richard.bonnifield@pseg.com)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
(717) 566-9000  
(717) 566-9901 (fax)  
[cdoll176342@aol.com](mailto:cdoll176342@aol.com)

I. David Rosenstein, Esquire  
PepcoHoldings, Inc.  
P.O. Box 6066  
Newark, DE 19714-6066  
(302) 451-5441  
(302) 451-5262 (fax)  
[david.rosenstein@connectiv.com](mailto:david.rosenstein@connectiv.com)

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
(Labor Parties)  
(570) 743-2233  
(570) 743-8145 (fax)  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
(Energy Coordinating Agency Phila.)  
(215) 849-4400  
(215) 849-5555  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Roger E. Clark, Esquire  
The Reinvestment Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591  
(215) 574-5814  
(215) 574-5914 (fax)  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Charles McPhedran, Senior Attorney  
PennFuture  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
(215) 545-9693  
(215) 545-9637 (fax)  
[mcphedran@pennfuture.org](mailto:mcphedran@pennfuture.org)

Jesse A. Dillon, Esquire  
Senior Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
(610) 774-5013  
(610) 774-6726 (fax)  
[jadillon@pplweb.com](mailto:jadillon@pplweb.com)

Donald A. Kaplan, Esquire  
James R. Weiss, Esquire  
Melanie J. Sabo, Esquire  
Preston Gates Ellis & Rouvelas Meeds LLP  
1735 New York Avenue, NW, Suite 500  
Washington, DC 20006-4759  
(202) 628-1700  
(202) 331-1024 (fax)  
[donk@prestongates.com](mailto:donk@prestongates.com)  
[jimwe@prestongates.com](mailto:jimwe@prestongates.com)  
[melanies@prestongates.com](mailto:melanies@prestongates.com)

Darlene Heep, Esquire  
Daniel W. Cantu-Hertzler, Esquire  
City of Philadelphia  
One Parkway Building 16<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102-1595  
(215) 683-5170  
(215) 683-5175 (fax)  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)  
[daniel.cantu-hertzler@phila.gov](mailto:daniel.cantu-hertzler@phila.gov)

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
(Direct Energy, LLC)  
(717) 236-1300  
(717) 236-4841 (fax)  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Theodore H. Jobes, Esquire  
Barnett Satinsky, Esquire  
Fox Rothschild LLP  
2000 Market Street - 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
(NJ Large Energy Users Coalition)  
(215) 299-2088  
(215) 299-2150 (fax)  
[tjobes@foxrothschild.com](mailto:tjobes@foxrothschild.com)  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

Steven S. Goldenberg, Esquire  
Fox Rothschild LLP  
Princeton Corporate Center  
997 Lenox Drive, Bldg. 3  
Lawrenceville, NJ 08648-2311  
(NJ Large Energy Users Coalition)  
(609) 896-4586

Richard L. Rosen, Esquire  
Arnold & Porter LLP  
555 12<sup>th</sup> Street NW  
Washington, DC 20004-1206  
(202) 942-5499  
(202) 942-5999 (fax)  
[richard.rosen@aporter.com](mailto:richard.rosen@aporter.com)

David W. Francis, Esquire  
Jan P. Paden, Esquire  
Rhoades & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
(717) 233-5731  
(717) 231-6600 (fax)  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)  
[jpaden@rhoads-sinon.com](mailto:jpaden@rhoads-sinon.com)

Julie A. Coletti, Esquire  
Strategic Energy LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
(412) 394-4356  
(412) 258-4866 (fax)  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Thomas T. Niesen, Esquire  
Charles E. Thomas, Jr., Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
(717) 255-7600  
(717) 236-8278 (fax)  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)  
[cthomasjr@ttanlaw.com](mailto:cthomasjr@ttanlaw.com)

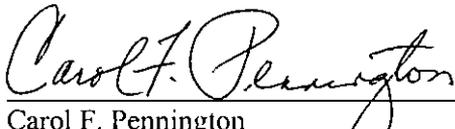
Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
(215) 568-2000  
(215) 568-0140 (fax)  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Boulevard, Suite 330  
Wyomissing, PA 19610-1222  
(610) 372-4761  
(610) 372-4177 (fax)  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Steven P. Hershey, Esquire  
Denise Adamucci, Esquire  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
(215) 684-6668  
(215) 684-6628 (fax)  
[steven.hershey@pgworks.com](mailto:steven.hershey@pgworks.com)  
[denise.adamucci@pgworks.com](mailto:denise.adamucci@pgworks.com)

Kevin J. Lipson, Esquire  
Hogan & Hartson L.L.P.  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004-1109  
(202) 637-5600  
(202) 637-5910 (fax)  
[kjlipson@hhlaw.com](mailto:kjlipson@hhlaw.com)

Paul Carpenter, Principal  
The Brattle Group  
44 Brattle Street  
Cambridge, MA 02138  
(617) 864-7900  
[paul.carpenter@brattle.com](mailto:paul.carpenter@brattle.com)  
[elizabeth.lacey@brattle.com](mailto:elizabeth.lacey@brattle.com)

  
Carol F. Pennington  
Assistant Small Business Advocate  
Attorney ID No. 50468

Date: May 20, 2005

Stamp

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

Morgan Lewis  
COUNSELORS AT LAW

Anthony C. DeCusatis  
215.963.5034  
adecusatis@morganlewis.com

ORIGINAL

May 26, 2005

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

DOCUMENT  
FOLDER

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 Objections to Interrogatories (Set IV) of Philadelphia Gas Works. Copies of the Objections have been served upon the persons and in the manner set forth in the attached Certificate of Service. Additional copies of this letter and the Objections 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

RECEIVED  
05 MAY 31 AM 11:18  
PA.P.U.C.  
SECRETARY'S BUREAU

7

**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 : DOCKET NO. A-110550F0160  
ENTERPRISE GROUP :  
INCORPORATED WITH AND INTO :  
EXELON CORPORATION :**

**OBJECTIONS OF PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
TO THE INTERROGATORIES (SET IV)  
OF THE PHILADELPHIA GAS WORKS**

**RECEIVED  
05 MAY 31 11:18  
PA. P.U.C. BUREAU  
SECRETARY'S OFFICE**

Pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code §5.342, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Corporation (PSE&G) (collectively, the Joint Applicants), hereby object to the Interrogatories (Set IV) propounded by the Philadelphia Gas Works (PGW). As explained below, the aforementioned interrogatories were filed two and a half weeks after the period for initial discovery closed. *See* Prehearing Order No. 2, Paragraph No. 33. In addition, specific Interrogatories, as delineated below, are objectionable because they inquire into matters that are not relevant to the issues in this proceeding, seek competitively sensitive information, are unduly burdensome, request customer information protected by 52 Pa. Code §62.78 and improperly request the Joint Applicants to conduct legal research.

1. On March 30, 2005, the Administrative Law Judge (ALJ) issued Prehearing Order No. 2. Paragraph No. 33 of that Order, which sets forth the schedule for this proceeding, provides that the initial discovery request period would end on May 1, 2005.

2. May 19, 2005, PGW issued its Interrogatories (Set IV), consisting of 28 questions, a copy of which is attached.

3. PGW's Interrogatories (Set IV) were issued 18 days after the initial discovery period closed in this case. Accordingly, those Interrogatories are untimely and should be stricken.

4. The Joint Applicants object to specific interrogatories on the additional grounds set forth below.

a. The Joint Applicants object to Interrogatories Nos. 2-4, 6, 8-13, 17-20, 24 and 25 on the grounds that the information they request is not relevant to any issue or matter properly within the scope of this proceeding.

b. The Joint Applicants object to Interrogatory Nos. 3, 4, 9, 10-12 and 18-20 on the grounds that they seek competitively sensitive information that has no ascertainable nexus to issues or matters properly within the scope of this proceeding.

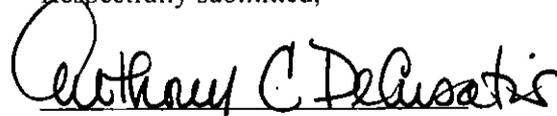
c. The Joint Applicants object to Interrogatory Nos. 8, 9, 10, and 17 on the grounds that obtaining and assembling the requested information would be unduly burdensome.

d. The Joint Applicants object to Interrogatory Nos. 17 and 19 because release of the information requested by PGW would violate the customer privacy provisions of the Commission's regulation at 52 Pa. Code §62.78.

e. The Joint Applicants object to Interrogatory Nos. 26-28 on the grounds that they request the Joint Applicants to conduct legal research for PGW. This use of the discovery process is not proper. *Malone v. The Pennsylvania Railroad Company*, 17 Pa. D&C 2d 752 (1959).

THEREFORE, for all of the foregoing reasons, the Joint Applicants' Objections to the Interrogatories (Set IV) of Philadelphia Gas Works should be granted.

Respectfully submitted,



Thomas P. Gadsden, Esquire  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
Anthony C. DeCusatis  
[adecusatis@morganlewis.com](mailto:adecusatis@morganlewis.com)  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234  
215.963.5001 (Fax)

Paul R. Bonney, Esquire  
[paul.bonney@exeloncorp.com](mailto:paul.bonney@exeloncorp.com)  
Kent D. Murphy, Esquire  
[kent.murphy@exeloncorp.com](mailto:kent.murphy@exeloncorp.com)  
Exelon Business Service Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215.841.4252  
215.841.4282 (Fax)

Counsel for PECO Energy Company

Daniel Clearfield  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
717.237.7173

Richard P. Bonnifield  
[richard.bonnifield@pseg.com](mailto:richard.bonnifield@pseg.com)  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
973.430.6441  
973.623.3261 (Fax)

Counsel for Public Service  
Electric and Gas Company

Dated: May 26, 2005

Appendix A  
PGW's Interrogatories  
(Set IV)

PENNSYLVANIA PUBLIC UTILITY COMMISSION

---

JOINT APPLICATION OF PECO : Docket No. A-110550F0160  
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 :

---

**PHILADELPHIA GAS WORKS'  
FOURTH SET OF INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS TO  
PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY**

---

Pursuant to Section 333(d) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §333(d), Philadelphia Gas Works ("PGW"), by its attorneys, submits the following Fourth Set of Interrogatories and Request for Production of Documents to PECO Energy Company ("PECO Energy") and Public Service Electric and Gas Company ("PSE&G") to be answered in writing under oath in accordance with the definitions and instructions provided below.

**Definitions and Instructions**

1. To "identify" or "state the identity of" a person, if that person is a natural person, means to state:

- a. his or her name and all other names by which he or she is referred to;
- b. his or her present or last known resident address and telephone number;
- c. his or her present or last known business address and telephone number; and
- d. his or her present or last known occupation, position, and business affiliation.

2. To “identify” or “state the identity of” a person, if that person is not a natural person, means to:

- a. state its full name and specify its nature (e.g., corporation, partnership, etc.);
- b. set forth the general nature of its business (e.g., products manufactured or sold, services rendered, etc.); and
- c. state its present or last known principal business address, identified as such, and such other of its business addresses as are known to you.

3. “Document” means the original and any non-identical copy (which is *different from the original or any copy because of notations thereon or attached thereto or otherwise*) of any written, recorded, printed, typewritten, or handwritten matter, however produced, reproduced or recorded, including without limitation, electronic mail, contracts, agreements, representations, warranties, certificates, opinions, letters, telegrams, memoranda, reports, studies, evaluations, diaries, minutes, maps, pamphlets, notes, charts, calendars, tabulations, analyses, bank records, income tax records, statistical information accumulations, transcripts, records of meetings and conversations of any kind, film impressions, photographs, magnetic tape, sound or mechanical reproductions, recordings, drafts of contracts, purchase orders, invoices, advertisements,

receipts, drawings, vouchers, and telephone records, which is or was at anytime in your possession, custody, or control or known or believed by you to exist or to have existed.

4. To “identify” or “state the identity of” a document means to state with respect thereto:

a. the nature or type of the document (e.g., letter, contract, etc.) and the number of pages or units of which it consists;

b. its date, and if it bears no date, the date it was prepared or received;

c. the identity of its author, each signatory or person over whose name it is issued, and each person who received, approved, or commented on it;

d. the identity of all persons to whom the document was addressed or distributed;

e. the last known physical location and address of the original and each duplicate copy, and the identity of its custodian; and

f. the general subject matter or content of the document with sufficient particularity to enable it to be identified.

5. “Person” means any natural person and any corporation, partnership, firm, joint venture, sole proprietorship, or other legal or business entity of any kind.

6. The terms “PECO Energy,” “you,” or “your,” or any synonym thereof is intended to and shall embrace and include, in addition to PECO Energy, counsel for PECO Energy, and all agents, servants, employees, partners, officers, representatives, private investigators and others who are aware of, in the possession, custody or control of, any information, document or thing for or on behalf of PECO Energy.

7. The terms “PSE&G,” “you,” or “your,” or any synonym thereof is intended to and shall embrace and include, in addition to PSE&G, counsel for PSE&G, and all agents, servants, employees, partners, officers, representatives, private

investigators and others who are aware of, in the possession, custody or control of, any information, document or thing for or on behalf of PSE&G.

8. Whenever you are asked in these requests to identify, or explain or describe a fact, incident, event, act, transaction, occasion, or course of conduct, include but do not limit your response to the following:

- a. the date, time and place it occurred;
- b. the identity of each person participating, a statement of who such person *purported to represent*, and the identity of all oral communications;
- c. a statement of the subject matter; and
- d. the identity of all documents referred to.

9. These requests shall be deemed continuing so as to require supplementation or further answers if further information is obtained between the time at which the answers are served and the time of hearing, specifically including, but not limited to, a continuing duty to seasonably supplement your response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters. You are under a similar duty to correct any incorrect response when you later learn that it is incorrect.

10. Grammar and syntax, as used in these requests, shall be construed and interpreted to give proper meaning and consistency to its context. By way of illustration and not by limitation, the singular form of words may include the plural and the plural form of words may apply to each individual person, and the use of any gender or tense may be construed to include all genders and tenses, wherever appropriate in these

requests, to bring within their scope any information which might otherwise be construed to be outside their scope.

## Interrogatories and Requests for Production of Documents

### **Additional Instructions**

For those of the following Interrogatories and Requests denoted “[**Electronic**]” please provide the response in an electronic spreadsheet format. The phrase “PECO and all other entities involved in the merger” includes, but is not limited to, PECO, PSE&G, all affiliates of PECO including but not limited to ComEd, Exelon Generation and Exelon Energy Inc., and all affiliates of PSE&G.

