

March 2, 2006

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

Secretary's Bureau Record Retention
Pennsylvania Public Utility Commission
Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17105-3265

Dear Sir/Madam:

Enclosed for filing please find an Acknowledgment of Receipt and Acceptance of Service for the above-referenced matter.

Very truly yours,

RHOADS & SINON LLP

By:

David W. Francis

Enclosure

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ORIGINAL

August 10, 2006

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

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Pennsylvania
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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:

PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) are submitting this letter to notify the Commission that their respective parent companies, Exelon Corporation (Exelon) and Public Service Enterprise Group Incorporated (PSEG), have filed the attached Motion at the Federal Energy Regulatory Commission (FERC). The Motion pertains to the plan for "interim" fossil mitigation that the FERC prescribed in connection with its approval of the proposed merger of Exelon and PSEG in *Exelon Corp.*, 11 FERC ¶ 61,011 (2005). Interim fossil mitigation consists of measures that will be taken to mitigate possible market power between closing on the merger and the implementation of permanent fossil mitigation, namely, the divestiture of fossil generation plants.

The Motion asks the FERC to amend its interim fossil mitigation plan to conform to the interim fossil mitigation measures imposed by the Department of Justice (DOJ) in a consent decree settlement with Exelon and PSEG that resolved DOJ's review of the merger under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a. As explained in the Motion, the proposed amendment will not weaken the interim fossil mitigation and, in fact, will make significantly more generation subject to interim mitigation than under the plan previously approved by the FERC.

Neither the filing of the Motion nor a FERC decision to grant the Motion will have any impact on the issues decided by this Commission in its order approving the merger. *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*, 248 PUR4th 1 (2006). The Commission approved the permanent mitigation measures (i.e., the divestiture and virtual divestiture of generation plants) proposed by the Joint Applicants to address wholesale market power concerns raised in connection with the merger. However, interim fossil mitigation was not an issue and was not specifically addressed in the Commission's order.

The Joint Applicants will answer any questions that the Commission or other parties may have about the Motion.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul R. Bormey". The signature is written in a cursive, flowing style.

cc: Hon. Wendell F. Holland, Chairman
Hon. James H. Cawley, Vice Chairman
Hon. Terrance J. Fitzpatrick, Commissioner
Hon. Kim Pizzingrilli, Commissioner
Hon. William Shane, Commissioner
All Parties of Record

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PA. P. O.
SECRETARY'S BUREAU

Exelon Corporation)
Public Service Enterprise Group Incorporated) Docket No. EC05-43-000

MOTION OF
EXELON CORPORATION AND
PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED
TO AMEND INTERIM FOSSIL MITIGATION COMMITMENT

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, Exelon Corporation ("Exelon") and Public Service Enterprise Group Incorporated ("PSEG") (collectively, Exelon and PSEG are referred to as "Applicants"), hereby move for authorization to amend the interim fossil mitigation that they have committed to provide in connection with the proposed merger (the "Merger") that was approved by the Commission in the above-referenced proceeding. In order to obtain timely guidance regarding their interim mitigation, the Applicants request that the Commission rule on this Motion no later than September 21, 2006, the date of the Commission's next public meeting.

I. BACKGROUND

A. The Applicants' Interim Mitigation Commitment

As part of the market power mitigation proposed in connection with the Merger, the Applicants committed to divest 6,600 MW of generation, consisting of the divestiture of 4,000 MW of fossil generation and the virtual divestiture – through the execution of power sales agreements – of 2,600 MW of baseload nuclear capacity. See Exelon Corp., 112 FERC ¶ 61,011 at P 144 (2005). Initially the Applicants requested 18 months to complete the fossil unit divestitures, but later modified their commitment to provide that

they be given one year to enter into agreements to sell their generation facilities and to file the necessary applications for approval of the sales.

The Applicants recognized that the divestiture could not be completed prior to the Merger and therefore committed to implement interim fossil mitigation in the period between the closing of the Merger and the sale of the divested units. Id. The Applicants also proposed a period of time to put the nuclear virtual divestiture contracts in place, with interim mitigation before that time. Id.

With respect to interim fossil mitigation, the Applicants committed that, commencing on the date that the Merger closes, they will offer 4,000 MW of fossil capacity into the PJM day-ahead market (and if not dispatched by PJM, into the PJM real-time market) at a price not to exceed the PJM cost-capped rates, which include a specified adder above the variable costs of the units.¹ The Applicants further committed that, commencing 30 days after the end of the month in which the Merger closes, they would enter into 4,000 MW of "virtual unit transfer" contracts, tied to specific units, in which the counterparty would acquire full dispatch and offering rights for the energy and market based ancillary services, as well as the right to the Unforced Capacity associated with the subject units. These contracts would replace the offer caps as the form of interim mitigation until the fossil units are divested. This interim fossil mitigation

¹ Since the time of their Application, PJM has modified somewhat the way that it defines a cost-based offer, effective January of 2006. The revised cost-based offer provisions appear in Section 6.4 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Third Revised Rate Schedule 24). To clarify their commitment, the Applicants intend to use the new PJM definition that currently is in effect, or whatever definition that is in effect in PJM at the time they offer their fossil units into the market.

commitment was accepted by the Commission when it approved the Merger. See Exelon Corp., 112 FERC ¶61,011 at P 144 (2005).

B. Consent Decree Provisions Regarding Interim Mitigation

The Applicants recently entered into a consent decree settlement with the U.S. Department of Justice ("DOJ") that resolved DOJ's review of the Merger under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a.² As part of that settlement, the Applicants agreed to divest 5,629 MW of fossil generation instead of the 4,000 that they committed to divest in this proceeding. Moreover, the Applicants committed to divest that generation on a more expeditious schedule, agreeing to enter into definitive agreements to sell their generation within five months after closing the Merger. After obtaining DOJ's approval of these agreements, the Applicants and purchasers will file all necessary applications for the approval of the sales. The closings of the sales then must take place within 21 days after all regulatory approvals are obtained.

As part of the consent decree settlement, the Applicants and DOJ agreed to a Hold Separate Stipulation and Order ("Hold Separate Order"), entered by the district court on June 29, 2006, that provides for interim mitigation pending the consummation of the divestiture of the fossil units. A copy of the Hold Separate Order is attached as Exhibit A

² The consent decree is subject to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h) (commonly known as the "Tunney Act"), which requires, inter alia, a federal district court to review and approve any consent decree that settles a civil antitrust complaint brought by DOJ. Accordingly, the consent decree relating to the Exelon-PSEG transaction is pending in the U.S. District Court for the District of Columbia. United States v. Exelon Corp., No. 06CV01138 (JDB) (D.D.C. filed June 22, 2006).

to this Motion. The Hold Separate Order has three features regarding interim mitigation that are relevant to this Motion:

- Instead of providing for the virtual unit transfer contracts, the Hold Separate Order requires the Applicants to implement offer caps on substantially all of the Applicants' fossil generation located in PJM East (over 9,300 MW in total), including units that are not subject to the divestiture requirement, until the divestiture of the 5,629 MW of fossil generation is completed. The Hold Separate Order provides for two categories of offer caps:
 - For those units listed on Attachment A of the Hold Separate Order (primarily baseload and mid-merit units), the offer cap is the same PJM cost-based offer cap that the Applicants have committed to apply in this proceeding prior to the time the virtual unit transfer contracts take effect. The units subject to this offer cap total 6385 MW of capacity, which is substantially more than the 4,000 MW that is subject to interim mitigation under the Applicants' commitment in this proceeding, and thus this requirement alone would satisfy the Applicants interim mitigation commitment.
 - For those units listed on Attachment B of the Hold Separate Order (which are peaking units), the offer cap is the greater of the PJM cost-based offer cap or the offers submitted by the Applicants for such units on May 15, 2006 for sales into the PJM markets on May 16, 2006. The units subject to this price cap total just under 3,000 MW of capacity. The use of May 15 offers for these peaking units was intended to allow these units to

submit market-based offers, capped at levels based on offers that were submitted by the Applicants both before the Hold Separate Order was executed and before the Merger is implemented and which therefore reflect Exelon's and PSEG's behavior as separate competitors.

