



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 17, 2005

In Re: A-110550F0160

(See attached list)

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

N O T I C E

This is to inform you that a pre-hearing conference on the
above-captioned case will be held as follows:

Type: Initial pre-hearing conference

Date: Tuesday, March 29, 2005

Time: 10:00 a.m.

Location: in an available hearing room
Philadelphia State Office Building
Broad and Spring Garden Streets
Philadelphia, Pennsylvania

Presiding: Administrative Law Judge Marlane R. Chestnut
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
Telephone: (215) 560-2105
Fax: (215) 560-3133

DOCKETED
APR 15 2005

**DOCUMENT
FOLDER**

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Chestnut
June Perry - LA, Keystone 3NW
Office of Trial Staff (2)
Consumer Advocate
Small Business Advocate
Susan Licon
Beth Plantz
Docket Section
Calendar File

#389788 rev 11/03

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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and Frank Kuders)

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VIA FEDERAL EXPRESS

March 23, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

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MAR 23 2005

**PA PUBLIC UTILITY COMMISSION
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 (3) copies of Motion For Admission Pro Hac Vice of James R. Weiss.

I have also enclosed an extra copy of the Motion. Please time-stamp and return in the enclosed envelope.

I have served a copy of this document on all parties to this proceeding, as shown on the attached Certificate of Service.

Respectfully submitted,

Jesse A. Dillon

KJR

Enclosures

cc: Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAR 23 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 OF
JAMES R. WEISS

Pursuant to Sections 1.22 and 1.23 of the Rules of Administrative Practice and Procedure of the Pennsylvania Public Utility Commission ("PUC"), 52 Pa. Code §§ 1.22 and 1.23, PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, the "PPL Companies"), through their undersigned attorney of record, move the PUC to allow the admission pro hac vice of attorney James R. Weiss as co-counsel and as grounds therefore state:

1. The PPL Companies are affiliates or subsidiaries of PPL Corporation, a Pennsylvania Company and have as their attorney of record in this proceeding the undersigned Jesse A. Dillon, who is a practicing attorney duly admitted to and in good standing with the bar of the Commonwealth of Pennsylvania (Attorney No. 47580).

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DOCKETED
MAY 21 2005

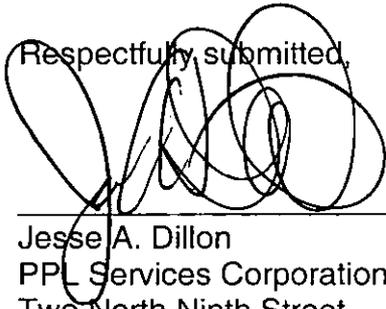
2. James R. Weiss, a partner in the law firm of Preston Gates Ellis & Rouvelas Meeds LLP, is a practicing attorney duly admitted to and in good standing with the bars of the District of Columbia, Maryland, the United States Supreme Court and several United States Courts of Appeals and District Courts. Mr. Weiss is also duly admitted to and in good standing with the bar of Pennsylvania but he is currently an inactive member of the Pennsylvania bar.

3. Mr. Weiss has experience in various aspects of regulatory and antitrust law and matters concerning the merging and restructuring of public utilities. In addition, Mr. Weiss' firm, Preston Gates Ellis & Rouvelas Meeds LLP has participated in several PUC proceedings regarding these issues. *See Pennsylvania Power & Light Company, Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00973954; UGI Utilities, Inc. Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00973975; 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; Docket No. A-110550F0147.*

4. The PPL Companies desire that Mr. Weiss represent them in this action and respectfully request that Mr. Weiss be admitted pro hac vice to practice before the PUC as co-counsel representing the PPL Companies in this proceeding.

WHEREFORE, the PPL Companies request an order admitting Mr. Weiss to serve as co-counsel for the PPL Companies, along with the PPL Companies' undersigned attorney of record.

Respectfully submitted,



Jesse A. Dillon
PPL Services Corporation
Two North Ninth Street
Allentown, Pennsylvania 18101
(610) 774-5013

Dated: March 23, 2005

THEREFORE,

IT IS ORDERED:

1. That James R. Weiss, Esq., Preston Gates Ellis & Rouvelas Meeds LLP, Suite 500, 1735 New York Avenue, NW, Washington, DC, 20006, is admitted pro hac vice in the above-captioned case, on behalf of PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, the "PPL Companies").

2. That in accordance with the provisions of Pa.B.A.R. 301(a), Jesse A. Dillon, Esq. shall remain attorney of record for the PPL Companies.

Date

Marlane R. Chestnut
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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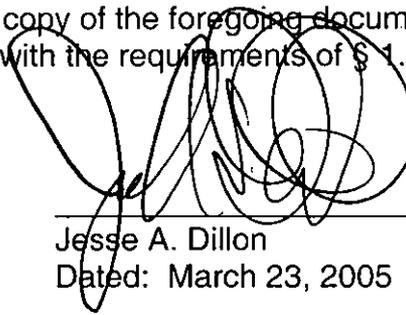
MAR 23 2005

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 : Docket No. A-110550F0160

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Certificate of Service

I hereby certify that on March 23, 2005, I served a copy of the foregoing document upon the active participants listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):



Jesse A. Dillon
Dated: March 23, 2005

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VIA FEDERAL EXPRESS

March 23, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

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MAR 23 2005

**PA PUBLIC UTILITY COMMISSION
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:

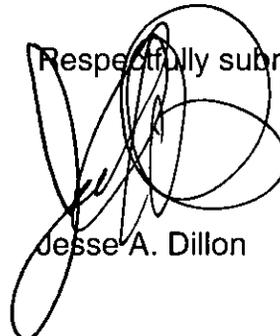
KJR

Enclosed for filing in the above-captioned proceeding are an original and three (3) copies of Motion For Admission Pro Hac Vice of Richard L. Rosen.

I have also enclosed an extra copy of the Motion. Please time-stamp and return in the enclosed envelope.

I have served a copy of this document on all parties to this proceeding, as shown on the attached Certificate of Service.

Respectfully submitted,



Jesse A. Dillon

Enclosures

cc: Certificate of Service

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104

admitted to and in good standing with the bar of the Commonwealth of Pennsylvania (Attorney No. 47580).

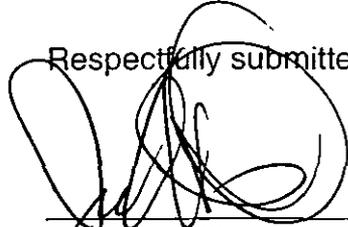
2. Richard L. Rosen, a partner in the law firm of Arnold & Porter LLP, is a practicing attorney duly admitted to and in good standing with the bars of the *District of Columbia, New York and the United States Supreme Court*.

3. Mr. Rosen has experience in antitrust law regarding regulated industries, including participation in merger proceedings.

4. The PPL Companies desire that Mr. Rosen represent them in this action and respectfully request that Mr. Rosen be admitted pro hac vice to practice before the PUC as co-counsel representing the PPL Companies in this proceeding.

· WHEREFORE, the PPL Companies request an order admitting Mr. Rosen to serve as co-counsel for the PPL Companies, along with the PPL Companies' undersigned attorney of record.

Respectfully submitted,



Jesse A. Dillon
PPL Services Corporation
Two North Ninth Street
Allentown, Pennsylvania 18101
(610) 774-5013

Dated: March 23, 2005

**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	:	

ORDER GRANTING ADMISSION PRO HAC VICE

On February 4, 2005, PECO Energy Company and Public Service Electric and Gas Company filed a Joint Application for Approval of the Merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation with the Pennsylvania Public Utility Commission.

On or about March 23, 2005, Jesse A. Dillon, Esq., a member of the bar of the Commonwealth of Pennsylvania, moved the admission pro hac vice of Richard L. Rosen, Esq., Arnold & Porter LLP, 555 12th Street NW, Washington, DC, 20004-1206, in this case, pursuant to Pa.B.A.R. 301.

It is represented by Mr. Dillon that Mr. Rosen is a member in good standing of the bars of the District of Columbia, New York, and the United States Supreme Court.

The Motion for Admission Pro Hac Vice is unopposed.

THEREFORE,

IT IS ORDERED:

1. That Richard L. Rosen, Esq., Arnold & Porter LLP, 555 12th Street NW, Washington, DC, 20004-1206, is admitted pro hac vice in the above-captioned case, on behalf of PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, the "PPL Companies").

2. That in accordance with the provisions of Pa.B.A.R. 301(a), Jesse A. Dillon, Esq. shall remain attorney of record for the PPL Companies.

Date

Marlane R. Chestnut
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Joint Application of PECO Energy Company :
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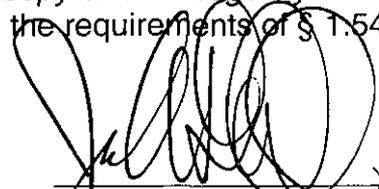
MAR 23 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. A-110550F0160

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(Metropolitan Edison Company, Pennsylvania
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Company, FirstEnergy Solutions, Corp.)

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VIA FEDERAL EXPRESS

March 23, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

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MAR 23 2005

**PA PUBLIC UTILITY COMMISSION
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 (3) copies of Motion For Admission Pro Hac Vice of Donald A. Kaplan.

I have also enclosed an extra copy of the Motion. Please time-stamp and return in the enclosed envelope.

I have served a copy of this document on all parties to this proceeding, as shown on the attached Certificate of Service.

**DOCUMENT
FOLDER**

Respectfully submitted,

Jesse A. Dillon

KJR

Enclosures

cc: Certificate of Service

DOCKETED
MAY 18 2005

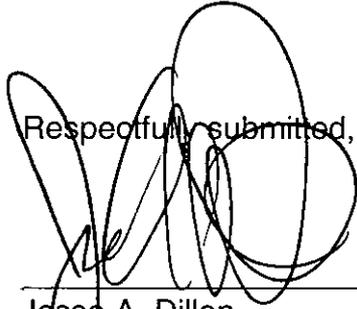
106

2. Donald A. Kaplan, a partner in the law firm of Preston Gates Ellis & Rouvelas Meeds LLP, is a practicing attorney duly admitted to and in good standing with the bars of the District of Columbia, New York, the United States Supreme Court and several United States Courts of Appeals and District Courts.

3. Mr. Kaplan has experience in various aspects of regulatory and antitrust law and matters concerning the merging and restructuring of public utilities. In addition, Mr. Kaplan has participated in several PUC proceedings regarding these issues. *See Pennsylvania Power & Light Company, Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00973954; UGI Utilities, Inc. Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00973975; 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; Docket No. A-110550F0147.*

4. The PPL Companies desire that Mr. Kaplan represent them in this action and respectfully request that Mr. Kaplan be admitted pro hac vice to practice before the PUC as co-counsel representing the PPL Companies in this proceeding.

WHEREFORE, the PPL Companies request an order admitting Mr. Kaplan to serve as co-counsel for the PPL Companies, along with the PPL Companies' undersigned attorney of record.

Respectfully submitted,


Jesse A. Dillon
PPL Services Corporation
Two North Ninth Street
Allentown, Pennsylvania 18101
(610) 774-5013

Dated: March 23, 2005

THEREFORE,

IT IS ORDERED:

1. That Donald A. Kaplan, Esq., Preston Gates Ellis & Rouvelas Meeds LLP, Suite 500, 1735 New York Avenue, NW, Washington, DC, 20006, is admitted pro hac vice in the above-captioned case, on behalf of PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, the "PPL Companies").

2. That in accordance with the provisions of Pa.B.A.R. 301(a), Jesse A. Dillon, Esq. shall remain attorney of record for the PPL Companies.

Date

Marlane R. Chestnut
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 :

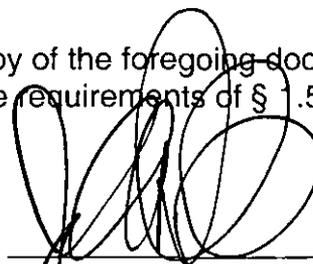
MAR 23 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. A-110550F0160

Certificate of Service

I hereby certify that on March 23, 2005, I served a copy of the foregoing document upon the active participants listed below, in accordance with the requirements of § 71.54 (relating to service by a participant):



Jesse A. Dillon
Dated: March 23, 2005

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jadillon@pplweb.com



VIA FEDERAL EXPRESS

RECEIVED

March 23, 2005

MAR 23 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

**PA PUBLIC UTILITY COMMISSION
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**

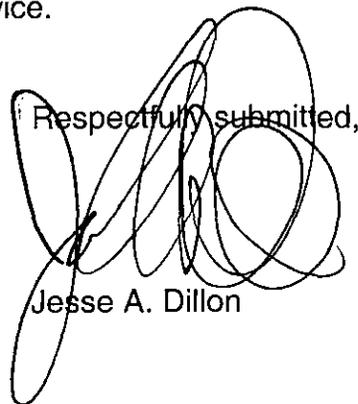
Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding are an original and three (3) copies of Motion For Admission Pro Hac Vice of Melanie J. Sabo.

I have also enclosed an extra copy of the Motion. Please time-stamp and return in the enclosed envelope.

I have served a copy of this document on all parties to this proceeding, as shown on the attached Certificate of Service.

**DOCUMENT
FOLDER**

Respectfully submitted,

Jesse A. Dillon

KJR

Enclosures

cc: Certificate of Service

105

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAR 23 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 OF
MELANIE J. SABO

Pursuant to Sections 1.22 and 1.23 of the Rules of Administrative Practice and Procedure of the Pennsylvania Public Utility Commission ("PUC"), 52 Pa. Code §§ 1.22 and 1.23, PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, the "PPL Companies"), through their undersigned attorney of record, move the PUC to allow the admission pro hac vice of attorney Melanie J. Sabo as co-counsel and as grounds therefore state:

1. The PPL Companies are affiliates or subsidiaries of PPL Corporation, a Pennsylvania Company and have as their attorney of record in this proceeding the undersigned Jesse A. Dillon, who is a practicing attorney duly admitted to and in good standing with the bar of the Commonwealth of Pennsylvania (Attorney No. 47580).

DOCKETED
MAY 19 2005

**DOCUMENT
FOLDER**

2. Melanie J. Sabo, a partner in the law firm of Preston Gates Ellis & Rouvelas Meeds LLP, is a practicing attorney duly admitted to and in good standing with the bars of the District of Columbia and Florida.

3. Ms. Sabo has experience in various aspects of regulatory and antitrust law and matters concerning the merging and restructuring of public utilities. In addition, Ms. Sabo's firm, Preston Gates Ellis & Rouvelas Meeds LLP has participated in several PUC proceedings regarding these issues. *See Pennsylvania Power & Light Company, Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00973954; UGI Utilities, Inc. Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00973975; 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; Docket No. A-110550F0147.*

4. The PPL Companies desire that Ms. Sabo represent them in this action and respectfully request that Ms. Sabo be admitted pro hac vice to practice before the PUC as co-counsel representing the PPL Companies in this proceeding.

WHEREFORE, the PPL Companies request an order admitting Ms. Sabo to serve as co-counsel for the PPL Companies, along with the PPL Companies' undersigned attorney of record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jesse A. Dillon', written over a horizontal line.

Jesse A. Dillon
PPL Services Corporation
Two North Ninth Street
Allentown, Pennsylvania 18101
(610) 774-5013

Dated: March 23, 2005

THEREFORE, \

IT IS ORDERED:

1. That Melanie J. Sabo, Esq., Preston Gates Ellis & Rouvelas Meeds LLP, Suite 500, 1735 New York Avenue, NW, Washington, DC, 20006, is admitted pro hac vice in the above-captioned case, on behalf of PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, the "PPL Companies").

2. That in accordance with the provisions of Pa.B.A.R. 301(a), Jesse A. Dillon, Esq. shall remain attorney of record for the PPL Companies.

Date

Marlane R. Chestnut
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAR 28 2005

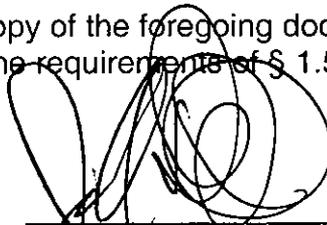
Joint Application of PECO Energy Company :
and Public Service Electric and Gas Company :
for Approval of the Merger of :
Public Service Enterprise Group Incorporated :
with and into Exelon Corporation :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. A-110550F0160

Certificate of Service

I hereby certify that on March 23, 2005, I served a copy of the foregoing document upon the active participants listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):



Jesse A. Dillon
Dated: March 23, 2005

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Organizations for Reform Now, Tenants'
Action Group)



ORIGINAL

March 24, 2005

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2005 MAR 24 PM 3:39

SECRETARY'S BUREAU

DOCUMENT FOLDER

Reply to Philadelphia Office

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

Re: 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

Dear Mr. McNulty:

Enclosed please find an original and three copies of the Initial Prehearing
Memorandum of the PennFuture Parties in the above-captioned proceeding. Copies have
been served on the parties as set forth in the Certificate of Service.

Sincerely,

Charles McPhedran
Senior Attorney

cc: Hon. Marlane R. Chestnut
Certificate of Service

BTL

71

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 WITH AND
INTO EXELON CORPORATION

:
: DOCKET NO. A-110550F0160
:

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JUN 13 2005

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2005 MAR 24 PM 3:39
SECRETARY'S BUREAU

INITIAL PREHEARING MEMORANDUM
OF THE PENNFUTURE PARTIES

In accordance with the Order in this proceeding dated March 17, 2005, Citizens for Pennsylvania's Future (PennFuture), Joy Bergey, and Lisa Z. Leighton (collectively, the PennFuture Parties) hereby submit their Initial Prehearing Memorandum.

History of the Proceeding

On February 4, 2005, PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) filed a Joint Application to obtain the approval of the Pennsylvania Public Utility Commission (Commission) of the merger of Public Service Enterprise Group Incorporated (PSEG) with and into Exelon Corporation. On February 19, 2005, notice of the merger appeared in the Pennsylvania Bulletin (35 Pa.B. 1401). This notice set a deadline of March 7, 2005 for protests and petitions to intervene. On March 4, 2005, the PennFuture Parties timely filed their Protest and Petition to

DOCUMENT
FOLDER

Intervene in this proceeding. On March 17, 2005, Administrative Law Judge Marlane R. Chestnut issued the Prehearing Conference Order.

Issues to be Presented

As noted in the Joint Application (at 12-13), a certificate of public convenience for a merger shall be granted by order of the Commission only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa. C.S. § 1102(a)(3), 1103(a). See also York v. Pa. P.U.C., 449 Pa. 136, 141, 295 A.2d 825, 828 (1972)(applicant for approval of a utility merger must demonstrate affirmative benefits under the statutory test). At this time, the PennFuture Parties have identified the following issues involved with this merger as related to the service, accommodation, convenience, or safety of the public:

1. In general, the public interest in service, accommodation, safety and convenience will be promoted through this merger only if the Commission requires Joint Applicants to take affirmative steps to encourage renewable energy, net metering, energy efficiency, and demand response. Among other things, such measures will protect reliability, provide health and environmental benefits by reducing harmful pollution, stabilize electricity prices over time, and promote economic development in Pennsylvania. In addition to meeting the requirements of the Public Utility Code for merger, the affirmative benefits thus provided will also promote the goals of Act 213 of 2004, the Alternative Energy Portfolio Standards Act. Additionally, the Commission should promote the public interest, especially in safety, by requiring Joint Applicants to reduce harmful air pollution from their electric generating stations.

2. To promote the public interest, the Commission should require Joint Applicants to take a variety of measures to encourage the generation and use of renewable energy, including but not limited to solar, wind, and landfill methane sources. For example, the Commission should require Joint Applicants to continue their commitment to renewable energy, to increase the amount of electricity generated from renewable sources supplied to their customers, and to help finance renewable energy development in Pennsylvania. The Commission should also require Joint Applicants to educate customers about the benefits of clean energy, by means including bill inserts and websites such as www.cleanyourair.org.

