



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

IN REPLY PLEASE
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ISSUED: November 30, 2005

A-110550 F0160

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**DOCUMENT
FOLDER**

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

TO WHOM IT MAY CONCERN:

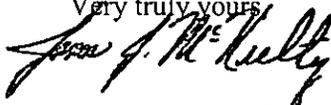
Enclosed is a copy of the Initial Decision of Administrative Law Judge Marlane R. Chestnut. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within **twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.**

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**DOCUMENT
FOLDER**

INITIAL DECISION

Before
Marlane R. Chestnut
Administrative Law Judge

DOCKETED
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Appendix A
Appendix B

Joint Petition for Settlement
Listing of statements and exhibits

I. HISTORY OF THE PROCEEDING

On February 4, 2005, PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) (collectively, joint applicants) filed with the Pennsylvania Public Utility Commission (Commission) a Joint Application requesting that the Commission issue an order approving, to the extent necessary, the merger of Public Service Enterprise Group Incorporated (PSEG), PSE&G's corporate parent, with and into Exelon Corporation (Exelon), PECO's ultimate parent corporation. Exelon, as the surviving company, will change its name to Exelon Electric & Gas Corporation (EEG).¹ Included with the Joint Application were Exhibits A, B, C and D, as well as PECO Sts. 1, 2 and 3, with associated exhibits.

PECO notified its customers of the filing of the Joint Application by bill inserts, and served it on the Commission's Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and on all of the active parties at Docket Nos. A-110550F0147 (the 2000 Unicom merger proceeding) and R-00994787 (PECO's natural gas restructuring proceeding). Pursuant to a Secretarial letter dated February 8, 2005, the joint applicants published notice of the proposed merger in the *Philadelphia Inquirer* the week of February 14, 2005. In addition, notice of the Joint Application was published in the *Pennsylvania Bulletin* on February 19, 2005. Numerous entities filed Protests or Petitions to Intervene. The active parties, in addition to the joint applicants, included the OCA; OSBA; OTS; the Philadelphia Area Industrial Energy Users Group (PAIEUG); Citizens for Pennsylvania's Future, Joy Bergey and Lisa Z. Leighton (PennFuture Parties); Department of Environmental Protection (DEP); Exelon Utility Coordinated Council, Locals 614 and 777 of the International Brotherhood of Electrical Workers and Frank Kuders (Labor Parties); PPL Electric Utilities Corporation (PPL Electric), PPL EnergyPlus, LLC (PPL EnergyPlus), PPL Brunner Island, LLC, PPL Hollywood,

¹ Following the proposed merger, the existing shareholders of Exelon will represent approximately 68% and the former shareholders of PSEG will represent approximately 32% of the shareholders of EEG. All of PECO's common stock will continue to be held by Exelon Energy Delivery (to be renamed EEG Energy Delivery) and ultimate ownership will continue to reside in EEG. PSE&G will become a separate subsidiary of EEG Energy Delivery. The proposed merger will not change the terms of or character of the outstanding preferred stock and debt of either PECO or PSE&G.

LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL University Park, LLC, Lower Mount Bethel Energy, LLC and PPL Susquehanna, LLC (collectively, PPL Companies); the City of Philadelphia (Philadelphia); Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and FirstEnergy Solutions, Corp. (FES) (collectively, FirstEnergy Companies); Action Alliance of Senior Citizens of Greater Philadelphia, Association of Community Organizations for Reform Now and Tenants' Action Group (Action Alliance et al.); The Reinvestment Fund, through its Sustainable Development Fund (TRF/SDF); Philadelphia Gas Works (PGW) and Pennsylvania State Senator Anthony H. Williams (Sen. Williams).

Inactive parties included the New Jersey Large Energy Users Coalition, Amerada Hess Corporation, Energy Coordinating Agency of Philadelphia, Inc., Strategic Energy LLC, Direct Energy Services LLC, the Retail Energy Supply Association (formerly Mid-Atlantic Power Supply Association) and Edison Mission Energy, EME Homer City Generation LP, Edison Mission Marketing & Trading, Inc. (collectively, the EME companies). See, Order Permitting Intervention dated May 31, 2005 (with respect to the EME companies), Prehearing Order #3 dated August 11, 2005 and Prehearing Order #5 dated September 7, 2005. By Petition dated July 5, 2005 and granted by Order dated July 6, 2005, Pepco Holdings, Inc. and subsidiaries Conectiv Energy Supply, Inc., Pepco Energy Services, Inc., Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company (collectively, PHI), which had been an active party, withdrew from the proceeding. By Opinion and Order entered July 18, 2005, the Commission denied the Petition to Intervene and dismissed the Protest of Eric Epstein, adopting my Initial Decision dated April 25, 2005.

By Notice dated March 17, 2005, a prehearing conference was scheduled for March 29, 2005 and the matter was assigned to me. On March 17, 2005, I issued a Prehearing Conference Order directing the parties to comply with certain procedural requirements.

That prehearing conference was held as scheduled on March 29, 2005 in Philadelphia. All of the active and inactive parties who had intervened were present through counsel. At that prehearing conference, various procedural items were addressed and a schedule was adopted. See, Prehearing Order #2, issued on March 30, 2005 and revised on March 31, 2005.

Pursuant to the schedule adopted at the prehearing conference, direct written testimony was submitted on or about June 28, 2005 by Sen. Williams, PGW, OTS, Philadelphia, Action Alliance et al., TRF/SDF, OCA (proprietary and nonproprietary), the FirstEnergy Companies, OSBA, the PPL Companies, DEP, the Labor Parties and the PennFuture Parties.

By Public Input Hearing Notice dated May 31, 2005, public input hearings were scheduled for June 30, 2005 at the Philadelphia Senior Center (10:00 am) and Philadelphia Community College West Regional Center (3:00 pm). Those public input hearings were held as scheduled. Seventeen people, either as individuals or representatives of a group, testified at the Philadelphia Senior Center session. Ten people, as either individuals or representatives of a group, testified at the Community College session. Various statements presented at those sessions were made part of the record by Order Admitting Statements into the Record dated July 18, 2005.

By Secretarial letter dated July 15, 2005, Vice-Chairman Cawley and Commissioner Shane posed a series of questions (Directed Questions) to be answered by the parties. The first four questions inquired into whether the synergies to be unlocked by the proposed merger could be harnessed to enhance economic development, and they specifically raised the issue of a “set aside” of “virtually divested generation” to be dedicated to that purpose. The fifth question asked the parties to consider the viability of combining the natural gas operations of PECO and PSE&G with the operations of PGW in a viable, profitable, shareholder-owned public utility.

By Hearing Notice dated July 19, 2005, hearings were scheduled for August 23, 24, 25, 26, 29, 30, 31 and September 1, 2005 in accordance with the schedule adopted at the prehearing conference held on March 29, 2005.

By Notice dated July 22, 2005, a further telephonic prehearing conference was scheduled for July 26, 2005 to discuss revising the schedule in order to allow the parties an adequate opportunity to address the Directed Questions.

On or about July 29, 2005, rebuttal testimony was submitted by PECO, OSBA and OCA.

The further telephonic prehearing conference was held as scheduled, and a new schedule was adopted. See, Prehearing Order #3 dated August 11, 2005.

By Hearing Notice dated August 12, 2005, hearings were scheduled for September 12, 13, 15, 16, 22, 23, 26, 27, 28 and 29, 2005, in Philadelphia. On August 18, 2005, I issued Prehearing Order #4, which slightly changed the scheduling of several witnesses for particular hearing days.

Pursuant to the schedule adopted at the July 26, 2005 telephonic further prehearing conference, on or about August 26, 2005, surrebuttal testimony was submitted by TRF/SDF, the Labor Parties, OSBA, the FirstEnergy Companies, OCA, OTS, Philadelphia, Action Alliance et al., PGW (proprietary and nonproprietary), the PennFuture Parties and the PPL Companies. Also on that date, supplemental direct testimony relating to the Directed Questions was submitted by OSBA, the FirstEnergy Companies, OCA, PECO, OTS, Philadelphia, PGW, the PennFuture Parties, the PPL Companies and DEP.

On September 1, 2005, I issued Prehearing Order #6 which directed the parties to provide certain information concerning their anticipated cross-examination.

As the result of settlement negotiations among various parties, the hearings scheduled for September 12, 13, 15 and 16, 2005 were cancelled, and a further telephonic prehearing conference was scheduled for September 9, 2005. That further telephonic prehearing conference was held as scheduled. All of the active parties and several inactive parties participated. The schedule was revised to reflect the settlement that had been reached among certain of the parties. See, Prehearing Order #7 dated September 12, 2005.

On September 12, 2005, a Joint Petition for Settlement was filed with the Commission. The Joint Petitioners included PECO, PSE&G, OTS, OCA, OSBA, DEP, the PennFuture Parties, Action Alliance et al., ECA, PAIEUG, TRF/SDF, and Sen. Williams. This Joint Petition is attached to this Initial Decision as Appendix A.

By letter dated September 13, 2005, the Labor Parties indicated that they did not oppose the settlement, and reserved the right to participate in further proceedings should the Commission reject or modify the settlement and also reserved the right to participate in proceedings in other jurisdictions. On September 13, 2005, PAIEUG filed and served a Statement in Support of the settlement. On September 14, 2005, Statements in Support of the settlement were filed by TRF/SDF, Action Alliance et al., OTS, OSBA, OCA, PennFuture Parties and DEP. Also on September 14, 2005, PECO submitted further supplemental testimony in support of the settlement. A statement in opposition to the settlement was filed on September 19, 2005 by the City of Philadelphia. On September 20, 2005, the PPL Companies filed a statement explaining that they were neither opposing nor supporting the settlement since it specifically does not address market power issues, citing a Stipulation filed with the Commission on September 16, 2005, and requesting that the Commission address those issues. PGW submitted supplemental testimony opposing the settlement on September 20, 2005.

Hearings were held in Philadelphia on September 22, 23 and 26, 2005. Witnesses were presented by the joint applicants and PGW. Admitted into the record, either through

adoption by a witness or through stipulation, were numerous statements and exhibits. See, Appendix B, a listing of the statements and exhibits.²

Pursuant to the schedule contained in Prehearing Order #7 (dated September 12, 2005), Main Briefs were filed and served on October 14, 2005 by the joint applicants, PGW (both proprietary and public versions), OCA, OTS, OSBA, the FirstEnergy Companies, the PPL Companies, the PennFuture Parties, TRF and Philadelphia. DEP did not file a brief, but did file proposed Findings of Fact and Conclusions of Law. Action Alliance et al. also did not file a brief but submitted proposed Findings of Fact and Conclusions of Law. Reply Briefs were filed and served on October 21, 2005 by OTS, the FirstEnergy Companies, the PPL Companies, OCA, OSBA, Philadelphia, PGW and the joint applicants.

As explained in more detail below, the settlement should be accepted without modification by the Commission. The record clearly demonstrates that the proposed merger, as reflected in the settlement terms and conditions, is in the public interest, provides substantial, affirmative benefits, and is not likely to result in anticompetitive or discriminatory conduct or the unlawful exercise of market power in the retail electric and natural gas markets.

Although the concerns raised by the parties who did not join the settlement are valid and well-presented, they do not represent a sufficient basis for disapproval or conditional approval of the proposed merger. The parties, especially the joint applicants, are to be commended for their recognition that substantial commitments were required to ensure that the proposed merger “affirmatively promote[s] the service, accommodation, convenience or safety of the public in some substantial way.” I also wish to note the outstanding professionalism and good faith shown in this proceeding by all the parties and their counsel.

² As a result of the settlement, a number of the statements which had been served were not moved into evidence, while others were revised or redacted before being admitted into the record.

II. DESCRIPTION OF THE PARTIES AND THE PROPOSED TRANSACTION

At issue is the proposed agreement that PSEG (the parent of PSE&G) will merge with and into Exelon Corporation, the parent of PECO, pursuant to an Agreement and Plan of Merger entered on December 20, 2004.

As explained in the Application, PECO is a jurisdictional utility regulated by the Commission that provides electric and gas service in southeastern Pennsylvania as a “public utility,” a “natural gas distribution company” and an “electric distribution company” as respectively defined by Sections 102, 2202 and 2803 of the Public Utility Code, 66 Pa.C.S.A. §§102, 2202 and 2803.

Pursuant to Commission Order entered June 22, 2000 at Docket No. A-00110550F0147, PECO became a wholly-owned subsidiary of Exelon, and Unicom (the parent of Commonwealth Edison Company, or ComEd) was merged with and into Exelon. Both PECO and ComEd are second-tier subsidiaries of Exelon through their immediate parent, Exelon Energy Delivery Company.

PSE&G is a New Jersey corporation that provides electric and natural gas service in New Jersey, in a corridor that runs diagonally across the state, including its six largest cities. As a consequence of its fractional ownership interest in an electric transmission line that runs from the Conemaugh Generating Station to the Maryland border, PSE&G holds a certificate of public convenience issued on April 24, 1986 at Docket No. 94234, but it is not authorized to serve any customers in Pennsylvania.

PSEG is the parent of PSE&G. It has four principal first-tier subsidiaries: (1) PSE&G; (2) PSEG Power LLC (a wholesale energy supply company that operates through three principal subsidiaries, PSEG Nuclear LLC, PSEG Fossil LLC and PSEG Energy Resources & Trade LLC); (3) PSEG Energy Holding LLC; and (4) PSEG Services Corporation.

Under the terms of the merger, each PSEG shareholder will be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held, with cash paid in lieu of any fractional shares. Exelon will be the surviving company, and will remain the corporate parent of PECO and all other current Exelon subsidiaries, and will become the ultimate corporate parent of PSEG and all other PSEG subsidiaries. Exelon will change its name to Exelon Electric & Gas Corporation (EEG).

Mr. John W. Rowe, the current Chairman, Chief Executive Officer and President of Exelon, will serve as Chief Executive Officer and President of EEG following the merger. Mr. James E. Ferland, the current Chairman, Chief Executive Officer and President of PSEG, will become the non-executive Chairman of the EEG Board of Directors after the merger and will serve in that capacity until March 31, 2007, unless he leaves the board sooner. When Mr. Ferland's tenure ends, EEG's Chief Executive Officer will be appointed Chairman. Mr. Dennis P. O'Brien, the current President of PECO, will remain in that position and will continue to be responsible for PECO's day-to day operations.

III. RELEVANT LEGAL PRINCIPLES

The Public Utility Code, 66 Pa.C.S. §332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, joint applicants have the burden of proof in this matter pursuant to 66 Pa.C.S. §332(a).

This burden is satisfied by the presentation of a preponderance of the evidence. “[T]he degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, i.e., a preponderance of the evidence (citations omitted). It is well established in this Commonwealth that proof by a preponderance of the evidence is the lowest degree of proof recognized in civil judicial proceedings (citation omitted, footnote omitted).” Samuel J. Lansberry, Inc. v. Pa PUC, 578 A.2d 600, 602, 1990 Pa. Commw

LEXIS 402, alloc. den., 602 A.2d 863 (Pa. Cmwlth. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa.C.S. §704; Mill v. Pa P.U.C., 447 A.2d 1100 (Pa. Cmwlth. 1982); Edan Transportation Corp. v. Pa P.U.C., 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. v. Pa P.U.C., 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa. Super. 1960); Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984).

Relevant to this proceeding are Sections 1102, 1103, 2210 and 2811 of the Public Utility Code, 66 Pa.C.S.A. §§1102, 1103, 2210 and 2811. Section 1102(a) requires that the Commission issue a certificate of public convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. The statute, in pertinent part, provides:

Upon application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

(3) For any public utility or affiliated interest of a public utility as defined in section 2101 . . . to acquire from, or transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock, including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service. . . .

66 Pa.C.S. §1102(a)(3).

The predecessor provisions to Sections 1102 and 1103 of the Public Utility Code, 66 P.S. §§1122 and 1123, were interpreted by the Pennsylvania Supreme Court in City of York v. PA Public Utility Commission, 449 Pa. 136, 295 A.2d 825 (Pa. 1972). The Supreme Court's interpretation remains valid today, and provides the legal standard against which the question of approval of the Joint Application must be measured. In City of York, the Supreme Court said:

[A] certificate of public convenience approving a merger is not to be granted unless the Commission is able to find affirmatively that public benefit will result from the merger. . . . [T]hose seeking approval of a utility merger [are required to] demonstrate more than the mere absence of any adverse effect upon the public. . . . [T]he proponents of a merger [are required to] demonstrate that the merger will affirmatively promote the "service, accommodation, convenience, or safety of the public" in some substantial way. City Of York v. PA Public Utility Comm'n, 449 Pa. 136; 295 A.2d 825, 828(1972).

See also, ARIPA v. PA Public Utility Commission, 792 A.2d 636 (Pa. Cmwlth. 2002), appeal denied, 572 Pa. 736, 815 A.2d 634 (2003); Middletown Twp. v. Pa. PUC, 482 A.2d 674, 682 (Pa. Commw. Ct. 1984) ; Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp., Docket No. A-110300F0095, 2001 Pa. PUC LEXIS 23 (Opinion and Order entered June 20, 2001) (subsequent appellate history omitted); Application of Newtown Artesian Water Company, 76 Pa. PUC 260, 262 (1992) ; Joint Application of Pennsylvania-American Water Company and Thames Water Aqua Holdings GmbH, Docket Nos. A-212285F0096 and A-230073F0004, 1995 Pa. PUC LEXIS 124 (Commission Opinion and Order entered December 4, 1995).

Most recently, this standard was applied by the Commission in Joint Application of SBC Communications, Inc., and AT&T Corp. together with its Certificated Pennsylvania Subsidiaries for Approval of Merger, Docket Nos. A-311163F0006, A-310213F0008, A-310258F0005, Commission Opinion and Order entered October 6, 2005 at 16-17. "In order to

obtain a certificate of public convenience, the Joint Applicants have the burden of proving by a standard of proof of a preponderance of the evidence, that the proposed transaction is in the public interest because it will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *See City of York*, 295 A.2d at 828.”

Thus, in order to obtain a certificate of public convenience, the joint applicants have the burden of proving that the proposed merger is in the public interest. To be found to be in the public interest, the joint applicants must demonstrate by a preponderance of the evidence that the merger will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.”

To ensure that a proposed merger is in the “public interest,” Section 1103 specifically permits the Commission to impose conditions in granting a certificate of public authority. “A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.” 66 Pa.C.S.A. §1103(a). In fact, by the imposition of conditions, the Commission can approve a merger that would not otherwise meet the City of York legal standard. See, Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp., supra; Re: DQE, Inc. , 88 Pa. PUC 467, 474, 186 PUR4th 39 (1998).

The Joint Application also must be reviewed pursuant to Section 2811 of the Public Utility Code that was adopted by the General Assembly as part of the Customer Choice Act. Pursuant to Section 2811, 66 Pa.C.S. §2811(a), the Commission generally has responsibility for “monitor[ing] the market for the supply and distribution of electricity to retail customers and tak[ing] steps as set forth in this section to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.” With regard to electric utility mergers, 66 Pa.C.S. §2811(e)(1) specifically requires the Commission to:

. . . consider whether a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive electricity market.

Section 2811(e)(2) requires that upon request for approval of a merger or acquisition, notice and an opportunity for hearing shall be afforded to explore whether a proposed transaction is “likely to result in anticompetitive or discriminatory conduct or the unlawful exercise of market power.” The Commission also is authorized to establish terms and conditions that it finds necessary to preserve the benefits of a properly functioning and workably competitive retail electricity market.

Similarly, Section 2210 requires the Commission to consider the impact of a proposed merger on the competitive retail natural gas market. 66 Pa.C.S. §2210. In the exercise of its authority to consider a merger, the Commission is to consider whether the proposed merger is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market. §2210(a)(1). The Commission also is to consider the effect of the proposed merger on the employees of the natural gas distribution company or any other authorized collective bargaining agent representing those employees. §2210(a)(2). The Commission is also authorized to impose necessary terms and conditions to preserve the benefits of the properly functioning and effectively competitive retail natural gas market. §2210(b).

Thus, the Commission must review the merger to determine if it is in the public interest, provides substantial, affirmative benefits, and is not likely to result in anticompetitive or discriminatory conduct or the unlawful exercise of market power in the retail electric and natural gas markets.

In the Joint Application and in their Main Brief at 6-7, the joint applicants discussed their position that Commission review and approval of the proposed transaction is not required. They noted that the proposed transaction does not result in any “change of control” of PECO as defined by the Commission’s policy statement at 52 Pa. Code §69.901.³ Both before and after the merger, all of PECO’s common stock will be owned by Exelon Energy Delivery, which will continue to be a wholly-owned, first-tier subsidiary of Exelon. In addition, they pointed out that there will be no change in control of Exelon, since no controlling interest as defined in the policy statement currently exists nor will be created as the result of the proposed merger.

This position was opposed by a number of parties in their responses to the Joint Application. For example, in its Reply Brief, OTS explained that the proposed transaction would require the issuance of a certificate of convenience because the merger would involve “an affiliated interest of a public utility,” citing, DQE, Inc., *supra*, 186 PUR4th at 46: “In DQE, Inc., the Commission determined that it had the authority to review the merger between the holding companies of West Penn Power Company and Duquesne Light Company specifically because it involved an affiliated interest of the public utility. Similarly, the instant proceeding involves the merger of another corporate entity into a subsidiary of Exelon, which is an affiliate of PECO.”