- As an exception to the cost-based offer cap requirement, the Hold Separate Order permits the Applicants, at their discretion, to enter into virtual unit transfer contracts (which the Hold Separate Order describes as Tolling Contracts) instead of using the offer caps for the units subject to the contracts. However, the purchasers and the terms of the Tolling Contracts are subject to DOJ's review and approval.
- The Hold Separate Order provides for an auditor selected and hired by DOJ (the "Auditor"), but paid for by the Applicants, to audit the Applicants' compliance with the offer cap provisions. The Auditor will have access to the data necessary to perform its functions and is required to submit reports to DOJ every month detailing the extent to which the Applicants have complied with their interim mitigation obligations. The Auditor not only will confirm that the Applicants have lived up to their offer cap commitment, but also is authorized to investigate all outages of the generation units other than planned outages to make sure that they are appropriate and not implemented for the purpose of affecting market prices. The Auditor thus will ensure that there is no economic or physical withholding during the interim period before divestiture is completed.

II. PROPOSED AMENDMENT TO FORM OF INTERIM FOSSIL MITIGATION

Upon the Commission's approval of the Merger, the Applicants formed teams tasked with the implementation of the various types of mitigation required under the Commission's order. One such team was the Interim Fossil Mitigation Team, which was assigned the responsibility for entering into the virtual unit transfer contracts. This team performed such tasks as preparing the necessary contracts and identifying potential counterparties under the contracts.

The Interim Fossil Mitigation Team always understood that the virtual unit transfer contracts, by their very nature, are extremely complex and must contain detailed provisions covering a myriad of issues, including the specific operating capabilities and resulting dispatch parameters of the underlying units, communication protocols between the Applicants, the counterparties and PJM, and availability and replacement energy provisions. It therefore will take considerable time and effort to develop and negotiate the relevant terms and conditions with the counterparties to the virtual unit transfer contracts, each one of which will have to be tailored to fit the specific units involved.

Under the interim mitigation plan approved by the Commission, it was appropriate to expend the time and resources necessary to conclude such complex arrangements, given that the resulting virtual unit transfer contracts would likely have had contract terms running over one year. However, the time period for divestiture now has been significantly shortened – asset purchase agreements must be executed within five months of closing of the Merger rather than within a full year of closing. As a result, it no longer makes sense to require the virtual unit transfer contracts. The offer cap provisions of the Hold Separate Order, including the independent monitoring that will be

performed by the Auditor, will provide appropriate mitigation for the shortened interim period without any need for Applicants to do the substantial amount of work that would be necessary to conclude the virtual unit transfer contracts.

Moreover, the Applicants' new obligations under the Hold Separate Order potentially could make it difficult to put the contracts in place by 30 days after the end of the month in which the Merger closes, as required under their existing commitment. Under the Hold Separate Order, the Applicants must obtain DOJ's prior approval of the purchaser and terms and conditions of each virtual unit transfer contract, which could take up to fifteen days. If DOJ were to reject a particular purchaser or the terms of a particular contract, it is unlikely that the Applicants could negotiate a new virtual unit transfer contract in time to satisfy their obligation to the Commission to have all of the contracts in place within the required time frame.

The Applicants therefore request that they be permitted to amend their interim fossil mitigation by extending the time that the offer cap commitment can be used for interim mitigation. The Applicants request that, instead of limiting the offer cap period to 30 days after the end of the month in which the Merger closes, they be permitted to use the offer caps for up to the entire period between the date the Merger closes and the time the fossil units are divested. Although the offer cap time period would be extended, the Applicants would retain the discretion to enter into virtual unit transfer contracts for some or all of the 4,000 MW of fossil divestiture at any time prior to their divestiture.

The Applicants recognize that the Hold Separate Order permits offer caps for some peaking units that are higher than the offer caps that the Applicants committed to in this proceeding. The Applicants believe that these higher offer caps should be acceptable

to the Commission, given that the Applicants were operating separately on May 15, the date that is used to establish the offer caps, nor did they know at that time that their offers could be used to establish offer caps. As a result, use of these caps reflects legitimate market behavior and precludes the exercise of merger-related market power because offers for the peakers are capped at their pre-merger competitive level.

In any event, the cost-based offer caps will apply to 6385 MW of generation, which is substantially more than the 4,000 MW Commission found to be necessary for the interim mitigation of the increase in market power caused by the Merger. The almost 3,000 MW of generation subject to the May 15 offer caps under the Hold Separate Order therefore would be above and beyond the 4,000 MW of generation subject to cost-based offer caps under the Applicants' interim mitigation commitment made to the Commission.

In addition, the Applicants propose that the Auditor file with the Commission the same reports that it is required to provide to DOJ under the Hold Separate Order. Such filing will maintain the confidentiality of commercially sensitive information by keeping such information under seal. This will allow the Commission to keep informed as to the Applicants' compliance with their obligation.

III. THE OFFER CAPS WILL PROVIDE EFFECTIVE INTERIM MITIGATION

There can be no doubt that the offer caps will provide effective interim mitigation. Requiring that generation be offered into the PJM markets at cost ensures that there can be no physical or economic withholding, as the Commission already found when it approved the use of offer caps to mitigate market power from the time that the Merger closes until the time that the virtual unit transfer contracts go into effect. See Exelon Corp., 112 FERC at P 144 (“the commitment to bid the fossil units at variable cost

eliminates the ability to harm competition by strategic bidding or economic withholding.”). Moreover, here there will be substantially more capacity subject to the offer caps under the Hold Separate Order –more than 9,300 MW in total – than the 4,000 MW of interim fossil mitigation required by the Commission.

It is the case that the Applicants now propose to extend the amount of time that the offer cap requirement will remain in place. This difference should not be material, however, for two reasons.

First, the time period between the closing of the Merger and the completion of the divestiture under the commitments made in this proceeding was expected to be over a year. Under the DOJ consent decree settlement, divestiture now is on a much shorter track. As a result, interim mitigation will not need to be in effect as long as originally anticipated.

Second, to the extent that there is concern that the offer cap proposal requires additional regulatory oversight, that concern is addressed by the requirement in the Hold Separate Order that the Applicants’ offers be reviewed by the DOJ-selected Auditor to ensure that no economic withholding is occurring. In addition, the Auditor will be responsible for monitoring all of Applicants’ generator outages to ensure that no physical withholding is occurring. This process will be in place regardless of whether the Commission approves this Motion. The reports that the Auditor will file with the Commission will provide assurance that the Applicants are properly abiding by their offer cap obligation, and that there is no economic or physical withholding.

IV. THERE WILL BE EFFECTIVE MITIGATION OF CAPACITY MARKETS

The Applicants recognize that the virtual unit transfer contracts also transfer the rights to Unforced Capacity, and that this feature will not apply to the offer caps. However, as described in more detail in their prior pleadings, the Applicants have committed to offer their entire net excess capacity into the daily capacity market at a price of zero, commencing as of the closing of the Merger. This will mitigate any market power in the capacity markets regardless of how much capacity the Applicants control. Again, the Commission already has found that this commitment mitigates any market power the Applicants might possess in the capacity markets. See Exelon Corp., 112 FERC at P 167 (“Applicants have committed to bid all of their uncommitted capacity at zero. Therefore, they will have no ability to withhold capacity in order to increase the market clearing price.”).³

³ The obligation to bid net uncommitted capacity into the PJM daily capacity markets applies as long as the current PJM-wide capacity market is in place. To the extent that PJM switches to a location-based capacity market, the Applicants have committed to propose a new mitigation proposal that would address any potential to exercise market power in the new locational capacity markets. Id.

CONCLUSION

At the end of the day, the amendments to the interim fossil mitigation commitments proposed herein will provide greater protection than the current commitment. Significantly more generation will be subject to offer caps which, when combined with the interim nuclear virtual divestiture mitigation, will result in a greater total amount of interim mitigation. Furthermore, the oversight role played by the Auditor will assure that there will be no physical or economic withholding during the interim period. Finally, the interim period will be shorter due to the accelerated DOJ schedule for generation divestiture. The Applicants therefore respectfully request that the Commission allow them to amend their interim fossil mitigation proposal by extending the time period for the offer caps, as described herein.

Respectfully submitted,

/s/Matthew W.S. Estes

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Counsel for
Exelon Corporation

August 10, 2006

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding.

Dated August 10, 2006, at Washington, D.C.

/s/ Matthew W. S. Estes

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Exhibit A

Hold Separate Order

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	Case No.:
v.)	
)	Judge:
EXELON CORPORATION)	
)	Deck Type:
and)	
)	Filed:
PUBLIC SERVICE ENTERPRISE)	
GROUP INCORPORATED)	
)	
Defendants.)	

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

- A. "Acquire" means obtain any interest in any electricity generating facility, including real property, deeded development rights to real property, capital equipment, buildings, or fixtures.