3. The Commission should require Joint Applicants to take measures that will promote net metering, which increases electricity supply, promotes renewable energy, helps to diversify fuel sources, and promotes economic development. For example, the Commission should require Joint Applicants to adopt tariffs and policies in Pennsylvania that promote net metering at least as strongly as comparable tariffs and policies in New Jersey.

4. The Commission should require Joint Applicants to adopt measures that will promote energy efficiency, which reduces demand and stress on electricity distribution systems and provides the general benefits identified at Paragraph 1 above. For example, the Joint Applicants should provide funds, recoverable in the rate base, to support energy efficiency activities by their customers.

5. The Commission should require Joint Applicants to adopt measures that will promote demand response by customers, that is, that will increase the ability of their customers to change consumption in response to real-time prices or time-of-use prices.

This will help reduce stress on generating capacity and may reduce stress on electricity distribution systems.

6. To protect public safety, the Commission should require Joint Applicants to reduce harmful air pollution, including but not limited to sulfur dioxide, nitrogen oxides, and mercury. These and other pollutants cause a variety of negative public health consequences, and the Commission should require Joint Applicants to sharply reduce pollution and to ensure current and future compliance with air pollution requirements at generating stations such as the Keystone plant in Armstrong County, Pennsylvania. If Joint Applicants divest their full or partial ownership in such stations, the Commission should require Joint Applicants to condition divestiture on such emission reductions in a manner enforceable by the Commission and the parties to this proceeding.

Consistent with the Order in this proceeding dated March 17, 2005, the PennFuture Parties respectfully reserve the right to supplement this list of issues to be presented.

Witnesses and Testimony

At this time, the PennFuture Parties propose the following witnesses:

1. John Hanger, President and Chief Executive Officer of PennFuture, Harrisburg, Pennsylvania. At this time, the PennFuture Parties intend to offer Mr. Hanger as a witness on some or all of issues identified above.

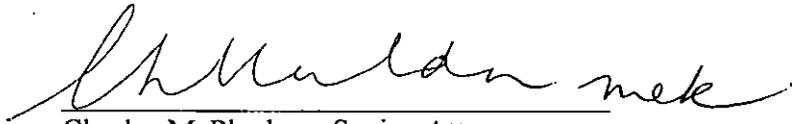
2. Thomas Tuffey, Director of PennFuture's Center for Energy, Enterprise, and Environment, Philadelphia, Pennsylvania. At this time, the PennFuture Parties intend to offer Mr. Tuffey as a witness on some of the issues identified above, including but not limited to renewable energy.

3. John Plunkett, Partner, Optimal Energy, Bristol, Vermont. At this time, the PennFuture Parties intend to offer Mr. Plunkett as a witness on energy efficiency and demand response.

4. David Hill, Senior Project Manager, Vermont Energy Investment Corporation, Burlington, Vermont. At this time, the PennFuture Parties intend to offer Dr. Hill as a witness on net metering.

Consistent with the Order in this proceeding dated March 17, 2005, the PennFuture Parties respectfully reserve the right to supplement this list of witnesses.

Respectfully submitted,



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Counsel for Petitioners PennFuture,
Joy Bergey and Lisa Z. Leighton

DATED: 03/24/05

ORIGINAL

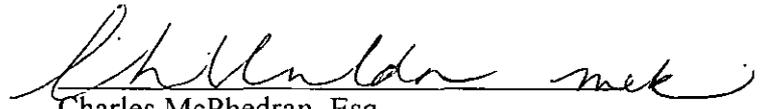
Joint Application of PECO Energy Company and Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation

Docket Number A-110550F0160

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Initial Prehearing Memorandum of the PennFuture Parties upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Date: 03/24/05


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RECEIVED

MAR 24 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

March 24, 2005

James J. McNulty, Secretary
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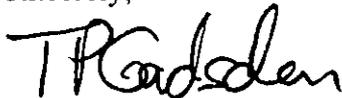
DOCUMENT
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**Re: Joint Application Of PECO Energy Company And Public Service Electric And Gas Company For Approval Of The Merger Of Public Service Enterprise Group Incorporated With And Into Exelon Corporation
Docket No. A-110550F0160**

Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding are an original and three copies of each of the following: (1) Joint Applicants' Answer in Opposition to the Petition to Intervene of Eric Joseph Epstein; and (2) Joint Applicants' Motion to Dismiss the Protest of Eric Joseph Epstein. Copies of the Answer in Opposition and Motion to Dismiss have been served upon the persons and in the manner set forth in the Certificate of Service attached to each of the enclosed documents. Additional copies of this letter and of the Answer in Opposition and Motion to Dismiss are enclosed, which we request be date-stamped and returned to us as evidence of filing.

Sincerely,



Thomas P. Gadsden

Enclosures

c: Per Certificate of Service

106


BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION.

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 :

MAR 24 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NO. A-110550F0160

DOCKETED
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JOINT APPLICANTS' MOTION TO DISMISS
THE PROTEST OF
ERIC JOSEPH EPSTEIN

DOCUMENT
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Pursuant to 52 Pa. Code §5.101, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants) file this Motion to Dismiss the Protest of Eric Joseph Epstein. As explained below, the Joint Applicants oppose Mr. Epstein's Protest because (1) he is not a customer of PECO Energy and does not have or allege any other direct, immediate or substantial interest in this proceeding that would satisfy the Commission's well-established criteria for standing; and (2) the issues Mr. Epstein seeks to raise are outside the scope of this proceeding and outside the jurisdiction of the Commission.

1. On March 7, 2005, Mr. Epstein filed a Protest in the above-captioned proceeding. Mr. Epstein also filed a Petition to Intervene. The Joint Applicants filed a separate Answer in Opposition to Mr. Epstein's Petition.

2. The gravamen of Mr. Epstein's Protest is that the Commission should not approve the Joint Application "until PECO Energy complies with, or addresses" a list of items set forth in 25 numbered paragraphs of the Protest which, for the most part, seek to raise operational issues pertaining to nuclear generating plants owned by entities other than PECO Energy (e.g., spent fuel storage, possible license extensions, the use of "mixed oxide" fuels). The few items that are not directly related to nuclear generation pertain to subjects that are not part of this proceeding (e.g., local property taxation of generating facilities not owned by PECO Energy).

3. Mr. Epstein's Protest is improper in two respects, either one of which requires dismissal. First, Mr. Epstein lacks standing to participate in this proceeding. Second, his Protest seeks to interject issues that are outside the scope of this proceeding and outside the jurisdiction of the Commission.

Mr. Epstein Does Not Have Standing To Participate In This Case

4. Mr. Epstein is not a customer of PECO Energy. As previously noted, Mr. Epstein filed a separate Petition to Intervene in which 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. Those averments are addressed in the Joint Applicants' Answer to Mr. Epstein's Petition to Intervene, which is incorporated herein by reference.

5. Mr. Epstein's membership in nuclear monitoring groups is not sufficient to confer standing to participate in this proceeding. PECO Energy is not the owner or operator of any nuclear facilities which, in any event, were removed from economic

regulation by the Electricity Generation Customer Choice and Competition Act (the Competition Act), codified in Chapter 28 of the Public Utility Code. See 66 Pa. C.S. §2802(14) (“The generation of electricity will no longer be regulated as a public utility function . . .”) Moreover, safety and health issues surrounding the operation of nuclear power plants are within the exclusive jurisdiction of the Nuclear Regulatory Commission (NRC), as this Commission has repeatedly affirmed. *Pa. P.U.C., v. Metropolitan Edison Co.*, 54 Pa. P.U.C., 276 (1980). Furthermore, Mr. Epstein’s unopposed intervention in prior proceedings before the Commission does not alter the import of the Commission’s regulations, which require a petitioner-protestant to establish that it has a direct, immediate and substantial interest in the subject matter of the specific proceeding in which it seeks to intervene. See *Landlord Service Bureau, Inc. v. Equitable Gas Company*, Docket No. C-000934801 (June 8, 1993), 1993 Pa. PUC LEXIS 54 (Stating that the Commission will apply the direct, immediate and substantial interest test set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168 346 A.2d 269 (1975) to determine standing.)

**Mr. Epstein’s Protest Seeks To Raise Issues That
Are Outside The Scope Of This Proceeding And Outside
The Commission’s Jurisdiction**

6. Mr. Epstein’s Protest attempts to convert this proceeding into a forum for delving into what he perceives to be operational and safety issues pertaining to nuclear generating facilities. That is not a valid or permissible basis for anyone to protest the merger at issue in this proceeding.

7. PECO Energy does not own or operate any nuclear generating facilities. Pursuant to the Commission’s prior approval, in January 2001, PECO Energy transferred

all of its generation to another entity, namely, Exelon Generation Company LLC (Exelon Generation). Consequently, the issues identified in Mr. Epstein's Protest are misdirected, since they are relevant only to the existing owner and holder of the NRC operating license for the nuclear generation facilities in which he has expressed interest.

Furthermore, as explained in Paragraph No. 5, above, the generation of electricity has been removed from economic regulation by the Commission by the Competition Act.

Therefore, the issues identified in Mr. Epstein's Protest cannot form a valid basis for his Protest.

8. Furthermore, any issue as to the operation or safety of nuclear generation facilities is 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.¹

This Commission has long recognized that its "traditional responsibility" does not authorize it to address the kinds of issues Mr. Epstein is attempting to interject into this proceeding and, in fact, the Commission has repeatedly rejected such attempts in the past.

¹ As previously explained, the "traditional" state regulatory function as to all generation has been removed from the Commission's jurisdiction by the Competition Act.

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:

[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 *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 the nuclear generating facilities then 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.")²

9. In Paragraph Nos. 4 and 5 of his Protest, Mr. Epstein identifies issues pertaining to the possible impact on state and local tax revenues from the situs of Exelon Generation's decommissioning trust funds and removal of nuclear generating facilities from the tax base of the Public Utility Realty Tax (PURTA)³. Neither of these issues is within the scope of this proceeding or, for that matter, within the Commission's jurisdiction. For that reason, when Mr. Epstein tried to present testimony on similar issues in the recent base rate proceeding of PPL Electric Utilities Corporation, his testimony was stricken (Tr. 671-679).⁴

10. Paragraph No. 16 of Mr. Epstein's Protest states that he will seek to inquire into the impact on the wholesale markets of NRC operating license extensions for certain nuclear generating plants. NRC license extensions are not at issue in this proceeding. Whether or not a license extension will be granted is within the regulatory

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

³ The change in the PURTA tax base was part of the package of changes made by, or in conjunction with, the Competition Act.

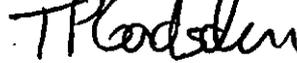
⁴ *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-00049255. Transcript of the hearing held August 10, 2004 before Administrative Law Judge Allison K. Turner. (A copy of the relevant pages is attached as Appendix A.)

jurisdiction of the NRC. License extensions are within the purview of the generation owner and are not subject to regulation or prior approval by the PUC. Moreover, Mr. Epstein does not have standing in this proceeding to address any issues pertaining to potential market impacts, since he is neither a customer of PECO Energy nor a marketer of electricity in PECO Energy's service territory.

11. The import of Paragraph No. 17 of Mr. Epstein's Protest is difficult to discern. However, it 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.

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

Respectfully submitted,



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Dated: March 24, 2005

1-PH/2183629.1

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

----- x
 :
Pennsylvania Public Utility Commission :
(R-00049255), U.S. Department of Defense : Docket No.
and Federal Executive Agencies (C0001), : R-00049255
PPL Industrial Customer Alliance (C0002), : R-00049255
Office of Small Business Advocate (C0003), : C0001-C0016
Office of Consumer Advocate (C0004), :
Eric Joseph Epstein (C0007), Victoria K. :
Mackin (C0008), Cheryl & Jeremy Ebert :
(C0009), Martha Wells (C0010), Margaret :
M. Stuski, Esquire (C0011), Wal-Mart :
Stores East, LP (C0012), Pennsylvania :
Energy Consortium (C0013), Donald E. :
McGarrigle (C0014), Curvin L. Snyder :
(C0015), William J. Junkin, III (C0016) :
v. PPL Electric Utilities Corporation. :
Proposed general rate increase. :

Further Hearing.

----- x
 Pages 539 through 704 Hearing Room 1
 Commonwealth Keystone Building
 Harrisburg, Pennsylvania
 Tuesday, August 10, 2004

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

ALLISON K. TURNER, Administrative Law Judge
 SUSAN COLWELL, Administrative Law Judge

Commonwealth Reporting Company, Inc.
 700 Lisburn Road
 Camp Hill, Pennsylvania 17011

1 submit to the court reporter.

2 JUDGE TURNER: Okay.

3 (Whereupon, the documents were
4 marked as Epstein Statement No. 1
5 and Epstein Statement No. 1-S for
6 identification.)

7 THE WITNESS: They were previously provided to you
8 and to the rest of the parties.

9 JUDGE TURNER: Now, I understand that there has been
10 and we have discussed, at least established that there's
11 been a motion to dismiss portions of the testimony. Mr.
12 MacGregor, do you want to tell us what portions you're
13 trying to strike?

14 MR. MacGREGOR: Yes, Your Honor. It is the testimony
15 contained in Section "K" of the direct testimony at pages 20
16 and 21, and then testimony on the same issue in Statement
17 Epstein 1-S, Section II(1) at pages two through seven.

18 JUDGE TURNER: What is it you want to strike on page
19 two?

20 MR. MacGREGOR: Of the surrebuttal?

21 JUDGE TURNER: Yes.

22 MR. MacGREGOR: Yes. My surrebuttal testimony as it
23 printed out starts at the top of page two with the heading,
24 II, surrebuttal testimony, sub 1, property tax appeals.

25 JUDGE TURNER: Okay. That's on page three for me.

1 THE WITNESS: It's II, page three?

2 JUDGE TURNER: Yes.

3 MR. MacGREGOR: It has page two on the top of mine.

4 JUDGE TURNER: All right. So why don't we identify
5 it that way. You want to strike II of surrebuttal
6 testimony, 1, property tax appeals.

7 MR. MacGREGOR: Yes.

8 JUDGE TURNER: And the following text to --

9 (Pause.)

10 MR. MacGREGOR: That entire section, and then the
11 next part of the testimony that begins Section 2, AMR
12 displacement costs, I am not moving to strike.

13 JUDGE TURNER: So that would be up to and through the
14 bullet, real estate tax dispute is settled, and that is on
15 page eight in the testimony document that I have, so we're
16 talking about three through eight in this text.

17 Is this the page numeration in the copy you submitted
18 to the court reporter?

19 THE WITNESS: The copy that you have is the same copy
20 I have. I'm not sure what happened --

21 JUDGE TURNER: Well, I want to know what the court
22 reporter has, because that's what will be in the record for
23 the Commission to review.

24 THE WITNESS: I made you an extra copy --

25 JUDGE TURNER: Okay.

1 THE WITNESS: -- of what I just handed to the court
2 reporter.

3 JUDGE TURNER: I just want to know --

4 THE WITNESS: Dave, I have an extra copy for you,
5 too.

6 JUDGE TURNER: Okay. Let's go off the record to get
7 this straight.

8 (Discussion off the record.)

9 JUDGE TURNER: Back on the record.

10 We will be referring to a version of this document
11 which has the material that PPL finds offensive on pages
12 three through eight of the surrebuttal testimony and that is
13 the pagination on the document submitted to the court
14 reporter for surrebuttal testimony.

15 Now, do you want to proceed to discuss your motion?

16 MR. MacGREGOR: Yes, Your Honor. This testimony in
17 the direct and surrebuttal testimony focuses on the level of
18 real estate taxation on PPL Corporation's generating plants.

19 The generating plants are not owned by PPL Electric
20 Utilities. They were spun out of the electric utility after
21 the Commission's restructuring proceeding. They are now
22 owned by a separate corporation, PPL Generation Company, who
23 is responsible for paying the real estate taxes on those
24 plants.

25 No part of those taxes on those generating plants is

1 being requested or recovered in any portion of PPL
2 Electric's transmission and distribution rates that are at
3 issue in this proceeding.

4 This proceeding is about a proposal to increase the
5 transmission and distribution rates of PPL Electric. This
6 testimony presented by Mr. Epstein relates to the level of
7 local real estate taxation on generating plants that are not
8 owned by PPL Electric nor are any portion of the costs of
9 those claimed as part of the transmission and distribution
10 rates in this case.

11 We therefore believe the testimony is irrelevant in
12 any determination of just and reasonable transmission and
13 distribution rates and therefore should be stricken.

14 JUDGE TURNER: Okay. And these tax rates and taxes
15 are not, as you've said before, included at all in the
16 calculations in this case?

17 THE WITNESS: That is correct.

18 JUDGE TURNER: Okay. Mr. Epstein, do you have a
19 response?

20 THE WITNESS: Yeah, I do have a response. Actually,
21 I have a written response. It may be easier. I anticipated
22 PP&L's motion to strike.

23 I think the problem is that based on the testimony
24 and based on information that I've ascertained, is that PPL
25 Electric Utilities was in fact a generating company through

1 2001. I'll briefly address that right now, if I may.

2 JUDGE TURNER: Okay.

3 THE WITNESS: First of all, I want to agree with Mr.
4 MacGregor's statement yesterday during his cross-examination
5 of Mr. Weakley regarding Isabel recovery, and think it's
6 germane to what I'm trying to say today, and that is I think
7 Mr. MacGregor opposed a ten year recovery period because
8 bills should be paid on time. Money has value.

9 I would also understand that some of my evaluations
10 or recommendations may be innovative or potentially
11 precedent setting, but so too was my 4 percent
12 decommissioning proposal in 1998 that was adopted and so to
13 is PPL's present DSIC proposal.

14 Looking at the facts, it's clear to me that PPL
15 Electric Utility Corporation served as a generating company
16 on paper through 2001, all right. Now, the issue for me is,
17 the communities I live in, these generating companies began
18 devaluating their taxes in 2000.

19 What I found by going to the Public Utilities
20 Fortnightly guidebook on electric companies is that February
21 14, 2000, PPL changed its name to PPL Electric Utilities
22 which together with Pennfuels Gas was to become the PPL
23 utility.

24 According to testimony yesterday, PPL Electric
25 Utilities was not transferred until July 1, 2000, so at

1 least for the first six months of 2000, by their own
2 admission, they were a generating company and a composite
3 entity.

4 In fact, I think it was Mr. Morgan's testimony
5 yesterday that indicated that PPL Electric Utilities
6 retained generating assets through 2001. I didn't have
7 access to the same day transcription, but paraphrasing Mr.
8 Morgan yesterday, he said still some generating assets that
9 were on the books had to be taken off.

10 So clearly PPL Electric Utilities was still acting as
11 a generating company through 2001. So I don't have a clear
12 understanding as when the separation took place. In my
13 mind, there is a fluid, composite entity, PPL Electric
14 Utilities, PPL. And that's why I'm looking to address some
15 of these issues through this proceeding.

16 JUDGE TURNER: Mr. MacGregor?

17 MR. MacGREGOR: Your Honor, this case is about
18 revenues, expenses, rate base and taxes for the future test
19 year 12 months ended December 31, 2004. During 2004, the
20 company owned no generating plants.

21 The testimony presented by Mr. Epstein deals with
22 appeals of tax assessment for the Susquehanna nuclear
23 station and the Brunner Island coal plant, both of which
24 were transferred out of the utility corporation effective
25 July 1, 2000. Whether the date is 2000 or 2001, 2000 taxes,

1 2001 taxes have nothing to do with this proceeding.

2 The purpose of this proceeding is to establish rates
3 based upon 2004 future test year, a year in which PPL
4 Electric Utilities owns no generating assets and is making
5 no claim to recover any costs associated with any generating
6 assets.