There is no question that if the policy statement in §69.901 is applied, then there is no change in control of PECO, its parent (Exelon Energy Delivery) or grandparent (Exelon) that would trigger the exercise of the Commission’s jurisdiction. Thus, this situation is unlike the cases cited by those parties opposed to the joint applicants’ position, such as DQE, *supra*.

However, there are two reasons why the Commission may chose to exercise its jurisdiction in this proceeding. First, as the joint applicants themselves pointed out, a policy

³ While the proposed merger will result in a change of control for PSE&G, PSE&G is not a jurisdictional public utility, as it does not serve any customers in Pennsylvania.

statement, unlike a regulation or statutory provision, does not have the force and effect of law but, instead, is an announcement to the public of the policy, which the agency hopes to implement in future rulemakings or adjudications. Pennsylvania Human Relations Commission v. Norristown Area School District, 473 Pa. 334, 350, 374 A.2d 671 (1977). As such, it is for the Commission to determine its application.⁴ Second, while the merger addresses the corporate structure of PECO's ultimate parent, there is the potential of impact on PECO's jurisdictional customers, who represent a sizable proportion of Pennsylvania's utility users.

It is unnecessary to resolve this issue in this proceeding, as the issue is moot. In the settlement, PECO, "surrender[ed] to the Commission's jurisdiction" in order to effectuate and enforce the settlement, without waiving or conceding its assertion that the Commission lacks jurisdiction. See, Paragraph 45. Therefore, the issue in this proceeding is whether the Commission should issue a certificate of public convenience approving the proposed transaction as requested by the joint applicants.

IV. MAJOR TERMS AND CONDITIONS OF THE JOINT PETITION FOR SETTLEMENT

The Joint Petition for Settlement contains the settlement terms and conditions. Appendix A attached to it contains the distribution tariffs and proof of revenue. The Joint Petition (without Appendix A) is attached to this Initial Decision as Appendix A. The Settlement Petition contains numerous terms and conditions at Paragraphs 14-61, which will not be repeated here. Below are the major terms and conditions in the Joint Petition for Settlement.

A. Rate Reductions/Rate Cap Protections

PECO agreed to reduce its retail electric distribution rates by \$120 million over a four year period. The rate reductions will commence approximately one month after

⁴ I note that, in order to remove uncertainty regarding the scope of the Commission's jurisdiction concerning the proposed transaction, PECO could have sought guidance from the Commission through a petition for a declaratory order pursuant to 66 Pa.C.S.A. §331(f). It chose not to do so.

consummation of the merger and will remain in effect for four years. In the first two years, rates will be reduced by \$40 million each year from the levels that would otherwise be in effect pursuant to the Commission's June 22, 2000 Order approving the 2000 Unicom Merger Settlement and in the December 19, 2002 Order approving the roll-in to base rates of the Revenue Neutral Reconciliation Gross Receipts Tax. In the next two years, rates will be reduced by \$20 million in each year. See, Paragraph 14. In addition to the rate reductions, PECO agreed to an extension of its transmission, distribution and generation rate caps through December 31, 2010, subject to certain exceptions. See, Paragraph 15-17. PECO agreed to amortize the costs and expenses of achieving the merger during this extended rate cap period, so that the costs will not be deferred or claimed in a subsequent base rate case. See, Paragraph 18.

B. Recovery of Nuclear Costs

Paragraph 19 of the Joint Petition for Settlement confirms PECO's commitment made in the 2000 Unicom Merger Settlement, and in its testimony here, that PECO's ratepayers will only be responsible for nuclear costs, including nuclear decommissioning costs, that are associated with the ownership and operation of nuclear plants that PECO held on December 31, 1999 (Pre-Existing Nuclear Interests).

C. Reliability and Customer Service

PECO agreed to a Quality of Service Plan (Service Plan) designed to maintain or improve reliability and customer service provided by PECO over the levels committed to in the 2000 Unicom Merger Settlement. In the 2000 Unicom Merger Settlement, PECO agreed to a Quality of Service Plan that was set to expire at the end of 2005.

PECO agreed to extend its reliability and customer service commitments through a new Service Plan. See, Paragraphs 20-32. In the Service Plan, PECO agreed to performance thresholds in eight areas that are important to providing safe and reliable service and reasonable

customer service. The Joint Petition also provides that the Service Plan metrics and thresholds are a part of the annual performance appraisal and compensation for certain managerial and supervisory employees. See, Paragraph 21.

Additionally, PECO agreed to a number of reporting requirements that will assist the Commission and the parties in monitoring many aspects of the provision of reliable service, as well as quality customer service, each year. See, Paragraphs 22, 24 and 25. As to reliability, PECO will continue to report on its efforts to improve reliability of its five worst performing circuits each year, its storm management efforts for major storms, its efforts to reduce repeat outages experience by customers, and its SAIDI (System Average Interruption Duration Index) and MAIFI (Momentary Average Interruption Frequency Index) statistics. As to customer service, PECO will continue to report on the number of residential customer disputes not issued a company report in 30 days, its justified consumer complaint rate, its PUC Infraction Rate, the number of residential bills not rendered each month, the number of residential meters not read every month, and its customer satisfaction survey results.

The Joint Petition also provides a process for addressing any performance failures or non-compliance with the Service Plan. All parties also retain their rights to pursue complaints for other failures not measured by the Service Plan, or to respond to individual or community complaints. PECO also agreed that the Joint Petition does not limit or eliminate its responsibility to address reliability and customer service problems in its service territory and that it does not limit the authority of the Commission or any of its bureaus. See, Paragraphs 25-30.

Finally, the Joint Petition sets forth a process to be followed by PECO in informing the Commission and interested parties about its impending billing system conversion. PECO agreed that if customers are subject to billing errors or billing delays associated with the implementation of the new billing system, customers will be given an opportunity for an affordable payment arrangement without regard to the limitations contained in Chapter 14 of the Public Utility Code. See, Paragraph 32.

D. Universal Service

PECO made a number of significant commitments that will enhance its universal service programs as well as the operation of those programs. See, Paragraphs 33-37. PECO has for many years operated a Customer Assistance Program (CAP) through which it provided discounted rates to customers who were low income. As a result of the 2000 Unicom Merger Settlement, PECO entered into negotiations with the interested parties and agreed to the addition of a Special Needs Component to its CAP program to try to make bills more affordable for those customers at the very lowest levels of poverty. PECO now agreed to increase the amount of kilowatt-hour usage that is subject to the discounted rate for all CAP Rate participants. For CAP Rates B (85% discount), C (75% discount), D (50% discount) and E (25% discount), PECO will increase the monthly usage levels eligible for the discount from 500 kwh to 650 kwh effective January 1, 2007.

PECO also agreed to increased efforts to reach customers most in need and to efficiently certify customers eligible for participation. PECO agreed to increase its own efforts and spending on outreach and education. PECO will spend an additional \$1.2 million over the next four years on its outreach and education efforts. PECO also agreed to provide funding to local community based organizations in the amount of \$100,000 per year for four years to assist PECO in better identifying and reaching eligible households. PECO reaffirmed its commitment to work with its Advisory Committee in soliciting input in these endeavors, and specific procedures have been put in place to ensure that this process works efficiently.

In addition to its own efforts to enhance its universal service programs, PECO agreed to provide additional funding through its Matching Energy Assistance Fund (MEAF) from 2007 through 2010 to be used by the county agencies in assisting PECO customers. PECO will provide \$500,000 in additional energy assistance each year to the county fuel fund agencies beyond its current matching of contributions and reimbursement of administrative costs for those

agencies. Over the four years, this will provide an additional \$2 million to assist PECO customers with their energy needs. PECO also agreed to restore the monthly bill check-off box option for MEAF contribution on customer bills when it implements its new customer billing and information system, and to provide for MEAF contributions from electronic bill payment customers, if technically feasible and not substantially uneconomical, and to provide bill inserts on MEAF on a regular basis so that customers are fully informed about the program and how to make contributions.

E. Environmental Provisions/Economic Development

PECO agreed to provide funding for renewable power and energy efficiency initiatives. PECO will provide a total of \$12 million to the Pennsylvania Energy Development Authority (“PEDA”) (\$3 million each year in 2007, 2008, 2009, 2010) to be used for the purpose of funding renewable energy, energy efficiency and energy conservation projects with emphasis on energy conservation projects of benefit to the PECO service territory. Of the \$12 million, a total of \$500,000 (\$125,000 each year in 2007, 2008, 2009, 2010) will be set aside, subject to approval of PEDA’s board of directors, for PEDA qualified Low Income Usage Reduction Programs in PECO’s service territory.

In addition to these amounts, PECO will provide a total of \$8 million to PEDA (\$2 million each year in 2007, 2008, 2009, 2010) to be used for energy-related economic development projects and initiatives of benefit to PECO’s service territory. PECO also agreed to continuation of funding of the Sustainable Development Fund (SDF). PECO will provide \$7.2 million in a lump sum within three months of the consummation of the merger to be used for projects in accordance with the goals and by-laws of the SDF. See, Paragraphs 38, 52.

F. Corporate Structure Protections

As in the 2000 Unicom Merger Settlement, PECO agreed to a number of corporate protections to ensure that PECO customers will be protected from the risk of affiliated businesses not regulated by the Commission. In addition, the corporate protections provide for accounting and pricing protocols and ensure that the Commission and interested parties have reasonable access to books, records and personnel of affiliates so as to perform regulatory oversight functions. The Joint Petition also provides for advanced notice of certain dividend payments and transfers of funds so that the interested parties can properly monitor any changes. See, Paragraphs 40-48.

G. Corporate and Community Presence

PECO committed to maintaining its corporate headquarters for its distribution business in Philadelphia through at least December 31, 2010. PECO also agreed to continue its charitable giving and sponsorships at least at its historic level of \$3 million per year each year from 2007 through 2010. See, Paragraphs 49 and 50.

H. Staffing

PECO agreed that for many of the key workforce positions that affect reliability and customer service, PECO will not reduce forces prior to January 1, 2011 and that it will reduce certain workforce positions as a result of the merger by no more than the number of reductions identified as part of this merger proceeding. See, Paragraph 51.

I. Competitive Electric Markets

PECO agreed to certain reporting requirements from 2007 through 2012 so that the Commission and the parties can better monitor the PJM wholesale markets, and to support

the ability of Default Service Providers to offer fixed-price retail service to large customers for at least a 12-month term in the Commission's Default Service Provider rulemaking proceeding at Docket No. L-00040169. While the Joint Petitioners have agreed to no longer pursue market power issues in this proceeding as part of this comprehensive settlement, the Joint Petitioners retain their rights to participate in the proceeding at the Federal Energy Regulatory Commission (FERC) regarding appropriate mitigation plans. Additionally, the Joint Petition does not impact the right of non-signatory parties to continue to litigate matters related to market power at the Pennsylvania Commission. See, Paragraphs 52-54.

J. Consolidation of Natural Gas Operations

The Joint Petitioners recognized that the Commission may initiate a separate fact-finding investigation after the consummation of the merger to examine the issues related to the consolidation of PGW operations into the natural gas business of Exelon. PECO agreed to fully cooperate in that investigation. See, Paragraph 55.

In addition to the specific terms described above, the settlement contains general provisions, such as the effectiveness of the settlement, the statement of resolution of issues, participation by interveners in other actions, and the precedential value of the settlement.

V. DISCUSSION

As explained in more detail below, it is my recommendation that based on evaluation of the record as developed through testimony and exhibits, the proposed merger as described in the Merger Agreement and the Joint Application and subject to the terms and conditions of the settlement is in the public interest and should be approved by the Commission without modification. It will affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way, and is not likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which would prevent

retail electricity or gas customers in Pennsylvania from obtaining the benefits of properly-functioning and workable electricity and natural gas markets or which would produce any unreasonable, adverse effect on the employees of PECO's Gas Division or any other authorized collective bargaining agent representing those employees. Therefore, the Commission should issue a certificate of public convenience to PECO and grant it the right to consummate the transactions at issue in this proceeding.

In the Joint Application (at 16-20) and the direct testimony of PECO President Dennis O'Brien (PECO St. 1 at 6-8), a number of benefits were presented as resulting from the proposed merger. As set out in the Joint Applicants Main Brief at 10-11, these include:

Increased Scale, Scope and Operational Diversity. The Merger of Exelon and PSEG will increase the scale and scope of the combined entity's energy delivery and generation businesses. For retail utility operations, this means a larger geographic "footprint" and, as a result, a more diverse customer base. For the generation business, it means the combined company's larger portfolio of generation assets will enable it to capture economies of scale and will provide more balance and diversification in terms of geographic location, fuel mix, dispatch and load-service capacity. In addition, EEG's overall operations will be more balanced, with approximately half its earnings and cash flow coming from its three regulated utilities and approximately half from the generation business. The greater scale, scope and diversification of the combined company's operations should provide more stable cash flows and greater earnings predictability, which, in turn, should allow EEG to maintain a strong balance sheet and continued access to capital at favorable rates.

Financial Strength and Flexibility. The Merger will provide continued financial strength and flexibility associated with a company with a strong balance sheet. Following the Merger, EEG will have approximately \$70 billion in assets, a market capitalization of approximately \$40 billion, annual revenues of approximately \$26 billion and annual net income of approximately \$2.6 billion. The PECO Energy balance sheet will not change as a result of the Merger.

Commitment to High-Quality Service; Sharing of Best Practices. Exelon is committed to maintaining and, where possible, enhancing

the high-quality service it provides. As a result of the merger, PECO will benefit from the opportunity to share best practices with PSE&G, which has an outstanding record of reliability and customer service in terms of both its electric and natural gas delivery functions.

Synergies. The Merger will create the opportunity to achieve meaningful cost savings not only through the sharing of best practices, as mentioned above, but also through the elimination of duplicative functions, improved operating efficiencies in nuclear and other generation operations and supply-chain benefits from improved sourcing.

Commitment to Competition. Exelon and PSEG have been strong advocates of competition in retail and wholesale markets for both electricity and natural gas. This shared vision will allow EEG to be even more active in promoting competitive markets and developing energy-related services. In addition, we anticipate that the knowledge and experience of each company will enhance EEG's ability to manage the transition to competition, which will provide benefits for customers and shareholders. We also recognize that combining the generation assets of the two companies raises certain market concentration concerns. To address those concerns, as part of our Application to the Federal Energy Regulatory Commission (FERC) for approval of the Merger, we are proposing a mitigation plan that entails divesting certain generating assets and selling entitlements to nuclear generation.

Many of the parties challenged the contention that the above proffered benefits provide a sufficient affirmative public benefit. As a result of the settlement, it is unnecessary to address that question because there can be no doubt that the terms and conditions agreed to by the joint applicants and the other signatory parties will produce substantial affirmative benefits for PECO's customers, the economy of PECO's service territory and the Commonwealth generally. The fact that the settlement is supported by a range of interests that includes the Commission's OTS, representatives of the residential, commercial and industrial customer classes, the Commonwealth of Pennsylvania (through DEP), advocacy groups for low-income customers and senior citizens, and organizations dedicated to environmental protection and

community and economic development, and is not opposed by the Labor Parties, shows that approval clearly is in the public interest.

Although the City of Philadelphia criticized the parties for compromising their litigation positions (Philadelphia Main Brief at 3, 12-13), the resulting settlement is the product of compromises made by all parties (especially the joint applicants) to reach a comprehensive framework designed to produce the substantial benefits to PECO, its customers and the public generally as required by the City of York standard. It is the Commission's policy to encourage settlements (52 Pa. Code §5.231) and compromise is part of such negotiation. The signatory parties were able to resolve many difficult issues to arrive at a comprehensive plan that satisfies a diverse array of interests and which provides substantial affirmative benefits.

A. Rate Protections

PECO's ratepayers will benefit from the \$120 million in electric rate reductions over four years and the caps on PECO's transmission and distribution charges until January 1, 2011, thereby ensuring a period of T & D rate stability of over 20 years since the conclusion of PECO's last base rate case in 1990. PECO also agreed to amortize the expenses of achieving the merger, protecting PECO's ratepayers from having to bear these costs in future rate cases. As noted by OCA in its Main Brief at 9, these provisions provide a reasonable and appropriate level of merger savings for PECO ratepayers.

The City of Philadelphia contended that these concessions are not substantial because of the duration of the rate reductions (four years) and rate caps (five years). The city claims that these benefits are only "short-term benefits that do not outweigh the long-term detriments of this merger. In order to find net public benefit, the Commission must ensure that PECO ratepayers are protected beyond 2010, when rate decreases, rate caps and most customer service initiatives will expire under the Joint Petition. Unless some modifications are

implemented, ratepayers will be subject to the vagaries of the market at the same time that the Applicants begin reaping the full rewards of the merger.” City of Philadelphia Main Brief at 13.

The city’s position must be rejected. As pointed out by both OCA and OSBA in their respective Reply Briefs, none of the settling parties testified in favor of capping rates after 2010; therefore it is unlikely that longer extensions could have been ordered even had the issue been fully litigated. As OSBA noted in its Reply Brief at 6-7, pursuant to the Electricity Customer Choice and Competition Act, rate caps are appropriate during the transition period, but those caps expire when a utility completes the recovery of its stranded costs through its competitive transition charge. 66 Pa.C.S.A. §2804(4). PECO’s transition period expires at the end of 2010, at which time the Act requires that PECO charge its customers market rates for generation. 66 Pa.C.S.A. §2807(e)(3). In addition, the joint applicants are correct that an indefinite moratorium on rate relief could seriously harm the financial health of the utility and compromise its ability to meet its service obligations, especially given the significant upward pressure on expenses such as health care, pensions, retiree medical benefits and critical materials. Joint Applicants Reply Brief at 12, citing PECO St. 1-R at 43-44. Finally, in its electric restructuring proceeding at Docket No. R-00973953, PECO filed a cost of service study indicating that its small business class (Rate GS-General Service) was providing a rate of return of 11.18% in comparison to a system rate of return of 9.44%. The settlement mitigates this problem through the interclass allocation of the \$120 million in rate reductions. OSBA Statement in Support at 3.

B. Reliability and Customer Service

The joint applicants agreed to a comprehensive and detailed Quality of Service Plan to maintain or improve reliability and customer service. This plan is designed to maintain or improve reliability and customer service provided by PECO over the levels committed to in

the 2000 Unicom Merger Settlement.⁵ Here, PECO agreed to established performance thresholds in eight areas that are important in providing safe and reliable service and reasonable customer service: System Average Interruption Frequency Index (SAIFI), Customer Average Interruption Duration Index (CAIFI), Percentage of calls answered within 30 seconds, Average busy-out rate, Average call abandonment rate, Percentage of residential bills not rendered once every billing period, Gas Response Time to Safety Calls and OSHA Lost Work Day Cases.⁶ The settlement also provides that the metrics and thresholds will be included as part of the annual performance appraisal and compensation for applicable managerial and supervisory employees, and contains detailed, specific enforcement procedures to address any performance failures or non-compliance with the plan.

The City of Philadelphia's position is that these commitments do not confer a substantial public benefit because "PECO's commitments do not extend beyond what the Public Utility Code already requires" and that "no corresponding enforcement mechanisms ensure the keeping of these potentially vague promises" concerning reliability. It requested that the Commission require PECO to utilize the ". . . synergy savings to implement substantial and verifiable reliability and customer service measures that will ensure an improvement in these services beyond that already required by the Public Utility Code. As part of this implementation, the Commission must require penalty mechanisms that will be automatically applied if PECO fails to meet these standards, subject to review by the Commission." City of Philadelphia Main Brief at 16, 17-18.

The city's position concerning the benefit of these commitments must be rejected. There can be no question that the performance thresholds established by the Service Plan are considerably more stringent than the standards that would otherwise apply to PECO. For example, as explained in the Joint Applicants Reply Brief at 15, starting January 1, 2006, PECO

⁵ The Quality of Service Plan agreed to in the 2000 Unicom Merger Settlement is set to expire at the end of 2005.

⁶ See OCA St. 4 at 26-28 for a description of these metrics.

will be subject to the Commission-imposed 12-month performance thresholds of 1.48 for SAIFI and 134 for CAIDI,⁷ while the corresponding Service Plan metrics are 1.28 and 125. SAIFI (System Average Interruption Frequency Index) and CAIDI (Customer Average Interruption Duration Index) are measures of the frequency and duration of interruptions, pursuant to 52 Pa. Code §57.192. Therefore, since higher numbers reflect worse performance, it is clear that the settlement calls for better performance than the Commission's requirements for PECO.

There are no specific Commission-imposed metrics for the customer service components (percentage of calls answered within 30 seconds, the call abandonment rate, the percentage of residential bills not rendered every billing period, gas response time to safety calls and OSHA lost work days) that PECO is required to meet, so the establishment of specific thresholds and metrics clearly benefits both PECO and its customers by providing clear and definite performance standards, which are designed to improve over the levels committed to by PECO in the 2000 Unicom Merger agreement. These commitments are especially important in light of the joint applicants' intention to adopt a new customer information and billing system.⁸

In addition, the settlement contains specific, detailed enforcement procedures that provide for mandatory initiation of a Commission proceeding in the event PECO fails to satisfy a performance threshold and places the burden of proof on PECO to justify its performance. These provisions ensure that PECO will be held accountable for its commitments.⁹

⁷ PECO St. 8-R at 9, column B; Amended Reliability Benchmarks and Standards for Electric Distribution Companies, Docket No. M-00991220 (Commission Order entered May 11, 2004, 233 PUR4th 447, 2004 Pa. PUC LEXIS 28 (Appendix B, column D).