- B. "Acquirer" or "Acquirers" means the entity or entities to whom Defendants divest any of the Divestiture Assets or with whom Defendants have entered into definitive contracts to sell any of the Divestiture Assets.
- C. "Control" means have the ability, directly or indirectly, to set the level of, dispatch, or Offer the output of one or more units of an electricity generating facility or to operate one or more units of an electricity generating facility.
- D. "Cost-based Offer" means the maximum offer to sell energy allowed under the version of the PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.
- E. "Counter-Party" means any person other than Defendants who enters into a Tolling Contract.
- F. "Designated Utility Zones" means the service territories in which the following companies on June 1, 2006, owned the wires through which electricity is distributed:
 - 1. Atlantic City Electric Company,
 - 2. Baltimore Gas and Electric Company,
 - 3. Delmarva Power and Light Company,
 - 4. Jersey Central Power and Light Company,
 - 5. Metropolitan Edison Company,
 - 6. Rockland Electric Company,
 - 7. PECO Energy Company,
 - 8. Potomac Electric Power Company,

9. PPL Electric Utilities Corporation, and
 10. Public Service Electric and Gas Company.
- G. “Divestiture Assets” means the following facilities: (1) Cromby Generating Station, 100 Cromby Rd. at Phoenixville, PA, 19460; (2) Eddystone Generating Station, Number 1 Industrial Hwy. at Eddystone, PA, 19022; (3) Hudson Generating Station, Duffield & Van Keuren Aves. at Jersey City, NJ, 07306; (4) Linden Generating Station, 4001 South Wood Ave. at Linden, NJ, 07036; (5) Mercer Generating Station, 2512 Lambertson Rd. at Hamilton, NJ, 08611; and (6) Sewaren Generating Station, 751 Cliff Rd. at Sewaren, NJ, 07077; and
- a. For each of those facilities, all of Defendants’ rights, titles, and interests in any tangible and intangible assets relating to the generation, dispatch, and offering of electricity at the facility; including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility; agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form (excluding records of past offers to the PJM Market); all equipment

associated with connecting the facility to PJM (including automatic generation control equipment); all remote start capability or equipment located on site; and all other interests, assets, or improvements at the facility customarily used in the generation, dispatch, or offer of electricity from the facility; provided however, that "Divestiture Assets" shall not include (i) electric and gas distribution or transmission assets located in, or appurtenant to, the boundaries of the facility, or (ii) any communications links between the facility and Defendants, which will be disconnected.

- b. At the option of the Acquirer of the Linden Generating Station, the natural gas pipeline facilities connecting any assets at the Linden Generating Station (including the assets listed in Section I.G.a. for the Linden Generating Station), to an interconnection with the Texas Eastern Gas Transmission LP, and all of Defendants' rights, titles, and interests in any tangible and intangible assets relating to the delivery of natural gas from the Texas Eastern Gas Transmission LP interconnection with the Linden Generating Station, including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility;

agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form; and all other interests, assets, or improvements customarily used in the delivery of natural gas from the interconnection of the Texas Eastern Gas Transmission LP to the Linden Generating Station.

To the extent that any licenses, permits, or authorizations described in Section I.G.a. or Section I.G.b. are nontransferable, Defendants will use their best efforts to obtain the necessary consent for assignment to the Acquirer or Acquirers of the license, permit, or authorization.

- H. “Exelon” means Exelon Corporation, a Pennsylvania corporation headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including Exelon’s participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station or the Conemaugh Generating Station), and their directors, officers, managers, agents, and employees.
- I. “Exelon/PSEG Transaction” means the merger of Exelon and PSEG that is the subject of HSR Transaction Identification No. 2005-0696, which was filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.A. § 18a (West 1997), including any changes in the terms of that merger that do not necessitate a new Hart-Scott-Rodino filing.

- J. “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. “Good Utility Practice” is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.
- K. “Including” means including but not limited to.
- L. “Offer” or “Offers” means an offer to sell energy submitted into the PJM Market pursuant to the version of PJM “Amended and Restated Operating Agreement of PJM Interconnection, LLC,” Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.
- M. “Outage” means any outage as defined in the version of PJM Manual 35, “Definitions and Acronyms,” available at <www.pjm.com>, in effect at the time the outage occurs, including “forced outage,” “generator forced/unplanned outage,” “generator maintenance outage,” “generator planned outage,” “maintenance outage,” and “planned outage.”
- N. “Person” means any natural person, corporation, association, firm, partnership, or other business or legal entity.
- O. “PJM” means PJM Interconnection, LLC.

- P. “PJM Market” means any market for energy operated or administered by PJM, including the “Day-ahead Energy Market” or the “Real-time Energy Market.”
- Q. “PSEG” means Public Service Enterprise Group Incorporated, a New Jersey corporation headquartered in Newark, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including PSEG’s participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station, the Conemaugh Generating Station, or the Yards Creek Generating Station), and their directors, officers, managers, agents, and employees.
- R. “Self Scheduling” means scheduling for dispatch by the owner or operator of the unit and not by PJM.
- S. “Tolling Contract” means a contract giving a Counter-Party Control over the level and offer price of the output for any unit listed in Attachment A or Attachment B.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets in order to remedy the effects that the United States alleges would otherwise result from the Exelon/PSEG Transaction. This Hold Separate Stipulation and Order ensures that, prior to such divestiture, (1) the Divestiture Assets will be offered into the PJM Market as specified herein; (2) the Divestiture Assets will be preserved, maintained, and operated at least in the same physical condition as of the date of consummation of the

Exelon/PSEG Transaction, ordinary wear and tear excepted and consistent with Good Utility Practice; and (3) competition is maintained during the pendency of the ordered divestiture.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and, for purposes of this action only, over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

- A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A, may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.
- B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the entry of the Final Judgment by the Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment and shall, from the date of the signing of this Hold Separate Stipulation and Order by the

parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

- C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.
- D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.
- E. In the event that (1) the United States has withdrawn its consent, as provided in Section IV.A. above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.
- F. Defendants represent that the divestitures required by the proposed Final Judgment can and will be made, subject to receipt of necessary regulatory approvals, and that Defendants will later raise no claims of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any provisions contained therein.

V. HOLD SEPARATE PROVISIONS

From consummation of the Exelon/PSEG Transaction until the divestitures required by Section IV and Section V of the Final Judgment have been accomplished:

- A. Defendants shall take all steps necessary to assure that the Divestiture Assets are maintained as separate, distinct, and saleable assets, apart from other assets of Defendants. Defendants shall preserve the documents, books, and records relating to the Divestiture Assets until the date of divestiture.
- B. Defendants shall provide sufficient working capital to continue to maintain the Divestiture Assets as economically viable and competitive facilities, consistent with the requirements of Section V.A.
- C. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.
- D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their capacity at the time of the consummation of the Exelon/PSEG Transaction and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets, consistent with Good Utility Practice.
- E. Defendants shall not, except as part of a divestiture in accordance with Sections IV or V of the proposed Final Judgment or a Tolling Contract in accordance with Section VI.C., remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

- F. Defendants' employees stationed at the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfers initiated by employees pursuant to Defendants' regular, established job posting policy and existing collective bargaining agreements. Defendants shall provide the United States with ten (10) calendar days notice of any such transfer.
- G. Within twenty (20) calendar days after the entry of this Hold Separate Stipulation and Order, Defendants will inform the United States of the steps such Defendants have taken to comply with this Hold Separate Stipulation and Order.

VI. CONDITIONS FOR OFFERS, PENDING DIVESTITURE

From consummation of the Exelon/PSEG Transaction until the divestitures required by Section IV and Section V of the Final Judgment have been accomplished:

- A. Defendants shall offer the units listed in Attachment A at offers no more than the Cost-Based Offer. The Defendants shall make offers as follows:
 - 1. Defendants must submit offers into the PJM Market in accordance with the terms of Section VI.A. for each facility listed in Attachment A, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI.A.
 - 2. Defendants are prohibited from Self Scheduling any of the units in Attachment A.
- B. Defendants shall offer the units listed in Attachment B at offers no more than the higher of (a) the Cost-Based Offer or (b) the offer for the facility submitted into the PJM Market

on May 15, 2006, to provide energy on May 16, 2006. The Defendants shall make offers as follows:

1. Defendants must submit offers into the PJM Market in accordance with the terms of Section VI.B. for each facility listed in Attachment B, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI.B.
 2. Defendants are prohibited from Self Scheduling any of the units in Attachment B.
- C. Defendants may enter into Tolling Contracts, provided that:
1. Defendants shall submit any proposed Tolling Contract to the United States for review by submitting the name of the proposed Counter-Party and a copy of the proposed contract, the term sheet, and any related agreements to the United States;
 2. The United States may, in its sole discretion, disapprove any proposed Tolling Contract; and
 3. The United States will inform Defendants within ten (10) days of Defendants' submission of the required information about any such proposed Tolling Contract whether the United States disapproves the proposed Tolling Contract. The United States, in its sole discretion, may extend the time period set forth in Section VI.C.3. for an additional period or periods of time not to exceed five (5) calendar days.