7 JUDGE TURNER: All right. Are those costs at all
8 included in Exhibit Historic 1?

9 MR. MacGREGOR: No, Your Honor.

10 THE WITNESS: Can I respond, Your Honor?

11 JUDGE TURNER: Yes.

12 THE WITNESS: I think this case is about more than
13 that. This case has an impact on people like me that pay
14 our rates, and what I would say to you is that the districts
15 that I articulated in this particular case, for example
16 Brunner Island, an 8.1 percent in costs on top of the costs
17 that have gone up to pay the real estate taxes on top of the
18 fact that that district lives at a 20 percent poverty level
19 would have an adverse impact on quality of life.

20 So I don't think this proceeding is just about a
21 sterile request dealing with rate structure and rate equity.
22 I'm trying to provide a context as to what impact this
23 request will have on my community based on other impacts
24 that previous requests have had on my community. And I
25 think there's a continuity and a context that can't be

1 excluded.

2 JUDGE TURNER: Well, I'm afraid I disagree with you.

3 THE WITNESS: I had a feeling you might say that.

4 JUDGE TURNER: I agree that the case is about more
5 than just cold, hard figures. It is also about quality of
6 life. However, legally, there is no involvement in this
7 case of the real estate tax issues, and there isn't any
8 involvement even in the historic test year.

9 And those rates or those transfers were made while
10 the cap was in effect. These rates are to take effect after
11 the cap is gone, and I can't see any relevancy.

12 THE WITNESS: Can I make one additional comment,
13 because there's the confusion too because at some point I
14 thought rates were set based on rate generations. It was my
15 understanding that a rate generation is, what, seven years,
16 every seven years.

17 JUDGE TURNER: Beg your pardon?

18 THE WITNESS: That for purposes of ratemaking, a
19 ratepayer generation is seven years. Every seven years is a
20 new generation. Is that correct or not?

21 MR. MacGREGOR: No, I plan to ask you about that
22 statement in your testimony. I've done utility work for 25
23 years and that's new to me.

24 THE WITNESS: Then okay. That was my understanding,
25 so I think you'll deal with me later on that, huh, David?

1 MR. MacGREGOR: I'm looking forward to an answer
2 because that was new to me.

3 JUDGE TURNER: But the point you were trying to make
4 is?

5 THE WITNESS: Would have been made, is that if the
6 ratepayer generation was seven years, then regardless of
7 when the company was decoupled, regardless of when the
8 settlement was, there's cross-generations that are being
9 impacted, or there's one generation being impacted more than
10 others. But I'm not going to pursue that argument.

11 JUDGE TURNER: Thank you. All right. So you've had
12 my ruling. Do you accept it?

13 THE WITNESS: Yes.

14 JUDGE TURNER: Okay. In that case -- and there's
15 nothing else that you want to strike based on irrelevancy?

16 MR. MacGREGOR: No, Your Honor.

17 JUDGE TURNER: All right. Would you like to begin
18 your cross-examination of Mr. Epstein?

19 MR. MacGREGOR: Yes. I just have a few clarifying
20 questions.

21 **CROSS-EXAMINATION**

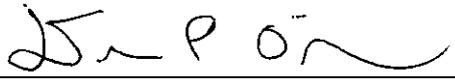
22 BY MR. MacGREGOR:

23 Q. First, Mr. Epstein, the subject of AMR, the
24 automatic meter reading project, you present a fair amount
25 of testimony on that subject. Are you opposed to the AMR

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
: **SS.**
: **COUNTY OF PHILADELPHIA** :

Denis P. O'Brien, being duly sworn according to law, deposes and says that he is the President of PECO Energy Company; that he is authorized to and does make this Affidavit for it; 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.



Denis P. O'Brien

Sworn to and subscribed before me
This 29th day of March, 2005

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MARYELLEN T. WHITE, Notary Public
City of Philadelphia, Phila. County
My Commission Expires December 2, 2008

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION MAR 24 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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Joint Applicants' Motion to Dismiss the Protest of Eric Joseph Epstein upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

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MAR 24 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

March 24, 2005

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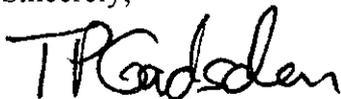
**DOCUMENT
FOLDER**

**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 each of the following: (1) Joint Applicants' Answer in Opposition to the Petition to Intervene of Eric Joseph Epstein; and (2) Joint Applicants' Motion to Dismiss the Protest of Eric Joseph Epstein. Copies of the Answer in Opposition and Motion to Dismiss have been served upon the persons and in the manner set forth in the Certificate of Service attached to each of the enclosed documents. Additional copies of this letter and of the Answer in Opposition and Motion to Dismiss are enclosed, which we request be date-stamped and returned to us as evidence of filing.

Sincerely,



Thomas P. Gadsden

Enclosures

c: Per Certificate of Service

106


BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAR 24 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

DOCKETED
AUG 03 2005

JOINT APPLICANTS' ANSWER IN OPPOSITION
TO THE PETITION TO INTERVENE OF
ERIC JOSEPH EPSTEIN

DOCUMENT
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Pursuant to 52 Pa. Code §5.61, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants) file this Answer to the Petition To Intervene of Eric Joseph Epstein.¹ As explained below, the Joint Applicants oppose Mr. Epstein's intervention because he is not a customer of PECO Energy and does not have or allege any other direct, immediate or substantial interest in this proceeding that would satisfy the Commission's well-established criteria for standing.

¹ Mr. Epstein also filed a Protest to the Joint Application. The Joint Applicants are filing a separate Motion to Dismiss Mr. Epstein's Protest, which is being filed at the same time as this Answer in Opposition.

1. Admitted. In further answer, although Mr. Epstein does not contend that his ownership of stock in Exelon Corporation (Exelon), the parent of PECO Energy, is sufficient to confer standing, it is clear that it is not. In *American Society of Utility Investors v. Pa. P.U.C.*, 54 Pa. P.U.C. 560 (1980), this Commission held that owning shares in a utility does not confer the right to participate in PUC proceedings involving that utility. Because Mr. Epstein alleges that he owns shares in the parent of PECO Energy, his interest is even farther removed from satisfying the direct, immediate and substantial standard necessary to establish standing.

2. Denied in part and admitted in part. Mr. Epstein's involvement with Three Mile Island Alert, Inc. is admitted. It is denied that his participation in a nuclear monitoring group creates a direct, immediate and substantial interest in this proceeding.

3. Denied in part and admitted in part. Mr. Epstein's involvement with the EFMR Monitoring Group is admitted. It is denied that his participation in a nuclear monitoring group creates a direct, immediate and substantial interest in this proceeding.

4. Denied as stated. Mr. Epstein's unopposed Petition to Intervene was granted 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*). However, after that Application was filed and before opposing parties submitted testimony, a comprehensive but non-unanimous settlement was achieved. Mr. Epstein supported the settlement, as evidenced by his signature on the Joint Petition for Settlement filed by the settling parties with the

Commission. At that time, PECO Energy was still a vertically integrated utility and owned electric generation, including nuclear generation. Since the conclusion of the *PECO-Unicom Proceeding*, PECO Energy, with the prior approval of the Commission, transferred all of its generation to another entity – namely, Exelon Generation Company, LLC (Exelon Generation). Moreover, even in the *PECO-Unicom Proceeding*, when one of the non-settling parties, as an alleged basis for opposing the proposed settlement, raised issues concerning the operation, safety and monitoring of the nuclear generating facilities then 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.”)² Significantly, as evidenced by Mr. Epstein’s Protest, he is seeking to intervene in this proceeding to raise just those kinds of issues.

5. Denied as stated. The settlement negotiations in the *PECO-Unicom Proceeding* were confidential, both by reason of the agreement of the parties and as a matter of public policy, and, therefore, cannot serve as a factual basis for a request to intervene in this or any other proceeding. Moreover, for the reasons set forth in the preceding paragraph, Mr. Epstein’s unopposed intervention in the *PECO-Unicom Proceeding* is not a valid basis for his intervention herein and does not alter the fact that he must establish a direct, immediate and substantial interest in the subject matter of *this* proceeding in order to be granted party status.

² Judge Rainey’s Recommended Decision was approved by the Commission in its final Order entered on June 22, 2000.

6. Admitted. However, the Nuclear Decommissioning and Waste Monitoring Agreement was assigned to Exelon Generation, which is now the owner of the nuclear generating facilities that had been owned by PECO Energy when the agreement was executed. As consequence, PECO Energy no longer has any interest in, or obligation under, that agreement.

7. Admitted. However, the fact that Mr. Epstein filed unopposed comments in support of a PECO Energy tariff supplement designed to promote the sale of wind-powered generation is not a valid basis for his intervention herein and does not alter the fact that he must establish a direct, immediate and substantial interest in the subject matter of *this* proceeding in order to be granted party status.

8. Denied as stated. Mr. Epstein's unopposed submission of comments in PECO-Energy's "Wind-Tariff" proceeding is not a valid basis for his intervention herein and does not alter the fact that he must establish a direct, immediate and substantial interest in the subject matter of *this* proceeding in order to be granted party status.

9. Denied. Mr. Epstein's unopposed participation in confidential settlement negotiations in another proceeding is not a valid basis for his intervention herein and does not alter the fact that he must establish a direct, immediate and substantial interest in the subject matter of *this* proceeding in order to be granted party status. Additionally, that proceeding did not involve the Hope Creek Generating Station, which was never owned or operated by PECO Energy.

10. Admitted in part and denied in part. The factual averments of Paragraph No. 10 are admitted. However, the Joint Applicants deny the implication that Mr. Epstein's prior experience in publishing and researching or his prior intervention in

proceedings before this Commission and the NRC provide a valid basis for his intervention in this case or in any way alter the fact that he must establish a direct, immediate and substantial interest in the subject matter of *this* proceeding in order to be granted party status.

11. Denied. It is denied that Mr. Epstein has set forth any direct, immediate and substantial interest in this proceeding based on the four issues he has identified in Paragraph No. 11 of his Petition to Intervene. Because Mr. Epstein is not a customer of PECO Energy and does not reside in its service territory, he does not have any direct, legally cognizable interest in the possible effect of the proposed merger on community investment, economic development or universal service. Furthermore, any issue as to “nuclear power production” is outside the scope of this proceeding for two reasons. First, electric generation is not subject to the jurisdiction of the Commission and, in fact, the Electricity Generation Customer Choice and Competition Act, codified in Chapter 28 of the Public Utility Code, expressly removed generation from Commission regulation. *See* 66 Pa. C.S. §2802(14) (“The generation of electricity will no longer be regulated as a public utility function . . .”). Second, any issues pertaining to the operation or safety of nuclear generating plants are outside the jurisdiction of the PUC, as this Commission has repeatedly stated. 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 or safety:

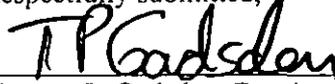
[T]he various proposals for an independent inspector are troublesome, particularly since this Commission has no jurisdiction over the safety aspects of the Saxton decommissioning program. The federal government has occupied the field of nuclear safety via the Atomic Energy Act, thus preempting state 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).

See also, PECO-Unicom Proceeding, Recommended Decision, *supra*, pp. 46-48.

12. Denied. Because the averments of Paragraph No. 12 are a statement of Mr. Epstein's subjective intent, the Joint Applicants lack knowledge or information sufficient to ascertain the truth thereof and, therefore, such averments are denied.

WHEREFORE, for the reasons set forth above, the Petition to Intervene of Eric Joseph Epstein should be denied.

Respectfully submitted,



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Dated: March 24, 2005

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COMMONWEALTH OF PENNSYLVANIA :

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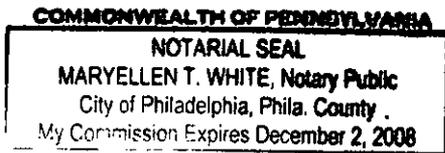
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Denis P. O'Brien, being duly sworn according to law, deposes and says that he is the President of PECO Energy Company; that he is authorized to and does make this Affidavit for it; and that the facts set forth in the foregoing Answer in Opposition 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.



Denis P. O'Brien

Sworn to and subscribed before me
This 29th day of March, 2005



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PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAR 24 2005

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SECRETARY'S BUREAU

JOINT APPLICATION OF PECO
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Docket No. A-110550F0160

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March 24, 2005

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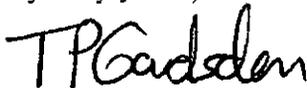
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Re: **Joint Application Of PECO Energy Company And Public Service Electric And Gas Company For Approval Of The Merger Of Public Service Enterprise Group Incorporated With And Into Exelon Corporation**
Docket No. A-110550F0160

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 Of Direct Energy. Copies of the Answer In Opposition 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 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,



Thomas P. Gadsden

Enclosures

c: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAR 24 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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NO. A-110550F0160

DOCKETED
AUG 03 2005

JOINT APPLICANTS' ANSWER IN OPPOSITION
TO THE PETITION TO INTERVENE OF
DIRECT ENERGY, LLC

Pursuant to 52 Pa. Code §5.61, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants) file this Answer to the Petition To Intervene of Direct Energy, LLC (Direct Energy). As explained below, the Joint Applicants oppose the intervention of Direct Energy because, as a natural gas supplier that provides service only in Western Pennsylvania – not in PECO Energy's service territory – it does not have a direct, immediate or substantial interest in this proceeding.

1. Denied as stated. For the reasons set forth in the Joint Application of PECO Energy and PSE&G, the proposed transaction does not constitute a change in control as defined in the Commission's Statement of Policy at 52 Pa. Code § 69.901 and is not otherwise subject to approval under Section 1102(a) of the Public Utility Code (66 Pa. C.S. §1102(a)) and, for that reason, the Joint Applicants have requested that the

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Commission issue a declaratory order to that effect or, in the alternative, approve the Joint Application.

2. Denied in part and admitted in part. Direct Energy avers that it “expects to obtain a license as an electric generation supplier in April 2005.” The Joint Applicants lack knowledge or information sufficient to ascertain the truth of Direct Energy’s averment concerning its expectations as to future licensee status, which, therefore, is denied. The balance of the averments of Paragraph No. 2 of the Petition are admitted.

3. Admitted.

4. Denied. Direct Energy is not a Natural Gas Supplier (NGS) in the service territory of PECO Energy, as Direct Energy admits in Paragraph No. 2 of its Petition, wherein it avers that it serves customers “in Western Pennsylvania.” Additionally, and as also acknowledged in Paragraph No. 2 of its Petition, Direct Energy is not currently an Electric Generation Supplier (EGS) in Pennsylvania. Moreover, although Direct Energy avers that it may attempt to obtain a license as an EGS in Pennsylvania, it does not aver that it may seek authority to function as an EGS in PECO Energy’s service territory. Furthermore, the mere possibility that Direct Energy might, at some point in the future, decide to engage in retail electric marketing in PECO Energy’s service territory is not a direct and immediate interest and, therefore, does not confer standing. Thus, in *Petition of Pike County Light & Power Company For Exception To Rate Cap Limitations*, Docket No. P-00011872 (June 22, 2001), this Commission held as follows:

Any assertion of future occurrence, (*i.e.*, IECPA members may become future customers of Pike County), does not [in] and of itself afford any entity [the] right to intervene in a proceeding. (*See, e.g., Joint Application for Approval of*

the Merger of GPU, Inc. with FirstEnergy Corp., Docket Nos. A-110300F0095, A-110400F0040 (February 21, 2001) (During interlocutory review, Commission concluded that entity who was not existing customer of the utility did not have a direct interest in the proceeding based on assertion that it might become a customer of a merger partner.).

Accordingly, Direct Energy does not have a direct, immediate and substantial interest in this proceeding and, therefore, does not have standing to intervene herein.

5. Admitted.

6. Denied. It is denied that simply because Direct Energy is an NGS in the service territory of other utilities in Western Pennsylvania it has a direct, immediate and substantial interest that will be affected by the outcome of this proceeding. Direct Energy's general interest in maintaining and promoting competitive retail markets is insufficient to satisfy the criteria for intervention in PUC proceedings. In fact, the interest asserted by Direct Energy is no different from the "abstract interest of all citizens in having others comply with the law," which the Pennsylvania Supreme Court has held is neither direct, immediate nor substantial. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 192-95, 346 A.2d 269, 280-82 (1975). As this Commission stated in *AES Beaver Valley, Inc. v. West Penn Power Company*, 58 Pa. P.U.C. 729, 730 (1985), the assertion of such general interests would be appropriate, if at all, only in "generic proceedings" before the PUC, not in a proceeding involving specific identifiable issues pertaining to a specific utility.

7. Denied. Because the averments of Paragraph No. 7 are a statement of Direct Energy's subjective intent, the Joint Applicants lack knowledge or information sufficient to ascertain the truth thereof and, therefore, such averments are denied.

WHEREFORE, for the reasons set forth above, the Petition to Intervene of Direct Energy should be denied.

Respectfully submitted,



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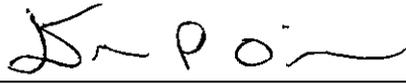
Counsel for Public Service
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Dated: March 24, 2005

AFFIDAVIT

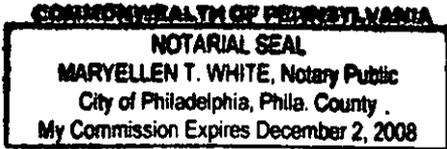
COMMONWEALTH OF PENNSYLVANIA :
: :
: : SS.
: :
COUNTY OF PHILADELPHIA :

Denis P. O'Brien, being duly sworn according to law, deposes and says that he is the President of PECO Energy Company; that he is authorized to and does make this Affidavit for it; 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.



Denis P. O'Brien

Sworn to and subscribed before me
This 29th day of March, 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

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 Of Direct Energy, LLC upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

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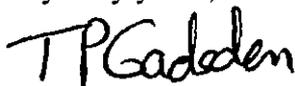
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Re: **Joint Application Of PECO Energy Company And Public Service Electric And Gas Company For Approval Of The Merger Of Public Service Enterprise Group Incorporated With And Into Exelon Corporation**
Docket No. A-110550F0160

Dear Secretary McNulty:

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

Very truly yours,



Thomas P. Gadsden

Enclosures

c: Per Certificate of Service

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied as stated. For the reasons set forth in the Joint Application of PECO Energy and Public Service Electric and Gas Company the proposed transaction does not constitute a change in control as defined in the Commission's Statement of Policy at 52 Pa. Code § 69.901 and is not otherwise subject to approval under Section 1102(a) of the Public Utility Code (66 Pa. C.S. §1102(a)). It is admitted that the subject of the Joint Application is the proposed merger of Public Service Enterprise Group with and into Exelon Corporation.

6. Denied. The averments of Paragraph No. 6 consist of statements of the Petitioners' subjective reasons for seeking to intervene in this proceeding. The Joint Applicants lack knowledge or information sufficient to ascertain the truth of those averments, which, therefore, are denied. In further answer, the "interests of [the Petitioners'] members who are employees of other subsidiaries of Exelon, including Exelon Generation LLC," which the Petitioners allege they will represent, are not within the scope of this proceeding. Such "other subsidiaries of Exelon" and, in particular, Exelon Generation, are not subject to the jurisdiction of the Commission and, in fact, the Electricity Generation Customer Choice and Competition Act, codified in Chapter 28 of the Public Utility Code, expressly removed generation from Commission regulation. *See* 66 Pa. C.S. §2802(14) ("The generation of electricity will no longer be regulated as a public utility function . . .") As a consequence, any issues pertaining to the relationship

of employees of subsidiaries other than PECO Energy to their employer are outside the scope of this proceeding.