1. If not already being provided in response to Question 73 from the City of Philadelphia Interrogatories to PECO Energy Company, Set 1, then for PECO and all other entities involved in the merger, please identify all contracts (including capacity release agreements) held on all gas pipelines for gas transportation services in effect from November 1, 1999 to the present, including:

- a) Pipeline name
- b) Contract holder (PECO, or another entity involved in the merger)
- c) Type of contract (firm or interruptible)
- d) Releasing shipper (if applicable)
- e) Receipt point(s)
- f) Delivery points(s)
- g) MDQ and/or other quantity terms
- h) Agreement date
- i) Contract start date
- j) Contract end date
- k) Rate

2. If not already being provided in response to Question 73 from the City of Philadelphia Interrogatories to PECO Energy Company, Set 1, then please provide a copy of all transportation contracts summarized in the response to No. 1, above.

3. [**Electronic**] If not already being provided in response to Question 73 from the City of Philadelphia Interrogatories to PECO Energy Company, Set 1, then please provide gas flows by day and by delivery point for each of the contracts summarized in the response to No. 1, above, from November 1, 2003 to the present.

4. If not already being provided in response to Question 2 from Philadelphia Gas Works’ Third Set of Interrogatories and Request for Production of Documents to PECO Energy Company and Public Service Electric and Gas Company, then for PECO and all other entities involved in the merger, please identify all agreements to release capacity held on gas pipelines in effect from November 1, 1999 to the present, including:

- a) Pipeline name

- merger)
- b) Releasing shipper (PECO, or another entity involved in the merger)
  - c) Acquiring shipper
  - d) Receipt point(s)
  - e) Delivery point(s)
  - f) MDQ and/or other quantity terms
  - g) Agreement date
  - h) Release start date
  - i) Release end date
  - j) Rate

5. If not already being provided in response to Question 71 from the City of Philadelphia Interrogatories to PECO Energy Company, Set 1, then for PECO and all other entities involved in the merger, please identify all natural gas storage contracts in effect from November 1, 1999 to the present, including:

- a) Storage provider
- b) Contract holder (PECO, or another entity involved in the merger)
- c) Location of storage field
- d) Inventory
- e) Injection rights
- f) Withdrawal rights
- g) Agreement date
- h) Contract start date
- i) Contract termination date

6. If not already being provided in response to Question 71 from the City of Philadelphia Interrogatories to PECO Energy Company, Set 1, then please provide a copy of all storage contracts summarized in the response to No. 5, above.

7. If not already being provided in response to Questions 71 and 73 from the City of Philadelphia Interrogatories to PECO Energy Company, Set 1, then for each of the transportation contracts identified in the response to No. 1, above, and the storage contracts identified in the response to No. 5, above, please identify which contracts are committed in whole or in part to meeting the needs of PECO's retail customers or PSE&G's retail customers, and the volumetric size of the commitment.

8. [Electronic] In the response to OCA Set II, No. 2, PECO describes its gas supply purchases. Please provide a listing of all gas supply purchases made by PECO and PSE&G during November 1, 2003 to the present (including purchases made prior to November 1, 2003 but that were in effect after November 1, 2003). For each supply contract, please include the date the contract was entered into, whether the purchase was made by PECO or PSE&G, the volume that flowed under the contract by day, the start date for delivery of gas, the end date for delivery of gas, the price formula (if any), the price and the location where gas was delivered. If the supply was purchased for a

particular purpose (e.g., supplying retail customers, system balancing, or supplying a third party sale), please so specify.

9. **[Electronic]** In the response to OCA Set II, No. 2, PECO describes its “least cost gas procurement strategy,” and how it “optimizes its resources.” For all sales (i.e., not deliveries to retail customers, but to third parties such as industrial users, marketers, etc.) made by PECO and PSE&G, please provide a listing of sales contracts in existence during November 1, 2003 to the present (including sales made prior to November 1, 2003 but in effect after November 1, 2003). For each sales contract, please include the date the contract was entered into, whether the purchase was made by PECO or PSE&G, the volume that flowed under the contract by day, the start date for delivery of gas, the end date for delivery of gas, price, the location where gas is delivered to the purchaser, and identity of the purchaser.

10. **[Electronic]** In the response to OCA Set II, No. 2, PECO describes its “least cost gas procurement strategy,” and how it “optimizes its resources.” Please provide the following information regarding hedging transactions entered into by PECO and PSE&G from November 1, 2003 to the present (including hedging transactions entered into prior to November 1, 2003 but that were in effect after November 1, 2003.)

a) Please provide the price, quantity, term (start date and end date), date agreed to, and settlement location by transaction for each gas futures, forward, or option contract or any other hedging instrument with a settlement location in PJM.

b) Please state whether the hedging transaction was entered into by PECO or PSE&G.

c) Please explain the column titles for each of the columns provided, and any abbreviations used.

d) For two or three different types of hedging transactions, please use the data from the database and explain PECO’s position in the transaction and its net proceeds from the transaction.

e) For each hedging transaction, please provide PECO’s net proceeds from the transaction.

f) For each option contract specified in (a) above, please specify whether the option was a call or a put and indicate the day the option was exercised or sold.

11. In the response to OCA Set II, No. 2, PECO describes its “asset management agreements whereby a portion of PECO’s storage and related firm transportation contract entitlements are managed by third party asset managers.” Please provide a copy of all such PECO and any PSE&G asset management agreements in effect from November 1, 1999 to the present.

12. **[Electronic]** In the response to OCA Set II, No. 2, PECO describes its use of two peaking facilities (LNG and Propane-Air). Please provide the following information by day for November 1, 2003 to the present:

- facility,
- a) Injections into and withdrawals from PECO's LNG peaking facility,
  - b) Withdrawals from PECO's Propane-Air facility,
  - c) Injections into and withdrawals from any PSE&G LNG facilities,
- and
- d) Withdrawals from any PSE&G propane or other such peaking facilities.

13. **[Electronic]** In the response to OCA Set II, No. 2, PECO describes how it "meets its number one priority of providing reliable gas supplies to the citygate at all times to meet PECO's customers' demands." Please provide for the PECO distribution system by day for November 1, 2003 to the present:

- a) Total sendout,
- b) Total sendout to PECO's retail customers,
- c) Total sendout to retail customers affiliate(s) of PECO (if any),
- d) Total sendout to electric generators, and
- e) Total sendout to electric generators supplied by PECO or affiliate(s) of PECO.

14. In the response to OCA Set II, No. 2, PECO describes how it "meets its number one priority of providing reliable gas supplies to the citygate at all times to meet PECO's customers' demands." Please provide the total receipt capacity of the PECO distribution system.

15. In the response to OCA Set II, No. 2, PECO describes how it "meets its number one priority of providing reliable gas supplies to the citygate at all times to meet PECO's customers' demands." For each of the PECO distribution system's interconnections with an interstate or intrastate pipeline or a local distribution system, please list:

- a) The interconnecting pipeline or LDC, and
- b) PECO's receipt capacity at the interconnection.

16. **[Electronic]** In the response to OCA Set II, No. 2, PECO describes how it "meets its number one priority of providing reliable gas supplies to the citygate at all times to meet PECO's customers' demands." Please provide PECO's total receipts at each of the interconnections listed in response to Request 13 by day from November 1, 2003 to the present.

17. **[Electronic]** In response to OCA Set VIII, No. 13, PECO provided a map showing the location of generating units owned by Exelon and PSEG in relation to PECO and PSE&G's service territories. For each gas-fired electric generating unit located in PJM owned by PECO and all entities involved in the merger, please provide:

- a) Name of the unit,
- b) Owner(s) of the units,
- c) Capacity (MW), and
- d) Gas usage by day from November 1, 2003 to the present.

18. In response to OCA Set VII, No. 4, PECO provided current annual gas supply plans for PECO and all entities involved in the merger.

a) To the extent not already provided, please provide all fuel supply plans for gas-fired electric generating units located in PJM prepared by or for PECO or affiliate(s) of PECO from November 1, 1999 to the present.

b) Is it contemplated that any currently effective fuel supply plans provided in response to 18 a) would change after the merger? If so, please provide a description of the change.

19. Please provide the following information for each gas-fired electric generating unit located in PECO's and PSE&G service territory:

- a) Name of unit
- b) Whether the unit is in PECO's or PSE&G's service territory
- c) Owner of unit
- d) Capacity (MW)
- e) Whether the unit is connected to PECO's or PSE&G's distribution system
- f) Gas usage by month by month from November 2003 to the present (for units that receive distribution or transportation services from PECO or PSE&G)
- g) All service agreements associated with the unit with PECO and all other entities involved in the merger
- h) Names of other pipelines to which the unit is connected

20. Please provide any contracts, agreements, letters of intent or communications with PECO or PSE&G with regard to any gas-fired electric generating units proposing to interconnect with PECO's gas distribution system or PSE&G's gas distribution system since November 1, 1999.

21. Please provide a copy of all currently effective balancing provisions or penalties applicable for electric generators taking gas distribution or transportation services from PECO or PSE&G.

22. Please provide any studies or reports prepared by or for PECO or any other entities involved in the merger from November 1, 1999 to the present regarding fuel supply services that PECO or PSE&G have offered or contemplated offering to electric generation facilities.

23. Please provide any studies or reports prepared by or for PECO or any other entities involved in the merger from November 1, 1999 to the present regarding market conditions and competition for natural gas service to electric generators or large industrial customers in PJM.

24. Please provide a copy of all complaints filed against PECO that involve the rates or terms of service for gas service to electric generation customers.

25. Please provide a copy of all complaints filed against PSE&G that involve the rates or terms of service for gas service to electric generation customers.

26. Please provide a copy of all currently effective natural gas open access regulations under which PECO and PSE&G operate.

27. Please provide a copy of all currently effective orders or rules promulgated by the Pennsylvania PUC or any other regulatory agency that limit the interaction or information shared between PECO and affiliate(s) of PECO.

28. Please provide a copy of all currently effective orders or rules promulgated by any other regulatory agency that limit the interaction or information shared between PSE&G and affiliate(s) of PSE&G.

Respectfully submitted,

By \_\_\_\_\_

Charles E. Thomas, Jr., Esquire  
Thomas T. Niesen, Esquire  
THOMAS, THOMAS, ARMSTRONG & NIESEN  
212 Locust Street, Suite 500 P.O. Box 9500  
Harrisburg, PA 17108-9500

Denise Adamucci, Esquire  
Philadelphia Gas Works - Legal Department 800  
West Montgomery Avenue Philadelphia, PA 19122

Attorneys for  
Philadelphia Gas Works

DATED: May 19, 2005

Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

---

JOINT APPLICATION OF PECO : Docket No. A-110550F0160  
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 :

---

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 19<sup>th</sup> day of May, 2005, served a true and correct copy of the foregoing Fourth Set of Interrogatories and Request for Production of Documents, upon the persons and in the manner set forth below:

**BY EMAIL AND HAND DELIVERY**

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

**BY EMAIL AND OVERNIGHT DELIVERY**

Thomas P. Gadsden, Esquire  
Anthony C. DeCusatis, Esquire  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)

Paul Bonney, Esquire  
Kent D. Murphy, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
[paul.bonney@exeloncorp.com](mailto:paul.bonney@exeloncorp.com)  
[kent.murphy@exeloncorp.com](mailto:kent.murphy@exeloncorp.com)

Richard P. Bonnifield,  
Esquire PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
[Richard.bonnifield@pseg.com](mailto:Richard.bonnifield@pseg.com)

**BY EMAIL**

David M. Kleppinger, Esquire  
Charis Mincavage, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphebran@pennfuture.org](mailto:mcphebran@pennfuture.org)

Richard P. Mather, Sr., Esquire  
Pamela G. Bishop, Esquire  
Scott Perry, Esquire  
Department of Environmental Protection  
Rachel Carson State Office Building,  
9th Floor  
400 Market Street  
Harrisburg, PA 17101-2301  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Craig Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Daniel W. Cantu-Hertzler, Esquire  
Darlene D. Heep, Esquire  
City of Philadelphia  
Law Department  
One Parkway Building, 16 th Floor 1515  
Arch Street Philadelphia, PA 19102-1595  
[daniel.cantu-hertzler@phila.gov](mailto:daniel.cantu-hertzler@phila.gov)  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street, 10 th Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P. O. Box 3265  
Harrisburg, PA 17105-3265  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Karen S. Miller, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Tanya J. McCloskey, Esquire  
James Mullins, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

**BY EMAIL**

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
[ericepstein@comcast.net](mailto:ericepstein@comcast.net)

Jesse A. Dillon, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
[jjadillon@pplweb.com](mailto:jjadillon@pplweb.com)

Todd S. Stewart, Esquire  
Hawke, McKeon, Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Carolyn D. Commons, Esquire Commons  
& Commons LLP  
2967 W. School House Lane, #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146 Harrisburg,  
PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer  
1105 Berkshire Boulevard, Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Steven Goldenberg, Esquire  
Fox Rothschild LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
[jjstein@clsphila.org](mailto:jjstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker  
LLP 1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)

Julie Coletti, Esquire  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jjcoletti@sel.com](mailto:jjcoletti@sel.com)

Roger E. Clark, Esquire  
The Reinvestment Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

---

Thomas T. Niesen

**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 the Objections of PECO Energy Company and Public Service Electric and Gas Company To The Interrogatories (Set IV) of The Philadelphia Gas Works upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)  
[kniesboul@state.pa.us](mailto:kniesboul@state.pa.us)  
(Hard copy and Electronic Copy)

Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)

Counsel for Philadelphia Gas Works

VIA FIRST CLASS MAIL

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Counsel for Public Service  
Electric and Gas Company

Counsel for Strategic Energy, LLC

Carol F. Pennington, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Office of Small Business  
Advocate

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[Daniel.cantu-hetzler@phila.gov](mailto:Daniel.cantu-hetzler@phila.gov)  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for City of Philadelphia

Counsel for TRF  
Sustainable Development Fund

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphebran@pennfuture.org](mailto:mcphebran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton  
and Joey Bergey

Steven S. Goldenberg, Esquire  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Counsel for MAPSA

Jesse A. Dillon, Esquire  
Donald A. Kaplan, Esquire  
Richard L. Rosen, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jadillon@pplweb.com](mailto:jadillon@pplweb.com)  
[donk@prestongates.com](mailto:donk@prestongates.com)  
[richard.rosen@aporter.com](mailto:richard.rosen@aporter.com)

Counsel for PPL Services Corporation

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)  
[tjobes@foxrothschild.com](mailto:tjobes@foxrothschild.com)  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Counsel for NJLEU Coalition  
and MAPSA

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for Direct Energy LLC

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W.. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of  
Philadelphia, Inc.

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
Pamela G. Bishop, Esquire  
Assistant Counsel  
Scott Perry, Esquire  
Assistant Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company,  
Pennsylvania Power Company, FirstEnergy  
Solutions, Corp.