⁸ It also should be noted that PECO agreed that if customers are subject to billing errors or billing delays associated with the implementation of the new billing system, customers will be given an opportunity for an affordable payment arrangement without regard to the limitations contained in Chapter 14 of the Public Utility Code. See, Paragraph 32. This clearly is a substantial benefit for PECO's customers.

⁹ This provision addresses Philadelphia's concern in its Main Brief at 17 that the enforcement mechanism is inadequate because "it is incorrect to place the burden on customers, rather than the non-abiding party (*i.e.*, PECO) to prove whether penalties are warranted."

The settlement contains two other provisions related to these commitments that are clearly in the public interest. First, PECO agreed that it would include the reliability and customer service performance thresholds as part of the annual performance appraisal and compensation for certain managerial and supervisory employees. This will ensure that management and supervisory personnel are held accountable for performance under the service plan. Also, PECO agreed to work cooperatively with other interested parties to enhance its ability to comply with the performance thresholds and to improve the level of reliability and customer service through the period January 1, 2006 through December 31, 2010 by agreeing to (a) continue its commitment and efforts to resolve reliability problems at specific locations and to continue to respond to customer and community concerns regarding reliability and service quality; (b) meet regularly with the city to review the reliability of service provided within the city; (c) consult with interested parties to determine necessary action to be implemented pursuant to the Service Plan each year; and (d) reconvene with interested parties in 2010 to discuss whether further action is necessary and, if so, the nature and scope of such action to ensure that PECO continues to provide reliable and high quality customer service.

As noted by OCA in its Reply Brief at 8, the fact that the parties took a cooperative approach to enforcement does not mean that the settlement is not in the public interest. The process (established in the 2000 Unicom merger) requires the parties to work together to attempt to resolve reliability or customer service problems that may arise before moving to litigate those issues. This cooperative approach not only represents a reasonable compromise by the signatory parties, it clearly promotes the interests of both the company and its customers.

In total, these commitments are designed to ensure that the proposed merger will not result in any service decline, and that reliability and customer service will be improved.

C. Corporate protections, presence, staffing

The settlement contains provisions relating to corporate structure protections (Paragraphs 40-48), the maintenance of PECO's headquarters in Philadelphia through at least December 31, 2010 (Paragraph 49) and PECO's agreement to fund charitable giving and sponsorships at a level of at least \$3 million per year in each of the years 2007 through 2010 (Paragraph 50). With respect to staffing, PECO agreed not to make any reductions in field forces levels prior to January 1, 2011 and agreed not to make reductions in certain specified categories as the result of the merger beyond those reductions already identified in this proceeding. See, Paragraph 51.

Philadelphia contends that the corporate, community and charitable provisions of the settlement fail to provide any substantive benefits to ratepayers over the status quo. City of Philadelphia Main Brief at 23-29. Specifically, the city contends that the Commission should require PECO to increase its charitable giving "significantly" (\$8 million per year for at least five additional years) through 2014, maintain its headquarters in Philadelphia through 2014, maintain minimum staffing levels post-deregulation, maintain the current total of full-and part-time employees within the city and "require PECO to bear the burden of proving any reduction in force over that committed to in the Settlement is not related to the merger."

While these concerns may reasonably reflect the specific interest of the city, they do not provide any basis for the Commission to disapprove or modify the proposed transaction as reflected in the settlement. There can be no question that the settlement contains a number of terms that provide significant benefits to the city; the fact that the city thinks they are insufficient does not lead to the conclusion that the settlement is not in the public interest.

Corporate protections: With respect to the corporate protections, the settlement clearly contains provisions that are designed to protect PECO's customers from the risks

associated with unregulated affiliates and cross-subsidization. These provisions incorporate the principal elements of the proposals presented by OTS. Also, the settlement specifically precludes PECO from seeking a rate cap exception based on a claim that “increases in the price of purchased power are outside the control of PECO simply because the purchase is from Exelon Generating Company, LLC, or another affiliate” (Paragraph 44) and also restricts the use of PECO’s assets and credit for non-regulated affiliates (Paragraph 41). As noted by OTS in its Main Brief at 5, “These additional safeguards, negotiated as part of the settlement, are above and beyond the protections that otherwise may have been put in place had this proceeding been fully litigated.” The imposition of these additional corporate safeguards is clearly in the public interest as they aid in insulating PECO and its customers from the non-jurisdictional operations of its parent and/or affiliates.

Corporate headquarters: PECO agreed to maintain its corporate headquarters for its distribution business in Philadelphia through at least December 31, 2010. The city’s request that the Commission extend this commitment through 2014 (City of Philadelphia Main Brief at 26) should be rejected. While PECO stated that it has no plans to move its headquarters, tying its hands for the next nine years as proposed by the City of Philadelphia is improper, would unreasonably restrict the flexibility PECO needs to operate its business efficiently and could interfere with PECO’s obligation to provide adequate and reasonable service to its customers.

In addition, it is unlikely that the Commission has the authority to micro-manage a utility in this way. The Pennsylvania appellate courts have repeatedly ruled that utilities themselves, not the Commission, have the right to make such business decisions. Northern Pennsylvania Power Company v. Pa. P.U.C., 333 Pa. 265, 268, 5 A.2d 133, 134-135 (“The Public Utility Commission is not a super board of directors for the public utility companies of the State and it has no right of management over them. . . . The company manages its own affairs to the fullest extent consistent with the protection of the public’s interest, and only as to such matters is the commission authorized to intervene, and then only for the special purposes mentioned in the act”). See also, Metropolitan Edison Company v. Pa. P.U.C., 62 Pa. Cmwlth.

460, 466-67, 437 A.2d 76, 80 (1981); NAACP v. Pa. P.U.C., 5 Pa. Cmwlth. 312, 319, 290 A.2d 704, 708 (1972).

More recently, the Commission in Campbell v. Metropolitan Edison Company, Docket No. C-20016194, Opinion and Order entered April 14, 2005, stated at 9 that: “Pennsylvania courts have held that it is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown. *Pa. Pub. Util. Comm’n v. Philadelphia Elec. Co.*, 522 Pa. 338, 561 A. 2d 1224 (1989); *Metropolitan Edison Co. v. Pa. Pub. Util. Comm’n*. 437 A. 2d 76 (Pa. Cmwlth. 1987). Pennsylvania courts have defined an ‘abuse of discretion’ to include a decision that demonstrates evidence of bad faith, fraud, capricious action or abuse of power. *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 659 A.2d 1055 (Pa. Cmwlth. 1995). Thus, under this ‘abuse of discretion’ standard, the Commission must show substantial deference to the management decisions of the utility.”

Charitable giving: As explained above, PECO agreed to continue its charitable giving and sponsorships at least at its historic level of \$3 million per year each year from 2007 through 2010. Philadelphia asserted that this simply maintains the status quo and the Commission should direct PECO to increase its charitable giving to \$8 million per year through at least 2014. Philadelphia Main Brief at 24-25.

This suggestion should be rejected by the Commission. First, there can be no dispute that a commitment to give at least \$12 million over a four-year period is indeed a substantial benefit. In addition, PECO is currently under no commitment to make any charitable contributions, so this represents a substantial benefit over the status quo. Most importantly, the Commission simply cannot direct PECO to make charitable contributions. The Commission itself recognized this, in PUC v. Pennsylvania-American Water Company, 231 PUR4th 277, 316 (2004): “Quite simply, the Commission is without authority to require PAWC, or any public

utility, to either make or increase charitable contributions derived solely from shareholder funds and kept entirely 'below-the-line' for rate-making purposes.”

The city cited the testimony of OCA witness Barbara Alexander to support its position. The OCA explained in its Reply Brief at 6-7, however, that the reference to the \$8 million in charitable and community giving in Ms. Alexander’s testimony was to a broad category of giving that included community and economic development, energy assistance grants, as well as charitable giving. OCA St. 4-S at 26-27. The settlement addresses these different forms of charitable and community giving through different provisions, such as the universal service provisions and the energy and economic development provisions. The \$3 million in charitable giving and sponsorships contained in Paragraph 50 of the Settlement therefore cannot be compared to the \$8 million figure contained in OCA witness Alexander’s testimony.

Staffing: PECO made various commitments concerning staffing levels following the proposed merger. It agreed not to make any reductions in field forces levels prior to January 1, 2011 and not to make reductions in certain specified categories as a result of the merger beyond those reductions already identified in this proceeding. See, paragraph 51. Philadelphia took issue with this agreement, claiming that any reduction in PECO’s employment within the city will harm the city. City of Philadelphia Main Brief at 26-29. Specifically, Philadelphia’s position is that “the Commission should require PECO to maintain minimum staffing levels post-deregulation, maintain the current total of full- and part-time employees within the City, and require PECO to bear the burden of proving any reduction in force over that committed to in the Settlement is not related to the merger.” Id at 29.

This issue also appears to be one where the city’s particular interest in ensuring that the maximum number of employees generating the city-wage tax (and thus economically benefiting Philadelphia) is not congruent with the interest of PECO’s customers as a whole, or the public interest generally. Obviously, one of the advantages of the proposed merger is the

elimination of unnecessary and duplicative positions. PECO St. 2 at 17; PECO Exh. WDA-2. This would not be possible if the city's position – that PECO be required to maintain the current number of full and part-time employees within the city apparently indefinitely – is adopted.

In addition, it should be noted that the Labor Parties, who actively participated in this proceeding, did not oppose the settlement, including this provision. Also, it is likely that decisions about the size and location of PECO's workforce are within the utility's discretion and not a proper subject (absent a showing of unreasonable service impacts) for the Commission to resolve. In fact, the concern about the effect on reliability and customer service is addressed in the settlement, which while it permits PECO to resize its workforce to reflect technological and process improvements that are unrelated to the merger, ensures that workforce levels will not be reduced further than projected as the result of the merger. PECO agreed that it will not reduce certain of its field forces prior to January 1, 2011 and that it will not reduce workforce positions in Engineering, Call Center, Revenue Management/Billing, Payment Processing, Design and Construction, Consultant, Energy Technician and Gas Dispatcher as a result of the merger by no more than the number of reductions contained in the synergy study.

These are important workforce protections, and reflect the concern that service to PECO's customers not be degraded as the result of the merger, while still allowing PECO (and its customers) to enjoy the synergy savings that are expected to occur.

D. Universal Service/customer assistance

An issue that was raised extensively at the public input hearings held in this proceeding was the inability of many of PECO customers to pay for their service, and the adequacy of PECO's response. Universal service and customer assistance program issues form a significant element of the settlement. The joint applicants are to be commended for recognizing the absolute importance of these issues and for trying to address in a substantive way the often compelling testimony presented by the public input witnesses.

As explained by a number of parties in their Statements in Support, the settlement is designed to improve on PECO's existing universal service programs by enhancing PECO's CAP Rate Program with a higher usage discount level and more customer friendly payment agreement practices, by providing for additional funds to and promotion of the Matching Energy Assistance Fund (MEAF), by expanding CAP enrollment outreach, by providing outreach funding to community based organizations that serve low-income utility customers, by streamlining the CAP application and recertification process, and by providing additional training to community organizations about PECO's low-income programs.

For CAP customers, PECO agreed to increase the monthly usage levels eligible for discounts for customers taking service under CAP Rates B, C, D and E to 650 kWh effective for regular billing cycles beginning after January 1, 2007.

PECO agreed to maintain its current practice of granting one payment arrangement to CAP customers who become delinquent, and to make available an additional payment arrangement to CAP customers who become delinquent and who either (a) are transitioning from one CAP rate level to another with a greater discount (e.g., from CAP Rate C to CAP Rate B); (b) have experienced "extenuating circumstances," as that term is defined in the Customer Assistance Program Rider of PECO's tariff; (c) incur increases greater than 30% of their monthly household expenses in non-discretionary costs essential to the customer's well-being; or (d) have experienced a material decline in household income. The payment arrangements are to consist of the current CAP payment plus \$5.00 per month for those customers on CAP Rates A, B and C and the current CAP payment plus \$15.00 per month for those customers on CAP Rates D and E.

PECO agreed to provide \$500,000 per year in each of the years 2007, 2008, 2009 and 2010 to the Matching Energy Assistance Fund (MEAF), to be distributed to assist PECO customers in accordance with the allocation formula provided in the settlement, in addition to

any PECO matching of contributions and any reimbursement of administrative costs to the MEAF agencies. PECO also agreed to authorize an increase in maximum MEAF grants from \$500 to \$1,000, and to include MEAF check-off options and bill inserts in customers' bills for contributions to MEAF.

PECO agreed to spend \$1.2 million (\$300,000 per year in each of the years 2007, 2008, 2009 and 2010) on additional CAP enrollment outreach, and to work with the LIURP Advisory Committee in the planning and implementation of such outreach program. This outreach will be directed toward those customers who may not know about PECO's CAP Rate program and who do not know about the special needs programs (including CAP Rates A, B and C).

For the purpose of CAP outreach and referrals, PECO agreed to provide \$0.4 million (\$100,000 per year in each of the years 2007, 2008, 2009 and 2010) to the Energy Coordinating Agency (ECA) to be directed to Neighborhood Energy Centers (NECs) in Philadelphia and to other Community Based Organizations (CBOs) in the surrounding counties, and agreed to continue to reimburse 33% (up to a maximum of \$200,000 per year) of the annual administrative costs of the Utility Emergency Services Fund (UESF) in each of the years 2007, 2008, 2009 and 2010.

To better serve current CAP and CAP-eligible customers, PECO agreed to enhance its CAP application and recertification process. In addition to its current practice of providing training on an informal basis, PECO will conduct at least four training sessions annually in each of the years 2007, 2008, 2009 and 2010 to educate staff members of community organizations and healthcare providers such as NECs, CBOs and legal service organizations located in its service territory regarding the availability and operation of its CAP Rate Program (including CAP Rates A, B and C) and other programs intended to benefit low income customers. It is expected that PECO will develop materials and conduct training that provide full

explanations of the benefits of PECO's low-income programs and the procedures for enrolling and staying in the programs.

Finally, PECO agreed to consider alternative LIURP treatment measures (to include but not limited to white reflective coating of roofs and solar hot water heaters), if approved by the Commission, among the various LIURP treatment options available for eligible customers.

Despite these very real and substantial commitments on PECO's part, Philadelphia claimed that they do not constitute "substantial benefits" because they expire in 2010. "In order to ensure that the Joint Petition provides adequate benefit to ratepayers, the Commission must require that the low-income provisions be revised to expand the benefits beyond 2010." City of Philadelphia Main Brief at 14-15. This contention should be rejected. First, a number of these commitments (such as the increase in the monthly level of usage eligible for the CAP discounts) will not expire in 2010, but will be embodied in PECO's tariff.

Even more importantly, each of the commitments represents a substantial benefit on its own. The increase in the usage discount level from 500 kWh to 650 kWh is expected to significantly improve the affordability of PECO bills for many low-income customers. This increased discount is conservatively estimated to save CAP customers an additional \$4 million dollars a year according to the Action Alliance Statement in Support at 3. The payment arrangement provisions will provide much needed protection to low-income CAP customers who are prohibited by Act 201 from seeking Commission review of payment arrangements. Also, limiting the arrearage payments to \$5.00 and \$15.00 per month should decrease the chances of default on these new payment arrangements. With the increasing cost of energy, the additional MEAF funding and the increased maximum grants will certainly benefit many low-income families. PECO's increased promotion of MEAF is designed to increase contributions, which will be used to directly benefit those families. The additional CAP enrollment outreach commitments represent an aggressive effort that will provide meaningful information to PECO's

low-income customers so that all customers who qualify and wish to enroll will be enrolled in the proper CAP Rate. Finally, PECO is providing substantial support to community based organizations such as the NECS, located in the neighborhoods of low-income utility customers, in recognition that they are natural partners for CAP outreach and referrals. All of these provisions clearly will benefit PECO's low-income customers, many of whom reside within the City of Philadelphia.

E. Economic Development

The settlement contains a number of provisions relating to economic development. PECO agreed to provide a total of \$8 million to the Pennsylvania Economic Development Authority (PEDA) (\$2 million each year for the years 2007, 2008, 2009 and 2010) to be used for energy-related economic development projects and initiatives of benefit to PECO's service territory. In addition, PECO agreed to continue funding the Sustainable Development Fund (SDF) by providing \$7.2 million in a lump sum within three months of the consummation of the merger to be used for projects in accordance with the goals and by-laws of the SDF. See, Paragraphs 38, 52.

In its Main Brief at 14-15, Philadelphia asserted that these commitments do not directly benefit PECO's ratepayers because the "vast majority of these funds potentially [may go] to entities outside of the PECO service territory" and recommended that "The Commission should require that the Joint Petition provide substantial and direct benefits to PECO ratepayers in the form of a set-aside of energy via the virtual divestiture to provide economic development for the City and others within the service territory. Only such a mechanism would ensure direct net public benefit from this merger."

Philadelphia's position should be rejected. It is important to remember that it is not necessary for the joint applicants to establish that each and every provision provides a substantial affirmative benefit to PECO's customers, just that the transaction taken as a whole

does meet that standard. While a requirement that all of the funds be used to directly benefit the PECO service territory obviously would be in the interest of the company's customers, those customers clearly will benefit from any initiatives that contribute to the economic prosperity of the Commonwealth generally.

The set-aside proposal is derived from the Directed Questions propounded by two of the Commissioners, and will be addressed in detail below.

F. Other terms

Other terms of the settlement were not opposed by any party. These provisions clearly provide a direct and substantial benefit to PECO's ratepayers and contribute to the finding that the proposed transaction is in the public interest.

First, the settlement agreement ensures that the provisions of the 2000 Unicom merger settlement for sharing the risk of future increases in the costs of decommissioning PECO's pre-existing nuclear units will remain in effect and reaffirms PECO's commitment not to seek recovery of decommissioning costs associated with any nuclear units it did not own as of December 31, 1999. See, Paragraph 19. This ensures that costs from the PSEG plants will not be charged to PECO's ratepayers, and that no portion of PECO ratepayer supplied funding of PECO Pre-Existing Nuclear Interests will be diverted to pay costs associated with acquired plants.

Second, the settlement provides important environmental initiatives, as PECO also agreed to contribute \$12 million (\$3 million per year in 2007, 2008, 2009 and 2010) to PEDDA to be used for the purpose of funding renewable energy, energy efficiency, and energy conservation projects with the emphasis on energy conservation projects of benefit to the PECO Service territory. Of the \$12 million, \$500,000 (\$125,000 per year in each year 2007, 2008, 2009 and 2010) will be set aside for funding PEDDA-qualified Low Income Usage Reduction Program

(LIURP) projects in PECO's service territory. Additionally, PECO has agreed to provide \$7.2 million in a lump sum payment to the SDF, which finances projects that promote renewable energy and energy efficiency. See, Paragraph 38. PECO also agreed to adopt net-metering and interconnection rules. See, Paragraph 39. The expanded use of energy efficiency and demand management, renewable energy and advanced clean energy technologies offers the public considerable affirmative benefit.

Third, PECO agreed to support, in the Commission's Default Service Provider rulemaking proceeding at Docket No. L-0040169, the ability of default service providers to offer, as part of the procurement of power through wholesale auctions, fixed-price retail service to large customers (i.e., those with demand of 1000 KW or greater) for at least a 12-month term. See, Paragraph 54.

VI. MARKET POWER ISSUES

A. Introduction

As explained above, pursuant to the Electric Competition Act, the Commission is required to determine whether the proposed merger "is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market." 66 Pa.C.S.A. §2811(e)(1). There is a parallel provision contained in the Natural Gas Choice and Competition Act, which requires the Commission to determine whether the proposed merger "is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market." 66 Pa.C.S.A. §2210(a)(1).

Market power has been defined by the courts as the ability of a firm or group of firms to raise prices above competitive levels or to exclude competition from a relevant market. DQE supra, at fn. 9, citing United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 391 (1956); Howser v. Fox Theaters Mgmt. Corp., 845 F.2d 1225, 1230 (3rd Cir. 1988).

The Commission explained the process for reviewing market power issues in the DQE decision, supra at 475. It stated that it intended to follow the analytical process delineated in the 1992 Department of Justice (DOJ) and Federal Trade Commission (FTC) Horizontal Merger Guidelines (Merger Guidelines) as revised on April 8, 1992, 57 Fed. Reg. 41, 552 (1992), revised 4 Trade Reg. Rep. (CCH) ¶13,104 and the FERC Merger Policy Statement issued December 18, 1996, Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, FERC order 592, 61 Fed. Reg. 68,595 (1996), which incorporated the Merger Guidelines into its own merger analysis. Appendix A of the Policy Statement addresses the potential market power implications of electric mergers by providing a methodology which is based primarily on a series of screens defined by FERC. These screens utilize concentration statistics based on the Herfindahl-Hirshman Index (HHI).¹⁰

An HHI below 1,000 is considered unconcentrated and will have no adverse competitive effect. An HHI between 1,000 and 1,800 is considered moderately concentrated and if the HHI increases 100 or more points from the pre-merger level, there may be competitive concerns depending on other competitive factors. An HHI above 1,800 is considered highly concentrated, and the merger guidelines provide that mergers in this range producing an increase in the HHI of more than 50 points raise significant competitive concern and further presumes that mergers producing an increase of more than 100 points are "likely to create or enhance market power or facilitates its exercise." DQE, id., citing 57 Fed. Reg. at 41, 558.

