

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> October 12, 2006	2. <u>BUREAU AGENDA NO.</u> OCT-2006-L-0070*
3. <u>BUREAU:</u> LAW	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: B. Pankiw, 3-3222 <i>BPP</i> Mgr/Spvr: R. Young, 7-3173	October 19, 2006
7. <u>PERSONS IN CHARGE:</u> L. Barth, 2-8579 <i>LB</i>	9. <u>EFFECTIVE DATE OF FILING:</u> N/A
8. <u>DOCKET NO.:</u> A-110550F0160	

10. (a) CAPTION (abbreviate if more than 4 lines)  
 (b) Short summary of history & facts, documents & briefs  
 (c) Recommendation

- (a) Joint Application of PECO Energy Company And Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corporation
- (b) PECO has informed the Commission that the merger with PSEG has been terminated. The proposed order rescinds the Commission's approval of the merger.
- (c) The Law Bureau recommends that the Commission approve the proposed order.

**DOCUMENT  
FOLDER**

**DOCKETED**  
DEC 13 2006

Calendar Docs No. 635463

Order Docs No. 635091

11. MOTION BY: Commissioner Chm. Holland

SECONDED: Commissioner Cawley

Commissioner Pizzingrilli - Yes  
Commissioner Fitzpatrick - Yes  
Commissioner

**KJR**

CONTENT OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
October 19, 2006

REFER TO OUR FILE

A-110550 F0160

THOMAS GADSDEN ANTHONY DECUSATIS ESQS  
MORGAN LEWIS AND BOCKIUS LLP  
1701 MARKET STREET  
PHILADELPHIA PA 19103-2921

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, Inc. with and into Exelon Corporation.

To Whom It May Concern:

This is to advise you that a Tentative Opinion and Order  
has been adopted by the Commission in Public Meeting on October 19,  
2006 in the above entitled proceeding.

A Tentative Opinion and Order has been enclosed for your  
records.

Very truly yours,

James J. McNulty  
Secretary

Enclosure  
Certified Mail  
LJM

See attached list for additional parties of record

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held October 19, 2006

Commissioners Present:

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Kim Pizzingrilli  
Terrance J. Fitzpatrick

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

**TENTATIVE OPINION AND ORDER**

Before us today is the September 19, 2006, letter of PECO Energy Company (PECO Energy) informing us that, its parent company, Exelon Corp. (Exelon) has terminated its merger agreement with Public Service Enterprise Group, Inc. (PSEG). For the reasons stated below, we shall tentatively rescind our approval of the merger of Exelon and PSEG. In the absence of any adverse comments filed within 10 days of the date of this order, the order shall become final without further Commission action.

This proceeding began February 4, 2005, when PECO and Public Service Electric and Gas Company (PSE&G) (collectively, Joint Applicants), filed a Joint Application pursuant to Chapter 11 of the Public Utility Code, 66 Pa.C.S. §§ 1100-1103, requesting that we issue an order approving the merger of PSEG, PSE&G's corporate parent, with and into Exelon. The Joint Application was set for hearing before an Administrative

Law Judge. On September 12, 2005, the Joint Applicants and most of the Intervenors filed a Joint Petition for Settlement (Settlement Agreement). Intervenors not joining in the Joint Settlement included the City of Philadelphia (City), Philadelphia Gas Works (PGW), the PPL Companies, and the FirstEnergy Companies. The City filed a statement in opposition to the Joint Settlement on September 19, 2005, and PGW submitted supplemental testimony opposing the Joint Settlement on September 20, 2005. Evidentiary hearings were held on September 22, 23, and 26, 2005.

On November 30, 2005, Administrative Law Judge Marlane R. Chestnut issued an Initial Decision (ID). ALJ Chestnut recommended that the Joint Settlement be accepted, without modification and also that the proposed merger be approved, as conditioned. PGW, the City and the PPL Companies filed exceptions to the ID. In our order entered February 1, 2006, we denied the exceptions, adopted the ID and placed additional conditions on the Joint Applicants. PGW and the City filed petitions for review of our February 1 order at Commonwealth Court Case Nos. 444 and 456 C.D. 2006. Those consolidated appeals remain pending before the court.

On October 10, 2006, Commonwealth Court granted a joint motion filed by the Commission, PGW and the City staying the procedural schedule and remanding the matter to the Commission so that we may act on the notification that the merger has been terminated.

In its letter of September 19, 2006, PECO states that, under paragraph 56 of the Settlement Agreement, the overall settlement was contingent upon the merger being consummated. PECO states that the Settlement Agreement is therefore terminated as well and asks us to seek the conclusion of the proceedings before Commonwealth Court.<sup>1</sup>

In addressing this letter, we first note that Paragraph 56 of the Settlement Agreement states, in pertinent part, that:

[T]he consummation and closing of the Merger constitutes a condition precedent to the Settlement. Once the Merger has

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<sup>1</sup> PECO also asks us to terminate our investigation into the possible consolidation of PGW with the gas operations of the merged companies at Docket No. I-00060110. That is a separate docket and we shall not address that request here.

been consummated and closed, the 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.