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Paul Carpenter  
Principal  
The Brattle Group  
44 Brattle Street  
Cambridge, MA 02138

[Paul.Carpenter@brattle.com](mailto:Paul.Carpenter@brattle.com)

Counsel for Senator Anthony H. Williams



Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

Date: May 26, 2005

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Tel: 215.963.5000  
Fax: 215.963.5001  
www.morganlewis.com

**Morgan Lewis**  
COUNSELORS AT LAW

**Anthony C. DeCusatis**  
215.963.5034  
adecusatis@morganlewis.com

**ORIGINAL**

May 26, 2005

**VIA HAND DELIVERY**

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

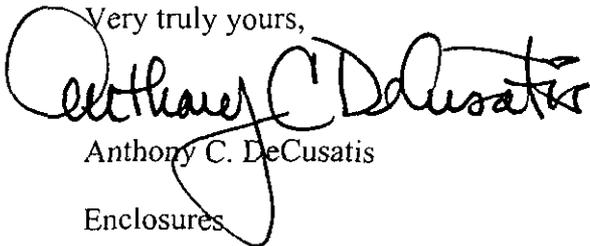
**DOCUMENT  
FOLDER**

**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 nine copies of the Replies of PECO Energy Company and Public Service Electric and Gas Company To Exceptions To The Initial Decision of Administrative Law Judge Marlane R. Chestnut Issued April 26, 2005. Copies of the Replies 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 of the Replies are enclosed, which we request be date-stamped and returned to us.

Very truly yours,

  
Anthony C. DeCusatis

Enclosures

c: Per Certificate of Service

BTL

RECEIVED  
2005 MAY 26 PM 4: 01  
SECRETARY'S BUREAU

38

**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 Replies of PECO Energy Company and Public Service Electric And Gas Company To Exceptions To The Initial Decision of Administrative Law Judge Marlane R. Chestnut Issued April 26, 2005 upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)  
[kniesboul@state.pa.us](mailto:kniesboul@state.pa.us)  
(Hard copy and Electronic Copy)

Cheryl Walker Davis, Director  
Office of Special Assistants  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Bldg. 3d Fl. East  
400 North Street  
Harrisburg, PA 17120

**RECEIVED**  
2005 MAY 26 PM 4: 01  
SECRETARY'S BUREAU

VIA FIRST CLASS MAIL

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Counsel for Public Service  
Electric and Gas Company

Carol F. Pennington, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Counsel for Office of Small Business  
Advocate

Daniel W. Cantú-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[Daniel.cantu-hetzler@phila.gov](mailto:Daniel.cantu-hetzler@phila.gov)  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Counsel for City of Philadelphia

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Counsel for Strategic Energy, LLC

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for TRF  
Sustainable Development Fund

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphebran@pennfuture.org](mailto:mcphebran@pennfuture.org)

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Counsel for PennFuture, Lisa Z. Leighton and  
Joey Bergey

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Steven S. Goldenberg, Esquire  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)  
[tjobes@foxrothschild.com](mailto:tjobes@foxrothschild.com)  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Counsel for MAPSA

Counsel for NJLEU Coalition  
and MAPSA

Jesse A. Dillon, Esquire  
Donald A. Kaplan, Esquire  
Richard L. Rosen, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jadillon@pplweb.com](mailto:jadillon@pplweb.com)  
[donk@prestongates.com](mailto:donk@prestongates.com)  
[richard.rosen@aporter.com](mailto:richard.rosen@aporter.com)

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

Counsel for PPL Services Corporation

Counsel for Direct Energy LLC

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[dfrancis@rhoads-sinon.com](mailto:dfrancis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W.. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of  
Philadelphia, Inc.

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
Pamela G. Bishop, Esquire  
Assistant Counsel  
Scott Perry, Esquire  
Assistant Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company, Pennsylvania  
Power Company, FirstEnergy Solutions, Corp.

Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)

Counsel for Philadelphia Gas Works

Paul Carpenter  
Principal  
The Brattle Group  
44 Brattle Street  
Cambridge, MA 02138

[Paul.Carpenter@brattle.com](mailto:Paul.Carpenter@brattle.com)

Date: May 26, 2005

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Counsel for Senator Anthony H. Williams

Eric J. Epstein, *pro se*  
4100 Hillsdale Road  
Harrisburg, PA 17112

  
Anthony C. DeCusatis, Esquire  
Counsel for PECO Energy Company

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

REPLIES OF PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
TO EXCEPTIONS

To The Initial Decision Of  
Administrative Law Judge Marlane R. Chestnut  
Issued April 26, 2005

SECRETARY'S BUREAU

2005 MAY 26 PM 4: 01

RECEIVED

Paul R. Bonney, Esquire  
Kent D. Murphy, Esquire  
Exelon Business Services Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Richard P. Bonnifield, Esquire  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102

DOCUMENT  
FOLDER

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

Daniel Clearfield, Esquire  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Counsel for PECO Energy Company

Counsel for Public Service  
Electric and Gas Company

Dated: May 26, 2005

DOCKETED ORIGINAL  
JUN 02 2005

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

REPLIES OF PECO ENERGY COMPANY AND  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
TO EXCEPTIONS

To The Initial Decision Of  
Administrative Law Judge Marlane R. Chestnut  
Issued April 26, 2005

SECRETARY'S BUREAU

2005 MAY 26 PM 4: 02

RECEIVED

Paul R. Bonney, Esquire  
Kent D. Murphy, Esquire  
Exelon Business Services Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Richard P. Bonnifield, Esquire  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102

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

Daniel Clearfield, Esquire  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Counsel for PECO Energy Company

Counsel for Public Service  
Electric and Gas Company

Dated: May 26, 2005

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. ARGUMENT.....	5
A. The ALJ Correctly Determined That Mr. Epstein Is Not Entitled To Intervene In This Proceeding.....	5
1. Mr. Epstein Does Not Have “Representational Standing” (Epstein Exceptions, p. 7).....	5
2. The Monitoring Agreement Does Not Confer Standing On Mr. Epstein To Participate In This Proceeding (Epstein Exceptions, p. 8).....	6
3. Mr. Epstein’s Allegations That He Has A “Special Interest” And “Expertise” In “Nuclear Economics, Nuclear Safety, and Nuclear Waste,” Even If True, Do Not Provide A Valid Basis For Intervention (Epstein Exceptions, pp. 8-14).....	8
4. Simply Because Mr. Epstein Wants To Opine On “Issues Relating To Economic Development, Community Investment, Environmental Degradation And Shareholder Services” Does Not Mean He Has Standing To Do So (Epstein Exceptions, pp. 14-18).....	12
B. The Concerns Expressed In The Exceptions Of The OCA, OSBA And DEP About The Potential Scope And Legal Impact Of The ALJ’s Discussion Of This Commission’s Jurisdiction Are Unwarranted (OCA Exception No. 1; OSBA Exception A; DEP Exception No. 1).....	13
III. CONCLUSION .....	15

## I. INTRODUCTION

On April 26, 2005, Administrative Law Judge Marlane R. Chestnut (ALJ) issued an Initial Decision denying Eric Joseph Epstein's Petition to Intervene and dismissing his Protest. Copies of the ALJ's Initial Decision and Mr. Epstein's Petition to Intervene and Protest are attached as Appendices A, B and C, respectively.

Mr. Epstein is an anti-nuclear activist<sup>1</sup> who, in his Petition to Intervene (pp. 1-2), claimed an interest in this proceeding based upon his association with nuclear monitoring groups and the fact that his intervention had not been opposed in prior proceedings before this Commission. The ALJ found, and it is undisputed, that Mr. Epstein "is not a customer of PECO, does not live in PECO's service territory and is not a marketer of electricity or gas in PECO's service territory." Initial Decision, pp. 2 and 6. Based upon these findings, the ALJ concluded that Mr. Epstein did not satisfy the criteria set forth in the Commission's regulations at 52 Pa. Code §5.72(a)(2) for standing to intervene in this proceeding:

None of [Mr. Epstein's] assertions rise to the level of an interest which is "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 this proceeding."

*Id. at 4.*

The ALJ also concluded that Mr. Epstein's intervention was not proper under 52 Pa. Code §5.72(a)(3) because "[t]here is no aspect of the public interest that requires intervention on his part." Initial Decision, p. 6. In that regard, the ALJ found, and it is undisputed, that "Mr. Epstein is an individual, and his Petition to Intervene and Protest were filed on that basis." *Id.*

---

<sup>1</sup> Mr. Epstein's views on the commercial use of nuclear power were expressed in the interview he conducted for an edition of PBS' FRONTLINE entitled *Nuclear Reaction – Why Do Americans Fear Nuclear Power?* (April 1997). The transcript of that interview is available at [www.pbs.org/wgbh/pages/frontline/shows/reaction](http://www.pbs.org/wgbh/pages/frontline/shows/reaction).

As an individual, Mr. Epstein does not have standing in a representational capacity. Moreover, since he is not an attorney, he would not be permitted to represent the interests of others before the Commission in any event. See 52 Pa. Code §1.21.

Finally, the ALJ analyzed the 25 numbered paragraphs of Mr. Epstein's Protest that set forth the issues he seeks to raise in the proceeding. Based on that analysis, the ALJ concluded that Mr. Epstein's Petition to Intervene and Protest were improper for the additional reason that "[a]ll of these issues relate in some way to nuclear generation, and most therefore are either outside the scope of this proceeding or outside the Commission's jurisdiction." In fact, all but two of Mr. Epstein's "issues" pertain to operational or safety-related matters at nuclear power plants owned by entities other than PECO Energy (e.g. planning for spent nuclear fuel storage; the propriety of possible nuclear plant operating license extensions; the safety implications of the use of "mixed oxide" fuels). As the ALJ found, this Commission has repeatedly held that such "issues" are within the exclusive jurisdiction of the Nuclear Regulatory Commission (NRC):

There is no question that issues relating to the operation or safety of nuclear facilities or the impact of extension of operating licenses are within the exclusive jurisdiction of the NRC. This has long been recognized by the Commission. See, *Pa. P.U.C. v. Metropolitan Edison Co.*, 54 Pa.PUC 276, (1980); *Re: Petition of Metropolitan Edison Co.*, 65 Pa.PUC 190 (1987). Any relevant issues relating to the operation or safety of any nuclear facilities will be addressed by the NRC, which is reviewing the proposed merger.

Initial Decision, p. 8.

One of the two non-nuclear issues raised by Mr. Epstein is set forth in Paragraph 17 of his Protest, where he contends that this Commission should order affiliates of PECO Energy and PSE&G, which sell electric generation in the wholesale market, to "sell off" their generating

assets in the event of “market manipulation convictions.”<sup>2</sup> Responding to this proposed line of inquiry, the ALJ determined that “[t]he Federal Energy Regulatory Commission has exclusive jurisdiction over the wholesale generation market.” Initial Decision, p. 9. As a consequence, the ALJ found that the issue Mr. Epstein proposed to raise involves matters over which the PUC does not have jurisdiction:

As recognized in PECO’s Motion [to Dismiss Mr. Epstein’s Protest] at Paragraph 11, “policing the operation of the wholesale generation market, including the appropriate remedies or sanctions for improper conduct, is primarily the role of the PJM Interconnection LLC and the Federal Energy Regulatory Commission (FERC) and, therefore, involves matters outside the PUC’s authority. Additionally, the entity to which Mr. Epstein’s concerns are directed is not a utility and not otherwise subject to the jurisdiction of this Commission.”

Initial Decision, p. 8.

Mr. Epstein has filed an Exception to the Initial Decision which, for the most part, repeats the arguments previously rejected by the ALJ. Exceptions also were filed by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Department of Environmental Protection (DEP). None of these parties disputes that Mr. Epstein lacks standing as a customer.<sup>3</sup> Instead, these parties express concern that the ALJ’s findings

---

<sup>2</sup> The only other non-nuclear issue is discussed in Paragraph 20 of Mr. Epstein’s Protest, wherein he seeks assurances concerning PECO Energy’s post-merger level of investment in local communities. Because Mr. Epstein does not live in a community served by PECO Energy, he has no standing to address this issue which, in any event, has been raised by a number of parties that actually have standing to do so. *E.g.* Prehearing Memorandum of the City of Philadelphia, p. 2.

<sup>3</sup> The OSBA and DEP do not take issue with the ALJ’s holding that Mr. Epstein lacks standing to intervene. The OCA, on the other hand, contends that, despite the fact Mr. Epstein has no cognizable interest in this case, his limited participation might be “in the public interest” to the extent he might expound on issues within the scope of this proceeding. *See* OCA Exceptions, pp. 8-9. As explained hereafter, that contention lacks merit.

might impact other aspects of this case, namely the ALJ's well-founded conclusion that the FERC has exclusive jurisdiction over the wholesale generation market.

As an initial matter, the Commission need not reach the broader issues of the precise scope of the Commission's authority over the wholesale generation market in connection with the limited standing issue presented – especially where, as here, the record narrowly addressed only the specific issues in Mr. Epstein's Protest and the ALJ's decision provides an independent basis for concluding that Mr. Epstein lacks standing.

Moreover, the conclusion that the Commission has limited jurisdiction is neither remarkable nor inconsistent in any way with this Commission's prior rulings in general and its specific rulings regarding PECO Energy and its generation affiliates. Indeed, Paragraph 28 of the Joint Petition For Full Settlement of PECO Energy Company's Proposed Restructuring Plan provides, in pertinent part: "PECO and its subsidiaries are permitted to transfer or assign all of their generating assets and liabilities, as those assets and liabilities are delineated in its Restructuring Plan filing .... Once the transfer is completed, the generation entity, if an affiliate of PECO, will be regulated by the Commission only if it makes retail sales, and then only as an EGS." The Joint Petition was approved in its entirety by the Commission's final Order in *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code et al.*, 186 P.U.R. 4th 105 (1998). PECO's generation affiliate makes no sales as an EGS in Pennsylvania and no one contends otherwise. The generation and nuclear safety issues that Mr. Epstein identifies simply are not properly before this Commission. Mr. Epstein intervened in other proceedings, most notably before the NRC, where his issues can be addressed.

For these reasons, and as explained in more detail below, the ALJ's ruling should be affirmed.

## II. ARGUMENT

### A. The ALJ Correctly Determined That Mr. Epstein Is Not Entitled To Intervene In This Proceeding

Mr. Epstein does not dispute the ALJ's findings that he is not a customer of PECO Energy, does not reside in its service territory and is not a marketer of electricity or natural gas. In addition, he concedes that "the nuclear power production issues relating to licensing and operations" that he seeks to interject in this proceeding "fall primarily under the jurisdiction of the Nuclear Regulatory Commission (NRC)" (Epstein Exceptions, p. 8). Consequently, the fundamental basis for the ALJ's decision has not been challenged by Mr. Epstein. Instead, Mr. Epstein contends that the PUC should exercise its "discretion" to grant him full party status in this case because: (1) he purports to have "representational standing;" (2) he is a party to a Nuclear Monitoring and Waste Storage Agreement (Monitoring Agreement) with PECO Energy; (3) he purports to have a "special interest" and "expertise" in "nuclear economics, nuclear safety and nuclear waste isolation," which allegedly cannot be duplicated by any other party; and (4) in his Prehearing Memorandum he represented that he would also like to raise issues "relating to economic development, community investment, environmental degradation and shareholder services." None of these arguments is valid.