¹⁰ An HHI is computed by squaring each market share and then adding the squared shares. For example, a market consisting of four firms with market shares of 30%, 30%, 20% and 20% has a HHI of 2,600 (900 + 900 + 400 + 400). The HHI approaches zero if there are a large number of very small competitors and equals 10,000 if there is just one firm in the market. DQE, fn. 4.

There is no question that these issues are relevant in this proceeding. The proposed merger is the largest utility merger ever proposed in the United States. The merged entity will serve over seven million electric customers and two million gas customers.

The potential effect of the proposed merger on the wholesale electricity market was examined by FERC at Exelon Corp., 112 FERC ¶61,011, Order Authorizing Merger under Section 203 of the Federal Power Act, issued July 1, 2005 (FERC Merger Order).¹¹

As explained in that Merger Order as well as in the testimony submitted by the various parties in this proceeding, the joint applicants' analysis showed that, absent mitigation, the proposed merger would not pass the Appendix A market screen test. Therefore, the joint applicants adopted a mitigation plan involving divestiture of 6,600 MW of generation through the outright sale of 4,000 MW of fossil generation and virtual divestiture of 2,600 MW of nuclear generation (PECO Ex. WHH-1a).¹² As explained in Joint Applicants Main Brief at 22, this is a substantial amount of generation and represents more than the total generating capacity owned by any other generation owner in PJM East, is almost equal to the amount of Exelon's generation located in PJM East prior to the merger and is "by far" the largest amount of generation ever proposed to be divested in connection with a merger.

The FERC Merger Order authorized the proposed merger and associated mitigation scheme and directed that the joint applicants make a compliance filing upon completion of the merger which includes an Appendix A analysis of the merger's effect on competition in the wholesale energy and capacity markets which reflect the actual plants divested and identifies the acquirers of the divested assets. If this analysis shows that the proposed merger's harm to competition has not been sufficiently mitigated, the joint applicants must propose additional mitigation. FERC Merger Order, Ordering Paragraph G. Several parties to

¹¹ This Order is contained in Appendix B to Joint Applicants Main Brief.

¹² The virtual divestment consists of the sale of energy on a firm, 24 hours a day, 7 days a week basis. PECO Ex. WHH-1, Exh. J-1, pp. 7-9.

the FERC proceeding filed requests for rehearing on or about August 1, 2005; those requests are pending before FERC.

Concerns about market power issues were addressed to some extent in the settlement. The joint applicants agreed to create a wholesale electricity market reporting and monitoring mechanism to remain in place through 2012, with reports to be filed with the Commission, provided upon request to any of the signatory parties and the public. The settlement explicitly recognizes the right of any party to request a Commission investigation when the party “reasonably believes that PECO’s affiliated generation company (or any other affiliated entity) has unlawfully exercised market power in any PJM market, or for any other reason as set forth in 66 Pa.C.S.A. §2811.” See, Paragraph 53.

As correctly noted by joint applicants in their Main Brief at 17-18, no party asserted or presented evidence that the proposed merger is likely to directly increase the joint applicants market power in any competitive retail market in Pennsylvania. PECO’s retail electric and gas operations are limited to Pennsylvania, while PSE&G’s retail and electric gas operations are in New Jersey. PECO Exh. WHH-1 at Exh. J-1, pp. 19-22. No competitor will be eliminated as a result of the proposed merger because “Exelon’s retail marketing affiliate is not active in PJM East while PSE&G does not even engage in competitive retail marketing.” Joint Applicants Main Brief at 18.

Instead, the focus has been on whether and to what extent the merged entity will be able to exert market power in the wholesale electric and natural gas markets, which will indirectly affect retail markets. Thus, the PPL Companies explained that their position is that the joint applicants’ market analysis and mitigation plan suffer from three fundamental flaws: First,

the market analysis failed to analyze the PJM Classic market;¹³ second, the market analysis failed to take into account the impact of financial transmission rights (FTRs); and third, the divestiture plan relies on “virtual” divestiture that will “fail to prevent the merged entity from exercising market power, will require constant federal and state oversight, and flies in the face of established Commission precedent, which emphasizes a strong preference for structural relief.” PPL Companies Reply Brief at 2. They request that the Commission find that the “proposed merger will likely lessen competition in the PJM Classic and PJM East wholesale electricity markets and, as a result, the Pennsylvania retail electricity market,” that the Commission find that the joint applicants’ proposed mitigation is insufficient, that the Commission condition its approval of the proposed merger on the joint applicants’ agreement to “effective relief” and that the Commission certify its findings, along with the record of this proceeding, to the Attorney General of the Commonwealth of Pennsylvania, the Antitrust Department of the United States Department of Justice, FERC and the New Jersey Board of Public Utilities (NJBPU). *Id.* at 35.

Similarly, the FirstEnergy Companies claimed that it has not been established that the joint applicants’ proposed mitigation plans are sufficient to address the “admitted” adverse market power consequences of the proposed merger, recommended several additional mitigation steps (including the actual divestiture of additional generation assets), and proposed that the Commission delay its approval of the proposed transaction. FirstEnergy Companies Main Brief at Appendix A, p. 9.

¹³ Joint applicant witness Dr. Hieronymus analyzed three geographic markets; PJM Expanded (all of PJM including American Electric Power Service Corporation (AEP), Dayton Power & Light and ComEd), PJM East (that portion of PJM east of the Eastern Interface) and PJM Pre-2004 (PECO Exh. WHH-1a at Exh. J-17 at 46-50; PECO Exh. WHH-1a at Exhs. J-18; J-19, J-27, J-28, and J-29; FERC Merger Order, fn. 9). PPL Companies witness Dr. Kalt did not object to Dr. Hieronymus’ choice of PJM Expanded and PJM East as markets that should be analyzed. However, Dr. Kalt did challenge Dr. Hieronymus’ decision to analyze PJM Pre-2004 as a separate market (PPL St. 1 at 16-19). Dr. Kalt argued that, instead, Dr. Hieronymus should have used “PJM Classic” to represent the intermediate market between PJM East and PJM Expanded. The difference between PJM Pre-2004 and PJM Classic is that PJM Pre-2004 includes the Allegheny Power system, which joined PJM in 2002. PJM Classic refers to the original members of PJM prior to Allegheny Power’s entry.

PGW claims that the proposed merger is likely to adversely impact the competitive retail gas market by creating vertical market power¹⁴ which allows the joint applicants to increase electric prices by increasing the price of natural gas in PJM East.¹⁵ PGW Main Brief at 12. It recommends that the Commission direct the divestiture of the joint applicants' natural gas distribution operations. *Id.* at 19-20.

B. Discussion

First, it is important to describe the scope of the Commission's review of these issues. As noted above, the focus of the Commission's examination of the proposed transaction is to determine whether it is likely to result in anticompetitive or discriminatory conduct (including the unlawful exercise of market power) which will prevent retail customers from obtaining the benefits of properly functioning retail natural gas and electricity markets. As wholesale prices necessarily affect the retail prices that are paid by gas and electricity customers, it therefore is necessary for the Commission to examine the proposed merger's potential effect on the relevant wholesale markets. The Commission is further authorized to "impose such terms and conditions" as the Commission finds necessary to preserve competition in the retail electric and natural gas markets. 66 Pa.C.S.A. §2811(e)(2); 66 Pa.C.S.A. §2210(b).

Of course, it is FERC, not the Commission, which has exclusive jurisdiction over the wholesale electric and natural gas markets. FERC, in fact, examined the proposed merger and found that, with the mitigation measures proposed by the joint applicants, it would not adversely impact competition in the wholesale market. Exelon Corp., 112 FERC ¶61,1011 (Merger Order, issued July 1, 2005). "As discussed below, we will approve the proposed merger as consistent with the public interest and find that it will not adversely affect competition, rates or regulation." Merger Order at ¶10. While FERC approved the proposed merger

¹⁴ PGW in its Main Brief at 12 defines a vertical merger as one which involves "entities that have positions in two product markets, where one product (natural gas) supplies or is an important input to the production of the second product (electricity)."

¹⁵ The City of Philadelphia in its Main Brief at 19-21 has adopted PGW's arguments on this issue.

unconditionally with the mitigation proposed by the joint applicants, it recognized in Ordering Paragraph G that additional mitigation might be necessary after further analysis of the mitigation measures actually undertaken.

The Commission has acknowledged that FERC has primary jurisdiction over the wholesale energy markets, and in fact has adopted the same method of analysis used by FERC to determine the competitive impacts of proposed mergers. While the Commission is not bound by the FERC decision, however, it is reasonable and appropriate for the Commission to recognize the analysis and conclusions reached by FERC with respect to the anticipated competitive effects of the proposed merger. This is especially true where, as here, the merger parties are not competing directly against each other in Pennsylvania.

While the Commission is not bound by any decision issued by FERC, it is appropriate for the Commission to recognize that FERC in fact is the agency that developed and has applied the market screen analysis in numerous merger proceedings. As stated in Joint Applicants Reply Brief at 22, “It would be especially inappropriate to second-guess FERC here, given that the arguments raised are essentially that the wholesale market analyses performed by the Joint Applicants do not conform to FERC’s merger regulations and merger precedent. The parties raising these arguments in essence are asking the Commission to hold that it is in a better position than FERC to conduct FERC’s own review of the impact of the Merger on wholesale markets.”

Clearly, the market power issues raised by the various protestants¹⁶ in this proceeding were carefully considered by FERC in its review of the studies submitted to support the proposed merger:

¹⁶ All of the parties addressing these issues (the PPL Companies, the FirstEnergy Companies, PGW and the City of Philadelphia) were parties in the FERC proceeding. FERC Merger Order, fn. 30.

(1) PPL Companies' witness Dr. Kalt did not object to Dr. Hieronymus' choice of PJM Expanded and PJM East as markets that should be analyzed. However, Dr. Kalt did challenge Dr. Hieronymus' decision to analyze PJM Pre-2004 as a separate market, stating that the PJM Classic Market should be evaluated as a separate geographic market (PPL St. 1 at 16-19; PPL Companies Main Brief at 25-30, Reply Brief at 20). This argument was considered and rejected by FERC in the Merger Order at ¶¶68, 123 ("We reject arguments that 'PJM Classic' should be considered a separate relevant geographic market within PJM Pre-2004.")

(2) PPL Companies' argument that the PJM East transmission import capacity should be allocated based on FTS holdings rather than on a pro rata basis (PPL Companies Main Brief at 30-37, Reply Brief at 20-27; City of Philadelphia Main Brief at 11) was considered and rejected by FERC in the Merger Order at ¶¶112, 129 ("We are not convinced that Applicants should have used an economic (i.e. least cost) allocation rather than a pro rata allocation of scarce transmission transfer capacity in their analysis. We have accepted the pro rata allocation methodology in numerous merger cases, and believe it reasonably models suppliers' ability to compete in a given destination market.")

(3) Several of the parties claim that virtual divestiture is not an appropriate form of mitigation. PPL Companies Main Brief at 37-37, Reply Brief at 24-27; City of Philadelphia Main Brief at 11; FirstEnergy Companies Main Brief at 17-18. This argument was considered and rejected by FERC in the Merger Order at ¶¶134-140 ("We have recognized that operational control of generation resources is a key element of market power analysis and mitigation.")

(4) PPL Companies' argument against the joint applicants' proposal to reduce their divestment obligation on a MW-for-MW basis as baseload capacity is retired (PPL Companies Main Brief at 46-47) was considered and rejected by FERC in the Merger Order at ¶143 ("We find that Applicants' proposed MW-for-MW reduction of the amount of the baseload energy mitigation is reasonable. . . Applicants also have made a convincing argument that a

decrease of their nuclear capacity, whether through divestiture, de-rating, or unit retirement, would mitigate market power, because the incentive to withhold output is an increasing function of the amount of baseload capacity from which the merged firm could profit due to energy prices.”)

(5) The argument that the joint applicants must identify the plants that will be divested (PPL Companies Main Brief at 47-49, Reply Brief at 28-29; FirstEnergy Companies Main Brief at 18) was considered and rejected by FERC in the Merger Order at ¶¶141-142 (“... in this instance, we find Applicants’ proposal sufficient because the divestiture can adequately mitigate the merger-related harm to competition; moreover, once the specific units have been identified, we will be able to ensure that they are appropriate units to make divestiture effective. . . Finally, establishing a pool of generation eligible for divestiture, rather than specifying exact units, addresses protestors’ “reverse cherry-picking” argument that Exelon will divest its least valuable units, rather than creating viable competitors by divesting the efficient units.”)

(6) FirstEnergy Companies’ claim that the amount of proposed divestment is insufficient (FirstEnergy Companies Main Brief at 17-18) was considered and rejected by FERC in the Merger Order at ¶133 (“We are not convinced by FirstEnergy’s arguments that Applicants’ proposed divestiture does not sufficiently mitigate the merger-related increase in market power.”)

In addition, while it is correct that FERC did not expressly consider the testimony of PGW witness Carpenter, FERC thoroughly considered and discussed the vertical market issues (i.e., whether the joint applicants’ control over natural gas transportation assets could be used to raise electric prices).¹⁷ FERC’s Merger Regulations at 18 C.F.R. §33.4 are addressed to vertical market power. Like the Appendix A analysis, FERC’s vertical market power analysis requires the calculation of market concentration using HHI statistics. Rather than comparing the

¹⁷ Dr. Carpenter’s FERC testimony was not filed until a few days before FERC issued the Merger Order. Joint Applicants Main Brief at 19; PGW Reply Brief at 9.

changes between the pre- and post-merger markets, however, this analysis looks solely at the post-merger HHI statistics, both for upstream (natural gas transportation) and downstream (electric generation served by natural gas pipelines) markets. Only if both the upstream and downstream markets are highly concentrated after the merger (if the HHI is above 1,800) will FERC conclude that there may be a market power problem.

The joint applicants presented an analysis to FERC showing that the post-merger HHI is below the 1,800 level. FERC accepted this analysis, specifically rejecting the same points raised by Dr. Carpenter in this proceeding, and found that “Applicants have shown that the combination of their generation and natural gas distribution facilities will not harm competition” and “Applicants have also shown that their presence in the natural gas storage market is small enough not to raise competitive concerns here.” FERC Merger Order at ¶¶182-185, 187-191, 193-196, 200, 202.

As I have indicated above, I recommend that the Commission come to the same conclusion as did FERC concerning the market power issues. As FERC’s analysis and resolution of the relevant issues is clearly reasonable and thorough, the Commission should afford its Merger Order considerable weight.

While several parties made a point of noting that FERC reached its decision without having hearings,¹⁸ the fact remains that FERC is in the best position to determine what record was necessary for it to make its ruling.

In addition, as noted by joint applicants in their Main Brief at 37-38, because of the electric rate cap provisions contained in the settlement, any market changes would not affect electric rates until after 2010. While the city contends that the Commission should look beyond

¹⁸ See, e.g., PPL Companies Main Brief at 55, Reply Brief at 10; City of Philadelphia Reply Brief at 2; PGW Main Brief at 36. In fact, PPL Companies Reply Brief is replete with references to FERC’s alleged procedural deficiencies. See, e.g., pp. 15, 20, 21 etc.

that time period, this argument is insufficient for the Commission to disregard both the FERC findings and the record presented in this proceeding.

The concerns about the mitigation efforts are reasonably addressed by the joint applicants' proposal that the Commission "condition its merger approval on the Joint Applicants making the required compliance filing at FERC and on the Joint Applicants implementing any additional mitigation lawfully required by FERC in a final, nonappealable order." Joint Applicants Reply Brief at 39.

The recommendation of the PPL Companies that the Commission refer its findings to other agencies (the Attorney General of the Commonwealth of Pennsylvania, the Antitrust Department of the United States Department of Justice, FERC and NJBPU) is unnecessary. FERC, the U.S. Department of Justice and JNBPU either are or have conducted their own investigations. While 66 Pa.C.S.A. §2811(d)(1) does require the Commission to "refer its findings to the Attorney General, the United States Department of Justice, the Security and Exchange Commission or the Federal Energy Regulatory Commission," those referrals are to be made only when "the Commission has reason to believe that anticompetitive or discriminatory conduct, including the unlawful exercise of market power, is preventing the retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market." The parallel gas provision is found at 66 Pa.C.S.A. §2209(g)(1). If and when the Commission makes such findings, the statute controls what agencies should receive the Commission's findings.

Similarly, the Commission should not utilize the "incipiency" standard of Section 7 of the Clayton Act, 15 U.S. C. §18 (2000), which the PPL Companies explain was "enacted to reach incipient anticompetitive effects not reached by section 1 of the Sherman Act." PPL Companies Main Brief at 20. Rather, the Commission should apply the standards contained in the Pennsylvania Public Utility Code at 66 Pa.C.S.A. §2811(e)(1) and 66 Pa.C.S.A. §2210(a)(1).

Also, as explained in Joint Applicants Reply Brief at 47-48, “any concerns the Commission may have regarding natural gas issues” are addressed by the fact that the joint applicants will not be combining their natural gas procurement functions and will not combine their natural gas procurement functions in the future without the Commission’s approval.

Finally, as noted in OSBA’s Reply Brief at 8-9, the concern that the merged entity will be able to increase gas price volatility through the discretionary use of selected storage injection and withdrawal strategies can be addressed in PECO’s annual 1307(f) gas cost proceedings. Not only will PECO have to establish that its uses its gas assets in a manner consistent with a least cost gas procurement policy, it could be required to seek relief on behalf of its customers for any adverse effect under its gas contracts caused by market manipulation by Exelon, PSE&G or any other affiliated interest.

VII. OTHER ISSUES

A. Directed Questions 1-4

As explained above, by Secretarial letter dated July 15, 2005, Vice-Chairman Cawley and Commissioner Shane posed a series of questions (Directed Questions) to be answered by the parties. The first four questions inquired into whether the synergies to be unlocked by the Merger could be harnessed to enhance economic development, and they specifically raised the issue of a “set aside” of “virtually divested generation” to be dedicated to that purpose. These questions are:

1. Neighboring states have availed themselves of opportunities to enhance their economic competitiveness through access to economical energy resources. What opportunities exist from this proposed merger in terms of economic development for Pennsylvania? Specifically, does this proposed merger present us with an opportunity to strengthen the State’s ability to remain competitive during periods of economic recession and volatile energy pricing?

2. The innovative and controversial nuclear “virtual divestiture” component of the FERC decision appears to present intriguing opportunities for the Commonwealth. Does the proposed merger present this Commission with an opportunity to create an additional economic development program designed to improve Pennsylvania’s business climate by creating strategic partnerships with the public and private sector that support product development and the use of energy-efficient technologies?
3. Would it be possible to set aside 10% or some relatively small share of the “virtually” divested generation to augment economic development and economic competition within the Commonwealth? For example, could the parties consider and comment on creating a pool of energy and capacity of at least 260 MWs which could be used at the discretion of the Secretary of the Department of Community and Economic Development to attract and retain business in the Commonwealth?
4. Could the Commonwealth through one of its agencies and/or in conjunction with a licensed Electric Generation Supplier facilitate the use of the output of this generation?

Testimony on these issues was submitted by various parties (joint applicants, OSBA, OCA, OTS, the FirstEnergy Companies, the PPL Companies, Philadelphia, PGW, the PennFuture Parties, and DEP) in supplemental direct testimony, and they were addressed to some extent in the settlement.

Virtually all parties agreed that a set-aside of the type apparently envisioned by the Directed Questions should not be ordered by the Commission. First, comparable programs in other states have been implemented on a state-wide basis and funded by customers or the state. PECO St. 1-DQ at 10. Second, a set-aside could complicate the mitigation plan, could have the inadvertent effect of increasing the price of energy sold at the virtual divestiture auction and could expose the Commonwealth or a designated competitive electric generation supplier to substantial market risk. PECO St. 3-DQ. Third, there are serious constitutional “taking” issues if the divested generation were to be appropriated for less than the fair market value, and a set-aside appears inconsistent with the policy and principles of electric restructuring in Pennsylvania.

PECO St. 12-DQ. Fourth, setting aside a pool of low-cost energy would impact market prices by introducing an artificial limit to market availability, would need to be agreed to by both the joint applicants and FERC, and the selection of winners and losers among Pennsylvania business and industry consumers would be a constant source of debate and litigation. FirstEnergy Companies Main Brief at Appendix B, Met-Ed/Penelec/Penn Power St. 1-S-1. Fifth, the set-aside would have to be made available to the Commonwealth at below-market prices in order to be useful as an economic development tool, and would have to be counted against the total pool of merger savings, resulting in fewer merger savings to be shared by the ratepayers. OSBA St. 4 at 3-4. Sixth, it would lead to a misallocation of merger benefits across PECO's rate classes. Id.

To avoid these potential legal and regulatory obstacles, the settlement at Paragraph 52 provides for PECO to contribute \$8.0 million (\$2 million in each of the years 2007, 2008, 2009 and 2010) to PEDDA to be used for energy-related economic development projects and initiatives of benefit to the PECO service territory. PEDDA will provide to the Commission and the joint petitioners copies of the report it sends annually to the Governor and the General Assembly so that the use of these funds can be monitored.

Philadelphia in its Main Brief at 16 stated merely that the "Commission should require that the Joint Petition provide substantial and direct benefits to PECO ratepayers in the form of a set-aside of energy via the virtual divestiture to provide economic development for the City and others within the service territory. Only such a mechanism would ensure direct net public benefit from this merger." The city provided no support for this recommendation, and failed to address the substantial and substantive problems noted above.