- D. Notwithstanding Sections VI.A., VI.B., and VI.C., Defendants will be relieved from their obligation to offer the units listed in Attachment A and Attachment B in accordance with the limits defined in Sections VI.A. and VI.B.:
1. After the sales of all the Divestiture Assets have been completed; or
 2. At such time as Defendants enter into Tolling Contracts:
 - a. for the complete output of each Divestiture Asset,
 - b. for a period of time ending no sooner than the date of transfer of the Divestiture Asset associated with the Tolling Contract to the Acquirer of that Divestiture Asset, and
 - c. such that Defendants offer no share of the energy of the Divestiture Assets into the PJM Market.
- E. The United States shall retain an auditor to monitor Defendants' compliance with the requirements of Section VI. The auditor shall have or shall contract with professionals or agents who have competence or experience in the operation of electric generation facilities and understanding of the requirements of Cost-Based Offers.
1. Within five (5) business days of the consummation of the Exelon/PSEG Transaction, Defendants shall execute an agreement that, subject to the prior approval of the United States, confers on the auditor all the power and authority necessary to permit the auditor to monitor Defendants' compliance with Section VI, in a manner consistent with the purposes of this Hold Separate Stipulation and Order.

2. The auditor shall have the rights, duties, and responsibilities necessary to monitor Defendants' compliance with Section VI, and shall exercise such power and authority and carry out the duties and responsibilities of the auditor in a manner consistent with the purposes of this Hold Separate Stipulation and Order, including determining (a) whether an Outage taken by Defendants is consistent with the requirements of Section VI or (b) whether an offer made for any unit is contrary to the requirements of Section VI.
3. On demand the auditor shall receive all information relevant to the necessity and duration of an Outage of any asset covered by Section VI, including Generating Availability Data System (GADS) data, Dispatcher Application and Reporting Tool (eData) data, and engineering or any other logs or contemporaneous records. All information relevant to the offering of generation units in the PJM Market, including all information necessary to evaluate compliance with Section VI.A. and Section VI.B. must be maintained by Defendants for one year after the sale of the Divestiture Assets.
4. The auditor shall have full and complete access to all personnel, books, records, documents, and facilities of Defendants related to Defendants' compliance with Section VI, or to any other relevant information, as the auditor may request, including but not limited to, all documents and records kept in the normal course of business that relate to Defendants' obligations under Section VI. Defendants shall provide such financial or other information as auditor may request and shall

cooperate with the auditor. Defendants shall take no action to interfere with or impede the auditor's ability to perform his responsibilities or to monitor Defendants' compliance with Section VI.

5. At any time during the period that Defendants are bound by Section VI,
 - a. if Defendants contact PJM orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI, Defendants must also communicate the same information to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor;
 - b. if Defendants are contacted by PJM orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI, Defendants must communicate any information they provide to PJM to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor, and
 - c. as to units listed in Attachment B,
 1. within five (5) days of the execution of the agreement referenced in Section VI.E.1., Defendants must inform the auditor in writing of what provision of the PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, applies at that time to the Cost-Based Offers for those units, and
 2. if PJM informs Defendants that any of those units become subject to a different provision of the PJM "Amended and Restated

Operating Agreement of PJM Interconnection, LLC,” Section 6.4, Defendants must communicate that information to the auditor in writing within six (6) hours.

6. Defendants may require the auditor to sign a confidentiality agreement prohibiting the disclosure of any information gained as a result of his role as auditor to anyone other than the United States or the Court.
7. The auditor shall serve, without bond or other security, at the cost and expense of Defendants, on terms commensurate with the auditor’s experience and responsibilities. Defendants shall indemnify the auditor and hold the auditor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the auditor’s duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the auditor.
8. The auditor shall have no responsibility or obligation for the operation of, or the right to operate, Defendants’ businesses.
9. The term of the auditor shall end sixty (60) days after the sale of the Divestiture Assets is completed. The United States may extend the time period set forth in Section VI.E.9. for an additional period or periods of time not to exceed thirty (30) calendar days.

Fax: (202) 307-2784

FOR DEFENDANT
PUBLIC SERVICE ENTERPRISE
GROUP INCORPORATED:

_____/s/
Douglas G. Green (DC Bar # 183343)
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
Tel: (202) 429-3000
Fax: (202) 429-3902

ORDER

It is SO ORDERED, this _____ day of _____, 2006.

United States District Court Judge

ATTACHMENT A

Electric Generating Facility	Location/Address	Unit Number(s)
Bergen Generating Station	10 Victoria Terr. Ridgefield, NJ, 07657	CC, CC1
Cromby Generating Station	100 Cromby Rd. Phoenixville, PA, 19460	1, 2
Eddystone Generating Station	Number 1 Industrial Hwy. Eddystone, PA, 19022	1, 2, 3, 4
Hudson Generating Station,	Duffield & Van Keuren Aves. Jersey City, NJ, 07306	1, 2
Linden Generating Station	4001 South Wood Ave. Linden, NJ, 07036	CC1, CC2
Mercer Generating Station	2512 Lambertson Rd. Hamilton, NJ, 08611	1, 2
Sewaren Generating Station	751 Cliff Rd. Sewaren, NJ, 07077	1, 2, 3, 4
Schuylkill Generating Station	2800 Christian St. Philadelphia, PA, 19146	1

ATTACHMENT B

Electric Generating Facility	Location/Address	Unit Number(s)
Burlington Generating Station	W. Broad St. And Devlin Ave. Bordentown, NJ, 08505	9, 11, 12
Chester Generating Station	Front and Ward Sts. Chester, PA 19013	7, 8, 9
Croydon Generating Station	955 River Rd. Croydon, PA, 19020	11, 12, 21, 22, 31, 32, 41, 42
Delaware Generating Station	1325 N. Beach St. Philadelphia, PA, 19125	9, 10, 11, 12
Eddystone Generating Station	Number 1 Industrial Hwy. Eddystone, PA, 19022	10, 20, 30, 40
Edison Generating Station	164 Silver Lake Rd. Edison, NJ, 08817	1, 2, 3
Essex Generating Station	155 Raymond Blvd. Newark, NJ, 07105	9, 10, 11, 12
Falls Generating Station	Bristol and Tyburn Rds. Fallsington, PA, 19067	1, 2, 3
Kearny Generating Station	Foot of Hackensack Ave. Kearny, NJ, 07032	12
Linden Generating Station	Grasselli Ave. Linden, NJ, 07036	5, 6, 7, 8
Moser Generating Station	1595 Industrial Hwy. Pottstown, PA 19464	1, 2, 3
Richmond Generating Station	3901 N. Delaware Ave. Philadelphia, PA, 19137	91, 92
Schuylkill Generating Station	2800 Christian St. Philadelphia, PA, 19146	10, 11
Southwark Generating Station	2501 S. Delaware Ave. Philadelphia, PA, 19148	3, 4, 5, 6

- B. "Acquirer" or "Acquirers" means the entity or entities to whom Defendants divest any of the Divestiture Assets or with whom Defendants have entered into definitive contracts to sell any of the Divestiture Assets.
- C. "Control" means have the ability, directly or indirectly, to set the level of, dispatch, or Offer the output of one or more units of an electricity generating facility or to operate one or more units of an electricity generating facility.
- D. "Cost-based Offer" means the maximum offer to sell energy allowed under the version of the PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.
- E. "Counter-Party" means any person other than Defendants who enters into a Tolling Contract.
- F. "Designated Utility Zones" means the service territories in which the following companies on June 1, 2006, owned the wires through which electricity is distributed:
1. Atlantic City Electric Company,
 2. Baltimore Gas and Electric Company,
 3. Delmarva Power and Light Company,
 4. Jersey Central Power and Light Company,
 5. Metropolitan Edison Company,
 6. Rockland Electric Company,
 7. PECO Energy Company,
 8. Potomac Electric Power Company,