#### 1. Mr. Epstein Does Not Have "Representational Standing" (Epstein Exceptions, p. 7)

The Commission has held that an association which is not itself a customer of a utility can have standing to participate in a proceeding on the condition that the individual members of the association would have standing in their own right to intervene in that proceeding.

*Pennsylvania Natural Gas Association v. T. W. Phillips Gas and Oil Company*, 75 Pa. P.U.C. 598, 604 (1991). Mr. Epstein is an individual, not an association. As a consequence, he does not represent anyone but himself, and, because he is not a lawyer, he would not be permitted to “represent” anyone before the Commission in any event. 52 Pa. Code §1.21 This is precisely what was held in *L.G. Spielvogel, P.E. and Larry Abramovitz v. PECO Energy Company*, Docket Nos. R-00963728C001 and C002 (January 17, 1997), 1997 Pa. PUC LEXIS 2 (hereafter, *Spielvogel*):<sup>4</sup>

Complainants are not attorneys. Therefore, Complainants may not bring complaints on behalf of [General Service] customers who have standing. *See 52 Pa. Code § 1.21*. Additionally, because Complainants are not members of an association whose members are receiving GS service, the concept of associational standing does not apply here. *See Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company, supra*.

**2. The Monitoring Agreement Does Not Confer Standing On Mr. Epstein To Participate In This Proceeding (Epstein Exceptions, p. 8)**

Mr. Epstein claims to have a “special interest” in this proceeding because he negotiated the Monitoring Agreement with PECO Energy. However, Mr. Epstein cannot gain standing from the Monitoring Agreement nor can that Agreement bestow jurisdiction on the Commission, which it does not have, to address nuclear safety and operational issues.

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 NRC with respect to the proposed merger of PECO Energy and Unicom Corporation (Unicom). Thus, the Monitoring

---

<sup>4</sup> A copy of *Spielvogel* is attached as Appendix D. The decision was approved and adopted by the Commission.

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 filed with the Commission in the proceeding involving the merger of PECO Energy and Unicom,<sup>5</sup> the PUC's jurisdiction over the Monitoring Agreement was disavowed by the parties in Paragraph No. 18 of the Joint Petition, 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, Mr. Epstein's claims that the Monitoring Agreement either confers jurisdiction on the PUC or gives him standing to intervene in this proceeding are 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.

Moreover, as the ALJ found and Mr. Epstein does not dispute, in January 2001, the Monitoring Agreement was assigned to Exelon Generation Company LLC (Exelon Generation), when PECO Energy, with prior PUC approval, transferred all of its generation to that company. Initial Decision, p. 2. Consequently, PECO Energy is no longer a party in interest to the Monitoring Agreement.

---

<sup>5</sup> *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)*

3. **Mr. Epstein's Allegations That He Has A "Special Interest" And "Expertise" In "Nuclear Economics, Nuclear Safety, and Nuclear Waste," Even If True, Do Not Provide A Valid Basis For Intervention (Epstein Exceptions, pp. 8-14)**

Mr. Epstein purports to have a "special interest" and "expertise" in issues related to nuclear power generation, which he contends should be enough to gain party status in this case. However, Mr. Epstein's claims do not confer standing, for the reasons explained below.

First, deeply held convictions about a subject do not satisfy this Commission's criteria for standing. To the contrary, the claimed "interest" and the effect the proceeding may have on that interest must be "direct, immediate and substantial." *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). See also *Landlord Service Bureau, Inc. v. Equitable Gas Company*, Docket No. C-0093481 (June 8, 1993), 1993 Pa. PUC LEXIS 54; *Spielvogel, supra*.

Second, a claim of "expertise" does not confer standing.<sup>6</sup> If it did, the PUC could look forward to numerous "experts" seeking party status in its proceedings even though they, like Mr. Epstein, are neither customers nor competitors of the utility and have no other direct, immediate and substantial interest that would be affected by the outcome of the case. For that reason, claims of special "expertise" were rejected as a basis for standing in *Spielvogel, supra*. In that case, two consultants who performed extensive consulting work for General Service (GS)

---

<sup>6</sup> Mr. Epstein asserts that no one "has questioned Mr. Epstein's expertise in the field of nuclear decommissioning and nuclear waste isolation" (Epstein Exceptions, p. 9). In truth, no one has had a reason or opportunity to "question" Mr. Epstein's alleged expertise because (1) he is seeking to intervene in this case, and intervention does not turn on the alleged "expertise" of the person seeking party status; and (2) challenges to an expert's qualifications are not made by the parties or entertained by the presiding officer until that person attempts to present testimony, which would not occur in this case until some time in the future.

customers of PECO Energy tried to challenge a tariff filing that changed provisions of the Company's GS rate schedule. The consultants asserted standing because of their numerous consulting agreements with GS customers, dating back many years, and their "expertise" in, and "familiarity" with, the issues presented in that case. They were found not to have standing and were not allowed to participate in the case:

[S]tanding focuses on whether a party is a proper litigant; not on whether a case has merit or whether a party has particular expertise or familiarity with the issues involved in a case. In this case, Complainants have not established that they are proper litigants.

Third, the issues as to which Mr. Epstein claims a special interest and expertise, which all involve nuclear operations and safety, are outside the scope of this proceeding and outside the jurisdiction of this Commission, as the ALJ determined. Initial Decision, p. 8. The Commission so held in *Pa. P.U.C., v. Metropolitan Edison Co.*, 54 Pa. P.U.C. 276 (1980):

This record contains many allegations concerning Met Ed's responsibility for the construction, maintenance, operation and cleanup of the Three Mile Island nuclear units. To the extent that these allegations relate to the safety of the people of Pennsylvania, *this commission is required to recognize that the federal government has completely preempted the states in the licensing and regulation of the commercial use of nuclear reactors and in the protection of the public from radiologic hazards. Northern States Power Co. v. Minnesota*, (CA8th 1971) 90 P.U.R. 401, 447 F.2d 1143, *aff'd mem* (1972) 405 U.S. 1035. (Emphasis added.)

Similarly, in *Re Petition of Metropolitan Edison Co.*, 65 Pa. P.U.C. 190, 197 (1987), the Commission reiterated its lack of jurisdiction in the area of nuclear operations and safety, including the operational and safety aspects of nuclear decommissioning:

[T]he various proposals for an independent inspector are troublesome, particularly since this Commission has no jurisdiction over the safety aspects of the Saxton decommissioning program.

The federal government has occupied the field of nuclear safety via the Atomic Energy Act, thus preempting state regulation of the same subject matter. *Pacific Gas & Electric Co. v. State Energy Resource Conservation And Development Commission*, 461 U.S. 190, 212-213 (1983).

Significantly, in the *PECO-Unicom Proceeding*, one of the protestants attempted to raise issues concerning the operation, safety and monitoring of the nuclear generating facilities then owned by PECO Energy. The presiding Administrative Law Judge in that case ruled that such issues were outside the scope of the proceeding and also outside the scope of the PUC's jurisdiction. *PECO-Unicom Proceeding, supra*, Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. (June 1, 2000) pp. 46-48 ("The Pennsylvania Public Utility Commission has recognized that the NRC has exclusive jurisdiction over nuclear safety issues.")<sup>7</sup>

Fourth, as noted previously, PECO Energy does not own or operate any nuclear – or, for that matter, non-nuclear – generation facilities because, as the ALJ found, they were transferred to Exelon Generation with the Commission's prior approval. Consequently, the issues Mr. Epstein would attempt to raise are misdirected, since they are relevant only to the existing owner of, and holder of the NRC operating licenses for, the nuclear facilities in which he has expressed an interest.

Fifth, if one or more parties to this case believe that Mr. Epstein may have something to add on issues that are germane to this proceeding, they could sponsor Mr. Epstein's testimony as a witness on their behalf. In this regard, the OCA disapproves of the ALJ's finding that existing

---

<sup>7</sup> Judge Rainey's Recommended Decision was approved by the Commission in its final Order entered on June 22, 2000.

parties to this proceeding, including the OCA, can, and will, address the relevant issues and properly represent the public interest without the need for Mr. Epstein's intervention (OCA Exception No. 2 at pp. 9-11). The OCA expresses concern that this finding could be interpreted to mean that a customer would be denied the right to intervene in a proceeding if the OCA is already a party. The OCA contends that such a result may be inconsistent with the terms of the statute creating the OCA, which provides (71 P.S. § 309-6): "Nothing contained herein shall in any way limit the right of any *consumer* to bring a proceeding before either the commission or a court" (emphasis added).

The OCA overlooks the undisputed fact that Mr. Epstein is not a "consumer" of PECO Energy's services and, therefore, is not part of the class addressed by the statutory reference upon which the OCA relies. The OCA's participation does not, in itself, preempt the right of a customer to intervene in a proceeding involving the utility from which it receives services. But that is not the case here. Moreover, 71 P.S. § 309-6 does not confer standing on anyone nor does it otherwise constrain the Commission's preexisting jurisdiction and authority to control its own proceedings and determine who may intervene or not.

Furthermore, the OCA misses the point of the ALJ's discussion. Where someone, like Mr. Epstein in this case, seeks to intervene under 52 Pa. Code § 5.72(a)(3) on the basis of an alleged need to represent "the public interest," it is entirely appropriate for a presiding officer to consider the fact that numerous other parties already represent the public interest, including parties like the OCA, OTS and OSBA that have statutory authority to do so.

4. **Simply Because Mr. Epstein Wants To Opine On “Issues Relating To Economic Development, Community Investment, Environmental Degradation And Shareholder Services” Does Not Mean He Has Standing To Do So (Epstein Exceptions, pp. 14-18)**

As a further acknowledgement that the nuclear operations and safety issues he proposes to address are outside the scope of this proceeding and outside the PUC’s jurisdiction, Mr. Epstein contends that, if allowed to intervene, he would raise other issues as well, which he catalogued in his Prehearing Memorandum. His interest in these other issues does not alter the fundamental fact that Mr. Epstein is not a customer of PECO Energy, does not reside in its service territory, does not market electricity or natural gas and, therefore, does not have standing to address those or any other issues in this case.

Significantly, Mr. Epstein acknowledges that the non-nuclear issues he has decided to pursue will be raised and addressed by others who have standing to do so and are already parties to this proceeding (Epstein Exceptions, p. 15). Nonetheless, Mr. Epstein contends that his participation is needed to give voice to customers of PECO Energy that reside in the portion of its service territory that lies in “south central Pennsylvania.” Of course, this is nothing more than a variation of Mr. Epstein’s earlier argument that he should be afforded “representational standing.” For the reasons previously explained, he is not entitled to standing on that basis. Moreover, since Mr. Epstein is not a customer of PECO Energy and does not reside in its service territory, he is not qualified to represent those who are customers and actually do live in areas PECO Energy serves.

Finally, Mr. Epstein claims that he has standing because he is a shareholder of Exelon Corporation, the ultimate parent of PECO Energy. As the ALJ correctly determined (Initial Decision, p. 6), this Commission has consistently held that owning shares in a utility does not

confer the right to participate in PUC proceedings involving that utility. *American Society of Utility Investors v. Pa. P.U.C.*, 54 Pa. P.U.C. 560 (1980). As for Mr. Epstein's claim that he would "monitor" "reductions in shareholders services," it must be emphasized that this Commission does not have authority or jurisdiction to regulate or supervise relations between a corporation and its shareholders. Jurisdiction and authority in that area resides in the Securities and Exchange Commission and state and federal courts.

For all these reasons, the Initial Decision's holding that Mr. Epstein does not have standing and does not have a valid basis to intervene should be affirmed.

**B. The Concerns Expressed In The Exceptions Of The OCA, OSBA And DEP About The Potential Scope And Legal Impact Of The ALJ's Discussion Of This Commission's Jurisdiction Are Unwarranted (OCA Exception No. 1; OSBA Exception A; DEP Exception No. 1)**

In their respective Exceptions, the OCA, OSBA and DEP have focused on the ALJ's Conclusion of Law No. 4 ("The Commission is without jurisdiction to regulate the generation of electricity as a public utility function") and the following paragraph appearing on page 8 of the Initial Decision:

In addition, the Commission no longer regulates the generation of electricity, Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S.A. §2802. With respect to generation issues, the Commission's role in this proceeding is to determine whether the proposed merger "is likely to result in anticompetitive or discriminatory conduct" pursuant to 66 Pa. C.S.A. §§2210(a), 2811(e). As recognized in PECO's Motion [to Dismiss Mr. Epstein's Protest] at Paragraph 11, "policing the operation of the wholesale generation market, including the appropriate remedies or sanctions for improper conduct, is primarily the role of the PJM Interconnection LLC and the Federal Energy Regulatory Commission (FERC) and, therefore, involves matters outside the PUC's authority. Additionally, the entity to which Mr. Epstein's concerns are directed is not a utility and not otherwise subject to the jurisdiction of this Commission."

Section 2802 of the Public Utility Code provides, in pertinent part: “The generation of electricity will no longer be regulated as a public utility function except as otherwise provided for in this chapter.” The same concept is expressed in Section 2806(a). There can be no dispute that the Electricity Generation Customer Choice and Competition Act (the Competition Act) removed generation from cost-of-service regulation, as the OCA readily conceded (OCA Exceptions, p. 3). Consequently, that fundamental proposition need not be debated. However, the OCA, OSBA and DEP express concern that Conclusion of Law No. 4 and the language from the Initial Decision quoted above could be misconstrued to improperly limit the Commission’s authority expressly conferred elsewhere in Chapter 28 to consider the effects of a merger on the competitive *retail* market for electricity (Section 2811(e), to establish and administer rate caps (Section 2804(4)) and to establish regulations for post-rate cap default service (Section 2807(e)(2) and (3)). Nothing in the Initial Decision suggests that the ALJ intended to address, define or limit the scope of the Commission’s authority in those areas. In fact, she expressly acknowledged the Commission’s authority embodied in Section 2811(e) and comparable authority in Section 2210(a) applicable to natural gas distribution companies.

Furthermore, the ALJ’s discussion of the limits of the PUC’s jurisdiction must be read in the context of the issues listed in Mr. Epstein’s Protest. As previously explained, those issues involved, for the most part, nuclear safety and operations, which this Commission has held to be outside its jurisdiction in decisions that were rendered well before the Competition Act became effective. More importantly, the ALJ’s discussion addressed a specific averment by Mr. Epstein. As Paragraph No. 11 of the Joint Applicants’ Motion to Dismiss Mr. Epstein’s Protest explained:

[I]t appears Mr. Epstein wants the Commission to impose a condition that would require Exelon Generation LLC, as the owner of nuclear generating plants, to divest its ownership interest in

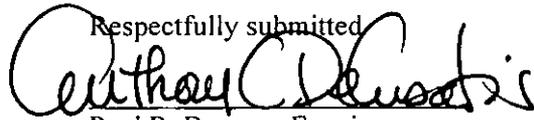
those plants if there are “market manipulation convictions.” Policing the operation of the wholesale generation market, including the appropriate remedies or sanctions for improper conduct, is primarily the role of the PJM Interconnection LLC and the Federal Energy Regulatory Commission (FERC) and, therefore, involves matters outside the PUC’s authority. Additionally, the entity to which Mr. Epstein’s concerns are directed is not a utility and is not otherwise subject to the jurisdiction of this Commission. Furthermore, Mr. Epstein does not have standing in this proceeding to address any issues pertaining to the operation of the wholesale markets for electricity, since he is neither a customer of PECO Energy nor a marketer of electricity in PECO Energy’s service territory.