As explained by the joint applicants in their Reply Brief at 13:

The City's insistence that a "set aside" of virtually divested generation is the only way to achieve a substantial benefit in the area of economic development is also wrong. Obviously, it should make little difference to a business whether economic development assistance were to come in the form of reduced electric rates or a

more direct subsidy. In fact, since the latter provides the recipient greater operational flexibility, a business contemplating moving to, or expanding in, the service territory would likely prefer it. Just as important, the City ignores the serious problems that the set aside program would confront.

Initially, it is worth noting that the generation in question is not owned by PECO, is sold in interstate commerce and such sales are subject to the exclusive regulatory jurisdiction of the FERC. Therefore, dictating the use or disposition of any of the “virtually divested” generation is outside the jurisdiction and authority of this Commission. In addition, attempts to appropriate the use of that generation without just compensation – or to withhold approval of the Merger to achieve the same result – would run afoul of the “takings” provisions of the Federal and State Constitutions (PECO St. 12-DQ at 9-11). U.S. Const. amend. V and XIV; *Brooks-Scanlon Co. v. Railroad Comm. of Louisiana*, 251 U.S. 396 (1920). Other constitutional prohibitions are implicated by the set-aside program because its use of government power to intrude on the operation of the interstate market for wholesale electric power in order to garner disproportionate benefits for Pennsylvania raises serious Commerce Clause issues (PECO St. 12-DQ at 11-12). *See New England Power Co. v. New Hampshire*; 455 U.S. 331 (1982). The set-aside proposal is also problematic because in order to comply with the FERC-approved mitigation plan, a state agency or its surrogate would have to become a participant (*i.e.*, a buyer and seller) in the wholesale market for electric power, would have to meet PJM requirements to function in that role, and would be subject to market price risks (PECO St. 3-DQ at 1-7). That kind of governmental intrusion into the operation of the wholesale power market is contrary to the legislative intent underlying the Electricity Generation Customer Choice and Competition Act (PECO St. 12-DQ at 14-16) and would likely raise the price of electric power for others in PJM (PECO St. 3-DQ at 8). In summary, upon close examination, serious legal and practical problems emerge with respect to the set aside program. Moreover, it is not, at this point, supported by any party other than the City. In contrast, many parties fully support the contribution to PEDDA as an appropriate way to foster economic development.

Clearly, the settlement does promote economic development in the PECO service territory by providing substantial rate relief and stability to all PECO customers, including the

residential, commercial and industrial classes. These benefits, when considered in conjunction with the economic development contributions PECO agreed to make, are substantial, will be available sooner, will be shared by more customers and will be allocated more fairly than will the benefits from any set-aside.

B. Directed Question 5

Directed Question 5 asked: “Would the combination of the PSE&G gas division with the PECO gas division and the Philadelphia Gas Works provide critical mass for a viable, profitable, shareholder owned public utility, assuming a revenue stream from off-system sales from an LNG Facility, and separate resolution of the problem of a billion dollar debt?”

In response, the signatory parties have proposed that this issue be addressed in a separate, fact-finding investigation to commence upon consummation of the proposed merger. Paragraph 55 provides that: “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. PECO agrees to fully cooperate in such fact-finding and other Joint Petitioners may participate in the proceeding if they so elect.”

PGW proposed that the scope of this investigation be expanded to include “a more detailed due diligence type study” to include consideration of “an authority structure to house the combined entity.” PGW Main Brief at 52, Reply Brief at 22. This option (a state authority) is opposed by the joint applicants, who assert that consideration of it “would detract from a reasoned assessment of possible solutions to PGW’s problems,” citing evidence they presented identifying approximately \$410 million of annual diseconomies associated with a spin-off of EEG’s post-merger gas operations. Joint Applicants Reply Brief at 49.

This request to modify Paragraph 55 should be denied. If and when that investigation is undertaken, the scope can be expanded to include consideration of that issue, if appropriate. At this time, the provision contained in the settlement concerning the scope of the investigation should be accepted without modification.

The City of Philadelphia's position is that this investigation should be "expedited" upon conclusion of this proceeding, with a final report produced by the Commission no later than December 31, 2006. City of Philadelphia Main Brief at 22. This proposal should be rejected, also. As pointed out by joint applicants in their Reply Brief at 50, it makes no sense to investigate the potential consolidation of PGW with EEG's combined gas operations before the merger has been completed. In addition, the settlement provides that its terms shall not be implemented and enforceable until the consummation and closing of the proposed merger. See, Paragraph 56.

Obviously, any consolidation or acquisition contemplated by the Directed Question would constitute a significant and very complicated corporate transaction that would entail months of due diligence, extensive negotiations and a lengthy regulatory approval process. There are numerous potential parties (such as other municipalities and their residents) who may want to participate in any proceeding which may directly impact them and who therefore should be afforded notice of the proceeding. For these reasons, the Commission should not accept the city's recommendation that the investigation be conducted so as to be concluded by December 31, 2006. It may very well be that more time may be necessary to address those complicated issues.

As correctly stated by OCA in its Main Brief at 18-19, the process contained in the settlement "would allow consideration of this issue to continue in a forum where the myriad of issues can be thoroughly explored, where all affected parties can fully participate, and where a reasoned decision can be reached on the issues. . . The investigation proposed by the Joint

Petition will ensure that such questions are raised, thoroughly considered, and that all affected parties are afforded a full opportunity to participate.” I agree.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.

2. PECO Energy Company is a “public utility,” a “natural gas distribution company,” and an “electric distribution company” as those terms are defined in the Public Utility Code at, respectively, 66 Pa.C.S.A. §102, 2202, 2803.

3. PECO Energy Company and Public Service Electric & Gas Company have requested Commission approval, pursuant to 66 Pa.C.S.A. §1102(a)(3), of the merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation.

4. The Commission may grant the Joint Application only if it is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa.C.S.A. §1103(a).

5. The proposed transaction will not result in a “new controlling interest” of PECO or any affiliate as that term is used in the Commission's Statement of Policy at 52 Pa. Code §69.901.

6. To ensure that a proposed merger is in the “public interest,” Section 1103(a) specifically permits the Commission to impose conditions in granting a certificate of public authority. In fact, by the imposition of conditions, the Commission can approve a merger that would not otherwise meet the City of York legal standard. Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp., Docket No. A-110300F0095, 2001 Pa. PUC LEXIS 23 (Opinion and Order entered June 20, 2001) (subsequent appellate history omitted).

7. Applicants PECO and PSE&G bear the burden of proving that the proposed transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. 66 Pa.C.S. §332(a); City of York v. PA Public Utility Commission, 449 Pa. 136, 295 A.2d 825 (Pa. 1972).

8. The degree of proof required to establish a case before the Commission is a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. Samuel J. Lansberry, Inc. v. Pa PUC, 578 A.2d 600, 602, 1990 Pa. Commw LEXIS 402, alloc. den., 602 A.2d 863 (Pa. Cmwlth. 1992); Se-Ling Hosiery v. Marquies, 70 A.2d 854 (Pa. 1950).

9. Any finding of fact necessary to support the Commission’s adjudication must be supported by substantial evidence. 2 Pa.C.S. §704; Mill v. Pa P.U.C., 447 A.2d 1100 (Pa. Cmwlth. 1982); Edan Transportation Corp. v. Pa P.U.C., 623 A.2d 6 (Pa. Cmwlth. 1993).

10. The term “substantial evidence” has been defined by the Pennsylvania appellate courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Norfolk and Western Ry. v. Pa P.U.C., 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa. Super. 1960); Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984).

11. Joint Applicants and the settling parties have established by a preponderance of substantial evidence that the proposed transaction, as described in the Merger Agreement and the Joint Application and subject to the terms and conditions contained in the Joint Petition for Settlement, is necessary or proper for the service, accommodation, convenience or safety of the public and will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.

12. Joint Applicants have established by a preponderance of substantial evidence that the proposed transaction, as described in the Merger Agreement and the Joint Application and subject to the terms and conditions contained in the Joint Petition for Settlement, will not result in any anti-competitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in Pennsylvania from obtaining the benefits of a properly functioning and workable competitive retail electricity market as required by 66 Pa.C.S.A. §2811(e).

13. Joint Applicants have established by a preponderance of substantial evidence that the proposed transaction, as described in the Merger Agreement and the Joint Application and subject to the terms and conditions contained in the Joint Petition for Settlement, will not (1) result in any anti-competitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers in Pennsylvania from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market as required by 66 Pa.C.S.A. §2210(a)(1); and (2) produce any unreasonable adverse effect on the employees of PECO's Gas Division or on any authorized collective bargaining agent representing those employees, as required by 66 Pa.C.S.A. §2210(a)(2).

14. The proposed transaction, as described in the Merger Agreement and the Joint Application and subject to the terms and conditions contained in the Joint Petition for Settlement, is in the public interest.

IX. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Settlement submitted by PECO Energy Company, Public Service Electric & Gas Company, Office of Trial Staff, Office of Consumer Advocate, Office of Small Business Advocate, Department of Environmental Protection, Citizens for Pennsylvania's Future, Joy Bergey and Lisa Z. Leighton, Action Alliance of Senior Citizens of Greater Philadelphia, Association of Community Organizations for Reform Now and Tenants' Action Group, the Philadelphia Area Industrial Users Group, The Reinvestment Fund, through its Sustainable Development Fund; Pennsylvania State Senator Anthony H. Williams (Sen. Williams) and the Energy Coordinating Agency of Philadelphia, Inc., at Docket No. A-110550F0160, is approved, including all terms and conditions;

2. That the Joint Application of PECO Energy Company and Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation is granted, subject to the following condition:

The Joint Applicants shall make a post-merger compliance filing at FERC detailing the generation units that they intend to divest and identifying the proposed purchasers of those units, as required by FERC's July 1, 2005 Order approving the Merger. If, and to the extent that, FERC issues a final, non-appealable order in response to that compliance filing requiring the Joint Applicants to implement any additional mitigation, the Joint Applicants shall implement such additional mitigation within the time period required by FERC

3. That PECO Energy Company is hereby granted, and a Certificate of Public Convenience shall be issued, upon compliance with the conditions herein set forth, the right to

consummate the merger of Public Service Enterprise Group Incorporated with and into Exelon Corporation as set forth in the Merger Agreement and Joint Application;

4. That any Protest filed in this proceeding and not satisfied or withdrawn pursuant to the terms of the Joint Petition for Settlement is denied;

5. That PECO Energy Company shall file with the Commission written notice of the merger within 30 days of the consummation of that transaction; and

6. That the record at Docket No. A-110550F0160 be marked closed.

Date: November 22, 2005



Marlane R. Chestnut
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

JOINT PETITION FOR SETTLEMENT

September 12, 2005

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

JOINT PETITION FOR SETTLEMENT

This Joint Petition for Settlement (“Joint Petition”) is submitted by the following parties in the above-captioned proceeding: PECO Energy Company (“PECO”); Public Service Electric and Gas Company (“PSE&G”); the Office of Trial Staff (“OTS”); the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); the Department of Environmental Protection (“DEP”); Citizens for Pennsylvania’s Future and the two named individuals that joined in its Protest and Petition to Intervene (collectively, “PennFuture”); the Action Alliance of Senior Citizens of Greater Philadelphia *et al.* (“Action Alliance”);¹ the Energy Coordinating Agency of Philadelphia, Inc. (“ECA”); the Philadelphia Area Industrial Energy Users Group (“PAIEUG”); The Reinvestment Fund/Sustainable Development Fund

¹ As used herein, “Action Alliance” refers collectively to the Action Alliance of Senior Citizens of Greater Philadelphia, the Association of Community Organizations for Reform Now (“ACORN”) and the Tenants’ Action Group (“TAG”), which are represented by common counsel and submitted a joint protest.

("TRF"); and State Senator Anthony H. Williams (all such parties referred to as the "Joint Petitioners").

The terms and conditions set forth in this Joint Petition represent a comprehensive settlement ("Settlement") among the aforementioned parties that resolves all issues pertaining to the above-captioned Joint Application. The Joint Petitioners aver that this comprehensive Settlement is in the public interest and, therefore, request that the Commission: (1) approve without modification the proposed Settlement as set forth herein; (2) issue the Certificates of Public Convenience and enter Orders granting the approvals requested in the Joint Application; and (3) approve the tariff supplements, appended hereto, that are necessary to implement the rate reductions and other changes agreed to as part of the proposed Settlement.

In support of their request, the Joint Petitioners state as follows:

I. SUMMARY OF SETTLEMENT

The Joint Petitioners have agreed to the proposed Settlement terms and conditions set forth in this document as a means to resolve, fairly and equitably, all issues arising from the Joint Application filed by PECO and PSE&G (collectively, the "Joint Applicants") for approval of the proposed merger. As a result of this Settlement, further protracted litigation will be avoided and customers will realize significant benefits.

The Joint Petitioners have agreed to terms and conditions that fairly balance the interests of all parties and affirmatively promote the public interest. In particular, within approximately thirty days of the close of the Merger, PECO will reduce its retail electric distribution rates by \$40.0 million annually. Such \$40.0 million reduction will remain in effect for two years, when the annual rate decrease will become \$20.0 million. The \$20.0 million rate reduction will remain

in effect for the next two years, thereby producing aggregate rate reductions over the four year period of \$120.0 million. PECO will also cap its retail electric transmission and distribution (“T&D”) charges for a four year period, from January 1, 2007 through December 31, 2010.²

In addition, the Settlement: (1) precludes PECO from seeking future rate recovery of expenses attributable to achieving merger-related savings; (2) establishes a Quality of Service Plan designed to maintain and/or improve system reliability and customer service; (3) extends certain reporting requirements that are otherwise scheduled to terminate on December 31, 2005; (4) provides for enhancements to PECO’s electric universal service programs; (5) supports efforts to promote energy efficiency and renewable energy; (6) adopts numerous corporate structure protections to insulate retail customers from the risks of affiliates not regulated by the Commission, and to avoid the potential for improper cross-subsidization; (7) provides for PECO to maintain a strong corporate presence in Southeastern Pennsylvania through specific commitments regarding its corporate headquarters, field force staffing levels, and charitable giving and sponsorships; (8) fosters the Commonwealth’s economic development efforts; and (9) facilitates the initiation of a separate proceeding to investigate the feasibility of consolidating the natural gas operations of PECO, PSE&G and the Philadelphia Gas Works (“PGW”).

The Joint Petitioners (other than the Joint Applicants), in turn, agree that the Settlement resolves all of their objections to the Joint Application and the granting of the various approvals requested therein and, subject to certain exceptions and qualifications as more fully set forth in Paragraphs 53 and 59, *infra*, they commit to withdraw all actions, interventions or protests filed,

² A prior cap on PECO’s T&D charges resulting from the settlement of the proceeding at Docket No. A-00110550F0147 wherein the Commission approved PECO’s merger with Unicom Corporation (the “2000 Unicom Merger Settlement”) is scheduled to expire on December 31, 2006.

and to terminate all other participation by themselves and their affiliates, in all proceedings involving or related to the merger of Exelon and PSEG and related transactions. The Joint Petitioners also agree to fully support the Settlement and to make reasonable good faith efforts to obtain its approval by the Commission and, if necessary, any Courts.

II. BACKGROUND

1. This proceeding was initiated by the filing on February 4, 2005 of the *Joint Application Of PECO Energy Company and Public Service Electric and Gas Company For Approval Of The Merger Of Public Service Enterprise Group Incorporated With And Into Exelon Corporation (the "Joint Application")*.

2. The transaction comprehended by the Joint Application consists of the merger of Public Service Enterprise Group Incorporated ("PSEG"), the corporate parent of PSE&G, with and into PECO's ultimate parent, Exelon Corporation ("Exelon"), after which Exelon, as the surviving company, will change its name to Exelon Electric & Gas Corporation ("EEG"). Following the Merger, the existing shareholders of Exelon will represent approximately 68%, and the former shareholders of PSEG will represent approximately 32%, of the shareholders of EEG. All of PECO's common stock will continue to be held by Exelon Energy Delivery (to be renamed EEG Energy Delivery) and ultimate ownership will continue to reside in EEG. PSE&G will become a separate subsidiary of EEG Energy Delivery. The Merger will not change the terms of or character of the outstanding preferred stock and debt of either PECO or PSE&G (Joint Application, pp. 7-8 and Exhibit D).

3. In the Joint Application, PECO and PSE&G requested that the Commission (a) find that its approval of the proposed Merger is not required under Chapters 11, 22 or 28 of the

Public Utility Code or, alternatively, (b) determine that the proposed Merger is “necessary or proper for the service, accommodation, convenience, or safety of the public” under Section 1103(a) of the Public Utility Code and issue Certificates of Public Convenience evidencing its approval thereof.

4. Along with the Joint Application and its attachments, PECO and PSE&G submitted Statement Nos. 1-3 and accompanying exhibits. The statements and exhibits are summarized in Paragraph No. 29 of the Joint Application. Included with the Joint Applicants’ supporting information is a market power analysis conducted by William H. Hieronymus, Vice President of Charles River Associates (PECO Statement No. 3 and Exhibit WHH-1), that was conducted in accordance with the Competitive Analysis Screen described in Appendix A to the Federal Energy Regulatory Commission’s (“FERC”) Merger Policy Statement, which in turn is intended to comport with the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines.

5. PECO notified its customers of the filing of the Joint Application by bill inserts. PECO also served copies of its filing on the OTS, the OCA, the OSBA and PAIEUG, and served notice of the filing on all of the active parties to the 2000 Unicom Merger proceeding at Docket No. A-110550F0147 and all active parties to PECO’s natural gas restructuring proceeding at Docket No. R-00994787, as more fully explained in Paragraph No. 35 of the Joint Application and its accompanying Certificate of Service. In addition, and pursuant to a Secretarial Letter dated February 8, 2005, the Joint Applicants published notice of the proposed Merger in the *Philadelphia Inquirer* the week of February 14, 2005.

6. On February 19, 2005, the Commission caused notice of the filing of the Joint Application to be published in the *Pennsylvania Bulletin*, which allowed interested parties until March 7, 2005 to file protests and petitions to intervene. Twenty-two parties filed protests or petitions to intervene in response to the Commission's Order.³ In addition, the OTS entered its appearance.

7. The Commission assigned this matter to Administrative Law Judge Marlane R. Chestnut to conduct hearings and issue an Initial Decision. On March 29, 2005, a Prehearing Conference was held in Philadelphia at which various procedural matters were addressed and resolved, including the establishment of a schedule for the filing of testimony, hearings and briefing.

8. Commencing shortly after the Joint Application was filed, the parties engaged in extensive formal and informal discovery. To date, the Joint Applicants have responded to approximately 1,000 interrogatories and requests for production of documents, which provided extensive additional information about the transaction for which approval is requested and about other issues of importance to the parties. In addition, the Joint Applicants made two of their expert witnesses available at informal discovery sessions.

³ Fifteen of the filings were made prior to the Commission's March 7, 2005 deadline and intervention was granted to all but one of those parties (the Petition to Intervene submitted by Eric Joseph Epstein was denied by an Initial Decision dated April 26, 2005, which determination was later affirmed by Commission Order dated July 14, 2005). The seven late-filed interventions were also granted, in some cases over the Joint Applicants' objections.

9. In accordance with the schedule worked out at the Prehearing Conference, public input hearings were held in Philadelphia on June 30, 2005. In addition, thirteen parties filed testimony and related exhibits addressing various aspects of the proposed Merger.

10. By Secretarial Letter dated July 15, 2005, the parties were directed to respond to a series of questions (the "Directed Questions") posed by Vice Chairman James H. Cawley and Commissioner Bill Shane. The first four questions inquired into whether the synergies to be unlocked by the Merger could be harnessed to enhance economic development, and they specifically raised the issue of a "set aside" of "virtually divested generation" to be dedicated to that purpose.⁴ The fifth question asked the parties to consider the viability of combining the natural gas operations of PECO and PSE&G with the operations of PGW in a viable, profitable, shareholder-owned public utility. Following various telephonic conferences, the parties agreed to, and the Administrative Law Judge approved, revisions to the procedural schedule to afford the parties a reasonable opportunity to prepare and submit testimony responsive to the Directed Questions.

11. On July 29, 2005, the Joint Applicants filed the rebuttal testimony and related exhibits of twelve witnesses. In addition, rebuttal statements were submitted by the OCA and OSBA.

12. On or about August 26, 2005, surrebuttal testimony and related exhibits were filed by eleven parties. At the same time, the Joint Applicants and ten other parties filed supplemental testimony and related exhibits responding to the Directed Questions.

⁴ Pursuant to the FERC's July 1, 2005 Order approving the Merger at Docket No. EC-0543, Exelon and PSEG will be required to cede control, by auction or bilateral agreement, to the output of 2600 MW of nuclear generation.

13. Commencing in mid-May, the Joint Petitioners engaged in a collaborative process to address the issues raised by the Joint Application and to hopefully resolve their differences. Those negotiations, which extended through the summer, ultimately led to the Settlement set forth herein.

III. TERMS AND CONDITIONS

The Joint Petitioners, intending to be legally bound and for due consideration given, agree that the Joint Application should be approved and the relief requested therein granted, subject to the following terms and conditions:

A. Rate Reductions and Imposition of Transmission and Distribution Rate Cap

14. **Rate Reductions.** Within approximately thirty days of the consummation of the Merger,⁵ PECO will reduce its retail electric distribution rates by \$40.0 million annually from the levels that otherwise would be in effect pursuant to the Commission's Order, entered June 22, 2000, approving the 2000 Unicom Merger Settlement, and the Order entered December 19, 2002 approving the roll-in to base rates of the effects of the Revenue Neutral Reconciliation Gross Receipts Tax. That \$40.0 million distribution rate reduction will remain in effect for two years (i.e., 24 months), at the conclusion of which the annual rate decrease will become \$20.0 million. The \$20.0 million rate reduction will remain in effect for an additional two years (i.e., 24 months), producing aggregate rate reductions over the four year period of \$120.0 million. The

⁵ The rate reductions will become effective on the first day of the first calendar month that commences more than thirty-one days after the close of the Merger. For example, if the Merger closes on March 15, 2006, the rate reductions will become effective on May 1, 2006.

distribution rate reductions will apply to all retail rate classifications and all customers within those rate classifications as set forth on a system average basis in Schedule 1 below.⁶

Schedule 1

SCHEDULE OF SYSTEM WIDE AVERAGE RATES ^(a)

<u>Effective Date</u> ^(b)	<u>Transmission</u> (1)	<u>Distribution</u> (2) ^(c)	<u>T&D Rate Cap</u> (3)=(1)+(2)	<u>CTC/ITC</u> (4)	<u>Shopping Credit</u> (5)	<u>Generation Rate Cap</u> (6)=(4)+(5)
	¢/kWh	¢/kWh	¢/kWh	¢/kWh	¢/kWh	¢/kWh
2006	0.47	2.49	2.96	2.82	5.03	7.85
2007	0.47	2.49	2.96	2.82	5.55	8.37
2008	0.47	2.54	3.01	2.82	5.55	8.37
2009	0.47	2.54	3.01	2.82	5.55	8.37
2010	0.47	2.59	3.06	2.82	5.55	8.37

⁶ Rates reflecting the distribution rate reductions agreed to herein will be reflected on customers' bills for regular billing cycles beginning after the effective dates of such rate reductions.

(a) All prices reflect average retail billing for all classes of service (including roll-in of RNR gross receipts tax at Docket No. R-00027912). Detail of actual individual rates for each class of service is provided in Appendix A. The average prices as presented in this Schedule 1 reflect the profile of service contained in PECO's proof of revenue set forth in Appendix A.

(b) The rate change assumed for 2006 will begin with the first billing route in the calendar month commencing at least 30 days after consummation of the Merger. The applicable reduced distribution rates (\$40M or \$20M) will each be in place for a total of 24 months.

(c) Excludes any effects of the Nuclear Decommissioning Cost Adjustment Clause and the Universal Service Fund Charge.

15. **Imposition Of Rate Cap.** PECO's T&D and generation charges will be capped at the levels set forth in Schedule 1, *supra*. The Joint Petitioners agree that the rate cap exceptions provided in Section 2804(4) of the Electric Competition Act shall apply to the rates set forth in this Settlement, except as otherwise specifically set forth herein. If at any time prior to December 31, 2010, PECO requests and is granted a rate increase pursuant to Section 2804(4) of the Act (Rate Cap Exceptions), such increase shall not reduce the shopping credits listed in Schedule 1 and such increases shall be allocated to the appropriate unbundled rate category in accordance with determinations of the Commission. In addition, it is understood and agreed that the recovery of nuclear decommissioning costs under the Nuclear Decommissioning Cost Adjustment Clause and universal service costs under the Universal Service Fund Charge are not subject to the rate caps set forth in Schedule 1.

16. The Joint Petitioners shall not file a complaint with the Commission or otherwise challenge PECO's then existing T&D unit rate levels or T&D rate structure prior to the expiration of the T&D rate cap on December 31, 2010, provided, however, that any Joint Petitioner may participate as a complainant or otherwise in any future transmission rate proceeding in which an increase in PECO's current transmission rates or change in rate structure is proposed and, further, may file a complaint or otherwise participate in any proceeding before

the Commission to adjust PECO's distribution rates as a result of any increase in PECO's transmission rates or change in rate structure. If, during the period that this rate cap is in effect PECO's transmission charges or rates (including but not limited to ancillary charges) are increased, then PECO's distribution rates will be reduced in a non-discriminatory manner that is revenue neutral on an individual customer class basis sufficiently to avoid exceeding the T&D rate cap.

17. The Joint Petitioners agree that the rates and the imposition of rate caps through December 31, 2010 in this Settlement reflect a reasonable compromise and accommodation among the parties of competing positions and provide a reasonable period of rate certainty to customers, PECO and the other Joint Petitioners. The Joint Petitioners agree further that the rates established herein, based on the evidence considered in this proceeding (including, but not limited to, the cost synergy analysis presented by Mr. Arndt (PECO Statement Nos. 2 and 2-R) and the testimony submitted by Messrs. O'Brien (PECO Statement No. 1-R), Keim (OTS Statement No. 1), La Capra (OCA Statement No. 1) and Kalcic (OSBA Statement No. 1)), are just and reasonable rates for PECO and are based on PECO's cost of providing regulated electric service. PECO acknowledges that it remains subject to (a) the continuing authority of the Commission during the rate cap period under Chapter 13 of the Public Utility Code, 66 Pa. C.S. Chapter 13, to ensure that its rates are just and reasonable and (b) the continuing obligation to make earnings report filings pursuant to Chapter 71 of the Commission's regulations, 52 Pa. Code §§71.1 *et seq.*

18. **Other Costs.** PECO agrees that expenses attributable to achieving Merger synergies will be amortized by the end of the T&D rate cap period and will not be deferred and/or claimed in a subsequent rate case.

B. Recovery Of Nuclear Costs, Including Decommissioning Expenses

19. Paragraphs 12-17 of the 2000 Unicom Merger Settlement regarding the recovery of nuclear costs, including decommissioning expense, will remain in full force and effect.⁷

C. Reliability And Customer Service

20. PECO agrees to a Quality of Service Plan ("Service Plan") designed to maintain or improve reliability and the quality of customer service provided by PECO in its service territory during the five year period from January 1, 2006 through December 31, 2010 over the levels committed to in the 2000 Unicom Merger Settlement. As set forth herein, the Service Plan establishes performance thresholds, reporting requirements and enforcement mechanisms for non-compliance. In addition, PECO makes certain further commitments to address issues relating to the anticipated implementation by Exelon of a new common customer information and billing system.

21. **Improved Performance.** During the period from January 1, 2006 through December 31, 2010, PECO's performance in terms of reliability and customer service shall continue to be subject to the Commission's applicable regulations. The Service Plan has been designed to maintain or improve performance over the levels committed to in the 2000 Unicom Merger Settlement in the eight areas listed below, by establishing the following numeric and/or percentage thresholds:

⁷ Paragraph 18 of the 2000 Unicom Merger Settlement, which references, for informational purposes only, an agreement to be executed by PECO and Eric Joseph Epstein, is not applicable.

RELIABILITY AND CUSTOMER SERVICE QUALITY OF SERVICE PLAN	
Performance Area Index	Performance Threshold*
RELIABILITY	
SAIFI (12-month)	1.28
CAIDI (12-month)	125
CUSTOMER SERVICE	
Percentage of calls answered within 30 seconds (as defined by the Company).	70%
Average "Busy-Out" rate (% of calls that encounter a busy signal).	.5%
Average Call Abandonment Rate.	5% **Company agrees to target performance at 4% but non-compliance will still be determined by the Threshold.
Percentage of residential bills not rendered once every billing period.	.02%
Gas Response Time to Safety Calls	99% within one hour.
OSHA Lost Work Days Cases	Target: Top 10% of EEI comparable companies (1500-4000 employees) Non-Compliance: Top 20% of EEI comparable companies (1500-4000 employees)
*Performance Threshold is the number by which performance is measured for purposes of determining non-compliance and application of the enforcement provisions of this Settlement Agreement.	

PECO agrees to include the foregoing performance thresholds as part of the annual performance appraisal and compensation for managerial and supervisory employees in the Distribution Operations and Customer and Marketing Services Group, as applicable.

22. For each of the years 2006, 2007, 2008, 2009 and 2010, PECO agrees to file an annual report with the Commission setting forth (a) its plan for the upcoming year to improve the reliability of its five worst performing electric circuits and (b) a review of its progress in

achieving the objectives described in its prior year plan. This reporting commitment shall be in addition to, and not in lieu of, the Commission's existing requirements.

23. The Joint Petitioners agree to work cooperatively to enhance PECO's ability to comply with the performance thresholds set forth in Paragraph 21, *supra*, and to otherwise improve the level of reliability and customer service provided in PECO's service territory during the period from January 1, 2006 through December 31, 2010. To this end, PECO agrees to (a) continue its commitment and efforts to resolve reliability problems at specific locations and to continue to respond to customer and community concerns regarding reliability and service quality; (b) meet regularly with the City to review the reliability of service provided within the City; (c) consult with interested parties to determine necessary action to be implemented pursuant to the Service Plan each year; and (d) reconvene with interested parties in 2010 to discuss whether further action is necessary and, if so, the nature and scope of such action to ensure that PECO continues to provide reliable and high quality customer service.

24. **Reporting Requirements.** In addition to the reporting requirements set forth in Paragraph 22, *supra*, PECO agrees to report to the Commission and interested parties, annually for each of the years 2006, 2007, 2008, 2009 and 2010 the following information regarding the reliability and quality of customer service provided in its service territory:

RELIABILITY

- SAIDI: Report on an annual basis
- MAIFI: Report on an annual basis
- Repeat Outages: PECO commits to adopt a yearly performance goal, and to provide a yearly plan, to reduce the number of customers who experience repeat outages.

- Storm Management: PECO will provide individual storm performance reports addressing PECO's storm management efforts for storms excluded by the Commission's definition.

CUSTOMER SERVICE

- Percentage of residential bills that are "issue ready"⁸
- Number of residential customer disputes not issued a Company report in 30 days
- Justified consumer complaint rate as per the data contained in the BCS Annual Report
- Number of residential bills not rendered per month
- Number and percentage of residential meters not read as required by 52 Pa. Code §§56.12 (4)(ii) and (iii)
- Commission Infraction Rate
- Customer satisfaction survey results (percentage of customers satisfied with recent contact and percentage of appointments kept)

25. **Evaluation Of Performance and Enforcement.** PECO will provide a report each year to the Commission, the OCA, the OTS, the OSBA, the City and other interested parties analyzing its performance in achieving the performance thresholds set forth in the Service Plan.

26. PECO agrees that, in any year during the effective period of the Service Plan, if its performance fails to satisfy the performance threshold for any performance areas being measured, the Commission will open a formal proceeding to investigate PECO's performance under the Service Plan. PECO, as an initial part of the formal proceeding, will provide the Commission, OCA, OTS, OSBA, the City and other interested parties with a report that analyzes the root cause of the failure to meet the particular Service Plan obligation(s) and specifies the steps to be taken over the next 12 months to meet the applicable performance threshold in the following year. The report shall include specific measurements of progress over the 12 month

⁸ This reporting requirement shall not become effective until after the implementation of the Common Customer System discussed in Paragraph 31, *infra*, has been completed.

period. A prehearing conference will be convened within 60 days of the filing of the report. At the prehearing conference, the parties to the proceeding must indicate whether they wish to proceed to full litigation of the matter or whether the matter has been resolved among the parties.

27. In any proceeding convened to investigate PECO's alleged non-compliance with the Service Plan, any party may request the Commission to order penalties for the service quality non-compliance. The Commission shall consider the degree of non-compliance and the number of indices in the Service Plan in which PECO failed to achieve agreed upon performance in determining whether to impose penalties and the level of penalties. The Commission may also consider other methods of ensuring compliance with the Service Plan.

28. PECO agrees that the parties retain their right to petition the Commission for an on-the-record investigation or to file a complaint in response to the storm management reports, storm response, other reported indices that are not directly measured in the Service Plan, individual or community complaints, or under other Commission regulations.

29. Nothing contained herein is intended to limit the authority of the Commission, the Bureau of Consumer Services, the Bureau of Safety and Compliance, or other Bureaus of the Commission from performing their duties and making recommendations, including recommendations regarding fines, for failure of PECO to perform in any of the areas contained in the Service Plan.

30. PECO agrees that it will not argue in any future proceeding that this Settlement or the Service Plan adopted herein limits or eliminates its responsibility to address reliability and customer service problems in its service territory.

31. **Common Customer System (“CCS”) Implementation.** PECO shall make a presentation to Commission Staff and interested parties no later than July 31, 2006 regarding the CCS conversion and implementation schedule. In this presentation, PECO will specifically address how the conversion and implementation schedule has been designed to ensure that PECO’s customer billing service performance shall not decline in quality. At least 30 days prior to the anticipated “go live” date for the implementation of CCS for PECO, PECO shall notify the Commission and interested parties of the intent to “go live” on that date. No later than the end of the fourth full calendar month after the actual “go live” date, PECO shall make a presentation to Commission Staff and interested parties concerning the impact, if any, of the implementation of CCS for PECO on PECO’s customer service performance, as measured by the metrics set forth in the Service Plan and agreed upon reporting requirements.

32. Until such time as the CCS is determined to be stable and operating accurately, if a customer is subject to a significant billing error or a delay in billing that exceeds two months due to problems associated with the CCS implementation, PECO shall afford the customer affected by such error or delay an opportunity for a payment arrangement that extends beyond the make-up billing provisions of Chapter 56 and the opportunity for an affordable payment arrangement that extends beyond Act 201 limitations, if necessary.

D. Universal Service

33. **MEAF Funding.** PECO agrees to provide \$500,000 per year in each of the years 2007, 2008, 2009 and 2010 to the Matching Energy Assistance Fund (“MEAF”), to be distributed for use to assist PECO customers in accordance with the following allocation formula: Project Heat c/o Bucks County Opportunity Council (7.8%); Chester County Cares, c/o

Community Service Council of Chester County (5.3%); Delco Shares Its Warmth c/o Community Action Agency of Delaware County (12.86%); Project Reach c/o Montgomery County Community Action Development Commission (8.5%); Utility Emergency Services Fund (Philadelphia County)(65%); Mason-Dixon Cares c/o Mason-Dixon Community Services (York County)(0.54%). These contributions will be in addition to any PECO matching of contributions and any reimbursement of administrative costs to the MEAF agencies. The county fuel fund agencies will provide annual reports to PECO detailing how payments made pursuant to this Paragraph were spent. PECO further agrees to include a check-off box on customers' bills for contributions to MEAF concurrent with the implementation by Exelon of its CCS and to include a check-off option for electronic bill-payment customers as part of the CCS conversion process unless, in PECO's judgment, the inclusion of such an option is technically infeasible or substantially uneconomical. In addition, PECO agrees to provide five MEAF bill inserts in 2005 and four MEAF bill inserts annually thereafter until such time as the monthly check-off box is included on customers' bills. Once the monthly check-off box is included on customers' bills, PECO will provide bill inserts twice a year explaining MEAF and the check-off box option. PECO also agrees to authorize an increase in maximum MEAF grants from \$500 to \$1000.

34. **Enhancement Of Cap Rate Program.** PECO agrees to increase the monthly usage levels eligible for discounts for customers taking service under CAP Rates "B," "C," "D" and "E" to 650 kWh effective for regular billing cycles beginning after January 1, 2007. Tariff sheets reflecting these changes are included in Appendix A. PECO will continue to provide one payment arrangement to all CAP Rate customers who become delinquent in their CAP payments. An additional payment arrangement shall be available to CAP customers who become delinquent and who either (a) are transitioning from one CAP Rate level to another with a greater discount

(e.g., from CAP Rate "C" to CAP Rate "B"); (b) have experienced "extenuating circumstances," as that term is defined in the Customer Assistance Program Rider of PECO's tariff; (c) incur increases greater than 30% of their monthly household expenses in non-discretionary costs essential to the customer's well-being; or (d) have experienced a material decline in household income. The payment arrangements shall consist of the current CAP payment plus \$5.00 per month for those customers on CAP Rates A, B and C and the current CAP payment plus \$15.00 per month for those customers on CAP Rates D and E. The Joint Petitioners agree that Paragraphs 34-36 of the 2000 Unicom Merger Settlement, relating to the use of Universal Service Fund Cost recovery mechanisms for electric and gas operations, will remain in full force and effect until PECO's next electric and gas base rate cases.

35. CAP Outreach, Application And Certification, And Funding And Training Of Other Organizations.

a. **Expansion Of PECO Outreach Efforts.** PECO commits to spend \$1.2 million (\$300,000 per year in each of the years 2007, 2008, 2009 and 2010) on additional CAP enrollment outreach. Such outreach shall inform potential CAP Rate Program participants about eligibility requirements, benefits of the program and how to apply. The \$300,000 annual amount to be spent on CAP enrollment outreach shall be in addition to the \$230,000 currently spent annually to support PECO's existing CAP outreach activities.

PECO further agrees to solicit input from the LIURP Advisory Committee with respect to its entire CAP outreach program, not solely the activities to be funded by the incremental annual \$300,000 provided herein. PECO will include CAP outreach as a regular item on the agenda for the LIURP Advisory Committee meetings. PECO will provide its annual proposed outreach plan, including a budget, to Action Alliance, Senator Williams and the LIURP Advisory

Committee by January 15 each year in 2007, 2008, 2009 and 2010. The LIURP Advisory Committee shall have 15 days to review and comment on the proposed outreach plan. By March 1 of each year, PECO shall present the final outreach plan to the LIURP Advisory Committee.

The dollars provided by this settlement for CAP outreach shall be dedicated to funding a combination of advertising in the public media and targeted solicitation to existing CAP customers and potentially CAP-eligible customers. The following elements may be included in this outreach campaign:

- *Media Advertising:*
 - Billboard and/or bus shelter advertisements
 - Radio campaigns
 - Newspaper advertisements
- *Targeted Solicitation:*
 - Bill inserts to inform customers of the availability of all of PECO's CAP Rates (including CAP Rates A, B and C)
 - Mailings to CAP Rate B customers to inquire whether they may qualify for CAP Rate A
 - Mailing of CAP Rate Program information letters to customers who, at the time of application for service, have identified themselves as receiving public assistance
 - Mailings of CAP Rate Program information to LIHEAP recipients not previously enrolled in the CAP Rate Program

b. Enhancement Of CAP Application And Recertification Process.

PECO agrees to (a) communicate with its employees on the CAP Rate Program so that they can become ambassadors for the Program and refer potential program participants for evaluation; (b) work with the Department of Welfare to stream-line the income verification process; (c) accept fax CAP Rate applications during any hours, including business hours when faxed CAP Rate applications will be accepted and processed efficiently; (d) implement procedures to provide that customers for whom PECO has received a CAP Rate Program application and for whom the application is pending do not experience termination of service by PECO before a decision is made on the customer's CAP Rate Program application; (e) for those customers that apply for service in person at PECO's offices and who have identified themselves as receiving public assistance, PECO will process an application for CAP Rate enrollment for that customer; and (f) if PECO determines, as part of its credit review for new applicants for PECO service, that the customer receives public assistance, then PECO will solicit that customer for enrollment in the CAP Rate Program.

c. Funding And Training Of Other Organizations. PECO agrees to

provide \$0.4 million (\$100,000 per year in each of the years 2007, 2008, 2009 and 2010) to the Energy Coordinating Agency ("ECA") to be directed to Neighborhood Energy Centers ("NECs") in Philadelphia and to other Community Based Organizations ("CBOs") in the surrounding counties for the purpose of CAP outreach and referrals. The ECA will report periodically to PECO on the results of its outreach and referral efforts and will file an annual report, by March 1 of each succeeding calendar year, to the Commission and the Joint Petitioners accounting for the use of all funds and describing the results of its outreach and referral efforts. PECO agrees to work with the ECA to identify areas which are underserved by the CAP Program. PECO also

agrees to continue to reimburse 33% (up to a maximum of \$200,000 per year) of the annual administrative costs of the Utility Emergency Services Fund ("UESF") in each of the years 2007, 2008, 2009 and 2010.

Further, PECO will conduct at least four training sessions annually in each of the years 2007, 2008, 2009 and 2010 to educate staff members of community organizations and healthcare providers such as NECs, CBOs and legal service organizations located in its service territory regarding the availability and operation of its CAP Rate Program (including CAP Rates A, B and C) and other programs intended to benefit low income customers. All proposed training programs and plans will be provided in advance to the LIURP Advisory Committee for its review and comment. Members of the LIURP Advisory Committee may suggest additional training topics and additional organizations to be invited to receive training at these events. The training programs shall include, but not be limited to, information and materials concerning the CAP Rate application procedures, eligibility standards, discount levels and their calculation, bill format and interpretation, health-usage discount, payment agreements, recertification procedures and arrearage forgiveness for all CAP Rates, including CAP Rates A, B and C. The training programs shall take place in the cities of Philadelphia and Chester during late-October and late-March of each year. PECO shall continue to conduct training concerning its CAP Rate Programs and LIHEAP on an informal basis consistent with current practice.