7. Denied. The averments of Paragraph No. 7 consist of a statement of Mr. Kuders' desire to participate as both a customer of PECO Energy and in his capacity as an officer of IBEW Local 614. The Joint Applicants lack knowledge or information sufficient to ascertain the truth of Mr. Kuders' averments concerning his motivation for seeking intervention in this case and, therefore, such averments are denied. In further answer, to the extent that Mr. Kuders seeks to intervene in this proceeding to raise issues pertaining to employees of companies other than PECO Energy, such intervention is improper and should be denied for the reasons set forth in Paragraph No. 6, which are incorporated herein by reference.

8. Denied in part and admitted in part. It is admitted that no other party has sought to intervene in this proceeding on behalf of the employees of PECO Energy. In further answer, it is denied that any of the members of the Petitioners other than employees of PECO Energy have any interest that is entitled to be represented in this proceeding.

9. Denied as stated. Neither the Public Utility Code nor prior Commission precedent recognizes a generalized "interest of organized labor" that is entitled to party status in a merger, acquisition or other proceeding or that is entitled to interject issues pertaining to companies other than the utility that is the subject of the proceeding. This principle is evident in Section 2210(a)(2) of the Natural Gas Choice and Competition Act (66 Pa. C.S. §2210(a)(2)), upon which the Petitioners rely, which authorizes the

Commission to consider the effects of a proposed transaction “on *the employees of the natural gas distribution company* and on any authorized collective bargaining agent representing *those employees*” (emphasis added).

10. Admitted. In further answer, and as the Petitioners acknowledge, the Joint Application and accompanying testimony address the potential impact of the proposed transaction upon the employees of PECO Energy. PECO Energy does not contest the intervention of Local 614 or Mr. Kuders to represent the interest of employees of PECO Energy that work on natural gas distribution company operations. However, for the reasons set forth above, interventions by Petitioners representing the interests of employees of entities other than PECO Energy are improper, outside the scope of this proceeding and the jurisdiction of the Commission and should not be allowed.

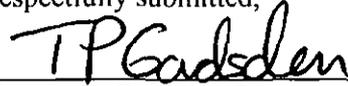
11. Denied. The averments of Paragraph No. 11 are a statement of Petitioners’ subjective intent and, as such, the Joint Applicants lack knowledge or information sufficient to ascertain the truth of those averments which, therefore, are denied.

12. Admitted.

WHEREFORE, for the reasons set forth above, the Petition to Intervene should be denied in its entirety with respect to EUCC and Local 777 of the IBEW and should be denied as to Local 614 of the IBEW and Frank Kuders to the extent that these Petitioners seek to interject into this proceeding issues pertaining to the employees of entities other

than PECO Energy or employees of PECO Energy that are not involved in natural gas distribution operations.

Respectfully submitted,



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Dated: March 24, 2005

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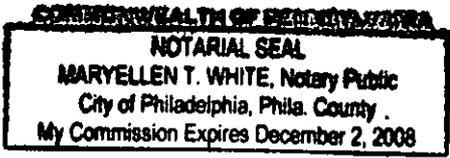
COMMONWEALTH OF PENNSYLVANIA :
: **SS.**
: **COUNTY OF PHILADELPHIA** :

Denis P. O'Brien, being duly sworn according to law, deposes and says that he is the President of PECO Energy Company; that he is authorized to and does make this Affidavit for it; 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.



Denis P. O'Brien

Sworn to and subscribed before me
This 29th day of March, 2005



**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 of Exelon Coordinated Council, 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
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Pennsylvania Public Utility Commission
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MAR 24 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

March 24, 2005

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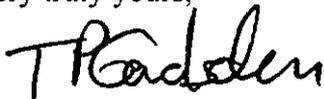
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Re: **Joint Application Of PECO Energy Company And Public Service Electric And Gas Company For Approval Of The Merger Of Public Service Enterprise Group Incorporated With And Into Exelon Corporation**
Docket No. A-110550F0160

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 Strategic Energy LLC's Petition To Intervene And Motion To Dismiss Strategic Energy LLC's Protest. Copies of the Answer In Opposition and Motion to Dismiss have been served upon the persons and in the manner set forth in the Certificate of Service attached to each of the enclosed documents. Additional copies of this letter and the Answer In Opposition and Motion to Dismiss are enclosed, which we request be date-stamped and returned to us in the stamped, self-addressed envelope we are providing.

Very truly yours,



Thomas P. Gadsden

Enclosures

c: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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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

DOCKETED
AUG 08 2005

JOINT APPLICANTS' ANSWER IN OPPOSITION
TO STRATEGIC ENERGY L.L.C.'S PETITION TO INTERVENE
AND
MOTION TO DISMISS
STRATEGIC ENERGY L.L.C.'S PROTEST

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 of Strategic Energy, L.L.C. (Strategic Energy) and Motion to Dismiss Strategic Energy's Protest.¹ As explained below, the Joint Applicants oppose the intervention of Strategic Energy and move to dismiss its Protest because both are untimely and because, by Strategic Energy's own admission, it does not serve any load in PECO Energy's service territory and, therefore, does not have a direct, immediate or substantial interest in this proceeding.

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¹ Strategic Energy combined its Petition to Intervene and Protest in a single document consisting of eleven numbered paragraphs. Consequently, the Joint Applicants will answer the specific averments set forth in the numbered paragraphs and, as part of their Answer, set forth the bases for dismissing Strategic Energy's filing if it is deemed to also constitute a "protest."

1. Admitted.

2. Admitted. In further answer, the Commission set March 7, 2005 as the deadline for the filing of protests or petitions to intervene in this proceeding. Strategic Energy's Protest and Petition to Intervene is dated March 11, 2005. Strategic Energy's Protest and Petition to Intervene is thus untimely, and Strategic Energy has not alleged any good cause for its failure to comply with the time limits established by the Commission in this case.

3. Admitted. In further answer, this Commission has held that it is afforded discretion to determine whether, and to what extent, to allow an entity to participate in proceedings before it. In addition, in exercising that discretion, this Commission has also held that it will adhere to the principles of standing and aggrievement established by Pennsylvania's appellate courts for civil and appellate proceedings. *See Landlord Service Bureau, Inc. v. Equitable Gas Company*, Docket No. C-000934801 (June 8, 1993), 1993 Pa. PUC LEXIS 54 ("The test for determining whether a party has standing, i.e., an interest in the subject matter, has been set forth by the Supreme Court in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). . . . [T]he Commission has applied the test enunciated in *William Penn Parking Garage* in determining whether complainants had standing to bring a complaint against a public utility.") Under the test established in *William Penn, supra*, an entity has standing only if it can show that its interest in the subject matter is direct, immediate and substantial.

4. Denied. Strategic Energy has failed to establish that it has a direct, immediate and substantial interest in the subject matter of this proceeding. The alleged

“reasons” for Strategic Energy’s “interest” in the proceeding, which are set forth in succeeding paragraphs of its pleading, simply identify a general interest in maintaining and enhancing the competitive retail electric market in Pennsylvania. Such a generic interest lacks the directness, immediacy and substantiality necessary to confer standing in a proceeding of this nature. In fact, the interests asserted by Strategic Energy are no different from the “abstract interest of all citizens in having others comply with the law,” which the Pennsylvania Supreme Court has held is neither direct, immediate nor substantial. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. at 192-95, 346 A.2d at 280-82 (1975). As this Commission stated in *AES Beaver Valley, Inc. v. West Penn Power Company*, 58 Pa. P.U.C. 729, 730 (1985), the assertion of such general interests would be appropriate, if at all, only in “generic proceedings” before the PUC, not in a proceeding involving specific identifiable issues pertaining to a specific utility.

5. Denied in part and admitted in part. It is admitted that Strategic Energy is a Pennsylvania licensed Electric Generation Supplier (EGS) and that it serves load of 300 kW or less in the control area of Duquesne Light Company (Duquesne) in Western Pennsylvania. In further answer, Strategic Energy does not serve any load in PECO Energy’s service territory. The balance of the averments in Paragraph No. 5 are denied. Contrary to Strategic Energy’s contention, the proposed merger will have no effect on Strategic Energy’s “ability to operate successfully” and to “offer attractive and valuable services to customers.”

6. Denied. The merger will not result in increased market power nor will it reduce retail competition in Pennsylvania. Neither PSE&G nor any of its affiliates market electricity within the Pennsylvania retail electric market and, therefore, the

proposed merger of the Joint Applicants' parent companies will have no effect on retail competition either in PECO Energy's service territory or in the service territory of Duquesne, which is the only portion of Pennsylvania in which Strategic Energy is operating. Moreover, to the extent that Strategic Energy purports to address market power in the wholesale electricity market, it should be noted that a parallel merger-review proceeding is being conducted before the Federal Energy Regulatory Commission (FERC) to address those issues, which are within the jurisdiction of that agency. The balance of the averments of Paragraph No. 6 either (1) summarize conditions that were in place before the announcement of the proposed merger and will be unchanged by it (i.e., that PECO Energy's customers are currently paying stranded costs), or (2) make assertions that are demonstrably incorrect (i.e., that PECO Energy has a "monopoly customer base"). None of those averments identifies any interest of Strategic Energy – let alone one that is direct, immediate and substantial – that would be affected by the approval of the proposed merger. To the contrary, those averments simply express Strategic Energy's general dissatisfaction with the terms and conditions of the electric industry restructuring that occurred in Pennsylvania pursuant to the Electricity Generation Customer Choice and Competition Act (the Competition Act).

7. Admitted. The averments of Paragraph No. 7 of Strategic Energy's pleading, while accurate, simply highlight the absence of any legally cognizable interest by Strategic Energy in this proceeding. As Strategic Energy admits, no affiliate of PECO Energy engages in competitive electric retail sales business in Pennsylvania and, in fact, none are even licensed to do so. Thus, Strategic Energy's claim that it has an interest in

the competitive retail electric market that could be affected by the proposed merger is undercut by the averments of its own pleading.

8. Denied in part and admitted in part. It is admitted that subsidiaries of Exelon Corporation own electric generating facilities in Pennsylvania. It is denied that such averment or any of the other averments set forth in Paragraph No. 8 state a valid basis for Strategic Energy to be granted intervention in this proceeding. Issues pertaining to market power in the wholesale market for electric generation and affiliate relationships with generation owners are matters within the jurisdiction of the FERC and are being addressed in the parallel proceeding being conducted before that agency to obtain the FERC's approval of the proposed merger.

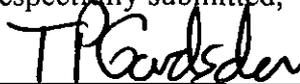
9. Denied. For all of the reasons set forth above, Strategic Energy does not have a direct, immediate or substantial interest in the subject matter of this proceeding and it has not satisfied the substantive criteria for intervention that this Commission has established.

10. Denied. Because the averments of Paragraph No. 10 of Strategic Energy's pleading are a statement of its subjective intent, the Joint Applicants lack knowledge or information sufficient to ascertain the truth thereof and, therefore, such averments are denied.

11. Admitted.

WHEREFORE, for the reasons set forth above, Strategic Energy's Petition to Intervene should be denied and its Protest should be dismissed.

Respectfully submitted,



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Dated: March 24, 2005

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COUNTY OF PHILADELPHIA :

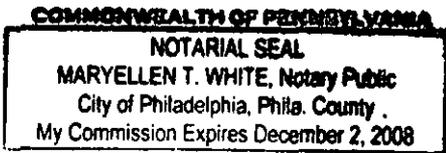
SS.

Denis P. O'Brien, being duly sworn according to law, deposes and says that he is the President of PECO Energy Company; that he is authorized to and does make this Affidavit for it; 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.



Denis P. O'Brien

Sworn to and subscribed before me
This 24th day of March 2005



**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 and Motion to Dismiss Of Strategic Energy LLC's Protest upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

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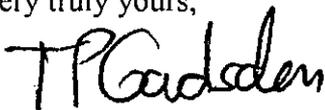
DOCUMENT
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Re: **Joint Application Of PECO Energy Company And Public Service Electric And Gas Company For Approval Of The Merger Of Public Service Enterprise Group Incorporated With And Into Exelon Corporation**
Docket No. A-110550F0160

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 Of The New Jersey Large Energy Users Coalition. Copies of the Answer In Opposition have been served upon the persons and in the manner set forth in the Certificate of Service attached to each of the enclosed documents. Additional copies of this letter and the Answer In Opposition are enclosed, which we request be date-stamped and returned to us in the stamped, self-addressed envelope we are providing.

Very truly yours,



Thomas P. Gadsden

RJP

Enclosures

c: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAR 24 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

DOCKETED
JUN 16 2005

JOINT APPLICANTS' ANSWER IN OPPOSITION
TO THE PETITION TO INTERVENE OF
THE NEW JERSEY LARGE ENERGY USERS COALITION

Pursuant to 52 Pa. Code §5.61, PECO Energy Company (PECO Energy) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants) file this Answer to the Petition To Intervene of the New Jersey Large Energy Users Coalition (the New Jersey Coalition). The Joint Applicants oppose the intervention of the New Jersey Coalition because it has no direct, immediate or substantial interest in the matters at issue in this proceeding. To the contrary, the New Jersey Coalition admits that its only interest in this case is "the potential that decisions issued in this proceeding may impact or influence the decisions of the New Jersey [Board of Public Utilities]." Such an interest is neither direct, immediate nor substantial and, therefore, cannot confer standing on the party asserting it. *AES Beaver Valley, Inc. v. West Penn Power Company*, 58 Pa. P.U.C. 729 (1985).

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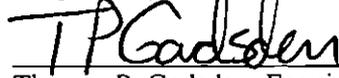
1. Admitted. However, the New Jersey Coalition has not identified its members.
2. Admitted.
3. Denied as stated. For the reasons set forth in the Joint Application of PECO Energy and PSE&G, the proposed transaction does not constitute a change in control as defined in the Commission's Statement of Policy at 52 Pa. Code § 69.901 and is not otherwise subject to approval under Section 1102(a) of the Public Utility Code (66 Pa. C.S. §1102(a)) and, for that reason, the Joint Applicants have requested that the Commission issue a declaratory order to that effect or, in the alternative, approve the Joint Application.
4. Admitted.
5. Admitted.
6. Admitted.
7. Denied. It is denied that this proceeding and the New Jersey proceeding will involve a "substantial overlap of factual and legal issues," inasmuch as there are different and separate statutory schemes in place in Pennsylvania and New Jersey and the decisions of this Commission are not binding upon the New Jersey Board of Public Utilities (New Jersey Board). Moreover, contrary to the averments of Paragraph No. 7 of the Petition, the interests alleged by the New Jersey Coalition (i.e., "that decisions issued in this proceeding may impact or influence the decisions of the New Jersey Board") do not constitute the kind of direct, immediate and substantial interests that are necessary to

confer standing. Thus, in both *AES Beaver Valley, Inc. v. West Penn Power Company*, *supra*, and *Pa. P.U.C. v. Lackawaxen Water and Sewer Company*, 55 Pa. P.U.C. 461 (1981), the Commission denied requests to intervene by entities that asserted an interest in the proceeding based on the potential precedential effect of the Commission's decisions. The interests alleged by the New Jersey Coalition are even more attenuated since a decision by this Commission could not have precedential effect in proceedings before the New Jersey Board.

8. Denied. It is denied that the participation of the New Jersey Coalition in this proceeding could be "in the public interest." Whether participation by an entity will be "in the public interest" must be assessed on the basis of criteria for standing and aggrievement established by this Commission. Prior precedent of this Commission clearly states that participation in Commission proceedings by parties that assert interests of the kind alleged by the New Jersey Coalition is not in the public interest and should not be allowed. To the contrary, the proliferation of interventions by entities with the kinds of tangential interests asserted by the New Jersey Coalition would place unwarranted burdens on the regulatory process and, thereby, make it more difficult for the Administrative Law Judge and the Commission to analyze and address issues that are within the scope of this proceeding and have properly been raised by real parties in interest.

WHEREFORE, for the reasons set forth above, the Petition to Intervene of the
New Jersey Coalition should be denied.

Respectfully submitted,



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Counsel for Public Service
Electric and Gas Company

Date: March 24, 2005

AFFIDAVIT

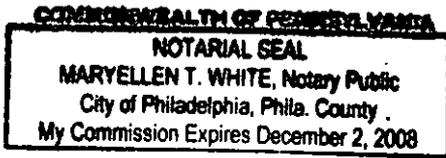
COMMONWEALTH OF PENNSYLVANIA :
:
: SS.
:
COUNTY OF PHILADELPHIA :

Denis P. O'Brien, being duly sworn according to law, deposes and says that he is the President of PECO Energy Company; that he is authorized to and does make this Affidavit for it; 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.

Denis P. O'Brien

Denis P. O'Brien

Sworn to and subscribed before me
This 27th day of March, 2005



**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 Of The New Jersey Large Energy Users Coalition 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
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VIA ELECTRONIC AND FIRST CLASS MAIL

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Counsel for New Jersey Large Energy Users Coalition

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MAR 24 2005

VIA FIRST CLASS MAIL

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SECRETARY'S BUREAU

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Thomas P. Gadsden, Esquire
Counsel for PECO Energy Company

Date: March 24, 2005

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2005 MAR 28 PM 12:02
SECRETARY'S BUREAU

STEVEN J. ENGELMYER
Direct 215.496.7230

March 24, 2005

James McNulty
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

ORIGINAL

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

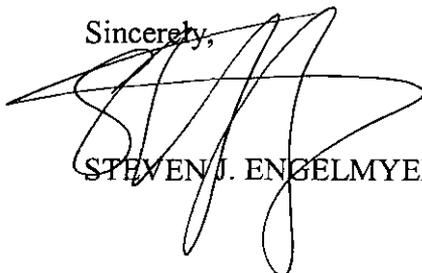
Secretary McNulty:

Enclosed for filing please find an original and four (4) copies of the Petition to Intervene of Pennsylvania Senator Anthony H. Williams, in the above-referenced matter.

In addition, we acknowledge that this filing does not conform with the filing requirements set forth by the Pennsylvania Public Utility Commission (the "PUC") in Pennsylvania Bulletin 35 Pa.B. 1401. Senator Williams regrets his inability to submit this Petition to Intervene in a timely manner due to the press of legislative business. Accordingly, Senator Williams respectfully requests the Commission to permit the submission of the enclosed Petition to Intervene pursuant to 52 Pa. Code § 1.15, which gives the PUC the authority to accept filings after the period specified in a notice.

Please date and return to me in the enclosed self-addressed stamped envelope the extra copy of the Petition to Intervene. If you have any questions with regard to this filing, please call me at 215.496.7237. Thank you for your attention to this matter.

Sincerely,


STEVEN J. ENGELMYER

DOCUMENT
FOLDER

Enclosures

BTL

{00025994;v1}

sengelmyer@kleinbard.com

www.kleinbard.com

Main 215.568.2000 Fax 215.568.0140

LAW OFFICES

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240 Claremont Avenue, Montclair, NJ 07042

113

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2005 MAR 28 PM 12:02

SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCUMENT
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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"), Senator Anthony H. Williams ("Senator Williams") hereby files this 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.

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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' district, Pennsylvania Senate District 8, spans portions of Philadelphia and Delaware counties and constitutes a population of approximately 250,000 citizens ("District 8 Residents"). He is mandated to advocate on behalf of and to ensure the welfare of his District 8 Residents.

5. Currently, PECO customers, which include District 8 Residents, 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.

6. 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.

7. 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.

8. 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.

9. 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.

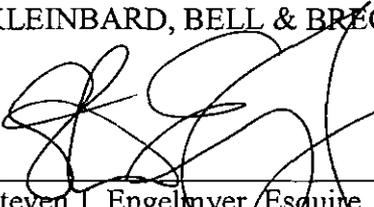
10. The decision of the Pennsylvania Public Utility Commission (the "PUC") regarding the merger will directly impact Senator Williams and District 8 Residents.