Viewed in the context of the issues Mr. Epstein proposed to raise and the Joint Applicants’ response, the ALJ’s discussion of the limits of the PUC’s jurisdiction over wholesale electricity markets and the exclusivity of the FERC’s jurisdiction over those same wholesale markets is understandable and clearly correct. In fact, the proposition articulated by the ALJ is axiomatic – the PUC does not regulate wholesale power markets and the FERC does. Mr. Epstein’s effort to introduce issues that presupposed jurisdiction the PUC does not have is another good reason to dismiss his Protest, in addition to his lack of standing. The concerns expressed by the OCA, OSBA and DEP that the ALJ has improperly limited the scope of this proceeding are based on an erroneous characterization of the Initial Decision and, therefore, are unwarranted. Accordingly, the Exceptions of those parties should be denied.

### III. CONCLUSION

Therefore, for the reasons set forth above and in the Joint Applicants’ Answer to Mr. Epstein’s Petition to Intervene and Motion to Dismiss Mr. Epstein’s Protest, the Initial Decision

should be affirmed and the Exceptions of Mr. Epstein, the OCA, the OSBA and DEP should be denied.

Respectfully submitted  


Paul R. Bonney, Esquire  
*paul.bonney@exeloncorp.com*  
Kent D. Murphy, Esquire  
*kent.murphy@exeloncorp.com*  
Exelon Business Service Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215.841.4252  
215.841.4282 (Fax)

Thomas P. Gadsden, Esquire  
*tgadsden@morganlewis.com*  
Anthony C. DeCusatis  
*adecusatis@morganlewis.com*  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234  
215.963.5001 (Fax)

Counsel for PECO Energy Company

Daniel Clearfield  
*dclearfield@wolfblock.com*  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
717.237.7173

Richard P. Bonnifield  
*richard.bonnifield@pseg.com*  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
973.430.6441  
973.623.3261 (Fax)

Counsel for Public Service  
Electric and Gas Company

Dated: May 26, 2005

**APPENDIX A**  
**Initial Decision of Administrative Law Judge Marlane R. Chestnut**  
**(April 26, 2005)**

**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 :

**INITIAL DECISION**

Before  
Marlane R. Chestnut  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

On February 4, 2005, PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) (collectively, joint applicants) filed with the Pennsylvania Public Utility Commission (Commission) a Joint Application requesting that the Commission issue an order approving, to the extent necessary, the merger of Public Service Enterprise Group Incorporated (PSEG), PSE&G's corporate parent, with and into Exelon Corporation (Exelon), PECO's ultimate parent corporation.

Notice of the Joint Application was published in the *Pennsylvania Bulletin* on February 19, 2005 and numerous entities filed Protests or Petitions to Intervene. Eric Joseph Epstein (Epstein) filed both a Protest and Petition to Intervene on March 7, 2005. On March 24, 2005, the joint applicants filed an Answer in opposition to the Petition to Intervene and a Motion to Dismiss the Protest, alleging lack of standing and issues that are outside the scope of this proceeding and outside the Commission's jurisdiction.

Mr. Epstein addressed the outstanding Answer and Motion at the prehearing conference which was held on March 29, 2005 in Philadelphia, PA. At that time, I took the Answer

and Motion under advisement, and permitted Mr. Epstein to participate in the proceeding pending resolution of the Answer and Motion.

On or about April 18, 2005, Mr. Epstein filed and served a Response to the joint applicants' Answer and Motion.

As discussed in more detail below, the Answer and Motion will be granted. Mr. Epstein is not a customer of PECO, does not live in PECO's service territory, is not an energy marketer within PECO's service territory and therefore lacks standing to participate in this proceeding as either an intervener or protestant. In addition, many of the issues he identified are outside the scope of this proceeding.

#### FINDINGS OF FACT

1. On February 4, 2005, PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) (collectively, joint applicants) filed with the Pennsylvania Public Utility Commission (Commission) a Joint Application requesting that the Commission issue an order approving, to the extent necessary, the merger of Public Service Enterprise Group Incorporated (PSEG), PSE&G's corporate parent, with and into Exelon Corporation (Exelon), PECO's ultimate parent corporation.
2. On March 7, 2005 Eric Joseph Epstein (Epstein) filed both a Protest and Petition to Intervene.
3. Eric Joseph Epstein is not a customer of PECO, does not live in PECO's service territory and is not a marketer of electricity or gas in PECO's service territory.
4. In January 2001, with the Commission's approval, PECO transferred all of its generation (including its interest in the Nuclear Monitoring and Waste Storage Agreement) to Exelon Generation Company LLC.

5. Parties permitted to participate in this proceeding include inter alia the Office of Consumer Advocate, Office of Small Business Advocate, Office of Trial Staff, the Pennsylvania Department of Environmental Protection, the City of Philadelphia, the Philadelphia Area Industrial Energy Users Group and the Exelon Utility Coordinated Council, Locals 614 and 777 of the International Brotherhood of Electrical Workers.

### DISCUSSION

Essentially, two grounds were alleged by the joint applicants in opposing the Protest and Petition to Intervene filed by Mr. Epstein. The first was the failure to establish a direct, immediate or substantial interest in the proceeding that provides standing to protest or to intervene; the second was that the issues raised by Mr. Epstein's Protest and Petition to Intervene are outside the scope of this proceeding. Each of these issues is addressed below.

#### A. Standing to Intervene or Protest

Eligibility to intervene in a proceeding before the Commission is addressed in the regulations promulgated by the Commission. Specifically, §5.72 provides in relevant part that:

(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.

Allowance of intervention is a matter within the discretion of the Commission. City of Pittsburgh v. PA Public Utility Comm'n, 153 Pa.Super. 83, 33 A.2d 641(1943), N.A.A.C.P., Inc. v. PA Public Utility Comm'n, 5 Pa.Comm.w. 312, 290 A.2d 704(1972). "The interest of a petitioner seeking intervention must be direct and immediate." Re Pennsylvania Power & Light Company, 50 Pa. PUC 38, 40(1976).

Mr. Epstein claims that he is eligible to intervene pursuant to subsections (2) and (3) above. Primarily he relies on his assertions that he has participated in prior proceedings involving PECO (specifically, as a signatory to the Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Docket No. A-110550F0147, the PECO-Unicom proceeding), and that he has a signed agreement with PECO relating to the operation of the company's Peach Bottom nuclear facility (Nuclear Monitoring and Waste Storage Agreement).<sup>1</sup> He also alleges that his participation is in the public interest because he "represent[s] dedicated interests managed and administered by Mr. Epstein for ratepayers, citizens and communities in South Central Pennsylvania." Response, Paragraphs 20 and 21. Finally, he states that he should be permitted to intervene because he is a shareholder of Exelon Corporation (PECO's parent), and has developed expertise in the area of nuclear power economics.

None of these assertions rise to the level of an interest which is "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."

First, the fact that he participated in prior PECO proceedings is irrelevant. Unlike issues involving jurisdiction, for example, which cannot be waived by the parties, standing is waivable. Simply because PECO allowed Mr. Epstein, who is not a customer, to participate in other PECO proceedings or to enter into monitoring agreements, is insufficient by itself to confer a direct and immediate interest in this particular proceeding. In this connection, it should be noted that since the conclusion of the PECO-Unicom merger proceeding, PECO's generating assets (including its

---

<sup>1</sup> Although Mr. Epstein references Three Mile Island Alert, Inc. and the EFMR Monitoring Group in his Petition to Intervene, both the Petition to Intervene and Protest were filed by Mr. Epstein as an individual.

interest and obligations pursuant to the Nuclear Monitoring and Waste Storage Agreement) were transferred to Exelon Generation Company, LLC.

Second, it is beyond argument that even if Mr. Epstein as an individual had a direct, immediate and substantial interest which may be directly affected in this proceeding, that interest certainly can be adequately represented by existing participants. All customer groups – as well as the public interest generally – are represented in this proceeding and, as noted by Mr. Epstein in his Response, have identified issues related to nuclear power generation in their respective Prehearing Memoranda. These parties are the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Office of Trial Staff (OTS), the Philadelphia Area Industrial Energy Users Group (PAIEUG), as well as the Pennsylvania Department of Environmental Protection (DEP). Other parties representing either employees, individual customers or groups of customers include the Action Alliance of Senior Citizens of Greater Philadelphia, Association of Community Organizations for Reform Now and Tenants' Action Group (Action Alliance et al.), Citizens for Pennsylvania's Future, Joy Bergey and Lisa Z. Leighton (PennFuture), the City of Philadelphia, the New Jersey Large Energy Users Coalition (NJLEUC, PECO customers only), the Energy Coordinating Agency of Philadelphia, Inc. (ECA), and the Exelon Utility Coordinated Council, Locals 614 and 777 of the International Brotherhood of Electrical Workers and Frank Kuders (Labor Parties). To the extent relevant, any of these parties can address issues relating to prior agreements entered into by PECO in other proceedings.

As the Commonwealth Court stated in Mid-Atlantic Power Supply Ass'n v. Pennsylvania Public Util. Comm'n, 746 A.2d 1196, 2000 Pa. Commw. LEXIS 86, \*11-12:

PECO does not represent the interests of its ratepayers. A party may not claim standing to vindicate the rights of a third party who has the opportunity to be heard. Pennsylvania Dental Assoc. v. Comm. of Pa., Dept. of Health, 461 A.2d 329 (Pa. Cmwlth. 1983). Additionally, Section 902-A of the Administrative Code statutorily provided for the OCA to represent the interests of customers before the PUC, and the OCA, as intervenor, submitted its brief in support of the PUC's Final Order. PECO was not aggrieved by the order to release specified customers information to all licensed suppliers of electricity and therefore lacks standing.

It must be remembered that Mr. Epstein is an individual, and his Petition to Intervene and Protest were filed on that basis. There is no aspect of the public interest that requires intervention on his part. He is not a customer of PECO, is not a gas or electric marketer in PECO's service territory, does not live in PECO's service territory, has no direct, immediate or substantial interest in this proceeding that cannot be represented by any other party, and will not be aggrieved in any way as the result of the Commission's final order.

Third, his status as a shareholder of Exelon Corporation is insufficient to confer any direct, immediate or substantial interest in this proceeding. It is a corporation's board of directors that represents shareholder interests; a shareholder's interest has been characterized by the Commission as "indirect." See, American Society of Utility Investors v. Pennsylvania Public Utility Commission, 54 Pa. PUC 560, 1980 Pa. PUC LEXIS 3, \*2: "[a]n injury to a corporation may, to be sure, result in injury to the corporation's stockholders. Such injury, however, is regarded as 'indirect,' and insufficient to give rise to a direct cause of action by the stockholders. Kelly v. Thomas (1912) 234 Pa 419, 428, 83 Atl. 307."

Finally, the fact that Mr. Epstein "has been recognized as an expert witness before the Commission on nuclear economics" and "has worked cooperatively with AmerGen, FirstEnergy, PPL, PECO Energy, PPLICA, PAIEUG, the OCS and the OTS to resolve nuclear tariffs" (Response, Paragraphs 25 and 26) is completely irrelevant.

As Mr. Epstein has failed to establish the direct and immediate interest necessary to permit his intervention in this proceeding, he also has failed to establish that he has standing to file a protest. As explained above, he is not a customer of PECO, is not an energy marketer with customers in PECO's service territory and does not live in its service territory.

Standing means that a party has a sufficient stake in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. It is a concept utilized to

determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented.

The Commission has adopted the criteria used in Pennsylvania civil law practice to determine if a party has standing. Courier Express, Inc. v. F. L. Shaffer Company, Inc., Docket No. C-892462 (Order dated April 11, 1990); Wm. Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975) (Wm Penn); Landlord Service Bureau, Inc. v. Equitable Gas Company, 1993 Pa. PUC LEXIS 54.

Standing requires that an aggrieved party have an interest which is substantial, direct, and immediate. To have a substantial interest means that there must be some discernible adverse effect to some interest of the complaining party other than the abstract interest of all citizens in having others comply with the law. To have a direct interest means that the aggrieved party must show causation of the harm to his interest by the matter of which he complains. To have an immediate interest means that the nature of the causal connection between the action complained of and the injury to the person challenging it is sufficiently close to present a justiciable controversy. Wm Penn, supra; In Re Francis Edward McGillick Foundation, 537 Pa. 194, 642 A.2d 467 (1994); PECO-Unicom proceeding, Commission Opinion and Order entered June 22, 2000.

As explained above, Mr. Epstein lacks standing to protest the Joint Application. The fact that he may have participated in prior proceedings and that he has entered into nuclear plant monitoring agreements is insufficient to confer standing. First, as standing is waivable, his prior participation is irrelevant to determining his interest in this proceeding. In addition, as stated in PECO's Motion to Dismiss at Paragraph 5, PECO Energy is not the owner or operator of any nuclear facilities.

In this connection, it should be noted that Mr. Epstein's contention at Paragraph 30 of his Response that he "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" is insufficient to constitute a direct interest in this proceeding. As explained in more

detail below, issues relating to nuclear plant operations are within the jurisdiction of the Nuclear Regulatory Commission (NRC). In addition, any claimed breach of the agreement, if properly before the Commission, would be addressed as a separate complaint proceeding, not in the course of this examination of the proposed merger.

B. Issues

Mr. Epstein identified various potential issues in his Petition to Intervene and Protest. All of these issues relate in some way to nuclear generation, and most therefore are either outside the scope of this proceeding or outside the Commission's jurisdiction.

There is no question that issues relating to the operation or safety of nuclear facilities or the impact of extension of operating licenses are within the exclusive jurisdiction of the NRC. This has long been recognized by the Commission. See, Pa. P.U.C. v. Metropolitan Edison Co., 54 Pa.PUC 276, (1980); Re: Petition of Metropolitan Edison Co., 65 Pa.PUC 190 (1987). Any relevant issues relating to the operation or safety of any nuclear facilities will be addressed by the NRC, which is reviewing the proposed merger.