9. PPL Electric Utilities Corporation, and
 10. Public Service Electric and Gas Company.
- G. “Divestiture Assets” means the following facilities: (1) Cromby Generating Station, 100 Cromby Rd. at Phoenixville, PA, 19460; (2) Eddystone Generating Station, Number 1 Industrial Hwy. at Eddystone, PA, 19022; (3) Hudson Generating Station, Duffield & Van Keuren Aves. at Jersey City, NJ, 07306; (4) Linden Generating Station, 4001 South Wood Ave. at Linden, NJ, 07036; (5) Mercer Generating Station, 2512 Lambertson Rd. at Hamilton, NJ, 08611; and (6) Sewaren Generating Station, 751 Cliff Rd. at Sewaren, NJ, 07077; and
- a. For each of those facilities, all of Defendants’ rights, titles, and interests in any tangible and intangible assets relating to the generation, dispatch, and offering of electricity at the facility; including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility; agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form (excluding records of past offers to the PJM Market); all equipment

associated with connecting the facility to PJM (including automatic generation control equipment); all remote start capability or equipment located on site; and all other interests, assets, or improvements at the facility customarily used in the generation, dispatch, or offer of electricity from the facility; provided however, that "Divestiture Assets" shall not include (i) electric and gas distribution or transmission assets located in, or appurtenant to, the boundaries of the facility, or (ii) any communications links between the facility and Defendants, which will be disconnected.

- b. At the option of the Acquirer of the Linden Generating Station, the natural gas pipeline facilities connecting any assets at the Linden Generating Station (including the assets listed in Section I.G.a. for the Linden Generating Station), to an interconnection with the Texas Eastern Gas Transmission LP, and all of Defendants' rights, titles, and interests in any tangible and intangible assets relating to the delivery of natural gas from the Texas Eastern Gas Transmission LP interconnection with the Linden Generating Station, including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility;

agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form; and all other interests, assets, or improvements customarily used in the delivery of natural gas from the interconnection of the Texas Eastern Gas Transmission LP to the Linden Generating Station.

To the extent that any licenses, permits, or authorizations described in Section I.G.a. or Section I.G.b. are nontransferable, Defendants will use their best efforts to obtain the necessary consent for assignment to the Acquirer or Acquirers of the license, permit, or authorization.

- H. “Exelon” means Exelon Corporation, a Pennsylvania corporation headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including Exelon’s participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station or the Conemaugh Generating Station), and their directors, officers, managers, agents, and employees.
- I. “Exelon/PSEG Transaction” means the merger of Exelon and PSEG that is the subject of HSR Transaction Identification No. 2005-0696, which was filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.A. § 18a (West 1997), including any changes in the terms of that merger that do not necessitate a new Hart-Scott-Rodino filing.

- J. “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. “Good Utility Practice” is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.
- K. “Including” means including but not limited to.
- L. “Offer” or “Offers” means an offer to sell energy submitted into the PJM Market pursuant to the version of PJM “Amended and Restated Operating Agreement of PJM Interconnection, LLC,” Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.
- M. “Outage” means any outage as defined in the version of PJM Manual 35, “Definitions and Acronyms,” available at <www.pjm.com>, in effect at the time the outage occurs, including “forced outage,” “generator forced/unplanned outage,” “generator maintenance outage,” “generator planned outage,” “maintenance outage,” and “planned outage.”
- N. “Person” means any natural person, corporation, association, firm, partnership, or other business or legal entity.
- O. “PJM” means PJM Interconnection, LLC.

- P. “PJM Market” means any market for energy operated or administered by PJM, including the “Day-ahead Energy Market” or the “Real-time Energy Market.”
- Q. “PSEG” means Public Service Enterprise Group Incorporated, a New Jersey corporation headquartered in Newark, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including PSEG’s participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station, the Conemaugh Generating Station, or the Yards Creek Generating Station), and their directors, officers, managers, agents, and employees.
- R. “Self Scheduling” means scheduling for dispatch by the owner or operator of the unit and not by PJM.
- S. “Tolling Contract” means a contract giving a Counter-Party Control over the level and offer price of the output for any unit listed in Attachment A or Attachment B.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets in order to remedy the effects that the United States alleges would otherwise result from the Exelon/PSEG Transaction. This Hold Separate Stipulation and Order ensures that, prior to such divestiture, (1) the Divestiture Assets will be offered into the PJM Market as specified herein; (2) the Divestiture Assets will be preserved, maintained, and operated at least in the same physical condition as of the date of consummation of the

Exelon/PSEG Transaction, ordinary wear and tear excepted and consistent with Good Utility Practice; and (3) competition is maintained during the pendency of the ordered divestiture.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and, for purposes of this action only, over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

- A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A, may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.
- B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the entry of the Final Judgment by the Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment and shall, from the date of the signing of this Hold Separate Stipulation and Order by the

parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

- C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.
- D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.
- E. In the event that (1) the United States has withdrawn its consent, as provided in Section IV.A. above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.
- F. Defendants represent that the divestitures required by the proposed Final Judgment can and will be made, subject to receipt of necessary regulatory approvals, and that Defendants will later raise no claims of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any provisions contained therein.

V. HOLD SEPARATE PROVISIONS

From consummation of the Exelon/PSEG Transaction until the divestitures required by Section IV and Section V of the Final Judgment have been accomplished:

- A. Defendants shall take all steps necessary to assure that the Divestiture Assets are maintained as separate, distinct, and saleable assets, apart from other assets of Defendants. Defendants shall preserve the documents, books, and records relating to the Divestiture Assets until the date of divestiture.
- B. Defendants shall provide sufficient working capital to continue to maintain the Divestiture Assets as economically viable and competitive facilities, consistent with the requirements of Section V.A.
- C. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.
- D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their capacity at the time of the consummation of the Exelon/PSEG Transaction and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets, consistent with Good Utility Practice.
- E. Defendants shall not, except as part of a divestiture in accordance with Sections IV or V of the proposed Final Judgment or a Tolling Contract in accordance with Section VI.C., remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

- F. Defendants' employees stationed at the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfers initiated by employees pursuant to Defendants' regular, established job posting policy and existing collective bargaining agreements. Defendants shall provide the United States with ten (10) calendar days notice of any such transfer.
- G. Within twenty (20) calendar days after the entry of this Hold Separate Stipulation and Order, Defendants will inform the United States of the steps such Defendants have taken to comply with this Hold Separate Stipulation and Order.

VI. CONDITIONS FOR OFFERS, PENDING DIVESTITURE

From consummation of the Exelon/PSEG Transaction until the divestitures required by Section IV and Section V of the Final Judgment have been accomplished:

- A. Defendants shall offer the units listed in Attachment A at offers no more than the Cost-Based Offer. The Defendants shall make offers as follows:
 - 1. Defendants must submit offers into the PJM Market in accordance with the terms of Section VI.A. for each facility listed in Attachment A, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI.A.
 - 2. Defendants are prohibited from Self Scheduling any of the units in Attachment A.
- B. Defendants shall offer the units listed in Attachment B at offers no more than the higher of (a) the Cost-Based Offer or (b) the offer for the facility submitted into the PJM Market

on May 15, 2006, to provide energy on May 16, 2006. The Defendants shall make offers as follows:

1. Defendants must submit offers into the PJM Market in accordance with the terms of Section VI.B. for each facility listed in Attachment B, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI.B.
 2. Defendants are prohibited from Self Scheduling any of the units in Attachment B.
- C. Defendants may enter into Tolling Contracts, provided that:
1. Defendants shall submit any proposed Tolling Contract to the United States for review by submitting the name of the proposed Counter-Party and a copy of the proposed contract, the term sheet, and any related agreements to the United States;
 2. The United States may, in its sole discretion, disapprove any proposed Tolling Contract; and
 3. The United States will inform Defendants within ten (10) days of Defendants' submission of the required information about any such proposed Tolling Contract whether the United States disapproves the proposed Tolling Contract. The United States, in its sole discretion, may extend the time period set forth in Section VI.C.3. for an additional period or periods of time not to exceed five (5) calendar days.