36. The commitments set forth in Paragraphs 33-35, *supra*, are intended to supplement, not supersede, existing PECO Universal Service obligations, and do not preclude the imposition by the Commission of additional Universal Service obligations. PECO shall not delay or request Commission permission to delay conducting or filing any required evaluation, report, or study concerning its Universal Service programs on any grounds associated with

PECO's obligations under this Settlement. The Joint Petitioners waive no rights regarding full participation in any proceeding concerning PECO's Universal Service programs, and entry into this Settlement in no way limits their rights to propose modifications to such programs.

37. PECO will consider alternative LIURP treatment measures (to include but not limited to white reflective coating of roofs and solar hot water heaters), if approved by the Commission, among the various LIURP treatment options available for eligible customers.

E. Environmental Provisions

38. **Funding Of Renewable Power And Energy Efficiency Initiatives.** PECO agrees to contribute \$12.0 million (\$3.0 million per year in each of the years 2007, 2008, 2009 and 2010) to the Pennsylvania Energy Development Authority ("PEDA") to be used for the purposes of funding renewable energy, energy efficiency and energy conservation projects with emphasis on energy conservation projects of benefit to the PECO service territory. Of the \$12.0 million, \$500,000 (\$125,000 per year in each of 2007, 2008, 2009 and 2010) will be set aside, subject to the approval of PEDA's board of directors, for funding PEDA qualified Low Income Usage Reduction Program (LIURP) projects in PECO's service territory (including the "Cool Roofs" program). All funds provided to PEDA will be used for the purposes of the PEDA and under the procedures set forth in the Pennsylvania Energy Development Act of 1982. PEDA will provide to the Commission and the Joint Petitioners a copy of the report it sends annually to the Governor and the General Assembly.

In addition, PECO agrees to provide \$7.2 million to the Sustainable Development Fund within three months after consummation of the merger. It is expressly understood that this lump sum payment to the SDF will constitute full satisfaction of PECO's obligations to fund the SDF

under this Joint Petition and any prior settlement agreements executed by PECO and the SDF, and that PECO will have no further or other obligation to make payments to SDF during the period ending December 31, 2010, or thereafter unless ordered otherwise by the Commission. The SDF shall report on the use of these funds (including data on program investments, loans, grants, revenues and expenditures) in a distinct section of the SDF annual report that SDF submits to the Commission and interested parties pursuant to the SDF's by laws and applicable Commission orders.

39. **Net Metering And Interconnection Rules.** PECO will adopt net metering and interconnection rules that are materially consistent with safe utility practice and the corresponding rules currently in place in New Jersey unless the Commission, as part of its ongoing Alternative Energy Portfolio Standards ("AEPS") rulemaking proceeding at Docket No. M-00051865, adopts statewide net metering and interconnection rules that are inconsistent with the New Jersey rules.

F. Corporate Structure Protections

40. **Cost Of Capital Of Regulated Distribution Operations.** PECO agrees that it will maintain its own long-term debt. In addition, the cost of capital used in establishing PECO's rates for retail electric and gas distribution service regulated by the Commission shall not reflect any risk adjustment associated with its ultimate corporate parent, EEG, or any affiliate not regulated by the Commission. For purposes of this Paragraph, PECO's cost of capital will be based upon its cost of debt, preferred stock and common equity, as applied to PECO's capital structure ratios.

41. **Investment Conditions.** From and after the effective date of this Settlement, PECO shall not: (1) guarantee the debt or credit instruments of Exelon or any affiliate not regulated by the Commission; (2) grant a mortgage or other lien or otherwise pledge as security for repayment of the principal or interest of any loan or credit instrument of Exelon or any affiliate not regulated by the Commission any property used and useful in providing retail utility service to the public subject to the Commission's jurisdiction; or (3) make any loan or otherwise extend credit to Exelon or any affiliate not regulated by the Commission for a term of one year or more.

42. **Notification Of Certain Payments And Transfer Of Funds.** PECO will notify the Commission of (a) its intention to transfer more than 5 percent of PECO's retained earnings (excluding regular quarterly dividend payments on common stock) to Exelon over a six-month period at least 30 days before such a transfer begins; (b) its intention to declare a special cash dividend (other than the regular quarterly dividend on common stock) at least 30 days before declaring the dividend, and (c) its most recent quarterly common stock cash dividend payment within 30 days after the declaration of such dividend.

43. **Transactions Between PECO And Its Affiliates.** PECO will maintain reasonable accounting controls and other procedures for the allocation of overhead and other costs of jointly used assets and personnel. Such controls and procedures will be designed to provide reasonable assurance that PECO does not improperly bear costs associated with the business activities of affiliated companies, which costs are not regulated by the Commission. PECO will also maintain reasonable pricing protocols for determining transfer prices for transactions between PECO and affiliated companies involved in business activities not regulated by the Commission. PECO further agrees to provide the OTS with a report outlining

the accounting controls and protocols that it adopts pursuant to this Paragraph within six months of the consummation of the Merger.

44. **Limitations On Affiliate Purchased Power Rate Cap Exception.** PECO agrees that it cannot argue, in any proceeding before the PUC involving the applicability of the rate cap exception (66 Pa. C.S. §2804(4)), that increases in the price of purchased power are outside the control of PECO simply because the purchase is from Exelon Generation Company, LLC, or another affiliate.

45. **Continuation Of Jurisdiction.** PECO agrees that approval of the Joint Application will not affect PECO's existing legal obligation to comply with all provisions of the Public Utility Code, including Chapters 11 and 21 thereof. Further, nothing contained in this agreement shall be used in this or any other proceeding as evidence of PECO's admission, acknowledgement or waiver of its assertion that the Commission lacks jurisdiction over this transaction. PECO surrenders to the Commission's jurisdiction only for purposes of effectuating and enforcing the Settlement.

46. **Access To Books, Records And Personnel.** Upon written request, PECO will provide to the Commission, the OTS, the OCA and the OSBA reasonable access to the books, records, officials and staff of PECO's affiliates not regulated by the Commission to the extent: (1) such affiliates provide goods or services to PECO; and (2) access to such books, records, officials or staff is necessary for the Commission to perform its regulatory oversight responsibility with respect to PECO's purchases of goods or services from those affiliates. PECO agrees to accept service in Philadelphia, Pennsylvania, of any requests made pursuant to these provisions and, in responding to such requests, PECO will make available within the

Commonwealth of Pennsylvania the books, records and personnel responsive to those requests. However, nothing set forth herein shall constitute or be interpreted as a waiver by PECO of its right to raise traditional discovery objections to any such requests, including, but not limited to, objections on the basis of relevance and privilege. Additionally, before responding to any such requests, PECO shall be permitted to require the imposition of protections it deems necessary to prohibit disclosure of proprietary or confidential information.

47. **Annual Reports And Presentations To Analysts.** PECO shall provide the OTS and the OCA with a copy of its annual report filed with the Securities and Exchange Commission ("SEC") and its Annual Report to Shareholders applicable to each year through 2010. In addition, PECO will provide the Commission with prompt access (through delivery of copies or notification of SEC filings) to all written presentations made by PECO to investors in exchange-listed or publicly traded PECO debt and equity securities and security analysts who publish research reports and similar investor information concerning exchange-listed or publicly traded PECO debt and equity securities.

48. Upon PECO's request, as set forth in a Securities Certificate registration or other appropriate filing, the Commission may waive any one or more of the conditions set forth in Paragraphs 40 - 44, *supra*, if it finds that PECO's retail customers receiving service subject to the Commission's jurisdiction will be fully protected from bearing any increased costs as a result of granting the requested exception and that such customers will obtain some benefit from the transaction(s) made possible by the requested exception.

G. Corporate Presence And Commitment To Local Communities

49. **PECO's Corporate Headquarters.** PECO will maintain the corporate headquarters for its distribution business in Philadelphia through at least December 31, 2010.

50. **Contributions And Sponsorships.** PECO agrees to fund charitable giving and sponsorships at a level of at least \$3.0 million per year in each of the years 2007, 2008, 2009 and 2010.

51. **Staffing Levels.** PECO agrees that it will not make any reductions to its current field force levels prior to January 1, 2011. The term "field forces," for purposes of this Paragraph, shall include employees who have direct, "hands-on" responsibility for the construction, operation and maintenance of PECO's transmission and distribution systems and does not include personnel who work primarily in support of such functions. Further, PECO agrees that, other than the approximate number of reductions identified in the Joint Applicants' Application, the synergy study referenced in the record, and related discovery, PECO will not make any reductions to its current Engineering, Call Center, Revenue Management/Billing, Payment Processing, Design and Construction, Consultant, Energy Technician, Dispatcher, Systems Dispatcher, Engineering Technician, Maintenance Technician and Gas Dispatcher workforce as a result of the merger. The Parties agree that nothing in this Agreement shall preclude PECO from properly sizing its workforce to reflect efficiencies created by future technological and process improvements (for example, the implementation of mobile data terminals and geographic information system technology) in the manner in which PECO provides service and which are unrelated to the Merger. PECO agrees to meet and exchange information regarding any such improvements at the request of organized labor.

H. Economic Development

52. PECO agrees to contribute \$8.0 million (\$2.0 million in each of the years 2007, 2008, 2009 and 2010) to PEDDA to be used for energy related economic development projects and initiatives of benefit to the PECO service territory. All funds provided to PEDDA will be used for the purposes of the PEDDA and under the procedures set forth in the Pennsylvania Energy Development Act of 1982. PEDDA will provide to the Commission and the Joint Petitioners a copy of the report it sends annually to the Governor and the General Assembly.

I. Competitive Electric Markets

53. a. PECO agrees that it will file with the Pennsylvania Public Utility Commission annually for each of the years 2007, 2008, 2009, 2010, 2011 and 2012 a report addressing wholesale market prices and price trends in the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") markets. The Report shall contain information regarding price differentials between PJM East and other PJM regions and other information necessary to assess prices and price trends in the PJM markets. Copies of such reports shall be provided upon request to any Joint Petitioner and shall be made available to the public.

b. PECO further agrees that any Joint Petitioner may request that the Commission, acting within its authority, initiate an investigation when such Joint Petitioner reasonably believes that PECO's affiliated generation company (or any other affiliated entity) has unlawfully exercised market power in any PJM market, or for any other reason set forth in 66 Pa. C.S. §2811.

c. The OTS, OCA and OSBA agree that they will not seek admission into the record of this proceeding of those portions of the testimony previously submitted by such parties

in this proceeding relating to competitive issues, including market power. In addition, and except as expressly provided below, the Joint Petitioners agree that they will not pursue any market-power issues related to approval of the Merger as part of this proceeding or in any other proceeding before state or federal agencies or courts.

d. The Joint Petitioners (other than the Joint Applicants) agree that they shall not file any additional pleadings or appeals regarding the FERC's Order of July 1, 2005 at Docket No. EC05-43-000; provided that they need not withdraw prior filings at that Docket. The Joint Petitioners (other than the Joint Applicants) further agree not to oppose the FERC's July 1, 2005 Order in any other state or federal proceeding, including any appeals taken by any other parties of such Order. Any Joint Petitioner may, however, participate in any proceedings with respect to the post-merger compliance filing directed by the July 1, 2005 Order at ordering paragraph (G) for the purpose of commenting on, or providing testimony on, whether the Applicants' filing and mitigation plan remedies, under FERC's Appendix A analysis, any market power identified by FERC in its July 1, 2005 Order. Any Joint Petitioner may also participate in any rehearing that may be granted by the FERC, or ordered by any court, for the purpose of commenting on, or providing testimony on, appropriate mitigation plans.

54. PECO agrees to support, in the Commission's Default Service Provider rulemaking proceeding at Docket No. L-00040169, the ability of Default Service Providers to offer, as part of the procurement of power through wholesale auctions, fixed-price retail service to large customers (those with demands of 1000 KW or greater) for at least a twelve-month term.

J. Consolidation Of Natural Gas Operations

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. PECO agrees to fully cooperate in such fact-finding and other Joint Petitioners may participate in the proceeding if they so elect.

K. General Settlement Provisions

56. **Effectiveness Of Settlement.** The Settlement will go into effect upon the Commission's issuance of a final order approving the Settlement without modification. If the Commission rejects the Settlement, the Settlement automatically will terminate and be null and void. If the Commission, in approving the Settlement, should modify any terms or conditions of the Settlement or add any conditions (including any conditions relating to the issues resolved herein and conditions involving the set-aside of electric generation or divestiture of electric or gas facilities), any Joint Petitioner may elect to withdraw from the Settlement by filing a notice of withdrawal with the Commission's Secretary and serving a copy thereof upon all Joint Petitioners by facsimile, electronic mail or overnight delivery service within five business days of the entry of the Commission's Order. In addition, the consummation and closing of the Merger constitutes a condition precedent to the Settlement. Once the Merger has been consummated and closed, this Settlement and its terms shall be implemented and enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the Commission's approval of this Joint Petition and Settlement unless such implementation and

enforcement of the Settlement is stayed or enjoined by the Commission, another regulatory agency, or a court having competent jurisdiction over the matter.

57. **All Issues Resolved.** The Settlement resolves with prejudice all issues related to the Joint Application and precludes the Joint Petitioners from asserting contrary positions in derogation of this Settlement with respect to any issue addressed herein during any subsequent litigation against PECO or PSE&G; provided, however, that this Settlement is made without admission against or prejudice to any factual or legal positions which any of the Joint Petitioners may assert in (a) the subsequent litigation of this proceeding in the event that the Commission does not issue a final, non-appealable Order approving this Settlement without modification; or (b) any proceeding involving another Pennsylvania utility. This Settlement is determinative and conclusive of all of the issues addressed herein and constitutes a final adjudication as to the Joint Petitioners of the matters thereof.

58. **Support Of The Settlement.** All Joint Petitioners shall support the Settlement and make reasonable and good faith efforts to obtain approval of the Settlement by the Commission and any Courts. In furtherance of this commitment, the Joint Petitioners agree to submit to the Administrative Law Judge Statements in Support of the Settlement within three business days of the filing of this Joint Petition. In addition, the Joint Petitioners agree to present testimony and/or briefs supporting the Settlement in response to any testimony submitted by non-signatory parties in opposition to the Settlement.

59. **Intervenors To Withdraw Other Actions.** Except as provided in Paragraph 53, *supra*, and below, all Joint Petitioners other than PECO and PSE&G (“Intervenors”) shall, immediately upon entry of a final Commission order approving the Settlement, withdraw any

actions, interventions or protests filed and terminate all other participation, formal or informal, direct or indirect, by such Intervenors and their affiliates in all proceedings involving or related to the approval of the Merger before other agencies or courts including, but not limited to, FERC, SEC, NRC, DOJ, FTC, FCC, IRS and the New Jersey Board of Public Utilities (“Other Forum”). Upon execution of the Joint Petition, Intervenors and their affiliates shall not initiate any such action, protest, intervention or participation before any Other Forum; except as provided in Paragraph 53, however, if, before the Commission enters an order granting, denying or modifying this Joint Petition, a filing is required in a proceeding before an Other Forum which, if not made, would cause the Intervenor to waive its right to participate in such a proceeding in the event this Settlement is not approved, a filing, which does not state a position adverse to PECO or PSE&G in such proceeding, may be filed to preserve such Intervenor’s right to participate in such proceeding. Any such filing will be withdrawn immediately upon entry of a final Commission order approving the Settlement. Additionally, if any court reverses, vacates or modifies the Commission’s final order approving the Settlement, the Intervenors may intervene or revive a prior intervention in any then-pending proceeding in an Other Forum and, in that event, PECO and PSE&G shall not object to such intervention or revival on the grounds that it is untimely.

60. **Other Proceedings.** Acknowledging that it is expressly understood and agreed that the Settlement constitutes a negotiated resolution solely of issues addressed herein, the Joint Petitioners agree that this Settlement shall not constitute or be cited as controlling precedent in any other proceeding, including any future proceedings involving PECO’s rates.

61. Unless expressly modified by this Settlement, all of the terms and conditions of the 2000 Unicom Merger Settlement at Docket No. A-00110550F0147 and the Electric Restructuring Settlement at Docket No. R-00973953 remain in full force and effect.

IV. PUBLIC INTEREST CONSIDERATIONS

The Joint Petitioners submit that this Settlement is in the public interest and should be approved in full for the following reason:

62. **Rates Will Be Reduced.** The Settlement provides for \$120 million of rate reductions over a four-year period commencing approximately thirty days after the consummation of the Merger.

63. **Transmission And Distribution Charges Will Be Capped Through The End Of 2010.** The Settlement caps PECO's transmission and distribution charges for an additional four years, or through December 31, 2010.

64. **Post-Cap Distribution Rate Increases Will be Mitigated.** The Merger will create the opportunity to achieve cost savings through the sharing of best practices, purchasing economies and the elimination of duplicative functions.

65. **Reliability And Customer Service Will Be Improved.** The Settlement requires PECO to comply with reliability and customer service performance thresholds and to hold management and supervisory personnel accountable if those thresholds are not met.

66. **Universal Service Coverage Will Be Expanded.** The Settlement increases the monthly usage levels eligible for discounts for most CAP Rate customers; significantly expands

PECO's customer education and outreach efforts; and provides for additional contributions by PECO to county fuel fund agencies in PECO's service territory.

67. **The Environment Will Benefit.** The Settlement promotes energy efficiency and energy sources through (a) substantial annual contributions to the Pennsylvania Energy Development Authority and the Sustainable Development Fund and (b) PECO's support of more customer-friendly net metering and interconnection rules.

68. **Customers Will Be Protected Against Affiliate Risk And Cross-Subsidization.** The Settlement provides that the determination of regulated retail rates shall not be affected by the success or failure of affiliated businesses not regulated by the Commission; requires PECO to adhere to reasonable accounting controls and pricing protocols in its dealings with affiliates; imposes conditions on PECO's extension of credit; ensures reasonable access to the books, records and personnel of affiliated entities; and provides the Commission advanced notice of certain dividend payments and transfers of funds.

69. **PECO Will Maintain A Strong Corporate Presence In Southeastern Pennsylvania.** The Settlement ensures that PECO will keep its corporate headquarters in Philadelphia through at least 2010; will maintain existing field force levels; and will fund charitable giving and sponsorships at no less than \$3.0 million annually through 2010.

70. **Economic Development Will Be Promoted.** The Settlement provides for the funding of \$8.0 million of economic development projects of benefit to PECO's service territory.

71. **Wholesale Market Conditions Will be Closely Monitored.** The Settlement requires that PECO submit an annual report to the Commission on trends in the price of electricity within the PJM.

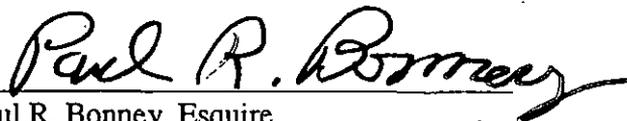
72. **Substantial Litigation And Associated Costs Will Be Avoided.** The Settlement amicably and expeditiously resolves a number of important and contentious issues. The administrative and appellate burden and costs to litigate these matters to conclusion would be substantial.

73. **The Settlement Is Consistent With Commission Policies Promoting Negotiated Settlements.** The Joint Petitioners arrived at the Settlement terms after conducting extensive discovery and engaging in in-depth discussions over several months. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (see 52 Pa. Code §§ 5.231, 69.391, 69.401).

V. CONCLUSION

WHEREFORE, the Joint Petitioners, intending to be legally bound, respectfully request that the Commission: (1) approve this Joint Petition, including all terms and conditions contained herein, without modification; (2) issue Certificates of Public Convenience under Section 1102 of the Code authorizing the proposed Merger; (3) approve the Tariff Supplements attached as Appendix A to become effective pursuant to terms set forth therein; and (4) terminate and mark closed the proceedings at Docket No. A-110550F0160.

Respectfully submitted,



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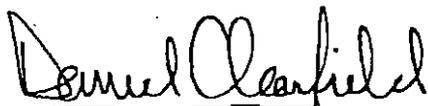
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For the Office of Consumer Advocate

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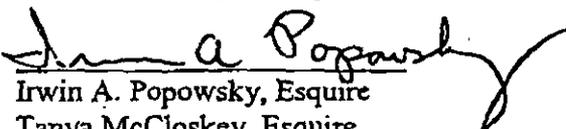
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V. CONCLUSION

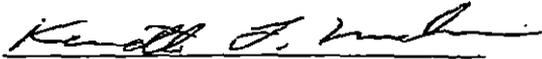
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Dated: September 12, 2005

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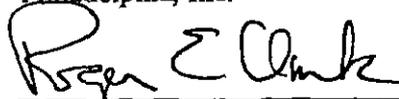
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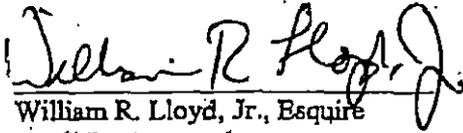
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For the Philadelphia Area Industrial Energy Users Group

Roger E. Clark, Esquire
TRF Sustainable Development Fund
718 Arch Street
Suite 300 North
Philadelphia, PA 19106-1591

For the Reinvestment Fund/Sustainable Development Fund

Steven J. Engelmyer, Esquire
Kahiga A. Tiagha, Esquire
Kleinbard, Bell & Brecker LLP
1900 Market Street, Suite 700
Philadelphia, PA 19103

For State Senator Anthony H. Williams

Susan Shinkman, Esquire
Richard P. Mather, Sr., Esquire
Deputy Chief Counsel
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301

For the Pennsylvania Department of Environmental Protection

Dated: September 12, 2005

William R. Lloyd, Jr., Esquire
 Small Business Advocate
 Carol F. Pennington, Esquire
 Office of Small Business Advocate
 Suite 1102, Commerce Building
 300 North Second Street
 Harrisburg, PA 17101

For the Office of Small Business Advocate

Jonathan M. Stein, Esquire
 Philip A. Bertocci, Esquire
 George D. Gould, Esquire
 Thu B. Tran, Esquire
 Community Legal Services, Inc.
 1424 Chestnut Street
 Philadelphia, PA 19102-2505

For the Action Alliance of Senior Citizens of
 Greater Philadelphia, et al.