11. 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, including Pennsylvania Senate District 8, in which they affirm to maintain or exceed current levels of investments.

12. Accordingly, Senator Williams, in his capacity as representative and advocate of the District 8 Residents, has a real and substantial interest in the present proceeding.

Respectfully submitted

KLEINBARD, BELL & BRECKER LLP



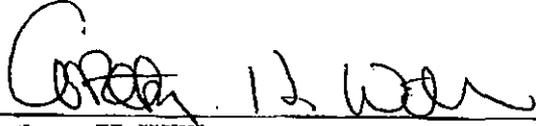
Steven J. Engelmeyer, Esquire
Kahiga A. Tiagha, Esquire
1900 Market Street; Suite 700
Philadelphia, PA 19103
215-568-2000
215-568-0140 (facsimile)

Attorneys for Senator Anthony H. Williams

Dated: March 24, 2005

VERIFICATION

I, Anthony H. Williams, hereby state that I have knowledge of the facts contained in this 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, and the statements contained therein are true and correct to the best of my knowledge, information, and belief. I affirm that I am authorized on my behalf to make this Verification, and these statements are made subject to the penalties contained in 18 U.S.C. § 4904 relating to unsworn falsification to authorities.



Anthony H. Williams

CERTIFICATE OF SERVICE

I, Kahiga A. Tiagha, hereby certify that on the 27th day of March, 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 hand delivery:

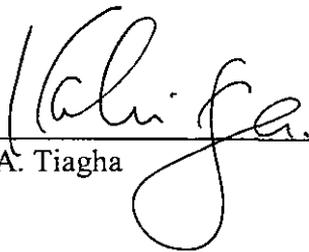
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA
17105-3265

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

March 24, 2005

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FOLDER

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

BTL

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 III) of the Office of Consumer 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,



Thomas P. Gadsden

Enclosures

c: Per Certificate of Service

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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
MAY 31 2005

**OBJECTIONS OF PECO ENERGY COMPANY AND
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
TO THE INTERROGATORIES (SET III)
OF THE OFFICE OF CONSUMER ADVOCATE**

PECO Energy Company (PECO Energy) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants), pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code §5.342, hereby object to the Interrogatories (Set III) Nos. 2, 3, 4 and 15 of the Office of Consumer Advocate and, in support of their objections, state as follows.

1. On March 7, 2005, the OCA filed a Notice of Intervention and Protest in the above-captioned proceeding.

2. On March 14, 2005, the OCA served upon PECO Energy its Interrogatories (Set III) consisting of 15 numbered questions. A copy of the Interrogatories is attached as Appendix A.

3. Question Nos. 2, 3, and 4 of the OCA's Interrogatories request information concerning employees and employment levels at entities other than PECO Energy,

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specifically, Exelon Generation Company LLC (Exelon Generation), Exelon's nuclear and trading operations.

4. Exelon Generation and the entities that conduct Exelon's nuclear and trading operations are subsidiaries of Exelon Corporation that are not parties to the Joint Application and are not subject to the jurisdiction of the Commission. In fact, the Electricity Generation Customer Choice and Competition Act, codified in Chapter 28 of the Public Utility Code, expressly removed generation from Commission regulation. *See* 66 Pa. C.S. §2802(14) ("The generation of electricity will no longer be regulated as a public utility function . . .")

5. The OCA's Interrogatory Nos. 2, 3 and 4 seek to inquire into matters that are outside the scope of this proceeding and outside the jurisdiction of this Commission. Accordingly, such interrogatories do not seek information that is relevant to any issue germane to this proceeding and, therefore, should be stricken.

6. The OCA's Interrogatory No. 15 is asked with reference to a question and answer in the PECO Statement No. 1 that refers to employees of PECO Energy. If OCA Interrogatory No. 15 is inquiring only as to employees of PECO Energy, the Joint Applicants have no objection to it. However, if the OCA intends Interrogatory No. 15 to inquire into employees of companies other than PECO Energy, the Joint Applicants object to it on the same grounds as set forth above with respect to OCA Interrogatory Nos. 2, 3 and 4.

NOW, THEREFORE, for the reasons set forth above, the Joint Applicants' Objections to the Interrogatories (Set III) Nos. 2, 3, 4 and 15 of the Office of Consumer Advocate should be sustained.

Respectfully submitted,



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Counsel for Public Service
Electric and Gas Company

Dated: March 24, 2005

APPENDIX "A"
Interrogatories (Set III)
of
The Office of Consumer Advocate

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

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

INTERROGATORIES OF THE
OFFICE OF CONSUMER ADVOCATE
SET III

Pursuant to 52 Pa. Code § 5.341, the Office of Consumer Advocate hereby propounds the following Interrogatories to PECO Energy Company, Public Service Electric and Gas Company, Public Service Enterprise Group Incorporated, and/or Exelon Corporation 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.

DATED: March 14, 2005

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 term "PECO Energy Company, Public Service Electric and Gas Company, Public Service Enterprise Group Incorporated, and/or Exelon Corporation " or "the Company," or "you," as used herein includes PECO Energy Company, Public Service Electric and Gas Company, Public Service Enterprise Group Incorporated, and/or Exelon Corporation, its attorneys, agents, employees, or other representatives.

d) As used herein the word "document" or "workpaper" 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, notes, letters, notices, confirmations, telegrams, pamphlets, notations of any sort concerning conversations, telephone calls, meetings or other communications, bulletins, transcripts, diaries, analyses, 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 on whatever medium including computerized memory or magnetic media.

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

PA Office of Consumer Advocate
Interrogatories Set III

O'Brien Testimony

1. Regarding page 4, for how long does PECO plan to keep a separate headquarters in Pennsylvania?
2. How many employees of Exelon Generating Company are there in Pennsylvania? What is the total annual direct payroll? Why is this move out of Pennsylvania being made? When is the move scheduled to take place?
3. Regarding the move of EEG's Nuclear operation from Chicago to Pennsylvania, by how many employees will this move increase employment in Pennsylvania? What will be the total annual direct payroll? When is this move scheduled to take place?
4. Regarding the combined energy trading organization, where is it located now? When will it be relocated to southeastern Pennsylvania? By how many employees will this move increase employment in Pennsylvania? What will be the total annual direct payroll? When is this move scheduled to take place?
5. Regarding page 6, please describe in greater detail how electric customers in Pennsylvania will benefit from Increased Scale, Increased Scope, and Increased Operational Diversity that could result from the merger. Specifically, provide a four-year, itemized estimate of the annual dollar savings to ratepayers in Pennsylvania for each of these merger benefits.
6. Please describe in detail how electric customers in Pennsylvania will benefit from more balanced operations, with half of the earnings and cash flow coming from unregulated operations? Provide a list of savings and a four-year itemized estimate.
7. Please provide supporting documentation for the expectation of more stable cash flow and greater earnings predictability. Include a description of how cash flow stability and earnings predictability are measured, and provide the results of the application of that measurement before and after the merger. Finally, provide an estimate of the savings to electric customers in Pennsylvania from more stable cash flows and more predictable earnings. Provide a four-year itemized estimate.

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

PA Office of Consumer Advocate
Interrogatories Set III

8. Regarding page 7, please provide additional detail on the expected benefits from Financial Strength and Flexibility. Will the merger increase (or decrease) the cost of capital to PECO? Please provide supporting documentation, and an estimate of the savings to electric customers in Pennsylvania from greater financial strength and flexibility.
9. Regarding the discussion of best practices on pages 7 and 9, please describe any benefits due to sharing of "best practice" information that accrued to PECO from its 2000 merger with Unicom. If possible, identify the particular improvement, the estimated annual savings to PECO, and the amount of savings delivered to electric customers in Pennsylvania.
10. Does the Company have any evidence that PSEG's reliability, service quality, and safety record is better than PECO's? If so, please provide.
11. If there is no evidence that PSEG's reliability, service quality, and safety record is better than PECO, how will sharing best practices improve PECO's reliability, service quality, and safety record?
12. Regarding page 10, please provide an estimate of the impact (i.e., percentage increase or decrease) of the savings identified by Mr. Arndt on PECO electric distribution rates after 2006.
13. Please discuss which specific distribution costs are expected to be lower in 2006 because of the merger, and why they will be lower.
14. Regarding page 12, does PECO intend to implement PSEG's Basic Generation Service Auction in Pennsylvania? If so, please provide a detailed estimate of the savings to electric customers in Pennsylvania from such an auction process.
15. Regarding page 12, please provide an estimate of the reductions in force. Specifically, how many employees currently working in Pennsylvania will lose their jobs as a result of the merger? What is the annual direct payroll associated with these positions?

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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 III) of the Office of Consumer Advocate 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
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Date: March 24, 2005

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March 24, 2005

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MAR 24 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 (3) copies of PPL's Prehearing Memorandum.

I have served a copy of this document on all parties to this proceeding,
as shown on the attached Certificate of Service.

Respectfully submitted,

Jesse A. Dillon

BTL

Enclosures

cc: Certificate of Service
Marlane R. Chestnut, Administrative Law Judge

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MAR 24 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

DOCKETED
JUL 8 2005

**DOCUMENT
FOLDER**

**PREHEARING CONFERENCE MEMORANDUM
OF THE PPL COMPANIES**

As directed by Administrative Law Judge Marlane R. Chestnut in the Prehearing Conference Order dated March 17, 2005, PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, the "PPL Companies") hereby submit this Prehearing Conference Memorandum in the above-captioned proceeding involving the Joint Application of PECO Energy Company ("PECO") and Public Service Electric and Gas Company ("PSE&G") (collectively, the "Joint Applicants") for approval of the merger of Public Service Enterprise Group Incorporated ("PSEG"), the corporate parent of PSE&G, with and into Exelon Corporation ("Proposed Merger"):

1. History of Proceeding.

On February 4, 2005, PECO and PSE&G filed a Joint Application asking the Commission to issue a declaratory order to that the merger of their corporate parents, PSEG and Exelon Corporation, does not require approval under Chapters 11, 22 and 28 of the Public Utility Code of Pennsylvania, or In the alternative, that the Commission grant such approvals as are necessary to permit the proposed merger to be consummated. The Joint Applications included the written testimony of witnesses in support of the filing, including the testimony William H. Hieronymus addressing the impact of the proposed merger on competition. On February 18, 2005, a notice of the proposed Merger was published in the Pennsylvania Bulletin requiring interested parties to file protests and motions to intervene on or before March 7, 2005.

In response to the February 18, 2005 notice, several parties filed notices or motions to intervene in the proceeding, including the PPL Companies, who filed a Motion to Intervene in this proceeding on March 7, 2005. On March 17, 2005, ALJ Chestnut issued an order scheduling a prehearing conference in this proceeding for March 29, 2005 and directing the parties to submit.

2. Issues to Be Addressed.

The PPL Companies intend to address the impact that the Proposed Merger will have on the proper functioning of a competitive wholesale electric electricity market in the region in which Pennsylvania is located and of a competitive retail electricity market in Pennsylvania. To address these issues, the PPL Companies will need to address the following sub-issues: (1) the relationship between the

wholesale market impacts of the Proposed Merger and the proper functioning of a fully competitive Pennsylvania retail electricity market; (2) whether the divestitures proposed by the Joint Applicants are adequate to mitigate the potential anticompetitive effects of the Proposed Merger; (3) the impact that the Joint Applicants' proposal to refuse to sell divested assets to certain entities will have on the proper functioning of a competitive wholesale electric electricity market in the region in which Pennsylvania is located and a fully competitive Pennsylvania retail electricity market and (4) whether the state of competition in the post-Proposed Merger market will increase the frequency of regulatory interference with competitive market outcomes.

3. Witnesses/Testimony.

The PPL Companies propose to present the testimony of Dr. Joseph P. Kalt and Mr. A. Joseph Cavicchi to discuss the proper functioning of a competitive wholesale electric electricity market in the region in which Pennsylvania is located and the potential impact of the proposed Merger on a fully competitive Pennsylvania retail electricity market. The PPL Companies may also present the testimony of one or more employees of PPL Corporation familiar with the Pennsylvania retail electricity market, PJM Interconnection, L.L.C. ("PJM"), the PJM transmission system, the operation of wholesale electricity markets in PJM, and the relationship of the PJM wholesale electricity market to the Pennsylvania retail electricity market.

4. Settlement Discussions.

At this time, the PPL Companies have not participated in and are not aware of any settlement discussions. However, the PPL Companies are willing to attend and participate in any such discussions.

5. Discovery.

The PPL Companies have not yet submitted any discovery requests in this proceeding, and are still in the process of formulating such discovery requests. The PPL Companies are prepared to cooperate with the other parties to avoid duplicative discovery requests.

6. Service.

The PPL Companies suggest the establishment of an electronic service list to allow the electronic submission of discovery requests, discovery responses and any pleadings that may be submitted in this proceeding. The PPL Companies note, however, if an electronic service list is established, a hard copy of all documents must still be served on the Administrative Law Judge consistent with Paragraph 4 of the Administrative Law Judge's Prehearing Conference Order.

7. Hearings.

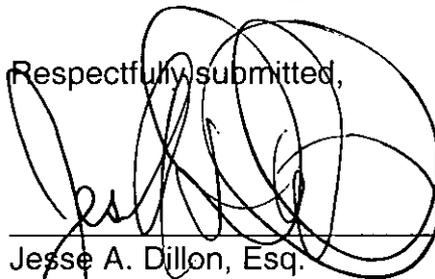
Consistent with the proposed procedural schedule provided below, the PPL Companies suggest one week of evidentiary hearings, reserving an additional week for further testimony, if necessary.

8. Procedural Schedule.

In order to facilitate the process of developing a procedural schedule, the PPL Companies propose the following:

	Date	Interval
Pre-hearing conference	March 29, 2005	
Informal Discovery Conference with Joint Applicants' witnesses	April 12, 2005	14
Intervenor and PUC Trial Staff Direct testimony	June 7, 2005	56
Conference to explore possibility of settlement	June 14, 2005	7
Intervenor/Trial Staff cross-answering testimony	July 5, 2005	21
Joint Applicants Rebuttal Testimony to intervenor and Trial Staff testimony	August 2, 2005	28
Intervenor/Trial Staff surrebuttal Testimony	August 30, 2005	28
Exchange proposed joint stipulation of issues	September 20, 2005	21
Last day for discovery requests	September 27, 2005	7
Final Joint Stipulation of Issues	October 3, 2005	6
Hearing commences (assumes 2 week of hearing)	October 18, 2005	15
Simultaneous initial briefs – all parties	November 21, 2005	34
Simultaneous reply briefs – all parties	December 12, 2005	21

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Jesse A. Dillon', written over a horizontal line. The signature is somewhat stylized and overlaps the line.

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Dated: March 24, 2005

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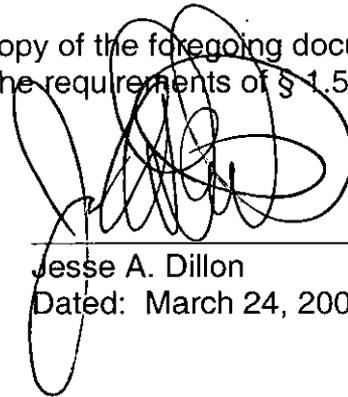
MAR 24 2005

**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

Certificate of Service

I hereby certify that on March 24, 2005, I served a copy of the foregoing document upon the active participants listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):



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Dated: March 24, 2005

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March 25, 2005

ORIGINAL

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**DOCUMENT
FOLDER**

Re: Joint Petition 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 please find an original and three copies of the Prehearing Memorandum of Exelon Utility Coordinating Council, Locals 614 and 777 of the International Brotherhood of Electrical Workers, and Frank Kuders (collectively "Labor Parties") in the above-referenced matter.

I have served a copy of this document on all parties of record, as shown on the attached Certificate of Service, as well as on the Administrative Law Judge.

I also have enclosed an additional copy of the document that I would appreciate having time-stamped and returned in the enclosed envelope.

Sincerely,


Scott J. Rubin

Enclosures

cc: Marlane R. Chestnut, Administrative Law Judge
All parties

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SECRETARY'S BUREAU

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION 2005 MAR 28 PM 12: 07

SECRETARY'S BUREAU

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 :

DOCKETED
JUL 8 2005

DOCUMENT
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PREHEARING MEMORANDUM
OF
EXELON UTILITY COORDINATING COUNCIL,
LOCALS 614 AND 777 OF THE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
AND FRANK KUDERS

Pursuant to the Prehearing Conference Order dated March 17, 2005, of Administrative Law Judge Marlane R. Chestnut, Exelon Utility Coordinating Council (EUCC), Locals 614 and 777 of the International Brotherhood of Electrical Workers (IBEW), and Frank Kuders (collectively "Labor Parties") hereby file this Prehearing Memorandum.

1. Party Identification: Labor Parties represent portions of the work force in Pennsylvania at PECO Energy Company (IBEW Local 614 and Mr. Kuders) and Exelon Generation LLC (IBEW Locals 614 and 777 and Mr. Kuders). EUCC is an ad hoc, umbrella organization for all IBEW Local Unions that represent employees of Exelon Corporation in Pennsylvania, New Jersey, and Illinois, including IBEW Locals 614 and 777. In addition to being the President of IBEW Local 614, Mr. Kuders is a residential customer of PECO Energy Company. Labor Parties filed a Petition to Intervene on March 7, 2005. Labor Parties request **active party status** and are represented by the undersigned counsel, upon whom all documents should be served.

2. Issues: Labor Parties will participate in this case to ensure that the interests of its members are fully protected and to facilitate the Commission in undertaking its obligation to consider the impact of the proposed transaction on affected employees, including the labor unions that represent those employees. See, e.g., 66 Pa. C.S. § 2210(a)(2).

3. Discovery: Labor Parties have not yet engaged in discovery.

4. Witnesses: Labor Parties have not yet determined if it will be necessary for them to file testimony. Labor Parties have identified five potential witnesses: (a) Frank Kuders, President, IBEW Local 614; (b) John Brown, Vice-President, IBEW Local 614; (c) Paul Simon, International Representative, IBEW; (d) Nick Citta, President, EUCC; and Michael Gabner, President, IBEW Local 777. If Labor Parties determine that they will file testimony, it is unlikely that all of these witnesses will be called, but Labor Parties expect that any witness or witnesses who testify will be drawn from this group of labor union officials.

5. Settlement: Labor Parties are willing to participate in settlement negotiations concerning any and all issues that affect their interests in this case.

6. Schedule: Labor Parties will work with the other parties at the Prehearing Conference to develop a schedule.

Respectfully submitted,



Scott J. Rubin
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Counsel for:
Labor Parties

Dated: March 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing upon the following parties to this proceeding by electronic mail at the email addresses shown below. Paper copies will be provided to any party at the Prehearing Conference or by first class mail, if so requested.

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Counsel for Labor Parties

Dated: March 25, 2005

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March 25, 2005

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

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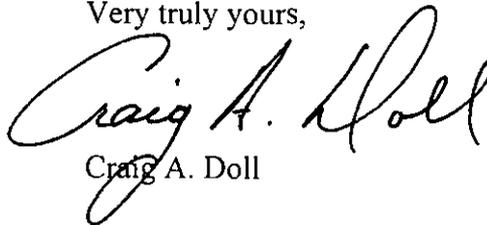
Re: Joint Application of PECO Energy Company and Public Service
Electric and Gas Company
Commission Docket Number A-110550F⁰160

Dear Secretary McNulty:

Enclosed for filing in the original and three copies of the Prehearing Memorandum of Pepco Holdings, Inc. A copy of this document has been served upon all parties of record and the presiding Administrative Law Judge, as set forth on the Certificate of Service appended to the document.

If you have any questions, please feel free to contact me.

