

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKETED
AUG 03 2005

ORDER PERMITTING INTERVENTION

On May 6, 2005, Edison Mission Energy, EME Homer City Generation LP and Edison Marketing & Trading, Inc. (jointly, the EME companies) filed a Petition to Intervene Out-of-Time (Petition). On May 27, 2005, PECO Energy Company and Public Service Electric and Gas Company (joint applicants) filed an Answer in Opposition to the Petition (Answer). In their Answer, joint applicants contend that the Petition should be denied for being untimely filed and also because petitioners fail to establish standing, as they do not have a direct, immediate and substantial interest in the proceeding.

There is no question that the request to intervene is untimely, and no good cause was given for the failure to intervene on a timely basis.¹ This is especially true in light of PECO's representation that an affiliate of petitioners filed a protest (including expert testimony) with the Federal Energy Regulatory Commission (FERC) on April 11, 2005. However, the Petition should not be denied based on that factor alone.

Of concern is the question of standing. One of the petitioning companies owns a generating station in Pennsylvania, the output of which is sold in the wholesale energy and capacity markets. In fact, it does not appear that petitioners engage in any retail operations in Pennsylvania

¹ Protests and petitions to intervene were due on or before March 7, 2005.

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at all. Their expressed concerns about the proposed merger's possible effects generally seem to fall within the scope of the proceeding currently before FERC.

Although I am concerned about the nature of the interest presented by petitioners here, I will permit the untimely intervention on an inactive-party basis. There are already numerous parties in this proceeding, and adding one more on an inactive party basis does not violate either the public interest or the specific due process rights of the parties. To permit the active intervention of a party with a marginal interest at this stage of the proceeding would be improper and inappropriate.

THEREFORE,

IT IS ORDERED:

1. That the Petition to Intervene Out-of-Time jointly filed by Edison Mission Energy, EME Homer City Generation LP and Edison Marketing & Trading, Inc. is granted; and
2. That the request for intervention as an active party is denied.

Date: May 31, 2005


Marlane R. Chestnut
Administrative Law Judge

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

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