In addition, the Commission no longer regulates the generation of electricity, Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S.A. §2802. With respect to generation issues, the Commission's role in this proceeding is to determine whether the proposed merger "is likely to result in anticompetitive or discriminatory conduct" pursuant to 66 Pa.C.S.A. §§2210(a), 2811(e). As recognized in PECO's Motion at Paragraph 11, "policing the operation of the wholesale generation market, including the appropriate remedies or sanctions for improper conduct, is primarily the role of the PJM Interconnection LLC and the Federal Energy Regulatory Commission (FERC) and, therefore involves matters outside the PUC's authority. Additionally, the entity to which Mr. Epstein's concerns are directed is not a utility and not otherwise subject to the jurisdiction of this Commission."

Therefore, even if Mr. Epstein had standing to intervene in this proceeding or to file a protest against the proposed merger, most if not all of the issues he raises are either outside the scope of this proceeding or not within the Commission's jurisdiction.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. *Eric Joseph Epstein has failed to establish that he has an interest in this proceeding which is direct, immediate and substantial.*
3. Eric Joseph Epstein lacks standing to intervene in this proceeding or to protest the proposed merger which is the subject of this proceeding.
4. The Commission is without jurisdiction to regulate the generation of electricity as a public utility function.
5. The Nuclear Regulatory Commission has exclusive jurisdiction over the operation of nuclear generating facilities.
6. The Federal Energy Regulatory Commission has exclusive jurisdiction over the wholesale generation market.

#### ORDER

THEREFORE

IT IS ORDERED:

1. That the Motion to Dismiss the protest of Eric Joseph Epstein filed by PECO Energy Company and Public Service Electric and Gas Company is granted;

2. That the Protest filed by Eric Joseph Epstein is dismissed; and

3. That the Petition to Intervene filed by Eric Joseph Epstein is denied.

Date: April 25, 2005

---

Marlane R. Chestnut  
Administrative Law Judge

**APPENDIX B**  
**Petition To Intevene of Eric Joseph Epstein**

**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. :**

---

**PETITION to INTERVENE  
of ERIC JOSEPH EPSTEIN, *Pro se***

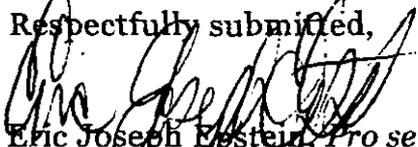
---

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

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of Eric Joseph Epstein's, *Pro se*, Petition to Intervention in 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.

Eric Joseph Epstein hereby moves pursuant to 52 Pa. Code S 5.71, to intervene. Copies have been served upon all parties of record as shown on the attached Certificate of Service.

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

DATED: March 7, 2005

1) Eric Joseph Epstein ("The Petitioner", "Mr. Epstein" or "Epstein" is a Philadelphia Electric Company/PECO Energy Company shareholder in good standing since September 24, 1987;

2) Mr. Epstein is the Chairman of Three Mile Island Alert, Inc., a safe-energy organization based in Harrisburg, Pennsylvania and founded in 1977. TMIA monitors Peach Bottom, Susquehanna, and Three Mile Island nuclear generating stations;

3) Epstein is also the Coordinator of the EFMR Monitoring group, a nonpartisan community based organization established in 1992. EFMR monitors radiation levels at Peach Bottom and Three Mile Island nuclear generating stations, invests in community development, and sponsors remote robotics research;

4) Eric Joseph Epstein was an active Participant and a Signatory to the Joint Petition for Settlement (1): Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & 28 of the Public Utility Code, for Approval of A Plan of Corporate Restructuring, Including the Creation of A Holding Company and The Merger of the Newly Formed Holding Company and Unicom Corporation: Docket No: A-110550F0147;

5) Mr. Epstein actively participated in Settlement Negotiations related to the Unicom Merger, and helped to facilitate the resolution of the following issues: Nuclear Decommissioning; Planned Operating Life of PECO's Nuclear Generating Stations; Spent Fuel Isolation; "Low-Level" Radioactive Waste Isolation; Rate Payer Equity; and, Community Investment in South Central Pennsylvania;

---

1 Please refer to Eric Joseph Epstein's Petition in Support of the Negotiated Settlement, and Eric Joseph Epstein's Testimony Statement No. 1, Regarding Nuclear Decommissioning, Planned Operating Life of PECO's Nuclear Generating Stations, Spent Fuel Isolation, Low-Level Radioactive Waste Isolation and Rate Payer Equity & Community Investment. Both documents were entered into Evidence at the Evidentiary Hearing held on May 10, 2000.

6) Eric Joseph Epstein and PECO Energy entered into an Agreement known as Appendix B: Nuclear Decommissioning and Waste Monitoring Agreement BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & 28 of the Public Utility Code, for Approval of A Plan of Corporate Restructuring, Including the Creation of A Holding Company and The Merger of the Newly Formed Holding Company and Unicom Corporation Application Docket No. A-110550F0147;

7) Eric Joseph Epstein filed Comments with the Pennsylvania Public Utility Commission in support of PECO Energy Company's Supplement No. 34, (Tariff Electric No. 3), on February 6, 2002;

8) In 2002, along with PECO Legal, the Office of Consumer Advocate, the Office of Trial Staff, and PIEUG, Mr. Epstein successfully litigated in support of PECO ENERGY COMPANY's Supplement No. 34., Tariff Electric No. 3, "Wind Tariff";

9) In 2004, Mr. Epstein was a principal negotiator along with the Office of Consumer Advocate, the Office of Trial Staff, and PIEUG, in PECO Energy Company's Supplement No. 44 request to its Nuclear Decommissioning Tariff for Limerick 1 & 2, Peach Bottom 2 & 3; Hope Creek and Salem 1 & 2;

10) Mr. Epstein has over twenty-years of experience in publishing, researching and actively intervening before the Pennsylvania Public Utility Commission and the Nuclear Regulatory Commission on nuclear decommissioning, nuclear waste isolation, nuclear economics, nuclear safety, universal service, and community investment;

11) Consistent with the Petitioner's established interests and expertise, Eric Joseph Epstein's participation in the proceeding will focus on issues related to nuclear power production, community investment, economic development, and universal service; and,

12) Mr. Epstein's participation will include, but not be limited to, Direct and Rebuttal testimony and the Cross Examination of witnesses presented by PECO Energy Company and Public Service Electric and Gas Company and other parties.

WHEREFORE, Eric Joseph Epstein requests the right to intervene as an active party in this proceeding.

Respectfully submitted,



Eric Joseph Epstein, Pro se  
4100 Hillsdale Road  
Harrisburg, PA 17112  
(717)-541-1101 Voice Mail  
(717)-541-5487 FAX  
ericpstein@comcast.net

DATED: March 7, 2005

*Enclosure: Certificate of Service*

**APPENDIX C**  
**Protest of Eric Joseph Epstein**

**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. :**

---

**PROTEST of  
ERIC JOSEPH EPSTEIN, *Pro se***

---

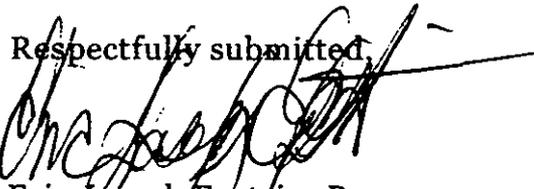
James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of Eric Joseph Epstein's, *Pro se*, Protest to 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 pursuant to 52 Pa. Code S 5.71, to intervene.

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

Respectfully submitted,

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

DATED: March 7, 2005

Eric Joseph Epstein, ("Epstein" or "Mr. Epstein"), Protests the Joint Application of Peco Energy Company (PECO") and Public Service Electric and Gas ("PSE&G") Company for Approval of the Merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation.

The Pennsylvania Public Utility Commission (PUC) should not approve the Above-Mentioned Application for Restructuring and Merger until PECO Energy complies with, or, addresses the following outstanding issues:

1) The Nuclear Regulatory Commission (NRC) defines "electric utilities" as "any entity that generates or distributes electricity and which recovers the cost of electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority (10 CFR § 50.2)";

PECO Energy and PSE&G should provide legally binding assurances to the Pennsylvania Public Utility Commission ("Pa PUC" or "PUC" or "the Commission") that the Proposed Merger will *not* prompt the NRC to revoke PECO Energy or PSE&G's status as an "electric utility" and undermine the ability of the licensees to pre-fund the entire cost of decommissioning their share of Limerick 1 & 2, Peach Bottom 2 & 3, and Hope Creek and Salem 1 & 2;

2) PECO Energy and PSE&G should prepare and submit reliable, revised estimates for radioactive nuclear decommissioning at the following nuclear generating stations: Limerick 1 & 2, Peach Bottom 2 & 3, Three Mile Island-1; and, Hope Creek and Salem 1 & 2;

These site-specific estimates should include, but not be limited to:

a) Cost projections based on 25 years, 30 years, and 35 years of "used and useful" operation;

b) Cost projections based on 25 years, 30 years, and 35 years of "used and useful" operation must necessarily include three different funding scenarios linked to the following Nuclear Regulatory Commission (NRC) approved modes of nuclear decommissioning: DECOM, ENTOMB and SAFSTOR;

c) Nuclear decommissioning cost projections based on two scenarios: 1) Availability of a permanent waste repository; and, 2) Storage of spent fuel for an indefinite period during and after decommissioning;

d) Factor into the decommissioning formula the following:

- 1) Cost projections for temporary, spent fuel isolation; and
- 2) Cost projections for permanent, spent fuel isolation in decommissioning cost projections;

3) PECO Energy and PSE&G should prepare and submit legally binding assurances and documentation that dedicated decommissioning funds are in excess of funding "targets" and are prudently being accumulated in externally, segregated sinking funds;

4) PECO Energy and PSE&G should prepare and submit documentation of the amount of taxes Pennsylvania loses annually by Exelon's decision to move its external, segregated sinking dedicated decommissioning funds to the State of Nevada;

5) PECO Energy should prepare and submit documentation of the amount of taxes paid under the Public Utility Real Estate Tax Assessment in 1995 versus the amount of taxes paid under the Revenue Neutral Reconciliation for: Limerick 1 & 2; Peach Bottom 2 & 3; and Three Mile Island-1;

6) PECO Energy and PSE&G should submit documentation that confirms, and quantifies, that the Companies carry property insurance commensurate with the real market value of the Limerick Nuclear Generation Station, the Peach Bottom Atomic Power Station, and the Three Mile Island Nuclear Generating Station;

7) PECO Energy and PSE&G should prepare and submit reliable estimates for decommissioning of the *non* radioactive components at Limerick 1 & 2, Peach Bottom 2 & 3, Hope Creek and Salem 1& 2;

8) PECO Energy and PSE&G should prepare and submit engineering and funding plans to return the following sites to Greenfield: Limerick 1 & 2, Peach Bottom 2 & 3, and Hope Creek and Salem 1 & 2;

9) PECO Energy and PSE&G should prepare and submit legally binding assurances, and guarantees, that any decommissioned and decontaminated portions of Limerick 1 & 2, Peach Bottom 2 & 3, Hope Creek and Salem 1& 2 sold, recycled, or depreciated, will flow back to rate payers;

10) PECO Energy and PSE&G should prepare and submit a report on the amount of spent fuel stored on site at Limerick 1 & 2, Peach Bottom 2 & 3, Three Mile Island-1, Hope Creek and Salem 1 & 2;

11) PECO Energy and PSE&G should prepare and submit a report on the the amount of spent capacity (1) available at Limerick 1 & 2, Peach Bottom 2 & 3, Three Mile Island-1, Hope Creek and Salem 1 & 2;

<sup>1</sup> " It could be 2012 to 2017 before the DOE waste program has a repository ready to begin disposing of utility spent fuel, according to a projection by a high-ranking program official this week... ("Nucleonics Week " /Volume 46/Issue 9/ March 3, 2005.)

The waste office's deputy director, John Arthur, told a nuclear waste management conference in Tucson, Arizona on February 28, 2005, that it could be roughly 30 to 35 years from the start of the DOE waste program before the U.S. has an operating repository. He made the comment while highlighting a similar pace at which several other countries were moving with their disposal programs .

12) PECO Energy and PSE&G should prepare and submit a report for onsite storage (2) of low-level radioactive waste for Limerick 1 & 2, Peach Bottom 2 & 3, Three Mile Island-1, Hope Creek and Salem 1 & 2;

13) PECO Energy and PSE&G should prepare and submit a timeline for loss of full-core off-load at Limerick 1 & 2, Peach Bottom 2 & 3, Three Mile Island-1; Hope Creek and Salem 1 & 2;

14) PECO Energy and PSE&G should prepare and submit a timeline for license extension plans for Limerick 1 & 2, Three Mile Island-1, Hope Creek, and Salem 1& 2;

15) PECO Energy and PSE&G should prepare and submit legally binding assurances and guarantees that work force levels at Limerick 1 & 2, Peach Bottom 2 & 3 and Three Mile Island-1 remain (3) at, or exceed, present levels (4);

<sup>2</sup> On July 1, 2008, the low-level (LLW) radioactive waste site in Barnwell, South Carolina will be closed. Waste will only be accepted from states in the Atlantic Compact.

The private Envirocare site in Utah will be the only site available to LLRW generators in 36 states. However, the Envirocare site is only licensed for biological waste, biomedical research waste or the two highest classes of LLRW. Most low-level radioactive waste generated at nuclear power plants can not be shipped to the Envirocare site. On February 25, 2005, Utah Governor Jon Huntsman Jr. (R) signed legislation to keep more radioactive classes of low-level waste out of the state. ("Nucleonics Week"/Volume 46/Issue 9/ March 3, 2005.)

<sup>3</sup> On August 6, 2003, Exelon announced it would eliminate about 1,900 positions--10% of its workforce--by 2006 as part of its restructuring. Exelon cut 1,200 positions by 2004, and another 700 layoffs are planned in 2006. Exelon currently staffs at the lower-level of acceptable standards and assumes supplemental forces in the event of another security breach. On April 30, 2003, Governor Ed Rendell removed the National Guard and Pennsylvania State Police from their posts at all five of Pennsylvania's nuclear generating stations.

<sup>4</sup> 10 CFR § 73.55 (h) (3) mandates, "The total number of guards, and armed trained personnel immediately available at the facility to fulfill these response requirements shall nominally be ten (10), unless specially required otherwise on a case by case basis by the Commission; however this number may not be reduced to less than five (5) guards".

16) PECO Energy and PSE&G should prepare and submit reliable estimates of the impact on the "virtual market place" (5) from the relicensing of Limerick 1 & 2, Three Mile Island-1; Hope Creek and Salem 1 & 2;

17) PECO Energy and PSE&G should prepare and submit legally binding assurances and guarantees that market manipulation convictions (6) will result in selling off the generating assets of Power Purchase Agreement assets to the current purchase recipient;

18) PECO Energy and PSE&G should prepare and submit legally binding assurances that PECO or PSE&G will not undermine Pennsylvania's security by utilizing mixed uranium oxide fuel sold, leased, or transferred from the United States Department of Energy at any of its operating nuclear generating stations;

19) PECO Energy and PSE&G should prepare and maintain a health and cancer registry for all Company, contractor and subcontractor employees working at one or more of AmerGen, ComEd, Exelon, PECO Energy or PSE&G's nuclear generating stations;

20) AmerGen, Exelon, PECO Energy should prepare and submit legally binding assurances and guarantees that investments in local Pennsylvania communities, remain at, or exceed, current levels;

<sup>5</sup> Volume IV, PECO Statement, No-3, The Direct Testimony of William H. Hieronymous. The Witness failed to discuss the impact of license extensions or power uprates on the "the virtual divestiture of nuclear base load".