- D. Notwithstanding Sections VI.A., VI.B., and VI.C., Defendants will be relieved from their obligation to offer the units listed in Attachment A and Attachment B in accordance with the limits defined in Sections VI.A. and VI.B.:
1. After the sales of all the Divestiture Assets have been completed; or
 2. At such time as Defendants enter into Tolling Contracts:
 - a. for the complete output of each Divestiture Asset,
 - b. for a period of time ending no sooner than the date of transfer of the Divestiture Asset associated with the Tolling Contract to the Acquirer of that Divestiture Asset, and
 - c. such that Defendants offer no share of the energy of the Divestiture Assets into the PJM Market.
- E. The United States shall retain an auditor to monitor Defendants' compliance with the requirements of Section VI. The auditor shall have or shall contract with professionals or agents who have competence or experience in the operation of electric generation facilities and understanding of the requirements of Cost-Based Offers.
1. Within five (5) business days of the consummation of the Exelon/PSEG Transaction, Defendants shall execute an agreement that, subject to the prior approval of the United States, confers on the auditor all the power and authority necessary to permit the auditor to monitor Defendants' compliance with Section VI, in a manner consistent with the purposes of this Hold Separate Stipulation and Order.

2. The auditor shall have the rights, duties, and responsibilities necessary to monitor Defendants' compliance with Section VI, and shall exercise such power and authority and carry out the duties and responsibilities of the auditor in a manner consistent with the purposes of this Hold Separate Stipulation and Order, including determining (a) whether an Outage taken by Defendants is consistent with the requirements of Section VI or (b) whether an offer made for any unit is contrary to the requirements of Section VI.
3. On demand the auditor shall receive all information relevant to the necessity and duration of an Outage of any asset covered by Section VI, including Generating Availability Data System (GADS) data, Dispatcher Application and Reporting Tool (eData) data, and engineering or any other logs or contemporaneous records. All information relevant to the offering of generation units in the PJM Market, including all information necessary to evaluate compliance with Section VI.A. and Section VI.B. must be maintained by Defendants for one year after the sale of the Divestiture Assets.
4. The auditor shall have full and complete access to all personnel, books, records, documents, and facilities of Defendants related to Defendants' compliance with Section VI, or to any other relevant information, as the auditor may request, including but not limited to, all documents and records kept in the normal course of business that relate to Defendants' obligations under Section VI. Defendants shall provide such financial or other information as auditor may request and shall

cooperate with the auditor. Defendants shall take no action to interfere with or impede the auditor's ability to perform his responsibilities or to monitor Defendants' compliance with Section VI.

5. At any time during the period that Defendants are bound by Section VI,
 - a. if Defendants contact PJM orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI, Defendants must also communicate the same information to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor;
 - b. if Defendants are contacted by PJM orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI, Defendants must communicate any information they provide to PJM to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor, and
 - c. as to units listed in Attachment B,
 1. within five (5) days of the execution of the agreement referenced in Section VI.E.1., Defendants must inform the auditor in writing of what provision of the PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, applies at that time to the Cost-Based Offers for those units, and
 2. if PJM informs Defendants that any of those units become subject to a different provision of the PJM "Amended and Restated

Operating Agreement of PJM Interconnection, LLC,” Section 6.4,
Defendants must communicate that information to the auditor in
writing within six (6) hours.

6. Defendants may require the auditor to sign a confidentiality agreement prohibiting the disclosure of any information gained as a result of his role as auditor to anyone other than the United States or the Court.
7. The auditor shall serve, without bond or other security, at the cost and expense of Defendants, on terms commensurate with the auditor’s experience and responsibilities. Defendants shall indemnify the auditor and hold the auditor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the auditor’s duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the auditor.
8. The auditor shall have no responsibility or obligation for the operation of, or the right to operate, Defendants’ businesses.
9. The term of the auditor shall end sixty (60) days after the sale of the Divestiture Assets is completed. The United States may extend the time period set forth in Section VI.E.9. for an additional period or periods of time not to exceed thirty (30) calendar days.

ATTACHMENT A

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Hudson Generating Station,	Duffield & Van Keuren Aves. Jersey City, NJ, 07306	1, 2
Linden Generating Station	4001 South Wood Ave. Linden, NJ, 07036	CC1, CC2
Mercer Generating Station	2512 Lambertson Rd. Hamilton, NJ, 08611	1, 2
Sewaren Generating Station	751 Cliff Rd. Sewaren, NJ, 07077	1, 2, 3, 4
Schuylkill Generating Station	2800 Christian St. Philadelphia, PA, 19146	1

ATTACHMENT B

Electric Generating Facility	Location/Address	Unit Number(s)
Burlington Generating Station	W. Broad St. And Devlin Ave. Bordentown, NJ, 08505	9, 11, 12
Chester Generating Station	Front and Ward Sts. Chester, PA 19013	7, 8, 9
Croydon Generating Station	955 River Rd. Croydon, PA, 19020	11, 12, 21, 22, 31, 32, 41, 42
Delaware Generating Station	1325 N. Beach St. Philadelphia, PA, 19125	9, 10, 11, 12
Eddystone Generating Station	Number 1 Industrial Hwy. Eddystone, PA, 19022	10, 20, 30, 40
Edison Generating Station	164 Silver Lake Rd. Edison, NJ, 08817	1, 2, 3
Essex Generating Station	155 Raymond Blvd. Newark, NJ, 07105	9, 10, 11, 12
Falls Generating Station	Bristol and Tyburn Rds. Fallsington, PA, 19067	1, 2, 3
Kearny Generating Station	Foot of Hackensack Ave. Kearny, NJ, 07032	12
Linden Generating Station	Grasselli Ave. Linden, NJ, 07036	5, 6, 7, 8
Moser Generating Station	1595 Industrial Hwy. Pottstown, PA 19464	1, 2, 3
Richmond Generating Station	3901 N. Delaware Ave. Philadelphia, PA, 19137	91, 92
Schuylkill Generating Station	2800 Christian St. Philadelphia, PA, 19146	10, 11
Southwark Generating Station	2501 S. Delaware Ave. Philadelphia, PA, 19148	3, 4, 5, 6

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	Case No.:
v.)	
)	Judge:
EXELON CORPORATION)	
)	Deck Type:
and)	
)	Filed:
PUBLIC SERVICE ENTERPRISE)	
GROUP INCORPORATED)	
)	
Defendants.)	

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

- A. "Acquire" means obtain any interest in any electricity generating facility, including real property, deeded development rights to real property, capital equipment, buildings, or fixtures.

- B. "Acquirer" or "Acquirers" means the entity or entities to whom Defendants divest any of the Divestiture Assets or with whom Defendants have entered into definitive contracts to sell any of the Divestiture Assets.
- C. "Control" means have the ability, directly or indirectly, to set the level of, dispatch, or Offer the output of one or more units of an electricity generating facility or to operate one or more units of an electricity generating facility.
- D. "Cost-based Offer" means the maximum offer to sell energy allowed under the version of the PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.
- E. "Counter-Party" means any person other than Defendants who enters into a Tolling Contract.
- F. "Designated Utility Zones" means the service territories in which the following companies on June 1, 2006, owned the wires through which electricity is distributed:
1. Atlantic City Electric Company,
 2. Baltimore Gas and Electric Company,
 3. Delmarva Power and Light Company,
 4. Jersey Central Power and Light Company,
 5. Metropolitan Edison Company,
 6. Rockland Electric Company,
 7. PECO Energy Company,
 8. Potomac Electric Power Company,

9. PPL Electric Utilities Corporation, and
 10. Public Service Electric and Gas Company.
- G. “Divestiture Assets” means the following facilities: (1) Cromby Generating Station, 100 Cromby Rd. at Phoenixville, PA, 19460; (2) Eddystone Generating Station, Number 1 Industrial Hwy. at Eddystone, PA, 19022; (3) Hudson Generating Station, Duffield & Van Kcuren Aves. at Jersey City, NJ, 07306; (4) Linden Generating Station, 4001 South Wood Ave. at Linden, NJ, 07036; (5) Mercer Generating Station, 2512 Lambertson Rd. at Hamilton, NJ, 08611; and (6) Sewaren Generating Station, 751 Cliff Rd. at Sewaren, NJ, 07077; and
- a. For each of those facilities, all of Defendants’ rights, titles, and interests in any tangible and intangible assets relating to the generation, dispatch, and offering of electricity at the facility; including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility; agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form (excluding records of past offers to the PJM Market); all equipment

associated with connecting the facility to PJM (including automatic generation control equipment); all remote start capability or equipment located on site; and all other interests, assets, or improvements at the facility customarily used in the generation, dispatch, or offer of electricity from the facility; provided however, that "Divestiture Assets" shall not include (i) electric and gas distribution or transmission assets located in, or appurtenant to, the boundaries of the facility, or (ii) any communications links between the facility and Defendants, which will be disconnected.

