

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

ORDER PERMITTING INTERVENTION

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

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

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

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

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

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

THEREFORE,

IT IS ORDERED:

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

Date: May 31, 2005

  
Marlane R. Chestnut  
Administrative Law Judge

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

SERVICE LIST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Jonathan M. Stein, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-3742      215-981-0434 (fax)  
[jstein@clsphila.org](mailto:jstein@clsphila.org)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)  
[ttran@clsphila.org](mailto:ttran@clsphila.org)  
(Action Alliance of Senior Citizens of Greater Philadelphia,  
Association of Community Organizations for Reform Now,  
Tenants' Action Group)

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

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

Steven J. Engelmyer, Esquire  
Kahiga A. Tiagha, Esquire  
Kleinbard, Bell & Brecker LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
215-568-2000      215-568-0140 (fax)  
[sengelmyer@kleinbard.com](mailto:sengelmyer@kleinbard.com)  
(Senator Anthony H. Williams)

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

### **Inactive Parties**

Kevin J. Lipson, Esquire  
Karin L. Larson, Esquire  
Hogan & Hartson, LLP  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004-1109  
202-637-5541      202-637-5910 (fax)  
[kjlipson@hhlaw.com](mailto:kjlipson@hhlaw.com)  
[kllarson@hhlaw.com](mailto:kllarson@hhlaw.com)  
(Edison Mission Energy, EME Homer City Generation,  
LP and Edison Mission Marketing & Trading Inc.)