Mr. Hieronymous' Testimony does not cover the impact of refueling outages, extended refueling outages, or the cost of generic rule making on Exelon's nuclear fleet.

<sup>6</sup> The issue of market manipulation is linked to "vertical issues", and was raised in The Direct Testimony of William H. Hieronymous, pp. 29-31.

21) The Pennsylvania Public Utility Commission should hold a final decision for approval of the merger in abeyance until such time that Exelon, Peco Energy and AmerGen, can demonstrate and verify they are complying with emergency preparedness measures at Limerick 1 & 2, Peach Bottom 2 & 3, and Three Mile Island-1 under the Radiological Emergency Protective Measures outlined in 10 CFR § 50.47 (Condition of Licenses) (7);

22) The Pennsylvania Public Utility Commission should hold a final decision for approval of the merger in abeyance until Exelon, Peco Energy, and AmerGen can document that the NRC has found Limerick 1 & 2, Peach Bottom 2 & 3, and Three Mile Island-1 to be in compliance (and current) with security enhancements mandated in 10 CFR § 73.55 (8);

---

7 Peach Bottom, Limerick and Three Mile island have failed to include child care facilities in their Radiological Emergency Plans for the past 18 years. As such, all three facilities are in violation of Federal Laws put into place due to Presidential Executive Order 12148 to provide "reasonable assurance" that the public, including preschool children, could be protected in the event of a Radiological Emergency as a condition to own and operate a nuclear power license.

Exelon is in violation of the following Federal Regulations: 10 CFR § 50.47; 10 CFR § 50.54; 10 CFR § Part 50 Appendix E; and 44 CFR § 350.

Representative Todd Platts (R-York) has requested a Congressional Investigation into this matter.

8 Exelon has regularly requested (and been granted) delays in meeting NRC security requirements mandated after 9/11. In addition, Exelon's security contractor, Wackenhut has been accused by the Department of Energy of cheating during force on force exercises.

*Refer to GAO, Nuclear Regulatory Commission: preliminary Observations of Efforts to Improve Security at Nuclear Power Plants. Statement of Jim Wells, Director, House Committee on Government Reform, September 14, 2004, p. 14.*

23) The Pennsylvania Public Utility Commission should hold a final decision for approval of the merger in abeyance until the Nuclear Regulatory Commission rules on a Petition filed by the Attorney's General of Arizona, Arkansas, California, Connecticut, Illinois, New York and Wisconsin requiring an upgrade on nuclear power plant security for 2005 (8);

24) The Pennsylvania Public Utility Commission should hold a final decision for approval of the merger in abeyance until Peach Bottom-2 is removed from the NRC's increased oversight program (9); and,

25) The Pennsylvania Public Utility Commission should hold a final decision for approval in abeyance until Three Mile Island's training program is removed from probation (10).

---

8 The Petition was filed on January 24, 2005.

9 On April 10, 2004, the Nuclear Regulatory Commission decided to maintain increased oversight at Peach Bottom-2, as a result of deficient performance and the number of unplanned shutdowns. The commission will follow a normal inspection schedule for the power station's third unit through September 30, 2005.

On November 15, 2003, the NRC announced it was increasing its inspections at peach Bottom after four unplanned shutdowns of the nuclear plant's Unit 2 reactor.

10 The training program was placed on probation in January, 2005, by the National Nuclear Accrediting Board, which reviews training programs every four years at commercial nuclear plants. The action could prevent the board from reaccrediting Three Mile Island's program. The exact result is unclear, however, because no nuclear station has lost its accreditation since the program started 20 years ago.

Respectfully submitted,



Eric Joseph Epstein, *Pro se*  
4100 Hillsdale Road  
Harrisburg, PA 17112  
ericpstein@comcast.net

DATED: March 7, 2005

**APPENDIX D**

***L.G. Spielvogel, P.E. and Larry Abramovitz v. PECO Energy Company***  
**1997 Pa. PUC LEXIS 2**

L. G. Spielvogel, P.E. v. PECO Energy Company; Larry Abramovitz v. PECO Energy Company  
Docket Number R-00963728C0001; Docket Number R-00963728C0002

PENNSYLVANIA PUBLIC UTILITY COMMISSION

1997 Pa. PUC LEXIS 2

January 17, 1997

PANEL: [\*1] CHARLES E. RAINEY, JR., Administrative Law Judge

OPINION: RECOMMENDED DECISION

Before

Charles E. Rainey, Jr.

Administrative Law Judge

Background

On July 22, 1996, PECO Energy Company ( PECO or Respondent) filed with the Pennsylvania Public Utility Commission (Commission) Supplement No. 6 to Tariff Electric - Pa. P.U.C. No. 2 (Tariff Supplement No. 6) to become effective September 20, 1996. The proposed Supplement modifies the single meter electric heating "demand forgiveness" provision of the general service rate (GS). The effective date was voluntarily postponed to October 18, 1996 by PECO to give it additional time to respond to Complaints by (1) Lawrence J. Spielvogel, P.E. ( Spielvogel) of King of Prussia, PA and (2) Larry Abramovitz (Abramovitz) of Warrington, PA (collectively referred to as "Complainants").

Spielvogel filed his Complaint on September 9, 1996. The gravamen of his Complaint is that PECO's proposed method for determining demand forgiveness will inappropriately and unfairly raise the rates of some of its GS customers. Therefore, according to Spielvogel, Tariff Supplement No. 6 should be rejected.

Abramovitz filed his Complaint on September 12, 1996. Like Spielvogel, [\*2]Abramovitz also challenges the appropriateness and fairness of PECO's proposed methodology for determining demand forgiveness. Abramovitz's Complaint also avers that "what they [ PECO ] are in essence doing is trying to eliminate the consultant's role with the customer in providing them with the maximum allowable rate relief." Abramovitz Complaint at 2. Additionally, Abramovitz addressed the issue of his standing to bring a Complaint and stated "while I am presently not a customer affected by this proposed rate change, I am a consultant who has many clients who would be adversely affected by this change." Abramovitz Complaint at 4.

PECO filed an Answer and New Matter to the Complaint of Spielvogel on September 16, 1996; and to the Complaint of Abramovitz on September 27, 1996. In its Answer, PECO admitted and denied the various allegations of the Complainants. In its New Matter to each Complaint, PECO averred that:

Complainant has no standing under *66 Pa. C.S. § 701* to bring a complaint addressed to a proposed change in the GS rate. Regardless of whatever remunerative arrangements Complainant has with GS customers, he is not himself a GS customer and thus has no direct, immediate[\*3] or substantial interest in this proceeding. *Wm. Penn Parking Garage, Inc., et al. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). *Bensalem School District v. PECO Energy Company*, PUC Docket No. C-00967737 (1996) (unpublished).

By Order entered October 17, 1996, the Commission allowed Tariff Supplement No. 6 become effective October 18, 1996. The Commission further stated, however, that its Order was without prejudice to the complaints filed by Spielvogel and Abramovitz, or any other complaints timely filed against PECO's proposed tariff. n1

-----Footnotes-----

n1 On or about November 19, 1996, Parcel 6-4 Associates, L.P., et al. filed a Complaint against PECO alleging that Tariff Supplement No. 6 is unfair and unreasonable. The Complaint of Parcel 6-4 Associates, L.P., et al. was docketed at R-00963728C0003. PECO filed an Answer to the Complaint of Parcel 6-4 Associates, L.P., et al. on or about December 11, 1996. In its Answer, PECO admitted and denied the various allegations made in the Complaint.

-----End Footnotes-----

[\*4]

This matter was assigned to me by Notice dated October 22, 1996. On November 20, 1996, I issued a prehearing order which required the parties to file prehearing memoranda. Prehearing memoranda were filed by all of the parties. In its prehearing memorandum, PECO raised as an issue the standing of Complainants to bring their Complaints.

A prehearing conference was held as scheduled on December 12, 1996. At the prehearing conference a number of matters were taken up - including the issue of the standing of the Complainants. Testimony and oral argument were provided by Complainants and PECO's counsel, Delia W. Stroud, Esq. Subsequently, I directed PECO and the Complainants to file memoranda of law on the issue of whether Spielvogel and Abramovitz have standing to bring their Complaints. This directive was memorialized in a written order which I issued on December 12, 1996. Consequently, memoranda of law were filed by PECO and the Complainants.

#### Discussion

This Commission has recognized that standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. The pertinent section of the Public Utility Code, *66 Pa. C.S. § 701*, provides[\*5] that any person, corporation or municipal corporation having an interest in the subject matter may complain in writing to the Commission. The complaint must demonstrate a direct, immediate and substantial interest. Investigation into Equitable Gas Company's Revenue Allocation Among Transportation Customers, I-900009 (Order entered January 16, 1992); *Re L & H Trucking Company, Inc.*, 55 Pa. PUC 469 (1982); *Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company*, 32 Pa. Commw. Ct. 19, 377 A.2d 1270 (1977), aff'd 488 Pa. 308, 412 A.2d 522 (1980).

The gravamen of PECO's position that Complainants lack standing is as follows:

In sum, the Consultants, Mr. Spielvogel and Mr. Abramovitz, lack the requisite standing as they have no immediate, direct, and substantial interest in this proceeding. Nor should they be accorded representational standing on behalf of their clients who are single-meter customers. The interests of any of their clients who may have decreased demand forgiveness under PECO Energy's proposed methodology are the same as Parcel 6-4 [\*6] Associates and will be adequately represented through that party.

PECO Memorandum of Law at 7.

The gist of Complainants arguments n2 regarding why they have standing are as follows:

1. They are residential customers, and residential customers can take GS service;

2. They are consultants to GS customers; and

3. Tariff Supplement No. 6 is unfair and inappropriate, and their experience and familiarity with the issues would be an asset to this proceeding.

-----Footnotes-----

n2 Although filed individually, Complainants' memoranda of law make the same arguments and therefore will be addressed together.

-----End Footnotes-----

In determining whether the Complainants have standing, it is necessary to examine whether they have a direct, immediate and substantial interest in Tariff Supplement No. 6.

Complainants claim that they have standing because they are residential customers of PECO, and residential customers n3 "can" take Rate GS service. Spielvogel Memorandum of Law at 4; Abramovitz Memorandum of Law at 1. However, Complainants do not claim that [\*7] they take Rate GS service. Therefore, Complainants' utility service is not affected by Tariff Supplement No. 6. Thus, Complainants have failed to establish by this argument that they have a direct, immediate and substantial interest in Tariff Supplement No. 6.

-----Footnotes-----

n3 At the prehearing conference Spielvogel claimed that he was a GS customer. (Tr. 7). However, based on a copy of a letter I received dated December 17, 1996 addressed to Spielvogel from PECO's counsel, Ms. Stroud, Spielvogel had agreed with her not to claim that he was a GS customer. In his memorandum of law, Spielvogel infers that he is a residential customer of PECO. Spielvogel Memorandum of Law at 4.

-----End Footnotes-----

Complainants also infer that because they are consultants to GS customers that they have standing to bring their complaints. Spielvogel Memorandum of Law at 4-5; Abramovitz Memorandum of Law at 2. However, Complainants, as consultants, are not directly affected by Tariff Supplement No. 6 - their Rate GS clients are. Their clients, of course, can assert their[\*8] own rights by bringing complaints against Tariff Supplement No. 6 if they so choose. I further note that Complainants are not attorneys. Therefore, Complainants may not bring complaints on behalf of GS customers who have standing. n4 See, 52 Pa. Code § 1.21. Additionally, because Complainants are not members of an association whose members are receiving GS service, the concept of associational standing does not apply here. See, *Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company, supra*. Thus, Complainants have not established that they have standing as a result of their employment as consultants to GS customers. I also note that the loss of any Rate GS clients, or a possible reduction in remuneration from those clients may be an indirect impact of Tariff Supplement No. 6 on Complainants. n5 However, to have standing the impact must be direct, immediate and substantial.

-----Footnotes-----

n4 Complainants infer that they should be granted standing because GS customers cannot afford to hire an attorney. Spielvogel Memorandum of Law at 4-5; Abramovitz Memorandum of Law at 2. However, GS customers who are individuals can file complaints in their own names and represent themselves at hearings. See, *52 Pa. Code § 1.21*. Additionally, some GS customers are being represented by legal counsel in a complaint brought in opposition to Tariff Supplement No. 6 by Parcel 6-4 Associates, L.P., et al. at Docket No. R-00963728C0003. [\*9]

n5 Abramovitz testified that his remuneration from his GS clients would be less under Tariff Supplement No. 6. (Tr. 7-8).

-----End Footnotes-----

Complainants also claim that they have standing because Tariff Supplement No. 6 is unfair and inappropriate, and their experience and familiarity with the issues would be an asset to this proceeding. Spielvogel Memorandum of Law at 5; Abramovitz Memorandum of Law at 2. However, standing focuses on whether a party is a proper litigant; not on whether a case has merit or whether a party has particular expertise or familiarity with the issues involved in a case. In this case, Complainants have not established that they are proper litigants.

Complainants have also raised a number of other issues which will be summarily addressed below.

Complainants claim that PECO's failure to raise the standing issue in a motion instead of in its New Matter deprived them of an opportunity to respond. Spielvogel Memorandum of Law at 2; Abramovitz Memorandum of Law at 1. It is true that *52 Pa. Code § 5.101(a) (3)* provides for filing a motion to dismiss a pleading that does not indicate on its face [\*10] the standing of the party. However, this is a moot point because Complainants have been given an opportunity to respond, and have responded, to the issue of standing, both at the prehearing conference and in their memoranda of law. n6

-----Footnotes-----

n6 Abramovitz also addressed the issue of standing in his Complaint.

-----End Footnotes-----

Spielvogel also asserts that Complainants should be granted standing because PECO did not challenge Complainants' standing in a prior related proceeding. n7 Spielvogel Memorandum of Law at 3. Complainants did not cite any legal authority for their argument, and there does not appear to be any. A party's failure to challenge another party's standing in one proceeding does not preclude that party from challenging the other party's standing in a separate related proceeding. Therefore, PECO is not precluded from challenging Complainants' standing in this case.

-----Footnotes-----

n7 Spielvogel asserts that he was a party to a 1993 proceeding regarding PECO's GS Rate. Spielvogel Memorandum of Law at 3. According to Spielvogel, he withdrew his complaint in that case after he reached a "compromise" with PECO and PECO amended its filing. Id.