- b. At the option of the Acquirer of the Linden Generating Station, the natural gas pipeline facilities connecting any assets at the Linden Generating Station (including the assets listed in Section I.G.a. for the Linden Generating Station), to an interconnection with the Texas Eastern Gas Transmission LP, and all of Defendants' rights, titles, and interests in any tangible and intangible assets relating to the delivery of natural gas from the Texas Eastern Gas Transmission LP interconnection with the Linden Generating Station, including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility;

agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form; and all other interests, assets, or improvements customarily used in the delivery of natural gas from the interconnection of the Texas Eastern Gas Transmission LP to the Linden Generating Station.

To the extent that any licenses, permits, or authorizations described in Section I.G.a. or Section I.G.b. are nontransferable, Defendants will use their best efforts to obtain the necessary consent for assignment to the Acquirer or Acquirers of the license, permit, or authorization.

- H. “Exelon” means Exelon Corporation, a Pennsylvania corporation headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including Exelon’s participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station or the Conemaugh Generating Station), and their directors, officers, managers, agents, and employees.
- I. “Exelon/PSEG Transaction” means the merger of Exelon and PSEG that is the subject of HSR Transaction Identification No. 2005-0696, which was filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.A. § 18a (West 1997), including any changes in the terms of that merger that do not necessitate a new Hart-Scott-Rodino filing.

- J. “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. “Good Utility Practice” is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.
- K. “Including” means including but not limited to.
- L. “Offer” or “Offers” means an offer to sell energy submitted into the PJM Market pursuant to the version of PJM “Amended and Restated Operating Agreement of PJM Interconnection, LLC,” Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.
- M. “Outage” means any outage as defined in the version of PJM Manual 35, “Definitions and Acronyms,” available at <www.pjm.com>, in effect at the time the outage occurs, including “forced outage,” “generator forced/unplanned outage,” “generator maintenance outage,” “generator planned outage,” “maintenance outage,” and “planned outage.”
- N. “Person” means any natural person, corporation, association, firm, partnership, or other business or legal entity.
- O. “PJM” means PJM Interconnection, LLC.

- P. "PJM Market" means any market for energy operated or administered by PJM, including the "Day-ahead Energy Market" or the "Real-time Energy Market."
- Q. "PSEG" means Public Service Enterprise Group Incorporated, a New Jersey corporation headquartered in Newark, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including PSEG's participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station, the Conemaugh Generating Station, or the Yards Creek Generating Station), and their directors, officers, managers, agents, and employees.
- R. "Self Scheduling" means scheduling for dispatch by the owner or operator of the unit and not by PJM.
- S. "Tolling Contract" means a contract giving a Counter-Party Control over the level and offer price of the output for any unit listed in Attachment A or Attachment B.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets in order to remedy the effects that the United States alleges would otherwise result from the Exelon/PSEG Transaction. This Hold Separate Stipulation and Order ensures that, prior to such divestiture, (1) the Divestiture Assets will be offered into the PJM Market as specified herein; (2) the Divestiture Assets will be preserved, maintained, and operated at least in the same physical condition as of the date of consummation of the

Exelon/PSEG Transaction, ordinary wear and tear excepted and consistent with Good Utility Practice; and (3) competition is maintained during the pendency of the ordered divestiture.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and, for purposes of this action only, over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

- A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A, may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.
- B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the entry of the Final Judgment by the Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment and shall, from the date of the signing of this Hold Separate Stipulation and Order by the

parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

- C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.
- D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.
- E. In the event that (1) the United States has withdrawn its consent, as provided in Section IV.A. above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.
- F. Defendants represent that the divestitures required by the proposed Final Judgment can and will be made, subject to receipt of necessary regulatory approvals, and that Defendants will later raise no claims of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any provisions contained therein.

V. HOLD SEPARATE PROVISIONS

From consummation of the Exelon/PSEG Transaction until the divestitures required by Section IV and Section V of the Final Judgment have been accomplished:

- A. Defendants shall take all steps necessary to assure that the Divestiture Assets are maintained as separate, distinct, and saleable assets, apart from other assets of Defendants. Defendants shall preserve the documents, books, and records relating to the Divestiture Assets until the date of divestiture.
- B. Defendants shall provide sufficient working capital to continue to maintain the Divestiture Assets as economically viable and competitive facilities, consistent with the requirements of Section V.A.
- C. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.
- D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their capacity at the time of the consummation of the Exelon/PSEG Transaction and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets, consistent with Good Utility Practice.
- E. Defendants shall not, except as part of a divestiture in accordance with Sections IV or V of the proposed Final Judgment or a Tolling Contract in accordance with Section VI.C., remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

- F. Defendants' employees stationed at the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfers initiated by employees pursuant to Defendants' regular, established job posting policy and existing collective bargaining agreements. Defendants shall provide the United States with ten (10) calendar days notice of any such transfer.
- G. Within twenty (20) calendar days after the entry of this Hold Separate Stipulation and Order, Defendants will inform the United States of the steps such Defendants have taken to comply with this Hold Separate Stipulation and Order.

VI. CONDITIONS FOR OFFERS, PENDING DIVESTITURE

From consummation of the Exelon/PSEG Transaction until the divestitures required by Section IV and Section V of the Final Judgment have been accomplished:

- A. Defendants shall offer the units listed in Attachment A at offers no more than the Cost-Based Offer. The Defendants shall make offers as follows:
 - 1. Defendants must submit offers into the PJM Market in accordance with the terms of Section VI.A. for each facility listed in Attachment A, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI.A.
 - 2. Defendants are prohibited from Self Scheduling any of the units in Attachment A.
- B. Defendants shall offer the units listed in Attachment B at offers no more than the higher of (a) the Cost-Based Offer or (b) the offer for the facility submitted into the PJM Market

on May 15, 2006, to provide energy on May 16, 2006. The Defendants shall make offers as follows:

1. Defendants must submit offers into the PJM Market in accordance with the terms of Section VI.B. for each facility listed in Attachment B, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI.B.
 2. Defendants are prohibited from Self Scheduling any of the units in Attachment B.
- C. Defendants may enter into Tolling Contracts, provided that:
1. Defendants shall submit any proposed Tolling Contract to the United States for review by submitting the name of the proposed Counter-Party and a copy of the proposed contract, the term sheet, and any related agreements to the United States;
 2. The United States may, in its sole discretion, disapprove any proposed Tolling Contract; and
 3. The United States will inform Defendants within ten (10) days of Defendants' submission of the required information about any such proposed Tolling Contract whether the United States disapproves the proposed Tolling Contract. The United States, in its sole discretion, may extend the time period set forth in Section VI.C.3. for an additional period or periods of time not to exceed five (5) calendar days.

- D. Notwithstanding Sections VI.A., VI.B., and VI.C., Defendants will be relieved from their obligation to offer the units listed in Attachment A and Attachment B in accordance with the limits defined in Sections VI.A. and VI.B.:
1. After the sales of all the Divestiture Assets have been completed; or
 2. At such time as Defendants enter into Tolling Contracts:
 - a. for the complete output of each Divestiture Asset,
 - b. for a period of time ending no sooner than the date of transfer of the Divestiture Asset associated with the Tolling Contract to the Acquirer of that Divestiture Asset, and
 - c. such that Defendants offer no share of the energy of the Divestiture Assets into the PJM Market.
- E. The United States shall retain an auditor to monitor Defendants' compliance with the requirements of Section VI. The auditor shall have or shall contract with professionals or agents who have competence or experience in the operation of electric generation facilities and understanding of the requirements of Cost-Based Offers.
1. Within five (5) business days of the consummation of the Exelon/PSEG Transaction, Defendants shall execute an agreement that, subject to the prior approval of the United States, confers on the auditor all the power and authority necessary to permit the auditor to monitor Defendants' compliance with Section VI, in a manner consistent with the purposes of this Hold Separate Stipulation and Order.