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

For Citizens for Pennsylvania's Future, et al.

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

For the Energy Coordinating Agency of
 Philadelphia, Inc.

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

For the Philadelphia Area Industrial Energy
 Users Group

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Richard P. Mather, Sr., Esquire
Deputy Chief Counsel
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301

For the Pennsylvania Department of
Environmental Protection

Dated: September 12, 2005

APPENDIX B

Statements and Exhibits A-110550F0160

Date	Party	Caption	Description	Exhibits/Attachments	Admit
2/4/05	PECO	Application	Joint Application of PECO Energy Company and Public Service Electric and Gas Company		*
		Vol. I:			
		Exh. A			*
		Exh. B			*
		Exh. D			*
		Vol. II			
		Exh. C			*
		Vol. III			
		PECO St. 1	Direct: Denis P. O'Brien, PECO Energy Company, President		*
		PECO St. 2	Direct: William D. Arndt, Exelon Corporation., Senior Vice-President, Financial Operations	PECO Exh. WDA-1 to WDA-6	*
		Vol. IV			
		PECO St. 3	Direct: William H. Hieronymus, Charles River Associates, Incorporated, Vice-President (Dr.)	PECO Exh. WHH-1, FERC Exh. J-1 (Hieronymus testimony and exhibits)	9/22/05
5/27/05	PECO	PECO Exh. WHH-1a	Hieronymus supplemental FERC testimony		9/22/05
6/28/05	Sen.		Direct: Pa. Senator Anthony Williams		
6/28/05	PGW	PGW St. 1	Direct: Paul R. Carpenter, The Brattle Group, Principal and Vice-Chairman, (Dr.) (Appendix A)		
6/28/05	OTS	OTS St. 1	Direct: David F. Keim, PUC, OTS, Technical Division, Fixed Utility Financial Analyst (Appendix A)	OTS Exh. 1	*
6/28/05	OTS	OTS St. 2	Direct: Michael J. Gruber, PUC, OTS, Technical Division, Fixed Utility Valuation Engineer (Appendix A)	OTS Exh. 2	Not offered
6/28/05	OTS	OTS St. 3	Direct: Kevan L. Deardorff, PUC, OTS, Technical Division, Fixed Utility Financial Analyst (Appendix A)	OTS Exh. 3	*

* Admitted by Stipulation on 9/22/05

** Admitted by Stipulation on 9/23/05

6/28/05	Philadelphia	Phila. St. 1	Direct: Kent R. Miller, Philadelphia, Municipal Energy Office, Executive Director (Dr.)	Exhs. KRM-1 to KRM-4	**
6/28/05	Action Alliance, et al	Action Alliance et al St. 1	Direct: Harry S. Geller, Pennsylvania Utility Law Project, Executive Director	Exhs. A-K	**
6/28/05	TRF	TRF St. 1	Direct: Lewis M. Milford, Clean Energy Group, Inc., President	Exhs. LMM-1 and LMM-2	
6/29/05	OCA	OCA St. 1 (proprietary and non-proprietary)	Direct: Richard La Capra, La Capra Associates, Principal Consultant		**
6/29/05	OCA	OCA St. 2	Direct: (1) Douglas C. Smith, La Capra Associates, Technical Director; and (2) Richard Hahn, La Capra Associates, Managing Consultant	Exh. LCA-MP-1a, 1b, LCA-MP-2 to MP-8	Not offered
6/29/05	OCA	OCA St. 3	Direct: Jerome D. Mierzwa, Exeter Associates, Inc., Principal and Vice-President		**
6/29/05	OCA	OCA St. 4	Direct: Barbara R Alexander, Consumer Affairs Consultant	Exh. BA-1	**
6/29/05	FirstEnergy Companies	MetEd/Penelec/Penn Power St. 1	Direct: William D. Byrd, FirstEnergy Service Company, Director, Rate Strategy		*
6/29/05	FirstEnergy Companies	MetEd/Penelec/Penn Power St. 2	Direct: Richard A. D'Angelo, FirstEnergy Service Company, Manager - Rates and Regulatory Affairs - Pennsylvania	Exhs. RAD-1 to RAD-4 Appendix A	*
6/29/05	FirstEnergy Companies	MetEd/Penelec/Penn Power St. 3	Direct: Julia Frayer, London Economics International LLC, Partner and Managing Director	Appendix A, B, C, Exh. 3-A & 3-B (FERC testimony)	*
6/29/05	OSBA	OSBA St. 1	Direct: Brian Kalcic, Excel Consulting, Principal (revised)	Appendix, Exh. 1 (Schs. BK-1 to BK-4, interrog. Responses)	*
6/29/05	PPL Companies	PPL St. 1	Direct: Joseph P. Kalt, Harvard University, John F. Kennedy School of Government, Ford Foundation Professor of International Political Economy; Lexecon, Inc., Senior Economist (Dr.)	Exhs. JPK -1 to JPK-11	*
6/29/05	DEP	DEP St. 1	Direct: David Aliard, DEP, Bureau of Radiation Protection, Director (Dr?)		Not offered

* Admitted by Stipulation on 9/22/05

** Admitted by Stipulation on 9/23/05

6/29/05	DEP	DEP St. 2	Direct: John F. Slade, DEP, Bureau of Air Quality, Division of Permits, Chief		Not offered
6/29/05	DEP	DEP St. 3	Direct: Daniel Desmond, DEP, Office of Energy and Technology Deployment, Deputy Secretary		*
6/29/05	Labor parties	Labor Parties St. 1	Direct: Frank Kuders, Exelon Generation LLC, Eddystone Station, maintenance technician; International Brotherhood of Electrical Workers, Local 614, President	Schs. FK-1 to FK-17	Not offered
7/5/05	PennFuture parties	PF St. 1	Direct: Thomas J. Tuifey, Citizens for Pennsylvania's Future, Center for Energy, Environment and Enterprise, Director (Dr.)		**
7/5/05	PennFuture parties	PF St. 2	Direct: John J. Plunkett, Optimal Energy, Inc., Partner	Exhs. PF-JP 1 and 2	**
7/5/05	PennFuture parties	PF St. 3	Direct: David Hill, Vermont Energy Investment Corporation, Senior Project Manager (Dr.)	Exh. PF-DH-1	**
7/29/05	OSBA	OSBA St. 2	Rebuttal: Brian Kalcic (revised)	Exh. 2	*
7/29/05	PECO	PECO St. 1-R	Rebuttal: Dennis P. O'Brien – Revised 9/21	Exhs. DPO-1 to DPO-6	*
7/29/05	PECO	PECO St. 2-R	Rebuttal: William D. Arndt	Exh. WDA-7	*
7/29/05	PECO	PECO St. 3-R	Rebuttal: Dr. William H. Hieronymus – Revised 9/21	Exh. WHH-2	9/22/05
7/29/05	PECO	PECO St. 4-R	Rebuttal: Lisa Crutchfield, PECO Energy Company, Vice-President of Regulatory and External Affairs	Exhs. LC-1 to LC-6	*
7/29/05	PECO	PECO St. 5-R	Rebuttal: M. Bridget Reidy, Exelon Business Services Company, Senior Vice-President of Exelon Energy Delivery Customer and Marketing Services	Exhs. BR-1, BR-2	*
7/29/05	PECO	PECO St. 6-R	Rebuttal: J. Barry Mitchell, Exelon Corporation, Senior Vice-President, Treasurer and Chief Financial Officer		*
7/29/05	PECO	PECO St. 7-R	Rebuttal: Brian D. Crowe, PECO Energy Company, Director, Rates and Regulatory Affairs	Exhs. BDC-1 to BDC-4	*
7/29/05	PECO	PECO St. 8-R	Rebuttal: William J. Patterer, PECO Energy Company, Regulatory & Governmental Affairs Dept., Senior Rates Specialist	Exh. WJP-1	*

* Admitted by Stipulation on 9/22/05

** Admitted by Stipulation on 9/23/05

7/29/05	PECO	PECO St. 9-R	Rebuttal: Jack Crowley, Exelon Generation Company, LLC, Power Team, Director of Regulatory Affairs – Revised 9/21	Exhs. JC-1, JC-2	9/22/05
7/29/05	PECO	PECO St. 10-R	Rebuttal: Jeffrey A. Benjamin, Exelon Generation Company LLC, Vice-President, Licensing and Regulatory Affairs	Exh. JAB-1	*
7/29/05	PECO	PECO St. 11-R	Rebuttal: John R. Morris, Economists Incorporated, Principal (Dr.)	Exhs. JRM -1 to JRM-3	9/22/05
7/29/05	PECO	PECO St. 12-R	Rebuttal: J. Gregory Sidak, Criterion Economics, LLC founder – Revised 9/21/05	Appendix A	*
8/01/05	OCA	OCA St. 1-R	Rebuttal: Richard LaCapra		**
8/25/05	TRF	TRF St. 1-SR	Surrebuttal: Lewis M. Milford		
8/26/05	Labor	Labor Parties St. 2	Surrebuttal: John McGill, PECO Energy Company, Lineman 1/C 2 and Relief SDII (System Dispatcher); International Brotherhood 3 of Electrical Workers (IBEW), Local 614 member of, member, and member of Negotiating Committee		Not offered
8/26/05	OSBA	OSBA St. 3	Surrebuttal: Brian Kalcic (revised)	Attachments A, B	*
8/26/05	OSBA	OSBA St. 4	Supplemental direct: Brian Kalcic (revised)		*
8/26/05	FirstEnergy Companies	MetEd/Penelec/Penn Power St. 3-S	Surrebuttal: Julia Frayer		*
8/26/05	FirstEnergy Companies	MetEd/Penelec/Penn Power St 1-S-1	Surrebuttal and Supplemental direct: William Byrd		*
8/26/05	OCA	OCA St. 1-S	Surrebuttal: Richard LaCapra		**
8/26/05	OCA	OCA St. 1-Supp.	Supplemental direct: Richard LaCapra		**
8/26/05	OCA	OCA St. 2-S	Surrebuttal: Richard S. Hahn/Douglas C. Smith	Exhs. A, B	Not offered
8/26/05	OCA	OCA St. 3-S	Surrebuttal: Jerome D. Mierzwa		**
8/26/05	OCA	OCA St. 4-S	Surrebuttal: Barbara R. Alexander		**
8/26/05	OCA	OCA St. 4-Supp.	Supplemental direct: Barbara R. Alexander		**
8/26/05	PECO	PECO St. 1-DQ	Supplemental direct: Denis P. O'Brien		*
8/26/05	PECO	PECO St. 3-DQ	Supplemental direct: William H. Hieronymus		9/22/05

* Admitted by Stipulation on 9/22/05

** Admitted by Stipulation on 9/23/05

8/26/05	PECO	PECO St. 12-DQ	Supplemental direct: J. Gregory Sidak		*
8/26/05	PECO	PECO St. 13-DQ	Supplemental direct: Todd J. Jirovec, Booze Allen Hamilton, Vice-President		*
8/26/05	OTS	OTS St. 1-SR	Surrebuttal: David F. Keim		*
8/26/05	OTS	OTS St. 2-SR	Surrebuttal: Michael J. Gruber		*
8/26/05	OTS	OTS St. 3-SR	Surrebuttal and supplemental direct: Kevan L. Deardorff	Exh. 3-SR	*
8/26/05	Philadelphia	Phila. St. 2	Surrebuttal: Tamar Alexander, City of Philadelphia, Assistant Managing Director		Not offered
8/26/05	Philadelphia	Phila. St. 1-Supp	Supplemental direct: Kent R. Miller (Dr.)		**
8/26/05	Action Alliance et al	Action Alliance et al St. 1-SR	Surrebuttal: Harry S. Geller	Exhs. 1-SR through 10-SR	**
8/26/05	PGW	PGW St. 1-SR (proprietary and non-proprietary)	Surrebuttal and supplemental direct: Paul R. Carpenter	Appendices 1, 2, 3	9/23/05
8/26/05	PGW	PGW St. 2	Supplemental direct: Craig E. White, Philadelphia Gas Works, Interim Chief Operating Officer		9/26/05
8/26/05	PennFuture parties	PennFuture parties St. 1-S	Surrebuttal: Thomas J. Tuffey (Dr.)		Not offered
8/26/05	PennFuture parties	PennFuture parties St. 1-Supp	Supplemental direct: Thomas J. Tuffey (Dr.)		Not offered
8/26/05	PPL Cos.	PPL St. 1-SR	Surrebuttal and supplemental direct: Joseph P. Kalt (Dr.)	Exhs. JPK-12 through JPK-14	*
8/26/05	DEP	DEP DQ Test. 1	Supplemental direct: Lester B. Lave, Carnegie Mellon University, Tepper School of Business, University Professor, Higgins Professor of Economics and Finance in the Tepper School of Business, Professor of Engineering and Public Policy in the Engineering School, and Professor of Public Policy and Management in the Heinz School of Public Policy and Management at Carnegie Mellon University. (Dr)		Not offered
8/26/05	DEP	DEP DQ Test. 2	Supplemental direct: Bryce Maretzki, Dept. of Community and Economic Development, Policy Director	Attachment 1	Not offered
9/13/05			Joint Petition for Settlement		*

* Admitted by Stipulation on 9/22/05

** Admitted by Stipulation on 9/23/05

9/14/05	PAIEUG		Statement in Support of the Joint Petition for Settlement		
9/14/05	OTS		Statement in Support of the Joint Petition for Settlement		
9/14/05	Action Alliance		Statement in Support of the Joint Petition for Settlement		
9/14/05	TRF/SDF		Statement in Support of the Joint Petition for Settlement		
9/14/05	OCA		Statement in Support of the Joint Petition for Settlement		
9/14/05	Penn Future		Statement in Support of the Joint Petition for Settlement		
9/14/05	DEP		Statement in Support of the Joint Petition for Settlement		
9/14/05	PECO	St. 1-S	Further Supplemental Testimony: Denis P. O'Brien		*
9/14/05	OSBA		Statement in Support of the Joint Petition for Settlement		
9/19/05	Philadelphia		Statement in Opposition to Joint Settlement		
9/20/05	PPL Cos.		Statement Regarding Joint Petition for Settlement		
9/20/05	PGW	PGW St. 1-S	Supplemental Testimony in opposition: Paul Carpenter (revised)		9/23/05
9/22/05	PECO	Exh. WHH-3	PJM – zonal price differences		9/22/05
9/22/05	PGW	X-Exh. 1	Hieronymus: response to PGW V1-1		9/22/05
9/22/05	PGW	X-Exh. 2	Morris: interrogatory responses		9/22/05
9/23/05	PECO	X-Exh. 1	Miller: interrogatory responses		9/23/05
9/23/05	PECO	X-Exh. 2	Miller: interrogatory responses		9/23/05
9/23/05	PECO	X-Exh. 3	Carpenter: schematic		9/23/05
9/26/05	PECO	X-Exh. 4	White: interrogatory response		9/26/05
9/26/05	PECO	X-Exh. 5	White: interrogatory response		9/26/05
9/26/05	PECO	X-Exh. 6	White: interrogatory response		9/26/05
9/26/05	PECO	X-Exh. 7	White: interrogatory response		9/26/05
9/26/05	PECO	X-Exh. 8	White: PGW web site, pages		9/26/05

* Admitted by Stipulation on 9/22/05

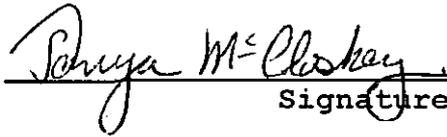
** Admitted by Stipulation on 9/23/05

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 30th day of November, 2005,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Initial Decision an official Commission document entered, issued, or otherwise promulgated under date of November 30, 2005 at Docket No. A-110550 F0160 on behalf of:

TANYA J MCCLOSKEY ESQUIRE
JAMES MULLINS ESQUIRE
OFFICE OF CONSUMER ADVOCATE
5TH FLOOR FORUM PLACE
555 WALNUT STREET
HARRISBURG PA 17101-1923


Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU
PA PUC
2005 DEC -1 PM 4:01

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of _____, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Initial Decision an official Commission document entered, issued, or otherwise promulgated under date of November 30, 2005 at Docket No. A-110550 F0160 on behalf of:

KENNETH L MICKENS ESQUIRE
ROBERT V ECKENROD ESQUIE
PA PUC OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265


Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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OFFICE OF TRIAL STAFF

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PA PUC

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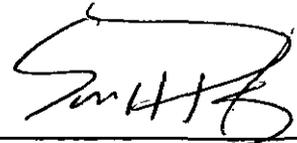
RECEIVED

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 2nd day of December, 2005,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Initial Decision an official Commission document entered, issued, or otherwise promulgated under date of November 30, 2005 at Docket No. A-110550 F0160 on behalf of:

RICHARD P MATHER SR ESQUIRE
SUSAN SHINKMAN ESQUIRE
SCOTT PERRY ESQUIRE
PA DEP
400 MARKET ST
RACHAEL CARSON BLDG 9TH FL
HARRISBURG PA 17101-2301



Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU
PA P.U.C.

2005 DEC -6 AM 9:15

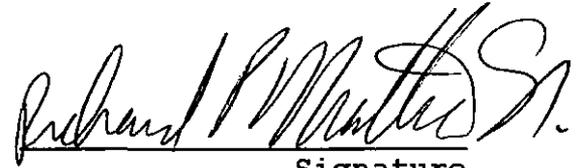
RECEIVED

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 3rd day of February, 2006,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of February 1, 2006 at Docket No. A-110550 F0160 on behalf of:

RICHARD P MATHER SR ESQUIRE
SUSAN SHINKMAN ESQUIRE
SCOTT PERRY ESQUIRE
PA DEP
400 MARKET ST
RACHAEL CARSON BLDG 9TH FL
HARRISBURG PA 17101-2301


Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
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Harrisburg, PA 17105-3265

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2006 FEB -7 AM 9:44
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COMMONWEALTH OF PENNSYLVANIA
Public Utility Commission
December 14, 2005

SUBJECT: A-110550F0160 – 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

TO: James J. McNulty
Secretary

FROM: Cheryl Walker Davis, Director
Office of Special Assistants

DOCUMENT
FOLDER

Pursuant to the requirements of Act 294, (66 Pa. C.S. §332(h)), Chairman Holland, Vice Chairman Cawley, Commissioner Shane, Commissioner Pizzingrilli and Commissioner Fitzpatrick have requested full review of the Administrative Law Judge's Initial Decision in the above captioned proceeding. The fifth request for review was dated December 14, 2005.

Please notify the Office of Administrative Law Judge to prepare the case for consideration at a future Public Meeting.

DOCKETED
JAN 17 2006

Exceptions Filed

RECEIVED
2005 DEC 14 PM 2:42
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SECRETARY'S BUREAU

Act 294

Case Identification:

A-110550F0160; 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

Initial Decision By:

ALJ Marlane R. Chestnut

Deadline for Return to OSA:

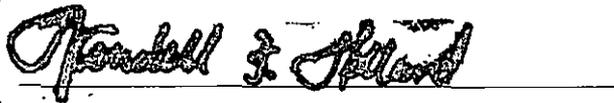
December 13, 2005

This decision has not been reviewed by OSA.

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* * * * *

I want full Commission review of this decision.



Commissioner



Date

I do not want full Commission review of this decision.

Commissioner

Date

Act 294

Case Identification:

A-110550F0160; 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

Initial Decision By:

ALJ Marlane R. Chestnut

Deadline for Return to OSA:

December 13, 2005

This decision has not been reviewed by OSA.

* * * * *

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I want full Commission review of this decision.

James H. Cawley

Commissioner

12/13/05

Date

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Commissioner

Date

Bob

Act 294

Case Identification:

A-110550F0160; 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

Initial Decision By:

ALJ Marlane R. Chestnut

Deadline for Return to OSA:

December 13, 2005

This decision has not been reviewed by OSA.

* * * * *

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2005 DEC 13 PM 3:04
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I want full Commission review of this decision.

Bill Shaw (AS)

Commissioner

12/12/05

Date

I do not want full Commission review of this decision.

B

Commissioner

Date

Act 294

Case Identification:

A-110550F0160; 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

Initial Decision By:

ALJ Marlane R. Chestnut

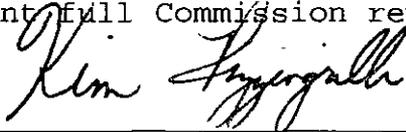
Deadline for Return to OSA:

December 13, 2005

This decision has not been reviewed by OSA.

* * * * *

I want full Commission review of this decision.



Commissioner

12-13-05

Date

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I do not want full Commission review of this decision.

Commissioner

Date

Act 294

Case Identification:

A-110550F0160; 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

Initial Decision By:

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Deadline for Return to OSA:

December 13, 2005

This decision has not been reviewed by OSA.

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OFFICE OF SPECIAL ASSISTANTS

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I want full Commission review of this decision.

Terrance J. Fitzpatrick

12/1/05

Commissioner

Date

I do not want full Commission review of this decision.

Commissioner

Date