-----End Footnotes-----

[\*11]

Complainants also infer that Section 701 of the Public Utility Code, *66 Pa. C.S. § 701*, does not require that litigants have a direct, immediate and substantial interest in the subject matter. Spielvogel Memorandum of Law at 2; Abramovitz Memorandum of Law at 1. Section 701 of the Public Utility Code provides that ". . . any person . . . having an interest in the subject matter . . . may complain in writing . . ." It is true that Section 701 of the Public Utility Code does not define the degree of interest which a litigant must have. However, long-standing case law does - that interest must be direct, immediate and substantial. See, e.g., *Investigation into Equitable Gas Company's Revenue Allocation Among Transportation Customers*, supra; *Re L & H Trucking Company, Inc.*, supra; *Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company*, supra. In the present case, because Complainants do not receive Rate GS service, they are not directly, immediately and substantially affected by Tariff Supplement No. 6.

Spielvogel further argues that standing requirements should be waived pursuant to *52 Pa. Code[\*12] § 1.2* (Liberal Construction). Spielvogel Memorandum of Law at 4. That rule provides that the "Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties." *52 Pa. Code § 1.2(b)*. The rule does not permit the Commission or a presiding officer to waive standing requirements. The requirement that a party have standing to bring a complaint is essential to the integrity of the administrative hearing process.

For all of the foregoing reasons, Complainants have failed to establish that they have a direct, immediate and substantial interest in PECO's Tariff Supplement No. 6. Therefore, their Complaints are dismissed.

Order

THEREFORE,

IT IS ORDERED:

1. That the Complaint of L. G. Spielvogel, P.E. v. PECO Energy Company at Docket No. R-00963728C0001 is dismissed for lack of standing.

2. That the Complaint of Larry Abramovitz v. PECO Energy Company at Docket No. R-00963728C0002 is dismissed for lack of standing.

Date: January 17, 1997

CHARLES E. RAINEY, JR., Administrative Law Judge

Legal Services  
Business Services Company  
10 South Dearborn Street, 35<sup>th</sup> Floor  
Chicago, IL 60603

Telephone 312-394-5400  
Fax 312-394-3456  
www.exeloncorp.com

Business Services  
Company

Mail To: P.O. Box 805379  
Chicago, IL 60680-5379

ORIGINAL

May 27, 2005

DOCUMENT  
FOLDER

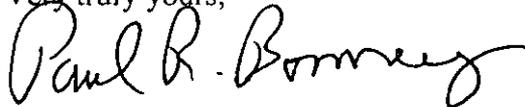
James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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 Out-Of-Time Of The EME Companies. Copies of the Answer In Opposition have been served upon the persons and in the manner set forth in the attached Certificate of Service. Additional copies of this letter and the Answer In Opposition are enclosed, which we request be date-stamped and returned to us in the stamped, self-addressed envelope we are providing.

Very truly yours,



Paul R. Bonney

Enclosures

cc: Per Certificate of Service

RECEIVED  
05 MAY 31 AM 10:58  
PA.P.U.C.  
SECRETARY'S BUREAU

59

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**  
AUG 03 2005

JOINT APPLICANTS' ANSWER IN OPPOSITION  
TO THE PETITION TO INTERVENE OUT-OF-TIME  
OF  
THE EME COMPANIES

Pursuant to 52 Pa. Code §§5.61 and 5.101, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants) file this Answer to the Petition to Intervene Out-Of-Time of the EME Companies.<sup>1</sup> As explained below, the Joint Applicants oppose the intervention of the EME Companies because their request is untimely and because, as an owner/operator and marketer of *wholesale* generation, they do not have a direct, immediate or substantial interest in this proceeding.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

**DOCUMENT  
FOLDER**

**RECEIVED**  
05 MAY 31 AM 10:58  
PA.P.U.C.  
SECRETARY'S BUREAU

<sup>1</sup> The "EME Companies" comprise Edison Mission Energy, EME Homer City Generation LP, and Edison Mission Marketing & Trading, Inc.

5. Denied. Unlike certain other entities that have been allowed to intervene in this proceeding (e.g., Amerada Hess, Direct Energy, Strategic Energy), the EME Companies do not engage in retail electric or natural gas sales in Pennsylvania. Rather, as their Petition explains (*see* paragraph 4), their activities are limited to the ownership and operation of generation facilities and the sale of the output of those facilities in *wholesale* energy and capacity markets. Moreover, the EME Companies' general interests in "fair competition" and "reasonable rates" are no different than the interests expressed by, and adequately represented by, numerous other parties to this case. Accordingly, the EME Companies do not have a direct, immediate and substantial interest in this proceeding and, therefore, do not have standing to intervene herein.

6. Denied. It is denied that the proposed transaction could result in increased prices or higher power costs; that the proposed mitigation plan filed at the Federal Energy Regulatory Commission (FERC) is inadequate to assuage market power concerns; or that the merged company would have an incentive and ability to unlawfully exercise market power. Moreover, to the extent that the EME Companies' concerns relate to alleged market power in wholesale electricity markets, the Joint Applicants note that a parallel merger-review proceeding is being conducted before the FERC to address those issues. Indeed, Midwest Generation, L.L.C., an affiliate of the EME Companies, has intervened and is actively participating in that proceeding.

7. Admitted in part and denied in part. It is admitted that the EME Companies' Petition is untimely, coming two months after the date fixed for the filing of interventions. It is denied that the EME Companies have demonstrated the requisite good cause for their tardiness or that the alleged "complexity of the merger application" or "complex structure of the transaction" contributed, in any meaningful way, to their delay. By way of further answer, the Joint Applicants note that the EME Companies' affiliate, Midwest Generation, L.L.C., filed a

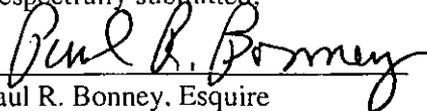
protest at the FERC on April 11, 2005 **and** attached to it expert witness testimony on the same wholesale market-concentration issues about which they profess to be concerned in this proceeding.

8. Denied. The EME Companies have not demonstrated - - or, for that matter, even alleged - - **any** knowledge of Pennsylvania's retail markets for electricity and natural gas, which are the "relevant markets" for purposes of this proceeding.

WHEREFORE, for the reasons set forth above, the Petition To Intervene Out-Of-Time of the EME Companies should be denied. In the event that the proposed intervention is granted, the Joint Applicants request that the Administrative Law Judge (1) rule that the time for the EME Companies to conduct discovery has passed, (2) direct the EME Companies to consolidate their efforts with other parties who have expressed an interest in market power and competition issues

(see Prehearing Order #2, p. 9), and (3) require the EME Companies to promptly identify any witness(es) they intend to present in this matter.

Respectfully submitted,



Paul R. Bonney, Esquire  
*paul.bonney@exeloncorp.com*  
Kent D. Murphy, Esquire  
*kent.murphy@exeloncorp.com*  
Exelon Business Services Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
215.841.4252  
215.841.4282 (Fax)

Thomas P. Gadsden, Esquire  
*tgadsden@morganlewis.com*  
Anthony C. DeCusatis, Esquire  
*adecusatis@morganlewis.com*  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234  
215.963.5001 (Fax)

Counsel for PECO Energy Company

Daniel Clearfield  
*dclearfield@wolfblock.com*  
Wolf, Block, Schorr  
& Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
717.237.7173

Richard P. Bonnifield  
*richard.bonnifield@pseg.com*  
Vice President-Law  
PSEG Services Corporation  
80 Park Plaza, T5E  
Newark, NJ 07102  
973.430.6441  
973.623.3261 (Fax)

Counsel for Public Service  
Electric and Gas Company

Dated: May 27, 2005

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :  
:  
: SS.  
:  
COUNTY OF PHILADELPHIA :

Paul R. Bonney, being duly sworn according to law, deposes and says that he is Vice President and Deputy General Counsel of Exelon Business Services Company; that he is authorized to and does make this Affidavit for PECO Energy Company; and that the facts set forth in the foregoing Answer in Opposition are true and correct to the best of his knowledge, information and belief and that he expects the said PECO Energy Company to be able to prove the same at any hearing thereof.

  
Paul R. Bonney

Sworn to and subscribed before me  
This 27<sup>th</sup> day of May, 2005

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
JENNIFER BRODHEIM, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires October 29, 2007



**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' Answer in Opposition to the Petition to Intervene Out-of-Time of the EME Complaints upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

**VIA HAND DELIVERY**

Honorable Marlane R. Chestnut  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA 19130  
[mchestnut@state.pa.us](mailto:mchestnut@state.pa.us)  
[kniesboul@state.pa.us](mailto:kniesboul@state.pa.us)  
(Hard copy and Electronic Copy)

VIA FIRST CLASS MAIL

Kevin J. Lipson  
Hogan & Hartson LLP  
555 Thirteenth Street, N.W.  
Washington, DC 20004  
[KJLipson@hhlaw.com](mailto:KJLipson@hhlaw.com)  
(Hard copy and Electronic Copy)

David Newmann  
Hogan & Hartson LLP  
1835 Market Street  
28th Floor  
Philadelphia, PA 19103  
[DNewman@hhlaw.com](mailto:DNewman@hhlaw.com)  
(Hard copy and Electronic Copy)

Kenneth L. Mickens, Esquire  
Robert V. Eckenrod, Esquire  
Pennsylvania Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105  
[kmickens@state.pa.us](mailto:kmickens@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

Charis Mincavage, Esquire  
David M. Kleppinger, Esquire  
McNees Wallace & Nurick LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[dkleppin@mwn.com](mailto:dkleppin@mwn.com)

Counsel for Philadelphia Area Industrial  
Energy Users Group

Daniel Clearfield, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)

Julie A. Coletti, Esquire  
Assistant General Counsel  
Strategic Energy, LLC  
Two Gateway Center  
Pittsburgh, PA 15222  
[jcoletti@sel.com](mailto:jcoletti@sel.com)

Counsel for Public Service  
Electric and Gas Company

Counsel for Strategic Energy, LLC

Carol F. Pennington, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[karenmil@state.pa.us](mailto:karenmil@state.pa.us)

Craig A. Doll, Esquire  
25 West Second Street  
P.O. Box 403  
Hummelstown, PA 17036-0403  
[cdoll76342@aol.com](mailto:cdoll76342@aol.com)

Counsel for Office of Small Business  
Advocate

Counsel for Pepco Holdings, Inc. and  
subsidiaries

Daniel W. Cantu-Hertzler, Esquire  
Darlene Heep, Esquire  
Senior Attorney  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595  
[Daniel.cantu-hetzler@phila.gov](mailto:Daniel.cantu-hetzler@phila.gov)  
[darlene.heep@phila.gov](mailto:darlene.heep@phila.gov)

Counsel for City of Philadelphia

Charles McPhedran, Esquire  
Citizens for Pennsylvania's Future  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
[mcphedran@pennfuture.org](mailto:mcphedran@pennfuture.org)

Counsel for PennFuture, Lisa Z. Leighton and  
Joey Bergey

Steven S. Goldenberg, Esquire  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Counsel for MAPSA

Jesse A. Dillon, Esquire  
Donald A. Kaplan, Esquire  
Richard L. Rosen, Esquire  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
[jadillon@pplweb.com](mailto:jadillon@pplweb.com)  
[donk@prestongates.com](mailto:donk@prestongates.com)

Roger E. Clark, Esquire  
TRF Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106  
[roger.clark@trfund.com](mailto:roger.clark@trfund.com)

Counsel for TRF  
Sustainable Development Fund

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut St., 4<sup>th</sup> Floor  
Philadelphia, PA 19102-2505  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Counsel for Alliance of Senior Citizens of  
Greater Philadelphia, Association of  
Community Organizations for Reform Now  
and Tenants' Action Group

Barnett Satinsky, Esquire  
Theodore H. Jobes, Esquire  
Fox Rothschild LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
[bsatinsky@foxrothschild.com](mailto:bsatinsky@foxrothschild.com)  
[tjobes@foxrothschild.com](mailto:tjobes@foxrothschild.com)  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Counsel for NJLEU Coalition  
and MAPSA

Todd S. Stewart, Esquire  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)

[richard.rosen@aporter.com](mailto:richard.rosen@aporter.com)

Counsel for PPL Services Corporation

Counsel for Direct Energy LLC

Jan P. Paden, Esquire  
David W. Francis, Esquire  
Rhoads & Sinon LLP  
One South Market Square  
P.O. Box 1146  
Harrisburg, PA 17108-1146  
[df Francis@rhoads-sinon.com](mailto:df Francis@rhoads-sinon.com)

Counsel for Amerada Hess Corporation

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

*Counsel for International Brotherhood of  
Electrical Workers and Frank Kuders*

Tanya J. McCloskey, Esquire  
Senior Assistant Consumer Advocate  
James A. Mullins, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Carolyn D. Commons, Esquire  
Commons & Commons, LLP  
2967 W. School House Lane #1210  
Philadelphia, PA 19144  
[lawyers@commonslaw.com](mailto:lawyers@commonslaw.com)

Counsel for Energy Coordinating Agency of  
Philadelphia, Inc.

Richard P. Mather, Sr., Esquire  
Deputy Chief Counsel  
Pamela G. Bishop, Esquire  
Assistant Counsel  
Scott Perry, Esquire  
Assistant Counsel  
[rmather@state.pa.us](mailto:rmather@state.pa.us)  
[pbishop@state.pa.us](mailto:pbishop@state.pa.us)  
[scperry@state.pa.us](mailto:scperry@state.pa.us)

Commonwealth of Pennsylvania  
Department of Environmental Protection  
RCSOB, 9th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

W. Edwin Ogden, Esquire  
Ryan, Russell, Ogden & Seltzer LLP  
1105 Berkshire Blvd., Suite 330  
Wyomissing, PA 19610-1222  
[eogden@ryanrussell.com](mailto:eogden@ryanrussell.com)

Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company, Pennsylvania  
Power Company, FirstEnergy Solutions, Corp.

Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[tniesen@titanlaw.com](mailto:tniesen@titanlaw.com)

Counsel for Philadelphia Gas Works

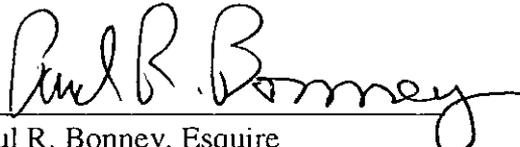
Paul Carpenter  
Principal  
The Brattle Group  
44 Brattle Street  
Cambridge, MA 02138

[Paul.Carpenter@brattle.com](mailto:Paul.Carpenter@brattle.com)

Date: May 27, 2005

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
[ktiagha@kleinbard.com](mailto:ktiagha@kleinbard.com)

Counsel for Senator Anthony H. Williams

  
Paul R. Bonney, Esquire  
Counsel for PECO Energy Company

RECEIVED  
05 MAY 31 AM 10:58  
PA P.U.C.  
SECRETARY'S BUREAU