2. The auditor shall have the rights, duties, and responsibilities necessary to monitor Defendants' compliance with Section VI, and shall exercise such power and authority and carry out the duties and responsibilities of the auditor in a manner consistent with the purposes of this Hold Separate Stipulation and Order, including determining (a) whether an Outage taken by Defendants is consistent with the requirements of Section VI or (b) whether an offer made for any unit is contrary to the requirements of Section VI.
3. On demand the auditor shall receive all information relevant to the necessity and duration of an Outage of any asset covered by Section VI, including Generating Availability Data System (GADS) data, Dispatcher Application and Reporting Tool (eData) data, and engineering or any other logs or contemporaneous records. All information relevant to the offering of generation units in the PJM Market, including all information necessary to evaluate compliance with Section VI.A. and Section VI.B. must be maintained by Defendants for one year after the sale of the Divestiture Assets.
4. The auditor shall have full and complete access to all personnel, books, records, documents, and facilities of Defendants related to Defendants' compliance with Section VI, or to any other relevant information, as the auditor may request, including but not limited to, all documents and records kept in the normal course of business that relate to Defendants' obligations under Section VI. Defendants shall provide such financial or other information as auditor may request and shall

cooperate with the auditor. Defendants shall take no action to interfere with or impede the auditor's ability to perform his responsibilities or to monitor Defendants' compliance with Section VI.

5. At any time during the period that Defendants are bound by Section VI,
 - a. if Defendants contact PJM orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI, Defendants must also communicate the same information to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor;
 - b. if Defendants are contacted by PJM orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI, Defendants must communicate any information they provide to PJM to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor, and
 - c. as to units listed in Attachment B,
 1. within five (5) days of the execution of the agreement referenced in Section VI.E.1., Defendants must inform the auditor in writing of what provision of the PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, applies at that time to the Cost-Based Offers for those units, and
 2. if PJM informs Defendants that any of those units become subject to a different provision of the PJM "Amended and Restated

Operating Agreement of PJM Interconnection, LLC,” Section 6.4,
Defendants must communicate that information to the auditor in
writing within six (6) hours.

6. Defendants may require the auditor to sign a confidentiality agreement prohibiting the disclosure of any information gained as a result of his role as auditor to anyone other than the United States or the Court.
7. The auditor shall serve, without bond or other security, at the cost and expense of Defendants, on terms commensurate with the auditor’s experience and responsibilities. Defendants shall indemnify the auditor and hold the auditor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the auditor’s duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the auditor.
8. The auditor shall have no responsibility or obligation for the operation of, or the right to operate, Defendants’ businesses.
9. The term of the auditor shall end sixty (60) days after the sale of the Divestiture Assets is completed. The United States may extend the time period set forth in Section VI.E.9. for an additional period or periods of time not to exceed thirty (30) calendar days.

ATTACHMENT A

Electric Generating Facility	Location/Address	Unit Number(s)
Bergen Generating Station	10 Victoria Terr. Ridgefield, NJ, 07657	CC, CC1
Cromby Generating Station	100 Cromby Rd. Phoenixville, PA, 19460	1, 2
Eddystone Generating Station	Number 1 Industrial Hwy. Eddystone, PA, 19022	1, 2, 3, 4
Hudson Generating Station,	Duffield & Van Keuren Aves. Jersey City, NJ, 07306	1, 2
Linden Generating Station	4001 South Wood Ave. Linden, NJ, 07036	CC1, CC2
Mercer Generating Station	2512 Lambertson Rd. Hamilton, NJ, 08611	1, 2
Sewaren Generating Station	751 Cliff Rd. Sewaren, NJ, 07077	1, 2, 3, 4
Schuylkill Generating Station	2800 Christian St. Philadelphia, PA, 19146	1

ATTACHMENT B

Electric Generating Facility	Location/Address	Unit Number(s)
Burlington Generating Station	W. Broad St. And Devlin Ave. Bordentown, NJ, 08505	9, 11, 12
Chester Generating Station	Front and Ward Sts. Chester, PA 19013	7, 8, 9
Croydon Generating Station	955 River Rd. Croydon, PA, 19020	11, 12, 21, 22, 31, 32, 41, 42
Delaware Generating Station	1325 N. Beach St. Philadelphia, PA, 19125	9, 10, 11, 12
Eddystone Generating Station	Number 1 Industrial Hwy. Eddystone, PA, 19022	10, 20, 30, 40
Edison Generating Station	164 Silver Lake Rd. Edison, NJ, 08817	1, 2, 3
Essex Generating Station	155 Raymond Blvd. Newark, NJ, 07105	9, 10, 11, 12
Falls Generating Station	Bristol and Tyburn Rds. Fallsington, PA, 19067	1, 2, 3
Kearny Generating Station	Foot of Hackensack Ave. Kearny, NJ, 07032	12
Linden Generating Station	Grasselli Ave. Linden, NJ, 07036	5, 6, 7, 8
Moser Generating Station	1595 Industrial Hwy. Pottstown, PA 19464	1, 2, 3
Richmond Generating Station	3901 N. Delaware Ave. Philadelphia, PA, 19137	91, 92
Schuylkill Generating Station	2800 Christian St. Philadelphia, PA, 19146	10, 11
Southwark Generating Station	2501 S. Delaware Ave. Philadelphia, PA, 19148	3, 4, 5, 6

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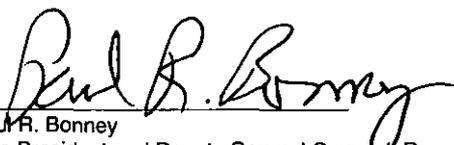
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Date:

August 10, 2006


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ORIGINAL

September 11, 2006

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FedEx

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
2nd Floor North
Commonwealth Keystone Building
Harrisburg, PA 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: PECO Energy's Conversion to a Common Customer System (CCS)
Docket No. A-110550F0160**

DOCUMENT
FOLDER

Dear Secretary McNulty:

Consistent with the PECO Energy's representations at paragraph 32 of the above-referenced docket, we are writing to inform you of the company's intent to implement a new customer information system beginning on the evening of Thursday, October 12, 2006, and concluding on Monday, October 16, 2006. PECO will brief representatives of the Commission and the Office of Consumer Advocate regarding this conversion on Tuesday, September 19, 2006.

Sincerely,

cc: Mitchell A. Miller, Director, Bureau of Consumer Services
Thomas E. Sheets, Director, Bureau of Audits
Tanya J. McCloskey, Esq., Office of Consumer Advocate

BDC/mtg

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ORIGINAL

September 19, 2006

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

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SECRETARY'S BUREAU

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

Investigation of the Potential Consolidation of the Operations of Philadelphia Gas Works with and into the Natural Gas Distribution Business of Exelon Electric & Gas Corporation
Docket No. I-00060110

Dear Secretary McNulty:

PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) submit this letter to notify the Commission that PECO's parent company, Exelon Corporation (Exelon), has terminated its merger agreement with PSE&G's parent company, Public Service Group Enterprise Incorporated (PSEG).

By Order entered February 1, 2006 at Docket No. A-110550F0160, the Commission approved a Joint Petition for Settlement and the Joint Application of PECO and PSE&G for approval of the merger of PSEG and Exelon. Under the terms of the Settlement (par. 56.): "The consummation and closing of the Merger constitutes a condition precedent to the Settlement." Since the merger agreement has been terminated, and because the merger therefore will not close, the Settlement has terminated. In light of this development, PECO and PSE&G request that the Commission ask the Commonwealth Court to relinquish jurisdiction over the appeals taken from the Commission's February 1, 2006 Order at Nos. 444 C.D. 2006 (Philadelphia Gas Works) and 456 C.D. 2006 (The City of Philadelphia) and mark the proceeding closed.

Further, under the Settlement Agreement (par. 55):

“The Joint Petitioners agree that the Commission, acting within its authority, may initiate a separate fact-finding investigation following the consummation of the Merger to examine issues related to a potential consolidation of the operations of PGW with and into the natural gas distribution business of EEG. The Commission may assign such investigation to the Office of Administrative Law Judge for the preparation of a report on such issues.”

By Order entered February 28, 2006 at Docket No. I-00060110 the Commission directed:

“That [such] a fact-finding investigation . . . shall be initiated thirty (30) days following the effective date of the merger”

Because the merger now will not close and because the Settlement has terminated, PECO and PSE&G request that the Commission terminate the proceeding at Docket No. I-00060110.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul B. Borrey". The signature is written in a cursive, flowing style.

cc: Hon. Wendell F. Holland, Chairman
Hon. James H. Cawley, Vice Chairman
Hon. Terrance J. Fitzpatrick, Commissioner
Hon. Kim Pizzingrilli, Commissioner
Hon. William Shane, Commissioner
Hon. Veronica A. Smith, Chief Administrative Law Judge
Hon. Marlane R. Chestnut, Administrative Law Judge

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Date: September 19, 2006



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