Very truly yours,


Craig A. Doll

cc: All parties of Record
I. David Rosenstein, Esquire

BTL

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2005 MAR 25 AM 2:31
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40

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 :
Electric Group Incorporated with and Into :
Exelon Corporation :

Commission Docket Number
A-110550F0160

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PREHEARING MEMORANDUM
OF
PEPCO HOLDINGS, INC.

In accordance with the Commission's regulations at 52 Pa. Code §5.222 and the March 17, 2005 Prehearing Conference Order of the Honorable Marlene R. Chestnut, Administrative Law Judge, Pepco Holdings, Inc. ("PHI") respectfully files this Prehearing Memorandum.

I. Background

On or about February 5, 2005, PECO Energy Company and Public Service Electric and Gas Company (referred to jointly herein as "Joint Petitioners") filed a Joint Petition (the "Joint Petition") seeking approval by this Commission of the merger of Public Service PSEG Group Incorporated with Exelon Corporation. Notice of the Joint Petition was published in the Pennsylvania Bulletin of February 12, 2005, Vol. 35, No. 8, Page 1401. Pursuant to that notice, formal protests and Petitions to Intervene were due to be filed no later than March 7, 2005.

On March 2, 2005, PHI filed a Petition to Intervene requesting that PHI and its subsidiaries be permitted to participate in this proceeding. By Prehearing Conference Order dated March 17, 2005, the parties were directed to file Prehearing Memoranda on or before 12:00 noon on March 28, 2005. This Prehearing Memorandum of PHI is filed in response to that Order.

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JUL 8 2005

II. Counsel and Participants

Legal counsel for PHI in this proceeding is Craig A. Doll, Esquire. All written correspondence should be directed to the above. It would be appreciated if a copy of all testimony and interrogatory responses were forwarded to I. David Rosenstein, Esquire, Associate General Counsel, Pepco Holdings, Inc. P.O. Box 6066, Newark, DE 19714-6066 (david.rosenstein@conectiv.com) who will insure internal distribution for Pepco Holdings Inc. as necessary.

III. Issues To Be Presented

PHI is in the process of completing its review and analysis of the Joint Application and supporting documents. Based upon its current understanding of the Joint Application, PHI believes that it may address the extent to which (i) the merged entity may have market power in PJM or any PJM sub-market¹; (ii) the merger might harm competition within the PJM markets; (iii) the Joint Petitioners' mitigation plan succeeds in purging the merger of any potential anticompetitive consequences; (iv) alternative or additional mitigation to the Joint Petitioners' mitigation should be developed to protect the competitive process; (v) non-economic considerations have relevance to the merger; and (vi) whether ongoing regulatory oversight of the merged entity's impact on competition might be needed.

PHI specifically reserves the right to raise other issues depending upon the issues raised and testimony presented by other parties.

IV. Witnesses

PHI presently anticipates that it will present testimony of Dr. Charles Cicchetti in support of positions that it seeks to address. PHI specifically reserves the right to call additional

¹ For purposes of this section, PJM includes PJM as a whole and any PJM sub-market including Pennsylvania.

witnesses depending upon the issues raised and testimony presented by the other parties to this proceeding.

V. Schedule

PHI will work cooperatively with the other parties and the Presiding Officer to develop a schedule that will permit this proceeding to be decided as soon as practical.

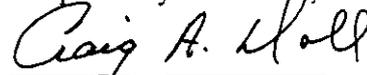
VI. Discovery

PHI anticipates conducting discovery.

VII. Settlement

PHI is willing to discuss the issues that it anticipates raising in order to further narrow or completely resolve those issues.

Respectfully submitted,



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(717) 566-9901 (fax)
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Attorney I.D. # 22814

Counsel for Pepco Holdings, Inc.
and its subsidiaries

Dated: March 25, 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Prehearing Conference Memorandum on behalf of Pepco Holdings, Inc. upon the individuals listed below, in the manner set forth, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant:

Service via E-mail and First Class Mail

Honorable Marlane R. Chestnut
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1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

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Attorney I.D. # 22814

Counsel for Pepco Holdings, Inc.
and its subsidiaries

Dated: March 25, 2005

ORIGINAL

Hawke

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

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Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart

Craig R. Burgraff
Steven D. Snyder
Janet L. Miller
Steven K. Haas
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Katherine E. Lovette

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmsk-law.com

March 25, 2005

VIA OVERNIGHT MAIL

VIA HAND DELIVERY

The Honorable Marlane R. Chestnut
Presiding Administrative Law Judge
1400 West Spring Garden Street
1302 Philadelphia State Office Building
Philadelphia, PA 19130

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor West
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;
PREHEARING CONFERENCE MEMORANDUM OF DIRECT ENERGY SERVICES, LLC

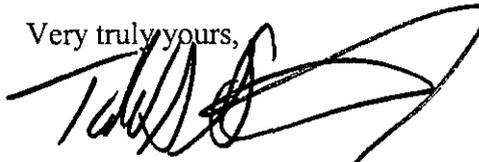
Dear Judge Chestnut and Secretary McNulty:

Enclosed, for filing with the Commission are the original and three (3) copies of the Prehearing Conference Memorandum of Direct Energy Services, LLC in the above-captioned proceeding.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

DOCUMENT
FOLDER

Very truly yours,



Todd S. Stewart
Counsel for Direct Energy, LLC

BTL

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MAR 25 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TSS:tap
Enclosures

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

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MAR 25 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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 : Docket No. A-110550F0160
Public Service Enterprise Group Incorporated :
with and Into Exelon Corporation :

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JUL 8 2005

PREHEARING CONFERENCE MEMORANDUM
OF DIRECT ENERGY SERVICES, LLC

NOW COMES Direct Energy Services, LLC ("Direct") by and through its counsel in the above-captioned matter, Hawke McKeon Sniscak & Kennard, LLP, and responds to the Presiding Administrative Law Judge's Prehearing Conference Order dated March 17, 2005. That Order required participants to submit a Prehearing Memorandum setting forth the history of the proceeding, the issues the party intends to present and a list of proposed witnesses including the subject matter of their testimony. The purpose of this Prehearing Memorandum is to comply with Your Honor's Prehearing Order.

I. Procedural History

1. On February 4, 2005, PECO Energy Company ("PECO") and Public Service Electric and Gas Company ("PSE&G") (collectively, "Joint Applicants") filed an Application seeking such approvals as may be required under the Public Utility Code, 66 Pa. C.S. §101 *et seq.*, in order to complete the merger of PSE&G with and into Exelon Corporation ("Exelon") the parent of PECO.

2. On March 4, 2005, Amerada Hess Corporation ("Amerada") petitioned to intervene in the above-captioned proceeding.

3. On March 7, 2005: 1) the Pennsylvania Office of Consumer Advocate (“OCA”) filed a Notice of Intervention and Protest; 2) Eric Joseph Epstein filed a pro se Petition to Intervene; 3) a Petition to Intervene was filed by the New Jersey Large Energy Users Coalition; 4) Direct Energy Services LLC filed its Petition to Intervene; and, 5) the PPL companies filed a Petition to Intervene.¹

4. By Notice dated March 17, 2005, this matter was assigned to the Honorable Administrative Law Judge Marlane R. Chestnut. By that same Notice a Prehearing Conference was scheduled before the Presiding Administrative Law Judge for Tuesday, March 29, 2005 and on that same date, Your Honor issued a Prehearing Conference Order.

II. Issues

5. As stated in its Motion to Intervene, Direct is a licensed natural gas supplier in Pennsylvania and expects to be granted a license as an electric generation supplier for the entire state, including PECO’s service territory, during the pendency of this proceeding.² Accordingly, and as a provider of competitive energy services throughout North America, Direct has a substantial interest in the competitiveness in the electricity and natural gas markets in Pennsylvania generally, and in PECO’s service territory in particular. The issues of particular concern to Direct are ensuring compliance with the affirmative statements of PECO that its merger will have no adverse competitive affects on either the wholesale markets within PJM or in Pennsylvania’s retail energy markets and, indeed, that the merger is likely to increase retail competition. This merger is the first significant merger of two (2) PJM utilities in the post Electricity Generation Customer Choice And

¹ Other Petitions to Intervene, Protests or Complaints may have been filed by other parties but were not served upon counsel for Direct Energy Services, LLC, and therefore, are not addressed by this procedural history.

² Direct Energy Services, LLC filed an Application for an Electric Generation Supplier for the entire Commonwealth on February 2, 2005, at Docket No. A-110164. Direct expects Commission action on its Application in April 2005.

Competition Act world, and the first involving two combined utilities. This proceeding and its outcome are particularly important because it occurs at a time when the Commission is considering the rules for provider of last resort service at the end of the transition period. Moreover, the Commission is poised to release its report to the legislature on the competitiveness of the natural gas markets in Pennsylvania. These factors serve to raise the significance of this merger on the future of competitive energy markets. Direct is concerned that the outcome of this proceeding will be precedential for other similar mergers and will have impact upon POLR service in the electricity markets in the post transition period and in the natural gas markets for many years to come. These issues will be the focus of Direct's participation in this proceeding.

III. Witnesses

6. Direct does not intend to present any witnesses of its own at this time, however, it reserves the right to call witnesses and present testimony as necessary in response to the testimony of other parties or other issues that may be raised during this proceeding.

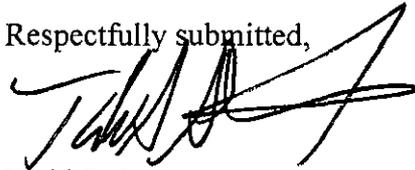
IV. Other Matters

7. Direct has not propounded any discovery nor has any discovery been propounded upon it. Direct is willing to work with the parties to develop a schedule that satisfies the needs of the parties and which is convenient for Your Honor.

8. On Thursday, March 24, 2005, Direct was served with an electronic copy of a document captioned "Joint Applicant's Answer in Opposition to the Petition to Intervene of Direct Energy, LLC." The purported basis of the Joint Applicant's opposition appears to be a view that Direct lacks standing to intervene in this matter. The Joint Applicants cite two cases related to the standing of customers to intervene in matters involving utilities of which the

Intervenors were not customers.³ These cases are clearly factually distinct because they do not address the standing of competitors, particularly as in the case at hand, where that competitor is in the process of entering the very market in question. Direct will be prepared to respond to the Answer in Opposition, if permitted to do so, either orally at the prehearing conference, or in a written submission. Direct requests that its intervention be granted, the Joint Applicant's opposition notwithstanding. Direct is aware of no other issues of concern to it that remain unresolved at this time.

Respectfully submitted,



Todd S. Stewart
Counsel for Direct Energy Services, LLC

Dated: March 25, 2005

³ *Petition of Pike County Light & Power Company for Exception to Rate Cap Limitations*, Docket No. P-00011872 (June 22, 2001); *AES Beaver Valley, Inc. v. West Penn Power Company*, 58 Pa. P.U.C. 729, 730 (1985),

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the persons named:

SERVICE BY ELECTRONIC MAIL AND FIRST CLASS MAIL

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of the International Brotherhood of Electrical
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and Frank Kuders)

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Todd S. Stewart

Dated: March 25, 2005

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Theodore H. Jobes
Direct Dial: (215) 299-2786
Internet Address: tjobes@foxrothschild.com

March 26, 2005

VIA FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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400 North Street
Harrisburg, PA 17120

**Re: Joint Application of PECO Energy Company and Public
Service Electric and Gas Company, A-110550F0160**

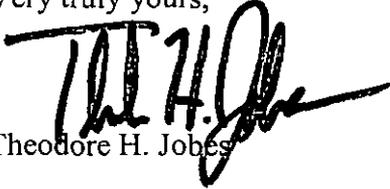
Dear Secretary McNulty:

Enclosed for filing are an original and four (4) copies of this transmittal letter and the Motion for Special Admission of Counsel seeking the admission *pro hac vice* of Steven S. Goldenberg, Esquire as co-counsel for the New Jersey Large Energy Users Coalition. Copies of the enclosed Motion are being served upon counsel for the Joint Applicants and the parties or their counsel set forth on the certificate of service.

Should you have any questions regarding the above, please call me at (215) 299-2786. Please date-stamp and return to me in the self-addressed envelope I have enclosed the extra copy of this letter and the Motion. Thank you for your cooperation.

DOCUMENT
FOLDER

Very truly yours,


Theodore H. Jobes

THJ/sf
Enclosures

KJR

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAR 26 2005

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 :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MOTION FOR SPECIAL ADMISSION OF COUNSEL

Theodore H. Jobes, Esquire respectfully moves the Pennsylvania Public Utility Commission pursuant to 52 Pa. Code § 1.22 for the special admission *pro hac vice* of Steven S. Goldenberg, Esquire in this matter, and in support thereof, represents as follows:

1. I am an attorney at law duly admitted to practice before the Supreme Court of Pennsylvania and am a member in good standing of the bar of the Commonwealth.
2. I am a partner in the law firm of Fox Rothschild LLP and am counsel of record representing the New Jersey Large Energy Users Coalition in this matter.
3. Steven S. Goldenberg, Esquire is associated with me in this matter and seeks admission *pro hac vice* on behalf of the New Jersey Large Energy Users Coalition.
4. Steven S. Goldenberg, Esquire is a partner of the law firm of Fox Rothschild LLP, practicing at the firm's Princeton, New Jersey office, and is duly qualified to practice in the courts of New Jersey and New York. He is a member in good standing of each of the above-listed courts and is not under suspension or disbarment by any court. The supporting affidavit of Steven S. Goldenberg, Esquire is attached hereto as "Exhibit A."

DOCKETED
MAY 13 2005

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5. The admission of Steven S. Goldenberg, Esquire will materially advance the conduct of this matter on behalf of the New Jersey Large Energy Users Coalition and will prejudice no one.

WHEREFORE, Theodore H. Jobes, Esquire respectfully requests that the Pennsylvania Public Utility Commission specially admit Steven S. Goldenberg, Esquire *pro hac vice* on behalf of the New Jersey Large Energy Users Coalition in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theodore H. Jobes', written over a horizontal line.

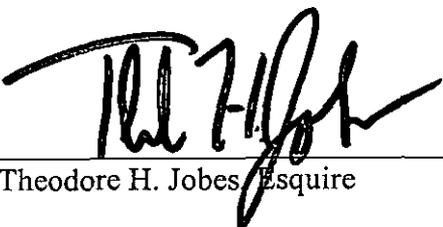
Theodore H. Jobes, Esquire
FOX ROTHSCHILD LLP
2000 Market Street, Tenth Floor
Philadelphia, PA 19103
(215) 299-2000

Attorney for the New Jersey
Large Energy Users Coalition

Dated: March 26, 2005

VERIFICATION

I, Theodore H. Jobs, Esquire do hereby verify and state that the factual statements contained in the foregoing Motion for Special Admission of Counsel are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.



Theodore H. Jobs Esquire

Dated: March 26, 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

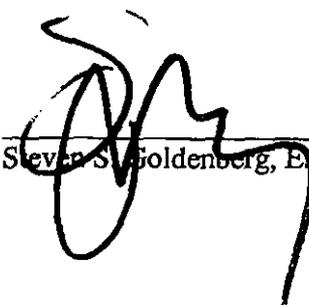
JOINT APPLICATION OF PECO ENERGY :
COMPANY AND PUBLIC SERVICE :
ELECTRIC AND GAS COMPANY :
FOR APPROVAL OF THE MERGER : Docket NO. A-110550F0160
OF PUBLIC SERVICE ENTERPRISE :
GROUP INCORPORATED WITH AND :
INTO EXELON CORPORATION :

**AFFIDAVIT OF STEVEN S. GOLDENBERG, ESQUIRE
IN SUPPORT OF MOTION FOR SPECIAL ADMISSION OF COUNSEL**

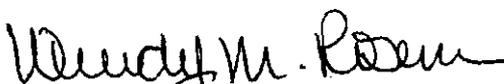
Steven S. Goldenberg, Esquire being duly sworn, deposes and says:

1. I am a member in good standing of the bar of the courts of New Jersey and New York, having been admitted to practice in 1981.
2. I am a partner with the law firm of Fox Rothschild LLP and practice at the firm's Princeton, New Jersey office which is located at Princeton Pike Corporate Center, 997 Lenox Drive, Building 3, Lawrenceville, NJ 08648-2311. My telephone number is (609) 896-4586.
3. I have previously represented the New Jersey Large Energy Users Coalition in other matters and am presently associated with Theodore H. Jobes, Esquire in this matter.
4. The New Jersey Large Energy Users Coalition desires that I participate in the trial and all other phases of this matter in Pennsylvania.
5. I understand that I will be bound by the Pennsylvania rules of procedure and professional conduct.

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 25 DAY OF March 2005



Steven S. Goldenberg, Esquire


Wendy M. Rosen
Attorney at Law
State of New Jersey
PHI 701174v2 03/24/05

**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 :

ORDER

AND NOW, this _____ day of March, 2005, upon consideration of the Motion of Theodore H. Jobes, Esquire, for Special Admission of Steven S. Goldenberg, Esquire in this matter, and for good cause shown, it is hereby ORDERED:

1. that Steven S. Goldenberg, Esquire be and hereby is admitted *pro hac vice* to the bar of the Commonwealth of Pennsylvania under 52 Pa. Code § 1.22, as co-counsel on behalf of the New Jersey Large Energy Users Coalition in this matter;
2. that Steven S. Goldenberg, Esquire shall abide by the rules of the Pennsylvania Public Utility Commission, including all disciplinary rules;
3. that Steven S. Goldenberg, Esquire shall immediately notify the Pennsylvania Public Utility Commission of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and
4. Theodore H. Jobes, Esquire, the moving party herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of the New Jersey Large Energy Users Coalition.

BY THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION:

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of March, 2005, served a copy of the foregoing Motion for Special Admission of Counsel, in the manner indicated below, in accordance with the requirements of 52 Pa. Code § 1.54, *et seq.* (relating to service by a participant) upon the following:

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

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

Daniel Clearfield, Esquire
Wolf, Block, Schorr & Solis-Cohen
2 Locust Street, Suite 300
Harrisburg, PA 17101

(Public Service Electric and Gas Company)

Paul Bonney, Esquire
PECO Energy 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, NY 07102

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

RECEIVED

MAR 26 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

(Counsel for PECO Energy Company)

VIA ELECTRONIC MAIL AND FIRST CLASS UNITED STATES MAIL

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Craig Doll, Esquire
25 West Second Street
P.O. Box 403
Hummelstown, PA 17036-0403

(Pepco Holdings, Inc. and subsidiaries)

(Philadelphia Area Industrial Energy Users
Group)

Charles McPhedran, Esquire
Citizens for Pennsylvania's Future
1518 Walnut Street, Suite 1100
Philadelphia, PA 19102

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

Tanya J. McCloskey, Esquire
James Mullins, Esquire
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Harrisburg, PA 17101

Jesse A. Dillon, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101

Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870-9357

(Exelon Utility Coordinated Council Locals 614
and 777 of the International Brotherhood of
Electrical Workers, and Frank Kuders)

Carolyn D. Commons, Esquire
Commons & Commons LLP
2967 W. School House Lane, #1210
Philadelphia, PA 19144

(Energy Coordinating Agency of Philadelphia,
Inc.)

Daniel W. Cantu'-Hertzler, Esquire
Darlene D. Heep, Esquire
City of Philadelphia
Law Department
One Parkway Building, 16th Floor
1515 Arch Street
Philadelphia, PA 19102-1595

Kenneth L. Mickens, Esquire
Robert V. Eckenrod, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

Todd S. Stewart, Esquire
Hawke, McKeon, Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
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(Direct Energy Services, LLC)

Jan P. Paden, Esquire
David W. Francis, Esquire
Rhoads & Sinon LLP
One South Market Square
P.O. Box 1146
Harrisburg, PA 17108-1146

(Amerada Hess Corporation)

W. Edwin Ogden, Esquire
Ryan, Russell, Ogden & Seltzer
1105 Berkshire Boulevard, Suite 330
Wyomissing, PA 19610-1222

Julie Coletti, Esquire
Strategic Energy, LLC
Two Gateway Center
Pittsburgh, PA 15222

(Metropolitan Edison Company, Pennsylvania
Electric Company, Pennsylvania Power
Company, FirstEnergy Solutions, Corp.)

Jonathan M. Stein, Esquire
Philip A. Bertocci, Esquire
Thu B. Tran, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102

Roger E. Clark, Esquire
The Reinvestment Fund
718 Arch Street, Suite 300 North
Philadelphia, PA 19106-1591

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



Theodore H. Jobs
FOX ROTHSCHILD LLP
2000 Market Street – 10th Floor
Philadelphia, PA 19103-3291
(215) 299-2088

James J. McNulty, Secretary

March 26, 2005

Page 2

cc: Honorable Marlane R. Chestnut (w/encl.) (via electronic mail and Federal Express)
Paul R. Bonney, Esq. (w/encl.) (via electronic mail and Federal Express)
Daniel Clearfield, Esq. (w/encl.) (via electronic mail and Federal Express)
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Anthony C. DeCusatis, Esq. (w/encl.) (via electronic mail and Federal Express)
Barnett Satinsky, Esq. (w/encl.)
Steven S. Goldenberg, Esq. (w/encl.)
Paul F. Forshay, Esq. (w/encl.)
All parties of record as set forth on the certificate of service

2000 MARKET STREET • TENTH FLOOR • PHILADELPHIA, PA 19103-3291
215.299.2000 • FAX 215.299.2150 • www.foxrothschild.com

RECEIVED

MAR 26 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Theodore H. Jobs
Direct Dial: (215) 299-2786
Internet Address: tjobs@foxrothschild.com

March 26, 2005

VIA FEDERAL EXPRESS

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

DOCUMENT
FOLDER

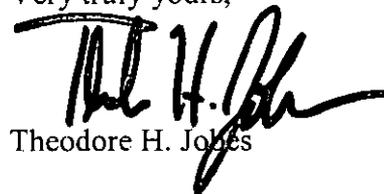
**Re: Joint Application of PECO Energy Company and Public
Service Electric and Gas Company, A-110550F0160**

Dear Secretary McNulty:

Enclosed for filing are an original and four (4) copies of this transmittal letter and the Motion for Special Admission of Counsel seeking the admission *pro hac vice* of Steven S. Goldenberg, Esquire as co-counsel for the Mid-Atlantic Power Supply Association. Copies of the enclosed Motion are being served upon counsel for the Joint Applicants and the parties or their counsel set forth on the certificate of service.

Should you have any questions regarding the above, please call me at (215) 299-2786. Please date-stamp and return to me in the self-addressed envelope I have enclosed the extra copy of this letter and the Motion. Thank you for your cooperation.

Very truly yours,



Theodore H. Jobs

THJ/sf
Enclosures

James J. McNulty, Secretary

March 26, 2005

Page 2

cc: Honorable Marlane R. Chestnut (w/encl.) (via electronic mail and Federal Express)
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Steven S. Goldenberg, Esq. (w/encl.)
Paul F. Forshay, Esq. (w/encl.)
All parties of record as set forth on the certificate of service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAR 26 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

DOCKETED
AUG 02 2005

MOTION FOR SPECIAL ADMISSION OF COUNSEL

Theodore H. Jobes, Esquire respectfully moves the Pennsylvania Public Utility Commission pursuant to 52 Pa. Code § 1.22 for the special admission *pro hac vice* of Steven S. Goldenberg, Esquire in this matter, and in support thereof, represents as follows:

1. I am an attorney at law duly admitted to practice before the Supreme Court of Pennsylvania and am a member in good standing of the bar of the Commonwealth.
2. I am a partner in the law firm of Fox Rothschild LLP and am counsel of record representing the Mid-Atlantic Power Supply Association in this matter.
3. Steven S. Goldenberg, Esquire is associated with me in this matter and seeks admission *pro hac vice* on behalf of the Mid-Atlantic Power Supply Association.
4. Steven S. Goldenberg, Esquire is a partner of the law firm of Fox Rothschild LLP, practicing at the firm's Princeton, New Jersey office, and is duly qualified to practice in the courts of New Jersey and New York. He is a member in good standing of each of the above-listed courts and is not under suspension or disbarment by any court. The supporting affidavit of Steven S. Goldenberg, Esquire is attached hereto as "Exhibit A."

DOCUMENT
FOLDER
DOCUMENT
FOLDER

5. The admission of Steven S. Goldenberg, Esquire will materially advance the conduct of this matter on behalf of the Mid-Atlantic Power Supply Association and will prejudice no one.

WHEREFORE, Theodore H. Jobes, Esquire respectfully requests that the Pennsylvania Public Utility Commission specially admit Steven S. Goldenberg, Esquire *pro hac vice* on behalf of the Mid-Atlantic Power Supply Association in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theodore H. Jobes', written over a horizontal line.

Theodore H. Jobes, Esquire
FOX ROTHSCHILD LLP
2000 Market Street, Tenth Floor
Philadelphia, PA 19103
(215) 299-2000

Attorney for the New Jersey
Large Energy Users Coalition

Dated: March 26, 2005

VERIFICATION

I, Theodore H. Jobes, Esquire do hereby verify and state that the factual statements contained in the foregoing Motion for Special Admission of Counsel are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.



Theodore H. Jobes, Esquire

Dated: March 26, 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT APPLICATION OF PECO ENERGY :
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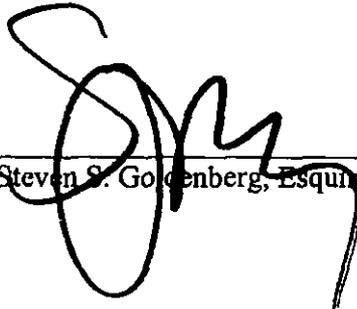
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5. I understand that I will be bound by the Pennsylvania rules of procedure and professional conduct.

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 25 DAY OF March, 2005

Wendy M. Green
Attorney at Law
State of New Jersey

PH1 007700v1 03/24/05



Steven S. Goldenberg, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT APPLICATION OF PECO ENERGY :
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FOR APPROVAL OF THE MERGER : Docket NO. A-110550F0160
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ORDER

AND NOW, this ____ day of March, 2005, upon consideration of the Motion of Theodore H. Jobes, Esquire, for Special Admission of Steven S. Goldenberg, Esquire in this matter, and for good cause shown, it is hereby ORDERED:

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2. that Steven S. Goldenberg, Esquire shall abide by the rules of the Pennsylvania Public Utility Commission, including all disciplinary rules;
3. that Steven S. Goldenberg, Esquire shall immediately notify the Pennsylvania Public Utility Commission of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and
4. Theodore H. Jobes, Esquire, the moving party herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of the *Mid-Atlantic Power Supply Association*.

BY THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION:

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of March, 2005, served a copy of the foregoing Motion for Special Admission of Counsel, in the manner indicated below, in accordance with the requirements of 52 Pa. Code § 1.54, *et seq.* (relating to service by a participant) upon the following:

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Newark, NY 07102

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

(Counsel for PECO Energy Company)

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Jesse A. Dillon, Esquire
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3 Lost Creek Drive
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(Exelon Utility Coordinated Council Locals 614
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Electrical Workers, and Frank Kuders)

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Commons & Commons LLP
2967 W. School House Lane, #1210
Philadelphia, PA 19144

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City of Philadelphia
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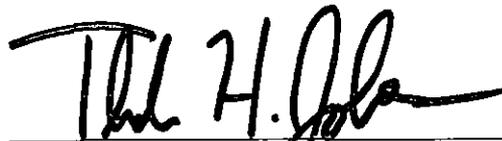
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(Action Alliance of Senior Citizens of Greater
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Theodore H. Jobs
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(215) 299-2088

Theodore H. Jobs
Direct Dial: (215) 299-2786
Internet Address: tjobs@foxrothschild.com

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MAR 26 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

March 26, 2005

VIA FEDERAL EXPRESS

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

DOCUMENT
FOLDER

**Re: Joint Application of PECO Energy Company and Public
Service Electric and Gas Company, A-110550F0160**

Dear Secretary McNulty:

Enclosed for filing are an original and four (4) copies of this transmittal letter and the Mid-Atlantic Power Supply Association's Protest to the Application for Approval of the Merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation in the above matter. Copies of the enclosed Protest are being served upon counsel for the Joint Applicants and the parties or their counsel set forth on the certificate of service.

Should you have any questions regarding the above, please call me at (215) 299-2786. Please date-stamp and return to me in the self-addressed envelope I have enclosed the extra copy of this letter and the Protest. Thank you for your cooperation.

Very truly yours,



Theodore H. Jobs

THJ/sf
Enclosures

James J. McNulty, Secretary

March 26, 2005

Page 2

cc: Honorable Marlane R. Chestnut (w/encl.) (via electronic mail and Federal Express)
Paul R. Bonney, Esq. (w/encl.) (via electronic mail and Federal Express)
Daniel Clearfield, Esq. (w/encl.) (via electronic mail and Federal Express)
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Thomas P. Gadsden, Esq. (w/encl.) (via electronic mail and Federal Express)
Anthony C. DeCusatis, Esq. (w/encl.) (via electronic mail and Federal Express)
Barnett Satinsky, Esq. (w/encl.)
Steven S. Goldenberg, Esq. (w/encl.)
Paul F. Forshay, Esq. (w/encl.)
All parties of record as set forth on the certificate of service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAR 26 2005

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 :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKETED
AUG 02 2005

**THE MID-ATLANTIC POWER SUPPLY ASSOCIATION'S PROTEST TO THE
APPLICATION FOR APPROVAL OF THE MERGER OF PUBLIC SERVICE
ENTERPRISE GROUP INCORPORATED WITH AND INTO EXELON CORPORATION**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to the provisions of 52 Pa. Code §§ 5.51 and 5.52, the Mid-Atlantic Power Supply Association ("MAPSA"), whose members include licensed electric and natural gas suppliers that are active within the PECO Energy Company ("PECO") service territory, hereby files this Protest, *nunc pro tunc*, in the above-captioned proceeding. In support thereof, MAPSA states as follows:

1. This Protest is brought on behalf of MAPSA, a trade association that is comprised of electric and natural gas suppliers duly licensed by the Pennsylvania Public Utility Commission (the "Commission"), independent power producers, and a broad range of companies active within the Mid-Atlantic energy markets. MAPSA's members currently provide retail electric and natural gas service to commercial and industrial customers located within the PECO service territory. A listing of MAPSA's members is attached as Schedule "A" to this Protest.

2. The names and addresses of MAPSA's attorneys are:

**DOCUMENT
FOLDER**

Barnett Satinsky
Theodore H. Jobes
FOX ROTHSCHILD LLP
2000 Market Street – 10th Floor
Philadelphia, PA 19103-3291
Phone: 215-299-2088
Fax: 215-299-2150

Steven S. Goldenberg
FOX ROTHSCHILD LLP
Princeton Pike Corporate Center
997 Lenox Drive
Building 3
Lawrenceville, NJ 08648-2311
Phone: 609-896-4586
Fax: 609-896-1469

Paul F. Forshay
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: 202-383-0100
Fax: 202-637-3593

3. By Joint Application dated February 4, 2005, PECO, a wholly owned subsidiary of Exelon Corporation (“Exelon”) and Public Service Electric and Gas Company (“PSE&G”) (collectively, “Joint Applicants”) seek approval by the Commission of the merger of Public Service Enterprise Group Incorporated (“PSEG”), the corporate parent of PSE&G, with and into Exelon.

4. MAPSA formed, in part, to monitor regulatory proceedings involving Pennsylvania’s electric and natural gas utilities, including PECO, and intervene in such regulatory proceedings to the extent necessary to represent its members’ common interests. MAPSA’s members market electricity and natural gas to large end-use customers in the PECO service territory and purchase energy and capacity either directly from PECO or in the PJM wholesale market. They will, therefore, be substantially and specifically affected by the outcome of this proceeding.

5. MAPSA has a unique perspective and insight regarding the potential impact, on marketers and the customers they serve, of the relief that is sought by Joint Applicants in this proceeding. Fundamental fairness and due process considerations require that MAPSA be

afforded an opportunity to intervene in this proceeding, the outcome of which will have a significant impact on the competitiveness of the relevant wholesale electric and natural gas markets and, in turn, the retail cost of electricity and natural gas in the PECO service territory.

6. The interests of MAPSA's members as competitors and customers of the Joint Applicants are substantially different from those of any other party to this proceeding. Therefore, MAPSA's interests in this proceeding are unique on both a quantitative and qualitative basis.

7. MAPSA's entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as competitors and customers of the Joint Applicants. MAPSA's entry as a party would promote an informed and balanced development and presentation of the issues in this significant proceeding.

8. MAPSA is currently in the process of formulating its positions with respect to the various aspects of the Joint Application. However, as a threshold matter, MAPSA has several concerns regarding the Joint Application and submits that the Commission should carefully consider the following issues, among others:

a. The Joint Application does not satisfy Joint Applicants' statutory burden to demonstrate that the Commission's approval is "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a). In particular, the Joint Application does not demonstrate that the proposed merger will promote the public interest in some substantial way. *See City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825 (1972). Among other concerns:

- As the Joint Applicants have acknowledged, Exelon Electric & Gas, the company to be created by this merger, would be the nation's largest utility, with total assets of approximately \$79 billion and serving 9 million electric and natural gas customers in

Illinois, New Jersey and Pennsylvania. Of significant concern to MAPSA is the fact that this combination would create a utility with a generation portfolio of approximately 52,000 megawatts of capacity, making the combined company the nation's largest power generator and a formidable wholesale power marketer. The proposed merger could cause substantial changes in the already *constrained relevant wholesale generation market that could* adversely affect the prices at which MAPSA's members acquire energy from PECO or within PJM, and their ability to supply low cost power to commercial and industrial customers located within the PECO service territory.

- In the Joint Application, Joint Applicants acknowledge that the merger will substantially increase the concentration of generating assets in the relevant marketplace, thereby raising concerns about horizontal market power that could impact the electric markets. The significant concentration of generating assets that would result from the merger of PSE&G and Exelon could adversely affect the cost of energy and capacity, together with congestion "rents", unless Joint Applicants' market power is mitigated.
- Joint Applicants acknowledge that in the absence of significant mitigation measures, the proposed combination of Exelon and PSE&G and their generation subsidiaries would "raise serious market power issues." Joint Applicants further acknowledge that the merger would result in concentrations of generation that exceed the merger guidelines established by the Department of Justice and Federal Trade Commission in all three of Joint Applicants' service territories and during all time periods studied. [Direct Testimony of William A. Hieronymus] Joint Applicants propose to mitigate their acknowledged market power by divestiture of certain unidentified peaking and mid-merit generating plants, and "virtual" divestiture of a portion of its nuclear baseload generation through an auction process. MAPSA's members have significant concerns regarding the Joint Applicants' divestiture proposals and whether they will, in fact, have the intended effect of mitigating Joint Applicants' significant market power.
- While Joint Applicants claim that the proposed merger will benefit competition in the wholesale and retail markets, Joint Applicants offer only generalized testimony in support of their assertions. MAPSA's members, as competitors of the Joint Applicants, have significant concerns that the merger will, in fact, adversely affect competition in the Joint Applicants' respective service territories and, in particular, the PECO service territory in which retail competition has yet to be firmly established.

b. The Pennsylvania Electricity Generation Customer Choice and Competition Act, Section 2210 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2811, states, in pertinent part:

(e) Approval of proposed mergers, consolidations, acquisitions or dispositions. --

(1) 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.

(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.

c. Similarly, the Pennsylvania Natural Gas Choice and Competition Act, Section 2210 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2210, states, in pertinent part:

(a) General rule. -- In the exercise of authority the commission otherwise may have to approve mergers or

consolidations involving natural gas distribution companies or natural gas suppliers or the acquisition or disposition of assets or securities of natural gas distribution companies or natural gas suppliers, the commission shall consider:

(1) 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 gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market.

The Joint Application does not satisfy the statutory standards in 66 Pa. C.S. §§ 2210 and 2811. Among other concerns:

- The merger as proposed by Joint Applicants in the Joint Application is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of horizontal and vertical market power, which will prevent market participants from obtaining the benefits of properly functioning and effectively competitive retail electric and natural gas markets.
- The mitigation proposal set forth in the Joint Application fails to adequately address or remedy the anticompetitive or discriminatory conduct or effects of the proposed merger as it relates to the retail electric and natural gas markets.
- The Joint Applicants' admitted market power that would result from the merger, if not properly mitigated, will adversely affect the competitiveness of the PJM wholesale market, which will have a corresponding impact on the prices at which MAPSA's members will be able to purchase, and thereafter sell, capacity and energy to end use customers in the PECO service territory.
- The market power mitigation devices identified in the Joint Application fail to adequately address or remedy the anticompetitive or discriminatory conduct or effects of the proposed merger on the retail electric and natural gas markets.
- Among other things, the Joint Application fails to set forth the identity and location of those plants that are proposed to be divested and whether the divestiture of these facilities is sufficient to fully mitigate the significant market power concentration that Joint Applicants concede would result from the merger. Nor does the Joint Application contain any commitment

to improve Joint Applicant's transmission assets as a further means to alleviate market power concerns.

- A significant issue exists whether the "virtual" divestiture of a portion of the Joint Applicants' baseload nuclear generation is a viable mitigation measure.
- A significant issue exists whether Joint Applicants will have the ability to leverage their considerable gas capacity portfolio to benefit Joint Applicants' electric generation assets to the detriment of their customers and competitors.
- While the Joint Applicants suggest that the proposed merger will have a favorable impact on competition in the relevant wholesale and retail markets, the Joint Application lacks specificity in this regard. Moreover, although the Joint Application describes expected improvements to the Joint Applicants' combined computer systems, there is no mention how those systems will be utilized to improve the quality of the "interfaces" between the Joint Applicants and marketers in such areas as the provision of timely access to quality customer data, and improvements to Electronic Data Interchange capabilities, both of which are critical to the development of a robust competitive marketplace.

d. Joint Applicants have failed to demonstrate that the proposed merger is in the public interest because, *inter alia*, it fails to adequately address and/or commit to improvements that would provide substantial benefit to the public in (a) the generation, transmission and distribution of electricity, (b) the distribution of natural gas, (c) the expansion of retail competition in the PECO service territory, and (d) improved service quality.

e. Joint Applicants' proposed merger is otherwise not in the public interest.

9. For the foregoing reasons, and because the retail electric and natural gas markets in which MAPSA's members compete, and the cost and quality of service to their customers in the PECO service territory will be directly and substantially affected by the issues to be determined in this proceeding, the Commission's disposition of the Joint Application will impact MAPSA's members and directly affect their interests. As a result, MAPSA has a direct, immediate and substantial interest in the outcome of this proceeding that is not adequately

represented by any other party of record, and as to which MAPSA may be bound by the action of the Commission in this proceeding.

10. MAPSA's interests in this proceeding are also of such a nature that the participation of MAPSA may be in the public interest, given its members' competitive posture with Joint Applicants and relationships with end-users in the PECO service territory.

11. Notwithstanding its unique interests, where it is possible and practical for it to do so, MAPSA will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

12. MAPSA acknowledges that the deadline established for intervention in this proceeding was March 7, 2005. However, it has been held that intervention may be granted *nunc pro tunc* in contested matters for good cause shown. The "good cause" requirement has been liberally interpreted, particularly in situations such as this where the grant of intervention will not delay the orderly progress of the case, significantly broaden the issues, or shift the burden of proof. *See, Application of Penn Access Corporation*, 1992 Pa. P.U.C. LEXIS 56; and *Ray Milton Transportation, Inc.*, 56 Pa. P.U.C. 623 (1982).

13. It is submitted respectfully that MAPSA's request for intervention satisfies these requirements. Because this matter is merely in its incipient stages, with a procedural schedule yet to be established, no party will be prejudiced by the granting of this motion *nunc pro tunc*. MAPSA's inability to comply with the March 7 deadline was caused, in large measure, by the fact that its regular Pennsylvania counsel, Daniel Clearfield of Wolf, Block, Schorr & Solis-Cohen, has a conflict in that he now appears as counsel to PSE&G in this proceeding. Accordingly, it was necessary for MAPSA to obtain substitute counsel to represent it in this matter.

14. In addition, in this proceeding, MAPSA will seek to align itself with certain of PECO's large end-use customers. The approval of these customers' respective managements to intervene in this matter could not be obtained by the intervention deadline, but should occur in the near future. With the Commission's indulgence, MAPSA will identify these customers as management approvals are obtained, with the understanding that the customers would in all respects step into the shoes of MAPSA as aligned parties in that they would (a) comply with all orders and procedural schedules that are established in this proceeding, (b) retain common expert witnesses and (c) engage in common discovery and trial practices.

WHEREFORE, the Mid-Atlantic Power Supply Association respectfully requests that the Pennsylvania Public Utility Commission:

(a) permit MAPSA to participate, with full party status and with full procedural and substantive rights, in this proceeding;

(b) deny the Joint Application dated February 4, 2005 pursuant to which PECO and PSE&G seek approval by the Commission of the merger of PSEG with and into Exelon; or

(c) assuming the Commission grants the Joint Application after hearing and initial decision by the Administrative Law Judge, impose such conditions on the Joint Applicants as the Commission may deem to be just and reasonable, including, but not limited to, binding commitments to (i) address the issues identified in this Protest; and (ii) assure that the merger will not adversely affect the competitive wholesale and retail markets for electricity and natural

gas in Pennsylvania, or the cost of electricity and natural gas in the PECO service territory.

Respectfully submitted,



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Attorneys for Mid-Atlantic Power
Supply Association

Dated: March 25, 2005

SCHEDULE A

Members of the Mid-Atlantic Power Supply Association

Amerada Hess Corporation

Centrica/Direct Energy

Constellation NewEnergy

Reliant Energy Solutions

Sempra Energy Solutions

Strategic Energy, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of March, 2005, served a copy of the Mid-Atlantic Power Supply Association's Protest to the Application for Approval of the Merger of Public Service Enterprise Group Incorporated With and Into Exelon Corporation, in the manner indicated below, in accordance with the requirements of 52 Pa. Code § 1.54, *et seq.* (relating to service by a participant) upon the following:

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MAR 26 2005

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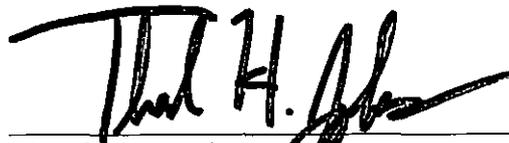
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FOLDER

March 26, 2005

VIA FEDERAL EXPRESS

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MAR 26 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

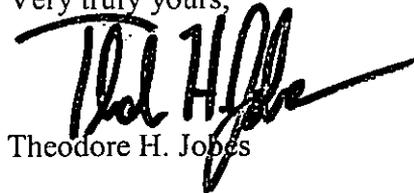
**Re: Joint Application of PECO Energy Company and Public
Service Electric and Gas Company, A-110550F0160**

Dear Secretary McNulty:

Enclosed for filing are an original and four (4) copies of this transmittal letter and the Prehearing Memorandum of the Mid-Atlantic Power Supply Association to Administrative Law Judge Marlane R. Chestnut. Copies of the enclosed Prehearing Memorandum are being served upon counsel for the Joint Applicants and the parties or their counsel set forth on the certificate of service.

Should you have any questions regarding the above, please call me at (215) 299-2786. Please date-stamp and return to me in the self-addressed envelope I have enclosed the extra copy of this letter and the Prehearing Memorandum. Thank you for your cooperation.

Very truly yours,



Theodore H. Jobs

THJ/sf
Enclosures

KJR

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAR 26 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

**PREHEARING MEMORANDUM OF THE MID-ATLANTIC POWER SUPPLY
ASSOCIATION TO ADMINISTRATIVE LAW JUDGE MARLANE R. CHESTNUT**

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Attorneys for Mid-Atlantic Power Supply Association

**PREHEARING MEMORANDUM OF
THE MID-ATLANTIC POWER SUPPLY ASSOCIATION**

This Prehearing Memorandum is submitted pursuant to the March 17, 2005 Prehearing Conference Order issued by Administrative Law Judge Marlane R. Chestnut (the "ALJ").

1. **HISTORY OF THE PROCEEDING**

On December 20, 2004, Exelon Corporation ("Exelon") and Public Service Enterprise Group, Inc. ("Enterprise Group") announced that they had entered into a definitive merger agreement to create Exelon Electric and Gas, which would be the nation's largest utility. The merger would create a combined company with total assets of approximately \$79 billion, serving 7 million electric customers and 2 million natural gas customers in Illinois, New Jersey and Pennsylvania. With a generation portfolio of approximately 52,000 megawatts of domestic capacity, the combined company would be the nation's largest power generator and a leading wholesale power marketer.

On February 4, 2005 PECO Energy Company ("PECO") and Public Service Electric & Gas Company ("PSE&G") filed a joint application before the Pennsylvania Public Utility Commission ("Commission") for approval by the Commission of the merger of Enterprise Group, the corporate parent of PSE&G, with and into Exelon, the ultimate corporate parent of the Joint Applicants. Joint Applicants request the Commission to issue Certificates of Public Convenience pursuant to Chapters 11, 22 and 28 of the Public Utility Code or, in the alternative, a final declaratory order determining that such approvals are not required.

March 7, 2005 was established as the filing date for Protests and Motions for Intervention. Motions were filed on or about that date on behalf of several parties. On March 28, 2005, the Mid-Atlantic Power Supply Association filed a Protest, *nunc pro tunc* in this

proceeding. The Protest contains the commitment by MAPSA to adhere to the procedural schedule established in this proceeding.

By Notice dated March 17, 2005, a prehearing conference has been scheduled for March 29, 2005 before ALJ Marlane R. Chestnut.

2. ISSUES TO BE PRESENTED IN THE CASE

The issues presented by Joint Applicants are whether Commission approval is required, pursuant to Chapters 11, 22 and 28 of the Public Utility Code, for the merger of Enterprise Group with and into Exelon and, if so, whether the Joint Application satisfies the statutory requirements for the issuance of Certificates of Public Convenience evidencing the Commission's approval.

Based upon its preliminary review of the Joint Application, MAPSA intends to raise the issues set forth below. MAPSA reserves the right to address other issues as they are discovered as the matter progresses:

- Whether, given the Joint Applicants' acknowledgement that the proposed combination of Exelon and PSE&G and their generation subsidiaries would raise serious market power issues absent significant mitigation measures, the proposed merger could adversely affect the relevant wholesale generation market and, as a result, the cost of energy and capacity to retail customers located within the PECO service territory.
- Whether the Joint Applicants' proposed mitigation measures, including the divestiture of certain unidentified peaking and mid-merit generating plants, and "virtual" divestiture of a portion of its nuclear baseload generation through an auction process will, in fact, have the intended effect of mitigating Joint Applicants' significant market power.
- Whether the merger as proposed by Joint Applicants is likely to result in anti-competitive or discriminatory conduct, including the unlawful exercise of horizontal and vertical market power, which will prevent market participants from obtaining the benefits of a properly functioning and effectively competitive retail electric and natural gas markets.

- Whether the proposed merger will benefit or harm competition in the relevant wholesale and retail electric and natural gas markets.
- Whether PECO's service quality will improve or be harmed as a result of the proposed merger.
- Whether Joint Applicants have satisfied their burden of proof that the proposed merger would provide substantial benefit to the public in the generation, transmission and distribution of electricity, the distribution of natural gas, the competitive retail markets in the PECO service territory, and improved cost of service and service quality.

3. **WITNESSES TO BE PRESENTED**

At the present time, MAPSA anticipates presenting two witnesses:

(a) Nicholas Phillips, Jr., a principal of the firm of Brubaker & Associates, Inc., who will testify about the likely impact on competition associated with the merger, the measures required to provide marketers and customers with a reasonable opportunity to buy and sell competitive energy in the PECO service territory, and the claimed merger benefits and appropriate allocation of synergy savings to the various jurisdictions in which Joint Applicants do business.

(b) Alan Chalfant, a principal of Brubaker & Associates, Inc., who will testify about all market power issues, the adequacy of claimed mitigation of market power as set forth by Joint Applicants, and the measures required to protect market participants and insure that workable competition exists in the relevant markets.

MAPSA reserves the right to present James R. Dauphinais, also of Brubaker & Associates, Inc., who may testify about the impact of the proposed merger on the PJM markets and adequacy of the transmission system for buyers and sellers of energy in the relevant markets.

4. **SETTLEMENT**

MAPSA envisions that the parties will engage in settlement discussions once the parties have had an opportunity to review discovery and to develop positions on the issues raised by the Joint Application. MAPSA supports establishing a schedule of settlement conferences.

5. **PUBLIC INPUT HEARINGS**

MAPSA requests that Public Input Hearings be scheduled in Philadelphia.

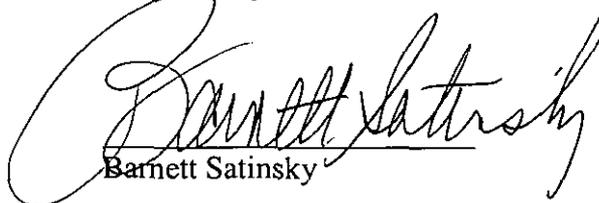
6. **SERVICE ON NJLEUC**

MAPSA will be represented in this case by Fox Rothschild LLP. Two copies of all documents should be served on MAPSA and its counsel as follows:

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Respectfully submitted,


Barnett Satinsky

**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 :

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of March, 2005, served a copy of the foregoing Prehearing Memorandum of the Mid-Atlantic Power Supply Association to Administrative Law Judge Marlane R. Chestnut, in the manner indicated below, in accordance with the requirements of 52 Pa. Code § 1.54, *et seq.* (relating to service by a participant) upon the following:

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(Counsel for PECO Energy Company)

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MAR 26 2005

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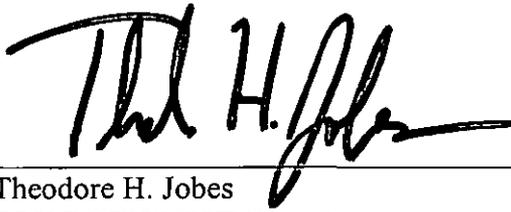
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James J. McNulty, Secretary

March 26, 2005

Page 2

cc: Honorable Marlane R. Chestnut (w/encl.) (via electronic mail and Federal Express)
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All parties of record as set forth on the certificate of service

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MAR 26 2005

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

March 26, 2005

VIA FEDERAL EXPRESS

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

DOCUMENT
FOLDER

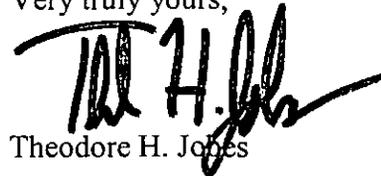
**Re: Joint Application of PECO Energy Company and Public
Service Electric and Gas Company, A-110550F0160**

Dear Secretary McNulty:

Enclosed for filing are an original and four (4) copies of this transmittal letter and the Prehearing Memorandum of the New Jersey Large Energy Users Coalition to Administrative Law Judge Marlane R. Chestnut. Copies of the enclosed Prehearing Memorandum are being served upon counsel for the Joint Applicants and the parties or their counsel set forth on the certificate of service.

Should you have any questions regarding the above, please call me at (215) 299-2786. Please date-stamp and return to me in the self-addressed envelope I have enclosed the extra copy of this letter and the Prehearing Memorandum. Thank you for your cooperation.

Very truly yours,


Theodore H. Jobs

THJ/sf
Enclosures

BTL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAR 26 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

**PREHEARING MEMORANDUM OF THE NEW JERSEY LARGE ENERGY USERS
COALITION TO ADMINISTRATIVE LAW JUDGE MARLANE R. CHESTNUT**

DOCUMENT
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DOCKETED
JUL 8 2005

Attorneys for New Jersey Large Energy Users Coalition

**PREHEARING MEMORANDUM OF
THE NEW JERSEY LARGE ENERGY USERS COALITION**

This Prehearing Memorandum is submitted pursuant to the March 17, 2005 Prehearing Conference Order issued by Administrative Law Judge Marlane R. Chestnut (the "ALJ").

1. HISTORY OF THE PROCEEDING

On December 20, 2004, Exelon Corporation ("Exelon") and Public Service Enterprise Group, Inc. ("Enterprise Group") announced that they had entered into a definitive merger agreement to create Exelon Electric and Gas, which would be the nation's largest utility. The merger would create a combined company with total assets of approximately \$79 billion, serving 7 million electric customers and 2 million natural gas customers in Illinois, New Jersey and Pennsylvania. With a generation portfolio of approximately 52,000 megawatts of domestic capacity, the combined company would be the nation's largest power generator and a leading wholesale power marketer.

On February 4, 2005 PECO Energy Company ("PECO") and Public Service Electric & Gas Company ("PSE&G") filed a joint application before the Pennsylvania Public Utility Commission ("Commission") for approval by the Commission of the merger of Enterprise Group, the corporate parent of PSE&G, with and into Exelon, the ultimate corporate parent of the Joint Applicants. Joint Applicants request the Commission to issue Certificates of Public Convenience pursuant to Chapters 11, 22 and 28 of the Public Utility Code or, in the alternative, a final declaratory order determining that such approvals are not required.

March 7, 2005 was established as the filing date for Protests and Motions for Intervention. On March 7, 2005, the New Jersey Large Energy Users Coalition ("NJLEUC") filed a Motion to Intervene in this proceeding. NJLEUC is an association of large end use

customers of PSE&G and other New Jersey – based utilities. Several of NJLEUC’s members also maintain significant facilities within the PECO service territory. Therefore, NJLEUC has a direct, immediate and substantial interest in the matters at issue in this proceeding. *See AES Beaver Valley, Inc. v. West Penn Power Company, 58 Pa. P.U.C. 729 (1995) and Pennsylvania Public Utility Commission v. Lackawaxen Water and Sewer and Company, 55 Pa. P.U.C. 461 (1981).*

By Notice dated March 17, 2005, a prehearing conference has been scheduled for March 29, 2005 before ALJ Marlane R. Chestnut.

2. ISSUES TO BE PRESENTED IN THE CASE

The issues presented by Joint Applicants are whether Commission approval is required, pursuant to Chapters 11, 22 and 28 of the Public Utility Code, for the merger of Enterprise Group with and into Exelon and, if so, whether the Joint Application satisfies the statutory requirements for the issuance of Certificates of Public Convenience evidencing the Commission’s approval.

Based upon its preliminary review of the Joint Application, NJLEUC intends to raise the issues set forth below. NJLEUC reserves the right to address other issues as they are discovered as the matter progresses:

- Whether, given the Joint Applicants’ acknowledgement that the proposed combination of Exelon and PSE&G and their generation subsidiaries would raise serious market power issues absent significant mitigation measures, the proposed merger could adversely affect the relevant wholesale generation market and, as a result, the cost of energy and capacity to retail customers located within the PECO service territory.
- Whether the Joint Applicants’ proposed mitigation measures, including the divestiture of certain unidentified peaking and mid-merit generating plants, and “virtual” divestiture of a portion of its nuclear baseload generation through an

auction process will, in fact, have the intended effect of mitigating Joint Applicants' significant market power.

- Whether the merger as proposed by Joint Applicants is likely to result in anti-competitive or discriminatory conduct, including the unlawful exercise of horizontal and vertical market power, which will prevent market participants from obtaining the benefits of a properly functioning and effectively competitive retail electric and natural gas markets.
- Whether the proposed merger will benefit or harm competition in the relevant wholesale and retail electric and natural gas markets.
- Whether PECO's service quality will improve or be harmed as a result of the proposed merger.
- Whether Joint Applicants have satisfied their burden of proof that the proposed merger would provide substantial benefit to the public in the generation, transmission and distribution of electricity, the distribution of natural gas, the competitive retail markets in the PECO service territory, and improved cost of service and service quality.
- Determination of an appropriate amount of synergy savings that will result from the merger.
- Determination of the proper allocation of synergy savings between the various jurisdictions in which Joint Applicants will conduct their business, and Joint Applicants' various operating units, both regulated and non-regulated.
- Determination of the effect of the merger on rates to retail customers in the various jurisdictions in which Joint Applicants will conduct their business.

3. **WITNESSES TO BE PRESENTED**

NJLUC will rely upon the same witnesses who will be presented by the Mid-Atlantic Power Supply Association, who are:

(a) Nicholas Phillips, Jr., a principal of the firm of Brubaker & Associates, Inc., who will testify about the likely impact on competition associated with the merger, the measures required to provide marketers and customers with a reasonable opportunity to buy and sell competitive energy in the PECO service territory, and the claimed merger benefits and

appropriate allocation of synergy savings to the various jurisdictions in which Joint Applicants do business.

(b) Alan Chalfant, a principal of Brubaker & Associates, Inc., who will testify about all market power issues, the adequacy of claimed mitigation of market power as set forth by Joint Applicants, and the measures required to protect market participants and that insure the benefits of competition exist in the relevant markets.

(c) James R. Dauphinais, also of Brubaker & Associates, Inc., who may testify about the impact of the proposed merger on the PJM markets and the adequacy of the transmission system for buyers and sellers in the relevant markets.

4. SETTLEMENT

NJLEUC envisions that the parties will engage in settlement discussions once the parties have had an opportunity to review discovery and to develop positions on the issues raised by the Joint Application. NJLEUC supports establishing a schedule of settlement conferences.

5. PUBLIC INPUT HEARINGS

NJLEUC requests that Public Input Hearings be scheduled in Philadelphia.

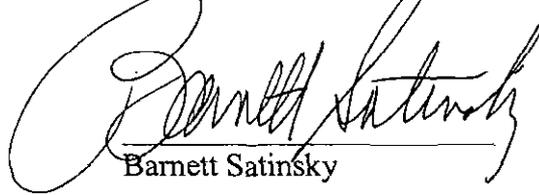
6. SERVICE ON NJLEUC

NJLEUC will be represented in this case by Fox Rothschild LLP. Two copies of all documents should be served on NJLEUC and its counsel as follows:

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Respectfully submitted,



Barnett Satinsky

**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 :

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of March, 2005, served a copy of the foregoing Prehearing Memorandum of the New Jersey Large Energy Users Coalition to Administrative Law Judge Marlane R. Chestnut, in the manner indicated below, in accordance with the requirements of 52 Pa. Code § 1.54, *et seq.* (relating to service by a participant) upon the following:

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MAR 26 2005

PA PUBLIC UTILITY COMMISSION
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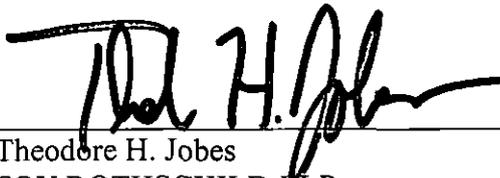
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A handwritten signature in black ink, appearing to read 'Theodore H. Jobes', written over a horizontal line.

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James J. McNulty, Secretary

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