We agree that a cessation of the merger by the parties to that merger renders the agreement void, pursuant to its own provisions. For that reason, with the Settlement Agreement, having fallen by its own terms, we hereby rescind our approval of the Settlement Agreement and the merger of Exelon and PSEG.

**THEREFORE,**

**IT IS ORDERED:**

1. That our approval of the merger of Exelon Corp. and Public Service Enterprise Group, Inc. is tentatively rescinded consistent with this order.
2. That, if no objections are received within ten (10) days of entry of this Tentative Opinion and Order, this docket shall be marked closed.
3. That a copy of this Tentative Opinion and Order shall be served upon all parties to this proceeding.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: October 19, 2006

ORDER ENTERED: **OCT 19 2006**

0001.  
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CHIEF ALJ VERONICA SMITH  
COMMONWEALTH KEYSTONE BLDG 2ND FLOOR  
P O BOX 3265  
HARRISBURG PA 17105-3265

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DIRECTOR OF OPERATIONS  
COMMONWEALTH KEYSTONE BLDG 3RD FLOOR  
P O BOX 3265  
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KENT D MURPHY

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PO BOX 8699

PHILADELPHIA

PA 19101-8699

PUBLIC SERVICE ELECTRIC & GAS COMPANIES

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 26<sup>th</sup> day of Oct, 2006

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of a Tentative Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of October 19, 2006 at Docket No. A-110550 F0160 on behalf of:

DIRECTOR OF OPERATIONS  
COMMONWEALTH KEYSTONE BLDG 3RD FLOOR  
P O BOX 3265  
HARRISBURG PA 17105-3265

Karen Bill  
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 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

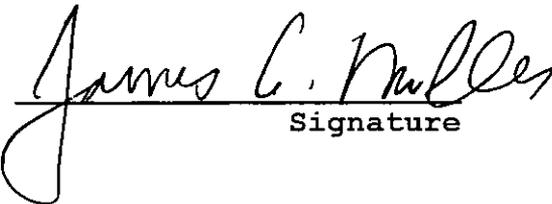
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PA.P.U.C.  
SECRETARY'S BUREAU

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 25<sup>th</sup> day of October, 2006

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of a Tentative Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of October 19, 2006 at Docket No. A-110550 F0160 on behalf of:

I POPOWSKY  
T MCCLOSKEY J MULLINS S KEENE A BEA  
555 WALNUT STREET FIFTH FL FORUM PL  
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 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

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OCT 26 2006

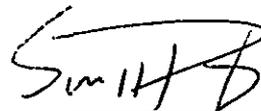
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 24<sup>th</sup> day of October, 2006 KJR

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of a Tentative Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of October 19, 2006 at Docket No. A-110550 F0160 on behalf of:

R P MATHER SR S SHINKMAN S PERRY COUNSEL  
RCSOB 9TH FLOOR  
400 MARKET STREET  
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 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

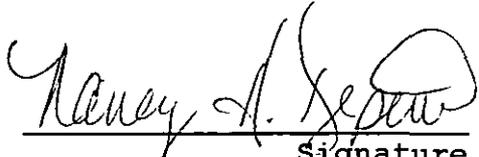
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SECRETARY'S BUREAU

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 a Tentative Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of October 19, 2006 at Docket No. A-110550 F0160 on behalf of:

K MICKENS R ECKENROD A CURTIN ESQUIRES  
PA PUC  
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 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

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SECRETARY'S BUREAU  
PA PUC

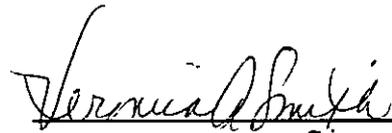
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05 OCT 20 AM 11:28  
PA PUC  
OFFICE OF TRIAL STAFF

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 20<sup>th</sup> day of October, 2006

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of a Tentative Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of October 19, 2006 at Docket No. A-110550 F0160 on behalf of:

CHIEF ALJ VERONICA SMITH  
COMMONWEALTH KEYSTONE BLDG 2ND FLOOR  
P O 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  
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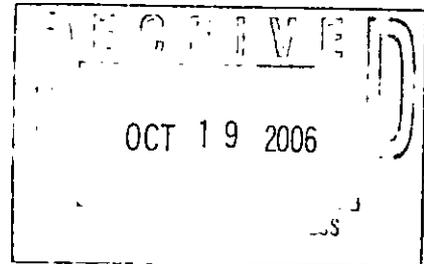
SECRETARY'S BUREAU  
2006 OCT 24 AM 10:17

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 a Tentative Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of October 19, 2006 at Docket No. A-110550 F0160 on behalf of:

K MILLER W R LLOYD JR S WEBB ESQUIRES  
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\_\_\_\_\_  
Signature

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

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PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
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Harrisburg, PA 17105-3265

**RECEIVED**

OCT 20 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU